

RESOLUTION PC 17-4649

A RESOLUTION OF THE SAN MARCOS CITY PLANNING  
COMMISSION RECOMMENDING THAT THE CITY COUNCIL  
TERMINATE DEVELOPMENT AGREEMENT (DA 91-05),  
APPROVED BY WAY OF ORDINANCE 91-910, IN ITS  
ENTIRETY

DA16-001 (P16-0005)  
H. G. Fenton/City of San Marcos

WHEREAS, on January 26, 2016 the City of San Marcos received an application from H.G. Fenton Development Company LLC, requesting the termination of Development Agreement DA 91-05, in conjunction with a Tentative Subdivision Map (TSM 16-001), Conditional Use Permit (CUP 17-004), and Grading Variance (GV 17-005) located on approximately 87.46 acres, more particularly described as:

ALL OR PORTIONS OF LOTS 1 AND 2 OF BLOCK 67, AND  
LOTS 8, 9, 10, 11, 12 AND 13 OF BLOCK 63 OF RANCHO LOS  
VALLECITOS DE SAN MARCOS, ACCORDING TO MAP  
THEREOF 806 AND PARCEL A OF MAP NO. 16595

Assessor Parcel Numbers: 221-080-18-00, 221-080-24-00, 221-080-19-00, 221-080-11-00, 221-070-20-00, 221-142-07-00, 221-080-23-00, 221-080-12-00, and 221-070-19-00

WHEREAS, the Scripps Specific Plan (SP 90-24) was adopted by the City Council with associated entitlements (General Plan Amendment [91-26 Subarea A], Rezone [91-46], Development Agreement [DA 91-05], Environmental Impact Report [EIR 91-17], Specific Plan Amendment [87-29(91M)], Conditional Use Permits (CUP 91-138, CUP 91-139), and Tentative Parcel Map [TPM 495] on November 26, 1991; and

WHEREAS, the University District Specific Plan (SP 87-29(08M#23)) was adopted on November 10, 2009 and the boundary included a portion of the Scripps Health Care Campus Specific Plan (on the north side of the future Discovery Street); and

WHEREAS, the applicant has proposed to rescind and replace the Scripps Specific Plan (SP 90-24) with the Discovery Village South Specific Plan (City project Number P16-0037, located on the south side of the future Discovery Street); and

WHEREAS, the City of San Marcos and Scripps Memorial Hospital desire to terminate the Development Agreement (DA 91-05); and

WHEREAS, by terminating Development Agreement (DA 91-05), the City will see equal or greater benefit through; a) the application of standard development fees (Public Facilities Fees) and

Community Facilities District requirements to any future project on the site, and b) the establishment of a Reimbursement Agreement that will ensure that H.G. Fenton, or a future developer agreed to by the City of San Marcos, will construct the full extent of Discovery Street with or prior to site development, expediting and reducing the cost to construct this significant infrastructure project currently identified in the City of San Marcos Capital Improvement Program but not yet fully funded; and

WHEREAS, it is the position of Scripps Memorial Hospital that the current changes in the health industry and the abundance of health care facilities as well as future anticipated expansion in the vicinity do not support the need for the Scripps Hospital Health Care Campus and;

WHEREAS, a Fiscal Analysis prepared for the proposed project by David Taussig and Associates also contained a Price Point Study prepared by Meyers Research. The Price Point Analysis prepared for the proposed project concluded that it is uncertain whether the Scripps Health Care Campus would be realized to full capacity given the uncertainty of demand for future hospital beds in San Diego County. The conclusion suggests that buildout and full occupancy may never be achieved under the existing zoning (Scripps Health Care Campus Specific Plan) and, consequently, the fiscal surplus projected in the report for that scenario is theoretical and may not be realized. Additionally, the fiscal study projects that the proposed project would generate a larger surplus to the City General Fund than would the existing zoning. Both the fiscal and market studies therefore conclude that the proposed plan represents a more viable development option for the City and;

WHEREAS, the Project (P16-005) is within the scope of the Final Environmental Impact Report (FEIR) for the University District Specific Plan and 2014 and 2017 Addendums to the FEIR (State Clearinghouse No. 2008101083) for the University District Specific Plan pursuant to the California Environmental Quality Act (CEQA); and

WHEREAS, the adoption of this Resolution expressly terminates all aspects of Development Agreement (DA 91-05), by which action the parties declare their intention that there are no remaining obligations to be performed on the part of either or the parties under the 1991 Development Agreement. Without limiting the foregoing, neither the City nor Scripps or any of its affiliates, agents, or successors, have any outstanding obligations, or opportunities for refund, with respect to the payment of any fees, penalties or interest, or construction of any infrastructure, arising out of or relating to the Development Agreement (DA 91-05).

WHEREAS, Developmental Services conducted a public workshop on October 5, 2017 for the proposed project; and

WHEREAS, the Development Services Department did study said request and does recommend approval; and

WHEREAS, the required public hearing was advertised for February 5, 2018, and was duly advertised in the manner prescribed by law; and

NOW, THEREFORE, this Resolution is hereby recommended for adoption and approval by the City Council of the City of San Marcos and

PASSED AND ADOPTED by the Planning Commission of the City of San Marcos, State of California, at a regular meeting thereof, this 5<sup>th</sup> day of 2018 by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

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, Chairman  
SAN MARCOS CITY PLANNING COMMISSION

ATTEST:

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Sandra Gallegos, Senior Office Specialist  
SAN MARCOS CITY PLANNING COMMISSION

Attachment "A" Recorded Document 1992-0022278 Development Agreement and Owner Participation Agreement between Scripps Memorial Hospitals and the City of San Marcos and the Redevelopment Agency of the City of San Marcos

Page 4  
Resolution PC 17-4649  
February 5, 2018

ATTACHMENT "A"

RECORDED REQUEST OF FIRST MORTGAGE TITLE CO.

1525

DOC # 1992-0022278  
15-JAN-1992 10:51 AM

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

City Clerk  
City of San Marcos  
105 W. Richmar Avenue  
San Marcos, California 92069

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
ANNETTE EVANS, COUNTY RECORDER

RF: 42.00 FEES: 122.00  
AF: 79.00  
MF: 1.00

4991724-22-

DEVELOPMENT AGREEMENT AND  
OWNER PARTICIPATION AGREEMENT  
BETWEEN SCRIPPS MEMORIAL HOSPITALS  
AND  
THE CITY OF SAN MARCOS  
AND  
THE REDEVELOPMENT AGENCY OF  
THE CITY OF SAN MARCOS

PC AGENDA ITEM #2  
Doc #11,047

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THIS DEVELOPMENT AGREEMENT and OWNER PARTICIPATION AGREEMENT is made and entered into as of December 10, 1991 by and between the City of San Marcos, a municipal corporation ("City"), and Scripps Memorial Hospitals, a California non-profit public benefit corporation ("Scripps") and the Redevelopment Agency of the City of San Marcos ("Agency"), and this agreement (this "Agreement") is executed with reference to the following circumstances:

RECITALS

A. Scripps owns or intends to acquire certain real property (the "Property") as described in Exhibit A, attached hereto, for medical facility development (the "Project"), as described and depicted in Exhibit B, attached hereto. For purposes of this Agreement, Scripps is deemed to have sufficient fee ownership or equitable interests in the Property to permit the parties to enter into this Agreement.

