Item 4 – Exhibit 1
Revised 9/10/19

CITY OF CHULA VISTA
REIMBURSEMENT AGREEMENT
WITH RIDA CHULA VISTA, LLC
TO CONSTRUCT SPECIFIED BAYFRONT SEWER IMPROVEMENTS

This REIMBURSEMENT AGREEMENT ("Agreement") is entered into as of this _____ day of _____, 20____ (the "Execution Date") by and among the City of Chula Vista, a chartered municipal corporation ("City") and RIDA Chula Vista, LLC, a Delaware limited liability company ("Developer") (collectively, the "Parties" and, individually, a "Party"), with reference to the following Recitals:

RECITALS

A. WHEREAS, City, Developer, and the San Diego Unified Port District ("District") entered into a Disposition and Development Agreement for the Resort Hotel Convention Center Project (Chula Vista Bayfront Master Plan Parcel H-3), effective May 7, 2018 (the "DDA"); and

B. WHEREAS, the Scope of Development attached to the DDA provides that the Developer shall in connection with the development of Developer's Private Improvements (as defined in the DDA) construct certain in-road sewer improvements, consisting of E Street (from G Street to H Street), the G Street Connection, and the H-3 Utility Corridor (collectively, the "Developer's Sewer Improvements" or "Project"), to be funded by the City's Sewer Facility Contribution; and

C. WHEREAS, pursuant to Chula Vista Municipal Code ("CVMC") Section 13.14.030(B) (Connection to Public Sewer – Fee), any person desiring to connect, directly or indirectly, any parcel or any building thereon to any public sewer which has been constructed at no cost to the parcel to be connected shall pay the one-time required fee for sewer connection to the City, with all revenue derived from such fees to be deposited into the Sewer Income Fund; and

D. WHEREAS, pursuant to CVMC Chapter 3.16 (Sewer Income Fund), all revenues collected under CVMC Section 13.14.030(B) shall be deposited into the "Sewer Income Fund" and may be used, in the discretion of the City Council (as defined below) and pursuant to a written contract, to reimburse any person who has constructed sewer facilities to the extent, as determined by the City Council, that such sewer facilities have benefited other properties; and

E. WHEREAS, the Developer's Sewer Improvements are eligible for reimbursement from the Sewer Income Fund; and

F. WHEREAS, the City has sufficient funds in the Sewer Income Fund to reimburse Developer for the design, development and construction of the Developer's Sewer Improvements; and

G. WHEREAS, Developer desires to enter into this Agreement with the City, so that it may obtain reimbursement for the eligible costs of designing, developing and constructing Developer's Sewer Improvements.

AGREEMENT

NOW THEREFORE, in consideration of the above Recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, City and Developer agree as follows:

ARTICLE I. DEFINITIONS

In this Agreement, unless the context otherwise requires, the following terms and phrases shall have the following meanings:

1.1. Acceptance. "Acceptance" means Project acceptance pursuant to standard and customary City practices.

1.2. Agreement. "Agreement" means this Reimbursement Agreement between the City and the Developer. The term "Agreement" shall include any amendment to the Agreement properly approved and executed pursuant to the terms of this Agreement.

1.3. Approved Drawings and Specifications. "Approved Drawings and Specifications" means the drawings and specifications for the Developer's Sewer Improvements as approved and permitted by the City.

1.4. BMP. "BMP" has the meaning given to such term in Section 8.1.3.

1.5. City. "City" means the City of Chula Vista. Unless specifically provided otherwise, whenever this Agreement requires an action or approval by City, that action or approval shall be performed by the City representative designated by the Agreement.

1.6. City Attorney. "City Attorney" means that position established pursuant to and in accordance with CVMC Chapter 2.11.

1.7. City Council. "City Council" means the governing body of the City.

1.8. City Engineer. "City Engineer" means that position established pursuant to and in accordance with CVMC Chapter 2.06.

1.9. City Manager. "City Manager" means the City Manager of City or his or her designee.

1.10. Competitive Bid or Solicitation Process. "Competitive Bid or Solicitation Process" has the meaning given to such term in Section 6.1.

1.11. Contested Charge. "Contested Charge" has the meaning given to such term in Section 9.1.5.3.

1.12. Contract Documents. "Contract Documents" includes, but is not limited to: the prime construction contract(s), prime construction contract(s) exhibits and addenda, subcontract(s), subcontract(s) exhibits and addenda, and any of the following: notice inviting bids, instructions to bidders, bid (including documentation accompanying bid and any post-bid documentation submitted prior to notice of award), the bonds, the general conditions, permits from City or other agencies, the special provisions, the plans, standard plans, standard specifications, reference specifications, the Approved Drawings and Specifications, and all modifications issued after the execution of the subcontract(s), in each case, in connection with the Project.

1.13. Cutoff Date. "Cutoff Date" means one (1) year from the date of Acceptance of the Project.

1.14. CVMC. "CVMC" has the meaning given to such term in the Recitals.

1.15. DDA. "DDA" has the meaning given to such term in the Recitals.

1.16. DDA Close of Escrow. "DDA Close of Escrow" means Close of Escrow as such term is defined in the DDA.

1.17. Defective Work. "Defective Work" means all work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not substantially conform to the Contract Documents.

1.18. Design and Construction Standards. "Design and Construction Standards" means the edition of the City-adopted Design and Construction Standards for public works projects that is in effect when the Approved Drawings and Specifications are approved by the City for purposes of the bids and which is available in the City's Department of Engineering and Capital Projects and on the City's website.

1.19. Developer. "Developer" has the meaning given to such term in the preamble.

1.20. Developer's Sewer Improvements. "Developer's Sewer Improvements" has the meaning given to such term in the Recitals.

1.21. Director of Development Services. "Director of Development Services" means the Director of Development Services of City or his or her designee.

1.22. District. "District" has the meaning given to such term in the Recitals.

1.23. Estimated Cost. "Estimated Cost" means the total cost of the design, development and construction of the Developer's Sewer Improvements, as estimated by preliminary engineering studies to total **$1,195,000**, as shown in Exhibit A attached hereto. As Estimated Cost is not initially the result of competitive bids for the actual design, development and construction, it is subject to change during the competitive bid process as well as during the design and construction phases, subject to approval of the Parties.

1.24. Execution Date. "Execution Date" has the meaning given to such term in the preamble.

1.25. Final Accounting. "Final Accounting" has the meaning given to such term in Section 9.1.7.

1.26. General Contractor. "General Contractor" means a party or parties under any contract with the Developer to perform the work or provide supplies for the Developer's Sewer Improvements.

1.27. Greenbook. "Greenbook" means the 2012 edition of the Standard Specifications for Public Works Construction.

1.28. Ground Lease. "Ground Lease" means that certain San Diego Unified Port District Lease to RIDA Chula Vista, LLC of Property Located at Chula Vista, California to be executed by the Developer and the District pursuant to the DDA.

