

MEETING DATE: 08/09/10

AGENDA ITEM: 1) Award of a Construction Contract to Land Forms Landscaping Construction, as the lowest responsive and responsible bidder, for the construction of the Ballona Creek Bikeway and Landscaping Project, P-900 – Federal Aid Project No. ESPL 5240 (021), and 2) Authorization to Enter Into Construction Access, Property Use, and Restoration License Agreement with the Culver City Unified School District, and (3) Authorization to Enter Into a Professional Services Agreement with Nickerson Company for Construction Management and Inspection Services, and 4) Authorization to Enter Into a Professional Service Agreement with Ninyo and Moore for Material Testing, and 5) Approval of a Related Budget Amendment.

ATTACHMENT

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**CONSTRUCTION ACCESS, PROPERTY USE, AND RESTORATION
LICENSE AGREEMENT**

THIS LICENSE AGREEMENT ("License") is made as of June __, 2010, by and between the following entities which shall be referred to herein as "Parties":

CULVER CITY UNIFIED SCHOOL DISTRICT
4034 Irving Place
Culver City, CA 90232
("District"); and

CITY OF CULVER CITY
9770 Culver Boulevard, 2nd Floor
Culver City, CA 90232-0507
("City").

WHEREAS, District owns certain real property commonly known as the Culver City Middle School, consisting of parcels 4210-015-902, 4210-016-900, 4210-026-902 and 4210-026-903 and 4210-017-900, located between Overland Avenue and Sepulveda Boulevard, at 4601 Elenda Street, Culver City, CA 90230 ("Subject Premises");

WHEREAS, City now desires to temporarily enter on, improve, and temporarily use a portion of the Subject Premises for the purpose of facilitating, at its sole cost, the installation of an approximately 32,400 square foot bikeway project for use by the general public and cabling connecting security cameras on the bikeway to the District's security office ("Project").

NOW, THEREFORE, the Parties agree as follows:

1. Grant and Term of License. The portion of the Subject Premises to be used by the City is more specifically depicted in Exhibit "A", attached hereto and incorporated herein by reference ("Project Site"). The District hereby grants and conveys a nonexclusive right of entry for access to the Project Site to perform construction, beginning at 7:00 a.m. on June 1, 2010, and continuing through 6:00 p.m. on December 31, 2010 ("Term"), to the City, its employees, authorized agents, contractors, subcontractors, and engineers ("City Workers"), to enter and pass onto the Project Site to perform necessary installation and construction on the Project Site pursuant to approved plans attached hereto and incorporated herein by reference as Exhibit "C", as those plans may be amended from time to time pursuant to the provisions of Paragraph 20 of this License. If the Work (as defined below) is not completed prior to the expiration of the Term, the District may, in its sole discretion, extend the Term for a reasonable time to permit the completion of the Work.
2. Acceptance of License. The City hereby accepts the grant by the District of a nonexclusive right of entry for access to the Project Site to perform the Work (as defined below).
3. Work to be Completed. The improvements to be constructed on the Project Site by the City shall include constructing recreation related improvements along the Ballona Creek bike path that may include, among other things, removal of the concrete embankment from the slope

which extends from the bike path to the District property and replacement of the concrete with landscaping, enhancements to the existing bikeway, a new decomposed granite pedestrian trail, signs, landscaping and related irrigation system, pedestrian light posts and related electrical systems, security cameras and related cables connecting these cameras to the District's security office, emergency call boxes, fencing, a retaining wall between the new landscaping and the bike path, installation of drainage devices and a bio-swale to capture storm run-off and performing all other tasks (collectively, "Work") necessary to complete the Project. All construction costs shall be the responsibility of the City. After completion of Work by the City, the District shall take possession of the Work. City shall be responsible for maintaining and operating the Work.

a. The City shall pay all costs and expenses incurred for performance of the Work, completion of the Work and future maintenance of the Work. The District shall bear no cost for the Work, completion of the Work or maintaining the Work now or in the future.

