

# COPY

## REIMBURSEMENT AGREEMENT FOR BLACK MOUNTAIN RANCH NORTH

THIS Agreement shall be for the reimbursement of costs of certain improvements identified in Exhibit C, pursuant to the terms and conditions set forth herein [Agreement]. This 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 Delaware corporation [collectively, Subdivider]. City and Subdivider when referenced herein collectively shall be referred to as Parties. This Agreement is entered into with reference to the following recitals:

### RECITALS

1. Subdivider is the master developer for certain real property [Property] located within City as depicted on the following Vesting Tentative Maps: 40-0528, 99-1054, 40-0529 [VTMs], a depiction of which is attached hereto as Exhibit A. A legal description of the Property is attached hereto as Exhibit B.
2. The Property is included within the boundaries of the Black Mountain Ranch Subarea 1 Plan, which was approved by the San Diego City Council [City Council] by Resolution number R-290525, dated July 28, 1998, and on file in the City Clerk's office as Document number RR- 290525, and amended on November 27, 2001, by Resolution number R-295792, and on June 18, 2002, by Resolution number R-296698
3. The Property also is located within the boundaries of City's Fiscal Year 2006 Black Mountain Ranch Public Facilities Financing Plan and Facilities Benefit Assessment [Financing Plan], which was adopted on November 1, 2005 by Resolution number R-301005. The Financing Plan identifies sources of funding for public infrastructure projects and is subject to annual review and updates by the City Council.
4. Pursuant to San Diego Municipal Code section 61.2215(b), in the event the City Council agrees to accept consideration in lieu of Facilities Benefit Assessments as provided by section 61.2213, the value of which the City Council finds is greater than the amount of the otherwise applicable Facilities Benefit Assessments, the Council may enter into an agreement with a developer pursuant to which said developer may be reimbursed for the amount of the otherwise applicable Facilities Benefit Assessments. Any such agreement shall set forth the amount to be reimbursed and the time and manner in which (a) cash reimbursement shall be made only from revenues paid into the special fund created for the Area of Benefit or (b) credits shall be granted against Facilities Benefit Assessment [FBA] fees to be paid in the Area of Benefit.
5. Subdivider would like to design, construct, and dedicate to City certain improvements included in the Financing Plan and identified by specific project numbers. Throughout this Agreement, an individual project shall be referred to as "Project," and several projects shall be referred to as "Projects." The group of all Projects shall be referred to as the [City Improvements]. A list of Projects comprising the City Improvements is attached as Exhibit C. Parties agree that the listing of a Project on Exhibit C does not obligate Subdivider to construct the Project.
6. In furtherance of this intent to provide the City Improvements, Subdivider has initiated a Community Facilities District [CFD] with the Poway Unified School District [District] in order to obtain Mello Roos financing for the construction of school facilities as well as the City Improvements.
7. The City and the District have entered into a Joint Community Facilities Agreement By and Between Poway Unified School District and City of San Diego [JCFA] to provide for the formation of CFD to finance (a) the construction of school facilities of the District and (b) the acquisition of the City Improvements, constructed by or on behalf of Subdivider and owned and maintained by City. The JCFA was approved by the City Council on November 21, 2005, pursuant to Resolution number R-301055. The JCFA is attached as Exhibit D.
8. In addition to construction of the Projects, Subdivider may agree to advance to City funds for the construction of other public facilities identified in the Financing Plan [Cash Advance(s)]. The dollar amounts of the Cash Advance(s) that have been made by Subdivider prior to the Effective Date of this Agreement and the facilities the Cash Advance(s) are intended to finance are identified in Exhibit E, attached.
9. The Parties acknowledge that the City Improvements are projects funded pursuant to the Financing Plan and, as provided for in section 61.2213 of the FBA Procedural Ordinance and as further described in this

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Agreement, shall be eligible for credits against any FBA fees that become due as a result of development of the Property or development of land within the CFD.

10. Provided Subdivider has not obtained reimbursement for a Project or Projects through another reimbursement agreement or alternative agreement with the City, Subdivider would like to enter into an agreement for reimbursement of the costs of all of the Projects comprising the City Improvements. Payment to Subdivider from the proceeds of the Mello Roos financing of the CFD shall not be considered an alternate source of funds, nor shall the JCFA be considered a reimbursement agreement, or alternative agreement for the purpose of Reimbursement.
11. Reimbursement shall occur on a project by project basis, and the Reimbursable Cost(s) for a particular Project shall be determined in accordance with this Agreement and shall not exceed the estimated cost of the Project as identified in the Financing Plan and the Schedule of Estimated Costs attached as Exhibit F [Estimated Cost], unless otherwise provided for in this Agreement.
12. In addition, by entering into this Agreement, Subdivider wishes to establish a mechanism by which Subdivider may be reimbursed for the Cash Advance(s) made for other public facilities identified in the Financing Plan.
13. The Financing Plan is subject to annual review and updates by the City Council at which time the Estimated Cost of a Project and the amounts subject to appropriation for a Project are subject to change.
14. Reimbursement for a Project shall occur, whether in cash or credit, at the time identified in the Financing Plan. Cash reimbursement may be made only to the extent that funds are available in the FBA fund.
15. For those Projects listed in Exhibit C that Subdivider is willing to construct, each shall be completed as a public improvement, according to Construction Documents approved by City; the Phasing Plan, attached as Exhibit G; and the Project Schedule, if applicable, for an amount not to exceed the Estimated Cost, and Subdivider desires to accept FBA credits from City, as compensation for Reimbursable Cost(s) associated with construction of each Project at the time identified in the Financing Plan.
16. Subdivider agrees to obtain all necessary permits and City agrees to process all such permits that are needed in order to construct a City Improvement. Subdivider further agrees that any City Improvements it constructs shall be constructed consistent with the provisions of this Agreement.

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

#### ARTICLE I. DEFINITIONS

**ADA:** The Americans with Disabilities Act of 1990 and any amendments thereto.

**Acceptance:** Final approval by the Inspection Team following the Final Inspection that City Improvements are complete and work required on the Punch List has been finished.

**Actual Cost:** The total actual cost of City Improvements, including professional services, construction, and Project administration.

**Agreement:** This Reimbursement Agreement for Black Mountain Ranch North.

**Agreement Documents:** Shall have the meaning described within section 19.1.1 of this Agreement.

**Area of Benefit:** The property comprising the Area of Benefit described in the Financing Plan.

**As-Builts:** Project Record Documents that are the plans modified from the original concept of the design to reflect the actual product built.

**Bidding Documents:** Shall have the meaning described within section 8.2 of this Agreement.

**Calendar Day(s):** All days of the week, holidays and weekends included.

**Cash Advances:** Funds advanced to City by Subdivider for construction of other public facilities identified in the Financing Plan as described in Recital 8.

**CEQA:** California Environmental Quality Act.

**CFD:** Community Facilities District formed pursuant to the JCFA between the City and the District.

**CGL:** A Commercial General Liability insurance policy as described in section 10.1.7 of this Agreement.

**Change Order:** A written order approved by City from Subdivider or its authorized representative to the contractor performing the work authorizing a change in the work to be performed under the Construction Documents.