1.29. Hazardous Materials. "Hazardous Materials" means hazardous waste or hazardous substances as defined in any federal, state, or local statue, ordinance, rule, or regulation applicable to the Property, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42) United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 united States Code sections 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25). "Hazardous Materials" shall also include asbestos or asbestos containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation.

1.30. Holiday. "Holiday" means the City-observed holidays listed below (if any holiday listed falls on a Saturday, then the Saturday and the preceding Friday are both legal holidays. If the holiday should fall on a Sunday, then the Sunday and the following Monday are both legal holidays):

Holiday	Observed On
New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
Caesar Chavez Day	March 31

Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Thanksgiving Day Friday	Friday after Thanksgiving
Christmas Day	December 25

1.31. Illegal Discharge. "Illegal Discharge" has the meaning given to such term in Section 14.1.3.

1.32. Maximum Reimbursement Amount. "Maximum Reimbursement Amount" means the lesser of the Estimated Cost, as may be amended from time to time, or the amount of Reimbursable Costs that is calculated during the Final Accounting (as defined below).

1.33. Non-Reimbursable Costs. "Non-Reimbursable Costs" means the following costs that shall not be eligible for reimbursement under this Agreement: Costs Incurred Due to Negligence, Unapproved Costs, Excess Costs, Non-Project Shared Costs, and Defective Work Costs each as further defined in Section 9.1.5.2.

1.34. Notice of Completion. "Notice of Completion" means the standard document recorded by the City upon completion of a public works project in accordance with City's standard and customary practices.

1.35. Party. "Party" has the meaning given to such term in the preamble.

1.36. Payment Date. "Payment Date" means twenty (20) days following the date on which Developer submits a complete Reimbursement Request (as reasonably determined by the Director of Development Services) or a Reimbursement Request that is complete with respect to a portion of the requested reimbursement (as reasonably determined by the Director of Development Services).

1.37. Pre-Existing Hazardous Material: "Pre-Existing Hazardous Material" means any Hazardous Material located on or under the Project Site prior to the Execution Date, whether known or unknown, or any Hazardous Material located outside the Project site (including any premises owned by the City) prior to the Execution Date that migrates to the Project site thereafter.

1.38. Project. "Project" has the meaning given to such term in the Recitals.

1.39. Project Improvements. "Project Improvements" or "Improvements" means the Developer's Sewer Improvements.

1.40. Project Site. "Project Site" means the location of the Project for purposes of pre-construction services and construction.

1.41. Reimbursable Costs. "Reimbursable Costs" means costs of the design, development and construction (including (i) the premium cost of property insurance, (ii) the premium cost of liability insurance, (iii) all other approved premium insurance costs, and (iv) property insurance deductible, liability insurance deductible and self-insured retention (SIR) costs not-to-exceed $25,000 per occurrence) of the Developer's Sewer Improvements that have been expended by Developer and approved by the City through approval procedures described in the Agreement.

1.42. Reimbursement Request. "Reimbursement Request" means a reimbursement request package submitted to the City containing the items listed in Section 9.1.3.1.

1.43. Sewer Facility Contribution. "Sewer Facility Contribution" means the contribution by the City to fund specific sewer facility improvements comprising part of the RHCC Public Improvements described in Exhibit A attached hereto and as may be more specifically described in the Plan of Finance (as defined in the DDA).

1.44. Sewer Income Fund. "Sewer Income Fund" means the fund designated as the "sewer income fund" with respect to the Developer's Sewer Improvements pursuant to and in accordance with CVMC Section 3.16.010.

1.45. Sewer Income Fund Eligible Expenses. "Sewer Income Fund Eligible Expenses" means costs for which the City shall reimburse Developer from the Sewer Income Fund (or an alternative source of funds identified by the City) for the design, development and construction (including the cost of builder's risk insurance and all other insurance costs) of the Developer's Sewer Improvements, not to exceed the Estimated Costs.

1.46. Sole Source Process. "Sole Source Process" has the meaning given to such term in Section 6.1.

1.47. Standard Specifications. "Standard Specifications" means the Greenbook, the local standard special provisions referenced in the Approved Drawings and Specifications, and any amendments thereto that are approved by the City.

1.48. Subcontractor. "Subcontractor" means a party or parties under any subcontract with the General Contractor to perform the work or provide supplies for the Developer's Sewer Improvements.

1.49. SWPPP. "SWPPP" has the meaning given to such term in Section 8.1.3.

1.50. Working Day(s). "Working Day(s)" means Monday through Friday, excluding Holidays.

ARTICLE II. SUBJECT OF THE AGREEMENT - GENERALLY

The above-listed Recitals are true and correct and are incorporated by this reference. All attachments to this Agreement as Exhibits are incorporated into this Agreement by this reference.

2.1. Developer's Sewer Improvements. Except as expressly provided in this Agreement, Developer shall cause the design and development of the Project Improvements in accordance with the Schematic Plans (as defined in the DDA) for the development of Phase 1A Infrastructure Improvements (as defined in the DDA) that the District shall submit to Developer pursuant to Section 4.4(b) of the DDA, and Developer shall cause the Project Improvements to be constructed so that the Project Improvements are in accordance with the applicable Contract Documents within the timeframe described in Section 5.1, in each case, in accordance with all the terms and conditions of this Agreement and for the Maximum Reimbursement Amount; provided, however, that the Developer shall have no obligation to develop or construct any of the Project Improvements unless and until DDA Close of Escrow occurs in accordance with the DDA.

2.2. Complete and Functional Improvements. Developer shall provide complete and functional Developer's Sewer Improvements that meet the Contract Documents and all other applicable standards identified herein.

2.3. Maintain Until Acceptance. Following the completion of the Project Improvements, Developer shall maintain the Project Improvements until the Acceptance.

2.4. City Payment. City shall reimburse Developer, in an amount not to exceed the Maximum Reimbursement Amount and subject to the terms and conditions herein, for the Sewer Income Fund Eligible Expenses of design, development, and construction of Developer's Sewer Improvements. City acknowledges and agrees that all of the Estimated Costs identified in Exhibit A are Sewer Income Fund Eligible Expenses. The City represents and warrants to Developer that, as of the Execution Date, the aggregate amount of funds on deposit in the Sewer Income Fund is equal to or greater than the Maximum Reimbursement Amount and that the City will use its reasonable efforts to manage the Sewer Income Fund in a manner so that the aggregate amount of funds on deposit in the Sewer Income Fund during the term of this Agreement is sufficient to pay all Reimbursable Costs in accordance with this Agreement. To the extent that the amount of funds in the Sewer Income Fund are insufficient to pay all Reimbursable Costs, City shall identify alternative funds from which to pay City's Sewer Facility Contribution obligation pursuant to the DDA.

