

DUPLICATE

REIMBURSEMENT AGREEMENT NO. 1038991 WITH BLACK MOUNTAIN RANCH LLC AND BMR CONSTRUCTION, INC. FOR PUBLIC FACILITIES IN THE BLACK MOUNTAIN RANCH SUBAREA PLAN

THIS REIMBURSEMENT AGREEMENT No. 1038991 WITH BLACK MOUNTAIN RANCH LLC AND BMR CONSTRUCTION, INC. FOR PUBLIC FACILITIES IN THE BLACK MOUNTAIN RANCH SUBAREA PLAN [Agreement] is made and entered into between THE CITY OF SAN DIEGO, a municipal corporation [City], and BLACK MOUNTAIN RANCH LLC, a California Limited Liability Company, and BMR CONSTRUCTION, INC., a California corporation [Black Mountain Ranch LLC and BMR Construction, Inc. are collectively referred to herein as Developer] for reimbursement for the purchase, design, and construction of certain public facilities identified in this Agreement. City and Developer when referenced herein collectively shall be referred to as Party or Parties. This Agreement is entered into with reference to the following recitals:

RECITALS

1. Developer is the master developer of approximately 967.5 acres of real property [Property] located in the City as depicted on the attached **Exhibit A**. A legal description of the Property is attached hereto as **Exhibit B**. Developer certifies that it is developing the Property subject to the requirements and conditions of the City Council of the City of San Diego [City Council].
2. The following entitlements granted by City allow Developer to construct a maximum of 2,783 residential dwelling units, a 300-room hotel, 515,000 square feet of employment/office uses, and 225,000 square feet of commercial/retail office uses [Development], all as more fully described in the following documents: Black Mountain Ranch Subarea Plan [Subarea Plan] approved by City Council Resolution No. R-290525 on July 28, 1998, as amended by City Council Resolution No. R-295792 on November 27, 2001, as amended by City Council Resolution No. R-296698 on June 18, 2002, and as amended by City Council Resolution No. R-304918 on May 19, 2009; First Amendment to Second Amended and Restated Development Agreement Between the City of San Diego and Black Mountain Ranch Limited Partnership [Development Agreement] approved by City Ordinance No. 0-19020 on December 10, 2001, Rezone No. 0-2009-135 approved by City Ordinance No. 0-19868 on June 21, 2009, Planned Development Permit No. 497493, Site Development Permit No. 497493, and Multiple Habitat Planning Area Boundary Line Adjustment No. 643464, amending Planned Development Permit Site Development Permit No. 40-0528, approved by City Council Resolution No. R-304920 on May 19, 2009, and Vesting Tentative Map No. 497492 approved by City Council Resolution No. R-304919 on May 19, 2009 [Entitlements].
3. The Property is located within the boundaries of the City's Fiscal Year 2013 Black Mountain Ranch Public Facilities Financing Plan and Facilities Benefit Assessment, which was adopted on October 25, 2012, by Resolution No. R-307790 [BMR Financing Plan], and adjacent to the boundaries of the City's Fiscal Year 2013 Torrey Highlands Public Facilities Financing Plan, which was adopted on November 27, 2012, by Resolution No. R-307857 [TH Financing Plan], and the City's Fiscal Year 2013 Pacific Highlands Ranch Public Facilities Financing Plan,

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which was adopted on April 23, 2012, by Resolution No. R-307364 [PHR Financing Plan]. The BMR Financing Plan, TH Financing Plan, and PHR Financing Plan, are collectively referred to herein as the "Financing Plans." The Financing Plans identify various sources of funding for public facilities including a Facilities Benefit Assessment [FBA]. Construction or funding of projects currently identified in the Financing Plans as being funded by the FBA are eligible for a credit against or reimbursement from the FBA in accordance with this Agreement

4. In addition to the eligibility for a credit or reimbursement from the FBA for the construction or funding of projects identified in the Financing Plans, Developer is eligible for reimbursement for a portion of the cost of the construction of Via De La Valle Widening [Project T-32.1], as described in the BMR Financing Plan, in the amount of \$1,010,298. Condition No. 43 for the Flower Hill Promenade development project provides for mitigation for traffic impacts to Via de la Valle as reflected in Coastal Development Permit No. 619980, approved by the City pursuant to Resolution No. R-306773 on April 19, 2011. Funds are currently being held by the City in the form of a Financial Guaranty Bond and cash will be made available upon the City's receipt of the cash secured by the Financial Guaranty Bond, but in no event before the start of construction of Project T-32.1 by Developer.

Developer is eligible for reimbursement for a portion of the cost of the construction of Project T-32.1 in the amount of \$680,000 by the Del Mar Highlands Estates development project as mitigation for traffic impacts to Via de la Valle as reflected in VTM No. 94-0576, Condition No. 32, approved by the City pursuant to Resolution No. R-288543 on April 15, 1997.

Developer shall be reimbursed for Project T-32.1 from other development projects to the extent and in the event that City, in its sole discretion, requires such other development projects to make a contribution for the construction of Project T-32.1 in order to mitigate for their respective traffic impacts to Via de la Valle and to the extent such contributions are received by the City.

Upon receipt by the City, all of the above contributions, shall be deposited in Developer Contribution Fund (200636) and then reimbursed to Developer pursuant to the terms of this Agreement provided Developer has not already been fully reimbursed for the Project Costs of Project T-32.1 from the BMR FBA or other City funds.

5. In addition to the eligibility for a credit or reimbursement from the FBA for the construction or funding of projects identified in the Financing Plans, the Parties agree that Developer also is eligible for credit or reimbursement from the TH Financing Plan FBA for the design cost of four lanes of Camino del Sur between Torrey Santa Fe Road and Dormouse Road [Project T-3.1B] in an amount not to exceed \$724,500.

6. Developer proposes to design, construct, and dedicate to the City all of the improvements identified in this Agreement and the Financing Plans and the design of Project T-3.1B., as more fully described in the attached **Exhibits C, C-1, C-2, C-3, C-4, C-5** [collectively, **Exhibit C**] [Projects]. **Exhibit C** also describes the amount of reimbursement that is eligible from each of the Financing Plans and Developer Contribution Fund (200636). The Financing Plans estimates for each of the Projects also is included in the attached **Exhibit C** and such estimates, minus the City's Administrative Costs (as defined in Section 12.1.5) and minus City's equipment

expenditures, constitutes the total and maximum City funds potentially available for reimbursement to Developer for the Projects (Maximum Funds); any amount in excess of the Maximum Funds may not be reimbursed through this Agreement and shall constitute a Non-Reimbursable Cost. Developer is not automatically entitled to the Maximum Funds or any other reimbursement. Developer must satisfy all terms of this Agreement to become eligible for any portion of the Maximum Funds if and as they are collected and become available for reimbursement.

7. Developer's Estimated Cost (as defined in Section 3.3) for each of the Projects is described in the attached **Exhibit C**, plus interest (as discussed in Section 12.1.6).

8. This Agreement is intended by the Parties to define the method, terms, and conditions of reimbursement to Developer for the funds to be expended for the planning, permitting, and construction of the Projects.

9. The Parties agree that nothing in this Agreement shall be interpreted as modifying any of the vested rights Developer possesses pursuant to the Development Agreement. During the term of the Development Agreement and to the extent the Development Agreement is applicable to this Agreement, in the event of a conflict between the terms and conditions of the Development Agreement and the terms and conditions of this Agreement, the terms and conditions of the Development Agreement shall control.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the Parties, and for other good and valuable consideration, City and Developer agree as follows:

ARTICLE I. SUBJECT OF THE AGREEMENT

- 1.1 **Design and Construction of Project.** Developer agrees to design and construct (as applicable) fully complete and operational Projects suited to the purpose for which they were designed and in accordance with this Agreement, the Plans and Specifications, and the Financing Plan, and within the timeframe established in the Project Schedule attached as **Exhibit D**, and for the Estimated Costs attached as **Exhibit C**.
- 1.2 **Substantial and Final Completion.** City's acceptance of the Project shall occur upon Subdivider's receipt of a letter of Substantial Completion from City (as defined in Section 15.1). Final Completion of the Project shall not occur until after approval of the as-built plans, a signed as final approval for grading or public right-of-way permit, acceptable capitalization form, and any required certificate of occupancy and/or property transfers (as defined in Section 16.1)
- 1.3 **Reimbursement.** City agrees to reimburse Developer for the Project(s) subject to the terms and conditions of this Agreement.

ARTICLE II. PROJECT SCHEDULE

- 2.1 **Project Schedule.** For each Project, Developer shall perform and complete the work under this Agreement according to the schedules set forth in the Entitlements and as

developed in accordance with this Agreement. At the beginning of each Project that has not started construction prior to the Effective Date of this Agreement, the Parties shall mutually agree on a project schedule [Project Schedule] for that Project, and Developer shall perform and complete that Project according to the Project Schedule attached as **Exhibit D**, the Project Schedule Obligations and Components attached as **Exhibit E**, the Meeting Requirements in **Exhibit F**; and Preconstruction, Progress, and Special Meeting Agendas in **Exhibit G**. For Projects for which Developer already began construction prior to the Effective Date of this Agreement, Developer shall provide a Project Schedule acceptable to the City for those Projects within thirty (30) Calendar Days of the Effective Date of this Agreement and shall perform and complete that Project according to that Project Schedule attached as **Exhibit D**, the Project Schedule Obligations and Components attached as **Exhibit E**, the Meeting Requirements in **Exhibit F**; and Preconstruction, Progress, and Special Meeting Agendas in **Exhibit G**.

- 2.2 Project Completion.** Developer agrees that all work on each of the Projects under this Agreement will be complete and ready for operational use or in the case of Project T-3.1B for design use according to the Project Schedule, and the Project Schedule Obligations and Components.
- 2.3 Changes in Project Schedule.**
- 2.3.1 Changes in the Project Schedule that increase the Estimated Cost must be approved by City in writing in accordance with Section 3.3.3.
- 2.3.2 Changes in the Project Schedule that do not increase the Estimated Cost may be approved by the engineer designated by City's Public Works Department (Responsible Department), which shall be responsible for review and approval of the progress of, and changes to, the Project (Resident Engineer); provided, however, that the Project is still completed in accordance with the Financing Plans (including any associated phasing plans) and all conditions of approval including, but not limited to the Entitlements requirements.
- 2.4 Notification of Delay.** If Developer anticipates or has reason to believe that performance of work under this Agreement will be delayed, Developer shall immediately notify the representative designated by City's Public Works Department to manage the Project on behalf of City (Project Manager). Unless City grants Developer additional time to ascertain supporting data, a written notice of the delay must be delivered to City within thirty (30) calendar days of the initial notification and shall include an explanation of the cause of the delay, a reasonable estimate of the length of the delay, any anticipated increased costs due to the delay, all supporting data, and a written statement that the time adjustment requested is the entire time adjustment Developer needs as a result of the cause of the delay. If Developer anticipates or has reason to believe the delay will increase the Estimated Cost, Developer shall also give notice to City in accordance with Section 3.4.
- 2.5 Delay.** If delay in the performance of work required under this Agreement is caused by unforeseen events beyond the control of the Parties, such delay may entitle Developer to a reasonable extension of time. Any such extension of time must be approved in writing by City, and will not be unreasonably withheld. A delay in the performance of work or any activity by City or Developer that affects a deadline to perform imposed on the other

party by this Agreement will entitle the other party to the number of days City or Developer failed to complete performance of the work. The following conditions may justify such a delay depending on their actual impact on each of the Projects: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Developer's work; concealed conditions encountered in the completion of the Project; inability to reasonably obtain materials, equipment, labor, or additional required services; or other specific reasons mutually agreed to in writing by City and Developer. Any delay claimed to be caused by Developer's inability to obtain materials, equipment, labor, or additional required services shall not entitle Developer to an extension of time unless Developer furnishes to City, in accordance with the notification requirements in Section 2.4, documentary proof satisfactory to City of Developer's inability to reasonably obtain materials, equipment, labor, or additional required services. Notwithstanding the above, Developer shall not be entitled to any extension of time, additional costs, or expenses for any delay caused by the acts or omissions of Developer, its consultants, contractors, subcontractors, employees, or other agents (collectively, Developer's agents). A change in the Project Schedule does not automatically entitle Developer to an increase in Reimbursable Costs (as defined in Section 3.2). If City determines that the delay materially affects the Project, City may exercise its rights under Section 2.7 of this Agreement.

2.6 Costs of Delay. City and Developer acknowledge construction delays may increase the cost of a Project. Unless Developer informs City pursuant to Sections 2.4 and 3.4 of cost increases due to delay and such cost increases are determined by City to be reasonable and are fully recovered through collected fees under the Financing Plan, funding will be insufficient to cover the cost increase. Developer agrees to absorb any increase in Estimated Costs and/or interest thereon not accounted for in the Financing Plans (or future updates of the Financing Plan) if Developer failed to timely notify the City in writing as required under Sections 2.4 and 3.4.

2.7 City's Right to Terminate for Default.

2.7.1 If Developer fails to adequately perform any obligation required by this Agreement concerning a Project, Developer's failure shall constitute a Default. Unless within thirty (30) calendar days of receiving written notice from City specifying the nature of the Default Developer undertakes all reasonable efforts to ensure that the Default is completely remedied within a reasonable time period to the satisfaction of City, City may immediately terminate this Agreement with respect to the involved Project, including all rights of Developer and any person or entity claiming any rights by or through Developer under this Agreement. A delay shall not constitute a Default if Developer has made good faith and reasonable efforts to adhere to the Project Schedule, has provided notice of delay in accordance with Section 2.4, and such delay was caused by unforeseen events that justify the delay as set forth in Section 2.5.

2.7.2 If City terminates the Agreement with respect to the involved Project due to Developer's Default, City shall have the option to assume all of the rights of any and all contracts or subcontracts entered into by Developer or Developer's agents

for the construction of the involved Project. Developer shall include, and require its contractors and subcontractors to include provisions in their contracts and subcontracts, that City is a third party beneficiary of the same and that City is entitled to and protected by the indemnities and warranties, whether written or express, contained therein.

2.7.3 The rights and remedies of City enumerated in Section 2.7 are cumulative and shall not limit, waive, or deny City's rights under other provisions of this Agreement, or waive or deny any right or remedy at law or in equity available to City against Developer, including any claims for damages against Developer that City may assert as a result of the Default.

2.8 **City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors.** If Developer files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, City may at its option and without further notice to or demand upon Developer immediately terminate this Agreement, and terminate all rights of Developer and any person or entity claiming any rights by or through Developer. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City's rights or remedies under other provisions of this Agreement or those available at law or in equity.

ARTICLE III. PROJECT COSTS AND CHANGE ORDERS

3.1 **Project Costs.** Project Costs are Developer's reasonable costs of construction labor and materials and design necessary for a Project as approved by the City and depicted in **Exhibit C**. Project Costs do not include Developer's Administrative costs (as defined in Section 3.3.1), but do include advances made by Developer to City to pay for the time of third party consultants retained by the City personnel to prepare this Agreement and for project cost verification in connection with the Projects in accordance with projects included in this Agreement.

3.2 **Reimbursable Costs.** Developer may seek reimbursement only for Reimbursable Costs. Reimbursable Costs shall consist only of the applicable Estimated Costs (as defined in Section 3.3) reasonably expended by Developer, approved for reimbursement in the Financing Plan, and approved by City under the terms of this Agreement.

3.2.1 **Non-Reimbursable Costs.** Non-Reimbursable Costs include: (i) Any cost in excess of the Maximum Funds; (ii) any cost in excess of the Estimated Costs not approved in accordance with Section 3.3.3; (iii) any cost identified in this Agreement as a Non-Reimbursable Cost; (iv) any cost to remedy Defective Work (as defined in Section 22.1); (v) any cost incurred as a result of Developer's or Developer's agents' negligence, omissions, delay, or Default; (vi) any cost of substituted products, work, or services not necessary for completion of the Project, unless requested and approved by City in writing; (vii) any cost not approved by City in the manner required by this Agreement and/or the Charter of the City of San Diego (Charter) and rules, regulations, or laws promulgated thereunder; (viii) any cost not supported by proper invoicing or other documentation as reasonable and necessary; and (ix) with respect to cash reimbursements, any cost in excess of FBAs actually collected by the City and

available for reimbursement to Developer for the design and construction of each Project during the term of this Agreement. Additionally, the fair value as reasonably determined by City of any property that is destroyed, lost, stolen, or damaged rendering it undeliverable, unusable, or inoperable for City constitutes a Non-Reimbursable Cost. Refundable deposits, such as utility deposits, also constitute a Non-Reimbursable Cost.

- 3.3 Estimated Cost(s).** Developer's Estimated Costs shall consist only of: (i) Project Costs (ii) Developer's Administrative Costs (as defined in Section 3.3.1), and (iii) the Project Contingency (as defined in Section 3.3.2). The total Estimated Cost of each of the Projects is described in **Exhibit C**. Without further amendment to this Agreement, the Estimated Cost may be increased annually by the applicable inflationary rate as set forth in the Financing Plan. Any other increase to Estimated Costs may only be approved in accordance with Section 3.3.3. .
- 3.3.1 ***Developer's Administrative Costs.*** Developer's Administrative Costs are reasonably incurred Project-related administration and supervision expenditures totaling a flat five percent (5%) of Developer's Project Costs.
- 3.3.2 ***Project Contingency.*** A Project Contingency of ten percent (10%) of estimated construction costs is included in each of the Project's Estimated Cost. The Project Contingency shall not be available for: (i) work required due to Developer's or Developer's agents' failure to perform work or services according to the terms of this Agreement or in compliance with the Construction Documents; or (ii) uninsured losses resulting from the negligence of Developer or Developer's agents.
- 3.3.3 ***Change Orders and Adjustments to Estimated Cost.*** Estimated Costs may be increased only through properly processed and approved Change Orders in accordance with **Exhibit H**. The Estimated Cost may only be increased if Developer provides documentation showing that the increase is reasonable in nature and amount, and is due to causes beyond Developer's or Developer's agents control or otherwise not the result of unreasonable conduct by Developer or Developer's agents which may, based on actual impact on each of the Projects, include: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Developer's work; concealed conditions encountered in the completion of the Project; inability to reasonably obtain materials, equipment, labor, or additional required services; inflation; actual bids received for Project Costs being greater than estimated; or other specific reasons mutually agreed to in writing by City and Developer. Developer shall not be reimbursed, and no Change Order may be approved, for costs or expenses resulting from a design error or omission (unless such a design error or omission is the direct result of a City request for such design or omission), or Developer's or Developer's agents' negligence. Developer shall not have the right to terminate, reform, or abandon this Agreement for City's refusal to approve a Change Order.

- 3.4 **Notification of Increased Estimated Costs.** If Developer anticipates or has reason to believe that the cost of the Project will exceed the Estimated Cost, Developer shall notify the City in writing within fourteen (14) calendar days of becoming aware of the potential increase. If Developer fails to timely notify City in writing, Developer agrees to absorb any increase in Estimated Costs and any interest thereon not accounted for in the Financing Plan. This written notification shall include an itemized cost estimate and a list of recommended revisions Developer believes will bring the construction cost to an amount within the Estimated Cost. In accordance with Section 3.3.3, City may approve an increase in Estimated Costs and/or delineate a project which may be constructed within Estimated Costs. If City chooses not to pursue the above options, Developer may elect to construct the Project and forgo any reimbursement in excess of the Estimated Cost.

