



**AGENDA REPORT**  
**SAN CLEMENTE CITY COUNCIL MEETING**  
 Meeting Date: December 4, 2012

Agenda Item CoF  
 Approvals: [Signature]  
 City Manager [Signature]  
 Dept. Head [Signature]  
 Attorney [Signature]  
 Finance \_\_\_\_\_

**Department:** Public Works / Engineering Division  
**Prepared By:** Amir K. Ilkhanipour, Senior Civil Engineer AKI

**Subject:** **APPROVAL OF THE AVENIDA VAQUERO STORM DRAIN REPLACEMENT AND EASEMENT AGREEMENT FOR THE CAMINO DE LOS MARES/AVENIDA VAQUERO STORM DRAIN UPGRADE, PROJECT NO. 16001.**

**Summary:** The City's storm drain at Camino de Los Mares near the intersection of Avenida Vaquero needs to be upsized to minimize flooding at the intersection during periods of heavy rain fall. A portion of the storm drain will be relocated from its current location at the toe of the Sea Pointe Homeowners Association slope to the south side of Los Mares. The storm drain will outlet at the Prima Deshecha Canada Channel (M01) at Avenida Vaquero, where it outlets. The proposed pipeline within Camino de Los Mares will be upsized from 33-inch diameter to 36-inch diameter, whereas the pipeline within Avenida Vaquero will be upsized from 36-inch diameter to 60-inch diameter.

There is no storm drain easement dedicated to the City within the Shorecliffs Golf Course for the last 100 feet of the existing storm drain before it drains into the Prima Deshecha Canada Channel. In consultation with the City Attorney's office, staff has negotiated a storm drain replacement and easement agreement with the Shorecliffs Golf Course owners (GC8, a joint venture of LHC Investments LLC and James and Suzan Wu) to allow installation of the new storm drain on golf course property. As a part of the Easement Agreement, the grantor requested the City pay \$7,500 to compensate the grantor for the easement and attorney review fees.

**Recommended**

**Action:** STAFF RECOMMENDS THAT the City Council:

1. Approve and authorize the Mayor to execute the Avenida Vaquero Storm Drain Replacement and Easement Agreement with the Shorecliffs Golf Course (GC8, a joint venture of LHC Investments LLC and James and Suzan Wu) for the Camino De Los Mares/Avenida Vaquero Storm Drain Upgrade, Project No. 16001; and
2. Authorize payment of \$7,500 to staff to pay GC8, a joint venture of LHC Investments LLC and James and Suzan Wu for granting this easement and the grantor's attorney review fees.

