

**RINCON/COUNTY OF SAN
DIEGO AGREEMENT**

**BOS: March 20, 2001(12)
SIGNED: March 20, 2001**

FACT SHEET

Cooperative Agreement with Rincon Band For Road Improvement Contributions

- Scheduled for 3/20/01 (12) (Tuesday) Board meeting. Representatives of the Rincon Band Business Council and Harrah's Entertainment plan to attend the meeting
- First Agreement negotiated with gaming Tribe
- Total contribution for improvements to Valley Center Road is **\$7,030,855** as follows:
 1. **\$686,230** Frontage improvements, including traffic signal at Casino entrance (both Interim and Permanent)
 2. **\$2,483,730** Programmed projects to widen Valley Center Road to four lanes from Escondido to Cole Grade Road (*Paid \$727,835 on 12/6/02 and \$2,070,547 on 3/24/05; these two payments totaling \$2,798,382 included \$314,652 in cost index adjustments and satisfied Rincon's obligation under this portion of the Agreement*)
 3. **\$3,860,895** New project to widen Valley Center Road to three lanes from Cole Grade Road to casino, including traffic signal at Valley Center Road and Lake Wohlford Road
- Highlights of Agreement:
 - Rincon waives sovereign immunity for purposes of County enforcing the Agreement
 - Rincon provides Letter of Credit for \$2,483,730 to secure contributions to the programmed projects
 - Contributions will be paid by Rincon at time of construction contract bidding
 - Contribution amounts will be escalated for inflation from 3/20/01 to date of payment
 - Contributions #2 and #3 are contingent on Rincon obtaining National Indian Gaming Commission (NIGC) approval of Rincon's application for a management contract with HCAL Corporation to run the casino
- How contribution amounts were determined:
 - Volume of traffic based on trip generation factors for permanent casino gaming square footage (59,000 sf) and number of hotel rooms (200); result was 6,500 average daily trips
 - Cumulative impacts to roads from other casino projects and other development were considered
 - Cost to widen impacted roads based on estimate of \$1.8M per lane mile
 - Rincon's share based on share of traffic on all impacted roads
 - Total contributions directed to Valley Center Road south of Casino where most of road impacts will occur
- On 1/11/01, Rincon opened its interim Casino
- On 2/21/01, Rincon obtained County permit to construct most of frontage improvements
- Rincon Band initiated the Agreement with a proposal of \$2,615,000 on 1/4/01
- Negotiations conducted January – March with staff of DPW, County Counsel, DCAO and District 5

**COOPERATIVE AGREEMENT BETWEEN THE COUNTY OF SAN DIEGO
AND THE RINCON SAN LUISENO BAND OF MISSION INDIANS FOR ROAD
IMPROVEMENTS ASSOCIATED WITH CASINO DEVELOPMENT**

This Cooperative Agreement (hereinafter "Agreement") is made this 20th day of March 2001, by and between the County of San Diego, ("County") and the Rincon San Luiseno Band of Mission Indians ("Rincon Band").

WHEREAS, Rincon Band has signed a Tribal State Gaming Compact ("Compact") with the State of California that will allow Rincon Band to develop up to two Class III casinos on its tribal lands;

WHEREAS, Rincon Band has tribal lands which are located within the unincorporated area of San Diego County;

WHEREAS, Rincon Band is presently developing a temporary Class III casino on its tribal lands, and will in the future develop a permanent Class III casino on its tribal lands;

WHEREAS, the permanent Class III casino project will consist of the development of approximately 65 gross acres with following elements: A 180,000 square foot casino building with 59,000 square feet of gaming space; a 200 room hotel of approximately 125,000 square feet; and 2,400 parking spaces.