B. The City, a general law city, is authorized pursuant to Government Code ss 65864-65869.5 and City Ordinance Nos. 86-701 and 87-747 to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property to establish certainty in the development process. The City recognizes the advantages to it and its citizens if Scripps selects a location within the City as the site for the Project. Scripps is authorized by law to enter into this Agreement and recognizes that it is in the best interest of the City to develop the Property for the purposes of the Project.

C. The City and the Agency, as a result of the development of the Project in accordance with the Redevelopment Plan (as defined in Recital D below) and this Agreement, will receive substantial benefits, including: medical facilities and services needed and desired by the community; associated employment opportunities; orderly development of the planning area, with public infrastructure in place prior to or concurrently with demand for such facilities; increased property and sales tax revenue; and public infrastructure improvements which provide critical links in the City's total infrastructure system of roads, water, sewer, and drainage improvements, and other public facilities. In exchange for these benefits to the City and the Agency, Scripps desires to receive assurances that it will be able to proceed with development of the Property in accordance with Specific Plan No. 90-24 ("Specific Plan"), Tentative Map No. 495 and this Agreement.

D. The City Council of the City has adopted Ordinance No. 89-820 adopting a redevelopment plan for Project Areas 1, 2 and 3 ("Redevelopment Plan"), which includes the Property. The Redevelopment Plan authorizes the Agency to enter

into owner participation agreements and development agreements in furtherance of the Redevelopment Plan.

E. The Redevelopment Plan contains numerous goals, objectives, and policies pertaining to the orderly development of Project Areas 1, 2 and 3 (the "Areas"). Implementation of the Redevelopment Plan pursuant to those goals, objectives and policies will require the mutual cooperation of the City, the Agency, and property owners and developers, including Scripps, and will require a substantial capital investment to ensure the completion of both private and public improvements necessary to serve the Areas.

F. Because of the complexities of financing the public infrastructure identified in the Redevelopment Plan, the City, the Agency and Scripps desire certainty regarding their responsibilities. The phasing, timing and financing of the public infrastructure necessitates a significant coordination of resources by Scripps and the City for such improvements to be successfully completed in a timely manner. Accordingly, in return for Scripps' selection of San Marcos as its site to develop the Project, the City and the Agency desire to make a commitment regarding the timing, phasing, nature and financing of certain public improvements (including utilities, roads and other public infrastructure), throughout the development process for the Areas.

In exchange for the requirements imposed by the City for dedication of property, and Scripps' covenants to develop the Property and to dedicate or transfer property under the terms of this Agreement, Scripps desires to receive assurances that Scripps may retain ownership of the Property for uses specified in this Agreement, the Specific Plan and the Redevelopment Plan and that the City and the Agency do not plan to acquire the Property through eminent domain proceedings.

G. On October 21, 1991, the Planning Commission of the City, after giving notice required by law, held a public hearing on the application for this Agreement. The City Council of the City, after providing public notice as required by law, similarly held a public hearing on the application for this Agreement, on November 12, 1991.

H. The City Council has found that this Agreement is consistent with the General Plan of the City and all other applicable plans, policies, and regulations of the City.

I. The Agency has found that this Agreement is consistent with the Redevelopment Plan, and with all other requirements of the Agency.

J. On November 26, 1991, the City Council adopted Ordinance No. 91-910 approving this Agreement with Scripps, and

the enacting ordinance thereafter took effect on December 26, 1991.

K. On December 10, 1991, the Agency adopted a resolution approving this Agreement with Scripps.

L. This Agreement shall become operative, with respect to development of the Property and the City's and the Agency's infrastructure obligations, upon Scripps' acquisition of all of the Property; however, the parties have entered into this Agreement beforehand to provide Scripps certain assurances prior to actual purchase of portions of the Property.

NOW, THEREFORE, in consideration of the foregoing circumstances, and based on the advantages to each party should Scripps develop the Project in the San Marcos area, Scripps and the City, and Scripps and the Agency agree as follows:

COVENANTS

1. Property Subject to Agreement. All of the Property described in Exhibit A shall be subject to this Agreement upon the completion of Scripps' acquisition of all of the Property. It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with the Property and the benefits and burdens hereof shall bind and inure to all successors-in-interest of the parties to this Agreement. Except for the "Acosta" and "Nomura" parcels, as defined and described in Section 16.2 below, Scripps represents that it holds or has a contract to acquire within three months after the date of this Agreement one hundred percent (100%) fee ownership of all of the Property and that all other persons who will then hold or thereafter acquire legal or equitable interests in the Property shall be bound by this Agreement. Subject to Section 16.2, Scripps will endeavor in good faith to acquire the "Acosta" and "Nomura" parcels, and upon such acquisition those parcels shall become subject to this Agreement and all persons who will then hold or thereafter acquire legal or equitable interests in those parcels shall be bound by this Agreement. If Scripps fails to acquire the the balance of the Property it does not currently own, other than the "Acosta" and "Nomura" Parcels, or cause all of the persons with an interest in the Property (other than those parcels) to be bound by this Agreement, within one year from the date of this Agreement, then any party may terminate this Agreement upon sixty (60) days prior written notice to the other parties, unless during that notice period Scripps acquires the balance of the Property it does not own (other than the "Acosta" and "Nomura" Parcels) or causes all such persons with an interest in the Property to be bound by this Agreement.

2. Term. The term of this Agreement shall commence upon the effective date of the Ordinances authorizing their execution and shall continue for a total period of thirty (30)

years thereafter. This Agreement shall automatically terminate and be of no further force or effect upon the expiration of the original term plus any approved extensions.

3. Permitted Uses. Scripps shall use and develop the Property for uses permitted in the Specific Plan as it may be amended from time to time, including a hospital and medical center, medical office buildings, medical clinics, medical research facilities, skilled nursing facilities, employees' children day care center and other uses consistent with its mission as a nonprofit public benefit corporation providing health care services; provided, however, that nothing in this provision shall be construed to preclude permitted uses by organizations or persons operating for profit.

4. Specific Plan. The parties agree that Scripps shall be entitled to develop the Project in accordance with the Specific Plan, which is on file with the Developmental Services Department and is incorporated in this Agreement by reference. Scripps agrees to comply with all requirements of the Specific Plan and all conditions of the approval of the Specific Plan. The City and the Agency recognize that the scheduling of dates or times of performance in the Specific Plan are subject to revision by Scripps from time to time, upon a written finding of Scripps informing the City and the Agency of the necessity, public interest, policy or convenience reasons for any change. Such revisions are permitted within the framework of this Agreement and are considered administrative in nature. To the extent permitted by the Specific Plan, such revisions may be approved by the City Manager or the City Council. All revisions shall be made in writing and shall be supported by adequate justification.