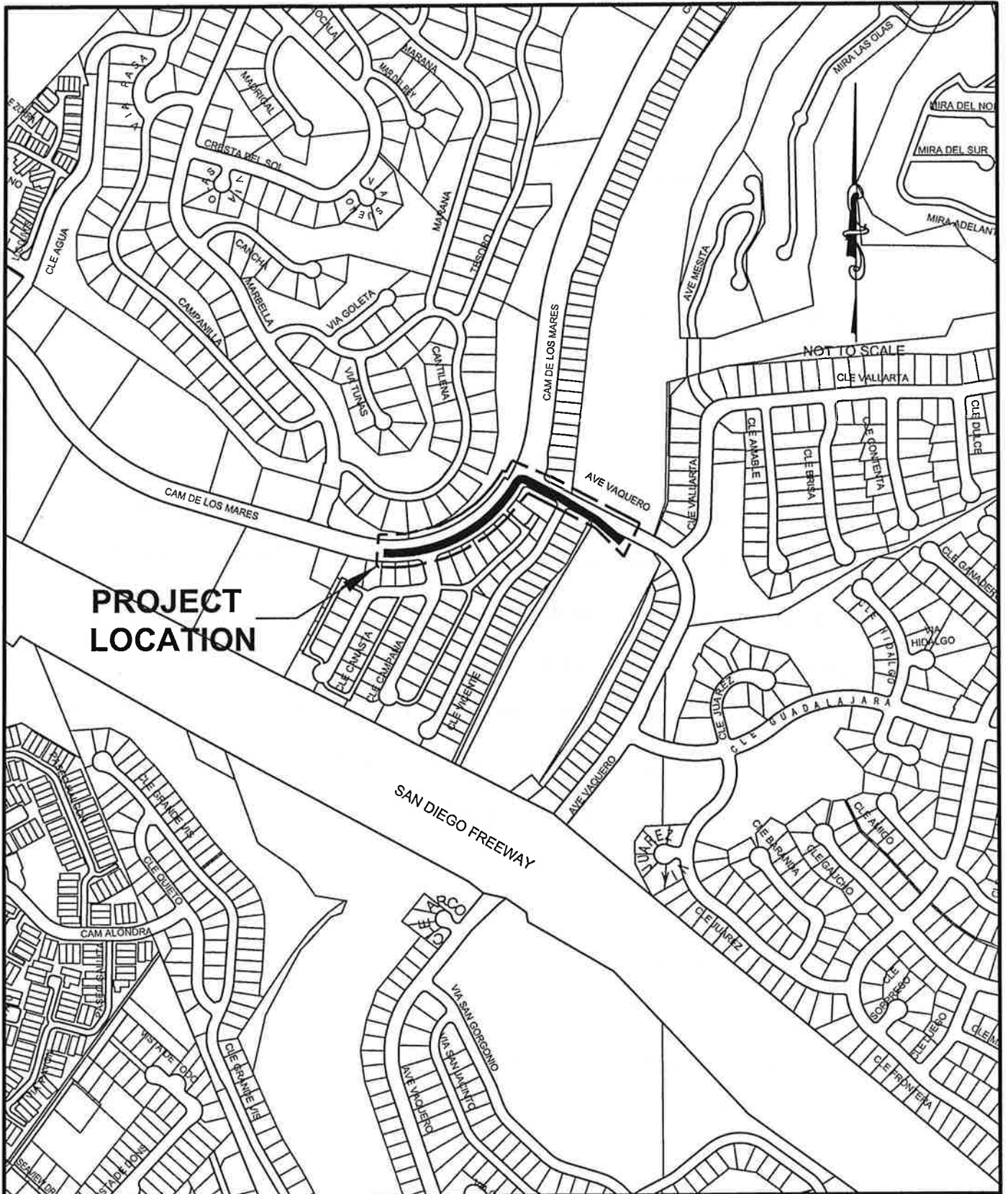
**Fiscal Impact:** None.

**Attachments:** Location Map  
 Avenida Vaquero Storm Drain Replacement and Easement Agreement.

**Notification:** Yes, Shorecliffs Golf Course Owners.

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6F-2



**PROJECT  
LOCATION**



*City of San Clemente*

910 Calle Negocio, Suite 100  
 San Clemente, CA 92673  
 Tel (949) 381-6100  
 Fax (949) 381-8318

**LOCATION MAP**  
**Avenida Vaquero**  
**Storm Drain Replacement**  
**& Easement Agreement**  
**P.N. 16001**

6P-5

AVENIDA VAQUERO STORM DRAIN REPLACEMENT AND EASEMENT  
AGREEMENT

THIS STORM DRAIN REPLACEMENT CONSTRUCTION AND EASEMENT AGREEMENT (the "Agreement") is made and entered into by and between the CITY OF SAN CLEMENTE ("City") and GC8, a joint venture of LHC Investments LLC and James and Suzan Wu ("Shorecliffs Golf Course").

RECITALS

A. City is a municipal corporation with general police powers to protect the public health, safety, and welfare within the geographical limits of San Clemente. Pursuant to this general police power, City is authorized to accept the dedication of storm drain easements and to construct and install public storm drain improvements.

B. Shorecliffs Golf Course owns the Shorecliffs Golf Course located on both sides of Avenida Vaquero, in the City of San Clemente, County of Orange, State of California, as generally shown on Exhibit A (the "Subject Property").