ARTICLE III. DURATION OF AGREEMENT

3.1. Term of Agreement. This Agreement shall become effective on the Execution Date, and the term of this Agreement shall extend until the earlier of (i) such time as all executory

terms have been completed or (ii) earlier termination of this Agreement according to the termination provisions herein.

ARTICLE IV. PROJECT COSTS

4.1. Estimated Cost. The Estimated Cost is one million dollars ($1,195,000), as shown in Exhibit A attached hereto.

4.2. Adjustment to Estimated Cost. Estimated Cost is subject to change by the methods identified below and those established elsewhere in this Agreement.

4.2.1. *Revisions to the Estimated Cost*. The City Manager or his/her designee shall review complete sets of the drawings and specifications for the Developer's Sewer Improvements promptly after Developer provides them to the City. In the event that the City Manager or designee reviews the drawings and specifications for the Developer's Sewer Improvements and determines that the cost of design, development, and construction will exceed the then current Estimated Cost, the Estimated Cost shall be increased to reflect the revised estimate in accordance with subsection 4.2.2.

4.2.2. *Adjustments Based on Other Cost Increases*. The Estimated Cost may be increased due to: (i) acts of God, acts of any governmental authority, the elements, war, litigation, shortages of material, labor strikes, inflation, later commonly accepted or adopted higher standards and specifications of construction, concealed or unknown conditions encountered in the completion of Developer's Sewer Improvements, or other cause beyond Developer's control; (ii) actual bids received being greater than estimated; (iii) other factors not the result of unreasonable conduct by Developer; or (iv) the presence of any Hazardous Material on the Project Site (as defined in the DDA). Subject to the prior written approval by the City Manager or his/her designee, which approval shall not be unreasonably withheld, conditioned, or delayed, the Estimated Cost shall be increased by the amount of the increase in the cost of the design, development, and construction of the Developer's Sewer Improvements that are determined by the City Manager or his/her designee (in such person's reasonable, good faith discretion) to be caused by such events or circumstances.

4.2.3. *Failure to Obtain Approval of Increase*. In any case where City Manager's approval is required for an increase in the Estimated Cost and such approval is not obtained, Developer shall have no obligation to incur costs in excess of the Estimated Cost. City Manager shall not unreasonably withhold, condition or delay its approval of any deductive change to the Project Improvements such that the Project Improvements, as revised, can be completed for the Estimated Cost.

4.3. Notification of Increased Costs. If, at any time, Developer definitively establishes that the amount expended on the Project Improvements will exceed the Estimated Cost, Developer shall promptly, and in any case not more than ten (10) Working Days after the Developer definitively establishes the amount of the increase, notify the City thereof in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions (e.g., deductive changes) which Developer believes will bring the cost to within the Estimated Costs. The City may either: (i) approve an increase in Estimated Cost (which approval shall not be unreasonably withheld, conditioned, or delayed) or (ii) reasonably delineate a project which may be constructed for the Estimated Cost; provided that such delineation does not have a material and adverse effect on the design, development, or construction of the Developer's Private Improvements (as defined in the DDA) or the Convention Center (as defined in the DDA); or (iii) any combination of (i) and (ii).

ARTICLE V. PROJECT SCHEDULE

5.1. Project Schedule. Developer shall complete the Project Improvements by sixty (60) months and ten (10) days after the commencement date of the Ground Lease (such deadline to be extended by one day for each day the applicable deadline is extended pursuant to and in accordance with the Ground Lease, including pursuant to any amendment to the Ground Lease). No delay in the completion of the Project Improvements shall excuse any failure by Developer to timely complete the Resort Hotel and the Convention Center (as each such term is defined in the Ground Lease) in accordance with the Ground Lease, except as set forth in the Ground Lease.

5.2. Unavoidable Delay. Each Party shall be entitled to an extension of the date of the performance of any obligation required of such Party under this Agreement in the same manner and to the same extent as provided in the Ground Lease.

ARTICLE VI. COMPETITIVE BIDDING AND EQUAL OPPORTUNITY

6.1. Compliance. Developer shall bid and award contracts and subcontracts to complete Project in accordance with all applicable public contract laws, rules, and regulations, including but not limited to those set forth in the City of Chula Vista Charter and Municipal Code, including CVMC §2.56.160(H) (Developer-Performed Public Works). Notwithstanding anything to the contrary herein, the Parties agree that the Developer may (a) subject to CVMC §2.56.160(H)(1)(b) (Developer-Performed Public Works), award the prime contract for the Project to the General Contractor on a sole source basis pursuant to and in accordance with CVMC §2.56.160(H)(1)(b) ("Sole Source Process") or, (b) subject to CVMC §2.56.160(H) (Developer-Performed Public Works), award the prime contract for the Project to the General Contractor by competitive bid or solicitation in accordance with CVMC §2.56.160(H)(2)(d) (Developer-Performed Public Works) ("Competitive Bid or Solicitation Process"). The Parties further agree that, in the case of the Sole Source

Process, the General Contractor for the Project shall award subcontracts for the Project to Subcontractors by competitive bid or solicitation in accordance with CVMC §2.56.160(H)(2)(d) (Developer-Performed Public Works) ("Competitive Bid or Solicitation Process").

6.1.1. *Proof of Advertising*. In the case of any Competitive Bid or Solicitation Process, Developer shall provide the City with proof that the Developer or the General Contractor, as applicable, solicited competitive bids from the General Contractor and/or Subcontractors, as applicable, in accordance with CVMC §2.56.160(H)(2)(c) (Developer-Performed Public Works).

6.1.2. *Prevailing Wage*. Developer shall advertise the Project as requiring the payment of prevailing wage and include all provisions in the advertisement and Contract Documents as required by the California Department of Industrial Relations.

6.2. Bid Opening and Award. In the case of any Competitive Bid or Solicitation Process, Developer shall provide City with a copy of the tabulation of competitive bid results with respect to each contract and subcontract, as applicable. In the event that the best qualified General Contractor's bid or Subcontractor's bid, as applicable, combined with a reasonable amount for contingencies, exceeds the Estimated Cost, the increase in the costs may be approved by the City Manager pursuant to Section 4.2.2 prior to awarding the prime contract or the subcontract, as applicable. In the event the City Manager does not approve the increased cost, this Agreement, at the City's option but subject to the next sentence, may be terminated upon prior written notice thereof to Developer of not less than twenty (20) days and the Project may be rebid and/or redesigned. If the City notifies Developer that it intends to exercise the termination option, then Developer shall have the right to pay the amount in excess of the Estimated Cost ("Excess Cost"), in which case the City shall no longer have the right to terminate this Agreement. Developer acknowledges and agrees that payment of any Excess Cost shall not be a Reimbursable Cost under this Agreement. In the event that the Agreement is terminated pursuant to this Section 6.2, the Developer's design, development, and/or construction costs will be reimbursed to Developer from the Sewer Income Fund for the actual Reimbursable Costs expended by Developer prior to termination of this Agreement. Developer shall provide City with copies of all executed contracts awarded in accordance with this Section 6.2.