5. Modifications Regarding Public Improvements. Modifications to the parties' financial responsibility or the phasing of public improvements provided for in this Agreement shall be considered administrative in nature and may be approved by the City Council without a public hearing unless such amendments require supplemental or subsequent environmental review pursuant to the California Environmental Quality Act (CEQA) and the City environmental protection ordinances, in which case approval of such amendments shall be by means of a formal amendment. The City Council may by resolution authorize the City Manager to approve such modifications. Any such resolution shall require the City Manager to make a written record of all modifications. The decision of the City Manager may be appealed to the City Council.

6. Requirements in Conflict with Specific Plan and Approved Public Facilities Plan. It is the express intention of the parties that Scripps have the continuing right to develop the Property in accordance with the Specific Plan. Absent amendment of this Agreement, the Property shall not be subject to any subsequently enacted amendments or additions to the City's General Plan, zoning, land use or subdivision ordinances, or the

City's Public Facilities Plan, which alters, or is in conflict with the Specific Plan. Development on the Property that is consistent with the Specific Plan and this Agreement shall be exempt from all increased development impact fees and other similar development exactions other than as specifically provided for in this Agreement. The City may, during the term of this Agreement, apply the fire, building, and safety codes in effect on the date of approval of subsequent plans and building permits; provided, however, that amendments to those fire, building and safety codes after the date of this Agreement do not prevent the uses, density or height, or change the public improvement requirements, unless justified by material considerations of public health and safety, or change the rate of the development of the Property specified in this Specific Plan. The only public facility fees applicable to this Project are those established within the framework of this Development Agreement.

In Pardee Construction Company v. City of Camarillo, 35 Cal.3d, 208 Cal.Rptr. 228 (1984), the California Supreme Court held that the failure of the parties to provide for the timing of development in a development agreement allowed a subsequently adopted initiative, restricting the timing of development, to prevail over the development agreement. It is the intention of the parties to this Agreement to cure that deficiency by specifically providing that Scripps shall have the right to develop the Property in such order, at such rate, and at such times as Scripps deems appropriate subject only to the provisions of the Specific Plan and this Agreement. As a material part of this Agreement, the City agrees that it will not (except as otherwise specifically authorized by this Agreement) determine, or seek to have a judicial determination made, that the Property is subject to any subsequently enacted ordinance or initiative regulating the number of building permits which may be issued at any time or within any given time period. This commitment is necessary and in the best interest of the City and Scripps in order to provide the medical facilities and public facilities and infrastructure necessary to meet the requirements of the Specific Plan and the needs of the City.

7. Amendment to General Plan or Redevelopment Plan.

Any amendments to the General Plan or Redevelopment Plan which change the uses or development permitted on the Property by the Specific Plan, or otherwise change any restrictions or controls of the General Plan or Redevelopment Plan that apply to the Property, shall require the written consent of Scripps. Amendments to the Redevelopment Plan applying to other real property in the redevelopment area shall not require the consent of Scripps, unless those amendments would prevent development of the Property as provided in the Specific Plan and this Agreement.

8. Dedication of Land for Public Use. As a condition of approval of the first final map for any of the Property, Scripps shall at its sole cost and expense dedicate, or irrevocably offer to dedicate, or otherwise transfer as provided

in this Agreement, all property, rights-of-way and other interests in the Property designated in this Agreement to the public agencies, and for the purposes, specified in this Agreement. All required dedications shall be free and clear of all liens, encumbrances and hazardous or toxic waste or materials. No additional dedication or improvement requirements other than as set forth by this Agreement shall be imposed upon Scripps.

9. City and Agency Obligations for Public Infrastructure. The City and the Agency, agree, at no cost to Scripps to provide the public infrastructure improvements described in Exhibit C attached to this Agreement, in accordance with the schedule set forth in Exhibit C.

10. Scripps' Obligations for Public Infrastructure. Scripps agrees at its cost and without any cost to the City or the Agency to provide for the public infrastructure improvements described in Exhibit D attached to this Agreement in accordance with the schedule set forth in Exhibit D.

11. Cooperation in Securing Governmental Permits, Conflict of Law. The City and the Agency shall cooperate with Scripps in securing for Scripps all permits which may be required for the Project by the City or any other governmental agency. In the event that Federal, State or County laws or regulations enacted after this Agreement has been entered into or the action or inaction of other affected governmental jurisdictions prevents or precludes compliance with one or more provisions of this Agreement or requires changes in plan, maps or permits approved by the City, the parties shall: (i) provide the other party with written notice of such Federal, State or County restrictions; (ii) provide a copy of such regulation or policy and a statement of conflict with the provisions of this Agreement; and (iii) promptly meet and confer with the other party in good faith and make a reasonable attempt to modify or suspend this Agreement to comply with such Federal, State or County, law or regulation.

12. Exemption from Public Facilities Financing Plan Thresholds. The parties acknowledge that the Specific Plan and the Agreement require Scripps, the City and the Agency to install significant regional serving public facilities and improvements which are of significant benefit to the City and the Agency and that the Specific Plan and this Agreement provide for the phasing of regional and local serving public improvements to best provide any necessary public facilities prior to the development of the Project. Therefore, the development of the Project pursuant to the Specific Plan and this Agreement is exempt from that portion of the Public Facilities Financing Plan adopted by the City on August 14, 1990 (the "Financing Plan"), which pertains to threshold requirements. Except for the Public Facility Fees/Tax Increment In-Lieu Fees and the Tax Increment In-Lieu Fees specified in Exhibit D, Scripps shall be exempt from all public facility fees for construction of public improvements provided

for in the Public Facilities Financing Plan or otherwise. This provision shall not be construed to apply to (i) the Citywide Police and Fire Mello-Roos Community Facilities District; (ii) any fee, rate or charge levied in connection with a public utility; or (iii) any state or regional law that establishes a mandatory requirement, binding on the City, that is financed by a fee, rate or charge.

13. Encumbrances on Property. The parties agree that this Agreement shall not prevent or limit Scripps from encumbering the Property or any portion of any improvement thereof by any mortgage, deed of trust, or other security device securing financing as determined appropriate by Scripps. The City and the Agency acknowledge that the lenders providing such financing may require certain modifications to this Agreement. The City and the Agency agree, upon request from time to time, to meet with Scripps and representatives of such lenders to negotiate requests for modifications. The City agrees that it will not unreasonably withhold its consent to modifications meeting the terms of this Section 13, provided that they do not materially alter the Specific Plan or this Agreement. Modifications may be made in the same manner as amendments to this Agreement.

The mortgagee of a mortgage, the beneficiary of a deed of trust, or any other party holding an interest encumbering the Property or any part thereof, and their successors and assigns, who have requested notice in writing to the City, shall be entitled to receive written notification from the City of any default by Scripps in the performance of any obligations of Scripps under this Agreement or under the Specific Plan if such default is not cured in a timely manner. The creation of any security device encumbering all or any part of the Property or its improvements shall not relieve Scripps or Scripps' successors in interest of its obligations under this Agreement.