C. Currently there is an existing 36" diameter storm drain line, hereinafter referred to as "the Existing Storm Drain", that traverses within Avenida Vaquero from Camino de Los Mares in a easterly direction draining into Prima Deshecha Canada Channel (Facility M01). About 100 feet short of this storm drain entering into Prima Deshecha Canada Channel, the storm drain enters onto the Subject Property (as generally shown on Exhibit B attached hereto and incorporated herein by this reference), before it drains into Prima Deshecha Canada Channel. Currently, the City does not hold a dedicated public easement over the Existing Storm Drain within the Subject Property.

D. The City has recently performed hydrology and hydraulic calculations and has determined that it is appropriate and beneficial to the City's overall storm drain improvement efforts to increase the size of the Existing Storm Drain from its current 36" diameter to 60" diameter pipe line (the "New Storm Drain").

E. City is willing to prepare plans, specifications and a cost estimate (PS&E) to construct and replace the Existing Storm Drain with a new upsized 60" diameter storm drain pipe (the "New Storm Drain"), at no cost to the Shorecliffs Golf Course, but City first needs confirmation that it will have the right to construct, maintain and repair the portion of the New Storm Drain that would traverse the Subject Property. Upon completion of the construction of the New Storm Drain and dedication of a storm drain easement on the Subject Property to the City by the Shorecliffs Golf Course, City will maintain and operate the New Storm Drain. Granting of the easement shall be a condition of this Agreement so that City may reasonably maintain the New Storm Drain.

F. Shorecliffs Golf Course agrees to dedicate a storm drain easement as generally shown on Exhibit C attached hereto and incorporated herein by this reference, hereinafter referred to as "Easement Area" along the alignment of the New Storm Drain with a half width of 20 feet on the southerly side of the New Storm Drain at no cost to the City. A metes and bounds legal description of the Easement Area will be drafted and all other legal documentation needed for the easement will be processed within 90 calendar days of the completion of construction of the New Storm Drain. City will survey and prepare all the needed documents for the easement documentation and recording at no cost to Shorecliffs Golf Course.

AGREEMENT:

In consideration of the foregoing Recitals, and the covenants, conditions, and promises contained herein, the parties hereto agree as follows:

**SECTION 1. Replacement Obligations of the Parties.**

1.1 In consideration of dedication of the Easement in the Easement Area, City shall replace the Existing Storm Drain with the New Storm Drain within the Easement Area in accordance with the City standards at no cost to Shorecliffs Golf Course.

1.2 Upon the Shorecliffs Golf Course's execution of this Agreement, City shall proceed with preparation of plans, specifications and cost estimate (PS&E) to advertize the New Storm Drain project for public bidding at no cost to the Shorecliffs Golf Course.

1.3 City shall have the sole right to select such contractor(s) and/or consultant(s) that City determines are necessary or appropriate for the design, construction and installation of the New Storm Drain and any maintenance, repair, and replacement of same.

1.4 Upon City's issuance of the notice of completion for the New Storm Drain, Shorecliffs Golf Course will submit to City a fully executed offer of dedication for the Easement Area, in the form attached hereto as Exhibit D, for operation, maintenance and repair of New Storm Drain. Shorecliffs Golf Course shall not use the Easement Area in a manner inconsistent with City's rights set forth in this Agreement. In this regard, Shorecliffs Golf Course is expressly prohibited from adding, installing, or constructing to the surface or subsurface of the Easement Area any hardscape, including but not limited to, walls, buildings and structures. Shorecliffs Golf Course may only add certain landscaping to the Easement Area that will not damage or jeopardize the New Storm Drain or materially impair City's ability to obtain access thereto (e.g., large trees shall be prohibited). If City uses the Easement Area to maintain or repair the New Storm Drain, it shall have no obligation to restore or repair any improvements or

additions constructed by Shorecliffs Golf Course or any other person or entity within the Easement Area, regardless of whether such additions or improvements are authorized by this Agreement or approved by City; provided, however, that City shall be obligated in such circumstances to (i) regrade the Easement Area to its pre-existing condition, and (ii) to restore and replace minor landscaping installed by Shorecliffs Golf Course or any other person.

1.5 Upon execution of this Agreement by Shorecliffs Golf Course and the City, City shall pay \$7,500 to Shorecliffs Golf Course to compensate Shorecliffs Golf Course for time spent reviewing the proposed agreement and New Storm Drain plan and to reimburse Shorecliffs Golf Course for legal review of this Agreement as provided herein.

