

Contract No.: _____

Approved: _____

CONSTRUCTION CREDIT AND REIMBURSEMENT AGREEMENT

PRESERVE DEVELOPMENT IMPACT FEE PROGRAM

MISCELLANEOUS RESIDENTIAL AMENITIES

[SCE CORRIDOR TRAIL - PROJECT PA-003]

This CONSTRUCTION CREDIT AND REIMBURSEMENT AGREEMENT (“**Agreement**”) is entered into this 17th day of December, 2024 (“**Effective Date**”), by and between CITY OF CHINO, a California municipal corporation (“**City**”), and CHINO DEVELOPMENT CORPORATION, a California Corporation and CHINO PRESERVE DEVELOPMENT CORPORATION, a California Corporation (collectively, “**Developer**”). City and Developer are sometimes hereinafter referred to individually as “**Party**” and jointly as “**Parties**”.

RECITALS

A. Developer is the master developer of The Preserve community within the City of Chino, County of San Bernardino (“**County**”), California, which includes the development of those certain tracts 16419, 17057, 17058, 17571, 17572, and 20102 (such tracts being collectively referred to herein as the “**Project**”).

B. Developer previously owned that certain real property located within the Project consisting of approximately 25.4 acres referred to as APNs 1055-371-05, 1055-371-74, 1055-411-04, 1055-411-06, 1055-411-08, 1055-441-19, 1055-441-20, 1055-381-09, 1057-051-04, 1057-091-15, 1057-091-18, and 1057-091-24, which real property is legally described on Exhibit A attached hereto and depicted on Exhibit A-1 attached hereto (“**Property**”) and is commonly known as land within the Southern California Edison (“**SCE**”) easement.

C. Developer has requested from City certain entitlements and/or permits for the Project, and City has granted the entitlements and/or permits subject to certain conditions of approval provided on Exhibit B which required and will require that certain Public Improvement (defined in Recital F below) to be constructed in excess of those applicable to the Project (“**Conditions of Approval**”).

D. The Conditions of Approval also require Developer to pay Development Impact Fees (“**DIFs**”), as established in Chapter 3.45 of the Chino Municipal Code (“**DIF Ordinance**”). The DIFs have been established by City to finance public facilities in furtherance of the goals and objectives of City’s general plan, various facility master plans, capital improvement plans, and the nexus reports described in the DIF Ordinance (“**Nexus Reports**”).

E. Pursuant to the DIF Ordinance and the Conditions of Approval, Developer owes Miscellaneous Residential Amenities DIFs for the Project.

F. Developer has, prior to the Effective Date, improved the Property with public improvements consisting of landscaping (“**Landscaping**”) and an approximately twenty-foot (20’) wide compacted crushed miscellaneous base trail (“**CMB Trail**”) with an eight-foot (8’) wide decomposed granite pedestrian trail (“**Ped Trail**”) within the twenty foot wide (20’) CMB Trail area. City is now requiring in connection with the development of Tract 17571, additional landscaping and trail

improvements within that portion of the SCE easement within Tract 17571, as more particularly described on Exhibit C attached hereto (collectively, “**Tract 17571 Public Trail Improvements**”). The Landscaping, the CMB Trail, Ped Trail and the Tract 17571 Public Trail Improvements are hereafter collectively referred to as the (“**Public Improvements**”). Such Public Improvements are in excess of those specifically required by the Conditions of Approval for the Project and the Development Agreement between Developer and the City dated July 1, 2004, as amended.

G. The DIF Ordinance provides that if, as a condition of approval of a development project, a developer constructs a public facility identified in the Nexus Reports, for which a development impact fee is imposed, Developer shall be eligible to receive a fee credit toward the DIFs imposed on the Project for the same type of public facility so constructed, and shall be entitled to reimbursement for eligible costs of constructing the public facility, provided that developer complies with the requirements of the DIF Ordinance as it may be amended from time to time. The DIF Ordinance specifically requires that the developer and City enter into a credit and reimbursement agreement.

H. City and Developer desire to enter into this Agreement for the following purposes: (i) to memorialize the fact that City has inspected and confirmed that the Landscaping, CMB Trail and Ped Trail have been completed in compliance with plans and specifications previously approved by City therefore and applicable laws and ordinances, (ii) to memorialize the fact that Developer is entitled to a credit against DIFs and/or reimbursement (“**Credit/Reimbursement**”) for the design and construction of the Landscaping, CMB Trail and Ped Trail in the amount of the Landscaping, CMB Trail and Ped Trail Cost (defined in Section 2 below), (iii) to provide for the timely construction and completion of the Tract 17571 Public Trail Improvements, (iv) to ensure that construction of the Tract 17571 Public Trail Improvements is undertaken in accordance with the Plans and Specifications (defined in Section 3.1 below), and the laws and ordinances pertaining to the construction of the Tract 17571 Public Trail Improvements (v) to satisfy the requirement of the DIF Ordinance that Developer and City enter into a credit and reimbursement agreement, (vi) to provide the methodology for establishing the Credit/Reimbursement to which Developer shall be entitled for its design and construction of the Tract 17571 Public Trail Improvements; and (vii) to provide the requirements for Developer’s transfer or application of all or any portion of the Credit/Reimbursement to third party.