ARTICLE IV. COMPETITIVE BIDDING, EQUAL OPPORTUNITY AND EQUAL BENEFITS

- 4.1 **Compliance.** Developer shall bid and award contracts to complete Projects in accordance with the Charter and rules, regulations, and laws promulgated thereunder, including, but not limited to, the Municipal Code and City Council resolutions and policies, as well as any expressly applicable public contract laws, rules, and regulations (Required Contracting Procedures). Required Contracting Procedures include all contracting requirements that are applicable to the City, including, but not limited to, competitive bidding, the City's small and local business program for public works contracts, and the City's Equal Benefits Ordinance. Prior to bidding a Project, Developer shall consult with City's Public Works Department. Developer shall work with City's Public Works Department to ensure that all Required Contracting Procedures are met. Developer understands that it must comply with all Required Contracting Procedures. Failure to adhere to all Required Contracting Procedures is a material breach of this Agreement, and any contract awarded not in accordance with the Required Contracting Procedures shall be ineligible for reimbursement. Developer may have entered into certain construction contracts prior to the Effective Date of this Agreement. Provided that Developer complied with the Required Contracting Procedures and the other requirements set forth in this Agreement with respect to those contracts, Developer shall be eligible for reimbursement for those contracts.
- 4.2 **Bidding Documents.** Following City review of the Construction Documents, Developer shall prepare final corrected Construction Documents to be submitted to City for review and approval, in accordance with City's standard review procedures prior to solicitation of bids.
- 4.2.1 ***Submission of Bidding Documents.*** Developer shall submit bidding documents to City for approval before soliciting bids for work on each of the Projects. The Developer may elect to prepare bidding documents requesting bids based on Lump Sum or Firm-Fixed prices or unit costs as applicable for each Project. City retains the right to notify Developer of necessary corrections and will notify Developer of corrections within fifteen (15) Working Days of submittal date.
- 4.2.2 ***Obtain all Permits and Approvals.*** Developer shall obtain all necessary permits, including, but not limited to, environmental, grading, building, mechanical,

electrical, and plumbing. Approval of Construction Documents will be evidenced by City's issuance of a letter indicating Developer may proceed with competitive bidding.

- 4.3 Solicitation of Bids.** Developer shall solicit sealed bids for construction of a Project in accordance with all Required Contracting Procedures. With notice of at least five (5) Working Days, Developer shall notify City of the time and place of each bid opening. Developer shall work with City's Public Works Department to ensure that bids are solicited in the manner required in accordance with the Required Contracting Procedures.
- 4.4 Bid Opening and Award of Contract.** Developer shall open bids and award contracts in accordance with all the Required Contracting Procedures. Developer shall work with City's Public Works Department to ensure that bids are opened and contracts are awarded in the manner required in accordance with the Required Contracting Procedures. Developer shall publicly open sealed bids in the presence of City's authorized representative(s). The bidding contractors shall be permitted to be present at the bid opening. City's representative(s) shall be provided with copies of all bids received immediately after the bid opening and with a copy of the tabulation of bid results upon Developer's completion. Contract(s) for the construction of a Project shall be awarded by Developer to the lowest responsible and reliable bidder in accordance with the Required Contracting Procedures.
- 4.4.1 In the event that the lowest responsible and reliable bid exceeds the Estimated Cost, any reimbursement for such an increase shall be subject to approval by Change Order pursuant to Section 3.3.3 following award of the contract.
- 4.4.1.1 In the event the City Council does not approve the increased cost, at City's option:
- 4.4.1.1.1 City may terminate this Agreement as to the involved Project. In the event the Agreement is terminated, Developer's obligations pursuant to this Agreement for the construction of the involved Project shall be released without further liability. This release shall in no way affect the obligations of Developer with respect to any terms or conditions of the VTMs, Tentative Map(s), Development Agreements, or other approvals and agreements with City. However, prior to termination of this Agreement, City shall reimburse Developer (at City's option with either FBA credits or cash reimbursement) for the engineering and design costs reasonably incurred and expended by Developer for the involved Project in accordance with this Agreement and within the Estimated Cost in accordance with Section 3.3. Developer shall provide City with copies of all executed contracts; or
- 4.4.1.1.2 City may work with Developer to rebid and/or redesign the involved Project.
- 4.4.1.1.3 With Developer's consent, Developer may award the bid and assume responsibility for the costs in excess of Estimated Cost.

4.5 Nondiscrimination Requirements.

4.5.1 ***Compliance with the City's Equal Opportunity Contracting Program.*** Developer shall comply with City's Equal Opportunity Contracting Program. Developer shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Developer shall provide equal opportunity in all employment practices. Developer shall ensure its consultants, contractors, and their subcontractors comply with the City's Equal Opportunity Contracting Program. Nothing in this Section shall be interpreted to hold the Developer liable for any discriminatory practice of its consultants, contractors or their subcontractors.

4.5.2 ***Nondiscrimination Ordinance.*** Developer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of consultants, contractors, subcontractors, vendors or suppliers. Developer shall provide equal opportunity for contractors and subcontractors to participate in contracting and subcontracting opportunities. Developer understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, and other sanctions. This language shall be in contracts between the Developer and any consultants, contractors, subcontractors, vendors and suppliers.

4.5.3 ***Compliance Investigations.*** Upon City's request, Developer agrees to provide to City, within sixty (60) calendar days, a truthful and complete list of the names of all consultants, contractors, subcontractors, vendors and suppliers Developer used in the past five years on any of its contracts undertaken within San Diego County, including the total dollar amount paid by Developer for each contract, subcontract or supply contract. The Developer further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance (Municipal Code sections 22.3501-22.3517). Developer understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in remedies being ordered against Developer up to and including Agreement termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Developer further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

4.6 Equal Benefits. This Agreement is with a sole source and therefore, Developer is not subject to the City's Equal Benefits Ordinance, Chapter 2, Article 2, Division 43 of the Municipal Code. However, the Equal Benefits Ordinance is applicable to contracts that Developer enters into with respect to the Project. Therefore, Developer shall ensure that its contractor(s) and consultant(s) comply with the Equal Benefits Ordinance. Developer shall include in each of its contracts with its contractor(s) and consultant(s) provisions: (i) stating that the contractor(s) and/or consultant(s) must comply with the Equal Benefits Ordinance; (ii) stating that failure to maintain equal benefits is a material breach of those agreements; and (iii) requiring the contractor(s) and/or consultant(s) to certify that they will maintain equal benefits for the duration of the contract. SDMC § 22.4304(e)-(f). In addition, Developer's contractor(s) and/or consultant(s) must comply with the

requirement that they not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, and that it notify employees of the equal benefits policy at the time of hire and during open enrollment periods during the performance of the contract. SDMC § 22.4304(a)-(b). Developer's contractor(s) and/or consultant(s) must also provide the City with access to documents and records sufficient for the City to verify compliance with the EBO's requirements. SDMC § 22.4304(c). Additionally, Developer's contractor(s) and/or consultant(s) may not use a separate entity to evade the requirements of the EBO. SDMC § 22.4304(d). Developer shall ensure that its contractor(s) and consultant(s) complete the Equal Benefits Ordinance Certification of Compliance included herein as **Exhibit I**.

ARTICLE V. PREVAILING WAGE

- 5.1 **Prevailing Wage.** Prevailing wages shall be paid on each of the Projects as required by the San Diego Municipal Code, or any other applicable law.

ARTICLE VI. CONSULTANTS

- 6.1 **Selection of Consultant.** Developer's hiring of a consultant is subject to City's approval. Developer's consultants shall be subject to all State and City laws, including regulations and policies applicable to consultants retained directly by City. Developer shall cause the provisions in **Exhibit J** Consultant Provisions to be included in its consultant contract(s) for the Project. The selection of any consultant is subject to all applicable public contract laws, rules, and regulations, including but not limited to, the City Charter, the Municipal Code, Council Policies, and the City's Administrative Regulations. Developer shall work with City's Public Works Department to ensure that City's consultant selection procedures are met. Developer understands that it must comply with all consultant selection procedures applicable to the City unless a waiver of those procedures is obtained. Failure to adhere to all applicable consultant selection procedures is a material breach of this Agreement, and any contract awarded not in accordance with the City's consultant selection procedures shall be ineligible for reimbursement.

Pursuant to Ordinance No. _____, City hereby waives the consultant selection requirements of San Diego Municipal Code section 22.3202, Council Policy 300-07, Council Policy 100-10 and Administrative Regulation 25.60 as to the following consultants and for the following consultant services on the Projects: (1) Rick Engineering shall be the consultant for civil engineering; (2) Wimmer Yamada and Caughey shall be the consultant for landscape architecture; (3) RECON Environmental, Inc. shall be the environmental consultant; (4) Geocon Incorporated shall be the geotechnical consultant; (5) KOA Corporation shall be the consultant for traffic and transportation engineering; (6) Q2 Services shall be the consultant for project administration; (7) Utility Specialists California, Inc. shall be the consultant for dry utilities engineering; (8) Latitude 33 Planning & Engineering shall be the consultant for engineering services; and (9) Project Design Consultants shall be the consultant for engineering services.

- 6.2 **Equal Benefits and Nondiscrimination.** The requirements of City's Equal Benefits Ordinance apply to Developer's consultant contracts. *See* Section 4.6. The nondiscrimination requirements in Section 4.5 apply to Developer's consultant contracts.
- 6.3 **Estimated Budget.** Developer shall require its consultant to prepare an estimated budget for each of the Projects, if applicable.
- 6.4 **Schematic Drawings.** Developer shall require its consultant to prepare schematic drawings for each of the Projects for City approval, if applicable.

ARTICLE VII. DESIGN AND CONSTRUCTION STANDARDS

- 7.1 **Standard of Care.** Developer agrees that the professional services provided under this Agreement shall be performed in accordance with the standards customarily adhered to by experienced and competent professional design, architectural, engineering, landscape architecture, and construction firms using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.
- 7.2 **Compliance with all Laws, Design Standards, and Construction Standards.** In all aspects of the design and construction of the Project, Developer shall comply with all laws and the most current editions of the Green Book, the City's Standard Drawings and Design and Construction Standards, including those listed in **Exhibit K**. It shall be Developer's sole responsibility to comply with the Americans with Disabilities Act and Title 24 of the California Building Standards Code, California Code of Regulations. Developer shall certify compliance with Title 24/ADA to City in the form and content as set forth on **Exhibit L**, Certificate for Title 24/ADA Compliance.
- 7.3 **Imputed Knowledge.** Developer shall be responsible for all amendments or updates to Design and Construction Standards and knowledge of all amendments or updates to Design and Construction Standards, whether local, state, or federal, and such knowledge will be imputed to Developer to the fullest extent allowed by law.
- 7.4 **City Approval.** Developer shall be required to obtain City approval of design, plans, and specifications in the manner required in **Exhibit M**, Approval of Design, Plans, and Specifications. Unless specifically provided otherwise, whenever this Agreement requires an action or approval by City, that action or approval shall be performed by the duly authorized City representative designated by this Agreement.
- 7.5 **City Approval Not a Waiver of Obligations.** Where approval by City, the Mayor, or other representatives of City is required, it is understood to be general approval only and does not relieve Developer of responsibility for complying with all applicable laws, codes, regulations and good consulting, design, or construction practices.

ARTICLE VIII. CONSTRUCTION AND DRUG-FREE WORKPLACE

- 8.1 **Compliance with Project Schedule and Construction Requirements.** For each Project, Developer shall commence construction in accordance with the Project Schedule, as described in Article II, and be subject to the obligations in **Exhibit N**, Construction Obligations. Developer shall diligently pursue such construction to completion. Failure

to maintain the Project Schedule constitutes a Default subject to Section 2.7. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City's rights or remedies under any other provision of this Agreement or those available at law or in equity.

- 8.2 Drug-Free Workplace.** Developer agrees to comply with City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE", adopted by San Diego Resolution R-277952 and fully incorporated into this Agreement by reference. The Developer shall certify to City that it will provide a drug-free workplace by submitting a Developer Certification for a Drug-Free Workplace in the form and content of **Exhibit O**. Developer shall ensure that its contractors comply with the requirements of City's Council Policy 100-17.

ARTICLE IX. PRODUCTS

- 9.1 Product Submittal and Substitution.** To the extent product specification is not addressed by the most recent edition of the Standard Specifications for Public Works Construction (including the City of San Diego's standard special provisions) (Green Book) or the Project has aesthetic aspects requiring City review, comment, and approval, prior to the bidding process, Developer shall obtain City approval of products and substitution of products in the manner provided in **Exhibit P**, Product Submittal and Substitution.
- 9.1.1 *Not a Release of Liability.* City's review of samples in no way relieves Developer of Developer's responsibility for construction of the Project in full compliance with all Construction Documents.

ARTICLE X. EXTRA WORK

- 10.1 City Authority to Order Extra Work.** Any City additions or modifications to work or Developer obligations under this Agreement not described within City-approved Construction Documents (Extra Work) may be ordered by City prior to completion pursuant to the terms and conditions listed in **Exhibit Q**, Extra Work Provisions. Estimated Costs may be increased without City Council approval due to Extra Work only through the properly processed and approved Extra Work in accordance with **Exhibit Q**. The Estimated Costs may only be increased if Developer provides documentation showing that the Extra Work increase was initiated and approved by City and is reasonable in nature and amount. Developer shall not be reimbursed beyond the amount estimated in the applicable Financing Plans.

ARTICLE XI. CHANGED CONDITIONS

- 11.1 Changed Conditions.** Changed Conditions shall have the meaning as defined in the Green Book. The Parties acknowledge and agree that even if Changed Conditions are found to be present, the Project shall not exceed the Estimated Cost without express City Council approval of an increase to the Estimated Cost in accordance with Section 3.3.3. Absent such express approval of additional funds, Developer shall provide City with value engineering and the Parties shall return the Project to within the Estimated Cost.

ARTICLE XII. REIMBURSEMENT

12.1 Reimbursement to Developer

12.1.1 *Notification of Reimbursable Project.* Along with the Project application to City's Development Services Department, and prior to commencement of any work on a Project (including hiring a consultant), Developer shall submit a Notification of Reimbursable Project form (attached as **Exhibit R**) to Development Services, Facilities Financing, and the City department designated by City for individual Project approval and/or supervision (Responsible Department). For contracts awarded prior to the Effective Date of this Agreement and as specifically exempted by this Agreement and City Council ordinance, Developer shall submit to Development Services, Facilities Financing, and the Responsible Department a Notification of Reimbursable Project Form (attached as **Exhibit R**) within thirty (30) Calendar Days of the Effective Date of this Agreement.

12.1.2 *Type of Reimbursement.* Developer shall be entitled to cash reimbursement, or FBA credits, for the Reimbursable Costs expended by Developer and approved by City in accordance with this Agreement and the Financing Plans. The Financing Plans determine the timing and schedule for reimbursement of the Projects. Any changes to the timing of reimbursement shall be reflected in future updates to the Financing Plans without further amendment to this Agreement. Developer shall not receive cash reimbursement unless there are sufficient funds to reimburse Developer, in whole or in part, from the FBA or if applicable the Developer Contribution Fund (200636). If more than one FBA is available to reimburse Developer for all or part of the same Project, Developer may elect to apply for a cash reimbursement from whichever FBA provides funding for the Project that has not already provided a cash reimbursement in the maximum amount shown on **Exhibit C**. If sufficient funds are unavailable in the FBA, City shall reimburse Developer only if and as funds accrue in the FBA for the Projects. Where FBA credits are requested and approved by City, credit reimbursement shall be made in accordance with the schedule in the Financing Plan. Developer may only use an FBA credit with respect to a development project for and within the boundary of the Development or the boundary of the Financing Plan for which the FBA credit is granted and the FBA credit cannot be converted to cash after it has been granted. Developer acknowledges and agrees that in the event there are no additional FBA funds available for collection by City to fund the Project, Developer shall not be reimbursed by City for any portion of Developer's outstanding costs or expenditures, and Developer expressly agrees to fully absorb all such outstanding costs or expenditures without any reimbursement from City.

12.1.3 *Funds for Reimbursement.* Developer shall only be entitled to reimbursement as set forth in this Agreement and only from FBA funds and Developer Contribution Fund(200636) collected by City in accordance with the Financing Plans or this Agreement, as it may be amended, in the amount set forth in this Agreement and only as allocated for the involved Project, if and as such funds become available for the involved Project, after the appropriate deductions and expenditures are

made, pursuant to the method of reimbursement described in Section 12.1.7, and in the priority of reimbursement described in Section 12.1.11.

- 12.1.4 **Amount of Reimbursement.** Developer shall be eligible for reimbursement for Reimbursable Costs in accordance with Section 3.2 in an amount not to exceed Estimated Costs in accordance with Section 3.3.
- 12.1.5 **City's Administrative Costs.** City's Administrative Costs shall be paid prior to any reimbursement to Developer and shall consist of the costs and expenses incurred by City to: (i) implement, process, and administer the Project, (ii) review contractor/subcontractor compliance with the City's Required Contracting Procedures, (iii) approve reimbursable costs for work performed during design/construction through final completion of the Projects, and (iv) review project documentation to verify all costs related to the Projects, inclusive of construction bid tabulations, contracts, and review of any cost allocation methods (City's Administrative Costs).
- 12.1.6 **Interest.**

- 12.1.6.1 Interest shall begin to accrue from 90 days after the time the submittal of a Reimbursement Request for Reimbursable Costs from the TH FBA is accepted and approved by the City, or the date the Developer submits an invoice for approved amounts in accordance with Section 12.1.10.8, whichever occurs later, and shall continue to accrue until the date of cash reimbursement, up to a maximum of One Million Seven Hundred Seventy Four Thousand Fifty Eight dollars (\$1,774,058). Interest shall accrue at the rate earned by the City Treasurer on funds allocated for the Project, not to exceed the assumed interest rate identified in the assumptions of the applicable Financing Plan, at the time the interest is accruing. Interest shall not accrue under circumstances set forth in Sections 2.6 and 3.4. Interest shall not accrue on the withholding amount set forth in Section 12.1.8.

- 12.1.6.2 For those projects involving FBA credits, if Developer does not use all of its FBA credits in one fiscal year, the value of the unused credits shall appreciate. The appreciation shall be based upon an accrual of interest at the same interest rate earned by the FBA Fund, as identified in the BMR Financing Plan. The value of the unused FBA credits will be reduced by the total value of the FBA fees deferred in executed Fee Deferral Agreements in place at fiscal year-end. Only this net balance of unused FBA credits will be eligible for interest accrual based on the following formula:

The unused FBA credits on the last day of the fiscal year (June 30) shall be multiplied by the interest rate identified in the BMR Financing Plan for the fiscal year ending June 30. The result shall be added to the unused FBA credits and the resultant sum shall be the amount of the unused FBA credits available beginning July 1.

This calculation shall be reflected in the FBA Credit Balance Report beginning July 1 maintained by the City.

12.1.6.3 Interest shall not accrue on any Reimbursable Costs paid for as a cash reimbursement from Developer Contribution Fund (200636).

12.1.7 **Method of Reimbursement.** Developer shall submit to City a written request for reimbursement for all Reimbursable Costs incurred or advanced for a Project for which Developer was not previously reimbursed or granted FBA credit (Reimbursement Request). Reimbursement Requests for projects other than those covered by this Agreement must be submitted as separate requests. The Reimbursement Request must also include all relevant documents in accordance with this Section. City shall determine whether additional documentation is needed to support the Reimbursement Request or if the Reimbursement Request is otherwise incomplete, and shall notify Developer of such deficiencies within sixty (60) calendar days of Developer's Reimbursement Request submittal. Developer shall provide additional documentation within fourteen (14) calendar days of City's notification and request. However, even if City fails to notify Developer within sixty (60) calendar days regarding Developer's Reimbursement Request, City may continue to request additional documentation to support the Reimbursement Request and shall not be obligated to reimburse Developer until City confirms receipt of all relevant documentation sufficient to support the Reimbursement Request. After all appropriate cost documentation has been received and City approves the Reimbursement Request (Reimbursement Request Approval), City shall reimburse Developer for those Reimbursable Costs within ninety (90) calendar days of the date of Reimbursement Request Approval provided that funds are available in the FBA for the Project, and that the Project is scheduled in the Financing Plans for reimbursement at that time.

