

EXHIBIT C

CONSENT DECREE
EXHIBIT C
CHIMES CREEK ACCESS AGREEMENT

This Chimes Creek Access Agreement ("Agreement") is made and entered into, effective upon the Court's approval and entry of the Consent Decree in *Millsmont Homeowners Association v. City of Oakland and DeSilva Gates Construction, L.P.*, No. C06-03955 MMC (N.D.Cal.) ("Consent Decree"); by and between the City of Oakland ("City"), the Millsmont Homeowners Association ("MHA"), and the owners of real property adjacent to Chimes Creek listed and signing below ("Homeowners"), collectively the "Parties" to this Agreement.

RECITALS

A. WHEREAS, the Consent Decree provides for funding and performance of a feasibility study, as described in the *Preliminary Work Scope Outline, Chimes Creek Restoration Feasibility Study* ("Feasibility Study") attached as Exhibit B to the Consent Decree; an agreement by MHA and the City to engage in cooperative efforts to seek funding from third parties for the restoration of Chimes Creek upstream of Nairobi Place (the "Creek Project") following completion of the Feasibility Study; and, if adequate funding is obtained as contemplated in the Consent Decree, the performance of the Creek Project, among other settlement terms;

B. WHEREAS, performance of the Feasibility Study and the Creek Project will require access by the City, the City's consultants, contractors and subcontractors, to privately-owned properties bordering Chimes Creek (the "Properties");

C. WHEREAS, MHA and the Homeowners wish to facilitate the Feasibility Study by allowing the City, the City's consultants, contractors and subcontractors, access to the Properties to perform the Feasibility Study and related activities under the conditions and mutual covenants set forth in this Agreement; and

D. WHEREAS, the Parties anticipate execution of a further agreement, substantially in the form of this Agreement, providing for access to the Properties to perform the Creek Project, if and when it is funded, consistent with the terms of the Consent Decree.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Grant of Temporary License. MHA and each of the Homeowners hereby grant to the City and to all of the other Homeowners a temporary license ("License") for the sole purpose of permitting the City (on its own behalf and as the agent for the other Homeowners), and its contractors, subcontractors, employees, agents and consultants (collectively, "City Licensees") to enter upon those parts of the Properties necessary and appropriate to perform the Planned Activities. As a condition of this Agreement, the City Licensees will comply with all covenants specified in this Agreement.

2. Properties Affected by the License. Each of the Properties identified in Exhibit A

is owned by one of the Homeowners, and each Homeowner is both a covenantor and a covenantee under this Agreement. Each of the Properties is both burdened and benefited by the covenants set forth in this Agreement, and by the obligations, releases, rights and remedies provided by the Consent Decree. By executing this Agreement, each Homeowner intends to create a covenant running with the land that will bind the successors and assigns of each Homeowner as a covenantor and be enforceable by the successors and assigns of each Homeowner as a covenantor.

3. Planned Activities. The activities to be conducted on the Properties by the City Licensees are those necessary and appropriate for: (i) performance of the Feasibility Study as described in Consent Decree section 1 and Exhibit C, (ii) efforts to secure funding for the Creek Project as described in Consent Decree section 3.a, and (iii) the efforts to develop mutually agreeable provisions for design, permitting, temporary construction rights-of-entry and construction of the Creek Project as described in Consent Decree section 3.b (collectively, "Planned Activities").

4. Term of License. The License granted hereby shall commence on the date of the Court's approval and entry of the Consent Decree and terminate three (3) years thereafter; provided, however, that the term of the License may be extended upon the written consent of MHA and Homeowners, or the individual Homeowner(s) from which further access is sought. Upon the expiration of this License, this Agreement shall no longer be a covenant running with the land as described in Section 2 of this Agreement.

5. Conditions Applicable to All Planned Activities. Entry by the City Licensees upon the Properties, and performance of the Planned Activities thereon by the City Licensees, shall be in full compliance with all applicable laws and regulations including, without limitation, all environmental, health and safety laws, requirements of all governmental and regulatory authorities, and building codes.

6. Notice of Planned Activities. The City shall provide MHA and Homeowners with not less than five (5) business days prior written notice of (i) the commencement of the Feasibility Study, and (ii) any site visits necessary and appropriate for Planned Activities.

7. Damage to Properties. The City will require that its contractors, subcontractors and consultants, upon completion of the Planned Activities or expiration of the License granted by this Agreement, at their sole cost and expense, remove from the Property all equipment, tools or any other materials used in performing or generated from the Planned Activities, and repair any damage to the Properties cause during performance of the Planned Activities.

8. Waiver of Claims. The City hereby acknowledges and agrees that MHA and Homeowners shall not be liable to any of the City Licensees for any actions, causes of action, damages, liabilities, claims and demands in law or in equity, of every kind and character, known or unknown, suspected or unsuspected ("Claims"), or any expense incurred or suffered by the City Licensees, or any of them, directly or indirectly arising out of or in any way relating to entry upon the Properties and/or the performance thereon of any Planned Activities by any of the City Licensees.

9. Waiver of Claims by MHA and Homeowners. MHA and the Homeowners hereby acknowledge and agree to release and discharge the City, and its agents, employees, departments, and officers, from all actions, causes of action, damages, claims and demands, in law or in equity, of every kind and character, known or unknown, suspected or unsuspected, concerning the Planned Activities performed on the Properties, that they or their successors, assigns, heirs, executors, or administrators may hereafter have against the City, and each of them, except to the extent such Claims arise from the active negligence or willful misconduct of the City Licensees.

10. Dispute Resolution. The Parties agree that any disputes concerning damage to Properties during performance of Planned Activities that are not resolved administratively with the City and its contractors, subcontractors and consultants will be subject to dispute resolution in accordance with the Consent Decree.

11. Entire Agreement: Modification. This Agreement contains the entire understanding and agreement between the Parties with respect to access to conduct the Planned Activities. This Agreement may be modified only by a writing signed by all the Parties.

12. Successors. This Agreement shall bind and inure to the benefit of Parties, any transferee(s) of the Properties, and any lender(s) to Homeowners or such transferee(s).

13. Governing Law. This Agreement shall be governed by the laws of the State of California.

14. Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient. It shall not be necessary that all signatures of the Parties appear on each counterpart. All counterparts hereof shall collectively constitute a single agreement.

15. Authority to Enter Into Agreement. Each of the Parties represents to the others that it has the authority to enter into this Agreement.

16. Notices. Any notices required under this Agreement shall be provided in accordance with the Consent Decree, and to the Homeowner(s) affected by the subject matter of the notice.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the day and year set forth next to their name.

Dated:

9/4/08

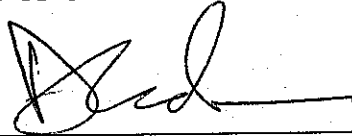
MILLSMONT HOMEOWNERS ASSOCIATION

By: _____

Nancy Sidebotham

Dated:

CITY OF OAKLAND

By:  _____

[Homeowners' Signatures Attached]

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Dated:

8/27/08

6367 and 6375 Hillmont Drive

By: 

Nancy S. Sidebotham

Dated:

8/27/08

6383 and 6391 Hillmont Drive

By: 

Nancy S. Sidebotham

Dated:

6401 Hillmont Drive

By: _____

Eddie Buntyon

Dated:

6401 Hillmont Drive

By: _____

Helen B. Buntyon

Dated:


6409 Hillmont Drive

By: _____

_____, on behalf of the
Edward and Alice Boddy Trust

Dated:

6417 Hillmont Drive

 9-4-08

By: 

Timothy David Peters

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Dated:

6425 Hillmont Drive

By: _____
Cindy Regnier

Dated: 8/22/08

6433 Hillmont Drive

By: Leroy Burnett
Leroy Burnett Trust

Dated: 8/27/08

6441 Hillmont Drive

By: Grace Simonds
Grace Simonds

Dated: 8/27/08

6509 Hillmont Drive

By: Alison J. Hardy
Alison J. Hardy

Dated: 8/27/08

6515 Hillmont Drive

By: Paul G. Shelby
Paula A. Shelby Trust, on behalf of the

Dated: 8/30/08

6525 Hillmont Drive

By: Hector M. Cavallari
Hector M. Cavallari

Dated:

6230 Oakdale Avenue

By: _____
Wells Fargo Bank

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Dated:

6236 Oakdale Avenue

By: _____
Riba M. Edwards

Dated:

6236 Oakdale Avenue

By: _____
Willie Edwards

Dated:

6242 Oakdale Avenue

By: _____
Veda Guess

Dated:

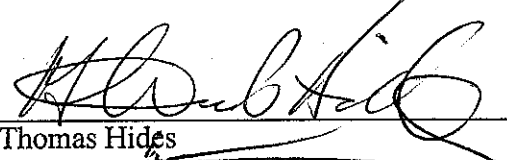
6242 Oakdale Avenue

By: _____
Lee Guess

Dated:

8/28/08

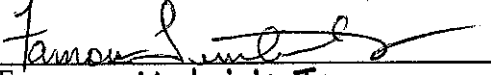
3822 Nairobi Place

By: 
Thomas Hides

Dated:

08-27-08

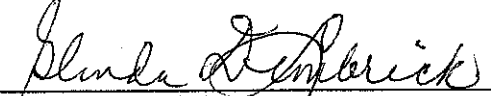
3801 Delmont Avenue

By: 
Famous Limbrick Jr.