**SECTION 2. Right of Entry**

2.1 Shorecliffs Golf Course hereby grants the City, including any of its officers, employees, agents and contractors, a right of entry over and across the Subject Property so as to replace the Existing Storm Drain with the New Storm Drain as identified in this Agreement. Shorecliffs Golf Course similarly grants the City the right to do all those acts necessary on the Subject Property to complete the New Storm Drain. The right of entry over and across the Subject Property shall terminate and be of no further force or effect upon City's completion of the New Storm Drain.

2.2 During construction of the New Storm Drain, City shall insure that the contractor it hires coordinates its construction activities with Shorecliffs Golf Course in order to minimize disruption of the ongoing operation of the course. While not anticipated, should the construction activities require closure of the "back nine" of the course for any period of time, Shorecliffs Golf Course, through the contractor, will be compensated for reasonable lost revenue associated with any such closure.

2.3 Prohibition Against Liens. City shall not permit any mechanics', materialmen's or other liens to be filed against Shorecliffs Golf Course or any part thereof for work or materials furnished to City in connection with the Storm Drain Easement, and City agrees to indemnify, defend and hold Shorecliffs Golf Course harmless from and against the same.

2.4 Indemnification by City. To the extent permitted by applicable law, City shall indemnify, defend and hold harmless Shorecliffs Golf Course and Shorecliffs Golf Course's officers, officials, representatives, members, employees, servants, contractors, agents, successors and assigns from and against any and all claims, suits, liens, actions, injuries, demands, losses, damages, costs and expenses (including but not limited to court costs, penalties and reasonable attorneys' fees), judgments, liabilities and causes of action (herein, collectively, "Claims") relating to City's acts and omissions relating to the construction, operation, maintenance, repair, or replacement of the New Storm Drain Line. Notwithstanding the foregoing, City has advised Shorecliffs Golf Course that in City's professional opinion the New Storm Drain will not materially increase the volume or velocity of flow downstream from the outlet of the New Storm Drain. Shorecliffs Golf Course has had an opportunity to review and consider City's opinion and, while not necessarily agreeing to same, is nevertheless willing to agree that the foregoing indemnity obligation shall not apply to any Claims for damages to any property other than the Subject Property that is located downstream from the outlet of the New Storm Drain; provided, that (1) nothing in this sentence is intended to waive or release any Claim Shorecliffs Golf Course might otherwise have against City in the absence of this Agreement for damage that City's construction, operation, maintenance, repair, or replacement of the New Storm Drain Line causes to any ~~portion of the Subject~~ <sup>2.1</sup> Property located downstream from the outlet of the New Storm Drain, and (2) nothing in this sentence is intended to waive or release any defenses to any



such Claim City might otherwise have against Shorecliffs Golf Course in the absence of this Agreement.

**SECTION 3. Miscellaneous.**

3.1 In the event of any legal action on a dispute arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses and costs, including reasonable attorneys' fees and expert witness fees, whether or not the action proceeds to a final judgment.

3.2 Each of the persons executing this Agreement hereby represents and warrants that he or she is authorized to execute this Agreement and to enter into this Agreement.

3.3 This Agreement shall in all respects be interpreted, enforced, and governed exclusively by and under the laws of the State of California.

3.4 Each party hereto has had the opportunity to seek the advice of counsel and qualified experts, including but not limited to, engineers and geologists, concerning this Agreement. The Agreement is to be deemed as to have been jointly prepared by all of the parties hereto, and any uncertainty or ambiguity existing herein shall not be interpreted against any party on the ground that it was the drafter.

3.5 This Agreement contains the entire understanding of the parties with respect to the subject matter herein. There are no representations, covenants, or understandings other than those expressed or referred to herein. Each party to this Agreement acknowledges that no other party or agent or attorney of any other party has made any promise, representation, or warranty, expressed or implied or statutory, not contained or referred to herein concerning the subject matter of the Agreement; and each party acknowledges that it has not executed this Agreement in reliance upon any promise, representation, or warranty not specifically contained or referred to

herein. No amendment or addition to this Agreement shall be valid unless such amendment or addition is in writing and signed by all parties hereto.

3.6 This Agreement may be signed in counterparts and may be signed in multiple originals so that each of the parties hereto shall have an original signed document and each shall be deemed an original. Each party hereto warrants that he, she, or it will and do hereby agree to sign any and all further documents or instruments necessary to implement the terms of this Agreement.

3.7 This Agreement in all respects has been voluntarily and knowingly executed by the parties hereto. Shorecliffs Golf Course represents that it has carefully read and fully understands all provisions of this Agreement, and that it is voluntarily entering into this Agreement. Shorecliffs Golf Course has been advised and represented by legal counsel in this matter and has consulted with his counsel prior to executing this Agreement.

3.8 All provisions of this Agreement shall be specifically enforceable by any party.

3.9 No portion of this Agreement is severable from the rest of this Agreement. Every duty under this Agreement must be performed as stated herein.

3.10 Construction of Agreement. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the Parties hereto. Headings at the beginning of Articles, Sections and Subsections of this Agreement are solely for the convenience of the Parties and are not a part of this Agreement. When required by the context, whenever the singular number is used in this Agreement, the same shall include the plural, and the plural shall include the singular, the masculine gender shall include the feminine and neuter genders, and vice versa. All references herein to a "Party" or "Parties" shall mean a Party or the Parties to this Agreement. The terms "hereof," "hereto," "hereunder," "hereby" and similar terms refer to this Agreement generally, rather than to the

specific Section or Subsection in which such term is used. No failure of any Party to exercise any right or power given such Party hereunder or to insist upon strict compliance by another Party with its obligations hereunder shall constitute a waiver of any Party's right to demand strict compliance with the terms of this Agreement. This Agreement shall not be construed to create an association, joint venture or partnership relationship among the Parties hereto or to impose upon either Party any fiduciary, trust or agency obligation or relationship.

3.11 Waiver. The waiver by any Party of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or of another provision hereof.

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IN WITNESS WHEREOF the undersigned have executed this Agreement as of the dates set forth below.

CITY OF SAN CLEMENTE

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

Approved as to form:

\_\_\_\_\_  
City Attorney

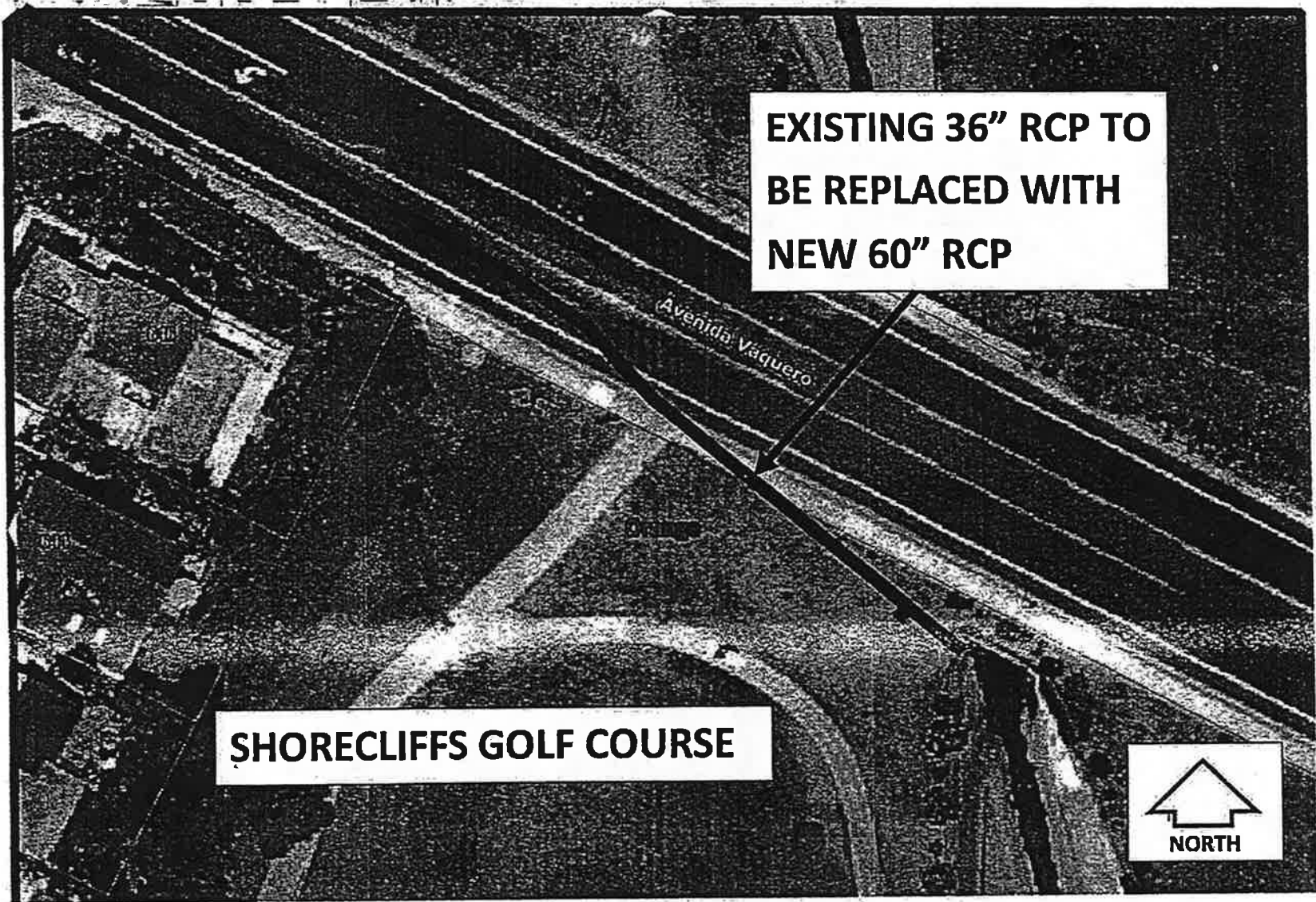
DATED: 9/21/2012

By: Jon Nyeam Leng  
GC8, a joint venture of LHC Investments  
LLC and James and Suzan Wu (Shorecliffs  
Golf Course)



**EXHIBIT A**

6-F-13



**EXISTING 36" RCP TO  
BE REPLACED WITH  
NEW 60" RCP**

*Avenida Vaquero*

**SHORECLIFFS GOLF COURSE**



**EXHIBIT B**

6-1-14



**EXHIBIT D**  
**(Form of Easement)**

67-16



(Space Above for Recorder's Use)  
Exempt from Recordation Fee per Gov. Code § 27383

**GRANT OF EASEMENT**

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, \_\_\_\_\_, a \_\_\_\_\_ hereby grants and conveys to the CITY OF SAN CLEMENTE, a California municipal corporation, an easement in gross on, over, under, and across that certain real property located in the City of San Clemente, County of Orange, State of California, more particularly described in the legal description attached hereto as Exhibit "E", for the operation, maintenance and repair of New Storm Drain.

IN WITNESS WHEREOF, this Grant of Easement is executed as of \_\_\_\_\_, 2012.

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

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STATE OF CALIFORNIA            )  
  )  
COUNTY OF \_\_\_\_\_)        ss.

On \_\_\_\_\_, 2012, before me, \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_ personally known to  
me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s) or their entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public (SEAL)

[SEAL]

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by this Grant of Easement dated \_\_\_\_\_, made by \_\_\_\_\_, to the City of San Clemente, a California Municipal Corporation, is hereby accepted on the terms and conditions herein stated, by the undersigned City Clerk on behalf of the City Council of the City of San Clemente pursuant to authority conferred by Ordinance No. \_\_\_\_\_ of the City of San Clemente adopted on \_\_\_\_\_.

City of San Clemente

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

On \_\_\_\_\_, 2012, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or their entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public (SEAL)

[SEAL]

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**EXHIBIT "E"**

**LEGAL DESCRIPTION OF EASEMENT**

That certain real property in the City of San Clemente, County of Orange, State of California, described as follows:

[to be inserted in future]

6A-20