WHEREAS, access to the tribal lands and proposed Indian gaming project is via County-maintained roads located within the unincorporated area of San Diego County;

WHEREAS, Rincon Band has agreed to voluntarily contribute funding toward the improvement of County maintained roads. The County has no other existing program or means by which to obtain funding for the road improvements, and Rincon Band is not obligated to seek the County's approval before constructing its Class III casino project. It is therefore in the County's interest to enter into this Cooperative Agreement so that the County-maintained roads in the vicinity of the Class III casino may be improved;

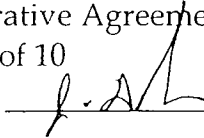
NOW THEREFORE, the parties agree as follows:

I. FRONTAGE IMPROVEMENTS

1. Rincon Band shall perform actions identified in Exhibit A, attached hereto and incorporated herein by reference, which sets forth improvements needed along Valley Center Road where it has frontage on tribal lands. The improvements shall be made according to current County construction and design standards for road improvements

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and to the satisfaction of the County Director of Public Works. These frontage improvements may be summarized as follows:

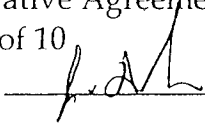
- a) Provision of right-of-way and improvements including southbound deceleration lane and two-way left turn lane for access for the southerly three driveways to the proposed project.
- b) Provision of right-of-way and improvements including southbound deceleration lane and two-way left turn lane for the most northerly (4th) driveway access to the proposed project.
- c) Installation of a traffic signal at the main driveway to the temporary Class III casino. The schedule for installation will be based on a determination by the County Director of Public Works that traffic volume warrants the installation. The County will provide Rincon Band 180 days advance notice of the requested installation and operation date.
- d) Provision of right-of-way and construction of walkway along frontage and connection to the planned new bridge over the San Luis Rey River. The new bridge is to be constructed under a County Capital Improvement Project. Schedule for construction of the walkway will be deferred until it can be coordinated with the bridge construction project.

2. The total cost to Rincon Band for the aforementioned improvements, based on design specification is estimated to be \$646,100.00. Rincon Band will be responsible for the full cost of the improvements, regardless of the ultimate cost. The improvements (with the exception of the installation of the traffic signal and the walkway, for which no date has been specified), shall be completed within 180 calendar days from the last day of receipt of required permits.

Under Department of Public Works Permit No. C32049 issued February 21, 2001, all of the frontage work will be performed by Rincon Band with the exception of the traffic signal, the walkway, and the 4th (most northerly) driveway and associated southbound deceleration lane. Rincon Band will compensate the County for costs associated with the engineering plan review, inspection and building material testing fees for the frontage improvements identified in this Section I-1a by placing initial deposits of \$12,030.00 for engineering plan review and an initial deposit of \$28,100.00 for inspection and testing. Unanticipated factors arising during engineering plan review and construction such as, but not limited to complexity, unforeseen conditions, and longer work duration may necessitate Rincon Band to augment the initial deposit amounts with additional funds to cover County costs. Rincon Band shall only be responsible to pay County such staff costs as determined by County Director of Public Works that are reasonable and necessary. At the end of all tasks, any excess deposits paid by Rincon Band will be refunded to Rincon Band. County will provide a detailed accounting of actual costs against these monies. For the frontage improvements in Section I.1(b), I.1(c), and I.1(d), Rincon Band agrees to obtain additional permits and provide additional engineering plan review and inspection/material testing deposits.

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3. At Rincon Band's request, together with the payment of an additional deposit if necessary, County will provide additional technical assistance to assist in the completion of the improvements. Any monies paid by Rincon Band per this section that are not used by County to directly offset costs, shall be repaid to Rincon Band.

4. Rincon Band will be responsible for complying with approved plans and specifications and will make any reasonable changes as requested by County staff following construction inspections. Rincon Band hereby gives its permission to County to perform inspections on tribal lands as necessary during construction of road improvements.

5. County will perform a final inspection of road improvements on tribal lands to verify construction according to County approved permits. County agrees to take the frontage road improvements into the County's maintained road system when the improvements are found to be completed and in conformance with the approved permit.