NOW, THEREFORE, for the purposes set forth herein, Developer and City hereby agree as follows:

AGREEMENT:

1. **Incorporation of Recitals.** The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2. **Landscaping, CMB Trail and Ped Trail.** The City Engineer has determined that the total costs of the Landscaping, CMB Trail and Ped Trail portion of the Public Improvements that are eligible for credit and reimbursement pursuant to the DIF Ordinance is Three Million Two Hundred Seventy-Eight Thousand Two Hundred Sixty-Nine and 60/100 Dollars (\$3,278,269.60) (“**Landscaping, CMB Trail and Ped Trail Cost**”). Please see the Landscape Plans for The Preserve SCE Corridor AA-46 approved 6/23/2015, as amended, covering Tract 16419 Lots 4 & 8, Tract 16419-1 Lot 14, Tract 17571 Lot 12, Tract 17572 Lot D and Tract 17057 Lot J for a summary of the Landscaping, CMB Trail and Ped Trail public improvements included in this total.

3. **Estimated Costs of Tract 17571 Public Trail Improvements.** City and Developer currently estimate that the cost of the Tract 17571 Public Trail Improvements shall be One Million Four Hundred Eighty-Six Thousand Four Hundred Seventy and 00/00 Dollars (\$1,486,470.00).

3.1 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any portion of the Tract 17571 Public Trail Improvements until all plans and specifications for the 17571 Public Trail Improvements have been submitted to and approved in writing by City (as applicable, “**Plans and Specifications**”). Approval by City shall not relieve Developer from ensuring that the 17571 Public Trail Improvements conform to all applicable laws, ordinances and regulation under California and federal law.

3.2 Permits and Notices. Prior to commencing any work on the Tract 17571 Public Trail Improvements, Developer (through its contractors) shall, at its sole cost and expense, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the 17571 Public Trail Improvements and performance of Developer’s obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in this Agreement, any applicable law, and any permit or license issued to Developer.

3.3 Public Works Requirements. Developer shall ensure that the bidding, awarding, and construction of the 17571 Public Trail Improvements (which will occur separately and at separate times) are undertaken as if such 17571 Public Trail Improvements were constructed as a public works project under the direction and authority of City, pursuant to all provisions of law applicable to governmental entities. Developer shall also comply with the requirements of City’s Bidding and Contract Requirements for Public Improvements Policy, as adopted by City Council, hereby incorporated by reference and made a part of hereof (as may be amended from time to time).

(a) Prior to soliciting or awarding the bid for any portion of the 17571 Public Trail Improvements, Developer shall submit the bid packet, and a set of construction drawings signed by Developer or another authorized representative designated by Developer for the work being bid to City Engineer or his or her designee for review and approval, which approval shall be granted or denied within fifteen (15) calendar days after submission of such bid packet. If City Engineer denies approval of such bid packet and construction drawings, City Engineer shall specify the reasons for such disapproval and Developer shall resubmit a revised bid packet for review and approval until such approval is obtained.

(b) Developer shall obtain bids for the construction of the 17571 Public Trail Improvements in a manner which has been approved by City Engineer. Developer shall provide City Engineer with copies of all bids received from California licensed contractors and a bid summary in a form approved by City Engineer to assure that the contractor/subcontractors adhere to the applicable legal requirements for public works projects. The contract or contracts for the construction of the 17571 Public Trail Improvements shall be separate and shall be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of the 17571 Public Trail Improvements. Developer shall enter into a construction contract or contracts for the work to be performed on the 17571 Public Trail Improvements (after competitive bidding as set forth above), (each, a “**Construction Contract**”) for the performance of the work set forth in the selected bid, and the terms of each Construction Contract entered into by Developer and each contractor/subcontractor shall be reasonably acceptable to City Engineer. Developer shall submit to City a copy of each executed Construction Contract for the 17571 Public Trail Improvements within fifteen (15) days after execution thereof.

(c) Developer’s general contractor for the construction of the 17571 Public Trail Improvements (“**General Contractor**”) shall pay prevailing wages (in accordance with Articles 1 and 2 of Chapter 1, Part 7, Division 2 of the Labor Code) and otherwise comply with applicable provisions of the Labor Code, the Government Code, the Civil Code, and the Public Contract Code relating to public works projects of cities and as required by the procedures and standards of City with respect to the construction of its public works projects or as otherwise directed by City Engineer.

(d) All contractors shall be required to provide proof of insurance coverage throughout the term of the construction of the 17571 Public Trail Improvements, which they will construct in conformance with Section 4 of this Agreement.

3.4 Schedule of Performance. Unless extended by a written extension executed by the Parties, Developer shall construct or have constructed, at its own cost and expense, in accordance with the Plans and Specifications, the provisions of this Agreement and the Consent dated July 28, 2015, previously executed by SCE and the Parties the Tract 17571 Public Trail Improvements within one (1) year after the completion of the Pine Avenue Stage 3 improvements, the issuance of a construction permit for the Tract 17571 Public Trail Improvements and SCE's approval of the of the Tract 17571 Public Trail Improvements. Developer shall provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary to fully and adequately complete the Tract 17571 Public Trail Improvements.

3.5 Standard of Performance. Developer and its contractors shall perform all work required to construct the Tract 17571 Public Trail Improvements in a skillful and workmanlike manner and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

3.6 Alterations. All work shall be done and the Tract 17571 Public Trail Improvements shall be completed as shown on the applicable Plans and Specifications, and any subsequent alterations thereto shall be mutually agreed upon by City and Developer. If Developer desires to make any alterations to the Plans and Specifications, it shall provide written notice to City of such proposed alterations. City shall have ten (10) business days after receipt of such written notice to administratively approve or disapprove such alterations, which approval shall not be unreasonably withheld, conditioned or delayed. If City fails to provide written notice to Developer of its approval or disapproval of the alterations within such ten (10) business day period, City will be deemed to have disapproved such alterations to the Plans and Specifications.