6.3. Equal Employment Opportunities and Equal Opportunity Contracting.

6.3.1. *Equal Employment Opportunity Nondiscrimination*. Developer shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Developer shall provide equal opportunity in all employment practices. Developer shall instruct its consultants, subconsultants, General Contractor, and Subcontractors, to comply with this provision. Nothing in this

subsection 6.3.1 shall be interpreted to hold Developer liable for any discriminatory practice of its General Contractor, Subcontractors or any other party.

6.3.2. *Equal Employment Opportunity Certification*. Developer shall require all bidders to submit signed equal employment opportunity certifications[1], on forms approved by the City, with their bid packages.

6.3.3. *Equal Opportunity Contracting Nondiscrimination*. Developer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of bidders, the General Contractor, Subcontractors, vendors, or suppliers. Developer shall provide equal opportunity for bidders, contractors, the General Contractor, and Subcontractors to participate in contracting and subcontracting opportunities. Developer understands and agrees that violation of this subsection 6.3.3 shall be considered a material breach of this Agreement and may result in termination of this Agreement, debarment, or other sanctions. The language in this subsection 6.3.3 shall be inserted in contracts between Developer, the General Contractor, any Subcontractors, vendors, and suppliers awarded in accordance with Section 6.2.

ARTICLE VII. DESIGN AND CONSTRUCTION STANDARDS

7.1. Standard of Care. Developer agrees that it will require that the services provided as part of this Agreement be performed in accordance with the standards customarily adhered to by experienced and competent professional architectural, engineering, landscape architecture, and construction firms (as applicable) using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.

7.1.1. *Compliance with all Laws.* Developer shall comply, and require compliance by any of its General Contractor, Subcontractors, employees, and agents, with all laws, including but not limited to all local, City, San Diego County, State of California, and federal laws, codes and regulations, ordinances and written publicly available policies, including, but not limited to, Development Services Department permits, hazardous material permits, site safety, state and local building codes, stormwater regulations, etc.

7.2. Compliance with Design and Construction Standards. Developer shall comply, and require compliance by any of its General Contractor, Subcontractors, employees, and agents, with the Design and Construction Standards.

[1] NTD: City to provide standard certifications for Developer's review.

7.2.1. *Standard Specifications*. Developer shall comply, and require compliance by any of its General Contractor, Subcontractors, employees, and agents, with the editions of the following reference specifications that are in effect as of the date of the approval of the Approved Drawings and Specifications for purposes of the bids when designing, developing, and constructing the Project: the Greenbook and the regional and any local supplement amendments thereto that are listed on Exhibit B attached hereto.

7.2.1.1. *City Standards*. Developer's professional services shall be provided in conformance with the professional standards of practice established by City. This includes amendments and revisions of these standards as adopted by City. The professional standards of practice established by City include the Standard Specifications and the Approved Drawings and Specifications.

7.3. Changes to Standards. Developer shall not be required to comply, nor to cause any of its General Contractor, Subcontractors, employees, and agents to comply, with any design standard or any construction standard or any amendment, update, supplement or other modification to the Design and Construction Standards after the date of the approval of the Approved Drawings and Specifications for purposes of the bids.

7.4. City Approval Not a Waiver of Obligations. Where approval by the City, the City Manager, or other representatives of City is required, it is understood to be general approval only and does not relieve Developer of responsibility for complying with all applicable laws, codes, and good consulting, design, or construction practices and is not an assumption of liability by the City, except in the case of City's express waiver of the requirement to comply with (a) any City requirement, to the extent such requirement is waivable, or (b) any good consulting, design, or construction practice. Nor shall City, through approval, become an insurer or surety of work associated with the approvals.

ARTICLE VIII. CONSTRUCTION

8.1. Site Safety, Security, and Compliance. Developer shall be responsible for Project Site safety, security, and compliance with all related laws and regulations.

8.1.1. *Persons*. As between the Developer and the City, and without expanding the Developer's contractual obligations or duties to any person other than the City, the Developer shall be fully responsible for the safety and security of its officers, agents, and employees authorized by Developer to access the Project Site.

8.1.2. *Other*. Developer is responsible for Project Site, materials, equipment, and all other incidentals on the Project Site until the completed Project has been accepted by the City pursuant to Article X.

8.1.3. *Environment*. Developer shall comply with all environmental laws and regulations, including the Clean Air Act of 1970, the Clean Water Act, Executive Order number 11738, and the Stormwater Management and Discharge Control Ordinance No. 0-17988 and any and all Best Management Practice ("BMP") guidelines and pollution elimination requirements as may be established by an enforcement official. Furthermore, Developer shall prepare and incorporate into the drawings and specifications a Stormwater Pollution Prevention Plan ("SWPPP") to be implemented by Developer during Project construction and, until Acceptance, maintenance. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and shall be in conformance with the City of Chula Vista BMP Design Manual and CVMC Chapter 14.20 (Storm Water Management and Discharge Control).

8.1.4. Access to Project Site. City officers, agents, and employees that have Project-related business shall have the right to enter the Project Site at any time for Project related purposes; provided that such person complies with all written applicable security and safety procedures provided by Developer to City, written instructions given by Developer to City and oral instructions given by Developer or the General Contractor to such person on the Project Site, and uses commercially reasonable efforts to minimize any interference with Developer's operation and use of the Project Site while on the Project Site.

8.2. Public Right-of-Way. All work, including materials testing, special testing, and surveying to be conducted in the public right-of-way shall be coordinated with the City.

8.2.1. *Follow all Laws, Rules, and Regulations*. Developer agrees to follow all Federal and State laws and regulations, and all written and publicly available City standards and regulations while working in the public right-of-way, including, but not limited to, utilizing proper traffic control and obtaining necessary permits.

8.3. Traffic Control. Developer shall comply with all written traffic control requirements for Project, including, if applicable, all traffic control plans and/or notes.

8.4. Maintenance. Developer shall maintain and be responsible for the Project and the Project Site until Acceptance, including ongoing erosion prevention measures. Upon Acceptance, City shall be responsible for maintenance of the Project.

ARTICLE IX. REIMBURSEMENT/PAYMENT OF COSTS AND EXPENSES

9.1. Payment of Costs Associated with Project

9.1.1. *Maximum Reimbursement Amount*. The maximum amount of reimbursement for Project shall not exceed the Maximum Reimbursement Amount. Neither Developer nor the General Contractor nor any Subcontractor, nor any combination thereof, shall be entitled to payment in excess of the Maximum Reimbursement Amount.