12.1.8 **Reimbursement Timing.** Subject to the limitations of Article XII, and at the City's discretion, provided that Reimbursement Requests have been approved for such amounts, Developer shall be entitled to reimbursement as follows:

12.1.8.1 Up to twenty-five percent (25%) of the Reimbursable Costs for a Project subject to the Developer satisfying all of the following requirements:

- All plans and specifications for the Project have been approved by the City, and
- Any right-of-way required for the Project has been secured and dedicated or irrevocably offered for dedication, and
- All required permits and environmental clearances necessary for the Project have been secured, and
- All performance bonds, payment bonds, and warranty bonds as described in Article XVIII have been provided, and
- All City fees and costs have been paid, and

- Evidence satisfactory to the City that Developer has complied with and satisfied Article IV (Competitive Bidding, Equal Opportunity, and Equal Benefits) and Article VI (Consultant Selection) of the Agreement.

12.1.8.2 Up to fifty percent (50%) of the Reimbursable Costs estimated for a Project subject to Developer satisfying all of the above-referenced requirements for the twenty-five percent (25%) reimbursement, and Developer has received valid bids for the Project, which have been approved by the City, and has awarded the construction contract. Such reimbursement shall be based on the Reimbursable Costs.

12.1.8.3 Up to ninety percent (90%) of the Reimbursable Costs reasonably expended for a Project subject to City's issuance of a Substantial Completion Letter (as defined in Section 15.1 for a Project).

12.1.8.4 The remaining ten percent (10%) of the Reimbursable Costs reasonably expended shall be paid to Developer upon (Final Completion)(as defined in Section 16.1).

12.1.8.5 Notwithstanding anything to the contrary in this Section 12.1.8 or this Agreement, Developer shall be eligible to receive cash reimbursement or FBA credit, as applicable, for one hundred percent (100%) of the design work performed by Developer and City plan check fees paid by Developer for Project T-3.1B upon completion of such design work by Developer as reasonably determined by City, but without being required to post any bonds to secure completion of the construction of Project T-3.1B .

12.1.9 ***Cutoff for Submission of Reimbursement Requests.*** Developer shall submit all Reimbursement Requests within six (6) months after the Final Completion (Cutoff Date). Any Reimbursement Request submitted after the Cutoff Date shall constitute a Non-Reimbursable Cost and Developer shall not be eligible or entitled for any reimbursement for those costs or expenses.

12.1.10 ***Verification of Reimbursement Request.*** Developer shall on at least a quarterly basis or as otherwise mutually agreed by the Parties provide reasonably organized documentation to support the Reimbursement Request including, but not limited to, proof that all mechanic liens have been released, copies of invoices received and copies of cancelled checks, substitute checks, or image replacement documents showing that payment has been made in connection with the Reimbursement Request in the following manner:

12.1.10.1 Developer shall submit one (1) copy of a Reimbursement Request Form (**Exhibit S**) with supporting documentation for work completed in accordance with the Plans and Specifications and/or Extra Work.

- 12.1.10.2 Prior to the approval of the Reimbursement Request, the RE shall verify whether the materials and work for which reimbursement is being requested have been installed and performed as represented in the Reimbursement Request. The RE shall review the Project on-site for quality of material and assurance and adherence to the bid list, contract estimates, and the Plans and Specifications. The RE shall also review as-builts and Best Management Practices (BMPs), and verify that a lien release has been prepared.
- 12.1.10.3 The RE shall initial the Reimbursement Request, noting any disallowed costs, maintain a copy, and forward the original to the Senior Civil Engineer or City designee for review and approval.
- 12.1.10.4 The Senior Civil Engineer or City designee shall review the Reimbursement Request, as well as supporting cost documentation received from Developer, including soft costs related to the Project, as well as monitor the RE's expenses charged to the Project, and other City Administrative Costs. The Senior Civil Engineer or City designee shall also serve as the liaison between the RE and the Facilities Financing Project Manager (FF Project Manager).
- 12.1.10.5 After review and approval of the Reimbursement Request, the Senior Civil Engineer or City designee shall forward to the Facilities Financing Project Manager for review and approval. Following approval, the Facilities Financing Project Manager shall return the request to the Senior Civil Engineer or City designee.
- 12.1.10.6 The Senior Civil Engineer or City designee shall prepare a memorandum, including a summary schedule of budgeted and actual approved costs, to the FF Project Manager recommending the reimbursement amount including all construction invoices and change orders previously approved, and soft costs incurred to date, noting any costs to be disallowed and the reason for the disallowance. A copy of the memorandum shall be forwarded to Developer. Developer shall then submit an invoice to the City for the reimbursement amount approved by City.
- 12.1.10.7 The FF Project Manager shall verify that reimbursements are scheduled in the Financing Plans and verify FBA or Developer Contribution Fund (200636) cash/credits are available for reimbursement.
- 12.1.10.8 Developer shall then submit an invoice to the City for the reimbursement amount approved by City.
- 12.1.11 ***Priority of Reimbursement.*** Reimbursement to Developer from the FBA for the Project will be subsequent to reimbursement of City's equipment purchases, Furniture Fixtures & Equipment (FF&E), and City's Administrative Expenses incurred in connection with the Project or Financing Plans and FBA, but takes priority over any Developer Reimbursable Project added to the Financing Plans

subsequent to the Effective Date (as defined in Section 27.1) of this Agreement, with the following exceptions:

- 12.1.11.1 Any State or Federally mandated project.
 - 12.1.11.2 Appropriations for City administered, managed, and funded Capital Improvement Projects.
 - 12.1.11.3 To the extent Developer failed to properly notify City in writing of any actual or anticipated increases in Estimated Costs as required under Sections 2.6 and 3.4, the reimbursement for the cost increases, if approved by City, will be subsequent in priority to those projects with agreements approved by the City Council prior to the City Council's approval of increased Estimated Costs.
 - 12.1.11.4 The FBA identifies other project(s) for funding in an earlier fiscal year than the Projects prior to the Effective Date of this Agreement.
- 12.1.12 **Individual Projects.** Though the reimbursement of all Projects is covered under this Agreement, each Project shall be accounted for as if it were an individual project subject to a separate agreement, unless bid as one project on the same plan set with City's prior approval.
- 12.1.12.1 Each Project shall be invoiced separately. An invoice submitted to City shall only have approved costs related to the Project for which the invoice is submitted.
- 12.1.13 **Multiple Projects with Single Contract or Contractor.** Where a bid, cost of materials, cost of labor, or other related costs are charged by the contractor on multiple Projects basis in order to reduce costs through efficiencies of scale, such costs shall be allocated to individual Projects either by (1) identifying actual costs; or (2) allocating costs by percentage of labor, materials, or services attributable to each Project. The allocated costs methodologies must be submitted to City for approval prior to submittal of any cost documentation and/or invoice.
- 12.1.14 **Use of FBA Credits.** Subject to the terms of this Agreement, the FBA credits granted pursuant to this Agreement may be used by Developer or third parties in connection with development within the boundaries of the Black Mountain Ranch Subarea Plan or the boundary of the Financing Plan for which the FBA credit is granted.
- 12.1.15 **FBA Credit Notification.** City acknowledges that Developer may enter into agreements with third parties in connection with the construction of a portion of the Development within the boundaries of the Black Mountain Ranch Subarea Plan or development within the boundary of the Financing Plan for which an FBA credit is granted and that such agreements include or may include allowing the third parties to utilize a portion of the FBA credits that Developer is entitled to receive pursuant to this Agreement in order to satisfy the FBA obligations of the third parties. In order for such third parties to utilize a portion of Developer's FBA credits, Developer shall deliver an executed copy of a FBA Fee Credit

Notification [FBA Credit Notification], a copy of which is attached hereto as **Exhibit T**, to City. The FBA Credit Notification shall notify City of the amount of the FBA credit Developer intends to make available to a third party consistent with the Financing Plans and this Agreement. After receipt of the FBA Credit Notification and concurrent with the time that an FBA becomes due from third parties, City shall reduce any FBA that normally would be collected by City for the development of the third party in the amount stated in the FBA Credit Notification. The FBA charged to the third party shall be based on the FBA schedule in effect at the time the FBA fee is paid. Any FBA not collected by City as a result of the receipt of an FBA Credit Notification executed by Developer shall be deducted from the total FBA credit available to Developer pursuant to this Agreement.

12.1.16 **FBA Credit Balance.** City shall maintain a record of Developer's FBA credits and shall make such record available to Developer within thirty (30) Calendar Days of Developer's request.

ARTICLE XIII. PUBLIC RELATIONS

- 13.1 **Presentations.** Developer and Developer's agents shall be available for all presentations required to be made to City Council, Council Committees, any other related committees, and citizen groups to provide them with information about the Project as well as presentations to any governing or regulatory body or agency for other approvals as may be required.
- 13.2 **City as Primary Contact.** Developer agrees that City is the primary contact with the media regarding the Project and Developer shall forward all questions regarding the Project status to the Responsible Department's Senior Public Information Officer.
- 13.3 **Advertising.** Developer acknowledges that advertising referring to City as a user of a product, material, or service by Developer and/or Developer's agents, material suppliers, vendors or manufacturers is expressly prohibited without City's prior written approval.
- 13.4 **Recognition.** Developer shall place a sign, placard, or other similar monument on each of the Projects sites during construction, which shall acknowledge Developer's and City's joint efforts in designing and constructing the Project, and identifying that the Project is funded with FBA funds or other City funds. Developer shall properly recognize City and include the City of San Diego's logo on permanent and temporary signs, invitations, flyers, or other correspondence. Any recognition of City shall be reviewed and approved by the Responsible Department's Senior Public Information Officer. For assistance with proper recognition, or if Developer is contemplating a dedication or ground breaking ceremony, Developer shall contact the Responsible Department's Senior Public Information Officer.
- 13.5 **Dedication Ceremony.** City or Developer shall have the opportunity to conduct and host a public dedication ceremony, ground-breaking, or similar ceremony on each of the Projects sites at any reasonable time following Operational Acceptance of the Project, provided Developer receives prior approval from the Engineering & Capital Projects Department for the ceremony and provides an opportunity for appearances by the Mayor,

Council Members and other appropriate City officials. Developer shall contact the Responsible Department's Senior Public Information Officer to arrange a mutually acceptable date and time for any ceremony. Invitation shall not be sent out or a date set until the Responsible Department's Senior Public Information Officer has approved the time and date for the ceremony.

- 13.6 **Cleanup.** Developer shall be responsible for the cleanup of the Project site and the restoration and repair of any damage to the Project site attributable to any Developer sponsored ceremony.

ARTICLE XIV. INSPECTION

- 14.1 **Inspection Team.** The Project shall be inspected by a team composed of representatives from (i) the City's Engineering & Capital Project Department, (ii) the Responsible Department, (iii) City's Development Services Department, (iv) Developer's consultant(s), and (v) Developer's construction superintendent (Inspection Team).

ARTICLE XV. SUBSTANTIAL COMPLETION

- 15.1 **Substantial Completion Letter.** When Developer determines that the Project is substantially complete, Developer shall request an operational inspection and Substantial Completion Letter from the Resident Engineer. The Substantial Completion Letter shall include the Field Engineering Division's inspection of the improvements. The Substantial Completion Letter only authorizes public utilization of the Project in accordance with Sections 6-8 "Completion, Acceptance, and Warranty," and 6-10 "Use of Improvements during Construction" of the Greenbook. The Substantial Completion Letter does not constitute City approval for Final Completion of the punch list or as-built plans.

ARTICLE XVI. FINAL COMPLETION

- 16.1 **Final Completion.** Final Completion shall not occur until all of the following are satisfied. Approval for the Final Completion for the work required to complete the Project shall occur upon the later of the following:
- 16.1.1 **Documents and Approvals.** Submission and approval of all documents required to be supplied by Developer to City pursuant to this Agreement, including As-Built Drawings, As-Graded Reports, warranties, operating and maintenance manuals and other Project Deliverables identified in **Exhibit U**; City signature and sign off as final approval on all grading or public right-of-way permits; and if applicable, the issuance of a final Certificate of Occupancy for the Project.
 - 16.1.2 **Capitalization.** The Developer shall submit a Capitalization Form with respect to the Project acceptable to the FF Project Manager, attached as **Exhibit W**.
 - 16.1.3 **Lien and Material Releases.** Developer shall ensure that all contractors and subcontractors provide lien and material releases for the Project and provide copies of such lien and material releases to the City Engineer. Alternatively, with City's approval, which shall not be unreasonably withheld, Developer may ensure

that bonds are provided in a form reasonably acceptable to City in lieu of the lien and material releases.

16.1.4 **Transfer Ownership.** If not already transferred or dedicated, Developer shall transfer the ownership of the Project and the property underlying the Project.

16.2 **No Waiver.** Developer's obligation to perform and complete the Project in accordance with this Agreement and Construction Documents shall be absolute. Neither recommendation of any progress payment or acceptance of the work, nor any payment by City to Developer under this Agreement, nor any use or occupancy of the Project or any part thereof by City, nor any act of acceptance by City, nor any failure to act, nor any review of a shop drawing or sample submittal will constitute an acceptance of work which is not in accordance with the Construction Documents.

16.3 **Assignment of Rights.** Upon Final Completion of the Project, Developer shall assign its rights under its contracts with all contractors, subcontractors, design professionals, engineers, and material suppliers associated with the Project to City. Developer shall be required to obtain written approval and acknowledgement, whether in the form of a contract provision or separate document, of such assignment from its contractors, subcontractors, design professionals, engineers, and material suppliers. This assignment of rights shall not relieve Developer of its obligations under this Agreement, and such obligations shall be joint and several.

16.4 **Ownership of Project Deliverables.** Upon Final Completion or termination, Project Deliverables shall become City's property. Developer and City mutually agree that this Agreement, Construction Documents, and Project Deliverables for the Project shall not be used on any other work without the consent of each Party.

ARTICLE XVII. OMITTED

ARTICLE XVIII. BONDS AND OTHER ACCEPTABLE SECURITIES

18.1 **Payment Bond.** Developer shall provide or require its construction contractor to provide City with a payment bond, letter of credit (LOC), cash or other acceptable security for material and labor in favor of City for 100 percent of the proposed construction costs, as determined by competitive bidding (Payment Bond).

18.2 **Performance Bond.** Developer shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security guaranteeing the performance in favor of City for 100 percent of the proposed construction costs, as determined by competitive bidding (Performance Bond).

18.3 **Warranty Bond.** Developer shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security guaranteeing the Project during the warranty period in favor of City (Warranty Bond). Developer shall provide the Warranty Bond to City upon release of the Performance Bond or commencement of the warranty periods, whichever occurs first.

18.4 **Term.** The Payment Bond or other security accepted by City shall remain in full force and effect until Final Completion of the Project for which it is associated to ensure that

all claims for materials and labor are paid, except as otherwise provided by law or regulation. The Performance Bond or other security accepted by City shall remain in full force and effect until Operational Acceptance of the Project by City. Upon Operational Acceptance, City shall follow the procedures outlined in California Government Code section 66499.7 and release the Performance Bond. The Warranty Bond or other security accepted by City shall remain in full force and effect for the warranty periods provided in this Agreement.

- 18.5 Certificate of Agency.** All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- 18.6 Licensing and Rating.** The bonds shall be duly executed by a responsible surety company admitted to do business in the State of California, licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits required by this Agreement, and have a minimum AM Best rating of "A-" to an amount not to exceed 10 percent of its capital and surplus.
- 18.7 Insolvency or Bankruptcy.** If the surety on any bond furnished by the construction contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, Developer shall within thirty (30) calendar days thereafter substitute or require the substitution of another bond or other acceptable security, acceptable to City.

ARTCILE XIX. INDEMNITY & DUTY TO DEFEND

- 19.1 Indemnification and Hold Harmless Agreement.** Other than in the performance of design professional services which shall be solely as addressed in Sections 19.2 and 19.3 below, to the fullest extent permitted by law, Developer shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees (Indemnified Parties) from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Developer or Developer's agents), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by Developer or Developer's agents, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Developer's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.
- 19.2 Indemnification for Design Professional Services.** To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Developer shall require its design professional to indemnify and hold harmless the City, its officers, and employees, from all claims, demands, or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Developer's design professional or design professional's officers or employees.

- 19.3 Design Professional Services Defense.** The Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of design professional or design professional's officers or employees.
- 19.4 Insurance.** The provisions of this Article are not limited by the requirements of Article XX related to insurance.
- 19.5 Enforcement Costs.** Developer agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Article.
- 19.6 Indemnification for Liens and Stop Notices.** Developer shall keep the Project and underlying property free of any mechanic's liens and immediately secure the release of any stop notices. Developer shall defend, indemnify, protect, and hold harmless, City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, arising from or attributable to a failure to pay claimants. Developer shall be responsible for payment of all persons entitled to assert liens and stop notices.

ARTICLE XX. INSURANCE

- 20.1 General.** Developer shall not begin work on each of the Projects under this Agreement until it has: (i) obtained, and upon City's request provided to City, insurance certificates reflecting evidence of all insurance required in this Article; (ii) obtained City approval of each company or companies; and (iii) confirmed that all policies contain specific provisions required by City pursuant to this Article. For work on Projects which began prior to the Effective Date of this Agreement, other than the requirement that it do so prior to commencement of construction, Developer must comply with the requirements of this Article XX within thirty (30) days after the Effective Date of this Agreement.
- 20.2 Type and Amount of Insurance.** For each Project, the City Attorney shall confer with the City's risk management department and determine the appropriate dollar amount and type of insurance, including any endorsements or specific clauses, necessary for the Project (Required Insurance). Developer shall obtain the Required Insurance prior to the commencement of construction of the involved Project. City's standard insurance provisions are attached as **Exhibit V**. If Developer is not informed otherwise in writing of Required Insurance, City's standard insurance provisions included in **Exhibit V** shall be the Required Insurance for the involved Project.
- 20.3 Written Notice.** Except as provided for under California law, any Required Insurance shall not be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by Developer to City by certified mail, except for non-payment of premium, in which case ten (10) calendar days' notice shall be provided.
- 20.3.1 Where the words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" are present on a certificate, they shall be deleted.
- 20.4 Rating Requirements.** Except for the State Compensation Insurance Fund, all insurance required by express provision of this Agreement shall be carried only by responsible

insurance companies that have been given at least an “A” or “A-” and “VI” rating by AM BEST, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by City.

- 20.5 Non-Admitted Carriers.** City will accept insurance provided by non-admitted, “surplus lines” carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers.
- 20.6 Additional Insurance.** Developer may obtain additional insurance not required by this Agreement.
- 20.7 Obligation to Provide Documents.** Prior to performing any work on a Project after the Effective Date of this Agreement, Developer shall provide copies of documents including, but not limited to, certificates of insurance and endorsements, and shall furnish renewal documentation prior to expiration of insurance. Each required document shall be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. City reserves the right to require complete, certified copies of all insurance policies required herein.
- 20.8 Deductibles/Self Insured Retentions.** All deductibles and self-insurance retentions on any policy shall be the responsibility of Developer. Deductibles and self-insurance retentions shall be disclosed to City at the time the evidence of insurance is provided.
- 20.9 Policy Changes.** Developer shall not modify any policy or endorsement thereto which increases City’s exposure to loss for the duration of this Agreement.
- 20.10 Reservation of Rights.** City reserves the right, from time to time, to review the Developer’s insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to City. City will reimburse the Developer for the cost of the additional premium for any coverage-requested by City in excess of that required by this Agreement without overhead, profit, or any other markup.
- 20.11 Not a Limitation of Other Obligations.** Insurance provisions under this Article shall not be construed to limit Developer’s obligations under this Agreement, including indemnity.
- 20.12 Material Breach.** Failure to maintain, renew, or provide evidence of renewal of required insurance during the term of this Agreement, and for a period of ten (10) years from the Effective Date of this Agreement, may be treated by City as a material breach of this Agreement.