II. OFFSITE IMPROVEMENTS AND/OR CONTRIBUTIONS FOR COUNTY ROADS

6. Programmed Improvements – Valley Center Road

a) Rincon Band agrees to pay \$2,483,730.00 toward the programmed County projects for improvements to Valley Center Road between the Escondido city limits north to and including the intersection at Cole Grade Road. (County Projects UJ1467 and UJ1101) and for signalization of the Valley Center Road/North Lake Wohlford Road intersection. These improvements consist of:

- 1) The addition of 2 lanes between Escondido city limits and the Cole Grade Road intersection.
- 2) Traffic signal at Woods Valley Road and Valley Center Road.
- 3) Intersection improvements at Cole Grade Road and Valley Center Road.
- 4) Traffic signal at the intersection of North Lake Wohlford Road and Valley Center Road.

b) County agrees to schedule items identified as (2), (3), and (4) above as early as feasible. County shall negotiate in good faith with the Rincon Band to construct such improvements so as to minimize any disruption of traffic flow to the casino.

c) Payments by Rincon Band for proposed improvements identified in this section shall be made within 45 days of request by Director, Department of Public Works, provided such request conforms with the notice provision of

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Section III-15 of this Agreement. The estimated schedule for payment is \$1,073,649.00 in January, 2002 for improvements on Valley Center Road between Escondido and Woods Valley Road, and \$1,410,081.00 in July, 2002 for all other improvements set forth in this section.

- d) Upon approval by the National Indian Gaming Commission (NIGC) of the management contract between HCAL Corporation and Rincon Band and the issuance of a Finding Of No Significant Impact (FONSI) for the permanent casino project, Rincon Band shall cause to be executed a binding Letter of Credit issued by a financial institution subject to regulation by the state or federal government for the sole benefit of County in the amount of \$2,483,730.00 to secure the obligations identified in this section. At the time County receives payments for the Band's obligations in this section, County will execute reasonable documents necessary to reduce proportionately the amount of the Letter of Credit. The executed Letter of Credit will be provided to County within 10 (ten) days of NIGC approval of the management contract and the issuance of a FONSI for the permanent casino project.

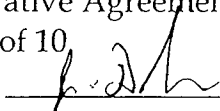
7. Unprogrammed Improvements - Valley Center Road

- a) Rincon Band agrees to pay \$3,860,895.00 toward construction of an unprogrammed County road improvement project to add one lane to Valley Center Road between Rincon Band casino entrance and Cole Grade Road. County will be responsible for any studies, design, environmental review, right-of-way acquisition, and the balance of those construction funds needed in combination with Rincon Band's contribution of \$3,860,895.00 to fund the full construction cost of the project. County shall negotiate in good faith with Rincon Band to construct such improvements so as to minimize any disruption of traffic flow to the casino.
- b) Payment by Rincon Band shall be made within 45 days of request by Director, Department of Public Works, provided such request otherwise conforms with the notice provision of Section III-15 of this Agreement. Such request shall be made at the time County is prepared to bid the construction contract within 90 days. The estimated schedule for payment is January, 2004. County agrees to schedule the improvements to Valley Center Road set forth in this Section II-7 as close to the estimated schedule date as feasible.
- c) In the event the payment to County pursuant to this section becomes due and owing prior to the approval by the NIGC of the management contract between HCAL Corporation and Rincon Band and the issuance of a FONSI for the permanent casino project, such payment shall not become due and owing until such approval has been granted.

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8. Acknowledgement of Additional Impacts

Rincon Band and County acknowledge that in consideration for Rincon Band's contributions to the Valley Center Road improvements identified in No. 7 above, impacts to Valley Center Road north of the Casino, Lake Wohlford Road and Lilac Road, will be mitigated by County sponsored improvement projects.

9. Adjustment of Payments for Inflation.

Payments required under Sections II-6 and II-7 of the Agreement shall be adjusted from the date of this Agreement by applying an adjustment factor based on the increase or decrease in the Engineering News Record Cost of Construction Index published by McGraw-Hill Publishing Company, or any successor thereof. County shall notify Rincon Band of any adjustments at the time of County request for payment. This provision shall not apply to any payments that become due and owing from Rincon Band to County after March 19, 2011.

10. Adjustments to Payments.

In the event that the Board of Supervisors downsizes or withdraws a programmed or unprogrammed road improvement and the construction costs are also reduced, Rincon Band's financial obligation shall be adjusted accordingly. Adjustments for downsizing shall be determined at the time an improvement is ready for construction procurement.

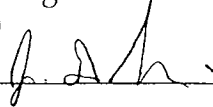
11. Contingency for Non-Approval of Management Contract.