9.1.2. *Funds for Payment of Costs/Expenses*. The source of funds for the payment of costs/expenses associated with Project shall be limited to that listed below. No other City funds, or monies held by, owed to, or in trust for, the City, shall be used by the City or sought to be collected by Developer, its employees, agents, the General Contractor, or Subcontractors other than those identified in Section 9.1.2.1.

9.1.2.1. Funds for Project. Funds for payment of costs/expenses for Project shall be limited to the City's Sewer Facility Contribution.

9.1.3. *Prerequisites to Payment*.

9.1.3.1. Reimbursement Request. Prior to reimbursement of any costs or expenses for the Project, Developer shall provide the City with a Reimbursement Request containing the following:

a. Invoices. Developer shall provide the Director of Development Services all invoices for Reimbursable Costs associated with Project, not previously paid by the City, within 30 days after receipt thereof.

b. Proof of Payment. Developer shall provide the Director of Development Services with proof of payment of all invoices for Reimbursable Costs submitted within 30 days after such payment.

c. Lien Releases/Stop Payment Notices. Developer shall provide the Director of Development Services with statutory lien/stop payment notice releases associated with all work performed or supplies provided in a form satisfactory to the City Attorney.

d. Certification of Payment. Developer shall provide the Director of Development Services with a written certification that all trade and soft costs for which Developer is seeking reimbursement have been paid.

e. Certification of Prevailing Wage Compliance. Developer shall provide the Director of Development Services with a written

certification of compliance with all applicable Prevailing Wage laws and regulations.

f. Acknowledgement of General Contractor and Subcontractors. Developer shall provide the Director of Development Services with a letter from each firm (e.g. civil, survey, and geotechnical) acknowledging that eligible soft costs included in the relevant invoices have been paid.

g. Time sheets. Developer shall provide the Director of Development Services with time sheets from Developer's construction manager to justify the Project management costs.

h. Graphics. Developer shall provide the Director of Development Services with a graphic depicting the areas within the Project for which the Reimbursement Request is being submitted.

i. Other Documents. Developer shall provide the Director of Development Services with any other documents that reasonably may be needed to evaluate the eligibility of the cost/expense as Reimbursable Costs as determined necessary by the Director of Development Services in his/her sole discretion.

City shall not have an obligation to make payment to Developer unless and until Developer provides the Director of Development Services with a Reimbursement Request containing all of the applicable items listed above and such Reimbursement Request is approved by the Director of Development Services as provided below.

9.1.3.2. Inspection. The Project shall be subject to City inspection as provided in section 2-11 of the Greenbook. Developer shall ensure that all persons and entities providing work or services for the Project comply with the inspection requirements provided in section 2-11 of the Greenbook.

9.1.3.3. Prevailing Wage Compliance. Developer shall ensure that all persons and entities providing work or services for the Project comply with Prevailing Wage requirements, as established by the California Department of Industrial Relations, as applicable, in accordance with applicable law.

9.1.3.4. City Approval. The Director of Development Services shall review each Reimbursement Request and the supporting documentation. If the Director of Development Services finds that any such Reimbursement

Request is incomplete, improper, or otherwise not suitable for reimbursement, then the Director of Development Services shall so inform Developer in writing within fifteen (15) Working Days after receipt thereof, of the reasons for his/her finding. If the Director of Development does not find that any such Reimbursement Request is incomplete, improper, or otherwise not suitable for reimbursement, then the Director of Development Services shall so inform Developer in writing within fifteen (15) Working Days after receipt thereof and within that time period approve the Reimbursement Request. Developer shall have the right to respond to such finding by submitting further documentation requested in such finding after receipt of said finding. The Director of Development Services shall review any further documentation received from Developer in support of the Reimbursement Request and inform Developer of his/her approval or denial of the Reimbursement Request within ten (10) Working Days after receipt of such further documentation. If the Director of Development Services determines that the Reimbursement Request is incomplete, but that sufficient and complete information exists with respect to a portion of the Reimbursement Request, then the Director of Development Services may but is not obligated to approve the Reimbursement Request with respect to such portion of the Reimbursement Request. The City shall cause the Director of Development Services to carry out its duties under this Section 9.1.3.3 in a reasonable and good faith manner.

9.1.4. *Time of Payment*. After Developer has obtained City's approval pursuant to 9.1.3, City shall reimburse Developer for the approved costs/expenses associated with each Reimbursement Request by the Payment Date. If the Payment Date falls on a weekend or holiday, the Payment Date shall be extended to the next Working Day.

9.1.4.1. Additional Costs. Any costs that may accrue, such as interest on late payments to Developer's General Contractors, Subcontractors, or suppliers as a result of the Developer's failure to provide a complete Reimbursement Request, shall not be the obligation of the City if the City has not received a complete Reimbursement Request. Such additional costs shall be the obligation of the Developer and not eligible for reimbursement.

9.1.5. *Reimbursement Amount per Reimbursement Request*. The City shall pay Developer approved amounts in the Reimbursement Request, less any Non-Reimbursable Costs and Contested Charges (as defined below) on or before the Payment Date. If the Payment Date falls on a weekend or holiday, the Payment Date shall be

extended to the next Working Day. Additional costs that result from the City's failure to make payments when required by this Agreement will be the obligation of the City.

9.1.5.1. Withholding. The prime contract and subcontracts for the Project may provide for withholding from each payment to the General Contractor or the Subcontractor, as applicable, until Acceptance. Except as otherwise provided in this Agreement or at law, the City shall not withhold any additional amounts from the Reimbursement Requests submitted by Developer, beyond the actual General Contractor or Subcontractor withholding amount.

a. Payment and Invoicing for Withholding. Developer shall not pay the General Contractor and the Subcontractors the amounts withheld until (1) forty-five (45) calendar days from recordation of the Notice of Completion and (2) confirmation has been submitted to the Director of Development Services by Developer that no stop payment notices or mechanic's liens have been filed and not released with respect to the Project and the following work has been completed:

i. All Project improvements have been installed.
ii. As-builts have been submitted to the City.
iii. Form PWE106 is completed.
iv. The final punch list is complete.

Where a stop payment notice or mechanic's lien has been filed following the recordation of the Notice of Completion, Developer shall continue to withhold the amount in controversy until a fully executed release of stop payment notice or mechanic's lien or a bond releasing the stop payment notice or mechanic's lien has been filed and a conformed copy delivered to the City. Notwithstanding anything in this Agreement to the contrary, Developer shall not be required to withhold any funds from the General Contractor or any Subcontractor to the extent doing so would violate any applicable law.

9.1.5.2. Non-Reimbursable Costs. The following costs/expenses shall not be eligible for reimbursement under this Agreement.

a. Costs Incurred Due to Negligence. Developer shall not be entitled to payment for any incremental cost or expense incurred due to negligent acts, negligent omissions, or willful misconduct of

Developer, the General Contractor, or Subcontractors, or any of their respective subcontractors, material suppliers, equipment providers, employees, or agents.

b. Unapproved Costs. Developer shall not be entitled to reimbursement for any cost or expense that has not been approved by the City pursuant to Section 9.1.3.3.

c. Excess Costs. Developer acknowledges and agrees that any Excess Cost (as defined in section 6.2 of this Agreement) shall not be a Reimbursable Cost.

d. Non-Project Shared Costs. The parties acknowledge that Developer may share certain costs (e.g. mobilization, traffic control) for the Project with other projects contemplated under the DDA. Developer acknowledges and agrees that any shared project costs that are not directly attributable to or reasonably apportioned to the Project, as reasonably determined by the City, shall not be a Reimbursable Cost.

e. Defective Work Costs. Developer acknowledges and agrees that defective work costs as provided in Section 12.3 of this Agreement shall not be a Reimbursable Cost.

9.1.5.3. Contested Charges. In the event that the City contests any costs/expenses on an invoice received ("Contested Charge"), the City shall provide Developer a written statement of the Contested Charges, the reason why the costs/expenses are contested, and a proposed resolution.

a. Appeal to City Manager. Developer may appeal the City's determination of any Contested Charges. The appeal must be received within 30 days after the City notifies the Developer of such Contested Charge. During the appeal period, and as long as any Contested Charge remains disputed, Developer shall proceed with the Project, and the City shall compensate Developer for the undisputed amounts. If, following the appeal, the City Manager determines that any Contested Charges are eligible for reimbursement, such amounts shall be included in the next payment to Developer.

9.1.6. *Cutoff for Submission of Invoices*. Developer shall submit its final Reimbursement Request not later than the Cutoff Date. Any Reimbursement Requests submitted

after the Cutoff Date shall not be reviewed or included in Reimbursable Cost. The final payment by the City for the Project will be made only after Developer has submitted all documentation reasonably necessary to substantiate the cost of construction and completing the Improvements associated with that phase, mechanic's lien free, stop payment notice free, in accordance with the Contract Documents. Final inspection and sign-off by the City's inspectors with associated mechanic's lien and stop payment notice releases (or bonds releasing contested mechanic's liens or stop payment notices) shall be sufficient evidence of the mechanic's lien or stop payment notice free completion of the Improvements.

9.1.7. *Final Accounting*. Following completion of the Project, Developer shall submit a final accounting ("Final Accounting") to the City in order to determine the cost of design, development, construction, and related work thereto to complete the Improvements. Developer shall also submit all supporting information reasonably necessary to document costs/expenses for the Improvements, including specific details on the costs and work attributable to the Improvements, including, as applicable, third-party invoices, billings, and receipts for construction surveying, soil testing, blue printing, actual construction costs, and similar expenses.

9.1.7.1. True-up Payments. Within 30 Working Days following a Final Accounting, the City shall determine whether the actual payments made to Developer equal the audited approved costs and expenses. In the event that the amount of the approved costs and expenses exceeds the amount of the actual payments, the City shall make a true-up payment to Developer for the difference; however, in no event, shall the true-up payment cause the total amount paid to exceed the Maximum Reimbursement Amount. If the Final Accounting shows that the amount of actual payments to Developer exceeds the amount of the approved costs and expenses, Developer shall remit or cause the remittance of the difference to the City within twenty (20) Working Days of a notice of deficiency.

ARTICLE X. PROJECT ACCEPTANCE AND FINAL COMPLETION

10.1. No Waiver. Developer shall cause the work to be performed and completed in accordance with the Contract Documents, as reasonably determined by the City Engineer and the Director of Development Services. Neither recommendation of any progress payment or acceptance of work, nor any payment by City to Developer under this Agreement, nor any use or occupancy of the Improvements or any part thereof by the City, nor any act of acceptance by the City, nor any failure to act, nor any review of a shop drawing or sample

submittal, will constitute an acceptance of work, which is not substantially in accordance with the Contract Documents.

ARTICLE XI. WARRANTIES

11.1. Enforcement of Warranties. Developer shall enforce for the City's benefit all warranties provided in the Contract Documents and any other implicit or explicit warranties or guarantees required or implied by law.

11.1.1. *Materials and Workmanship*. Developer shall require the General Contractor and Subcontractor(s) to guarantee all work on the Project against Defective Work for a period of one (1) year from the date of Acceptance.

11.1.2. *New Materials and Equipment*. Developer shall require the General Contractor and Subcontractor(s) to warrant and guarantee to City that all materials and equipment incorporated into the Project are new unless otherwise specified.

11.1.3. *Design, Construction, and Other Defects*. Developer shall require the General Contractor and Subcontractor(s) to warrant and guarantee to City that all work is in accordance with the Contract Documents and is not Defective Work in any way in design, construction, or otherwise.

11.2. Term of Warranties. Unless otherwise specified or provided by law, warranties shall extend for a term of one (1) year from the date of Acceptance.

ARTICLE XII. DEFECTIVE WORK

12.1. Correction, Removal, or Replacement. The Developer shall require that if, within the designated warranty period, or such additional period as may be required by law or regulation, the City determines the Project contains Defective Work, the General Contractor or applicable Subcontractor, as applicable, shall promptly and in accordance with the City's written instructions and within the reasonable time limits stated therein, either correct, repair, or both remove and replace the Defective Work.

12.2. City's Right to Correct. If circumstances warrant, including but not limited to an emergency or the Developer's failure, the General Contractor's failure, or such Subcontractor's failure, as applicable, to adhere to Section 12.1, City may correct, remove, or replace the Defective Work. In such circumstances, the Developer, the General Contractor, and such Subcontractor(s), as applicable, shall not recover costs associated with the Defective Work.

12.3. Non-Reimbursable Costs. Any costs incurred by Developer, the General Contractor, Subcontractors or its agents to remedy defects are Non-Reimbursable Costs, unless the

Contract Documents require the Developer to reimburse for such costs. Notwithstanding the foregoing, for the avoidance of doubt, the parties acknowledge and agree that the following shall constitute Non-Reimbursable Costs: (i) costs to remedy defects due to the negligence of the General Contractor, Subcontractors, or their agents; (ii) costs to remedy defects due to the failure of General Contractor, Subcontractors, or their agents to comply with the Contract Documents to the extent such costs exceed the guaranteed maximum price contained in the Contract Documents, or (iii) costs to remedy defects where such costs have been recovered from an alternate source (e.g. insurance or bond). If the City has already reimbursed Developer, the General Contractor, Subcontractors or its agents, as applicable, for the Defective Work, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a setoff against the amount, or to make a claim against Developer's bond, if Developer, the General Contractor, Subcontractors or agents, as applicable, have been paid in full, until the Defective Work is remedied unless the Contract Documents require the Developer to reimburse for such costs.

12.4. Extension of Warranty. When Defective Work, or damage therefrom, has been corrected, repaired, replaced or removed, as applicable, during the warranty period, the one (1) year or another relevant warranty period, as applicable, will be extended for an additional time period equal to that of the initial warranty period, from the date of the satisfactory completion of the correction, repair, replacement or removal, as applicable, but, in no event, beyond one (1) year from the date of the expiration of the initial warranty period.

12.5. No Limitation on Other Remedies. Exercise of the remedies for Defective Work pursuant to this Article XII shall not limit the remedies City may pursue under this Agreement or at law.

12.6. Disputes. If Developer and City are unable to reach agreement on disputed work, City may direct Developer to proceed with the work and compensate Developer for undisputed amounts. Payment of disputed amounts shall be as later determined in accordance with 9.1.5.3. Developer shall maintain and keep all records relating to disputed work for a period of three (3) years in accordance with Article XIV.

ARTICLE XIII. SECURITY FOR CONSTRUCTION

13.1. Bond. The Contract Documents shall require the General Contractor or Subcontractors to provide a payment bond and a performance bond, on forms acceptable to the City, for the construction of the Project in an amount of no less than the Estimated Cost. Developer shall cause the City to be named as a co-obligee of the payment bond and performance bond. Developer shall deliver copies of the payment bond and performance bond to City prior to commencement of construction for the Project. Developer shall ensure the payment bond and performance bond are maintained until such time as the Project is complete and Accepted by the City.

13.2. Insolvency or Bankruptcy. If the surety on any of the above-mentioned bonds is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, Developer shall within five (5) Working Days after the City notifies the Developer thereof substitute or require the substitution of another bond and surety, reasonably acceptable to the City.

13.3. Calling the Bond. Developer acknowledges and agrees that if Developer's construction of the Improvements has not been completed in accordance with Section 5.1, has not been performed in accordance with the Contract Documents, or if the Developer has failed to cure any Defective Work within the commercially reasonable time specified in a written notice of defect, the City may use the security referenced in Section 13.1 above to complete the Improvements. This remedy is not a limitation on remedies of the City and is in addition to any other remedy that the City may have at law or in equity.

ARTICLE XIV. INDEMNITY AND DUTY TO DEFEND

14.1. Defense, Indemnity, and Hold Harmless.

14.1.1. *General Requirement*. (a) Developer shall defend, indemnify, protect, and hold harmless (collectively, "Indemnify") the City, its elected and appointed officers, agents and employees (collectively, the "Indemnified Parties"), from and against any and all claims, demands, causes of action, costs, expenses, liabilities, loss, damages, and injuries (collectively, "Loss"), in law or equity, to property, including takings claims, or persons, including wrongful death, to the extent and proportion directly or indirectly caused by any negligent acts or negligent omissions, or negligence or willful misconduct of Developer, its officials, officers, the General Contractor, Subcontractor(s), agents, or employees arising out of or in connection with the performance of the Project or this Agreement; provided, however, Developer shall have no obligation to Indemnify the Indemnified Parties for any Loss that arises out of any design or other defect in connection with the Project more than ten (10) years after Acceptance.

(b) This indemnity provision does not include any claims, damages, liability, costs and expenses (including without limitations, attorneys' fees) arising from the sole negligence, active negligence or willful misconduct of the City, its officials, officers, agents or employees.

(c) Also covered by this provision is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or negligent omissions of the City, its agents, officers, officials or employees which may be in combination with, and to the extent and proportion caused by, the active or passive

negligent acts or negligent omissions of Developer or its officials, officers, the General Contractor, Subcontractor(s), agents, or employees.

14.1.1.1. Damage to Downstream or Adjacent Properties. Such indemnification and agreement to hold harmless shall extend to damages to adjacent or downstream properties or the taking of property from owners of such adjacent or downstream properties as a result of and to the extent of and proportion caused by the negligence by Developer, its officials, officers, the General Contractor, Subcontractor(s), agents, or employees in the construction of the Improvements in accordance with the Contract Documents as provided herein. It shall also extend to damages resulting from diversion of waters, change in the volume of flow, modification of the velocity of the water, erosion or siltation, or the modification of the point of discharge as the result of and to the extent of and proportion caused by the negligence by Developer, its officials, officers, the General Contractor, Subcontractor(s), agents, or employees in the construction of the Improvements in accordance with the Contract Documents.

14.1.2. *Hazardous Materials*. (a) Developer agrees to defend, indemnify, and hold harmless, the City, its agents, officers and employees from and against any and all costs, damages, claims, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly, arising from or related to the release of Hazardous Materials by Developer, its officials, officers, the General Contractor, Subcontractor(s), contractors, agents, or employees in association with the construction, maintenance, or repair of the Project, or any act taken or omission under the Agreement.

(b) Notwithstanding the foregoing, Developer shall have no obligation to Indemnify any Indemnified Party for any Loss related to any Pre-Existing Hazardous Material except to the extent Developer, any of its officials, officers, the General Contractor, Subcontractor(s), contractors, agents, or employees, or any combination thereof, is negligent in releasing, allowing a release, or causing a release of such Pre-Existing Hazardous Material. Developer expressly preserves its rights against other parties and does not release or waive its rights to contribution against any other party.

14.1.3. *Illegal Discharge to Storm Drains*. Developer shall defend, indemnify, protect, and hold harmless City, its agents, officers, and employees, from and against all claims asserted, or liability established for damages or injuries to any person or property resulting from a discharge to public storm drains in violation of applicable laws to the extent arising out of the construction of the Improvements (an "Illegal

Discharge") caused by any action or failure of Developer, its officials, officers, the General Contractor, Subcontractor(s), agents, or employees to take reasonable measures to prevent an Illegal Discharge or any Illegal Discharge by any such persons or entities. Developer shall also be responsible for payment of any fines or penalties assessed against City for an Illegal Discharge. Developer's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of City, its officials, officers, agents or employees.

14.1.4. *Costs of Defense and Award*. Developer shall immediately accept all tenders and defend, at Developer's own cost, expense and risk, any and all claims, demands, suits, actions, or other legal or administrative proceedings that may be brought or instituted against the City, its officials, officers, employees and/or agents and that appear to be covered by the defense obligation defined in Section 14.1.1(a), 14.1.1(c), 14.1.1.1, 14.1.2(a), or 14.1.3. Developer acknowledges and agrees that its obligation to accept tender and defend the City, its officials, officers, employees, and/or agents as provided in this Section 14.1.4 is absolute and not subject to any limitations in Sections 14.1.1(b) and 14.1.2(b) of this Agreement, or elsewhere. Developer shall pay and satisfy any judgement, award, or decree that may be rendered against City or its officials, officers, employees and/or agents, for any and all related legal expense and costs incurred by each of them to the extent of Developer's actual determined negligence, subject to the limitations in Sections 14.1.1 and 14.1.2 and only to the extent Section 14.1.1 or 14.1.2 requires Developer to do so. The City may, in its reasonable discretion, participate in the defense of any and all suits, actions, or other legal proceedings that may be brought or instituted against the City, its officials, officers, employees and/or agents, and the Developer shall have the obligation to reimburse the City for any costs of defense incurred by the City, including, without limitation, reimbursement for attorneys' fees, experts' fees and other costs. Prior to incurring any defense costs, City agrees to notify Developer and offer to meet-and-confer with Developer to discuss practicable measures to manage total defense costs. The City's participation shall not relieve the Developer of any of its obligations under this Article XIV.

14.1.5. *Insurance Proceeds*. Developer's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees and/or agents.

14.1.6. *No Use of Security*. The security identified in Article XIII shall not be used to satisfy the obligations of Developer under this Article XIV.

14.1.7. *Declarations*. Developer's obligations under Article XIV shall not be limited by any prior or subsequent declaration by Developer.

14.1.8. *Enforcement of Costs*. Developer agrees to pay any and all costs, including attorneys' fees, that the City incurs enforcing the indemnity and defense provisions set forth in Article XIV.

14.1.9. *Survival*. Developer's obligations under Article XIV shall survive the expiration and/or termination of this Agreement.

ARTICLE XV. INSURANCE REQUIREMENTS

15.1. Insurance Requirements. Developer shall, and shall require its architects, engineers, contractors, subcontractors, and other persons and entities providing services for or performing work on the Project to purchase and maintain insurance in the same manner and to the same extent as required by Section 4.10 of the DDA. The parties agree to meet-and-confer to try to identify insurance coverage to cover losses to Project supplies, materials, and equipment prior to Acceptance.

ARTICLE XVI. RECORDS AND AUDITS

16.1. Retention of Records. Developer shall maintain data and records related to this Agreement for a period of not less than three (3) years following receipt of final payment under this Agreement.

16.2. Audit of Records. At any time during normal business hours and as often as the City deems necessary, Developer, the General Contractor and any or all of Subcontractors shall make available to the City for examination at reasonable locations within the City/County of San Diego all of the data and records with respect to all matters covered by this Agreement. Developer, the General Contractor and Subcontractors will permit the City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement. If records are not made available within the City/County of San Diego, then Developer shall pay all the City's travel related costs to audit the records associated with this Agreement at the location where the records are maintained. Such costs will not be Reimbursable Costs.

16.1.1. *Costs*. Developer and Developer's agents shall allow City to audit and examine books, records, documents, and any and all evidence and accounting procedures and practices that City reasonably determines are necessary to discover and verify all costs of whatever nature, which are claimed to have been incurred, anticipated to be incurred, or for which a claim for additional compensation or for extra work have been submitted under this Agreement.

ARTICLE XVII. MISCELLANEOUS PROVISIONS

17.1. Notices. All notices and demands given pursuant to this Agreement shall be written. They shall be deemed served (i) immediately, upon personal delivery; (ii) the next Working Day, if sent prepaid by recognized overnight service such as FedEx for delivery the next Working Day; or (iii) three (3) Working Days after deposit in the United States mail, certified or registered mail, return receipt requested, first-class postage prepaid. Until notice of a change of address is properly given, notice shall be given:

If to City:
City of Chula Vista
Attn: City Manager
276 Fourth Avenue
Chula Vista, California 91910

With a copy to:
Office of the City Attorney
Attn: City Attorney
276 Fourth Avenue
Chula Vista, California 91910

If to Developer:
RIDA Chula Vista, LLC
1777 Walker Street, Suite 501
Houston, Texas 77010
Attention: Legal Department

With a copy to:
Latham & Watkins
12670 High Bluff Drive
San Diego, CA 92130
Attention: Steven Levine

17.2. Captions. Captions in this Agreement are inserted for convenience of reference. They do not define, describe or limit any term of this Agreement.

17.3. Entire Agreement. This Agreement embodies the entire agreement and understanding between the Parties regarding the subject matter hereof. No prior or contemporaneous oral or written representations, agreements, understandings and/or statements regarding its subject matter shall have any force or effect. This Agreement is not intended to supersede or amend any other agreement between the Parties unless expressly noted. However, all previous written agreements, remain in full force and effect except to the extent they conflict with this Agreement.

17.4. Severability. If any provision of this Agreement or its particular application is held invalid or unenforceable, the remaining provisions of this Agreement, and their application, shall remain in full force and effect, unless a Party's consideration materially fails as a result.

17.5. Recordation. The City may record this Agreement in the Office of the County Recorder of San Diego County, California.

17.6. Preparation of Agreement. No inference, assumption or presumption shall be drawn from the fact that a Party or its attorney drafted this Agreement. It shall be conclusively presumed that all Parties participated equally in drafting this Agreement.

17.7. Authority. Each Party warrants and represents that it has legal authority and capacity to enter into this Agreement, and that it has taken all necessary action to authorize its entry into this Agreement.

17.8. Modification. This Agreement may not be modified, terminated or rescinded, in whole or in part, except by written instrument duly executed and acknowledged by the Parties hereto, their successors or assigns.

17.9. Governing Law and 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 shall be the City of San Diego.

17.10. Administrative Claims. No suit or arbitration shall be brought arising out of this Agreement against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City in accordance with the procedures set forth in Chapter 1.34 of the CVMC, 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.

17.11. Non-liability of City Officials and Employees. No member, official, employee or consultant of the City shall be personally liable to Developer in the event of any default or breach by City, or for any amount which may become due to Developer, or on any obligations under the terms of this Agreement.

17.12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be the original and all of which shall constitute one and the same document.

[End of page. Signature page follows this page.]

IN WITNESS WHEREOF, this Reimbursement Agreement is executed as of the day and year first set forth above.

CITY

CITY OF CHULA VISTA, a California charter city and municipal corporation

By:_____

Gary Halbert, City Manager

ATTEST:

By:_____

Kerry Bigelow, City Clerk

APPROVED AS TO FORM:

By:_____

Glen R. Googins, City Attorney

DEVELOPER

RIDA CHULA VISTA, LLC, a Delaware limited liability company

California Contractor License Number: 1039979

By:_____*

* Signatories to provide signature authority for signatory.

Exhibit A

Estimated Cost

Improvement Description	Sewer Improvement Cost Estimate[2]
E Street (G Street to H Street)	730,000
G Street Connection	85,000
H-3 Utility Corridor	380,000
Total	**1,195,000**

[2] Cost estimates are in 2019 dollars. Estimates include hard costs, soft costs, and continencies.

Exhibit B

Amendments to the Greenbook