**Changed Conditions:** Shall have the meaning described within section 17.1 of this Agreement.

**City:** The City of San Diego. Unless specifically provided otherwise, whenever this Agreement requires an action or approval by City, that action or approval shall be performed by the City Representative designated by this Agreement.

**City Council:** The City Council of the City of San Diego.

**City Improvements:** Those improvements described on the attached Exhibit C.

**City Representative:** The individual selected by the City to act as its representative with respect to this Agreement.

**Construction Documents:** Including, but not limited to: 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 Contract.

**Consultant(s):** A party or third parties hired by Subdivider to provide the services necessary for the design and construction of the City Improvements, as described in section 10.1 of this Agreement.

**Cutoff Date:** Shall have the meaning described within section 18.1.6.4 of this Agreement.

**Default:** Shall have the meaning described within section 4.6 of this Agreement.

**Defective Work:** All work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to the Agreement Documents is defective.

**Design Consultant:** Design consultant selected by Subdivider for a Project.

**Design Development Documents:** Shall have the meaning described within section 24.1.5 of this Agreement.

**DIF:** Development Impact Fees.

**District:** Poway Unified School District

**Effective Date:** Shall have the meaning described within section 4.1 of this Agreement.

**Estimated Budget:** Shall have the meaning described within section 11.2 of this Agreement.

**Estimated Cost:** Shall have the meaning described within section 5.1 of this Agreement.

**Extra Work:** Any City additions, modifications, or deletions to work or Subdivider obligations under this Agreement not described within City approved Construction Documents.

**FBA:** Facilities Benefit Assessment as defined under San Diego Municipal Code section 61.2202(i).

**FBA Credit Balance Report:** Shall have the meaning described within section 33.3 of this Agreement.

**FBA Notification:** Shall have the meaning described within section 33.2 of this Agreement.

**FF Project Manager:** Shall have the meaning described within section 18.1.7.4 of this Agreement.

**Final Completion:** Shall have the meaning described within section 23.2 of this Agreement.

**Final Inspection:** Shall have the meaning described within section 22.5 of this Agreement.

**Financing Plan:** The City's Fiscal Year 2006 Black Mountain Ranch Public Facilities Financing Plan and Facilities Benefit Assessment, as it may be updated by the City Council from time to time.

**Greenbook:** The most recent edition of the Standard Specifications for Public Works Construction (including City's standard special provisions).

**H, G, & E Reports:** Hydrologic, geotechnical, and environmental reports.

**Hazardous Materials:** Hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Property, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25). "Hazardous Materials" shall also include asbestos or asbestos containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation.

**Holiday:** City-observed holidays listed below (if any holiday listed falls on a Saturday, then the Saturday and the preceding Friday are both legal holidays. If the holiday should fall on a Sunday, then the Sunday and the following Monday are both legal holidays):

Holiday	Observed On
New Year's Day	January 1
Martin Luther King Day	Third Monday in January
Presidents Day	Third Monday in February
Caesar Chavez Day	March 30
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

**Inspection Team:** Shall have the meaning described within section 21.1 of this Agreement.

**JCFA:** Joint Community Facilities Agreement By and Between Poway Unified School District and City of San Diego approved by the City Council on November 21, 2005 pursuant to Resolution number R-301055.

**JPA:** Joint Powers Agreement to be entered into by the Poway Unified School District and the State of California to provide funding for improvements to the I-15 and SR-56 corridors. A separate JPA may be entered into for the I-15 and the SR-56 corridor improvements.

**NEPA:** National Environmental Policy Act.

**Notice of Completion:** The document Subdivider executes and files with the County Recorder prior to Final Completion that stipulates the date that a City Improvement was completed. The warranty and stop notice periods commence on the date the Notice of Completion is recorded.

**Notice of Correction:** Shall have the meaning described within section 22.5 of this Agreement.

**Notice of Funding:** Shall have the meaning described in section 18.1.10.1.

**Notification of Reimbursable Project:** Shall have the meaning described within section 18.1.1.

**Phasing Plan:** Shall mean the Phasing Plan for the City Improvements identified in the Financing Plan and attached as Exhibit G.

**Plans and Specifications:** Shall have the meaning described within Article XI of this Agreement.

**Pre-Bid Project:** Shall have the meaning described within section 8.1 of this Agreement.

**Previous Agreement:** Shall have the meaning described within section 33.1 of this Agreement.

**Project(s):** Shall have the meaning described within Recital 5 of this Agreement.

**Project Deliverables:** Shall have the meaning described within Article XXIV of this Agreement.

**Project Contingency:** Shall have the meaning described within section 5.2.3 of this Agreement.

**Project Manager:** The representative designated by City to manage the Project.

**Project Schedule:** Shall have the meaning described within Article IV of this Agreement.

**Project Superintendent:** The superintendent designated by Subdivider to manage the Project.

**Property:** The real property described in Exhibit A and Exhibit B attached hereto.

**Punch List:** Shall have the meaning described within section 22.2.1 of this Agreement.

**Reimbursable Cost(s):** Costs of City Improvements that have been expended and approved by the City either through the adoption of the Financing Plan or through other approval procedures described in the Agreement, such as those for Change Orders.

**Reimbursement Request:** Shall have the meaning described within section 18.1.6 of this Agreement.

**Required Insurance:** Shall have the meaning described within section 30.2 of this Agreement.

**Resident Engineer:** The engineer designated by City with responsibility concerning the Project.

**Responsible Department:** The department at City designated by City for individual Project approval and/or supervision.

**Schedule of Estimated Costs:** Shall mean the Estimated Costs for Projects designated on the attached Exhibit F.

**Schematic Design Documents:** Shall have the meaning described within section 24.1.4 of this Agreement.

**School District:** Poway Unified School District

**Scope of Work:** The work authorized by City pursuant to approved Construction Documents for a Project.

**Services:** Professional services, including design and construction management of the City Improvements that are required to design and construct the City Improvements in accordance with the Agreement Documents. Services does not include Work.

**Solicitation of Bids:** Shall have the meaning described in section 8.3 of this Agreement.

**State:** State of California

**Subdivider:** Black Mountain Ranch, LLC, a California Limited Liability Company and BMR Construction, Inc., a Delaware corporation.

**SWPPP:** Storm Water Pollution Prevention Plan.

**Title 24:** California Building Standards Code, California Code of Regulations, Title 24.

**Total Estimated Cost:** Shall have the meaning described in section 5.1 of this Agreement.

**VTMs:** Vesting Tentative Maps Nos. 40-0528, 99-1054, 40-0529.

**Walk-Through Inspection:** Shall have the meaning described within section 22.2 of this Agreement.

**Withholding:** Shall have the meaning described within section 18.1.6.1 of this Agreement.

**Work:** All labor, materials, supplies, and equipment that are necessary to construct the City Improvements in accordance with the Agreement Documents. Work does not include Services.

**Working Day(s):** Monday through Friday, excluding City holidays.

**Working Drawings:** Shall have the meaning described within section 24.1.2 of this Agreement.

## ARTICLE II. SUBJECT OF THE AGREEMENT

The above-listed recitals are true and correct and are hereby incorporated by this reference. All attachments to this Agreement as Exhibits are incorporated into this Agreement by this reference.