Dated:

8/27/08

3801 Delmont Avenue

By: 
Glinda D. Limbrick

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Dated: August 10, 2008

3805 Delmont Avenue

By: Deionne Duplessis
Deionne Duplessis
Deionne Duplessis

Dated:

9/4/08

3809 Delmont Avenue

By: Irina Perez
Irina Perez

Dated:

9/4/08

3809 Delmont Avenue

By: Magdaleno Navarro
Magdaleno Navarro

Dated:

AUG-27-2008

3815 Delmont Avenue

By: Johnny Lau
Johnny Lau

Dated:

3819 Delmont Avenue

By: Doug Polentz
Doug Polentz

Dated:

9/1/08

3825 Delmont Avenue

By: Wi K. Tang
Wi K. Tang

Dated:

8/27/08

3829 Delmont Avenue

By: Steve Leikin
Steve Leikin

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Dated:

3805 Delmont Avenue

By: _____
Deionne Duplessis

Dated:

3809 Delmont Avenue

By: _____
Irma Perez

Dated:

3809 Delmont Avenue

By: _____
Magdaleno Navarro

Dated:

3815 Delmont Avenue

By: _____
Johnny Lau

Dated:

3819 Delmont Avenue

10/3/08

By: _____
Doug Polantz

Dated:

3825 Delmont Avenue

By: _____
Wi K. Tang

Dated:

3829 Delmont Avenue

By: _____
Steve Leikin

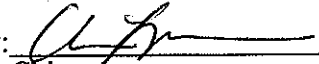
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Dated:

8/27/08

3829 Delmont Avenue

By:



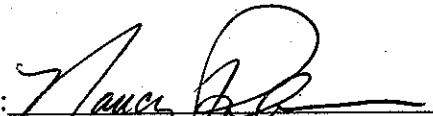
Chiye Azuma

Dated:

8/12/08

3835 Delmont Avenue

By:



Nancy G. Peterson

Dated:

8/24/08

3839 Delmont Avenue

By:



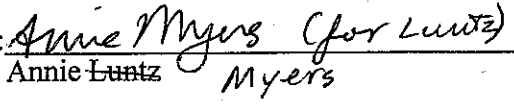
Steve Luntz

Dated:

8/24/08

3839 Delmont Avenue

By:



Annie Luntz Myers

Dated:

09-04-2008

3845 Delmont Avenue

By:



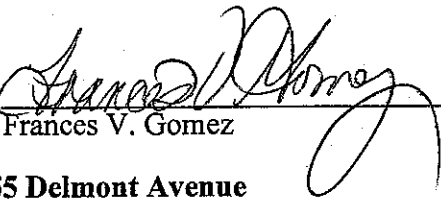
Albert E. Moreno

Dated:

8/23/08

3849 Delmont Avenue

By:



Frances V. Gomez

Dated:

08/27/08

3855 Delmont Avenue

By:



Phillip McGill

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Dated: 08/27/08

3859 Delmont Avenue

By: Phillip McGill
Phillip McGill

Dated: 8-17-08

3865 Delmont Avenue

By: David M. Lyons
David M. Lyons

Dated: 8-17-08

3873 Delmont Avenue

By: David M. Lyons
David Lyons

Dated: 27 Aug 08

6217 Hillmont Drive

By: Lynne M. Rice
Lynne M. Rice

Dated:

6225 Hillmont Drive

By: _____
Anna L. Lepree

Dated: 8/27/08

6233 Hillmont Drive

By: Deanna Leth
Deanna Leth

Dated: 8/27/08

6233 Hillmont Drive

By: Thomas Leth
Thomas Leth

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Dated: 8-28-08

6251 Hillmont Drive

By: Mayford Dare
Mayford Dare

Dated: 8/28/08

6251 Hillmont Drive

By: Donald Dare
Donald Dare

Dated: 8-27-08

6261 Hillmont Drive

By: Ronald L. Fleming
Ronald L. Fleming

Dated: 8-28-08

6269 Hillmont Drive

By: Laverne E. Foley-Williams
Laverne E. Foley-Williams
Forney to

Dated: 8/27/08

6301 Hillmont Drive

By: Diana M. Barrett, on behalf of the
Diana M. Barrett Trust

Dated: 8-28-08

6311 Hillmont Drive

By: Ali Fuad
Ali Fuad

Dated:

6351 Hillmont Drive

By: _____
Walter L. Mann

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Dated:

6251 Hillmont Drive

By: _____
Mayford Dare

Dated:

6251 Hillmont Drive

By: _____
Donald Dare

Dated:

6261 Hillmont Drive

By: _____
Ronald L. Fleming

Dated:

6269 Hillmont Drive

By: _____
Laverne E. Foley Williams

Dated:

6301 Hillmont Drive

By: _____, on behalf of the
Diana M. Barrett Trust

Dated:

6311 Hillmont Drive

By: _____
Ali Fuad

Dated: *3PBS*

6351 Hillmont Drive

10/4/08

By: *Patricia Sanchez*
~~Walter L. Mann~~ PATRICIA SANCHEZ

10/3/08

By: *Christian Gomez*
CHRISTIAN GOMEZ

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Dated: 8/27/08

6359 Hillmont Drive

By: Renee Beck
Renee Beck