In the event that NIGC disapproves the management contract between HCAL Corporation and Rincon Band, or the submission is withdrawn, Rincon Band shall be responsible for only those provisions set forth in Section I, and Rincon Band and County shall renegotiate government-to-government, in good faith, the provisions set forth in Section II based on the scope of the gaming facility the Rincon Band approves in the place of its existing plans. In the event of a complete cessation of gaming activities in excess of 90 consecutive days, Rincon Band shall only be responsible for those payments for which it has been properly noticed. In the event Rincon Band recommences gaming activities thereafter, Rincon Band and County shall renegotiate government-to-government, in good faith, the provisions set forth in Section II based on the scope of the gaming facility Rincon Band approves in the place of its existing plans.

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- h) Where County is responsible for the balance of project costs beyond the amounts to be paid by Rincon Band under this Agreement, County will rely upon and will obtain those funds from typical County capital project funding sources such as contributions from new development projects, Federal Highway Administration (FHWA), TRANSNET, Gas Tax. Rincon Band will receive no credit for such funding.
- i) County shall use best efforts to secure funds from the Special Distribution Fund for road improvements needed to mitigate off-reservation impacts of the Rincon Casino.
- j) Any credits towards Rincon Band's obligations pursuant to this section shall be treated as the next payments in time to be paid by Rincon Band. If such payments are made toward the programmed improvements to Valley Center Road, County agrees to execute documents necessary to reduce equal amounts committed to a binding Letter of Credit.
- k) In the event funds identified in Section II-12 (a-d) are received by the County after payments from Rincon Band have already been paid to the County, the County shall reimburse Rincon Band within 30 days from receipt of such funds if mutually agreed.

III. MISCELLANEOUS

13. Other Studies

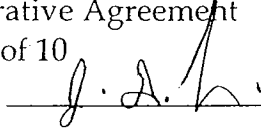
County will be responsible for the preparation of any studies, environmental review, right-of-way acquisition, and construction needed to complete the offsite road improvements as identified in this Agreement. Rincon Band's contributions for road improvements include the costs of studies, environmental review, right of way acquisition and construction.

14. Tribal-State Compact

County and Rincon Band agree that Rincon Band's contributions to County pursuant to this Agreement are not exactions or fees imposed as a condition of development, and therefore are not subject to the Mitigation Fee Act (California Government Code Section 66000 and following). County and Rincon Band agree that Class III gaming facilities on reservation land are regulated by the Compact and that the County has no permitting authority over the construction of the casino. The voluntary contributions contemplated by this Agreement are being made by Rincon Band pursuant to Section 10.8 of the Compact.

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instance shall any enforcement of any kind whatsoever be allowed against any assets of Rincon Band other than the limited assets of the revenue stream of the Rincon Casino and physical assets of the Rincon Casino. Specifically, this waiver shall not extend to any other accounts of Rincon Band, the source of which includes distributions from accounts directly related to the Rincon Casino, so long as such distributions are in the ordinary course of business when the Agreement is not in default and are not done for the purpose of frustrating the County's remedies hereunder. Rincon Band does not waive the defense of sovereign immunity with respect to any action by third parties, or extend its waiver to reach any assets of Rincon Band other than those specifically set forth herein.

b) County acknowledges that Rincon Band may bring an action in the State Courts of California to enforce the terms of this agreement as against San Diego County for money damages, specific performance, injunctive relief and/or declaratory relief for County's breach of this Agreement. County acknowledges that State Courts with proper venue have jurisdiction to hear such disputes. For purposes of the Agreement, County waives any immunity it may have from suits to enforce the provisions of the Agreement.

18. Entire Agreement, Waivers

This Agreement constitutes the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreement between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the County or of Rincon Band.

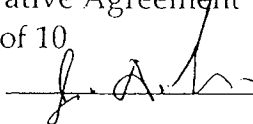
19. Amendments

This Agreement may be amended by mutual written agreement of the Parties duly executed by the lawfully authorized officers or officials of each party.

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IN WITNESS WHEREOF, the Agreement has been executed by the Parties as of the day and year first set forth above,

TRIBE:

RINCON SAN LUISENO BAND OF MISSION INDIANS, a federally recognized Indian Tribe

By: [Signature]
Tribal Chairman

COUNTY:

COUNTY OF SAN DIEGO, a political subdivision of the State of California

By: Thomas J. Paul
Clerk of the Board of Supervisors

Approved and/or authorized by the Board of Supervisors of the County of San Diego
Date 3/20/01 Minute Order No. 12
THOMAS J. PASTUSZKA
Clerk of the Board of Supervisors
By: [Signature]
Deputy Clerk

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Rincon [Signature]
County DP

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL
BY [Signature]
SOLICITOR

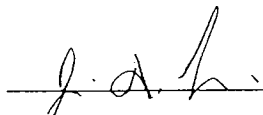
EXHIBIT A

**COOPERATIVE AGREEMENT BETWEEN THE COUNTY OF SAN DIEGO AND
THE RINCON SAN LUISENO BAND OF MISSION INDIANS FOR ROAD
IMPROVEMENTS ASSOCIATED WITH CASINO DEVELOPMENT**

FRONTAGE ROAD IMPROVEMENTS

1. Grant right-of-way for public highway along the project frontage to complete a forty-eight foot (48') half width, plus slope and drainage easements, from the centerline of Valley Center Road (C.E. Route SF 639).
2. Apply to the County Traffic Advisory Committee (TAC) for a parking prohibition along the West side of the project frontage on Valley Center Road (CE Route SF639).
3. To process the necessary right-of-way dedication documents, provide a Lot Book Report not less than three months old showing all Deeds of Trust, a Grant Deed, and a \$400.00 deposit for document processing fees to the County Department of General Services, Real Property Division. The Real Property Division can be reached at (858) 694-2297.
4. Allow transfer of the property into Zone A of the San Diego County Street Lighting District without notice or hearing and pay the cost to process such transfer. Contact Special Districts at 858 571-4258.
5. Construct roadway improvements on Valley Center Road (C.E. Route SF 639) along the project frontage. These improvements shall include the following:
 - a) Installation of asphalt concrete dike, driveway(s), disintegrated granite walkway and asphalt concrete pavement over approved base, to the satisfaction of the Director of Public Works. The face of dike and curb returns shall be thirty-eight feet (38') from centerline.
 - b) Provide a two-way left turn lane on Valley Center Road (C.E. Route SF 639) to the satisfaction of the Director of Public Works.
 - c) Design an asphaltic concrete raised island within the most southerly and northerly project driveway(s) for right-in/right-out ingress/egress movements only and provide right-in/right-out only signs to the satisfaction of the Director of Public Works. Left turning movements

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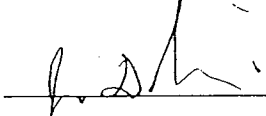


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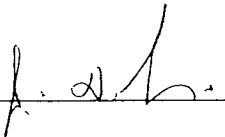
into the most southerly and northerly project driveway from Valley Center Road shall not be allowed.

- d) Install a traffic signal at the ultimate location of the intersection of the project's main driveway entrance (2nd driveway north of the most southerly driveway) and Valley Center Road (C.E. Route SF 639) to the satisfaction of the Director of Public Works.
 - e) Provide a minimum twelve-foot (12') striped acceleration lane, and a taper transition from the most southerly driveway to the existing edge of pavement to the satisfaction of the Director of Public Works.
 - f) Provide a minimum twelve foot (12') striped deceleration lane at the proposed project's most southerly driveway to the satisfaction of the Director of Public Works.
 - g) Provide a minimum twelve foot (12') striped acceleration lane and deceleration lane at the proposed project's driveway entrance (3d driveway north of the most southerly driveway) to the satisfaction of the Director of Public Works.
 - h) Provide a minimum twelve foot (12') striped acceleration lane at the proposed project's driveway entrance (4" driveway north of the most southerly driveway) to the satisfaction of the Director of Public Works.
 - i) Construct two hundred foot (200') long deceleration lane, plus a two hundred fifty (250') tapered transition, at the proposed project driveway (4th driveway north of the most southerly driveway) to the satisfaction of the Director of Public Works.
 - j) Additional improvements upon further review may include drainage improvements and traffic striping to the satisfaction of the Director of Public Works. This will be satisfied upon completion and approval of Improvement Plans.
6. Provide a detailed design and striping/signage plan for Valley Center Road (C.E. Route SF 639) to the satisfaction of the Director of Public Works.
7. A registered civil engineer, a registered traffic engineer, or a licensed land surveyor shall provide a signed statement that: "Physically, there is a minimum of six hundred feet (600') of unobstructed sight distance in both directions from all the proposed driveway(s) along Valley Center Road (C.E. Route SF 639) per the Design Standards of Section 6.1.E of the County of San Diego Public Road Standards (approved July 14, 1999)". If the lines of sight fall within the existing public road right-of-way, the engineer or surveyor