ARTICLE XXI. WARRANTIES

- 21.1 Warranties Required.** For each Project, Developer shall require the construction contractor and its subcontractors and agents to provide the warranties listed below. This warranty requirement is not intended to exclude, and shall not exclude, other implicit or explicit warranties or guarantees required or implied by law. All such warranties shall be enforceable by and inure to the benefit of City.
- 21.1.1 Materials and Workmanship.** All work on a Project shall be guaranteed against defective workmanship and all materials furnished by the construction contractor and its agents.

- 21.1.2 **Call Back Warranty.** The construction contractor shall replace or repair Defective Work for a period of one (1) year from the date of a Project's Final Completion. Construction contractor shall replace or repair or require its agents to replace or repair any such Defective Work or materials in a manner satisfactory to City, after notice to do so from City, and within the time specified in the notice.
- 21.1.3 **New Materials and Equipment.** Construction contractor shall warrant and guarantee, and shall require its agents to warrant and guarantee, that all materials and equipment incorporated into a Project are new unless otherwise specified.
- 21.1.4 **Design, Construction, and Other Defects.** Construction contractor shall warrant and guarantee, and shall require its agents to warrant and guarantee, that all work is in accordance with the Plans and Specifications and is not defective in any way in design, construction, or otherwise.
- 21.2 **Form and Content.** Except manufacturer's standard printed warranties, all warranties shall be on Developer's and Developer's agents, material supplier's, installer's or manufacturer's own letterhead, addressed to City. All warranties shall be submitted in the format specified in this Section.
- 21.2.1 **Durable Binder.** Obtain warranties, executed in triplicate by Developer, Developer's agents, installers, and manufacturers. Provide table of contents and assemble in binder with durable plastic cover.
- 21.2.2 **Table of Contents.** All warranties shall be listed and typewritten in the sequence of the table of contents of the Project manual, with each item identified with the number and title of the specification section in which specified, and the name of product or work item.
- 21.2.3 **Index Tabs.** Each warranty shall be separated with index tab sheets keyed to the table of contents listing.
- 21.2.4 **Detail.** Provide full information, using separate typewritten sheets, as necessary. List Developer's agents, installer, and manufacturer, with name, address and telephone number of responsible principal.
- 21.2.5 **Warranty Start Date.** This date shall be left blank until the date of Final Completion.
- 21.2.6 **Signature and Notarization.** All warranties shall be signed and notarized. Signatures shall be required from Developer's construction contractor and where appropriate, the responsible subcontractor.
- 21.3 **Term of Warranties.** Unless otherwise specified or provided by law, all warranties shall extend for a term of one (1) year from the date of Final Completion.
- 21.4 **Meetings.** During the one (1) year warranty period described in Section 21.3, Developer shall meet and shall require its design consultant, construction contractor, and key subcontractors to meet, with City representatives, including the Engineering & Capital Projects Project Manager and one or more Responsible Department representatives, on a monthly basis, if requested by City. This meeting shall be held to discuss and resolve any problems City discovers in design, construction, or furnishing, fixtures, and equipment of the Project during the one (1) year warranty period.

ARTICLE XXII. DEFECTIVE WORK

- 22.1 Correction, Removal, or Replacement.** All work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to the Construction Documents, including defective work found during the warranty period, is defective (Defective Work). If within the designated warranty period, or such additional period as may be required by law or regulation, a Project is discovered to contain Defective Work, Developer shall promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work.
- 22.2 City's Right to Correct.** If circumstances warrant, including an emergency or Developer's failure to adhere to Section 22.1, City may correct, remove, or replace the Defective Work. In such circumstances, Developer shall not recover costs associated with the Defective Work and shall reimburse City for all City's costs, whether direct or indirect, associated with the correction or removal and replacement.
- 22.3 Defects Constitute Non-Reimbursable Costs.** All costs incurred by Developer or Developer's agents to remedy Defective Work are Non-Reimbursable Costs. If City has already reimbursed Developer for Defective Work, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a setoff against the amount, or to make a claim against Developer's or the construction contractor's bond if Developer has been paid in full.
- 22.4 Extension of Warranty.** When Defective Work, or damage therefrom, has been corrected, removed, or replaced during the warranty period, the one (1) year, or relevant warranty period, shall be extended for an additional one (1) year from the date of the satisfactory completion of the correction, removal, or replacement.
- 22.5 No Limitation on other Remedies.** Exercise of the remedies for Defective Work pursuant to this Article shall not limit the remedies City may pursue under this Agreement, at law, or in equity.
- 22.6 Resolution of Disputes.** If Developer and City are unable to reach agreement on disputed work, City may direct Developer to proceed with the work and compensate Developer for undisputed amounts. Payment of disputed amounts shall be as later determined by mediation or as subsequently adjudicated or established in a court of law. Developer shall maintain and keep all records relating to disputed work in accordance with Article XXIV.
- 22.7 Prior to Final Acceptance and Reimbursement to the Developer.** Where Defective Work has been identified prior to the Final Completion of a Project, Developer shall promptly, and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work. Costs incurred to remedy Defective Work are Non-Reimbursable Costs. Where Defective Work is not remedied, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a setoff against the amount paid, or make a claim against the Developer's or construction contractor's bond.

ARTICLE XXIII. MAINTENANCE OF LANDSCAPING & IRRIGATION WORK

- 23.1 Maintenance Period.** If the construction contractor is required to install or maintain landscaping and/or irrigation, Developer shall require the construction contractor to provide a maintenance period to begin on the first day after all landscape and irrigation work on each of the Projects is complete, checked, approved by City, and City has given written approval to begin the maintenance period, and shall continue until ninety (90) calendar days after the date of Final Completion or ninety (90) calendar days after the date the landscaping and irrigation is accepted, whichever is longer. The maintenance period shall be 120 calendar days if turf is seeded.
- 23.2 Maintenance Area.** Developer shall require the construction contractor to maintain all areas of each Project, including areas impacted or disturbed by the Project, until Final Completion.
- 23.3 Maintenance Required.** Developer shall require the construction contractor to conduct regular planting maintenance operations immediately after each plant is planted. Plants shall be kept in a healthy growing condition and in a visually pleasing appearance by watering, pruning, mowing, rolling, trimming, edging, fertilizing, restaking, pest and disease controlling, spraying, weeding, cleaning up and any other necessary operation of maintenance. Landscape areas shall be kept free of weeds, noxious grass and all other undesired vegetative growth and debris. Construction contractor shall replace all plants found to be dead or in an impaired condition within fourteen (14) calendar days from the date the condition is first detected. Maintenance shall also include the following: (i) filling and replanting of any low areas that may cause standing water (ii) adjusting of sprinkler head height and watering pattern, (iii) filling and recompaction of eroded areas, (iv) weekly removal of trash, litter, clippings and foreign debris, (v) inspecting plants at least twice per week, and (vi) protecting all planting areas against traffic or other potential causes of damage.
- 23.4 Landscape and Irrigation Inspection.** At the conclusion of the maintenance period, City shall inspect the landscaping and irrigation to determine the acceptability of the work, including maintenance. This inspection shall be scheduled with two (2) weeks' notice, a minimum of eighty (80) calendar days after the plant maintenance period commencement, or when Developer or Developer's contractor notifies City they are ready for the final landscape and irrigation inspection, whichever comes last. The City will notify Developer of all deficiencies revealed by the inspection before acceptance.
- 23.5 Extension of Maintenance Period.** Developer shall require the construction contractor to extend completion of the maintenance period when in City's opinion improper maintenance and/or possible poor or unhealthy condition of planted material is evident at the termination of the scheduled maintenance period. Developer shall require the construction contractor to accept responsibility for additional maintenance of the work until all of the work is completed and acceptable. Additional costs for failure to maintain landscaping during the maintenance period are Non-Reimbursable Costs.
- 23.6 Replacement.** Plants found to be dead or not in a vigorous condition, or if root balls have been damaged, within the installation, maintenance and guarantee periods, shall be

replaced within fourteen (14) calendar days of notification by City. Developer shall require the construction contractor to include, at construction contractor's expense, a timely written diagnosis of plant health by a certified arborist, should a dispute arise. An arborist's report shall indicate the reason for lack of vigor, potential remedies, if any, and an estimate of the time required to regain vigor and specified size. Plants used for replacement shall be of the same kind and size as specified and shall be furnished, planted and fertilized as originally specified, unless otherwise directed in writing by City. Developer shall require the cost of all repair work to existing improvements damaged during replacements be borne by the construction contractor. Costs of replacement are Non-Reimbursable Costs.

ARTICLE XXIV. RECORDS AND AUDITS

- 24.1 Retention of Records.** Developer, consultants, contractors, and subcontractors shall maintain data and records related to this Project and Agreement for a period of not less than five (5) years following the Effective Date of this Agreement.
- 24.2 Audit of Records.** At any time during normal business hours and as often as City deems necessary, Developer and all contractors or subcontractors shall make available to City for examination at reasonable locations within the City/County of San Diego all of the data and records with respect to all matters covered by this Agreement. Developer and all contractors or subcontractors shall permit City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement. If records are not made available within the City/County of San Diego, then Developer shall pay all City's travel-related costs to audit the records associated with this Agreement at the location where the records are maintained. All such costs are Non-Reimbursable Costs.
- 24.2.1 Costs.** Developer and Developer's agents shall allow City to audit and examine books, records, documents, and any and all evidence and accounting procedures and practices that City determines are necessary to discover and verify all costs of whatever nature, which are claimed to have been incurred, anticipated to be incurred, or for which a claim for additional compensation or for Extra Work have been submitted under this Agreement.

ARTICLE XXV. NOTICES

- 25.1 Writing.** Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing.
- 25.2 Effective Date of Notice.** Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective: (i) on personal delivery, (ii) on the second business day after mailing by certified or registered U.S. Mail, Return Receipt Requested, (iii) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, or (iv) upon documented successful transmission of facsimile.

25.3 **Recipients.** All demands or notices required or permitted to be given to City or Developer shall be delivered to all of the following:

25.3.1 Director, Public Works Department
City of San Diego
525 B Street, Suite 750 (M.S. #908A)
San Diego, California 92101
Facsimile: (619) 533-5176

25.3.2 Facilities Financing Manager
Planning, Neighborhoods and Economic Development Department
Economic Development and Project Management
City of San Diego
1010 Second Avenue, Suite 600 (M.S. #606F)
San Diego, California 92101
Facsimile: (619) 533-3687

25.3.3 Bill Ostrem
Black Mountain Ranch LLC
16010 Camino Del Sur
San Diego, CA 92127
Facsimile No.: (858) 792-7625

25.3.4 Allen Haynie
Haynie Law Group
17140 Bernardo Center Drive, Suite 354
San Diego, CA 92128
Facsimile No.: (858) 485-7707

25.4 **Change of Address(es).** Notice of change of address shall be given in the manner set forth in Article XXV.

ARTICLE XXVI. MEDIATION

26.1 **Mandatory Mediation.** If dispute arises out of, or relates to a Project or this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association (AAA) or any other neutral organization agreed upon before having recourse in a court of law.

26.2 **Mandatory Mediation Costs.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator (Mediator), and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.

26.3 Selection of Mediator. A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a “Request for Mediation” along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

26.3.1 If AAA is selected to coordinate the mediation (Administrator), within fourteen calendar days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

26.3.2 The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.

26.3.3 If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.

26.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

26.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

26.4.2 Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be “non-binding” and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

ARTICLE XXVII. MISCELLANEOUS PROVISIONS

- 27.1 **Term of Agreement.** Following the adoption of the City Council ordinance authorizing this Agreement and the subsequent execution of the same by the Parties, this Agreement shall be effective upon the date it is executed by the City Attorney in accordance with Charter section 40 (Effective Date). Unless otherwise terminated, the Agreement shall be effective until (i) the final reimbursement payment is made; or (ii) one year after the Warranty Bond for the last Project terminates, whichever is later, but not to exceed ten (10) years unless approved by City ordinance.
- 27.2 **Construction Documents.** Construction documents include, but are not limited to: construction contract, contract addenda, notice inviting bids, instructions to bidders, bid (including documentation accompanying bid and any post-bid documentation submitted prior to notice of award), the bonds, the general conditions, permits from other agencies, the special provisions, the plans, standard plans, standard specifications, reference specifications, and all modifications issued after the execution of the construction contract.
- 27.3 **Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.
- 27.4 **Gender & Number.** Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine genders, and (ii) the singular number includes the plural number.
- 27.5 **Reference to Paragraphs.** Each reference in this Agreement to a Section refers, unless otherwise stated, to a Section of this Agreement.
- 27.6 **Incorporation of Recitals.** All Recitals herein are true and correct to the Parties' best knowledge and belief, and are fully incorporated into this Agreement by reference and are made a part hereof.
- 27.7 **Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of City or Developer shall be deemed to be both covenants and conditions.
- 27.8 **Integration.** This Agreement and all Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or a written amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.
- 27.9 **Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.
- 27.10 **Drafting Ambiguities.** The Parties acknowledge they each have been fully advised by their own counsel with respect to the negotiations, terms, and conditions of this Agreement. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

- 27.11 Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.
- 27.12 Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.
- 27.13 Good Faith Performance.** The Parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement.
- 27.14 Further Assurances.** City and Developer each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.
- 27.15 Exhibits.** Each of the Exhibits referenced and attached to this Agreement is fully incorporated herein by reference.
- 27.16 Compliance with Controlling Law.** Developer shall require its consultants, contractors, subcontractors, agents, and employees to comply with all laws, statutes, resolutions, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement (and if expressly made applicable by the City Council, California Labor Code section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and preconstruction phases of Project), including inspection and land surveying work. In addition, Developer shall require its consultants, contractors, subcontractors, agents, and employees comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, resolutions, ordinances, rules, regulations or policies.
- 27.17 Hazardous Materials.** Hazardous Materials constitute any hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to Property, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601-9675), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (California Health and Safety Code sections 25100-25250.25). Developer agrees to comply with all applicable state, federal and local laws and regulations pertaining to Hazardous Materials.
- 27.18 Jurisdiction, Venue, Choice of Law, and Attorney Fees.** The venue for any suit or proceeding concerning this Agreement, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California. The prevailing Party in any such suit

or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

- 27.19 Municipal Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 27.20 Third-Party Relationships.** Nothing in this Agreement shall create a contractual relationship between City and any third-party; however, the Parties understand and agree that City, to the extent permitted by law, is an intended third-party beneficiary of all Developer's contracts, purchase orders and other contracts between Developer and third-party services. Developer shall incorporate this provision into its contracts, supply agreements and purchase orders.
- 27.21 Non-Assignment.** Except with respect to Permitted Transfers, the Developer shall not assign any or all obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without City's prior written approval. Permitted Transfers include assignments to affiliates that are under Developer's control. The term "control" as used in the immediately preceding sentence, means the power to direct the affiliate's management or the power to control the appointment or election of the board of directors or other governing body of the affiliate. Upon notification by Developer to City, Permitted Transfers are subject to the reasonable approval of documentation, by the Mayor or his designee, substantiating that the assignment is a Permitted Transfer within ten (10) Working Days. If City reserves the right to require, where deemed appropriate by the City, as a condition precedent to the completion of any Permitted Transfer, and any other assignment or transfer approved by the City, an executed assignment and assumption agreement confirming that the assignee has assumed the obligations under this Agreement. Any assignment in violation of this Section shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of City. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.
- 27.22 Successors in Interest.** This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.
- 27.23 Independent Contractors.** The Developer, any consultants, contractors, subcontractors, and any other individuals employed by Developer shall be independent contractors and not agents of City. Any provisions of this Agreement that may appear to give City any right to direct Developer concerning the details of performing the work or services under this Agreement, or to exercise any control over such performance, shall mean only that Developer shall follow the direction of City concerning the end results of the performance.
- 27.24 Approval.** Where the consent or approval of a Party is required or necessary under this Agreement, the consent or approval shall not be unreasonably withheld; however, nothing in this Section shall in any way bind or limit any future action of the City Council pertaining to this Agreement or the Project.

- 27.25 No Waiver.** No failure of either City or Developer to insist upon the strict performance by the other of any covenant, term, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.
- 27.26 Signing Authority.** The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been duly obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.
- 27.27 Remedies.** Notwithstanding any other remedies available to City at law or in equity, Developer understands that its failure to comply with the insurance requirements or other obligations required by this Agreement, and/or submitting false information in response to these requirements, may result in withholding reimbursement payments until Developer complies and/or may result in suspension from participating in future city contracts as a developer, prime contractor or consultant for a period of not less than one (1) year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three (3) years.
- 27.28 Mortgagee Rights and Obligations.** The mortgagee of a mortgage or beneficiary of a deed of trust encumbering a Project site or any part thereof and their successors and assigns shall, upon written request to City, be entitled to receive from City written notification of any default by Developer under this Agreement which has not been cured within thirty (30) Calendar Days following the date of the default. Notwithstanding Developer's default, and provided that City's prior written approval is obtained for any assignment of the obligations under this Agreement in accordance with Section 27.21, this Agreement shall not be terminated by City as to any mortgagee or beneficiary to whom notice is to be given and to which either of the following is true:
- 27.28.1 The mortgagee or beneficiary cures any default by Developer within thirty (30) Calendar Days after notice of default, or
- 27.28.2 As to defaults requiring title or possession of the Project site or any portion thereof to effectuate a cure: (i) the mortgagee/beneficiary agrees in writing, within thirty (30) Calendar Days after receipt from City of the written notice of default, to perform Developer's obligations under this Agreement; (ii) the mortgagee/beneficiary commences foreclosure proceedings to reacquire title to the Project site or any part thereof within said sixty (60) Calendar Days and thereafter diligently pursues such foreclosure to completion; and (iii) the mortgagee/beneficiary promptly cures such default after obtaining title or possession.

No mortgagee or beneficiary shall have an obligation or duty under this Agreement to perform the obligations of Developer or to guarantee such performance. In the event that

a mortgagee or beneficiary elects to receive reimbursement in accordance with this Agreement, the mortgagee or beneficiary shall be required to assume and perform the obligations or other affirmative covenants of Developer under this Agreement

IN WITNESS WHEREOF, this agreement is executed by the City of San Diego, acting by the through its Mayor, pursuant to Ordinance No. _____, authorizing such execution, and by Developer.

This Agreement was approved as to form and content by the City Attorney this 20th of November, 2014, and this date shall constitute the Effective Date of this Agreement.