14. Certificate of Completion. Promptly after completion of the specific buildings, the City and the Agency shall provide Scripps with instruments so certifying. Those certificates shall be conclusive determination that the obligations of Scripps under this Agreement have been met with respect to the specific building described in the certification. The Certificates shall be in such form as will enable them to be recorded in the Official Records of the County of San Diego.

15. Reimbursement. Scripps may request that the City establish means of collecting reimbursement from developers of other property for Scripps' cost of installing public facilities outside the boundaries of the Property which are of size, length or capacity greater than needed to serve or mitigate the impacts of development of the Property. The City agrees to cooperate in establishing such reimbursement in an equitable fashion. Reimbursement for such oversized or supplemental improvements shall be determined according to the provisions of the City

subdivision ordinance in effect at the time of the reimbursement request.

16. Eminent Domain.

16.1 Public Improvements. If, as a condition of any subdivision map or any other land use approval, the City requires the improvement of, or entry upon, land not owned by Scripps, the City, or the Agency, then the City or the Agency shall consider the adoption of a resolution of necessity at its sole discretion so as to commence eminent domain proceedings to secure the land. In the event that neither the City, nor the Agency exercises its right of eminent domain to the extent authorized by law, the condition requiring the property, or entry upon property shall be deemed waived without further action of any party to this Agreement. With respect to land required for improvements described in Exhibit C, the City shall pay the award for just compensation and damages and relocation benefits, if any, but Scripps shall bear attorneys' fees, expert fees and all other costs and expenses of the eminent domain proceeding.

16.2 "Nomura" and "Acosta" Parcels. The description of the Property in Exhibit A includes portions of that certain real property described and identified in Exhibits E1 and E2 attached hereto as the "Nomura" and "Acosta" Parcels. Other portions of the "Acosta" and "Nomura" Parcels are required for off-site street improvements under the General Plan Circulation Element. Scripps shall exert its reasonable, good faith efforts for three months after the date of this Agreement to acquire the portions of the "Nomura" and "Acosta" Parcels required for the Project in a voluntary sale. In no event shall Scripps be required to pay more for those properties than the probable total cost of acquiring those properties through eminent domain. If Scripps is unable, despite its reasonable, good faith efforts, to acquire the portions of the "Nomura" and "Acosta" Parcels included in the Property through a voluntary purchase within three months after the date of this Agreement, then the City or the Agency shall consider the adoption of a resolution of necessity in its sole discretion so as to commence eminent domain proceedings to secure the land. Scripps shall bear all costs associated with any such eminent domain proceeding, including, without limitation, just compensation and damages and relocation benefits awarded, if any, attorneys' fees, expert fees and other costs and expenses. The City shall be responsible for the purchase price of those portions of the "Acosta" and "Nomura" Parcels required for off-site street improvements and any other acquired portions of those parcels not included in the Property, whether the land is acquired in a voluntary sale or eminent domain, but Scripps shall bear all other costs of any eminent domain proceeding including attorneys' fees, expert fees and other costs and expenses. The owners of the "Acosta" and "Nomura" parcels have been given notice of the hearings of the Agency and the City with respect to this Agreement.

16.3 Renegotiation Period. The parties recognize that the exercise of eminent domain is subject to certain legal requirements. If acquisition of land required for purposes of this Agreement through a voluntary sale cannot be accomplished, and a final determination by a court of competent jurisdiction holds that the exercise of eminent domain with respect to that land is an abuse of discretion or would violate a constitutional right of the owner of the land, then the parties shall meet in good faith to negotiate modifications to this Agreement or otherwise address that contingency.

17. Annual Review.

17.1 Annual Review by City Staff. The City staff shall review this Agreement annually to determine whether there is good faith compliance by Scripps with the terms of this Agreement. For the purposes of this review, Scripps shall present to the City Staff (i) a written report identifying Scripps' performance or (ii) other written evidence of Scripps' performance. Scripps shall be deemed to have complied in good faith with the terms of this Agreement unless written reports, other written evidence or other evidence developed by the City Staff show a lack of reasonable effort by Scripps to comply with the authorized uses, densities, public improvements, and dedication requirements specified in the Specific Plan and in this Agreement, or a failure of Scripps to substantially comply with all of the terms of this Agreement.

17.2 Finding of Good Faith Compliance. If the City staff finds that Scripps has complied in good faith with the terms of this Agreement, a certificate of compliance shall be issued. The decision of the City staff shall become final if no person, including a party has appealed the decision of the City staff to the City Manager within ten (10) days after the certificate of compliance has been issued. The certificate of compliance shall be in recordable form and may be recorded by Scripps in the Official Records of the County of San Diego. The decision of the City Manager shall be made in writing and may be appealed to the City Council in the same manner as an appeal of a determination of the City Staff.

17.3 Finding of Noncompliance. In the event that the City staff determines that Scripps is not in good faith compliance with the terms of this Agreement, the City staff shall provide Scripps with written notice of this finding stating the reasons for the findings of noncompliance and all evidence relied upon by the City staff in making this determination. Scripps shall have sixty (60) days from receipt of this notice of non-compliance to cure the defects noted by the City staff. Upon expiration of this sixty (60) day period, if the City staff finds that Scripps has not cured the defects, or made substantial efforts to cure the defects where more than sixty (60) days is necessary for a complete cure, the City staff shall submit the matter to the City Manager for a determination of compliance. If

the City Manager finds, on the basis of substantial evidence, that Scripps has failed to comply in good faith with the terms of this Agreement, the City Manager shall notify Scripps of the grounds of noncompliance, including evidence relied upon by the City Manager in making the determination. The determination of noncompliance shall then be scheduled for a hearing before the City Council. This hearing shall not be held less than fourteen (14) days after Scripps has received notice of the City Manager's determination of noncompliance. At the hearing before the City Council, Scripps shall be entitled to submit all oral or written evidence desired by Scripps in opposition to the determination of noncompliance.

17.4 Determination by City Council of Noncompliance. If the City Council determines that Scripps has not complied in good faith with the terms of this Agreement, the City Council may modify or terminate this Agreement. The City Council actions to modify or terminate this Agreement shall be taken at a public hearing after written notice of the City Council's intent has been given to Scripps. Such notice shall contain the time and place of the hearing, a statement as to whether or not the City Council intends to modify or terminate this Agreement, and a list of the terms or conditions of this Agreement which have not been complied with in good faith and a summary of the factual basis upon which the termination of noncompliance was made. The decision of the City Council to modify or terminate this Agreement shall be final, except that Scripps shall have thirty (30) days following receipt of notice of the City Council's decision to file a legal action to attack, review, set aside, void, or annul the decision of the City Council.