4. Performance of Work. The City shall perform, or cause to be performed by City Workers under City supervision, all Work related to the Project, and the District is in no way responsible to perform any Work related to the Project. The City may perform Work between 7:00 a.m. and 6:00 p.m., Monday through Saturday. The City shall not perform any Work on Sunday.

a. Vehicle access to the Project Site will be through the Subject Premises's south entrance/gate closest to the pedestrian bridge crossing La Ballona Creek, as depicted in Exhibit "A." Prior to any Work beginning under this License, District and City shall mutually agree upon a route to the Project Site that will be the only route used by City Workers.

b. Prior to accessing the Project Site during school days, notice shall be given to the School's Principal, [Insert Name and contact information], to determine the timing of entry by any City Workers onto the Project Site.

c. According to generally accepted construction practices, the City will be solely and completely responsible for conditions on the Project Site, including safety of all persons and property during completion of the Work. This requirement will apply continuously and not be limited to normal working hours. Implementation and maintenance of safety programs shall be the sole responsibility of the City.

d. The City shall furnish and place proper guards for the prevention of accidents including, but not limited to, fencing around the bike path portion of the Project Site. The City shall provide and maintain any other necessary measures required to secure safety of life or property.

e. The City shall pay when due all claims for labor and material furnished to the Project Site. District may elect to record and post notices of non-responsibility on the Project Site.

f. City Workers retained by City with respect to the Work shall be fully licensed and bonded as required by law and must maintain levels of casualty, liability and workers' compensation insurance (as detailed in Section 16 below) and performance and payment bonds satisfactory to District and consistent with law and District construction requirements. City shall

ensure that the Work is performed in a sound and workmanlike manner, in compliance with all laws, ordinances and regulations applicable to the Work, including but not limited to applicable building codes and regulations, prevailing wage and other labor and public works laws. District shall have a continuing right at all times during the performance of the Work to enter the Project Site and to inspect the Work.

5. Communications. With the exception of the notice required by Section 4.b., above, all communication with the District related to the Project, the Project Site, and the Work shall be with the District's designated representative, Mr. Ali Delawalla, Assistant Superintendent, Business Services, (310) 842-4220 extension 4234. The District shall not be required or asked to communicate with any of the City Workers or to direct the Work of the City Workers. Nothing in this paragraph shall prohibit the District from communicating with any of the City's agents, employees, contractors, subcontractors, or engineers on the Project Site to inquire about any matters and, if necessary, to immediately stop the Work on the Project Site for any reason, at the District's sole discretion.

6. Mutual Cooperation. During the term of this License, the City Workers shall have the right to enter upon the Project Site on the days and at the times detailed herein to perform any and all construction activities as may reasonably be necessary or desirable to perform the Work on the Project Site. The City shall use care and consideration in connection with all of its construction and activities. The City agrees to coordinate its activities with the District to minimize any inconvenience to or interruption of the conduct of the District's activities on the Subject Premises. If requested by the District, the City shall adjust its schedule to conform to the District's requirements so as not to interfere, in any way, with the uses of the Subject Premises.

7. Maintenance of Subject Premises. The City shall promptly and properly clean the Project Site and the surrounding area as it progresses with the Work. The City is responsible to provide a debris container for clean-up of all debris directly associated with the City's construction activities.

8. Repair of Damage. The City shall protect and preserve the Project Site and any adjoining District property from all damage or accident. The City shall be responsible for damage done to existing structures, furnishings, equipment, buildings, walks, roads, trees, landscaping and/or improvements in all working areas, including, without limitation, on the Project Site and any adjoining property of the District ("Improvements"). The City shall provide adequate protection therefor. If temporary removal is necessary of any of the Improvements, or damage occurs to the Improvements, City shall replace same at City's expense with same kind, quality and size of the Improvements damaged.

9. Existing Conditions. The City is responsible for verifying all measurements and existing conditions including, but not limited to, the location of any underground utilities, conduits, pipes, or similar improvements, in and around the Project Site prior to the start of any Work. The City shall maintain in operation during the term of the License, drainage lines, storm drains, sewers, water, gas, electrical, steam, telephone, data transmission and other utility service lines within or in the vicinity of the Project Site.