3.7 Force Majeure. Developer agrees that the time within which it shall be required to perform any act under this Agreement shall not be extended except as follows: (i) Developer is delayed by City (including, without limitation, restrictions on priority, initiative or referendum, or moratoria), in which case Developer shall provide written notice to City specifically describing the nature and extent of the delay caused by City and Developer's detailed efforts to avoid such delay, which references this section and deliver such notice within thirty (30) days of discovering such delay, and Developer's obligations shall be extended for such time as City deems reasonable as a result of the delay if and only if Developer provides such written notice to City within such time; or (ii) Developer is delayed due to circumstances beyond the control and without the fault of Developer, including but not limited to adverse weather conditions, flood, earthquakes, strikes, lockouts, riots, epidemics, pandemics quarantine restrictions, and other public health emergencies, freight embargoes, chain of supply interruption, construction-industry-wide inability to procure labor or materials in the region in which the property is located, construction-industry-wide inability to procure equipment or supplies on the open market in the region in which the property is located, unusual delays resulting from transportation, laws, rules, regulations or orders of a public agency or other public agency action or inaction (including City), acts or failures to act of a public agency (including City), changes to the scope of work required by City, and similar causes. An extension of time for any such cause shall be for the period of the enforced delay equal to the number of days during which Developer's performance was delayed and shall commence to run from the time of the commencement of the cause, if

written notice by Developer claiming such extension is sent to City within thirty (30) days of knowledge of the commencement of the cause.

4. Security; Surety Bonds. Prior to the commencement of any work on the Tract 17571 Public Trail Improvements, Developer or its contractor shall provide City with surety bonds in the amounts and under the terms set forth below or, at City's request, in lieu of surety bonds, a letter of credit or letters of credit issued by a banking institution with a rating to be approved by City and in the form and upon terms approved by City ("**Security**"). The amount of the Security shall be based on the estimated costs ("**Estimated Costs**") to construct the Tract 17571 Public Trail Improvements as determined by City after Developer has awarded a contract for construction of the Tract 17571 Public Trail Improvements to the lowest responsive and responsible bidder in accordance with this Agreement. If City determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer or its contractor shall adjust the Security in the amount requested by City. Providing the Security shall not release Developer of its indemnification obligation in Section 4.

4.1 Performance Bond. To guarantee the construction of the Tract 17571 Public Trail Improvements and faithful performance of all the provisions of this Agreement, to protect City if Developer is in Default as defined in Section 15, and to secure the Warranty of the Tract 17571 Public Trail Improvements pursuant to Section 11, prior to commencement of work on such Tract 17571 Public Trail Improvements, Developer or its contractor shall provide City a faithful performance bond in an amount which sum shall be not less than one hundred percent (100%) of the Estimated Costs of such Tract 17571 Public Trail Improvements. City may, in its reasonable discretion, partially release a portion or portions of the security provided under this section as portions of the applicable Public Improvements are approved by City, provided that Developer is not in default on any provision of this Agreement and the total remaining security is not less than twenty percent (20%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period, provided that Developer is not in default of this Agreement.

4.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, materialmen, and other persons furnishing labor, materials, or equipment for performance of the Tract 17571 Public Trail Improvements and this Agreement, prior to commencement or work as to such Tract 17571 Public Trail Improvements, Developer or its contractor shall provide City a labor and materials bond in an amount which shall not be less than fifty percent (50%) of the Estimated Costs of such Tract 17571 Public Trail Improvements. The security provided under this section shall be released by City six (6) months after the date City approves the Tract 17571 Public Trail Improvements, provided there are no outstanding stop payment notices.

4.3 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best rating of at least "A" and FSC-VIII, shall be licensed to do business in California. As part of the obligation secured by the Security and in addition to the face amount of the Security, Developer and its contractor or the surety shall secure the costs and reasonable expenses and fees, including reasonable attorneys' fees and costs, incurred by City in enforcing the obligations of this Agreement. Developer and its contractor and the surety shall stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Tract 17571 Public Trail Improvements or the applicable Plans and Specifications shall in any way affect its obligation on the Security.

5. Indemnification. Developer shall defend, indemnify, and hold harmless City, its elected officials, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental agency, arising out of or incident to the negligence or willful misconduct of Developer in connection with the Tract 17571 Public Trail Improvements and performance of this Agreement ("**Claims**"). This indemnification includes,

without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any Claim to the extent caused by the negligence or willful misconduct of City, as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement but only with respect to any Claims that occur prior to City's approval of the Tract 17571 Public Trail Improvements and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, employees, or agents. Developer shall have no obligation to defend, indemnify or hold harmless the City, its elected officials, employees or agents with respect to Claims (i) which occur after the City's approval of the Tract 17571 Public Trail Improvements and (ii) with respect to the remainder of the Public Improvements, which occurred after the City's approval of such Public Improvements.

6. Insurance.

6.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors to procure and maintain, during performance of this Agreement, insurance of the types and in the amounts described below ("**Required Insurance**"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

6.1.1 General Liability. Occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage.

6.1.2 Business Automobile Liability. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any auto owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

6.1.3 Workers' Compensation. Workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, at all times during which insured retains employees.

6.1.4 Professional Liability. For any consultant or other professional who will engineer or design the Tract 17571 Public Trail Improvements, liability insurance for errors and omissions with limits not less than Two Million Dollars (\$2,000,000) per occurrence, shall be procured and maintained for a period of five (5) years following completion of the Tract 17571 Public Trail Improvements. Such insurance shall be endorsed to include contractual liability.

6.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

6.3 Additional Insured; Separation of Insureds. The Required Insurance, except for the professional liability and workers' compensation insurance, shall name City as an additional insured with respect to work performed by or on behalf of Developer or its contractors, including any materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard

separation of insureds provisions, and shall contain no special limitations on the scope of its protection to City, its elected officials, officers, employees, or agents.

6.4 Primary Insurance; Waiver of Subrogation. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering City, its elected officials, officers, employees, or agents. The policy required for workers' compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against City in connection with any damage or harm covered by such policy.

6.5 Certificates; Verification. Developer and its contractors shall furnish City with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by City before work pursuant to this Agreement can begin. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

6.6 Term; Cancellation Notice. Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall, to the extent available from commercially reasonable insurance providers, be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days' prior written notice to City.

6.7 Insurer Rating. Unless approved in writing by City, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least "A-" and FSC-VIII.

7. Maintenance. City acknowledges and agrees that fee title to the various segments of the Property on which the SCE easement is located and on which the Tract 17571 Public Trail Improvements are constructed have been conveyed by Developer to the Preserve Master Maintenance Corporation, a California nonprofit public benefit corporation ("**PMMC**"). Developer retains rights to construct the Tract 17571 Public Trail Improvements and after completion of 17571 Public Trail Improvements, City shall approve the Tract 17571 Public Trail Improvements. PMMC has been maintaining and shall continue to maintain the Landscaping, CMB Trail and Ped Trail pursuant to that certain City Preserve Maintenance Agreement dated July 17, 2018 between City and PMMC and, at all times subsequent, it shall be the obligation of PMMC to continue to maintain and care for the Tract 17571 Public Trail Improvements as well. Developer shall have no obligation to make the any portion of the Tract 17571 Public Trail Improvements available for public use and City shall exercise no control over nor be authorized to use the Public Improvements until the 17571 Public Trail Improvements have been completed and approved by the City. Any use by any person of the Tract 17571 Public Trail Improvements, or any portion thereof, shall be at the sole and exclusive risk of City at all times subsequent to the recordation of the applicable segment of the Trail Easement in the County Records. Developer shall maintain the Tract 17571 Public Trail Improvements in a state of good repair until completed by Developer and approved by the City. It shall be Developer's responsibility to initiate all maintenance work in connection with the Tract 17571 Public Trail Improvements prior to the approval by the City, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this section, City may, upon written notice and Developer's failure to remedy as provided in Section 15, do all work necessary for such maintenance, and, as between the City and Developer, the cost thereof shall be the responsibility of Developer. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Tract 17571 Public Trail Improvements or its condition prior to approval by City, except to the extent such damage or injury is caused by the negligence or willful misconduct of City, its elected officials, employees, and/or agents.

8. City Inspection. Developer shall, at its sole cost and expense, and at all times during construction of the Tract 17571 Public Trail Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the areas where construction has occurred, is occurring or will occur. Developer shall give notice to City when the construction of all or a portion of the Tract 17571 Public Trail Improvements is complete. Upon receiving such notice, City may inspect the Tract 17571 Public Trail Improvements and request any modifications or corrections as may be deemed reasonably necessary by City Engineer, in his or her sole discretion, to bring each into conformity with the applicable Plans and Specifications, including any approved revisions thereto. Developer or Developer's contractors shall make all such modifications and corrections requested by City Engineer.

9. Liens. Developer shall not permit any liens to be filed against the Tract 17571 Public Trail Improvements and indemnifies City with respect to any such liens. Upon the expiration of the time for the recording of claims of liens as prescribed by Sections 8412 and 8414 of the Civil Code with respect to such Tract 17571 Public Trail Improvements, Developer shall provide to City such evidence or proof as City shall reasonably require that all persons, firms, and corporations supplying work, labor, materials, supplies, and equipment to the construction of the Tract 17571 Public Trail Improvements has been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm, or corporation. Rather than await the expiration of the said time for the recording of claims of liens, Developer may elect to provide to City a title insurance policy or other security acceptable to City guaranteeing that no such claims of liens will be recorded or become a lien upon any of the Property.

10. Approval; As-Built or Record Drawings. If the Tract 17571 Public Trail Improvements are completed by Developer in accordance with the applicable Plans and Specifications, as determined by City Engineer, City shall approve of the Tract 17571 Public Trail Improvements. City may, in its reasonable discretion, approve of fully completed portions of the Tract 17571 Public Trail Improvements prior to such time as they are complete, which shall not release or modify Developer's obligation to complete the remainder thereof. Upon the total or partial approval of the Tract 17571 Public Trail Improvements by City, Developer shall file in Official Records a notice of completion for the approved Tract 17571 Public Trail Improvements in accordance with California Civil Code Section 9204 ("**Notice of Completion**"). Notwithstanding the foregoing, City may not approve the Tract 17571 Public Trail Improvements (or the applicable portion thereof) unless and until Developer provides two (2) sets of "as-built" or record drawings or plans to City for all of the Tract 17571 Public Trail Improvements (or the applicable portion thereof). The drawings shall be certified and shall reflect the condition of the Tract 17571 Public Trail Improvements as constructed, with all changes incorporated therein.

11. Warranty and Guaranty. Developer warrants and guarantees the Tract 17571 Public Trail Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance thereof which shall be conducted by PMMC, for a period of one (1) year following completion of the work and recordation of the applicable segment of the Trail Easement in the Official Records ("**Warranty**"). During the applicable period of the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise materially unsatisfactory portion of the Tract 17571 Public Trail Improvements in accordance with the Plans and Specifications. All repairs, replacements, or reconstruction during the Warranty period shall be at the sole cost and expense of Developer or PMMC, as applicable, and shall not be eligible for credits or reimbursements. As to any portion of the Tract 17571 Public Trail Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer hereby agrees to provide a warranty for a one (1) year period following City approval of the repaired, replaced, or reconstructed portion of the Tract 17571 Public Trail Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any portion of the Tract 17571 Public Trail Improvements following expiration of the applicable Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

12. DIF Credit and Reimbursement.

12.1 Landscaping, CMB Trail and Ped Trail Cost. In consideration of the design and construction of the Landscaping, CMB Trail and Ped Trail and Developer's expenditure of the Landscaping, CMB Trail and Ped trail Cost, as of the Effective Date, Developer shall be entitled to a Credit/Reimbursement as to Miscellaneous Residential Amenities DIFs payable in connection with the development of the Property in the amount of the Landscaping and CMB Trail Cost (*i.e.*, Three Million Two Hundred Seventy-Eight Thousand Two Hundred Sixty-Nine and 60/100 Dollars (\$3,278,269.60)).

12.2 Tract 17571 Public Trail Improvements Costs. Upon or prior to completion of the Tract 17571 Public Trail Improvements by Developer, Developer shall submit to City Engineer such information as City Engineer may require to calculate the additional actual costs incurred by Developer to construct the Tract 17571 Public Trail Improvements ("**Tract 17571 Public Trail Improvements Cost**"). Upon City approval of completed Tract 17571 Public Trail Improvements, in addition to the Landscaping, CMB Trail and Ped Trail Cost, Developer shall be entitled to a Credit/Reimbursement in the additional amount of the Tract 17571 Public Trail Improvements Cost, which with the Landscaping, CMB Trail and Ped Trail Cost shall be referred to herein as the "**Total DIF Cost.**"

12.3 Credit/Reimbursement Limits. The Credit/Reimbursement amount owed to Developer for construction of the Tract 17571 Public Trail Improvements shall be equal to the actual costs incurred by Developer in connection therewith, subject to the following limitations:

12.3.1 11.2.1 Reasonable Soft Costs. City Engineer shall, in his or her sole reasonable discretion, determine the amount of reasonable soft costs eligible for credit and reimbursement under the DIF Ordinance. Such amounts may include professional engineering and design services, construction management, soils testing, permits, plan check fees, and inspections, but shall not include interest or attorneys' fees. For soft costs to be reimbursable to Developer for the Tract 17571 Public Trail Improvements pursuant to this Agreement, City must be able to verify that such soft costs are specifically attributable to the specified Tract 17571 Public Trail Improvements for which reimbursement is being made, by reference to separate subcontract(s) or by another means approved by City in writing. The total amount of the soft costs shall not exceed fifteen percent (15%) of the Credit/Reimbursement Amount applicable to the Tract 17571 Public Trail Improvements. City Engineer may, in his or her reasonable discretion, reduce or disallow credit and/or reimbursement for any costs he or she finds excessive or unreasonable.

12.3.2 Nexus Report Costs Estimates. The Credit/Reimbursement amount applicable to the Tract 17571 Public Trail Improvements shall not exceed the cost estimates for each if included in the Nexus Reports, unless approved by City council.

11.2.2 DIF Categories. Developer acknowledges that DIFs are imposed in various separate categories to fund specific public facilities. Credit against DIFs may only be applied for eligible improvements identified in the specific DIF category.

12.4 Conditions Precedent to Final Credit or Reimbursement. City's obligation to provide Credit/Reimbursement for the Tract 17571 Public Trail Improvements pursuant to this Agreement is conditioned upon the prior satisfaction by Developer or written waiver by City Manager of each of the following **Conditions Precedent** as to each of the Tract 17571 Public Trail Improvements within the times designated below.

12.4.1 Completion of Construction. Developer shall have completed the construction of the Tract 17571 Public Trail Improvements acceptable to City and thirty (30) days have

elapsed since notices of completion have been recorded in relation to the Tract 17571 Public Trail Improvement, in accordance with California Civil Code Sections 9204 and/or 8182 (as applicable). The purpose of this provision is to ensure that the respective Public Improvements will be independently functional and to maintain consistency with vesting rights, and nothing herein shall be deemed to make any part of the Project a public work other than the Public Improvements.

12.4.2 Submission of Documents. Developer shall have made full and complete payment of all undisputed claims for work performed on the Tract 17571 Public Trail Improvements, or in the event of a dispute between Developer and the General Contractor or a subcontractor, Developer shall have obtained a commercially reasonable bond reasonably satisfactory to City to release any applicable mechanics' lien or stop notice, and Developer shall have submitted and City shall have approved a written request for the credit/reimbursement, including copies of all bills and/or invoices evidencing the costs of constructing the Tract 17571 Public Trail Improvements actually incurred by Developer and any other documents reasonably required by City.

12.4.3 As-Built Drawings. Pursuant to Section 10, Developer shall have submitted two (2) sets of final as-built drawings for the Tract 17571 Public Trail Improvements to City Engineer.

12.4.4 No Default. Developer shall not be in default in any of its obligations under the terms of this Agreement, and all representations and warranties of Developer contained herein shall be true and correct in all material respects.

12.4.5 Compliance with DIF Ordinance and Conditions of Approval. Developer shall be in compliance with all requirements of the DIF Ordinance and the Conditions of Approval relating to the applicable Public Improvements.

13. DIF Addendum.

13.1 DIF Addendum. So long as Developer is entitled to a credit and/or reimbursement of the Total DIF Cost or any portion thereof, the Parties shall execute a Credit/Reimbursement Addendum in the form attached as Exhibit D ("**DIF Addendum**").

13.2 Reimbursement. If Developer is entitled to a reimbursement, City shall reimburse the balance to Developer in accordance with the provisions of the DIF Ordinance.

13.3 Assignment of Credit/Reimbursement Amount. Developer shall have the right to assign all or portions of the credit and/or reimbursement amount to which it is entitled in accordance with the requirements specified in the DIF Addendum, which assignment will require City's written acknowledgement. Developer understands that strict compliance with the assignment restrictions is critical to allow City to track the Total DIF Cost credit and reimbursement amount and Developer's failure to comply with the assignment requirements in the DIF Addendum may result in delays in the processing of credit/reimbursement assignments by the City.

14. Assignment. Prior to completion of the Public Improvement, Developer may assign this Agreement to a third party ("**Assignment**"), subject to the approval of City's Director of Development Services ("**Director**") in his/her reasonable discretion. If Developer desires to assign this Agreement, Developer shall provide detailed information as to the proposed assignee ("**Assignee**") as requested by City including but not limited, evidence of Assignee's right to acquire the Property, its background and financial information evidencing the ability of Assignee to complete the Public Improvement. Any assignment of this Agreement shall not release Assignor.

15. Default; Notice; Remedies.

15.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if City determines there is a violation of any federal, state, or local law, ordinance, regulation or code (“**Default**”), City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer to immediately remedy the default or violation (“**Notice of Default**”). Developer shall substantially commence the work required to remedy the default or violation within ten (10) business days of Developer’s receipt of the Notice of Default. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice of Default verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon City’s issuance of the Notice of Default, Developer shall be liable to City for all costs of construction and installation of the Public Improvement and all other administrative costs or expenses, as provided for in this Section 15 of this Agreement.

15.2 Failure to Remedy; City Action. If the work required to remedy the noticed default or violation is not commenced within the time required under Section 15.1 of this Agreement and diligently prosecuted to completion, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its reasonable discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost and expense of Developer, without the necessity of giving any further notice to Developer. In the event City elects to complete or arrange for completion of the remaining work and the Public Improvement, City may require all work by Developer to cease in order to allow adequate coordination by City.

15.3 Other Remedies. No action by City pursuant to this Section 15 shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise its rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

16. Administrative Costs. If Developer fails to construct and install all or any part of the Public Improvement, or if Developer fails to comply with any other obligation contained herein, Developer shall be jointly and severally liable to City for all administrative expenses, fees, and costs, including reasonable attorneys’ fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

17. Miscellaneous.

17.1 Relationship between the Parties. The Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer’s contractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of City.

17.2 Authority to Enter Agreement. Each person executing this Agreement on behalf of Developer represents and warrants that he or she has the legal power, right and authority to execute this Agreement on behalf of Developer and that this Agreement is binding upon Developer.

17.3 Notices. Any notice, demand, request, consent, approval, or communication either Party desires or is required to give to the other Party or any person shall be in writing and either served personally, communicated electronic mail (with a receipt requested), or sent by prepaid, first-class mail to

the address set forth below. Notice shall be deemed communicated immediately upon personal delivery, fax or email receipt, or forty-eight (48) hours from the time of mailing if mailed as provided in this section:

To City: City of Chino
13220 Central Ave.
Chino, CA 91710
Attn: Director of Development Services
Email: WMorelion@cityofchino.org

With Copy to: Aleshire & Wynder, LLP
1 Park Plaza, Suite 1000
Irvine, CA 92614
Attn: Fred Galante, Esq.
Email: fgalante@awattorneys.com

To Developer: Chino Development Corporation
1156 N Mountain Ave
Upland, CA 91786
Attn: Bryan T Goodman
Email: Bryan.Goodman@Lewismc.com

With a copy to: Lewis Management Corp.
1156 N Mountain Ave
Upland, CA 91786
Attn: Jay Dupre, Esq
Email: jj.dupre@lewismc.com

17.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

17.5 Construction; References; Captions. The Parties agree that the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days, unless specified therein. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

17.6 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and executed by both Parties.

17.7 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

17.8 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

17.9 No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

17.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

17.11 Governing Law; Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of San Bernardino, California.

17.12 Time is of the Essence. Time is of the essence in this Agreement, and the Parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.

17.13 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

17.14 City Officers and Employees. No officer or employee of City shall be personally liable to Developer or any successors in interest in the event of any default or breach by City or for any amount that may become due to Developer or any successor(s) in interest or for breach of any obligation of the terms of this Agreement. No officer or employee of Developer shall be personally liable to City or any successor(s) in interest in the event of any default or breach by Developer or for any amount that may become due to City or their successors in interest or for breach of any obligation of the terms of this Agreement.

17.15 Entire Agreement. This Agreement contains the entire agreement between City and Developer and supersedes any prior oral or written statements or agreements between City and Developer.

17.16 Exhibits. The following exhibits are attached hereto and incorporated herein by reference:

| | |
|--------------------|--|
| <u>Exhibit A</u> | Legal Description of the Property |
| <u>Exhibit A-1</u> | Site Depiction |
| <u>Exhibit B</u> | Conditions of Approval |
| <u>Exhibit C</u> | Description of Tract 17571 Public Trail Improvements |
| <u>Exhibit D</u> | DIF Credit/Reimbursement Addendum |

[SIGNATURES ON FOLLOWING PAGE]

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

DEVELOPER:

CHINO DEVELOPMENT CORPORATION,
a California Corporation

By: _____
Name: Bryan T. Goodman
Its: _____

DATED: _____

CHINO PRESERVE DEVELOPMENT
CORPORATION, a California Corporation

By: _____
Name: Bryan T. Goodman
Its: _____

DATED: _____

CITY:

CITY OF CHINO, a municipal corporation

By: _____
Dr. Linda Reich, City Manager

DATED: _____

ATTEST:

Natalie Gonzaga, City Clerk

DATED: _____

APPROVED AS TO CONTENT:

Hye Jin Lee, Director of Public Works

DATED: _____

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Fred Galante, City Attorney

DATED: _____

DEVELOPER: ONE PERSON AUTHORIZED BY THE APPLICABLE ENTITY FORMATION DOCUMENTS SHALL EXECUTE THIS AGREEMENT. COPIES OF APPLICABLE DOCUMENTS EVIDENCING SUCH AUTHORITY SHALL BE PROVIDED TO CITY. DEVELOPER SIGNATURE SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE APPLICABLE FORMATION DOCUMENTS FOR THE ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

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

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

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)
On _____ before me, _____,
Date Here Insert Name and Title of the Officer
personally appeared _____
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

That certain real property in the City of Chino, County of San Bernardino, and State of California legally described as follows:

The following lots on recorded maps as defined below:

Tract 16419 Lot 4, 8, AI, AF, AL

Tract 20102 Lot E

Tract 17058 Lots 8 & D

Tract 17057 Lots F & J

Tract 17571 Lot 12 and D

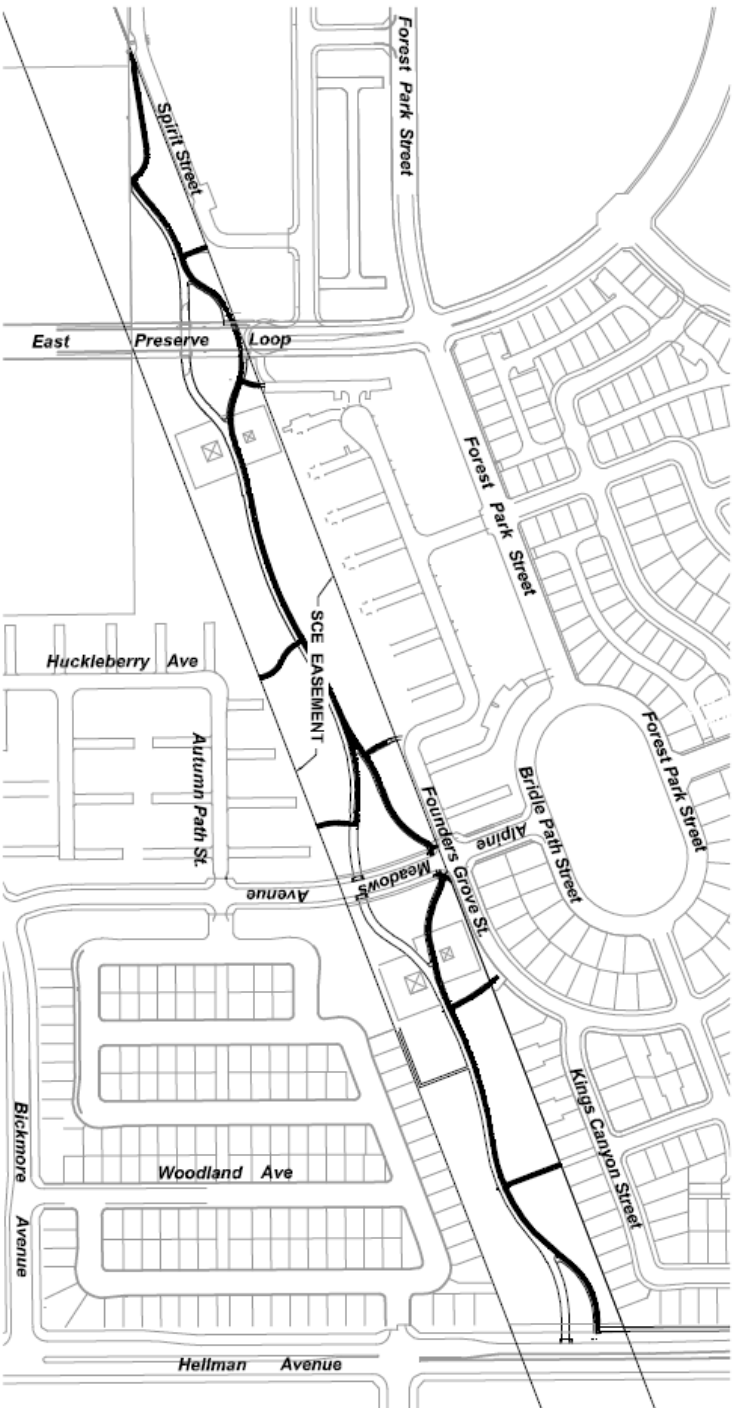
Tract 17572 Lots B & D

EXHIBIT A-1

SITE DEPICTION

[Please see following pages]

Exhibit "A-1"
SCE Trail - East



UPKING
Engineers/Surveyors

975 N Haven Avenue
Suite 200
Ontario, California 91764
Phone: (909) 945-0526
Fax: (909) 945-0529

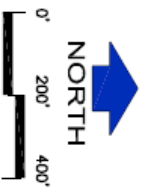
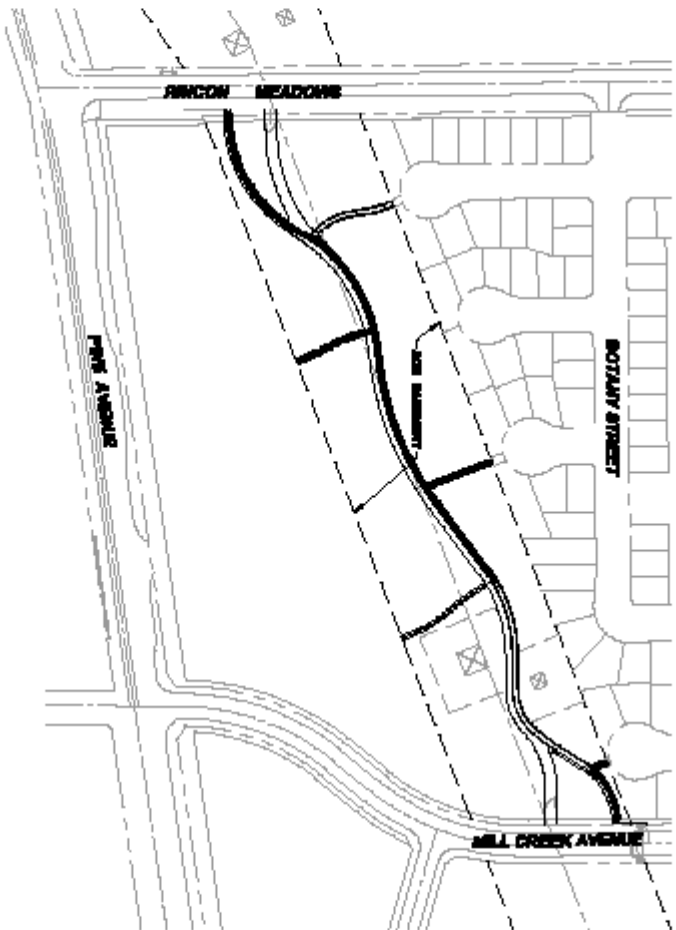


Exhibit "A-1"
SCE Trail - West



UPKING
Engineering & Surveyors

878 H Hansen Avenue
Suite 200
Chico, California 95926
Phone: (916) 944-0224
Fax: (916) 944-0223

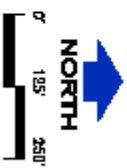


EXHIBIT B

CONDITIONS OF APPROVAL

Per Amended and Restated Development Agreement dated June 20, 2023, Section 6.4.1

EXHIBIT C

DESCRIPTION OF TRACT 17571 PUBLIC TRAIL IMPROVEMENTS

Landscaping Improvements and trail per plans approved by Chino June 22, 2015 and June 23, 2015 and approved by SCE Dec 24, 2014 and per SCE Consent dated July 28, 2015

EXHIBIT D

**AGREEMENT
CONSTRUCTION CREDIT/REIMBURSEMENT AGREEMENT
PRESERVE DEVELOPMENT IMPACT FEES
[SCE CORRIDOR TRAIL – PROJECT PA-003]**

**CONTRACT NO. _____
ADDENDUM NO. 1 _____
(Assignment of Credit)**

- ❖ Document No.: _____
- ❖ Developer: Chino Development Corporation or Chino Preserve Development Corporation
- ❖ Project Name: SCE Corridor Trail – PA-003

- ❖ DIF Addendum per section 12:

| | <i>Estimated Costs</i> | <i>Credits Applied</i> | <i>Balance</i> |
|---------------------------------|------------------------|-------------------------|------------------------|
| Misc. Residential Amenities DIF | \$ | \$ | \$ |
| | <i>Balance</i> | <i>Credits Assigned</i> | <i>Balance Forward</i> |
| Assigned DIF Credit | \$ | \$ | \$ |

CHINO DEVELOPMENT CORPORATION or CHINO PRESERVE DEVELOPMENT CORPORATION is hereby transferring DIF *Credit* in the amount of \$ _____ to:

- ❖ Assignee: _____
- ❖ Credit Transfer Amount: \$ _____
- ❖ Balance Forward: \$ _____

“Any transfer or assignment of credits or reimbursement rights acknowledged in this Addendum shall be made in accordance with City procedures, on a form approved by and acknowledged by the City. All parties to this Addendum agree that City will have no obligation to recognize or honor an assignment or transfer that does not comply with the terms of this Addendum.”

[SIGNATURES ON FOLLOWING PAGE]

ASSIGNEE:

CHINO DEVELOPMENT CORPORATION
CHINO PRESERVE DEVELOPMENT
CORPORATION:

Signature, Title

Signature, Title

Date: _____

Date: _____

CITY OF CHINO ACKNOWLEDGEMENT:

Signature, Title

Date: _____