17.5 Untimely Annual Review. In the event the City has failed to commence a annual review within sixty (60) calendar days of the anniversary date of the effective date of this Agreement or any anniversary date thereafter, Scripps shall be entitled to send a letter to the City requesting a determination of compliance. The failure of the City staff to make a determination of compliance or noncompliance within fourteen (14) days following receipt of the letter shall be deemed for all purposes, as a finding of good faith compliance with the terms of this Agreement for that year. Upon request of Scripps, the City shall execute a certificate of compliance in recordable form which Scripps may record reflecting compliance for the relevant one-year period.

17.6 Definition of City Staff. For purposes of this Section 17, the term "City Staff" means the Director of Developmental Services, or other employee in charge of the Developmental Services Department, or such other employee as may be designated by the City Manager.

18. Default.

18.1 Default by Scripps. Scripps shall be in default of this Agreement if Scripps breaches any term of this Agreement or if Scripps develops the Property in a manner that materially conflicts with the terms of this Agreement and the approved Specific Plan. Scripps shall not be in default as a result of any failure to perform caused by force majeure as defined in Section 21 of this Agreement.

18.2 Default by the City or the Agency. In the event that the City or the Agency defaults under this Agreement, the City and the Agency agree that Scripps in no event shall be obligated to proceed with or complete the project contemplated by the Specific Plan, or to perform its obligations under this Agreement, unless and until the default of the City or the Agency has been cured. In the event of default by the City or the Agency, any resulting delays in Scripps' performance of its obligations under this Agreement shall not constitute grounds for termination or cancellation of this Agreement by the City or the Agency. In the event that the City or the Agency, in the good faith exercise of their budgetary authority, do not appropriate sufficient funds to pay the cost of performance of any of the obligations of the City or the Agency pursuant to this Agreement, then (i) the parties shall meet to negotiate in good faith to address this contingency; and (ii) Scripps shall have the right, but not the obligation, to either (a) extend the term of this Development Agreement for the period of delay caused by the failure to appropriate funds (which shall not, however, extend the obligation to pay the annual in-lieu fee described in Paragraph 6 of Exhibit "D") or (b) itself construct the public improvements for which the funds were not appropriated and obtain reimbursement of the costs of such improvements from the City or the Agency when funds become available.

18.3 Notice of Default. If either party to this Agreement believes that the other party is in default of any term or condition of this Agreement, the party alleging the default or breach shall give the other party not less than thirty (30) days' written notice of default. The notice shall be deemed effective from the date of certified mailing to the last known address of the other party. The notice of default shall specify the nature of the alleged default and the manner and period of time in which the default may be satisfactorily cured. During any period of curing, the party charged shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is cured within the cure period, the noticing party shall take no further action.

19. Specific Performance. Notwithstanding all other remedies at law and in equity that could be asserted, the parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this

Agreement and should be available to all parties for the following reasons:

A. Money damages are unavailable against the City for breach of this Agreement.

B. Due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, Scripps may be foreclosed from other choices regarding how the Property may be utilized and Scripps has invested significant time and resources and performed extensive planning and processing of the Project in reliance on the terms of this Agreement. It is not possible to determine the sum of money that would adequately compensate Scripps for such efforts and lost development opportunities.

20. Trauma Center Approval. If requested by Scripps, the City shall approve a designation of Scripps as a North San Diego County trauma center.

21. Force Majeure. In addition to specific provisions of this Agreement, performance by either party under this Agreement shall not be deemed to be in default where delays or defaults are demonstrated to be due to acts of God or declaration of an emergency by the Governor or President. An extension of time in right shall be granted for the period of the enforced delay, or longer, as mutually agreed upon, which period shall commence to run from the time of commencement of the cause of the delay.

22. Entire Agreement, Waivers and Amendments. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter of this Agreement.

23. Severability. If any provision of this Agreement is held invalid, the remainder of this Agreement shall be effective and shall remain in force and effect unless amended or modified by mutual consent of the parties.

24. Applicable Laws/Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any action be brought in any court of competent jurisdiction, the prevailing party in such action shall be entitled to recover all attorneys' fees, court costs, and necessary disbursements in connection with such litigation.

25. Assignment. Scripps shall have the right, without the consent of the City or the Agency, to assign or transfer its rights and obligations under this Agreement to Scripps Institutions of Medicine & Science ("SIMS") or any direct or indirect subsidiary of SIMS, including, without limitation,

Scripps Clinic and Research Foundation, The Scripps Research Institute, Scripps Memorial Corporation and Scripps Memorial Health Services (collectively, "Scripps Corporate Affiliates"), and also to any partnership in which all of the general partners are Scripps Corporate Affiliates. Scripps shall not otherwise assign or transfer its rights and obligations under this Agreement without the prior written consent of the City and the Agency, which they may give or withhold in their sole discretion, and any attempt to so assign or transfer rights and obligations under this Agreement without those consents shall be invalid and without any force or effect.

26. Amendment or Cancellation of Agreements. This Agreement may be amended from time to time or cancelled by the mutual consent of the parties hereto but only in the same manner as its adoption by an Ordinance as set forth in Government Code Sections 65867, 65868 and 65868.5, and San Marcos Municipal Code Sections 19-43. The term "Agreement" shall include any such amendments properly approved and executed.

27. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, and shall be addressed as follows:

If to the City or the Agency --

City of San Marcos  
105 West Richmar Avenue  
San Marcos, California 92069  
Attention: City Manager

If to Scripps --

Scripps Memorial Hospitals  
9888 Genesee Avenue  
La Jolla, California 92037  
Attention: Lauren Blagg

A party may change its address by giving notice in writing to the other party. Thereafter, notices, demands and other pertinent correspondence should be addressed and transmitted to the new address.

28. Incorporation of Recitals/Intent of Parties. The Recitals at the beginning of the Agreement are specifically incorporated into this Agreement and are evidence of the intent of the parties for the purposes of construction of the Agreement.

29. Exhibits. The following exhibits attached to this Agreement are by this reference incorporated into this Agreement:

Exhibit A	Legal Description of the Property
Exhibit B-1	Description of Project
Exhibit B-2	Site Plan
Exhibit C	Public Infrastructure Improvements to be Provided by the City or the Agency
Exhibit D	Public Infrastructure Improvements to be Provided by Scripps
Exhibit E	Legal Descriptions of the "Nomura" and "Acosta" Parcels
Exhibit F	Contractual Obligations by Scripps Memorial Medical Campus

30. Conflict. The City, the Agency and Scripps intend and believe that the provisions of this Agreement, the Specific Plan and the conditions of approval of Tentative Map No. 495 and the conditional use permits for the Project to be adopted prior to or concurrently with this Agreement are all consistent. Nevertheless, in the event of a perceived conflict between the provisions of this Agreement, the Specific Plan and the conditions of approval for Tentative Map No. 495 and the project conditional use permits, the following order of precedence shall govern resolution of that conflict:

- (i) This Agreement;
- (ii) The Specific Plan;
- (iii) Conditions of approval of Tentative Map No. 495; and
- (iv) Conditions of approval of conditional use permits.