10. Permits. The City, at no expense to the District, shall obtain any and all required approvals, permits, inspections, or similar items, if any, from all agencies or authorities with jurisdiction.
11. Execution of License. Each of the undersigned hereby represents and warrants that he or she is authorized to execute this License on behalf of the respective Parties to the License and that this License, when executed by those parties, shall become a valid and binding obligation, enforceable in accordance with its terms.
12. Assignment, Successors, and Assigns. This License cannot be assigned by either party without the prior written consent of the other. This License shall be binding as to the Parties' respective representatives, successors, heirs, and assigns.
13. Indemnity. City agrees to indemnify, defend and hold harmless District, its governing board, employees, agents, representatives, consultants, and contractors from and against any and all claims, suits, actions, damages, costs, liabilities, obligations, expenses, fines or penalties (collectively, "Claims") resulting from or arising out of injury or death of any person, damage or loss to property, including, but not limited to flooding, erosion, or water damage, any non-compliance with any federal, state or local laws or regulations; provided that these Claims arise from the performance of the Work on the Project Site and except to the extent that such Claims result from the sole negligence or willful misconduct of District or District's governing board, employees, agents, representatives, consultants or contractors.
14. Labor Code Requirements. To the extent applicable, the City Workers shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1 5, including, without limitation, the payment of the general prevailing per diem wage rates for public works projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the City. In addition, the City Workers, including contractors and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with Section 1720, and including Section 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by City Workers, including contractors or subcontractors, to the extent applicable.
15. Insurance of City. Throughout the term of this License, City shall maintain pooled self-insurance of the type and in the amounts specified in Paragraph 16 of this License.
16. Insurance of Others. Throughout the term of this License, City's agents, contractors, subcontractors, engineers or any other person permitted onto the Project Site on behalf of City, shall obtain and maintain the following insurance, which shall be primary and non-contributory:
- a. Commercial General Liability Insurance. Commercial general liability insurance with combined single-limit coverage of not less than One Million Dollars (\$1,000,000) for any one occurrence (covering personal injury, bodily injury, liability, death and property damage) and not less than Two Million Dollars (\$2,000,000) in the aggregate for any one policy year.

b. **Automobile Insurance.** Combined single limited automobile liability insurance covering personal injury, bodily injury and property damage in an amount not less than One Million Dollars (\$1,000,000) for any one occurrence (covering personal injury, bodily injury, liability, death and property damage) and not less than Two Million Dollars (\$2,000,000) in the aggregate for any one (1) policy year. Said automobile insurance shall cover all owned, non-owned, and hired vehicles used by City's agents, contractors, subcontractors, engineers or any other person permitted onto Project Site on behalf of City to perform the Work.

c. **Workers Compensation Insurance.** City's agents, contractors, subcontractors, engineers or any other person permitted onto Project Site on behalf of City to perform the Work shall maintain statutory workers' compensation insurance to meet all applicable requirements of the Labor Code of the State of California and occupational disease insurance as applicable, and employment practices liability insurance in limits of not less than One Million Dollars (\$1,000,000) for any one (1) occurrence and not less than Two Million Dollars (\$2,000,000) in the aggregate for any one (1) policy year.

d. **Professional Liability Insurance.** Any consultant working on the Project shall maintain professional liability insurance in the amount of One Million Dollars (\$1,000,000) for any one occurrence and not less than Two Million Dollars (\$2,000,000) in the aggregate for any one policy year.

e. **Certificates of Insurance.** Copies of the policies, certificates of insurance or endorsements, naming the District as an additional insured on all policies except workers' compensation and professional liability, shall be provided prior to beginning Work on the Project.

17. **Notice.** Any notice, consent, requirements, reports, demands, or other document given to or made upon the Parties hereto, shall be in writing and be delivered to or mailed to the receiving party at its address, referenced above in this License.

18. **Fingerprinting.** City shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements described in Education Code section 45125.1. As such, City shall submit, and shall ensure that City Workers, including any contractors or subcontractors and the employees of each, that will access the Subject Premises under this License submit, a Criminal Background Investigation Certification ("Certification") in the form attached to this License as Exhibit B. The Certification shall be provided in writing to District prior to each individual's access to the Subject Premises.

19. **Hazardous Materials.** District and City agree as follows with respect to the existence or use of Hazardous Materials (as defined below) on the Subject Premises including any improvements made by City.

a. **Definition.** As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, Section 66261.30 et seq. (ii)

defined as a "hazardous waste" pursuant to Section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to Section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, relicense or disposal of any Hazardous Material.

b. Hazardous Materials. City shall not cause or permit any Hazardous Material to be generated or disposed of in or about the Subject Premises and any improvements constructed by City or City Workers. City shall comply with all environmental laws.

c. Any handling, transportation, storage, treatment, disposal or use of Hazardous Materials in or about the Subject Premises and any Project improvements shall be the responsibility of City and shall strictly comply with all applicable Hazardous Materials Laws and the provisions of this License.

d. Indemnification. City shall indemnify, defend upon demand with counsel reasonably acceptable to District, and hold harmless District and its trustees, agents, representatives, and employees from and against any liabilities, losses, claims, damages, lost profits, consequential damages, interest, penalties, fines, monetary sanctions, attorneys' fees, experts' fees, court costs, remediation costs, investigation costs, and other expenses which result from or arise in any manner whatsoever out of City Workers' use, storage, treatment, transportation, release, disposal, or presence from any cause or source whatsoever of Hazardous Materials on or about the Subject Premises and any Project improvements.

e. In the event that City causes any Hazardous Materials to be released, spilled or otherwise exposed through its work on the Subject Premises, City shall be solely responsible for all costs associated with the proper handling, mitigation, remediation and disposal of the Hazardous Materials and all related cleanup.

20. Documentation of City's Plans. Should City need to amend the plans incorporated herein as Exhibit "C," City shall file any revised plans with the District via certified mail, with a return receipt requested.

21. Entire Agreement of Parties. This License constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This License may be amended or modified only by a written instrument executed by both Parties.

22. Applicable Law. This License shall in all respects be governed by the laws of the State of California which are applicable to agreements executed and to be fully performed therein.

IN WITNESS WHEREOF, the Parties have executed this License on the dates set forth below.

Dated: _____, 2010

CULVER CITY UNIFIED SCHOOL DISTRICT

By: _____
Print Name: _____
Print Title: _____

Dated: _____, 2010

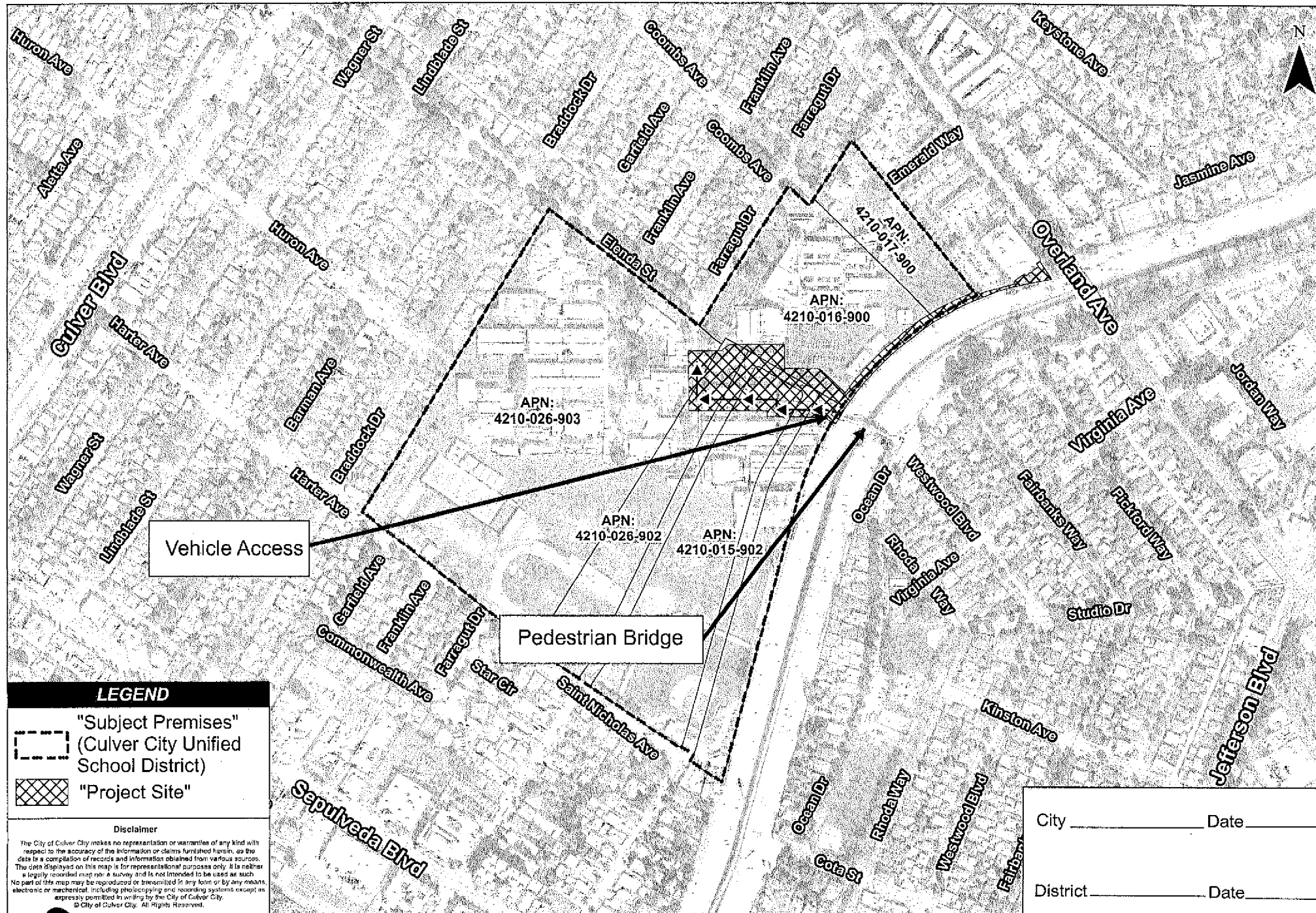
CITY OF CULVER CITY

By: _____
Print Name: _____
Print Title: _____

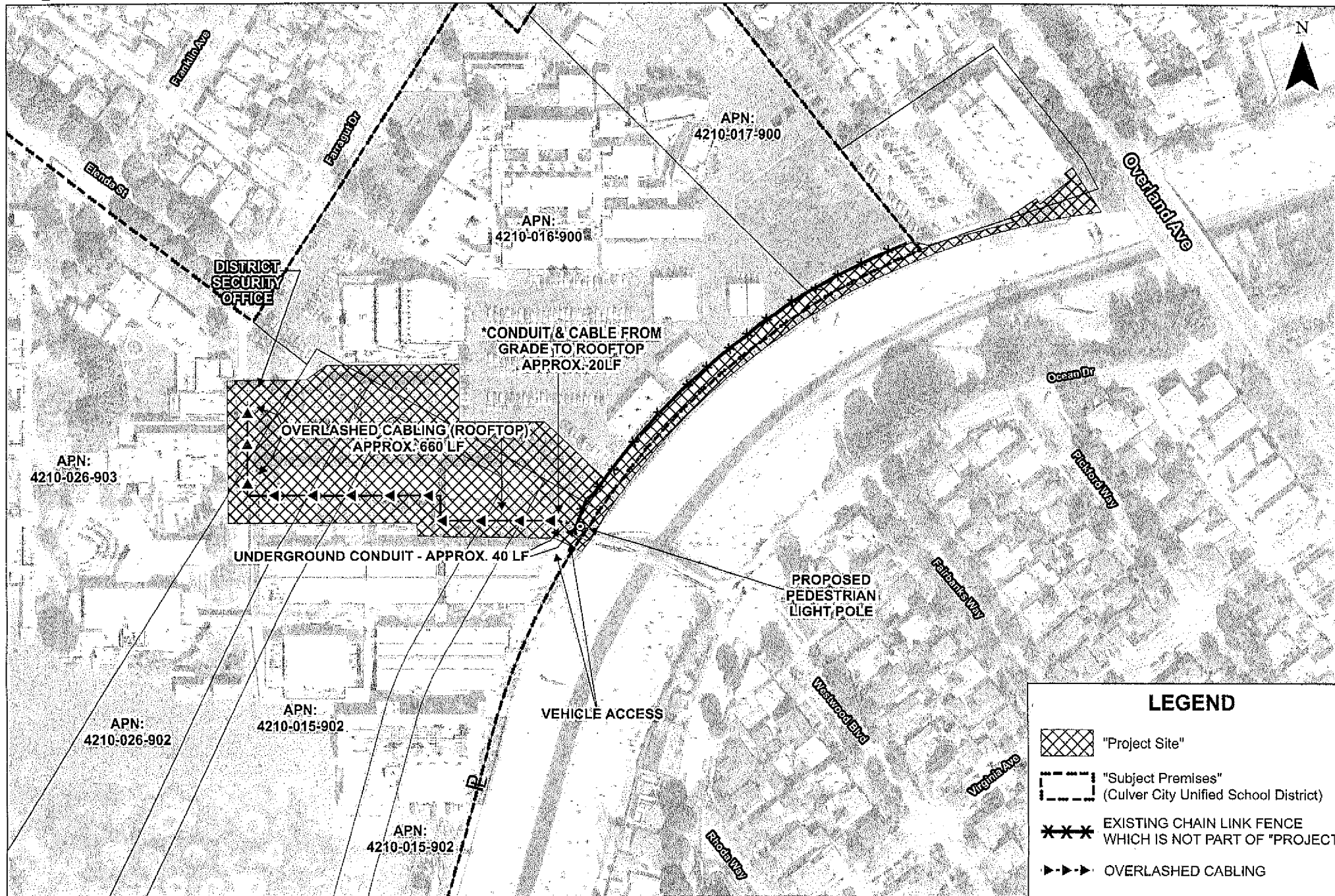
Exhibit "A"

Project Site

Ballona Creek Bikeway & Landscaping Project, P-900, Federal Aid Project No. ESPL - 5240 (021)



**BALLONA CREEK BIKEWAY & LANDSCAPING IMPROVEMENT PROJECT,
PROJECT NO. P-900 & FEDERAL AID NO. ESPL 5240 (021)**



**EXHIBIT A
(PAGE 2 OF 2)**

Exhibit "B"

CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

The undersigned does hereby certify to the Governing Board of the Culver City Unified School District ("District") as follows:

That I am a representative of the City of Culver City ("City"); that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of the City.

City certifies that it has taken at least one of the following actions with respect to the construction project on the District school site that is the subject of the Construction Access, Property Use and Restoration License Agreement by and between the District and the City ("License") (check all that apply):

_____ The City has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all City employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the License, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122. 1. A complete and accurate list of City's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the License is attached hereto; and/or

_____ Pursuant to Education Code section 45125.2, City has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between City's employees and all of its subcontractors' employees and District pupils at all times; and/or

_____ Pursuant to Education Code section 45125.2, City certifies that all employees and all of its subcontractors' employees will be under the continual supervision of, and monitored by, an employee of the City who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising City's employees and its subcontractors' employees is:

Name: _____

Title: _____

City's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the City.

Date: _____
Signature: _____
Print Name: _____
Title: _____

Exhibit "C"

City Approved Plans