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shall further certify: "Said lines of sight fall within the existing right-of-way and a clear space easement is not required".

8. A registered civil engineer, a registered traffic engineer, or a licensed land surveyor shall certify that the sight distance of adjacent driveways and street openings within six hundred feet (600) beyond all improvements along Valley Center Road (C.E. Route SF 639), will not be adversely affected by this project.
9. Coordinate improvements along Valley Center Road (C.E. Route SF 639) at the project frontage relative to the construction of the Valley Center Bridge (over San Luis Rey River) with the Department of Public Works, Capital Improvement Projects Section 858 694-2343.
10. Submit a letter from the Rincon San Luiseno Band of Mission Indians outlining all arrangements to enforce the Band's Ordinance No. 94-06 relative to protecting open range cattle and the motoring public safety on Valley Center Road (C.E. Route SF 639).
11. Submit a traffic control plan to Department of Public Works Traffic Section and apply for a traffic control permit from the Department of Public Works at 858 874-4025.
12. Regional Water Quality Control Board programs limit pollutant discharges into storm water. Provide a Storm Water Quality Management Plan for the site showing all proposed Best Management Practices (BMPs). Note: Discharge of roof drains and parking lots directly into storm drains is discouraged. Use of grass-lined strips for "treating" runoff prior to discharge is a better storm water quality BMP.
13. To construct roadway improvements within the right-of-way, execute the following procedures:
 - a) Engage a registered civil engineer to prepare the roadway improvement plans (curb grade drawing).
 - b) Submit six blue line copies of the curb grade drawing, an engineer's estimate of cost for the roadway improvements, and plan checking deposit to the Department of Public Works, Grading and Improvements Counter, 5201 Ruffin Road, San Diego, CA 92123.
 - c) Execute a Secured Agreement, to include all improvements, with the County of San Diego to assure the construction of roadway improvements.

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- d) Obtain an instrument of credit, letter of credit, or make a cash deposit to the County of San Diego in the amount determined by this department as necessary to secure the roadway improvements. This amount can only be determined after receiving Rincon Band's engineer's cost estimate and completion of County field check.

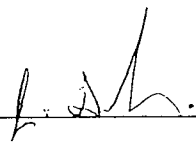
14. In addition to the foregoing, a typical Construction Permit cannot be issued by the Department of Public Works, until the following requirements are met:

- a) Obtain an approved curb grade drawing and engineer's cost estimate from the Department of Public Works.
- b) Sign the right-of-way dedication documents.
- c) Sign the Secured Agreement.
- d) Pay the necessary construction inspection deposits as determined by the Department of Public Works.

15. Before any security will be released by the Director of Public Works, Rincon Band will be required to:

- a. Complete all required improvements to the satisfaction of the Director of Public Works.
- b. Complete all required items to the satisfaction of the Director of Public Works.
- c. Notify the Department of Public Works Traffic Section at 858 874-4030 when the traffic signal at the project's main driveway entrance (2nd north of the most southerly driveway) and Valley Center Road (C.E. Route SF 639) has been activated.
- d. Pay off any and all project deficits.

16. Department of Public Works policy prohibits trench cuts for undergrounding of utilities in all new, reconstructed, or resurfaced paved County-maintained roads for a period of three years following project surface application. Therefore, notify all adjacent property owners who may be affected by this policy and are considering development of applicable properties. The owners of this project will be required to sign a statement that they are aware of the County of San Diego, Department of Public Works, Pavement Cut Policy and that they have contacted all adjacent property owners and solicited their participation in the extension of utilities.

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