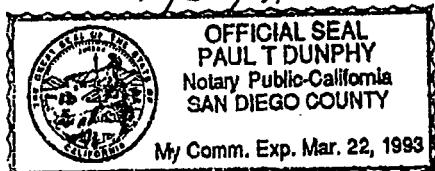
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

DATE: December 31, 1991

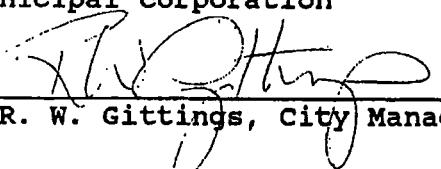
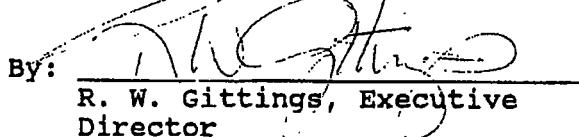
SCRIPPS MEMORIAL HOSPITALS,  
a California non-profit public  
benefit corporation

By:

Lauren W. Blagg  
Lauren W. Blagg, Executive  
Vice President



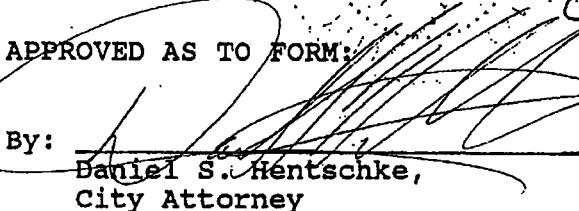
Paul T. Dunphy

DATE: 1/1/92CITY OF SAN MARCOS,  
a municipal corporationBy:   
R. W. Gittings, City ManagerDATE: 1/1/92REDEVELOPMENT AGENCY OF THE  
CITY OF SAN MARCOSBy:   
R. W. Gittings, Executive  
Director

ATTEST:

By:   
Sheila A. Kennedy, City Clerk

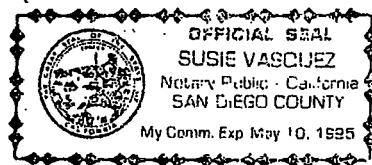
APPROVED AS TO FORM:

By:   
Daniel S. Hentschke,  
City Attorney

STATE OF CALIFORNIA)  
COUNTY OF SAN DIEGO) ss.

On this 13th day of January, 1992, before me, Susie Vasquez, Notary Public, personally appeared R. W. GITTINGS, personally known to me to be the person who executed this instrument as CITY MANAGER of the CITY OF SAN MARCOS and acknowledged to me that the CITY OF SAN MARCOS executed it.

Susie Vasquez  
Susie Vasquez, Notary Public



**CORPORATE ACKNOWLEDGMENT**

NO. 202

State of CALIFORNIA  
County of SAN DIEGO } ss.

On this the 30<sup>th</sup> day of DECEMBER 91, before me,

PAUL T. DUNPHY

the undersigned Notary Public, personally appeared

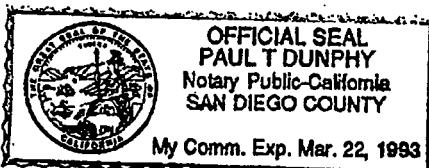
LAUREN W. BLAGG

personally known to me

proved to me on the basis of satisfactory evidence  
to be the person(s) who executed the within instrument as  
EXECUTIVE Vice Pres. or on behalf of the corporation therein  
named, and acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.

Paul T. Dunphy  
Notary's Signature



ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE  
MUST BE ATTACHED  
TO THE DOCUMENT  
DESCRIBED AT RIGHT:

Title or Type of Document DEVELOPMENT AGREEMENT

Number of Pages 15 Date of Document DEC. 10<sup>th</sup> 1991

Signer(s) Other Than Named Above R.W. Gittings, City Manager

STATE OF CALIFORNIA)  
COUNTY OF SAN DIEGO) ss.

On this 13th day of January, 1992, before me, Susie V.  
Public, personally appeared R. W. GITTINGS, personal  
to be the person who executed this instrument as EXEC  
of the SAN MARCOS REDEVELOPMENT AGENCY and acknowledged  
the SAN MARCOS REDEVELOPMENT AGENCY executed it.

Susie Vasquez  
Susie Vasquez, Notary Public



N 17° 03' 59" W  
- 66° 17' 26"  
- D 34° 02' 11" S 006° 72'  
- 201

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

1548

**EXHIBIT B**  
**DESCRIPTION OF PROJECT**

**SITE PROGRAM**

Scripps Memorial Hospital - San Marcos  
November 2, 1990

Buildings	Footprint	Total S.F.	Number of Floors	Parking Required	Ratio
Acute Care General Hospital 201 Beds	75,000 s.f.	260,000 s.f.	5 & 2	402	2/bed
Acute Care General Hospital Added 250 beds	75,000 s.f.	325,000 s.f.	5 & 2	500	2/bed
<b>Heliport</b>					
Medical Office Building #1	30,000 s.f.	90,000 s.f. (60,000 M.O.B. 30,000 O.P. Surg. + Imaging)	5	450	5/1,000 s.f
Medical Office Building #2	16,000 s.f.	80,000 s.f.	5	400	5/1,000 s.f
Medical Office Building #3	16,000 s.f.	80,000 s.f.	5	400	5/1,000 s.f
Skilled Nursing Facility 150 beds	82,500 s.f.	82,500 s.f.	1	50	1/3 beds
Mental Health Center/CDRH 100 beds	37,500 s.f.	75,000 s.f.	2	150	1.5/bed
Fitness Center	10,000 s.f.	20,000 s.f.	2	80	1/250
Child Care Center	6,000 s.f.	6,000 s.f.	1	20	estimate
Education Center	20,000 s.f.	40,000 s.f.	2	200	1/200 1/100 conf/ lecture

**SITE PROGRAM - Page Two**  
**Scripps Memorial Hospital - San Marcos**  
**November 2, 1990**

<b>Buildings</b>	<b>Footprint</b>	<b>Total S.F.</b>	<b>Number of Floors</b>	<b>Parking Required</b>	<b>Ratio</b>
Specialized Treatment Center	10,000 s.f.	20,000 s.f.	2	100	1/200 s.f.
Medical Research Buildings	50,000 s.f.	150,000 s.f.	3	300	1/500 s.f.
Power Plant	10,500 s.f.	10,500	1	0	0
<b>TOTALS</b>	<b>438,500 s.f.</b>	<b>1,239,000 s.f.</b>		<b>3,052 sp.</b>	

1550

1551

**EXHIBIT B-2**

**SITE PLAN**

## EXHIBIT B2

(1)

PHASE ULTIMATE SITE PLAN

MASTER PLAN

See Map 1, Site Plan, 14900 sq. ft. 14900 sq. ft.

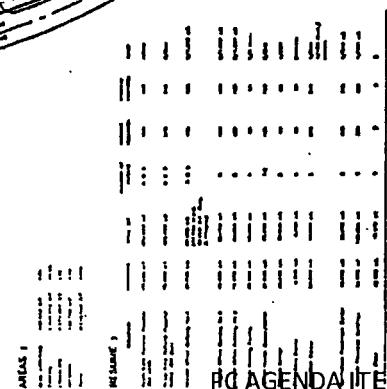
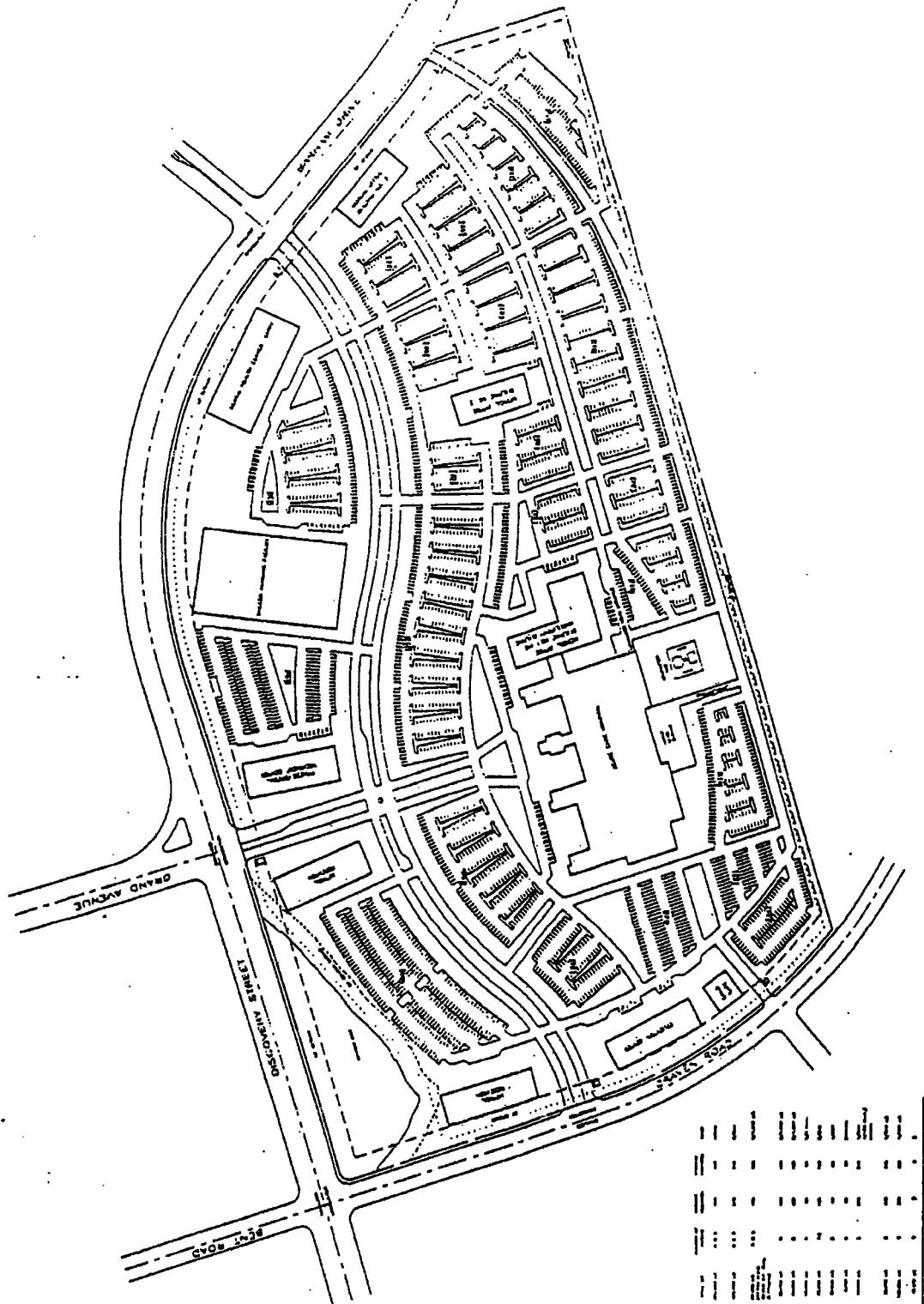


EXHIBIT C

PUBLIC INFRASTRUCTURE IMPROVEMENTS  
TO BE PROVIDED BY THE CITY OR AGENCY  
AND SCHEDULE OF PERFORMANCE

## EXHIBIT C

PUBLIC INFRASTRUCTURE IMPROVEMENTS  
TO BE PROVIDED BY THE CITY OR AGENCY  
AND SCHEDULE OF PERFORMANCE

<u>INFRASTRUCTURE IMPROVEMENTS</u>	<u>SCHEDULE</u>
1. Twin Oaks Valley Road from Carmel to Barham.	Completion not later than August 15, 1992
2. Barham Drive from La Moree to Twin Oaks Valley Road.	Completion not later than August 15, 1992
3. That portion of Barham Drive dedicated by Bieri/Avis from Twin Oaks Valley Road west toward Scripps Memorial Medical Campus.	Completion not later than August, 1994 -- a minimum of two lanes, one in each direction, with a painted median
4. That portion of Craven Drive dedicated by Bieri/Avis west of Twin Oaks Valley Road toward Scripps Memorial Medical Campus.	Completion not later than January 1, 1996
5. Acquisition of the contiguous parcels for transfer to Scripps/others upon completion of all governmental requirements for eminent domain. All costs associated with this acquisition to be borne by Scripps.	Completion by January 1, 1994

6. Acquisition of all off-site rights-of-way for public improvements for which Scripps does not assume responsibility under Exhibit D, and also for the extension of Grand Avenue described in Exhibit D upon completion of all governmental requirements for eminent domain. Scripps will pay for all processing costs associated with this acquisition; City/Agency will pay for any land costs.      Completion by March, 1992

EXHIBIT D

PUBLIC INFRASTRUCTURE/FINANCING  
IN LIEU OF IMPROVEMENTS TO BE  
PROVIDED BY SCRIPPS AND  
SCHEDULE OF PERFORMANCE

## EXHIBIT "D"

1. INFRASTRUCTURE IMPROVEMENTS

Completion of permanent street and bridge improvements on Grand Avenue from its current southerly terminus south of San Marcos Boulevard to the entrance of the Scripps property south of Discovery Street. The City will establish a reimbursement requirement condition on other benefiting property owners, based on an analysis by the City of relative traffic impacts of the respective property developments of those owners.

SCHEDULE

Construction including Grand Avenue bridge to be completed not later than January 1, 1994. However, if the permanent creek improvements are not in place by January 1, 1993, the City, at its expense, shall construct temporary street and creek crossing improvements for Grand Avenue south to Discovery Street to be completed no later than January 1, 1994. Then, at such time as the final creek improvements are in place, Scripps shall complete, at its expense, final road and bridge improvements.

2. INFRASTRUCTURE IMPROVEMENTS

Completion of frontage 1/2 street (63') improvements along Barham/Discovery from easterly property line of the Scripps property westerly to the intersection of the existing Discovery Street at Bent Avenue.

SCHEDULE

Construction completed not later than January 1, 1996.

3. INFRASTRUCTURE IMPROVEMENTS

Dedication for public rights-of-way along the Discovery Street for 1/2 street improvements abutting Scripps Memorial Medical Campus (63' - 1/2 street r.o.w.).

Note: Dedication for 1/2 street improvements along abutting Craven r.o.w. was accomplished by Parcel Map No. 16,595, which recorded on August 22, 1991.

SCHEDULE

Dedication or irrevocable offers of dedication completed by approval of final map (estimate: March, 1992).

4. INFRASTRUCTURE IMPROVEMENTS

Installation of traffic signals at (1) Grand Avenue and Discovery/Barham and (2) Discovery/Barham at the easterly entrance of Scripps Memorial Hospital. The City will use its best efforts to obtain reimbursement for Scripps Memorial Hospital from other benefiting properties as they develop.

SCHEDULE

Same construction schedule as #1 and #2 and no sooner than when all signal warrants are met.

5. INFRASTRUCTURE IMPROVEMENTS

Payment of Public Facility Fee/Tax Increment In-Lieu Fee of \$300,000 per year for ten (10) years. This in-lieu fee to increase annually by the percentage increase for the preceding year in the Consumer Price Index -- All Items, All Urban consumers (1982-84 = 100) for the Los Angeles-Anaheim-Riverside Area. Alternatively, Scripps Memorial Hospital may pay the Public Facility Fee/Tax Increment In-Lieu Fee in a single lump sum, which shall be calculated based on discount rates, inflation rates and computational methodology to be agreed-upon by Scripps and the City Manager.

SCHEDULE

First payment on January 2, 1993, with each successive annual payment on the same date of each year. Final payment complete on January 2, 2002. If a single lump sum payment is chosen, payment will be made on January 2, 1994.

6. INFRASTRUCTURE IMPROVEMENTS

If the project does not yield \$150,000 in property and sales taxes per year, payment of an in-lieu fee for operations and maintenance of municipal services in the amount of \$150,000, or such amount to bring the total property and sales tax payment attributable to the Property to \$150,000 per year, beginning on January 2, 2003, and continuing during the term of this Development Agreement.

SCHEDULE

First payment on January 2, 2003; final payment on January 2, 2022.

EXHIBIT E

LEGAL DESCRIPTIONS OF THE TAYLOR,  
NOMURA AND ACOSTA PARCELS

1559  
PC AGENDA ITEM # 2

1560

NOMURA PARCEL

ORDER NO. 1000577-2

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, AND IS DESCRIBED AS FOLLOWS:

LOTS 12 AND 13 IN BLOCK 63 OF RANCHO LOS VALLECITOS DE SAN MARCOS, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 806, FILED IN THE OFFICE OF THE RECORDER OF SAID SAN DIEGO COUNTY, DECEMBER 21, 1895, ALSO ALL THAT PORTION OF THE SOUTHERLY HALF OF THE UNNAMED ROAD LYING NORTHERLY OF AND ADJOINING SAID LOTS AS VACATED AND CLOSED TO PUBLIC USE ON DECEMBER 5, 1900, BY AN ORDER OF THE BOARD OF SUPERVISORS OF SAN DIEGO COUNTY AND BEING RECORDED IN BOOK 23, PAGE 175 OF SUPERVISORS RECORDS.

EXCEPTING FROM LOT 12 ABOVE DESCRIBED THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID LOT 12; THENCE NORTHERLY ALONG THE WESTERLY LINE THEREOF 400 FEET; THENCE EASTERLY, PARALLEL WITH THE SOUTHERLY LINE OF SAID LOT A DISTANCE OF 109 FEET; THENCE SOUTHERLY, PARALLEL WITH SAID WESTERLY LINE 400 FEET TO SAID SOUTHERLY LINE; THENCE WESTERLY ALONG SAID SOUTHERLY LINE 109 FEET TO POINT OF BEGINNING.

1561

ORDER NO. 1000576-2

ACOSTA PARCEL

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

THE WESTERLY 109 FEET OF THE SOUTHERLY 400 FEET OF LOT 12, IN BLOCK 63 OF RANCHO LOS VALLECITOS DE SAN MARCOS, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 806, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 21, 1895.

PARCEL 2:

AN EASEMENT FOR ROAD PURPOSES OVER THE FOLLOWING DESCRIBED PROPERTY:

THE WESTERLY 15 FEET OF LOT 12, BLOCK 63 OF RANCHO LOS VALLECITOS DE SAN MARCOS, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 806, FILED IN THE OFFICE OF THE COUNTY RECORDER.

1562

EXHIBIT F

OTHER COMMITMENTS OF SCRIPPS  
MEMORIAL MEDICAL CAMPUS

## EXHIBIT "F"

1. Scripps Memorial Hospitals will work with the City Engineer to establish work schedules that avoid shift changes during the City's peak traffic hours as defined in the City of San Marcos' peak hour traffic management program.
2. Scripps Memorial Hospitals will vote affirmatively to include the Scripps Specific Plan area in the citywide Police and Fire Mello-Roos Community Facilities District.
3. Scripps Memorial Hospitals will cooperate with City as necessary to establish assessment districts or community facilities districts. However, it is understood that the payments set out in Exhibit "D", items 5 and 6, fully discharge Scripps Memorial Hospitals from any further financial obligation in connection with existing or future assessment districts or community facility districts (C.F.D.).
4. Scripps Memorial Hospitals will offer the City an employee health plan at a cost to be negotiated, at such time as the first phase of the project is completed and operating.
5. Scripps Memorial Hospitals will join the City's Lighting and Landscaping District and participate on the same basis as other property owners in the district.
6. Scripps Memorial Hospitals agrees to attempt in good faith to mitigate all requirements as specified by the San Marcos Unified School District and the Vallecitos Water District.
7. Scripps Memorial Hospitals agrees to indemnify and hold City/Agency harmless in the event City/Agency is sued by others on any issue relating to the approval of this Development Agreement except to the extent that a cause of action is based on the sole negligence of City officials and employees or the failure of the City to comply with its own procedural and notice requirements.
8. The obligations of Scripps under Paragraphs 2 and 3 above include: participating, prorata with other property owners, in the cost of establishing such districts; not protesting the formation of such districts without a good faith, substantial reason to believe that the particular districts, assessment or special tax is illegal or would prevent the development of the Property in accordance with this Agreement and the Specific Plan; voting in favor of any special tax unless Scripps has a good faith, substantial reason to believe that the tax is illegal, other than with reference to Scripps' tax-exempt status, or would prevent development of the Property in accordance with this Agreement and the Specific Plan; taking all

reasonable actions to assure that the obligations of this Paragraph bind future owners.

9. Scripps shall take all reasonable actions to assure that any future owner or holder of a possessory interest in all or any portion of the Property who is not tax-exempt holds title in a manner as to allow the City or the Agency to collect all appropriate property taxes.