2.1 **City Improvements.** Except as expressly provided in this Agreement, with respect to those Projects that Subdivider intends to construct, Subdivider shall design and construct the Project in accordance with all the terms of this Agreement, approved Construction Documents, and the Financing Plan, and be eligible for reimbursement in an amount not to exceed the Estimated Cost identified in Exhibit F and the Financing Plan.

2.1.1 *Project Types.* In Exhibit C, the Projects are divided into three (3) categories:

2.1.1.1 Type I Projects. There has been no work done on these Projects. Consultants have not been hired, plans have not been drafted, bids have not been received, contracts have not been awarded, and construction has not commenced.

2.1.1.2 Type II Projects. Consultants have been hired and the Projects are in various stages of pre-construction.

2.1.1.3 Type III Projects. Construction has begun on these Projects.

- 2.2 **Complete and Functional.** Subdivider shall provide complete and functional Projects, which are suited to the purposes for they were designed.
- 2.3 **Transfer of Ownership.** Upon Acceptance of a Project, Subdivider shall transfer title to the Project and any associated easements or property rights to the City pursuant to the terms and conditions of this Agreement.

#### ARTICLE III. CERTIFICATION

- 3.1 **Purpose of Certification.** There exist and have existed certain requirements that City includes in its construction contracts for public improvements. These requirements are intended to protect City and the public, who benefit from these public improvements, from harm, including physical and monetary, as well as to ensure that the contractor building the public improvement follows all laws related to such contracts and construction. Certification is intended to act as a guarantee to City that such requirements were met by Subdivider during its design and construction of a Project. If Subdivider has certified that an action has occurred, omission not made, a standard met, or a law followed and such action did not occur, omission happened, such standard was not met, or such law was not followed, then Subdivider shall indemnify and hold harmless the City from any claim, demand, cause of action, cause, expense, losses, attorney fees, injuries, or payments arising out of or related to the act not done, the omission which occurred, the standard not met, or the law not followed in accordance with Article XXIX of this Agreement. This Section shall not act to limit the remedies otherwise available to City under law.
- 3.2 **Type II and Type III Project Certification.** With respect to work commenced prior to the Effective Date, unless explicitly excluded by the language in this Agreement, by executing this Agreement, Subdivider hereby certifies that it has complied with all Public Work Contract requirements, including bidding requirements, standards of care, and other applicable law in effect at the time of the performance of the work on Type II and Type III Projects. Subdivider shall indemnify and hold harmless City from any claim, demand, cause of action, cause, expense, losses, attorney fees, injuries, or payments arising out of or related Subdivider's non-compliance with such requirements in accordance with Article XXIX of this Agreement.

#### ARTICLE IV. DURATION OF AGREEMENT

- 4.1 **Term of Agreement.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement following City Council approval by Resolution [Effective Date]. The term of this Agreement will extend for a period of fifteen (15) years following the Effective Date unless this Agreement is earlier terminated, or its term modified in writing agreed to by both Parties.
- 4.2 **Phasing Plan.** The Projects subject to this Agreement are all subject to a Phasing Plan, attached as Exhibit G. The Phasing Plan, as it currently exists or as it may latter be amended, is intended to direct the timing of the construction and completion of the Projects. For those Projects that Subdivider intends to construct, Subdivider shall comply with the requirements of the Phasing Plan and commence and complete construction of Projects as indicated in the Phasing Plan.
- 4.3 **Time is of the Essence.** Time is of the essence for this Agreement and each provision of this Agreement.
- 4.4 **Notification of Delay.** If Subdivider anticipates or has reason to believe that the performance of work on a Project under this Agreement will be delayed and such delay will increase the Estimated Cost of the Project, Subdivider shall immediately notify the Project Manager. A written notice of the delay must be delivered to City within thirty (30) Calendar Days of the initial notification, unless City allows an additional period of time to ascertain more accurate data in support of the request. The written notice shall include an explanation of the cause of the delay, a reasonable estimate of the length of the delay, and all supporting data, including the Estimated Cost increase.

- 4.5 **Delay.** If delays in the performance of work for a Project required under this Agreement are caused by unforeseen events beyond the control of the Parties, such delay may entitle Subdivider to additional compensation. Any additional compensation must be approved pursuant to the Change Order provisions of Article XV of this Agreement. The following conditions may justify such a delay and additional compensation: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of Subdivider's work; inability to obtain materials, equipment, or labor; required additional Professional Services; or other specific reasons agreed to between City and Subdivider; provided, however, that this provision shall not apply to, and Subdivider shall not be entitled additional costs or expenses for a delay caused by the acts or omissions of Subdivider, its consultants, contractors, employees, or other agents. A delay shall not constitute a Default if Subdivider has made good faith and reasonable efforts to avoid or mitigate such delay and has provided notice of delay pursuant to section 4.3; however, Subdivider shall pay all costs attributable to delay pursuant to section 4.8
- 4.6 **City's Right to Terminate for Default.** If Subdivider fails to perform or adequately perform any obligation required by this Agreement, Subdivider's failure constitutes a Default. If Subdivider fails to undertake all reasonable efforts to the satisfaction of City, within thirty (30) Calendar Days of receiving written notice from City specifying the nature of the Default, in order to ensure that the Default will be fully and completely remedied within a reasonable period of time thereafter, City may immediately cancel and/or terminate this Agreement as it relates to the Project on which Subdivider is in Default, and terminate each and every right of Subdivider with respect to that Project, and any person claiming any rights by or through Subdivider under this Agreement. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to City against Subdivider. A delay shall not constitute a Default.
- 4.7 **City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors.** If Subdivider 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 Subdivider, immediately cancel and/or terminate this Agreement, and terminate each and every right of Subdivider under this Agreement, and any person claiming any rights by or through Subdivider. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City's rights under any other provision of this Agreement. Nor does this Section otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to City against Subdivider.
- 4.8 **Costs of Delay.** City and Subdivider recognize that construction delays increase the cost of a particular Project. Unless Subdivider informs City within a reasonable time of such cost increases due to delay and such increases are fully recovered through increased fees in the Financing Plan, funding will be insufficient to cover the cost increase. Subdivider agrees to absorb any cost increases caused by delay to the extent that such costs have not been recovered through the Financing Plan and the FBA.

## ARTICLE V. PROJECT COSTS

- 5.1 **Estimated Cost.** Each Project shall have an Estimated Cost, which is identified in the Financing Plan and the Schedule of Estimated Costs. The Estimated Cost of a Project is subject to change pursuant to methods established in this Agreement. The sum of all Estimated Costs is one hundred sixty five million two hundred twenty eight thousand one hundred thirteen dollars (\$165,228,113) [Total Estimated Cost].
- 5.1.1 *Annual Adjustments to Estimated Cost.* Without further amendments to this Agreement, the Estimated Cost of a Project may be increased annually by the inflation rate, as determined by the Financing Plan, or future amendment to the Financing Plan and subsequent City Council action approving a greater expenditure.



- 5.1.2 *Adjustments to Estimated Cost Based on Approved Change Orders.* Estimated Cost may be changed, increased or decreased, based on Change Orders approved pursuant to Article XV.
- 5.1.3 *Adjustments Based on Other Cost Increases.* Estimated Cost may be increased due to: (i) acts of God, acts of any governmental authority, the elements, war, litigation, shortages of material, labor strikes, inflation, later commonly accepted or adopted higher standards and specifications of construction, concealed or unknown conditions encountered in the completion of the Project, or other cause beyond Subdivider's control, (ii) actual bids received being greater than estimated, or (iii) other factors not the result of unreasonable conduct by Subdivider. Estimated Cost may be increased by the amount of such increases, subject to approval by City Council.
- 5.1.4 *Not in Excess of Total Estimated Cost.* At the completion of all Projects subject to this Agreement, it may be determined following City's final accounting of costs that certain Projects were completed at a cost below their Estimated Cost, while other Projects were completed at a cost in excess of their Estimated Cost. City may reimburse Subdivider for excess costs upon determining that all of the following are true:
- 5.1.4.1 The increases in costs are otherwise reimbursable (ie. not a result of Subdivider or Subdivider's agents negligent actions or omissions or the cost of replacing property destroyed, lost, stolen, or damaged rendering it undeliverable or unusable for City.
- 5.1.4.2 Payment of the costs in excess of the Estimated Costs will not cause the reimbursement to Subdivider to exceed the Total Estimated Cost.
- 5.2 **Duty to Advance Costs.** Subdivider shall advance all costs for City Improvements it undertakes to construct in an amount not to exceed the sum of the Estimated Cost for each Project. All of the following shall be included in Estimated Costs:
- 5.2.1 *City's Project Management Costs.* For each Project, Subdivider shall make an initial deposit with City to cover City's Project Management Costs in an amount and manner acceptable to City Department responsible for Project oversight and management [Responsible Department].
- 5.2.1.1 *Costs in Excess of Deposit.* If, at any time, City anticipates that it will incur costs in excess of the initial deposit, Subdivider shall, upon written notice from City, increase the deposit in the amount requested by City.
- 5.2.2 *Subdivider's Administration Costs.* Subdivider's project administration and construction supervision, including salary, overhead, transportation, administration support, and office expenses shall not exceed five percent (5%) of Actual Costs.
- 5.2.3 *Project Contingency.* Subdivider shall include in Estimated Costs a Project Contingency of not less than fifteen percent (15%) of estimated construction costs as determined by competitive bidding. Any expenditure from the Project Contingency shall be approved by City prior to use of the Project Contingency.
- 5.2.3.1 *Use of Project Contingency.* The Project Contingency will not be available for: (i) work required due to Subdivider's, its officers', agents' or employees' failure to perform Work or Services according to the terms of this Agreement and/or in compliance with the Construction Documents; or (ii) uninsured losses resulting from the negligence of Subdivider, its officers, agents, or employees.
- 5.3 **Notification of Increased Costs.** If, at any time, Subdivider anticipates that the amount expended on the Project will exceed the Estimated Costs, Subdivider shall immediately, not more than ten (10) Working Days from becoming aware of the potential increase, notify City in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions which Subdivider believes will bring the construction cost to within the Estimated Costs. City may either: (i) approve an increase in the amount

authorized for the Project; or (ii) delineate a project which may be constructed for the budget amount; or (iii) any combination of (i) and (ii). If City does none of the above-mentioned options, Subdivider may elect to construct the Project and forgo any reimbursement in excess of the Estimated Cost.

#### ARTICLE VI. PROJECT ACCOUNTING

- 6.1 **Individual Projects.** Though the reimbursement of all City Improvements is covered under one agreement, each Project shall be accounted for as if it were an individual project subject to a separate agreement.
- 6.1.1 *Project Under Budget.* Where a Project is constructed for less than the Estimated Cost of the Project, the difference between the Actual Cost of the Project and the Estimated Cost of the Project may be applied to another Project without obtaining approval from City Council or an amendment to this Agreement provided that the Total Estimated Cost of this Agreement does not increase and provided that the additional cost is otherwise reimbursable.
- 6.1.2 *Invoices.* Each Project shall be invoiced separately. An invoice submitted to City shall only have costs related to the Project for which the invoice is submitted.
- 6.1.2.1 *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 a multiple Project basis in order to reduce costs through efficiencies of scale, such costs shall be allocated to individual Projects either by:
- 6.1.2.1.1 Identifying Actual Costs; or
- 6.1.2.1.2 Allocating costs by percentage of labor, materials, or services attributable to each Project.

#### ARTICLE VII. PROJECT SCHEDULE

- 7.1 **Project Schedule.** As the timing of Project commencement and completion is directly related to the Phasing Plan, Subdivider will not be required to prepare a Project Schedule for a Project absent a request from the Responsible Department. Where a Project Schedule is requested, Subdivider shall make a good faith effort to maintain the Project Schedule and shall inform City of changes to the Project Schedule.
- 7.2 **Project Completion.** Subdivider acknowledges that all work on the Project under this Agreement will be complete and ready for Acceptance by City on or before the date required by the Phasing Plan or where a Project Schedule has been requested, on or before the Completion Date identified in the Project Schedule.
- 7.3 **Changes in Project Schedule.** Where a Project Schedule has been requested by City, changes in Project Schedule, which have an associated increase in Estimated Cost, must be approved by City in writing pursuant to the method applied in Article XV, section 15.3. Changes in Project Schedule that do not have an associated increase in cost shall be approved by the City's Resident Engineer [RE] upon request of Subdivider, provided that the Project will still be completed by the date required in the Phasing Plan.

#### ARTICLE VIII. COMPETITIVE BIDDING AND EQUAL OPPORTUNITY

- 8.1 **Compliance.** All Projects are subject to City's Equal Opportunity and Competitive Bidding Requirements. With respect to Type II and Type III Projects that have awarded bids for construction prior to the Effective Date of this Agreement, Subdivider certifies, pursuant to Article III, that it complied with in all applicable public contract laws; rules; regulations set forth in City of San Diego Municipal Code, City Council Policy 800-03 "PUBLIC INFRASTRUCTURE FINANCING ASSESSMENT DISTRICTS AND COMMUNITY FACILITIES" as they existed on the date the bid was awarded; and State law. With respect to Type I Projects and Type II Projects that have not awarded bids for construction prior to the Effective Date of this Agreement [Pre-Bid Projects], Subdivider shall bid and award contracts to complete each Project in accordance with all applicable public contract laws; rules; regulations set forth in City of San Diego Municipal Code, City Council

Policy 800-03 "PUBLIC INFRASTRUCTURE FINANCING ASSESSMENT DISTRICTS AND COMMUNITY FACILITIES" as it exists as of the date of this Agreement; and State law.

- 8.2 **Bidding Documents.** For each Pre-Bid Project, Subdivider, following City review of the Construction Documents, shall prepare final, corrected Construction Documents [Bidding Documents]. All Bidding Documents are to be submitted to City for review and approval, in accordance with City's standard review procedures prior to Solicitation of Bids. For all other Projects, Subdivider shall provide City with Bidding Documents within thirty (30) calendar days of a request from the Responsible Department.
- 8.2.1 *Submission of Bidding Documents.* Subdivider shall submit Bidding Documents to City for approval before soliciting bids for work on the Project. City will notify Subdivider of corrections within ten (10) Working Days of submittal date.
- 8.2.2 *Obtain all Permits and Approvals.* Subdivider shall obtain all necessary permits, including but not limited to, environmental, grading, building, mechanical, electrical, and plumbing. City approval of Bidding Documents will be evidenced by City's issuance of a letter indicating Subdivider may proceed with competitive bidding.
- 8.3 **Solicitation of Bids.** For each Pre-Bid Project, Subdivider shall solicit sealed bids for the construction of the Project. Such solicitation may be by publication in a local newspaper of choice, but must include notice in the San Diego Daily Transcript. Subdivider may also directly solicit sealed bids for the construction of the Project. Bids shall be solicited from at least three (3) qualified contractors and the bidding response time shall not be less than ten (10) Working Days. Subdivider shall notify City of the time and place of each bid opening for the construction of the Project and shall provide City with copies of all bids received.
- 8.4 **Bid Opening and Award of Contract.** For each Pre-Bid Project, Subdivider shall open sealed bids in the presence of City's authorized representative(s). The bidding contractors shall be permitted to attend the bid opening. City's representative(s) shall be provided with a copy of the tabulation of bid results and copies of bids submitted. Contract(s) for the construction of the Project shall be awarded by Subdivider to the qualified contractor(s) submitting the lowest responsible bid(s), as mutually determined by Subdivider and City's authorized representative(s).
- 8.4.1 *Bid Exceeds Estimated Cost.* In the event that the lowest responsible bid, combined with the Project Contingency, exceeds the Estimated Cost, Subdivider shall either:
- 8.4.1.1 Obtain City Approval of the Increase in the Costs. The increase in costs must be approved by City pursuant to Article V, section 5.1.3 prior to awarding the contract if the Subdivider wants assurance that the increase in costs shall constitute Reimbursable Costs. In the event City Council does not approve the increased cost and Subdivider does not choose to assume responsibility for costs pursuant to section 8.4.1.2, City may, at its option, delete the Project from this Agreement or require that the Project be rebid and/or redesigned. In the event City deletes the Project, the obligations of Subdivider, with respect to the design and construction of the Project shall be released without further liability. However, City shall reimburse Subdivider, at Subdivider's option with either FBA credits or cash reimbursement (subject to availability), for the Reimbursable Costs related to engineering and design expended by Subdivider prior to deletion of the Project from this Agreement. Subdivider shall provide City with copies of all executed contracts.
- 8.4.1.2 Award Bid and Assume Responsibility for Costs in excess of Estimated Costs. In the event that City Council does not approve an increase in the Estimated Cost of a Project, Subdivider may complete the construction of the Project and assume responsibility of costs in excess of Estimated Costs.
- 8.5 **Equal Employment Opportunities and Equal Opportunity Contracting.**

- 8.5.1 *Equal Employment Opportunity Nondiscrimination.* To the extent that work has already been completed on a Type II or Type III Project, Subdivider certifies that it has complied with City of San Diego's Equal Opportunity Contracting Program then in effect with respect to the work completed. For all other work, Subdivider shall comply with City of San Diego's Equal Opportunity Contracting Program. Subdivider shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Subdivider shall provide equal opportunity in all employment practices. Subdivider shall ensure that their consultants, subconsultants, prime contractors and their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold Subdivider or a prime contractor liable for any discriminatory practice of its subcontractors.
- 8.5.2 *Equal Employment Opportunity Duty to Submit Reports.* Pursuant to San Diego Municipal Code section 22.2705, with respect to Pre-Bid Projects, Subdivider shall submit to the Equal Opportunity Contracting program a Work Force Report or an Equal Employment Opportunity Plan approved by the program manager prior to tendering the signed contract documents to City for signature. For all other Projects, Subdivider shall submit a Work Force Report of Equal Employment Opportunity Plan to the Equal Opportunity Contracting Program within a reasonable time, not to exceed 180 days, after the Effective Date.
- 8.5.3 *Equal Opportunity Contracting Nondiscrimination.* Subdivider 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 subcontractors, vendors, or suppliers. Subdivider shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Subdivider understands and agrees that violation of this Subsection shall be considered a material breach of this Agreement and may result in contract termination, debarment, or other sanctions. With respect to Pre-Bid Projects, the language of this Subsection shall be inserted in contracts between Subdivider and any subcontractors, vendors, or suppliers.
- 8.5.4 *Local Contracts/Investigation.* Upon City's request, Subdivider agrees to provide City, within sixty (60) Calendar Days a truthful and complete list of the names of all subcontractors, vendors, and suppliers Subdivider has used in the past five (5) years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Subdivider for each subcontract or supply contract. Subdivider 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). Subdivider understands and agrees that violation of this Subsection shall be considered a material breach of this Agreement and may result in contract termination, debarment, and other sanctions.

#### **ARTICLE IX. PREVAILING WAGE**

- 9.1 **Prevailing Wage.** Except where not required by law, City Charter, or Council Policy, each Project subject to this Agreement shall pay prevailing wage.

#### **ARTICLE X. CONSULTANT**

- 10.1 **Selection of Consultant.** Subdivider's hiring of an appropriate third party to perform services related to each Project [Consultant] is subject to prior approval by City. As Type II and Type III Projects have hired Consultants prior to the Effective Date, it is not possible for City to approve of these Consultants prior to their selection. In such circumstances, by entering into this Agreement, City grants its approval of the Consultants hired prior to the Effective Date and Subdivider agrees that it shall defend, indemnify, and hold harmless City, its agents, officers, and employees as required by Articles III and XXIX. Prior to the Effective Date, Subdivider shall provide a comprehensive list of these Consultants to City. This list shall identify the Projects for which the Consultant was hired and the scope of work for such Projects. With respect to Type I Projects, Subdivider shall give written notice to City of each Consultant selected at least fifteen (15) Calendar Days before entering into a contract with the Consultant. Further, Subdivider shall cause the following provisions to

be included in its Consultant contract(s) for Type I Projects, unless City authorizes in writing a deviation to the provisions:

- 10.1.1 “Third Party Beneficiary. City of San Diego is an intended third party beneficiary of this contract. In addition, it is expected that upon completion of design, 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.”
- 10.1.2 “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 City of San Diego. Consultant shall submit this written justification to 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.”
- 10.1.3 “Professional Services Indemnification. As to Consultant’s professional obligations, work or services involving this Project, Consultant agrees to indemnify and hold harmless 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 City of San Diego for liabilities arising out of Consultant’s provision of services under this Agreement.”
- 10.1.4 “General Indemnification. With respect to any liability, including but not limited to claims asserted or costs, losses, attorney’s fees, or payments for injury to any person or property caused or claimed to be caused by the acts or omissions of Consultant, or Consultant’s employees, agents, and officers, arising out of any services performed involving this project, except liability for Professional Services, Consultant agrees to defend, indemnify, protect, and hold harmless City of San Diego, and its agents, officers, or employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of Consultant, its employees, agents or officers, or any third party. Consultant’s duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of City of San Diego, its agents, officers or employees.”
- 10.1.5 “Enforcement Costs. Consultant agrees to pay any and all reasonable costs City of San Diego may incur to enforce the indemnity and defense provisions set forth in this Agreement.”
- 10.1.6 “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 one million dollars (\$1,000,000) aggregate. Consultant shall ensure both that (i) this policy’s retroactive date is on or before the date of commencement of the work to be performed under this Agreement; and (ii) 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 City of San Diego’s exposure to loss.”

- 10.1.7 “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.”
- 10.1.8 “Insurance Policy Requirements. Except for professional liability insurance and Workers Compensation, 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 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 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 City of San Diego by certified mail, as reflected on an endorsement which shall be submitted to 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 City of San Diego with all Certificates of Insurance accompanied with all endorsements.”
- 10.1.9 “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 City of San Diego and its respective elected officials, officers, employees, agents and representatives.”
- 10.1.10 “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.”
- 10.1.11 “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 City of San Diego to inspect, copy and audit such books, records, documents and other evidence at all reasonable times. In addition, Consultant agrees to provide City of San Diego with complete copies of final Project design and construction plans and project cost estimate.”

#### ARTICLE XI. PLANS AND SPECIFICATIONS

- 11.1 **Construction Documents.** All construction drawings are subject to the approval of City Engineer through the Development Services Department review process. Unless requested at an earlier stage, Subdivider shall submit 100% complete plans and supporting data per section 3 of Volume 1, Chapter 1 of the Land Development Manual. Prior to beginning construction all applicable permits must be obtained and bonds must be provided in accordance with Chapter 12 Article 9 of the San Diego Municipal Code. City agrees to review the Construction Documents and provide City’s written comments to Subdivider within sixty (60) Calendar Days of the date such Construction Documents are delivered to City in accordance with the notice provisions in Article XXXII. Approval shall not be unreasonably withheld. Construction Documents shall include City’s

standard drawings and specifications as described in Article XXIV. If requested by City, Subdivider shall make changes to the Construction Documents, but Subdivider shall not be responsible for implementing such changes if the cumulative total of such changes would increase the Estimated Cost by more than five percent (5%). In such a case, the changes to the Construction Documents shall be considered additive or deductive bid alternates to the Project.

11.1.1 *Type III Projects.* Subdivider shall submit the Construction Documents for these Projects prior to or concurrent with the Effective Date.

11.2 **Preparation of Estimated Budget.** Prior to the solicitation of bids, Subdivider shall require its Consultant to prepare an Estimated Budget covering the Project for review and approval by the Responsible Department.

## ARTICLE XII. DESIGN AND CONSTRUCTION STANDARDS

12.1 **Standard of Care.** For each Project, Subdivider agrees that the professional services provided as part of this Agreement shall be performed in accordance with the standards customarily adhered to by experienced and competent professional 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 [State]. For any work commenced prior to the Effective Date (ie. on Type II or Type III Projects), Subdivider certifies pursuant to Article III of this Agreement that the professional services were performed in accordance with the standards customarily adhered to by experienced and competent professional 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.

12.2 **Compliance with all Laws.** To the extent that work has been performed on a Project prior to the Effective Date, Subdivider certifies, pursuant to Article III, that it has complied with all laws in effect at the time the work was performed. For all work to be performed on any Project following the Effective Date, Subdivider shall comply with all laws, including but not limited to:

12.2.1 All local, City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including but not limited to, Development Services Department permits, hazardous material permits, site safety, state and local Building Codes, stormwater regulations, etc.

12.2.2 The Americans with Disabilities Act [ADA] and Title 24 of the California Building Code. It is the sole responsibility of Subdivider to comply with all ADA and Title 24 regulations. Subdivider Certification for Title 24/ADA Compliance is attached as Exhibit H.

12.2.3 Subdivider shall complete all environmental measures required by CEQA (State requirements), NEPA (Federal requirements), and the local jurisdiction, including but not limited to, mitigation measures, and site monitoring.

12.2.4 Subdivider shall comply with the Clean Air Act of 1970, the Clean Water Act (33 USC 1368)-Executive Order 11738, and the Stormwater Management and Discharge Control-Ordinance No. 0-17988.

12.2.5 Subdivider shall comply with the Essential Services Building Seismic Safety Act, SB 239 & 132.

12.2.6 Subdivider shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.

12.3 **Compliance with Design and Construction Standards.** To the extent that work has been performed on a Project prior to the Effective Date, Subdivider certifies, pursuant to Article III, that it has complied with the editions of Design and Construction Standards in effect at the time the work was performed. For all work to be performed on any Project following the Effective Date, Subdivider shall comply with the most current editions of Design and Construction Standards.

- 12.3.1 *Standard Specifications.* Subdivider shall comply with the most current editions of the following reference specifications when designing and constructing the Project, including:
- 12.3.1.1 The most recent edition of the Standard Specifications for Public Works Construction, including the Regional and City of San Diego Supplement Amendments [Greenbook].
  - 12.3.1.2 California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones.
- 12.3.2 *City Standards.* Subdivider'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:
- 12.3.2.1 City of San Diego's Drainage Design Manual.
  - 12.3.2.2 City of San Diego's Landscape Technical Manual produced by the Planning Department.
  - 12.3.2.3 City of San Diego's Consultant's Guide to Park Design and Development produced by the Park and Recreation Department.
  - 12.3.2.4 City of San Diego's Street Design Manual.
  - 12.3.2.5 City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.
  - 12.3.2.6 City of San Diego's Technical Guidelines for Geotechnical Reports.
  - 12.3.2.7 City of San Diego Standard Drawings including all Regional Standard Drawings.
  - 12.3.2.8 City of San Diego Data Standards for Improvement Plans.
  - 12.3.2.9 Green Building. The Project design and construction shall comply with City Council Policy 900-14, "GREEN BUILDING POLICY".
- 12.3.3 *Energy Conservation Standards.* Technological advances in energy conservation devices such as lighting and Heating Ventilation and Air Conditioning [HVAC] enable additional energy savings over that required by the State of California Title 24 Energy Standards. If requested by City, Subdivider shall be responsible for preparing a cost savings comparison of such devices for City review. The purpose of the comparison is to identify the additional initial cost of such devices, versus their long-term energy savings. Subdivider shall prepare a cost savings matrix that lists each device being considered and 1, 3, 5, and 10-year projected savings. The comparison shall include, but not be limited to the below listed devices: lighting, HVAC, water, heating, and motors.
- 12.3.4 *Compatibility.* Subdivider shall design the Project in a fashion that is architecturally or otherwise compatible with the surrounding community, subject to City's discretion.
- 12.4 **Imputed Knowledge.** Subdivider shall be responsible for all amendments or updates to standards and knowledge of all amendments or updates to standards, whether local, state, or federal, and such knowledge will be imputed to Subdivider to the extent allowed by law.
- 12.5 **City Approval Not a Waiver of Obligations.** Where approval by City, City Manager, or other representatives of City is required, it is understood to be general approval only and does not relieve Subdivider of responsibility for complying with all applicable laws, codes, and good consulting, design, or construction practices.

### ARTICLE XIII. CONSTRUCTION

- 13.1 **Compliance with Project Schedule.** For each Project, Subdivider shall commence construction in accordance with the Project Schedule, where required by Article VII, or in accordance with the Phasing Plan, if no Project Schedule is required for that Project. Where a Project Schedule is required, Subdivider shall use its best efforts to adhere to the Project Schedule and shall notify City of Delay in accordance with Article IV, section 4.3. Subdivider shall pay costs attributable to Delay pursuant to Article IV, section 4.8. Subdivider



shall diligently pursue construction to completion. This Section shall not limit City's remedies described in Article IV or any other remedies, which may be otherwise available to City.

13.2 **Preconstruction Meeting.** For each Type I Project, Subdivider shall conduct a preconstruction meeting with its officers, agents and employees and City. The purpose of this meeting is to discuss: (i) the Agreement conditions, (ii) Scope of Work clarifications, and (iii) City policies, inspection requirements, and procedures.

13.2.1 *Attendance.* Subdivider shall ensure that the preconstruction meeting is attended by Subdivider's construction contractor, the Subdivider's Project Superintendent, all Subdivider's major subcontractors, City Inspection Team as set forth in Article XXI, section 21.1, and all other persons necessary as determined by Subdivider or City.

13.2.2 *Agenda.* The preconstruction meeting agenda shall at a minimum address the topics described in Exhibit I, attached hereto and incorporated herein.

13.2.3 *Minutes.* Subdivider shall take corresponding meeting minutes and distribute copies to all attendees.

13.3 **Progress Meetings.** For each Type I or II Project, Subdivider shall conduct progress meetings at dates and times scheduled at the preconstruction meeting with the following necessary parties: Subdivider's Construction Superintendent, Subdivider's Project Manager, Subdivider's Design Consultant, City representatives, including Responsible Department, Project Manager, and RE.

13.3.1 *Agenda.* Agenda shall include items as defined in Exhibit I.

13.3.2 *As-Builts.* Subdivider shall bring updated As-Builts and verify that the latest changes have been made.

13.3.3 *Special Meetings.* Special meetings shall occur at Project phases as outlined in Exhibit I.

13.3.4 *Rescheduling.* Progress and Special Meetings may be rescheduled if rescheduled meeting times are convenient for all necessary parties, and Subdivider has given no less than five (5) Calendar Days prior written notice of the rescheduled meeting.

13.4 **Site Safety, Security, and Compliance.** Subdivider shall be responsible for site safety, security, and compliance with all related laws and regulations.

13.4.1 *Persons.* Subdivider 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 Subdivider to access the Project site.

13.4.2 *Other.* Subdivider is responsible for the Project, site, materials, equipment, and all other incidentals until the Project has been Accepted by City pursuant to Article XXIII.

13.4.3 *Environment.* Subdivider shall be responsible for the environmental consequences of the Project construction and shall comply with all related laws and regulations, including 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 Enforcement Official. Furthermore, Subdivider shall prepare and incorporate into the Construction Documents a Stormwater Pollution Prevention Plan [SWPPP] to be implemented by Subdivider 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.

**13.5 Access to Project Site.**

13.5.1 *Field Office.* If City requires, Subdivider shall provide in the Estimated Budget a City field office (approximately 100 square feet) which allows City access to a desk, chair, two (2) drawer locking file cabinet with key, phone, fax, computer, copy machine and paper during working hours.

13.5.2 *Site Access.* Other than Project Manager and RE, City officers, agents and employees with Project related business shall have the right to enter the Project site with reasonable notice, not less than forty eight (48) hours, to Subdivider, except where necessitated by a bona-fide emergency, or if the nature of their work requires unannounced notice, in which case, they shall be accompanied by an employee of Subdivider while at the Project Site. Project Manager and RE shall have the right to access the site at any time for Project related purposes.

**13.6 Surveying and Testing.** Subdivider 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:

13.6.1 *Existing Conditions.* Subdivider shall obtain all necessary soils investigation and conduct agronomic testing required for design of the Project. Subdivider's 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.

13.6.2 *Utilities.* Subdivider 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. Subdivider 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.

13.6.3 *Geotechnical Information.* Subdivider 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.

**13.7 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 City.

13.7.1 *Materials Testing.* Subdivider 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.

13.7.2 *Surveying.* Subdivider shall pay for and coordinate with City's Survey Section all surveying required within the Public right-of-way.

13.7.3 *Follow all Laws, Rules, and Regulations.* Subdivider 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.

**13.8 Traffic Control.** Subdivider shall address all traffic control requirements for the Project including, if necessary, separate traffic control plans and/or notes.

**13.9 Inspections.** Subdivider shall coordinate any and all special inspections required for compliance with all State Building Codes as specified in the Contract Documents.

13.9.1 *Reports.* Subdivider shall provide City all special inspection reports within five (5) Working Days of inspection. Subdivider shall report all failures of special inspections to City.

- 13.9.2 *Remedies.* Remedies for compliance shall be approved by Subdivider, Subdivider's Consultants, City's Development Services Department, and City representatives.
- 13.9.3 *Concealing Work.* Prior to concealing work, Subdivider shall obtain approval of work from the following departments as required by City: (i) Engineering & Capital Projects Department; (ii) Development Services Department; and (iii) 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 Subdivider of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations. Subdivider shall fulfill all requirements of each of these three entities.
- 13.10 **Property Rights.** Subdivider 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" for the Projects it constructs. City shall not require Subdivider to provide any easement documents for land to which Subdivider does not have title; however, Subdivider shall not relinquish, sell or transfer title to avoid any obligation under this Section, this Agreement, the Financing Plan, or any applicable Development Agreement.
- 13.11 **Permits.** The Parties acknowledge that the construction work to be performed on a Project by Subdivider 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 Subdivider. 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 Subdivider is relieved from its obligation to construct those Projects covered by the denial of said permit(s). City shall, under such circumstances, and upon Subdivider's sole option, either credit Subdivider with FBA credits or pay Subdivider in cash (subject to availability) for all work completed up to the date of denial of said permit(s), including payment in full of the purchase price of the Property, where applicable, and any other costs reasonably related to concluding work. 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 Subdivider's receipt of payment in full as described above.
- 13.12 **Maintenance.** Subdivider shall maintain and be responsible for each Project site until Acceptance of the Project, including ongoing erosion prevention measures. Upon Acceptance of a Project, City shall be responsible for all maintenance of Project site.
- 13.13 **Drug-Free Workplace.** To the extent that work has been performed on a Project prior to the Effective Date, Subdivider certifies, pursuant to Article III, that it has complied with City's requirements set forth in Council Policy 100-17, "DRUG-FREE WORKPLACE," adopted by San Diego Resolution R 277952 and incorporated into this Agreement by this reference. For any work not performed prior to the Effective Date, Subdivider agrees to comply with City's requirements set forth in Council Policy 100-17, "DRUG-FREE WORKPLACE." Subdivider shall certify to City that it will provide a drug-free workplace by submitting a Subdivider Certification for a Drug-Free Workplace form.
- 13.13.1 *Subdivider Notice to Employees.* Subdivider 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.
- 13.13.2 *Drug-Free Awareness Program.* Subdivider shall establish a drug free awareness program to inform employees about all of the following:
- 13.13.2.1 The dangers of drug abuse in the work place.
  - 13.13.2.2 The policy of maintaining a drug free work place.
  - 13.13.2.3 Available drug counseling, rehabilitation, and employee assistance programs.
  - 13.13.2.4 The penalties that may be imposed upon employees for drug abuse violations.
  - 13.13.2.5 In addition to section 13.13.1 above, Subdivider shall post the drug free policy in a

prominent place.

- 13.13.3 *Subdivider's Agreements.* Subdivider further certifies that each contract for Consultant or Contractor services for each Type I Project shall contain language that binds the Consultant or Contractor to comply with the provisions of Article XIII, section 13.13 of this Agreement, 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.

#### ARTICLE XIV. PRODUCTS

- 14.1 **Submittals.** To the extent that a product specification is not addressed by the Greenbook or the Project has aesthetic aspects requiring City review, comment and approval, prior to the bidding process, Subdivider shall submit for City approval a list of products intended for use in the Project. Upon Subdivider's completion of Construction Documents, City will review and approve products specified therein. Subdivider shall provide City a copy of each submittal for City approval throughout the duration of construction within twenty (20) Calendar Days of Subdivider's receipt of submittal. Approval is general approval only and in no way relieves Subdivider of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations.
- 14.2 **Substitutions.** Subdivider 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 Subdivider's contractor. City shall review substitution requests within thirty (30) Calendar Days of submission of such requests. Subdivider agrees that City requires Consultant's input and as such Subdivider shall coordinate a five (5) Working Day review by its Consultant.
- 14.2.1 *Substantiate Request.* Subdivider shall include with each substitution request complete data which substantiates that the proposed substitution conforms to requirements of the Contract Documents.
- 14.2.2 *Subdivider Representations.* By submitting a substitution request, Subdivider is representing to City all of the following: (i) Subdivider has investigated proposed product and determined that in all respect the proposed product meets or exceeds the specified product; (ii) Subdivider is providing the same warranty for the proposed product as was available for the specified product; (iii) Subdivider shall coordinate installation and make any other necessary modifications which may be required for work to be complete in all respects; and (iv) Subdivider shall waive any claims for additional costs related to the substituted product, unless the specified product is not commercially available.
- 14.2.3 *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.
- 14.3 **Samples.** Where samples are required or requested by City, the following shall apply:
- 14.3.1 *Postage.* Samples shall be sent to Subdivider's office, carriage prepaid.
- 14.3.2 *Review.* Subdivider shall furnish to City for review, prior to purchasing, fabricating, applying or installing, (2) two samples (other than field samples) of each required material with the required finish.
- 14.3.2.1 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.
- 14.3.2.2 Subdivider shall assign a submittal number. Subdivider 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.

- 14.3.2.3 All materials, finishes, and workmanship in the complete building shall be equal in every respect to that of the reviewed sample.
  - 14.3.2.4 City will return one submitted sample upon completion of City review.
  - 14.3.2.5 Subdivider's, or Subdivider's agent's, field samples shall be prepared at the site. Affected finish work shall not commence until Subdivider or its agents have been given a written review of the field samples.
- 14.3.3 *Not a Release of Liability.* City's review of samples in no way relieves Subdivider of Subdivider's responsibility for construction of Project in full compliance with all Construction Documents.

#### ARTICLE XV. CHANGE ORDERS

- 15.1 **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 15.3 and delivered to Subdivider.
- 15.2 **Written Approval of Change Orders.** Change Orders which will not result in an increase in the Total Estimated Cost may be approved by the RE. If a requested Change Order would result in an increase in the Total Estimated Cost, approval of the Change Order shall require City Council approval.
- 15.3 **Process for Approval of Change Orders.** Subdivider shall notify the RE in writing, of the need for a Change Order. Subject to section 15.4, the Change Order must indicate whether the change will affect, in any way, by increasing or decreasing, the Total Estimated Cost, Project Schedule, or project quality established during the design and submittal review process.
- 15.3.1 *Resident Engineer Approval.* If the Change Order request does not result in an increase in the Total Estimated Cost, the RE shall either approve or reject the Change Order in writing within ten (10) Working Days of receiving Subdivider's written notice, provided Subdivider has submitted complete documentation substantiating the need for such Change Order. If City fails to respond to Subdivider's written notice within the ten (10) Working Days, the Change Order request shall be deemed denied.
  - 15.3.2 *City Council Approval.* For Change Orders not subject to section 15.3.1, City Council approval is required. City shall process the Change Order along with any required amendments to the Financing Plan and this Agreement as a 1472, a Request for Council Action. At a hearing on such Request for Council Action, City Council shall either approve or reject such Change Orders. Council Approval shall not be subject to the ten (10) Working Day response time provided for in section 15.3.1.
- 15.4 **Errors and Omissions.** Subdivider shall not be reimbursed for any costs or expenses of a Change Order resulting from a design error or omission, Subdivider's negligence, or the negligence of any of Subdivider's agents or subagents. Subdivider shall be reimbursed for any costs or expenses of a Change Order resulting from a design error or omission that is the direct result of a City request for such design or omission.
- 15.5 **City Refusal to Approve Change Order.** Subdivider shall not have the right to terminate this Agreement for City's refusal to approve a Change Order pursuant to sections 15.2 and 15.3.
- 15.6 **Claim by Subdivider that an Increase in Estimated Cost of a Project will not Increase Total Estimate Cost.** Where a Subdivider has submitted a Change Order and has indicated that such Change Order shall not increase the Total Estimated Cost, but does increase the Estimated Cost of the Project, thereby avoiding the necessity to obtain Council approval, Subdivider shall submit sufficient documentation to City to support the claim. In the event that City approves the Change Order, Subdivider shall not obtain reimbursement for any amount in excess of the Estimated Cost of the Project unless and until an accounting identified in Section 5.1.4 is completed and the determinations required by that Section are made.

## ARTICLE XVI. EXTRA WORK

- 16.1 **City Authority to Order Extra Work.** City may at any time prior to Subdivider's filing a Notice of 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 the bid award, without invalidating this Agreement and without notice to any surety.
- 16.1.1 *Requests in Writing.* All requests for Extra Work shall be in writing, shall be treated as, and are subject to the same requirements as Change Orders. Subdivider shall not be responsible for failure to perform Extra Work, which was requested in a manner inconsistent with this Section.
- 16.2 **Bonds Required for Extra Work.** Subdivider's and its agents' bonds, under Article XXVIII shall cover any Extra Work provided that the Extra Work is authorized pursuant to section 16.1.
- 16.3 **Reimbursement for Extra Work.** Work performed by Subdivider as Extra Work is reimbursable in the same manner described in Article XVIII. The Project Contingency as described in Article V, section 5.2.3, will be used first to cover the costs of Extra Work.
- 16.4 **Markup.** Subdivider will be paid a reasonable allowance for overhead and profit for Extra Work. The allowance shall not exceed five percent (5%) of the approved costs for the Extra Work.

## ARTICLE XVII. CHANGED CONDITIONS

- 17.1 **Changed Conditions.** Changed Conditions shall be addressed under the Greenbook section 3-4; however, Parties acknowledge that even if Changed Conditions are found to be present, Subdivider shall not be entitled to reimbursement in excess of the Estimated Cost of the Project without express City Council approval of an increase to the Estimated Cost. