

APPROVED/RATIFIED
 BY BOARD 01/12/2015

**MEMORANDUM OF AGREEMENT
 BETWEEN
 FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT
 AND THE
 CITY OF SUNNYVALE**

THIS MEMORANDUM OF AGREEMENT (hereinafter referred to as the “Agreement”) regarding certain activities to be undertaken at what previously was Onizuka Air Force Station (“OAFS”) in Sunnyvale, California, is entered into on this ___ day of _____, 2014 (“Effective Date”), by and between **FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT** (“District”), and **CITY OF SUNNYVALE** (“City”). The District and the City are each sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, as required by Base Realignment and Closure law, the U.S. Air Force (“USAF”) deactivated certain properties, including OAFS, and USAF elected to subdivide OAFS into four (4) smaller parcels for conveyance to four (4) entities as depicted in the map attached hereto and incorporated herein as Exhibit “A” (“Map”);

WHEREAS, Parcels D and E on the Map represent the land transferred to the City by USAF, and Parcel C on the Map represents the land transferred to the District by USAF;

WHEREAS, there is an existing 12-inch City sanitary sewer facility that passes through the City’s Parcels D and E and the District’s Parcel C, continuing into Innovation Way. The subject sanitary sewer facility is scheduled for replacement by the City in the near future;

WHEREAS, it is advantageous to both Parties to replace a portion of the sanitary sewer facility located primarily on the District’s Parcel C, and passing through the City’s Parcels D and E, before the District proceeds with site construction and building construction over and adjacent to the subject sanitary sewer facility;

NOW, THEREFORE, in consideration of the foregoing premises and the respective representations, agreements, covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

AGREEMENT

ARTICLE 1.

The District shall:

A. Contract with a licensed design professional for design services needed to remove the existing 12" sanitary sewer facility and install a new 15" sanitary sewer facility partially located in the City's Parcel D and passing through the District's Parcel C within a public utility easement, in accordance with City-approved plans as shown on Exhibit "B" (the "District's Work");

B. Secure the City's approval of construction documents prepared by the District's design professional.

C. Construct the sanitary sewer improvements in accordance with City-approved plans;

D. Remove, mitigate or abate any soil contamination or hazardous materials discovered during construction of the District's Work;

E. Provide access to the project site and notification to the City to allow monitoring and inspection by the City during construction of the District's Work;

F. Conduct video inspection of the completed sanitary sewer improvements and provide the City with a digital record of the inspection;

G. Increase the width of the sanitary sewer easement from ten (10) feet in width to fifteen (15) feet in width, and adjust the location of the easement to align with the new sanitary sewer improvements, if necessary;

H. Perform the District's Work in accordance with all applicable laws, codes, ordinances, and permitting requirements, including any and all environmental preservation or abatement or historic preservation requirements; and

I. Notify the City of any additional costs due to unforeseen conditions, and secure the City's approval to proceed with added work to be charged against the contingency allowance.

J. Guarantee the District's Work for a period of one year, as described more fully in Exhibit "E" ("One Year Warranty for Work Performed").

ARTICLE 2. City hereby agrees to:

A. Grant to the District and its contractors a revocable license in the form attached to this Agreement as Exhibit "C" that allows the District and its contractors to enter City's Parcel D to undertake the District's Work.

B. Assign a representative to act as its agent for acceptance of the District's Work as it is completed and communicate the City's approval of any proposed changes to the District's Work; provided, however, that only a City representative with the proper warrant shall be authorized to make any such acceptance decisions or otherwise legally bind the City.

C. Conduct monitoring and inspections and provide decisions regarding changes of cost in a timely manner as needed and as requested by the District to allow the District's Work to proceed without delay.

ARTICLE 3. The District and the City hereby mutually agree:

A. Upon completion and acceptance of the District's Work, the City shall reimburse the District for design, construction and related costs in an amount not to exceed Two Hundred, Fifty Thousand and No/100 Dollars (\$250,000.00), as more fully set forth in Exhibit "D".

B. If costs due to design changes or delayed actions by the City, unforeseen conditions or changes required by regulatory agencies exceed the contingency amount stated in Exhibit "D", this Agreement shall be amended to increase the contract amount to reimburse the District for those increased costs.

C. The District shall complete District's Work within Ninety (180) calendar days of the date on which the District receives a revocable license from the City to conduct the District's Work, which completion date may be extended at the City's discretion, upon the District's request.

D. Within ten (10) days of completion of District's Work, District shall provide to City a digital record of its video inspection of the new sewer and provide notification to the City that work has been completed.

E. Upon notification by the District that the District's Work is complete and receipt of the digital video inspection, the City shall conduct a final inspection with District personnel. Within ten (10) days of such inspection, the City shall confirm the City's acceptance of the District's Work, or shall communicate any issues preventing acceptance, in writing. Until the District's Work has been accepted as satisfactory by the City, the City and the District shall cooperate to resolve issues preventing acceptance.

F. To the extent a revocable license exists for the purposes of the District's Work, it shall be mutually terminated once the City accepts the District's Work. Provision of security for and maintenance of Parcels D and E shall revert to the City upon withdrawal of the revocable license.

G. District and District's contractor shall indemnify and hold harmless City, its officers, employees, and agents from any and all liability, damages, claims, or causes of action for injury to person or persons, or damage to property which may arise out of, or occur by reason of the performance or work associated with the District Work by the District, its design professional or its

contractors in furtherance of this Agreement, including all costs and attorney fees incurred in defending any claim arising as a result thereof.

H. City and City's contractor shall indemnify and hold harmless District, its officers, employees, contractors and agents from any and all liability, damages, claims, or causes of action for injury to person or persons, or damage to property which may arise out of, or occur by reason of the performance of work associated with work by the City, its design professionals or contractors in furtherance of this Agreement, including all costs and attorney fees incurred in defending any claim arising as a result thereof, specifically, in connection with the City owned property designated as parcel D.

I. Concurrently with the acceptance of this Agreement, District, its design professional and its contractor shall separately furnish and deliver to City a certificate showing that they have commercial general liability insurance insuring District, its design professional and its contractor against loss or liability which may arise during the performance of, or which may result from any of the work herein associated with the District Work to be done by the District, its design professional and its contractor, including all costs of defending any claim arising as a result thereof. Such policy shall be in an aggregate amount of at least One Million Dollars (\$1,000,000.00) for the death or injury to any person or persons in any one accident or occurrence. District shall also provide separate Certificates from its design professional and its contractor who will perform the District Work which shall show Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees. Said policies shall remain in full force and effect until this Agreement shall be fully performed and shall state by its terms or by an endorsement thereof that said policy shall not be canceled until the City shall have at least thirty (30) days' notice in writing of said cancellation. A contractual liability endorsement shall be added to each commercial general insurance policy extending coverage to include the liability assumed above. THE CITY OF SUNNYVALE MUST BE NAMED AS AN ADDITIONAL INSURED.

J. The District's design professional and its sub-consultants shall obtain and maintain Professional Liability and Errors and Omissions Insurance in the amount of One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) aggregate. Said policies shall remain in full force and effect until this Agreement shall be fully performed and shall state by its terms or by an endorsement thereof that said policy shall not be canceled until the District and the City shall have at least thirty (30) days' notice in writing of said cancellation.

ARTICLE 4. District's Representations. The District hereby represents to the City on and as of the Effective Date of this Agreement, the District has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by the District pursuant hereto, and all required action and approvals therefore have been duly taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of the District shall be duly authorized to sign the same on the District's behalf and to bind the District thereto. This Agreement and all documents to be executed pursuant hereto by the District are and shall be binding upon and enforceable against the District in accordance with their respective terms.

ARTICLE 5. City's Representations. The City hereby represents to the District on and as of the Effective Date of this Agreement, the City has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by the City pursuant hereto, and all required action and approvals therefore have been duly taken and obtained with the exception of those actions that require USAF approval. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of the City shall be duly authorized to sign the same on the City's behalf and to bind the City thereto. This Agreement and all documents to be executed pursuant hereto by City are and shall be binding upon and enforceable against the City in accordance with their respective terms.

ARTICLE 6. Notices. Notices shall be deemed sufficient under this Agreement and made in writing and submitted to the following addresses (or to any new or substitute address hereinafter specified, in a writing theretofore delivered in accordance with the notice procedure set forth herein by the intended recipient of such notice):

If to District: Steve Kitchen, Executive Director
 Foothill – De Anza Community College District
 12345 El Monte Road
 Los Altos Hills, CA 94002
 650-949-6150

If to City: Office of the City Manager
 Attn: Deanna Santana, City Manager
 456 W. Olive Avenue, PO Box 3707
 Sunnyvale, CA 94088

ARTICLE 7. Modification; Waivers. This Agreement contains the entire agreement and understanding of the Parties, and may not be amended, modified or discharged nor may any of its terms be waived except by an instrument in writing signed by the Parties. A waiver of a specific provision shall not be deemed a waiver of any subsequent provision. The Parties hereto shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not contained herein.

ARTICLE 8. Interpretation. The headings and captions herein are inserted for convenient reference only and the same shall not limit or construe the paragraphs or sections to which they apply or otherwise affect the interpretation hereof.

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms shall refer to this Agreement, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the date of this Agreement.

(b) Words of the masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(d) The terms “include,” “including” and similar terms shall be construed as if followed by the phrase “without being limited to.”

(e) Whenever under the terms of this Agreement the time for performance of a covenant or condition falls upon a Saturday, Sunday or holiday observed by the performing party, such time for performance shall be extended to the next business day. Otherwise all references herein to “days” shall mean calendar days.

(f) If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(g) Time is of the essence for this Agreement.

ARTICLE 9. Further Assurances. The District and the City shall, upon the reasonable request of the other Party, execute, cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in order to carry out the intent and purpose of this Agreement.

ARTICLE 10. Miscellaneous.

(a) **Counterparts.** This Agreement may be executed in multiple counterparts and/or with the signatures of the Parties set forth on different signature sheets and all such counterparts, when taken together, shall be deemed one original.

(b) **Governing Law and Parties in Interest.** This Agreement shall at all times be subject to and governed by the laws of the State of California.

(c) **Jurisdiction and Venue.** This Agreement shall be governed by the law of California, County of Santa Clara.

ARTICLE 11. Attachments. This Agreement shall include the following Attachments:

Exhibit “A”: Map

Exhibit “B”: FHDA Sanitary Sewer Exhibit, dated 11/06/2014

Exhibit “C”: Revocable License

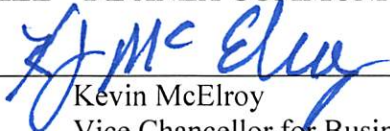
Exhibit “D”: District Work Cost Breakdown

Exhibit “E”: One Year Warranty for Work Performed

ARTICLE 12. Termination and Expiration. This Agreement shall automatically expire upon written notice from the City to the District that the District Work has been successfully completed and accepted and payment has been made to the District, or upon thirty (30) days advance written notice from either party to the other party.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused their duly authorized representative to execute and deliver this Agreement as of the date first above written.

FOOTHILL – DE ANZA COMMUNITY COLLEGE DISTRICT


Name: Kevin McElroy
Title: Vice Chancellor for Business Services

CITY OF SUNNYVALE

Name: Deanna J. Santana
Title: City Manager

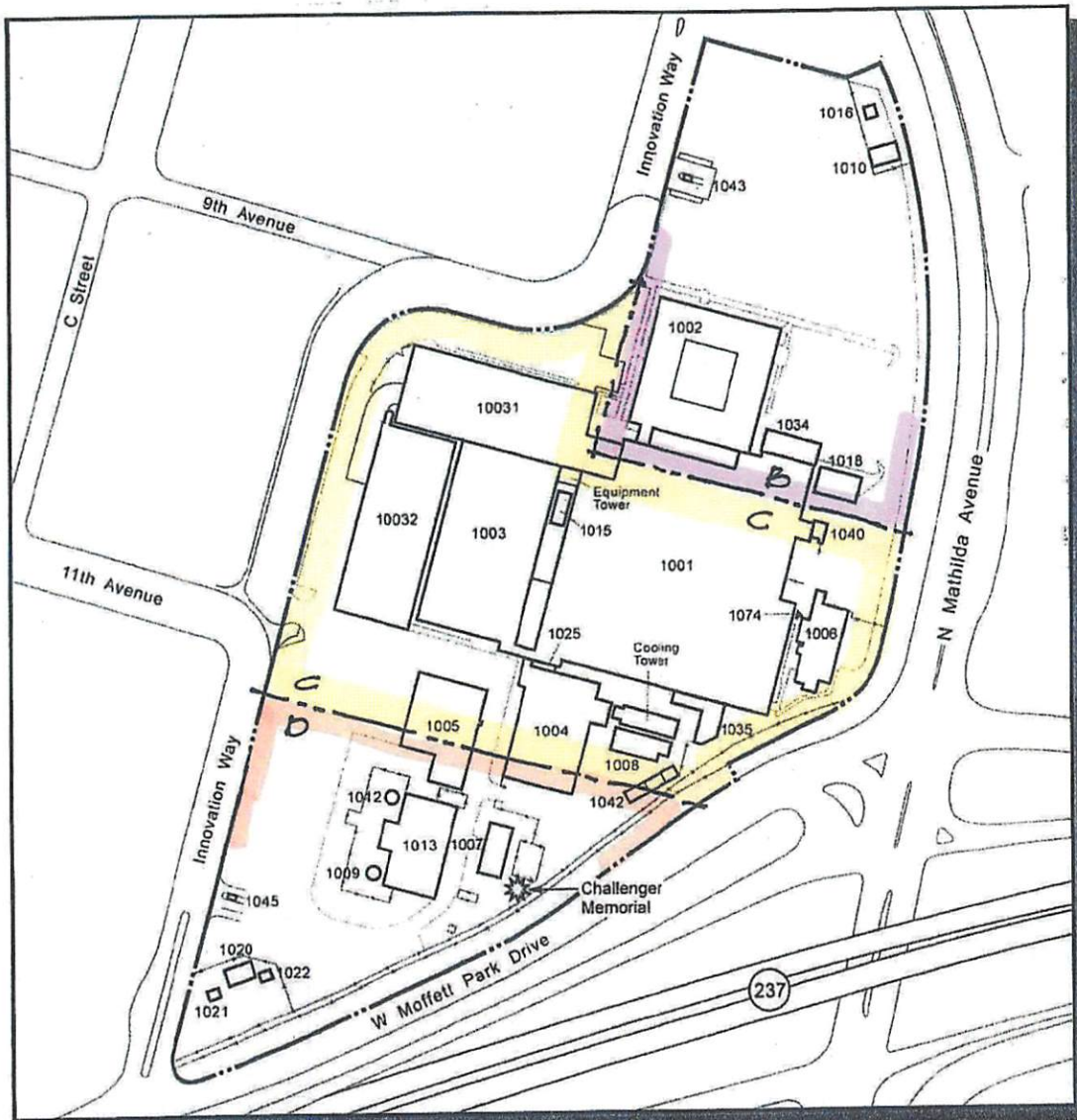
APPROVED AS TO FORM

Joan Borger
City Attorney

EXHIBIT "A"

MAP

Onizuka Building Locations





NO.	DATE	DESCRIPTION
1	06/11/2014	ISSUED FOR PERMITS
2	06/11/2014	REVISED PER CITY COMMENTS
3	06/11/2014	REVISED PER CITY COMMENTS
4	06/11/2014	REVISED PER CITY COMMENTS
5	06/11/2014	REVISED PER CITY COMMENTS
6	06/11/2014	REVISED PER CITY COMMENTS
7	06/11/2014	REVISED PER CITY COMMENTS
8	06/11/2014	REVISED PER CITY COMMENTS
9	06/11/2014	REVISED PER CITY COMMENTS
10	06/11/2014	REVISED PER CITY COMMENTS

NO.	DATE	DESCRIPTION
1	06/11/2014	ISSUED FOR PERMITS
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5	06/11/2014	REVISED PER CITY COMMENTS
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8	06/11/2014	REVISED PER CITY COMMENTS
9	06/11/2014	REVISED PER CITY COMMENTS
10	06/11/2014	REVISED PER CITY COMMENTS



FHDA SANITARY SEWER EXHIBIT
BKF
11/06/2014

REPLACE EXISTING
SEWER MANHOLE
WITH NEW MANHOLE

EXISTING
MANHOLE TO BE
REMOVED

SANITARY
SEWER LINE TO
BE REPLACED -
685 LF

NEW SANITARY
SEWER MANHOLE

NEW SANITARY
SEWER MANHOLE

REPLACE EXISTING
SANITARY SEWER
MANHOLE WITH NEW
MANHOLE

REPLACE EXISTING
SEWER MANHOLE
WITH NEW MANHOLE

GENERAL NOTES:
1. VERIFY ALL EXISTING UTILITIES AND DEPT. RECORDS.
2. VERIFY ALL EXISTING UTILITIES AND DEPT. RECORDS.
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- 15. VERIFY ALL EXISTING UTILITIES AND DEPT. RECORDS.
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- 17. VERIFY ALL EXISTING UTILITIES AND DEPT. RECORDS.
- 18. VERIFY ALL EXISTING UTILITIES AND DEPT. RECORDS.
- 19. VERIFY ALL EXISTING UTILITIES AND DEPT. RECORDS.
- 20. VERIFY ALL EXISTING UTILITIES AND DEPT. RECORDS.

NOTES
 -- LENGTH OF PIPE TO BE REPLACED = 685 LF
 -- REMOVE EXISTING 12" SANITARY SEWER LINE
 -- INSTALL NEW 15" PVC, SDR 26 JIM EAGLE PIPE
 WITH RING-TITE JOINTS AND LOCKED-IN
 GASKETS PER CITY OF SUNNYVALE STANDARDS
 -- DIVERSIONARY PUMPING OF SANITARY SEWER
 FLOWS DURING CONSTRUCTION ARE INCLUDED.

EXHIBIT "B"

EXHIBIT C

FORM OF REVOCABLE LICENSE

CITY OF SUNNYVALE, CALIFORNIA (“City”)

REVOCABLE LICENSE TO

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT (“DISTRICT”)

**FOR ENTRY ONTO AND USE OF PROPERTY CONTROLLED BY CITY,
FORMERLY A PORTION OF THE ONIZUKA AIR FORCE STATION (“OAFS”),**

SUNNYVALE, CALIFORNIA

The City, hereinafter referred to as the “Grantor” hereby grants to the District, hereinafter referred to as the “Grantee” a revocable license (“License”) for Grantee’s entry onto and use of the property identified as Parcels D in Exhibit “A” attached hereto and made a part hereof, as set forth in that certain Memorandum of Agreement between the City and the District dated _____, 2014 (“Agreement”), over, across, in and upon such land, hereinafter referred to as the “Premises.”

THIS LICENSE is granted subject to the following conditions.

1. This License is hereby granted for a term of up to six (6) months, beginning upon execution by the Grantor, and shall be revocable upon written notice from Grantor to Grantee.
2. All correspondence and notices to be given pursuant to this License shall be addressed, if to the Grantor, to City Manager Deanna Santana, 456 W. Olive Ave., P.O. Box 3707, Sunnyvale, CA 94088, and if to the Grantee, Director, Foothill College Bond Funded Projects, Foothill – De Anza Community College District, 12345 El Monte Road, Los Altos Hills, California 94002, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service, private courier, or delivery service.
3. The use and occupation of the Premises shall be without cost or expense to the Grantor, and under the general supervision and subject to the approval of the City or its duly authorized representative, and to such rules and regulations as may be prescribed from time to time by the City. The terms or duration of this License may be modified by the City should the agreed upon services outlined in the Agreement require such modification.

4. The Grantee acknowledges that it has inspected the Premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever, and without any obligation on the part of the Grantor.

5. Except for the activities permitted under the Agreement, any interference with the use of or damage to property under control of the Grantor, incident to the exercise of the privileges herein granted, shall be promptly corrected to the original state, by the Grantee, to meet the reasonable satisfaction of the City.

6. Upon the date of expiration of this License or its relinquishment by the Grantee, the Grantee shall vacate the Premises and remove its property therefrom. If, however, this License is revoked, the Grantee shall vacate the Premises and remove its property therefrom within such time as mutually agreed by the parties.

7. During the term of this License, the Grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the Premises are located.

8. Except as specifically provided in the Agreement, it is understood that the requirements of this License pertaining to maintenance, repair, protection, and restoration of the premises shall be effective only insofar as they do not conflict with any agreement, pertaining to such matters made between local representatives of the Grantor and Grantee in accordance with existing regulations.

9. Governing Law and Parties in Interest. This Agreement shall at all times be subject to and governed by the laws of the State of California.

IN WITNESS whereof, I have hereunto set my hand this ____ day of _____, 20__.

CITY OF SUNNYVALE

By: Deanna Santana
Title: City Manager

THIS PERMIT is also executed by the Grantee this ____ day of _____, 20__.

FOOTHILL – DE ANZA COMMUNITY COLLEGE DISTRICT



Name: Kevin McElroy
Title: Vice Chancellor, Business Services

EXHIBIT D
TO MEMORANDUM OF AGREEMENT
DISTRICT WORK COST BREAKDOWN

Proportional Share Cost

Costs in sections 1, 2 and 3 are based upon actual bid prices. Final cost will be determined by extent of contingency use upon completion of project.

1. Design Services Cost

Description	City Share (%)	City Share (\$)
Sanitary Sewer Site Work - by BKF/Lionakis	100%	\$19,000
Total		\$19,000

2. Construction Costs

Description	City Share (%)	City Share (\$)
Direct Construction Bid Cost by CW Driver	100%	\$201,040
Trade Bonds and Insurance	1.566%	\$3,148
Contractors Overhead & Fee	2.34%	\$4,704
Total		\$208,893

3. Project Management and District Overhead Cost

Description	City Share (%)	City Share (\$)
Project Management Cost: % of (1+2)	5%	\$0
District Overhead Costs: % of (1+2)	6.24%	\$0
Total		\$0

4. Contingency

Description	City Share (%)	City Share (\$)
Contingency for Unforeseen Conditions	100%	\$22,107
Total		\$22,107

5. TOTAL CITY COSTS

Description	City Share (\$)
1. Design Services Cost	\$19,000
2. Construction Costs	\$208,893
3. Project Management and District Overhead Costs	\$0
4. Contingency	\$22,107
Total	\$250,000

EXHIBIT "E"

One Year Warranty for Work Performed

District hereby warrants to City for a period of one (1) year following the date of Final Acceptance of the Work, the quality and adequacy of all of the Work performed as herein described including, without limitation, all work performed and materials supplied by District and/or its Contractor.

Neither final payment nor use of the Work performed by the District or its Contractor shall constitute an acceptance of any work not done in accordance with this warranty or relieve District of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. District shall remedy any defects in the Work and pay for any damage resulting therefrom which shall appear within one (1) year.

If within one year after the date of Final Acceptance, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be defective, District shall promptly, without cost to City and in accordance with City's written instructions, correct such defective Work. If District fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the defective Work corrected or the rejected Work removed and replaced. In such an event, District shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement.

Inspection of the work by City shall not relieve the District of any of its obligations under this agreement. Even though equipment, materials, or work required to be provided under the Contract Documents have been inspected, accepted, and paid, District shall, at its own expense, replace or repair any such material or work found to be defective or otherwise not in compliance with the requirements of this agreement.