THE CITY OF SAN DIEGO, a Municipal Corporation

Dated: 11.5.14

By: 

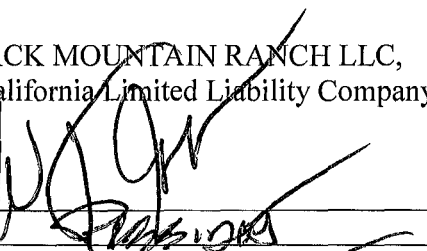

Approved as to form:
JAN I. GOLDSMITH, City Attorney

Dated: 11/20/14

By: 

BLACK MOUNTAIN RANCH LLC,
A California Limited Liability Company

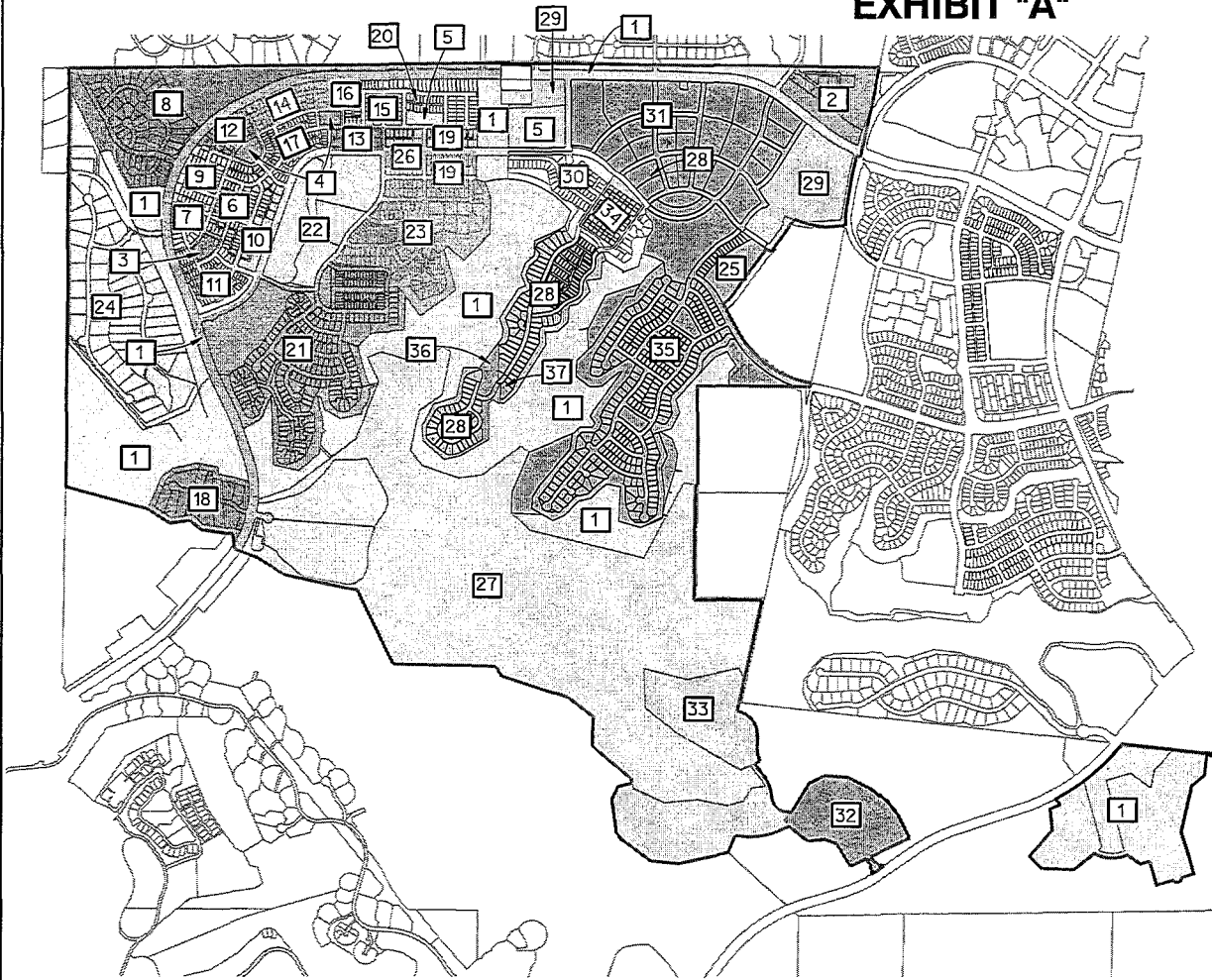
Dated: 6/2/14

By: 
Its: 

By: William J. O'Brien

EXHIBIT "A"

SHEET 1 OF 1



- 1 PARCELS 1, 2, 13, 17, 21, 22, 24, 25, 'B', 'C', & 'F' (OR PORTIONS THEREOF) OF PM 18504
- 2 PM 19273
- 3 LOT "A" OF MAP 14879
- 4 PORTIONS OF MAP 14880
- 5 MAP 15032
- 6 MAP 15076
- 7 MAP 15082
- 8 MAP 15090
- 9 MAP 15093
- 10 MAP 15094
- 11 MAP 15095
- 12 MAP 15099
- 13 MAP 15100
- 14 MAP 15123
- 15 MAP 15148
- 16 MAP 15149
- 17 MAP 15150
- 18 MAP 15151
- 19 PORTIONS OF MAP 15164
- 20 LOT "A" OF MAP 15165
- 21 MAP 15207
- 22 MAP 15304
- 23 MAP 15327
- 24 MAP 15328
- 25 PARCEL 2 OF PM 20146
- 26 MAP 15537
- 27 PM 20877
- 28 MAP 15875
- 29 PARCELS 1, 2 & 3 of PM 21002
- 30 MAP 15908
- 31 MAP 15919
- 32 MAP 15923
- 33 MAP 15924
- 34 MAP 15950
- 35 MAP 15951
- 36 PM 21088
- 37 PM 21089

RICK ENGINEERING COMPANY
 5620 FRIARS ROAD J. 16757
 SAN DIEGO, CA 92110
 619.291.0707
 (FAX)619.291.4165

rickengineering.com

San Diego Riverside Sacramento Orange Phoenix Tucson

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EXHIBIT "B"

1. Parcels 1, 2, 6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, "B", "C", "D", "E" and "F" of Parcel Map 18504 in the City of San Diego, County of San Diego, State of California according to Map thereof filed in the Office of the County Recorder of San Diego County July 18, 2000.

Excepting therefrom:

Any portion lying within:

- a. Black Mountain Ranch North Village Unit No. 1 according to Map thereof No. 14879 filed in said County Recorder's Office September 17, 2004;
- b. Black Mountain Ranch North Village Unit No. 2 according to Map thereof No. 14880 filed in said County Recorder's Office September 17, 2004;
- c. Black Mountain Ranch West Clusters Unit No. 1 according to Map thereof No. 15151 filed in said County Recorder's Office October 21, 2005;
- d. Black Mountain Ranch North Village Unit No. 3 according to Map thereof No. 15207 filed in said County Recorder's Office December 16, 2005;
- e. Black Mountain Ranch North Village Unit No. 4 according to Map thereof No. 15304 filed in said County Recorder's Office April 4, 2006;
- f. Black Mountain Ranch North Village Unit No. 5 according to Map thereof No. 15327 filed in said County Recorder's Office April 28, 2006;
- g. Black Mountain Ranch West Clusters Unit 2 according to Map thereof No. 15328 filed in said County Recorder's Office April 28, 2006;
- h. Parcel Map 20146 filed in said County Recorder's Office November 17, 2006;
- i. Parcel Map 20877 filed in said County Recorder's Office April 15, 2011;
- j. Black Mountain Ranch North Village East Unit No. 14 according to Map thereof No. 15875 filed in said County Recorder's Office July 26, 2012;
- k. Black Mountain Ranch East Clusters Unit No. 1 according to Map thereof No. 15923 filed in said County Recorder's Office June 26, 2013;
- l. Black Mountain Ranch East Clusters Unit No. 2 according to Map thereof No. 15924 filed in said County Recorder's Office June 26, 2013;
- m. Black Mountain Ranch Units 16-19 according to Map thereof No. 15951 filed in said County Recorder's Office October 31, 2013.

Together with:

2. Parcel Map 19273 in the City of San Diego, County of San Diego, State of California according to Map thereof filed in the Office of the County Recorder of San Diego County July 11, 2003.

3. Lot "A" of Black Mountain Ranch North Village Unit No. 1 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 14879 filed in the Office of the County Recorder of San Diego County September 17, 2004.
4. All of Black Mountain Ranch North Village Unit No. 2 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 14880 filed in the Office of the County Recorder of San Diego County September 17, 2004.

Excepting therefrom:

Any portion lying within Black Mountain Ranch North Village Unit No. 2A according to Map thereof No. 15099 filed in said County Recorder's Office September 13, 2005, Black Mountain Ranch North Village Unit No. 2B according to Map thereof No. 15100 filed in said County Recorder's Office September 13, 2005, Black Mountain Ranch North Village Unit No. 2E according to Map thereof No. 15123 filed in said County Recorder's Office September 20, 2005 and Black Mountain Ranch North Village Unit No. 2D according to Map thereof No. 15150 filed in said County Recorder's Office October 21, 2005.

Together with:

5. All of Black Mountain Ranch North Village Unit No. 9 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15032 filed in the Office of the County Recorder of San Diego County June 17, 2005.

Excepting therefrom:

Any portion lying within Black Mountain Ranch North Village Unit No. 9A according to Map thereof No. 15148 filed in said County Recorder's Office October 21, 2005, Black Mountain Ranch North Village Unit No. 9B according to Map thereof No. 15164 filed in said County Recorder's Office November 1, 2005, Black Mountain Ranch North Village Unit No. 9C according to Map thereof No. 15165 filed in said County Recorder's Office November 1, 2005.

Together with:

6. All of Black Mountain Ranch North Village Unit No. 1C in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15076 filed in the Office of the County Recorder of San Diego County August 23, 2005.
7. All of Black Mountain Ranch North Village Unit No. 1E in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15082 filed in the Office of the County Recorder of San Diego County August 26, 2005.
8. All of Black Mountain Ranch North Cluster in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15090 filed in the Office of the County Recorder of San Diego County September 2, 2005.

9. All of Black Mountain Ranch North Village Unit No. 1A in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15093 filed in the Office of the County Recorder of San Diego County September 6, 2005.
10. All of Black Mountain Ranch North Village Unit No. 1B in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15094 filed in the Office of the County Recorder of San Diego County September 6, 2005.
11. All of Black Mountain Ranch North Village Unit No. 1D in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15095 filed in the Office of the County Recorder of San Diego County September 7, 2005.
12. All of Black Mountain Ranch North Village Unit No. 2A in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15099 filed in the Office of the County Recorder of San Diego County September 13, 2005.
13. All of Black Mountain Ranch North Village Unit No. 2B in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15100 filed in the Office of the County Recorder of San Diego County September 13, 2005.
14. All of Black Mountain Ranch North Village Unit No. 2E in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15123 filed in the Office of the County Recorder of San Diego County September 20, 2005.
15. All of Black Mountain Ranch North Village Unit No. 9A in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15148 filed in the Office of the County Recorder of San Diego County October 21, 2005.
16. All of Black Mountain Ranch North Village Unit No. 2C in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15149 filed in the Office of the County Recorder of San Diego County October 21, 2005.
17. All of Black Mountain Ranch North Village Unit No. 2D in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15150 filed in the Office of the County Recorder of San Diego County October 21, 2005.
18. All of Black Mountain Ranch West Clusters Unit No. 1 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15151 filed in the Office of the County Recorder of San Diego County October 21, 2005.
19. All of Black Mountain Ranch North Village Unit No. 9B in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15164 filed in the Office of the County Recorder of San Diego County November 1, 2005.

Excepting therefrom:

Any portion lying within Black Mountain Ranch North Village Unit No. 9F according to Map thereof No. 15537 filed in said County Recorder's Office April 15, 2007.

Together with:

20. All of Black Mountain Ranch North Village Unit No. 9C in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15165 filed in the Office of the County Recorder of San Diego County November 1, 2005.
21. All of Black Mountain Ranch North Village Unit No. 3 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15207 filed in the Office of the County Recorder of San Diego County December 16, 2005.
22. All of Black Mountain Ranch North Village Unit No. 4 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15304 filed in the Office of the County Recorder of San Diego County April 4, 2006.
23. All of Black Mountain Ranch North Village Unit No. 5 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15327 filed in the Office of the County Recorder of San Diego County April 28, 2006.
24. All of Black Mountain Ranch West Clusters Unit 2 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15328 filed in the Office of the County Recorder of San Diego County April 28, 2006.
25. All of Parcel Map 20146 in the City of San Diego, County of San Diego, State of California according to Map thereof filed in the Office of the County Recorder of San Diego County November 17, 2006.

Excepting therefrom:

Any portion lying within Black Mountain Ranch North Village East Unit No. 14 according to Map thereof No. 15875 filed in said County Recorder's Office July 26, 2012, Black Mountain Ranch Units 16-19 according to Map thereof No. 15951 filed in said County Recorder's Office October 31, 2013 and Parcel Map 21002 filed in said County Recorder's Office September 21, 2012.

Together with:

26. All of Black Mountain Ranch North Village Unit No. 9F in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15537 filed in the Office of the County Recorder of San Diego County April 5, 2007.
27. All of Parcel Map 20877 in the City of San Diego, County of San Diego, State of California according to Map thereof filed in the Office of the County Recorder of San Diego County April 15, 2011.

28. All of Black Mountain Ranch North Village East Unit No. 14 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15875 filed in the Office of the County Recorder of San Diego County July 26, 2012.

Excepting therefrom:

Any portion lying within Black Mountain Ranch Del Sur Town Center in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15919 filed in said County Recorder's Office June 3, 2013, Resubdivision of Black Mountain Ranch North Village East Unit No. 14 (Motor Courts) according to Map thereof No. 15950 filed in said County Recorder's Office October 31, 2013, Parcel Map 21088 filed in said County Recorder's Office November 12, 2013 and Parcel Map 21089 filed in said County Recorder's Office November 12, 2013.

Together with:

29. Parcels 1, 2 & 3 of Parcel Map 21002 in the City of San Diego, County of San Diego, State of California according to Map thereof filed in the Office of the County Recorder of San Diego County September 21, 2012.

30. All of Resubdivision of Black Mountain Ranch North Village East Unit No. 14 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15908 filed in the Office of the County Recorder of San Diego County March 25, 2013.

Excepting therefrom:

Any portion lying within Resubdivision of Black Mountain Ranch North Village East Unit No. 14 (Motor Courts) in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15950 filed in said County Recorder's Office October 31, 2013.

Together with:

31. All of Black Mountain Ranch Del Sur Town Center in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15919 filed in the Office of the County Recorder of San Diego County June 3, 2013.

Excepting therefrom:

Any portion lying within Black Mountain Ranch Units 16-19 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15951 filed in said County Recorder's Office October 31, 2013.

Together with:

32. All of Black Mountain Ranch East Clusters Unit No. 1 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15923 filed in the Office of the County Recorder of San Diego County June 26, 2013.
33. All of Black Mountain Ranch East Clusters Unit No. 2 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15924 filed in the Office of the County Recorder of San Diego County June 26, 2013.
34. All of Resubdivision of Black Mountain Ranch North Village East Unit No. 14 (Motor Courts) in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15950 filed in the Office of the County Recorder of San Diego County October 31, 2013.
35. All of Black Mountain Ranch Units 16-19 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15951 filed in the Office of the County Recorder of San Diego County October 31, 2013.
36. All of Parcel Map 21088 in the City of San Diego, County of San Diego, State of California according to Map thereof filed in the Office of the County Recorder of San Diego County November 12, 2013.

Excepting therefrom:

Any portion lying within Parcel Map 21089 filed in said County Recorder's Office November 12, 2013.

Together with:

37. All of Parcel Map 21089 in the City of San Diego, County of San Diego, State of California according to Map thereof filed in the Office of the County Recorder of San Diego County November 12, 2013.

Attached hereto is a Drawing labeled Exhibit "B" and this reference made a part hereof.

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**EXHIBIT C
Project Descriptions and Estimated Costs**

BMR PFFP Project	TH PFFP Project	Project Description	BMR FBA SHARE	DEL MAR HIGHLANDS ESTATES	FLOWER HILL MALL	OTHERS*	TOTAL PROJECT ESTIMATE
T-32.1	-----	Widen Via de la Valle to four lanes between El Camino Real and San Andres Dr	\$7,263,911	\$680,000	\$1,010,298	\$2,803,752	\$11,757,961

1 * Others funding includes property owners within Subarea II with street frontage on Via de la Valle.

CONSULTANTS

Civil Engineering - Rick Engineering
 Landscape Architecture - Wimmer Yamada Caughey
 Environmental - RECON
 Geotechnical - Geocon
 Traffic/Transportation - KOA Corporation
 Project Administration - Q2 Services

BMR PFFP Project	TH PFFP Project	Project Description	BMR FBA SHARE	TOTAL PROJECT ESTIMATE
T-47.3	-----	Construct two lanes of Paseo Del Sur between Potomac Ridge Rd and Camino Del Sur	\$1,595,972	\$1,595,972

2

CONSULTANTS

Civil Engineering - Rick Engineering
 Landscape Architecture - Wimmer Yamada Caughey
 Dry Utilities - Utility Specialist California Inc

BMR PFFP Project	TH PFFP Project	Project Description	TH FBA SHARE	TOTAL PROJECT ESTIMATE
T-22.2	T-4.4	Widen Camel Valley Rd to four lanes between Camino Del Sur and Black Mountain Rd	\$1,774,058	\$1,774,058

3

CONSULTANT - Project Design Consultants

BMR PFFP Project	TH PFFP Project	Project Description	BMR FBA SHARE	TOTAL PROJECT ESTIMATE
T-63	-----	Construct two lanes of Nicole Ridge Rd between Potomac Ridge Rd and Camino San Bernardo	\$862,150	\$862,150

4

CONSULTANTS

Civil Engineering - Rick Engineering
 Landscape Architecture - Wimmer Yamada Caughey
 Dry Utilities - Utility Specialist California Inc

BMR PFFP Project	TH PFFP Project	Project Description	TH FBA SHARE**	TOTAL PROJECT ESTIMATE
-----	T-3.1B*	Design plans only (no construction) for four lanes of Camino Del Sur between Torrey Santa Fe Rd and Dormouse Rd.	\$724,500	\$724,500

5

* Also includes design plans for T-3.1A, T-3.2A, T-3.2B, T-5.1, & T-5.2

** This is the design costs only.

CONSULTANT - Latitude 33

**EXHIBIT C-1
ESTIMATED COST OF PROJECT (T-32.1)**

(I) PROJECT COSTS

A. Soft Costs

Civil Engineering	1,300,000
Soils Engineering	150,000
Landscape Architect	30,000
Environmental Consultants	350,000
Bonding Costs	800,000
Other Consultants	100,000

B. Improvement Costs

Grading & Drainage	2,336,760
Pavement & Curb & Gutter	3,268,330
Traffic Control	235,404
Traffic Signals & Street Lights & Signs	171,269
Retaining Walls & Guard Rails	1,344,019
Landscaping	375,923

(II) ADMINISTRATIVE COSTS

5% of Project Costs	523,085
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(III) PROJECT CONTINGENCY

10% of Improvement Costs	<u>773,171</u>
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TOTAL SUBDIVIDER COST	<u><u>11,757,961</u></u>
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(0)

EXHIBIT C-2
ESTIMATED COST OF PROJECT (T-47.3)

(I) PROJECT COSTS

A. Soft Costs

Civil Engineering	100,000
Soils Engineering	40,000
Landscape Architect	20,000
Bonding Costs	23,584
Other Consultants	44,899

B. Improvement Costs

Pavement	446,456
Curb & Gutter	66,993
Curb Ramps & Sidewalk	249,316
Street Lights	120,032
Traffic Signals & Street Lights & Signs	296,390

(II) ADMINISTRATIVE COSTS

5% of Project Costs	70,383
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(III) PROJECT CONTINGENCY

10% of Improvement Costs	<u>117,919</u>
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TOTAL SUBDIVIDER COST	<u><u>1,595,972</u></u>
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(0)

EXHIBIT C-3
ESTIMATED COST OF PROJECT (T-22.2)

(I) PROJECT COSTS

A. Soft Costs

Civil Engineering	150,000
Soils Engineering	30,000
Landscape Architect	20,000
Bonding Costs	25,560
Other Consultants	64,279

B. Improvement Costs

Grading & Drainage	27,000
Pavement & Curb & Gutter	1,210,886
Traffic Control	40,137

(II) ADMINISTRATIVE COSTS

5% of Project Costs	78,393
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(III) PROJECT CONTINGENCY

10% of Improvement Costs	<u>127,802</u>
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TOTAL SUBDIVIDER COST	<u><u>1,774,058</u></u>
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(0)

EXHIBIT C-4
ESTIMATED COST OF PROJECT (T-63)

(I) PROJECT COSTS

A. Soft Costs

Civil Engineering	90,000
Soils Engineering	32,331
Landscape Architect	30,000
Bonding Costs	11,200
Other Consultants	44,231

B. Improvement Costs

Pavement & Curb/Gutter	560,000
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(II) ADMINISTRATIVE COSTS

5% of Project Costs	38,388
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(III) PROJECT CONTINGENCY

10% of Improvement Costs	<u>56,000</u>
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TOTAL SUBDIVIDER COST	<u><u>862,150</u></u>
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0

**EXHIBIT C-5
ESTIMATED COST OF PROJECT (T-3.1B)**

(I) PROJECT COSTS

A. Soft Costs

Civil Engineering	500,000
Soils Engineering	100,000
Landscape Architect	50,000
Bonding Costs	-
Other Consultants	40,000

B. Improvement Costs

Pavement & Curb/Gutter	None
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(II) ADMINISTRATIVE COSTS

5% of Project Costs	34,500
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(III) PROJECT CONTINGENCY

10% of Improvement Costs	<u>-</u>
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TOTAL SUBDIVIDER COST	724,500
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(IV) CITY ADMINISTRATIVE COSTS

5% of Improvement Costs	<u>-</u>
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TOTAL ROAD PROJECT COSTS	<u><u>724,500</u></u>
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EXHIBIT D

Project Schedule

- I. Pull Permit & Post Bonds (if needed)

- II. Submit Invitation to Bid, Bid Proposal, Master Subcontract Agreement, Work Agreement and Proposed Advertisement to the Public Works Department (Allow 2 Weeks for City Approval)

- III. Issue Public Advertisement

- IV. Pre-Bid Meeting (approximately 1 week after Public Advertisement)

- V. Public Bid Opening (Approximately 4 weeks after Public Advertisement)

- VI. Issue Contract

- VII. Preconstruction Meeting (Approximately 1 week before construction start)

EXHIBIT E

Project Schedule Obligations and Components

1. **Developer's Obligation.** To the extent required by City, Developer shall provide, coordinate, revise, and maintain the Project Schedule for all phases of the Project.
 - A. *Project Initiation.* During Project initiation and design phases, Developer shall submit an updated Project Schedule on a quarterly basis to City for approval.
 - B. *Construction Phase.* During Construction, Developer shall submit an updated Project Schedule monthly to City and shall include:
 - i. Forecast Data with the intended plan for the remainder of the contract duration.
 - ii. Actual Data with indications of when and how much Work and/or Services was performed (% complete)
 - iii. Logic changes or other changes required to maintain the Project Schedule
2. **Detail and Format.** Unless otherwise directed by City, the Project Schedule shall include all phases of the Project. It shall be in a precedence diagram format, plotted on a time-scaled calendar, detailed to activity level, and shall include:
 - A. Identification of *design and construction activities and their sequence:*
 - i. Work shall be divided into a minimum of 5 activities.
 - ii. Activities shall not exceed 21 calendar days in duration or \$50,000 in value, except long lead procurement and submittal activities or those accepted by City.
 - iii. Each Activity shall be assigned a budget value in accordance with Agreement requirements and activity descriptions.
 - a. The sum of all budget values assigned shall equal Estimated Cost.
 - b. Each construction activity shall indicate the estimated labor days and materials quantities required.
 - iv. Incorporate specific activity and time requirements.
 - v. Include 10 weather/delay days, commonly known as "rain days." The late finish date shall be the fully elapsed Contract Time.
 - B. *Float Time.* Show activities on their early dates with corresponding Total Float Time noted beside them.
 - i. Project Schedule shall not include more than 40 calendar days of Float Time absent City approval.
 - C. *Milestones.* Show Milestones with beginning and ending dates.

- i Milestones shall include schematic plans, 60% design, 90% design, 100% design; bid opening; Notice to Proceed; start construction; end construction; and Project Completion and Acceptance.
 - D. *Relationships.* Show all appropriate definable relationships with separate explanation of constraints and each start-start, finish-finish, or lag relationship. Relate all activities to each other and to the first appropriate Milestone.
 - E. *Procurement.* Show the procurement of major equipment and materials.
 - F. *Submittals.* Include all submittals required and identify the planned submittal dates, adequate review time, and the dates acceptance is required to support design and construction.
3. **Submittal.** Project Schedule shall be submitted to City on a computer disk in PRIMAVERA Project Planner P3e/c Release Version 4.1 SP1 software in conformance with Construction Plans & Scheduling by AGC or America, or other software specifically designated by City.

EXHIBIT F

Meeting Requirements

1. **Preconstruction Meeting.** Developer shall conduct a preconstruction meeting with its officers, agents and employees and City. The purpose of this meeting is to discuss: (1) the Agreement conditions, (2) Scope of Work clarifications, and (3) City policies, inspection requirements, and procedures.
 - A. *Attendance.* Developer shall ensure that its construction contractor and major subcontractors, the Project Superintendent, and the City Inspection Team as set forth in the Agreement, and all other persons necessary as determined by Developer or City attend the preconstruction meeting.
 - B. *Minutes.* Developer shall take corresponding meeting minutes and distribute copies to all attendees.
2. **Progress Meetings.** Developer shall conduct weekly progress meetings at dates and times scheduled at the preconstruction meeting with the following necessary parties: Developer's Construction Superintendent, Developer's Project Manager, Developer's Design Consultant, City representatives including Responsible Department representatives, the Engineering and Capital Projects Project Manager and the Resident Engineer.
 - A. *As-Builts.* Developer shall bring updated As-Builts and verify that the latest changes have been made.
 - B. *Special Meetings.* Special meetings shall occur at Project phases as outlined in **Exhibit F**.
 - C. *Rescheduling.* Progress and Special Meetings may be rescheduled if rescheduled meeting times are convenient for all necessary parties, and Developer has given no less than seven calendar days prior written notice of the rescheduled meeting.
3. **Agenda.** All meetings shall include at a minimum the agenda identified in **Exhibit G**.

EXHIBIT G

Preconstruction, Progress, & Special Meeting Agenda

1. Preconstruction. The issues below should be made part of the Preconstruction Meeting Agenda, provided however that the agenda may deviate depending on the circumstances that exist at that time.
 - 1.1 Permits and Utility Issues, including telephone, cable, gas, and electric. RE to announce to Developer that franchise companies may be working in the area of the Project and that coordination regarding such a situation may need to be done.
 - 1.2 Establish parking areas for construction employees and possibly patrons/others.
 - 1.3 Developer's payment procedure and forms.
 - 1.4 Format for Request for Proposals (RFPs) using the sample in the back of the contract documents.
 - 1.5 Collection of emergency numbers for off-hour emergencies from the prime (with an alternate contact person).
 - 1.6 Distribution and discussion of the construction schedule.
 - 1.7 Procedure for maintaining the Project record documents.
 - 1.8 Distribution of the Second Opinion Option Form.
 - 1.9 Designation of persons authorized to represent and sign documents for the RE and Developer and the respective communication procedures between parties.
 - 1.10 Safety and first aid procedures including designation of Developer's safety officer.
 - 1.11 Temporary barricades, fencing, signs, and entrance and exit designations, etc.
 - 1.12 Testing laboratory or agency and testing procedures.
 - 1.13 Establish schedule for progress meetings.
 - 1.14 Procedure for changes in work requested by Developer, notice to RE, timing, etc.
 - 1.15 Procedure for changes in work requested by City.
 - 1.16 Public safety.
 - 1.17 Housekeeping procedures and Project site maintenance.
 - 1.18 Protection and restoration of existing improvements.
 - 1.19 Sanitation, temporary lighting, power, water, etc.
 - 1.20 Procedure for encountering hazardous substances.
 - 1.21 Any items requested by attendees of preconstruction meeting/open discussion.

2. Progress Meetings. The issues below should be made part of the Progress Meeting Agenda, provided however that the agenda may deviate depending on the circumstances that exist at that time.
 - 2.1 Review progress of construction since the previous meeting.
 - 2.2 Discuss field observations, problems, conflicts, opportunities, etc.
 - 2.3 Discuss pre-planning opportunities.
 - 2.4 Identify problems that impede planned progress and develop corrective measures as required to regain the projected schedule; revise the schedule if necessary.
 - 2.5 Discuss Developer's plan for progress during the next construction period and the corresponding inspections necessary.
 - 2.6 Discuss submittal status.
 - 2.7 Discuss request for information (RFI) status.
 - 2.8 Progress of schedule.
 - 2.9 Disputed items.
 - 2.10 Non-conformance/non-compliance items.
 - 2.11 New business of importance from any member of the meeting.
 - 2.12 Deferred approvals and their coordination.
 - 2.13 Discuss request for proposals, change orders, and progress payment status.

3. Special Meetings.

- 3.1 Grading. Prior to grading the site, the RE shall call a grading mini-preconstruction meeting. This meeting applies when surveying is being supplied by the City. The superintendent, the Developer's appropriate subcontractors, the RE, the City's survey crew, and any appropriate consultants (if deemed necessary by the RE) will attend. Unless otherwise noted, the agenda will be to coordinate the staking, reference markers, bearings, various site conditions, etc. as defined in the contract documents and any necessary coordination of scope or scheduling between the respective parties.
- 3.2 Roofing. Upon completion of the roofing structural diaphragm and prior to installing flashing, and/or any other roofing materials, the RE shall call a roof mini-preconstruction meeting. The superintendent, the Developer's appropriate contractors, the RE, any City representative deemed appropriate by the RE, the roof suppliers manufacturer's representative, and any appropriate consultants (if deemed necessary by the RE) will attend. The agenda will be to coordinate the flashing, caulking, sealing, and different roofing materials and/or contractors on site with the various field conditions.
- 3.3 Landscaping. Upon completion of the grading and prior to the installation of any landscaping equipment, supplies, etc., the RE shall call a landscaping mini-preconstruction meeting. The superintendent, the Developer's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) will attend. The agenda will be to coordinate all landscape materials, plant and irrigation coverage, visual planting procedures, etc. and/or contractors on site with the various field conditions.
- 3.4 Mini-Preconstruction Meeting. Prior to the installation of any mechanical, electrical, plumbing, and sprinkler system equipment, the Developer shall call a mini-preconstruction meeting. The superintendent, the Developer's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) will attend. The intent of this meeting is to ensure that the prime contractor is adequately coordinating the space of the facility so as to not impede the visual integrity of the overall product.
- 3.5 Other. Upon appropriate notice to other parties, the RE may call special meetings at times agreed to by all parties involved.

EXHIBIT H

Procedure for Processing Change Orders

1. **Forms Required.** All Change Orders shall be in writing on the appropriate City form and must be approved or rejected by City in writing as provided in Section 3, below, and delivered to Developer.
2. **Written Approval of Change Orders.** Change Orders that will not result in an increase in the Estimated Cost may be approved by the RE. If a requested Change Order would result in an increase in the Estimated Cost, approval of the Change Order shall require City Council approval.
3. **Process for Approval of Change Orders.** Developer shall notify the RE in writing of the need for a Change Order. A Change Order must indicate whether the change will result in any change to the Estimated Cost, Project Schedule, or Project quality established during the design and submittal review process.
 - 3.1 ***Resident Engineer Approval.*** If the Change Order request does not result in an increase in the Estimated Cost, the RE shall either approve or reject the Change Order in writing within fourteen (14) calendar days of receiving Developer's written notice, provided Developer has submitted complete documentation substantiating the need for such Change Order. If City fails to respond to Developer's written notice within the fourteen (14) calendar days, the Change Order request shall automatically be deemed denied.
 - 3.2 ***City Council Approval.*** For Change Orders not subject to Section 3.1, above, City Council approval is required. In such cases, once a Change Order is preliminarily approved by the appropriate City staff, City staff shall process the Change Order along with any required amendments to the Financing Plan and this Agreement as a 1472 (Request for Council Action). At a hearing on such Request for Council Action, City Council may either approve or reject such Change Orders. Council Approval shall not be subject to the fourteen (14) calendar day response time set forth above in Section 3.1. Furthermore, nothing in this Agreement shall compel the City Council to take any particular action.

Exhibit I

Equal Benefits Ordinance Certification of Compliance

**EQUAL BENEFITS ORDINANCE
CERTIFICATION OF COMPLIANCE**



For additional information, contact:
CITY OF SAN DIEGO
EQUAL BENEFITS PROGRAM
 202 C Street, MS 9A, San Diego, CA 92101
 Phone (619) 533-3948 Fax (619) 533-3220

COMPANY INFORMATION		
Company Name:	Contact Name:	
Company Address:	Contact Phone:	
Contact Email:		
CONTRACT INFORMATION		
Contract Title:	Start Date:	
Contract Number (if no number, state location):	End Date:	
SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS		
<p>The Equal Benefits Ordinance [EBO] requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply:</p> <ul style="list-style-type: none"> ■ Contractor shall offer equal benefits to employees with spouses and employees with domestic partners. <ul style="list-style-type: none"> ▪ Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance programs; credit union membership; or any other benefit. ▪ Any benefit not offered to an employee with a spouse, is not required to be offered to an employee with a domestic partner. ■ Contractor shall post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods. ■ Contractor shall allow City access to records, when requested, to confirm compliance with EBO requirements. ■ Contractor shall submit <i>EBO Certification of Compliance</i>, signed under penalty of perjury, prior to award of contract. <p>NOTE: This summary is provided for convenience. Full text of the EBO and its Rules are posted at www.sandiego.gov/administration.</p>		
CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION		
<p>Please indicate your firm's compliance status with the EBO. The City may request supporting documentation.</p> <p><input type="checkbox"/> I affirm compliance with the EBO because my firm (<i>contractor must select one reason</i>):</p> <ul style="list-style-type: none"> <input type="checkbox"/> Provides equal benefits to spouses and domestic partners. <input type="checkbox"/> Provides no benefits to spouses or domestic partners. <input type="checkbox"/> Has no employees. <input type="checkbox"/> Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired. <p><input type="checkbox"/> I request the City's approval to pay affected employees a cash equivalent in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.</p> <p>It is unlawful for any contractor to knowingly submit any false information to the City regarding equal benefits or cash equivalent associated with the execution, award, amendment, or administration of any contract. [San Diego Municipal Code §22.4307(a)]</p> <p>Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by the City.</p>		
_____ Name/Title of Signatory	_____ Signature	_____ Date

FOR OFFICIAL CITY USE ONLY		
Receipt Date:	EBO Analyst:	<input type="checkbox"/> Approved <input type="checkbox"/> Not Approved – Reason:

rev 02/15/2011

EXHIBIT J

Consultant Provisions

1. **Third Party Beneficiary.** The City of San Diego is an intended third party beneficiary of this contract. In addition, it is expected that upon completion of design and payment in full to Consultant by Developer, the City will become the owner of the Project design and work products, and City shall be entitled to enforce all of the provisions of this contract as if it were a party hereto. Except as expressly stated herein, there are no other intended third party beneficiaries of this contract.
2. **Competitive Bidding.** Consultant shall ensure that all design plans and specifications prepared, required, or recommended under this Agreement allow for competitive bidding. Consultant shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City of San Diego. Consultant shall submit this written justification to the City of San Diego prior to beginning work on such plans or specifications. Whenever Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.
3. **Professional Services Indemnification.** Other than in the performance of design professional services which shall be solely as addressed in Sections 4 and 5 below, to the fullest extent permitted by law, Consultant shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Consultant or its subcontractors, agents, subagents and consultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by Consultant, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties. As to Consultant's professional obligations, work or services involving this Project, Consultant agrees to indemnify and hold harmless the City of San Diego, and its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney's fees, losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of Consultant or Consultant's employees, agents or officers. This indemnity obligation shall apply for the entire time that any third party can make a claim against, or sue the City of San Diego for liabilities arising out of Consultant's provision of services under this Agreement.
4. **Indemnification for Design Professional Services.** To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, and/or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.
5. **Design Professional Services Defense.** Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.
6. **Enforcement Costs.** Consultant agrees to pay any and all reasonable costs the City of San Diego may incur to enforce the indemnity and defense provisions set forth in this Agreement.

7. **Professional Liability Insurance.** For all of Consultant's employees who are subject to this Agreement, Consultant shall keep in full force and effect, errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate. Consultant shall ensure both that (1) this policy's retroactive date is on or before the date of commencement of the work to be performed under this Agreement; and (2) this policy has a reporting period of three (3) years after the date of completion or termination of this Agreement. Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City of San Diego's exposure to loss.
8. **Commercial General Liability [CGL] Insurance.** Consultant shall keep in full force and effect, during any and all work performed in accordance with this Agreement, all applicable CGL insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence, subject to an annual aggregate of two million dollars (\$2,000,000) for general liability, completed operations, and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.
9. **Insurance Policy Requirements.** Except for professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. Additional insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City of San Diego. Further, all insurance required by express provision of this agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VII" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City of San Diego. The policies cannot be canceled, non-renewed, or materially changed except after thirty (30) calendar days prior written notice by Consultant or Consultant's insurer to the City of San Diego by certified mail, as reflected on an endorsement that shall be submitted to the City of San Diego, except for non-payment of premium, in which case ten (10) calendar days notice must be provided. Before performing any work in accordance with this Agreement, Consultant shall provide the City of San Diego with all Certificates of Insurance accompanied with all endorsements.
10. **Workers Compensation.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by the State of California, the Consultant shall keep in full force and effect, a Workers Compensation policy. That policy shall provide a minimum of one million dollars (\$1,000,000) of employers liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City of San Diego and its respective elected officials, officers, employees, agents and representatives.
11. **Compliance Provision.** Consultant agrees, at its sole cost and expense, to perform all design, contract administration, and other services in accordance with all applicable laws, regulations, and codes, including, but not limited to, the Americans with Disabilities Act of 1990 [ADA] and title 24 of the California Code of Regulations as defined in Section 18910 of the California Health and Safety Code [Title 24]. Further, Consultant is responsible as designer and employer to comply with all parts of the ADA and Title 24.
12. **Maintenance of Records.** Consultant shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of services for the Project, throughout the performance of the services and for a period of five (5) years following completion of the services for the Project. Consultant further agrees to allow the City of San Diego to inspect, copy and audit such books, records, documents and other evidence upon reasonable written notice. In addition, Consultant agrees to provide the City of San Diego with complete copies of final Project design and construction plans and Project cost estimate.

EXHIBIT K

Design and Construction Standards

1. **Laws.** Developer shall comply with all local, City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including, but not limited to, the following:
 - A. *Permits.* Development Services Department permits, hazardous material permits.
 - B. *Building Codes.* State and local Building Codes.
 - C. *The Americans with Disabilities Act [ADA] and Title 24 of the California Building Code* [Title 24]. It is Developer's sole responsibility to comply with all ADA and Title 24 regulations. See Developer Certification attached as **Exhibit H**.
 - D. *Environmental.* Developer shall complete all environmental measures required by the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and the local jurisdiction, including but not limited to, implementation of mitigation measures, and conducting site monitoring.
 - E. *Air, Water, and Discharge.* Developer shall comply with the Clean Air Act of 1970, the Clean Water Act, and San Diego Municipal Code Chapter 4, Article 3, Division 3 (Stormwater Management and Discharge Control).
 - F. *ESBSSA.* Developer shall comply with the Essential Services Building Seismic Safety Act, SB 239 & 132.
 - G. *City Directives.* Developer shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.
2. **Standard Specifications.** Developer shall comply with the most current editions of the following reference specifications when designing and constructing the Project, including:
 - A. *Greenbook.* Standard Specifications for Public Works Construction, including the Regional and City of San Diego Supplement Amendments.
 - B. *DOT.* California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones.
3. **City Standards.** Developer's professional services shall be provided in conformance with the professional standards of practice established by City. This includes all amendments and revisions of these standards as adopted by City. The professional standards of practice established by City include, but are not limited to, the following:
 - A. *City of San Diego's Drainage Design Manual.*
 - B. *City of San Diego's Landscape Technical Manual produced by the Planning Department.*
 - C. *City of San Diego's Street Design Manual.*
 - D. *City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.*
 - E. *City of San Diego's Technical Guidelines for Geotechnical Reports.*

F. *City of San Diego Standard Drawings including all Regional Standard Drawings.*

G. *City of San Diego Data Standards for Improvement Plans.*

H. *The City of San Diego Consultant's Guide to Park Design and Development.*

I. *The City of San Diego Water Department Guidelines and Standards*

4. **Architectural Compatibility.** Developer shall design the Project in a fashion which is architecturally compatible with the Project's surrounding area, subject to the City's discretion.

EXHIBIT L

Certification for Title 24/ADA Compliance

{INSERT Name of Project}

I HEREBY WARRANT AND CERTIFY that any and all plans and specifications prepared for {Insert Name of Project} by {Insert Consultant Name} shall meet all current California Building Standards Code, California Code of Regulations, Title 24 and Americans with Disabilities Act Accessibility Guidelines requirements, and shall be in compliance with the Americans with Disabilities Act of 1990.

Dated: _____

By: _____

EXHIBIT M

Approval of Design, Plans, and Specifications

UNLESS OTHERWISE DIRECTED BY THE CITY, DEVELOPER SHALL OBTAIN APPROVAL OF DESIGN, PLANS, AND SPECIFICATIONS IN THE MANNER IDENTIFIED BELOW:

1. **City Approval.** Developer shall obtain City approval of the design, in writing, at schematic design, 60% Design, and 90% Design.
 - A. *Condition Precedent.* City approval of the Schematic Design Documents is a condition precedent to authorization to proceed with subsequent work on the Project. City will notify Developer in writing within four weeks after receipt of Design Documents of approval, or of request for modifications. If modifications are requested, Developer shall modify and resubmit Schematics for City approval.
 - B. *Sixty (60) Percent Design.* At 60% design, City will notify Developer in writing within eight weeks after receipt of Design Documents at each required stage of design, of approval, or of request for modifications. If modifications are requested, Developer shall modify and resubmit Design Documents for City approval.
 - C. *Ninety (90) Percent Design.* At 90% design, City will notify Developer in writing within ten weeks after receipt of design documents at each required stage of design, of approval, or of request for modifications. If modifications are requested, Developer shall modify and resubmit Design Documents for City approval.
2. **Submittal of Plans, Specifications, and Budget.** Developer shall deliver to City complete Plans and Specifications, Estimated Costs, and bid documents, consistent with the Schematic Drawings, for the design and construction of the Project.
3. **Citywide Review of 100% Plans and Specifications.** City agrees to review the Plans and Specifications and provide City's written comments to Developer within ninety (90) calendar days of the date such Plans and Specifications are delivered to City in accordance with the notice provisions in Article XXVIII. Plans and Specifications shall include City's standard drawings and specifications as described in **Exhibit G**. If requested by City, Developer shall make changes to the Plans and Specifications, but Developer shall not be responsible for implementing such changes if they would increase the Estimated Cost by more than 5%. In such a case, the changes to the Plans and Specifications shall be considered additive or deductive bid alternates to the Project.
4. **Final Approval and Permit Review.** City approval of the Plans and Specifications is a condition precedent to authorization to proceed with subsequent work on the Project. Approval and permit review will require a minimum of ninety (90) calendar days from the date that the Plans and Specifications were submitted to the City review, if no changes are required, or ninety (90) days from the date the requested changes are submitted to the City.

EXHIBIT N

Construction Obligations

1. **Site Safety, Security, and Compliance.** Developer shall be responsible for site safety, security, and compliance with all related laws and regulations.
 - A. *Persons.* Developer shall be fully responsible for the safety and security of its officers, agents, and employees, City's officers, agents, and employees, and third parties authorized by Developer to access the Project site.
 - B. *Other.* Developer is responsible for the Project, site, materials, equipment, and all other incidentals until the Project has been Accepted by the City pursuant to Article XIX.
 - C. *Environment.* Developer shall be responsible for the environmental consequences of the Project construction and shall comply with all related laws and regulations, including, but not limited to, the Clean Air Act of 1970, the Clean Water Act, Executive Order Number 11738, and the Stormwater Management and Discharge Control Ordinance No. 0-17988, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the City. Furthermore, the Developer shall prepare and incorporate into the Construction Documents a Stormwater Pollution Prevention Plan [SWPPP] to be implemented by the Developer during Project construction. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and any municipal regulations adopted pursuant to the permits.
2. **Access to Project Site.**
 - A. *Field Office.* Developer shall provide in the construction budget a City field office (approximately 100 square feet) that allows City access to a desk, chair, two drawer locking file cabinet with key, phone, fax, computer, copy machine and paper during working hours.
 - B. *Site Access.* City officers, agents and employees have the right to enter the Project site at any time; however, City will endeavor to coordinate any entry with Developer.
 - C. *Site Tours.* Site tours may be necessary throughout completion of the Project. Developer shall allow City to conduct site tours from time to time as the City deems necessary. City will give Developer notice of a prospective tour and a mutually agreeable time shall be set. Developer is not obligated to conduct tours or allow access for tours when City failed to give prior notice.
3. **Surveying and Testing.** Developer shall coordinate, perform, and complete all surveying, materials testing, and special testing for the Project at the Project site, as otherwise required by this Agreement, and as required under the State Building Code or any other law or regulation, including:
 - A. *Existing Conditions.* Developer shall obtain all necessary soils investigation and conduct agronomic testing required for design of the Project. The Soils Consultant shall prepare a statement that will be included in the Bidding Documents as to the nature of soils, ground water conditions and any other information concerning the existing conditions of the site.
 - B. *Utilities.* Developer shall provide all required information for the construction or relocation of public or private utility facilities that must be constructed or relocated as a result of this Project. Developer shall file all of the required documents for the approval of authorities having jurisdiction over the Project and in obtaining the services of all utilities required by the Project.
 - C. *Geotechnical Information.* Developer shall obtain all necessary geotechnical information required for the design and construction of the Project. The Project Engineering Geologist and/or Project Soils

Engineer (qualified R.C.E. or R.G.E.) shall prepare a statement that will be included in the Bidding Documents, to address existing geotechnical conditions of the site that might affect construction.

4. **Public Right of Way.** All work, including, materials testing, special testing, and surveying to be conducted in the Public right of way shall be coordinated with the City.
 - A. *Materials Testing.* Developer shall pay for and coordinate with City to have all material tests within the Public right of way and any asphalt paving completed by City's Material Testing Laboratory.
 - B. *Surveying.* Developer shall pay for and coordinate with City's Survey Section all surveying required within the Public right of way.
 - C. *Follow all Laws, Rules, and Regulations.* Developer agrees to follow all City standards and regulations while working in the Public right of way, including but not limited to, utilizing proper traffic control and obtaining necessary permits.
5. **Traffic Control.** Developer shall address all traffic control requirements for the Project including, if necessary, separate traffic control plans and/or notes.
6. **Inspections.** Developer shall coordinate any and all special inspections required for compliance with all State Building Codes as specified in the Contract Documents.
 - A. *Reports.* Developer shall provide City all special inspection reports within seven (7) calendar days of inspection. Developer shall report all failures of special inspections to City.
 - B. *Remedies.* Remedies for compliance shall be approved by Developer, Developer's consultants, City's Development Services Department, and City representatives.
 - C. *Concealing Work.* Prior to concealing work, Developer shall obtain approval of the work from the following three entities: 1) Engineering & Capital Projects Department; 2) Development Services Department; and 3) Special Inspections - as required by all State Building Codes and as stipulated in this Agreement. This approval is general approval only and in no way relieves Developer of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations. Developer shall fulfill all requirements of each of these three agencies.
7. **Property Rights.** Developer shall provide all required easement documents, including but not limited to: dedication, acquisitions, set asides, street vacations, abandonments, subordination agreements, and joint use agreements, as required by City of San Diego Real Estate Assets Department requirements and Council Policy 600-04, "STANDARDS FOR RIGHTS OF WAY AND IMPROVEMENTS INSTALLED THEREIN". City shall not require Developer to provide any easement documents for land to which Developer does not have title; however, Developer shall not relinquish, sell or transfer title to avoid any obligation under this Section, this Agreement, the Public Facilities Financing Plans or any applicable Development Agreement.
8. **Permits.** The Parties acknowledge the construction work to be performed on the Project by Developer in compliance with this Agreement is subject to the prior issuance of building, land development, and/or public improvement permits paid for and obtained by Developer. In the event that City, or any other governmental agency, unreasonably refuses to issue the permit(s) necessary to authorize the work to be performed or if the permit(s) are unreasonably canceled or suspended, then Developer is relieved from its obligation to construct those improvements covered by the denial of said permit(s), and City shall reimburse Developer in accordance with the terms of the Agreement for the work completed. All plans, specifications and improvements completed to the date of the denial, suspension or cancellation of said permit(s) shall become the property of City upon reimbursement as set forth above.
9. **Maintenance.** Developer shall maintain and be responsible for the Project site until Acceptance of the

Project, including ongoing erosion prevention measures. Unless stated otherwise in the Agreement, upon Acceptance of the Project, City shall be responsible for all maintenance of Project site.

10. **Drug-Free Workplace.** The Developer agrees to comply with the City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE," adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. The Developer shall certify to the City that it will provide a drug-free workplace by submitting a Developer Certification for a Drug-Free Workplace form [Exhibit Q].

A. *Developer Notice to Employees.* The Developer shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

B. *Drug-Free Awareness Program.* The Developer shall establish a drug free awareness program to inform employees about all of the following:

- i. The dangers of drug abuse in the work place.
- ii. The policy of maintaining a drug free work place.
- iii. Available drug counseling, rehabilitation, and employee assistance programs.
- iv. The penalties that may be imposed upon employees for drug abuse violations.
- v. In addition to section 10.A above, the Developer shall post the drug free policy in a prominent place.

C. *Developer's Agreements.* The Developer further certifies that each contract for Consultant or Contractor Services for this Project shall contain language that binds the Consultant or Contractor to comply with the provisions of section 10 "Drug-Free Workplace," as required by Sections 2.A(1) through (3) of Council Policy 100-17. Consultants and Contractors shall be individually responsible for their own drug free work place program.

EXHIBIT O

Certification for a Drug-Free Workplace

PROJECT TITLE: _____

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in the request for proposals, and that:

{Insert Name Under which Business Conducted}

has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this Project contains language that indicates the Subcontractors/consultants agreement to abide by the provisions of Sections 2.A(1) through (3) of Council Policy 100-17 as outlined.

Signed _____
Printed Name _____
Title _____
Date _____

EXHIBIT P

Product Submittal and Substitution

1. **Product Submittal.** Prior to the bidding process, Developer shall submit for City approval a list of products intended for use in the Project. Upon Developer's completion of plans and specifications, City will review and approve products specified therein. Developer shall provide City a copy of each submittal for City approval throughout the duration of construction within twenty (20) Calendar Days of Developer's receipt of submittal. Approval is general approval only and in no way relieves Developer of its sole responsibilities under this Agreement or any and all laws, codes, permits, or regulations.
2. **Substitutions.** Developer shall submit all requests for product substitutions to City in writing within thirty (30) Calendar Days after the date of award of the construction contract. After expiration of the thirty (30) Calendar Days, City will allow substitution only when a product becomes unavailable due to no fault of Developer's contractor. City shall review substitution requests within thirty (30) Calendar Days of submission of such requests. Developer agrees that City requires Consultant's input and as such Developer shall coordinate a seven (7) Calendar Days review by its Consultant.
 - A. *Substantiate Request.* Developer shall include with each substitution request complete data that substantiates that the proposed substitution conforms to requirements of the Contract Documents.
 - B. *Developer Representations.* By submitting a substitution request, Developer is representing to City all of the following: (a) Developer has investigated proposed product and determined that in all respect the proposed product meets or exceeds the specified product; (b) Developer is providing the same warranty for the proposed product as was available for the specified product; (c) Developer shall coordinate installation and make any other necessary modifications that may be required for work to be complete in all respects; and (d) Developer shall waive any claims for additional costs related to the substituted product, unless the specified product is not commercially available.
 - C. *Separate Written Request.* City will not consider either substitutions that are implied in the product data submittal without a separate written request or substitutions that will require substantial revision of construction contract documents.
3. **Samples.**
 - A. *Postage.* Samples shall be sent to Developer's office, postage prepaid.
 - B. *Review.* Developer shall furnish to City for review, prior to purchasing, fabricating, applying or installing, two (2) samples (other than field samples) of each required material with the required finish.
 - i. Where applicable, all samples shall be 8" x 10" in size and shall be limited in thickness to a minimum consistent with sample analysis. In lieu thereof, the actual full-size item shall be submitted.
 - ii. Developer shall assign a submittal number. Developer shall include with each submission a list of all samples sent, a statement as to the usage of each sample and its location in the Project, the name of the manufacturer, trade name, style, model, and any other necessary identifying information.
 - iii. All materials, finishes, and workmanship in the complete building shall be equal in every respect to that of the reviewed sample.
 - iv. City will return one submitted sample upon completion of City review.
 - v. Developer's or Developer's agents' field samples shall be prepared at the site. Affected finish work shall not commence until Developer or its agents have been given a written review of the field samples.

EXHIBIT Q

Extra Work Provisions

1. **Extra Work.** City may at any time prior to Project Completion order Extra Work on the Project. The sum of all Extra Work ordered shall not exceed five percent (5%) of the Estimated Cost at the time of Bid Award, without invalidating this Agreement and without notice to any surety.
 - A. *Requests in Writing.* All requests for Extra Work shall be in writing, and shall be treated as and are subject to the same requirements as Change Orders. Developer shall not be responsible for failure to perform Extra Work, which was requested in a manner inconsistent with this Section.
2. **Bonds Required for Extra Work.** Developer's and its agents' bonds, under Article XXI, shall cover any Extra Work provided that the Extra Work is paid for by the Project Budget
3. **Reimbursement for Extra Work.** Work performed by Developer as Extra Work is reimbursable in the same manner described as in Article IV. The Project Contingency as described in Article VIII, Section 8.3.2, will be used first to cover the costs of Extra Work.
4. **Markup.** Developer will be paid a reasonable allowance for overhead and profit. The allowance shall not exceed five percent (5%) and shall be added to the Developer's costs for Extra Work.

EXHIBIT R

Notification of Reimbursable Project

Pursuant to Section 12.1.1 of the Reimbursement Agreement with [INSERT Developer Name] for Financing Plan Project No. [INSERT Number], [INSERT Project Name], in the [INSERT Community] Community, adopted pursuant to City Council Resolution No. [INSERT Resolution Number] and executed on [INSERT Date], [INSERT Developer Name] hereby notifies the City of San Diego that work will begin on [INSERT Name of Project] in the [INSERT Community] community on or about [Insert Date Work is Scheduled to Begin].

This Notification of Reimbursable Project form shall be submitted with the Project's construction permit application to the City's Development Services Department prior to commencement of any work on construction Project No. [INSERT PTS Number], Development Services Deposit Account No. [INSERT Account Number].

The Developer shall add the following note above the title block on the construction plan cover sheet, and on all sheets where subject to reimbursement:

REIMBURSABLE PROJECT: [INSERT Community Name], [INSERT Financing Plan Project No.].

This note is required to be submitted with the application for the Project's construction permit.

[Insert Name of Developer],
[Insert type of entity]

By: _____

[Insert Title] _____

Dated: _____

EXHIBIT S

Reimbursement Request Form

Change Order Request	No.
----------------------	-----

 or

Invoice Approval Request	No.
--------------------------	-----

Project Name	PPFP Project No:	
Project Manager	Date Requested	
Requested by	Date Approval Requested	

Scope of Work Covered by Submittal:

Line Item	Qty	Units	Unit Price	Cost		
				Previous	Current	Total To Date
1.						
2.						
3.						
4.						
5.						
6.						
7.						

(use separate form for additional items)

Total Requested for this Submittal			
------------------------------------	--	--	--

Justification for Change/Extra
Impacts, Adds, Deducts, Schedule Impacts, etc

Date	Developer	Title/Signature
<small>*I hereby certify that this information is true and accurate and is not part of a previously approved submittal</small>		

Approvals

Date	Field Division	Inspector Name/Signature
------	----------------	--------------------------

This work is within and pertains directly to the limits of the approved project and the quantity is consistent with measurements of work installed in the field.

Comments:

Date	Consultant	Printed Name/Signature
------	------------	------------------------

We have reviewed this request with respect to the Developer's Reimbursement Agreement and industry practices and have the following recommendations:

Items _____ are recommended for approval

Total Recommended Amount	Cost		To Date
	Previous	Current	

Items _____ are not recommended for approval. <Comments>

Date	Facilities Financing	Printed Name/Signature
------	----------------------	------------------------

The reimbursement request items noted above are accepted and considered reimbursable as presented.

Comments:

* Approval denotes the acceptability of change under the reimbursement agreement. Reimbursement is contingent upon work acceptance by City.

COMPLETED BY DEVELOPER

COMPLETED BY INSPECTOR

COMPLETED BY CONSULTANT/CITY/PM

COMPLETED BY FACILITIES FINANCING

EXHIBIT T

FBA Fee Credit Notification

**Black Mountain Ranch Public Facilities Financing Plan (PFFP)
and
Black Mountain Ranch, LLC**

Pursuant to Section 12.1.15 of the Reimbursement Agreement entitled Reimbursement Agreement No. 1038991 with Black Mountain Ranch LLC and BMR Construction, Inc. for Public Facilities in the Black Mountain Ranch Subarea Plan (“Agreement”), adopted pursuant to Ordinance No. _____ and executed on _____, 2014, Black Mountain Ranch, LLC (“BMRLLC”) hereby grants to _____ FBA fee credits for _____ in the amount of _____ (\$ _____).

These FBA fee credits may be used in connection with development located on Lot(s) _____ of Final Map No. _____ and may not be transferred or assigned to a third party without the written consent of BMRLLC. BMRLLC acknowledges that the amount of the FBA credits described in this FBA Fee Credit Notification shall be deducted from the total FBA fee credits BMRLLC is entitled to receive pursuant to the Agreement.

Black Mountain Ranch LLC,
a California Limited Liability Company

By: _____

Its: _____

Dated: _____

EXHIBIT U

Project Deliverables

- A. *Working Drawings.* Developer shall prepare Working Drawings in accordance with City's most current drawing format as outlined in City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.
- i. *Quality.* Developer shall make Working Drawings by one of the following methods: permanent ink, Computer Aided Drafting, a permanent photographic reproduction process, or with pencil made for use on drafting film and permanently fixed with spray coating. Scale and clarity of detail shall be suitable for half-size reduction.
 - ii. *Font and Contents.* Specifications shall be typewritten with one type face, using carbon ribbon or equivalent on bond paper utilizing Greenbook format. Developer will furnish only the technical "Special Provisions" section of the Specifications to supplement or modify the Greenbook standards as needed.
- B. *Surveys.* Developer shall provide all surveying services required for the design of this Project in accordance with all applicable legal regulations, the Technical Guidelines produced by the California Council of Civil Engineers & Land Surveyors under the title "A Guide to Professional Surveying Procedures," and the City of San Diego Engineering and Capitol Projects Department's "Data Standards for Improvement Plans," August 2004.
- C. *Schematic Design Documents.* Developer shall consult with City to ascertain requirements of the Project and to prepare Schematic Design Documents.
- i. Schematic Design Documents shall include, but not be limited to the following:
 - a. Sketches with sufficient detail to illustrate the scale and location of Project components.
 - b. Floor plans with sufficient cross-sections to illustrate the scale and relationship of building components, exterior elevations and exterior colors and textures.
 - c. Analysis of parameters affecting design and construction for each alternate considered.
 - d. Description and recommendation for structural, mechanical and electrical systems, showing alternatives considered.
 - e. Probable construction costs for the base Project and all additive alternates considered.
 - f. Summary of Project requirements and a recommendation.
 - g. Artistic renderings of the Project.
 - ii. *Form.* Developer's Schematics shall conform to the quality levels and standards in size, equipment, and all facets of its design and deliverables as set forth in City specifications and as may be updated prior to commencement of construction.
- D. *Design Development Documents.* Developer shall prepare from the approved Schematic Design Documents, for approval by City, Design Development Documents to fix and describe the size and character of the entire Project. These documents shall contain, at a minimum, the following:
- i. Site plan, indicating the nature and relational location, via dimensions, of all proposed Project components.
 - ii. Traffic circulation and landscaping should also be indicated at this stage if applicable.
 - iii. Plans, elevations, cross-sections, and notes as required to fix and describe the Project components.
 - iv. Proposed construction schedules.
 - v. Technical 'Special Provisions' section of the Specifications.
 - vi. Outline of Specifications prepared in accordance with the latest recommended format of the Construction Specification Institute.
 - vii. Probable Project construction costs, for each component of the Project being considered in this phase.
 - viii. Color board with material samples.

- E. *Construction Documents.* Developer shall provide, based on the approved Design Development documents, Working Drawings and Contract Specifications (throughout the Agreement and attached exhibits referred to as Construction Documents) setting forth in detail the requirements for construction of the Project, including the necessary bidding information.
- F. *Utility Location Requests.* Along with initial submission of Construction Documents, Developer shall furnish copies of the Service and Meter Location Request and all utility companies' verifications.
- G. *Cost Estimate.* Developer shall provide a construction cost estimate based on the Construction Documents.
- H. *H, G, & E Reports.* Developer shall provide hydrologic, geotechnical, environmental documents, and other related documents or reports as required by City.
- I. *As-Builts.* Developer shall provide As-Builts.
 - i. As-Builts shall show by dimension accurate to within one (1) inch, the centerline of each run of conduits and circuits, piping, ducts, and other similar items as determined by City, both concealed and visible. Developer shall clearly identify the item by accurate note such as "cast iron drain," galvanized water, etc. Developer shall clearly show, by symbol or note, the vertical location of the item ("under slab," "in ceiling," "exposed," etc.), and make all identification sufficiently descriptive that it may be related reliably to the specification. Developer shall thoroughly coordinate all changes on the As-Builts making adequate and proper entries on each page of specifications and each sheet of drawings and other documents where entry is required to properly show the change.
 - ii. Developer shall include all of the following on the As-Builts:
 - a. Depth of foundation in relation to finished first floor.
 - b. Horizontal and vertical locations of underground utilities and appurtenances, with references to permanent surface improvements.
 - c. Locations of internal utilities and appurtenances, with references to visible and accessible features of the structure.
 - d. Field changes of dimensions and details.
 - e. Changes authorized by approved proposal requests, construction change orders, discussion with City that resulted in any change/deviation from City's program, specifications, approved plans, equipment or materials.
 - f. Details not issued with original contract drawings, design/build plans, deferred approvals, etc.
 - g. Upon completion of work, obtain signature of licensed surveyor or civil engineer on the Project record set verifying layout information.
 - h. Show locations of all utilities on-site with size, and type of pipe, if different than specified, and invert elevations of pipe at major grade and alignment changes.
 - i. The title "PROJECT RECORD" in 3/8" letters.
 - iii. Developer shall maintain a set of As-Builts at the Project site for reference. Developer shall ensure that changes to the As-Builts are made within twenty-four hours after obtaining information. Changes shall be made with erasable colored pencil (not ink or indelible pencil), shall clearly describe the change by note (note in ink, colored pencil or rubber stamp) and by graphic line, shall indicate the date of entry, shall circle the area or areas affected and, in the event of overlapping changes, use different colors for each change.
- J. *As-Graded Reports.* Developer shall submit the City approved As-Graded Report summarizing the results of the observations and testing of grading operations.
- K. *Signed Grading and/or Public Right-of-Way Permit.* The Developer shall submit the signed grading and/or public right-of-way permit.
- L. *Operation and Maintenance Manuals.* Developer shall submit all Operation and Maintenance manuals prepared in the following manner:
 - i. In triplicate, bound in 8½ x 11 inch (216 x 279 mm) three-ring size binders with durable plastic covers prior to City's Final Inspection.

- ii. A separate volume for each system, including but not limited to mechanical, electrical, plumbing, roofing, irrigation, and any other system as determined by City, with a table of contents and index tabs in each volume as follows:
 - a. Part 1: Directory, listing names, addresses, and telephone numbers of Developer's agents, suppliers, manufacturers, and installers.
 - b. Part 2: Operation and Maintenance Instructions, arranged by specification division or system. For each specification division or system, provide names, addresses and telephone numbers of Developer's agents, suppliers, manufacturers, and installers. In addition, list the following: 1) appropriate design criteria; 2) list of equipment; 3) parts list; 4) operating instructions; 5) maintenance instructions, equipment; 6) maintenance instructions, finishes; 7) shop drawings and product data; and 8) warranties.
- M. *Capitalization Form*. The Developer shall submit all required capitalization information in a form acceptable to the Facilities Financing Project Manager.
- N. *Certificate of Occupancy/Property Transfers*. The Developer shall submit any required certificates of occupancy and/or property transfers.

EXHIBIT V

Typical Insurance Provisions

1. Types of Insurance. At all times during the term of this Agreement, Developer shall maintain insurance coverage as follows:
 - 1.1 Commercial General Liability. Developer shall provide at its expense a policy or policies of Commercial General Liability [CGL] Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad and which shall cover liability arising from premises and operations, XCU (explosions, underground, and collapse) independent contractors, products/completed operations, personal injury and advertising injury, bodily injury, property damage, and liability assumed under an insured's contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the CGL Insurance limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Developer shall maintain the same or equivalent CGL Insurance as described herein for at least ten (10) years following substantial completion of the work. All costs of defense shall be outside the policy limits. The CGL Insurance shall provide for coverage in amounts not less than the following: (i) General Annual Aggregate Limit (other than Products/Completed Operations) of two million dollars (\$2,000,000); (ii) Products/Completed Operations Aggregate Limit of two million dollars (\$2,000,000); (iii) Personal Injury Limit one million dollars (\$1,000,000); and (iv) Each Occurrence Limit one million dollars (\$1,000,000).
 - 1.2 Commercial Automobile Liability. For all of Developer's automobiles used in conjunction with the Project including owned, hired and non-owned automobiles, Developer shall keep in full force and effect, a policy or policies of Commercial Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad in the amount of one million dollars (\$1,000,000) combined single limit per occurrence, covering bodily injury and property damage for owned, non-owned and hired automobiles. All costs of defense shall be outside the policy.
 - 1.3 Architects and Engineers Professional Liability. For all of Developer's employees who are subject to this Agreement, Developer shall keep in full force and effect, or Developer shall require that its architect/engineer(s) of record keep in full force and effect errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) annual aggregate. Developer shall ensure both that (i) this policy retroactive date is on or before the date of commencement of the Project; and (ii) this policy has a reporting period of three (3) years after the date of completion or termination of this Agreement. Developer agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City's exposure to loss.
 - 1.4 Worker's Compensation. For all of Developer's employees who are subject to this Agreement and to the extent required by the State of California, Developer shall keep in full force and effect, a Workers' Compensation Insurance and Employers' Liability Insurance to protect Developer against all claims under applicable state workers' compensation laws. The City, its elected officials, and employees will not be responsible for any claims in law or equity occasioned by the failure of the Developer to comply with the requirements of this section. That policy shall provide at least the statutory minimums of one million dollars (\$1,000,00) for Bodily Injury by Accident for each accident, one million dollars (\$1,000,000) for Bodily Injury by Disease each employee, and a one million dollars (\$1,000,000) for Bodily Injury by Disease policy limit. Developer shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.
 - 1.4.1 Prior to the execution of the Agreement by the City, the Developer shall file the following signed certification:

“I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker’s compensation or to undertake self-insurance, in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of the Agreement.”

1.5 **Builder’s Risk.** To the extent commercially available, Developer shall provide a policy of “all risk” Builders Risk Insurance. Developer shall add City and its respective elected officials, officers, employees, agents, and representatives to the policy as additional named insureds or loss payees, to the extent such insurance is commercially available. Developer shall also add its construction contractor, and the construction contractor’s subcontractors to the policy as additional named insureds or loss payees, to the extent such insurance is commercially available. The insurance may provide for a deductible which shall not exceed fifty thousand dollars (\$50,000). It shall be Developer’s responsibility to bear the expense of this deductible. The Builders Risk coverage shall expire at the time such insured property is occupied by City, or a Notice of Completion is filed, whichever occurs first.

2. **Endorsements Required.** Each policy required under Section 1, above, shall expressly provide, and an endorsement shall be submitted to the City, that:

2.1 *Additional Insureds.* Except as to Architects and/or Engineers professional liability insurance and Workers Compensation, the City and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds.

2.1.1 **Commercial General Liability.** The policy or policies must be endorsed to include as an Insured the City and its respective elected officials, officers, employees, agents, and representatives. The coverage for Projects for which the Estimated Costs is one million dollars (\$1,000,000) or more shall include liability arising out of: (i) ongoing operations performed by you or on your behalf, (ii) your products, (iii) your work, including but not limited to your completed operations performed by you or on your behalf, or (iv) premises owned, leased, controlled, or used by you; the coverage for Projects for which the Estimated Costs is less than one million dollars (\$1,000,000) shall include liability arising out of: (i) ongoing operations performed by you or on your behalf, (ii) your products, or (iii) premises owned, leased, controlled, or used by you; except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, these endorsements shall not provide any duty of indemnity coverage for the active negligence of the City and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code section 11580.04, the insurer's obligation to the City and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code section 11580.04.

2.1.2 **Commercial Automobile Liability Insurance.** Unless the policy or policies of Commercial Auto Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy or policies must be endorsed to include as an insured the City and its respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Developer; except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement shall not provide any duty of indemnity coverage for the

active negligence of the City and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code section 11580.04, the insurer's obligation to the City and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code section 11580.04.

- 2.2 *Primary and Non-Contributory.* The policies are primary and non-contributing to any insurance or self-insurance that may be carried by the City, its elected officials, officers, employees, agents, and representatives with respect to operations, including the completed operations if appropriate, of the named insured. Any insurance maintained by the City and its elected officials, officers, employees, agents, and representatives shall be in excess of Developer's insurance and shall not contribute to it.
- 2.3 *Project General Aggregate Limit.* The CGL policy or policies must be endorsed to provide a Designated Construction Project General Aggregate Limit [Aggregate Limit] that will apply only to the work performed under this Agreement. Claims payments not arising from the work shall not reduce the Aggregate Limit. The Aggregate Limit shall be in addition to the aggregate limit provided for the products-completed operations hazard.
- 2.4 *Written Notice.* Except as provided for under California law, the policies cannot be canceled, non-renewed or materially changed except after thirty (30) Calendar Days prior written notice by Developer to the City by certified mail, as reflected in an endorsement which shall be submitted to the City, except for non-payment of premium, in which case ten (10) Calendar Days notice shall be provided.
- 2.5 The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" shall be deleted from all certificates.

EXHIBIT W

Capitalization Cost Breakdown

For Developer Built Reimbursable Public Projects

1) Project Title/Location: _____
 2) Project (PTS) Number: _____
 3) Internal Order Number: _____
 4) Drawing Number: _____

5) Permit Number: _____
 6) Substantial Completion Letter Date: _____
 7) As-Built Date: _____
 8) PFFP Ref. #: _____
 Reimb. Agreement Resolution #: _____
 Date Approved: _____

TABLE A.

(1) Item	(2) Description	(3) Asset Code	(4) Quantity #	(5) Unit Measurement	(6) Total Cost *
STREETS **					
Roadways		ROAD		SF	
Sidewalk		SIDE		SF	
Curb & Gutter		SIDE		LF	
Curb Ramps		SIDE		Each	
Medlans		SIDE		SF	
Alleys		ALLY		SF	
Traffic Signals		TRAF		Each	
Street Lights		STRT		Each	
Guardrails		STRT		LF	
BRIDGES					
Vehicular/Wildlife		BRDG		SF	
Pedestrian		BRDG		SF	
Other (Specify)					
STORM DRAINS					
Storm Drains		STRM		LF	
Channels & Culverts		CHAN		LF	
Other (Specify)					
PARK INFRASTRUCTURE (list)					
Parkgrounds		PARK		Each/acres	
Picnic Shelter		PARK		Each	
Playground		PARK		Each	
Recreation Center		3000		Each/SF	
Comfort Stations		3000		Each	
Park Lighting		PARK		Each	
Pool		PARK		Each	
Bike Path or Multi-Use Trails		PATH		LF	
Parking Lot		LOTS		SF	
OTHER (list)					
Pedestrian Lighted Crosswalk		TRAF			
Fire Station		various			-
Library					
Police Station					
Total Project Cost					\$ -

I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, THE INFORMATION PROVIDED ON THIS CAPITALIZATION FORM IS TRUE AND ACCURATE REGARDING THE CITY ACQUIRED INFRASTRUCTURES.
 PRINT NAME: _____ TITLE: _____
 SIGNATURE: _____ DATE: _____

Name/Title _____ Contact No. _____
 Prepared by: _____

City Use Only-Forward Original to Facilities Financing for Distribution

* Project soft cost for administration, engineering, design, etc. should be allocated using the percentage of hard cost for each cost category.
 ** Water & Sewer capitalized by PUD.

Copy Auditor- CIP Fixed Asset Acct. MS 6A
 Copy Street Division-MS 44
 Copy Development Services Department

6/9/2014

Capitalization Form to be completed by Developer initially upon receipt of Substantial Completion Letter (90%) from City Engineering Department.
 Capitalization Form to be updated upon final completion of Project to reflect all verified project costs.

ORDINANCE NUMBER O- 20417 (NEW SERIES)

DATE OF FINAL PASSAGE OCT 14 2014

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO TO AUTHORIZE A REIMBURSEMENT AGREEMENT WITH BLACK MOUNTAIN RANCH LLC AND BMR CONSTRUCTION, INC. FOR THE CONSTRUCTION OF PUBLIC FACILITIES IN BLACK MOUNTAIN RANCH AND SURROUNDING AREAS, AND WAIVE SAN DIEGO MUNICIPAL CODE SECTION 22.3202 AND COUNCIL POLICIES 300-07 AND 100-10.

WHEREAS, Black Mountain Ranch LLC and BMR Construction, Inc. (BMR LLC) are the master developers of approximately 967.5 acres of real property located in the Black Mountain Ranch Subarea Plan; and this property is located within the boundaries of the Fiscal Year 2013 Black Mountain Ranch Public Facilities Financing Plan and Facilities Benefit Assessment, adopted on October 25, 2012, by Resolution No. R-307790 (BMR Financing Plan), and is located adjacent to the boundaries of the Fiscal Year 2013 Torrey Highlands Public Facilities Financing Plan, adopted on November 27, 2012, by Resolution No. R-307857 (TH Financing Plan), and Fiscal Year 2013 Pacific Highlands Ranch Public Facilities Financing Plan, adopted on April 23, 2012, by Resolution No. R-307364 (PHR Financing Plan); and

WHEREAS, BMR LLC's development agreement, vesting tentative map conditions, and various other permit conditions, as more specifically set forth in the Reimbursement Agreement No. 1038991 with Black Mountain Ranch LLC and BMR Construction, Inc. for Public Facilities in the Black Mountain Ranch Subarea Plan (Agreement), and the Transportation Phasing Plan contained in the BMR Financing Plan, all require BMR LLC to advance substantial public facilities to serve the Black Mountain Ranch community and the surrounding communities of Torrey Highlands and Pacific Highlands Ranch; and

WHEREAS, the various public facilities set forth in the Agreement are identified and included in the BMR Financing Plan, TH Financing Plan and PHR Financing Plan; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor or his designee is authorized and directed to execute, for and on behalf of City, the Reimbursement Agreement No. 1038991 with Black Mountain Ranch LLC and BMR Construction, Inc. for Public Facilities in the Black Mountain Ranch Subarea Plan, on file in the Office of the City Clerk as Document No. OO- 20417, for the design and construction of various public facilities under the terms and conditions set forth in the Agreement.

Section 2. That San Diego Municipal Code section 22.3202, and Council Policies 300-07 and 100-10, are waived with respect to Rick Engineering, Wimmer Yamada and Caughey, RECON Environmental, Inc., Geocon Incorporated, KOA Corporation, Q2 Services, Utility Specialists California, Inc., Latitude 33 Planning & Engineering, and Project Design Consultants, all with whom BMR LLC entered into a contract for the public facilities that are the subject of the Agreement prior to the effective date of the Agreement.

Section 3. That the Chief Financial Officer is authorized to add CIP RD-15000, Camino Del Sur - 2 lanes (Torrey Santa Fe to Dormouse Rd), to the Fiscal Year 2015 Capital Improvements Program.

Section 4. That The Chief Financial Officer is authorized to add CIP RD-15001, Carmel Valley Rd Widening (Camino Del Sur to Black Mountain Rd), to the FY 2015 Capital Improvements Program.

Section 5. That the Chief Financial Officer is authorized to increase the Fiscal Year 2015 Capital Improvements Program Budget in CIP RD-15000, Camino Del Sur - 2 lanes (Torrey Santa Fe to Dormouse Rd) and appropriate and expend an amount not to exceed \$724,500 from Fund 400094, Torrey Highlands FBA, for the purpose of designing this public improvement, consistent with the terms and conditions set forth in the Agreement and the timing established in the most recently adopted TH Financing Plan, and contingent upon the adoption of the Fiscal Year 2015 Appropriation Ordinance and further contingent upon the Chief Financial Officer furnishing a certificate certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

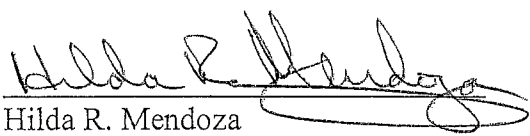
Section 6. That the Chief Financial Officer is authorized to increase the Fiscal Year 2015 Capital Improvements Program Budget in CIP RD-15001, Carmel Valley Rd Widening (Camino Del Sur to Black Mountain Rd) and appropriate and expend an amount not to exceed \$1,774,058 from Fund 400094, Torrey Highlands FBA, for the purpose of constructing this public improvement, consistent with the terms and conditions set forth in the Agreement and the timing established in the most recently adopted TH Financing Plan, and contingent upon the adoption of the Fiscal Year 2015 Appropriation Ordinance and further contingent upon the Chief Financial Officer furnishing a certificate certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

Section 7. That the Chief Financial Officer is authorized to appropriate and expend an amount not to exceed \$11,757,961, for the Widening of Via de la Valle from Camino Real to San Andres Drive, consistent with the terms and conditions set forth in the Agreement and the timing established in the most recently adopted BMR Financing Plan, and contingent upon the Chief

Financial Officer furnishing a certificate certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

Section 8. That the Chief Financial Officer is authorized, upon advice from the administering department, to transfer excess funds, if any, to the appropriate reserves.

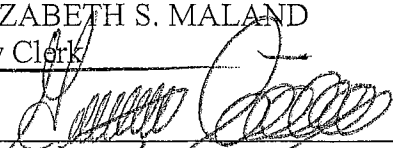
APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Hilda R. Mendoza
Deputy City Attorney

HRM:meb
8/7/2014
Or.Dept:Planning
Doc. No.: 837057

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of SEP 30 2014.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 10/14/14
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on SEP 30 2014, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Harris	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 14 2014.

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

SEP 16 2014

OCT 14 2014

, and on _____.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O-_____

20417

Passed by the Council of The City of San Diego on September 30, 2014 by the following vote:

YEAS: **LIGHTNER, HARRIS, GLORIA, COLE, KERSEY, ZAPF,
SHERMAN, ALVAREZ, EMERALD.**

NAYS: **NONE.**

VACANT: **NONE.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

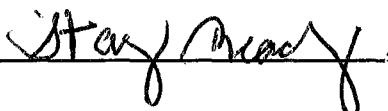
KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: , Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O – 20417 (New Series) of The City of San Diego, California.

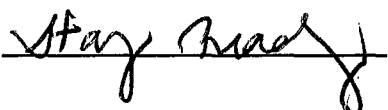
I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on September 16, 2014 and on October 14, 2014.

I FURTHER CERTIFY that the said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available for the consideration of each member of the Council and the public prior to the day of its passage.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy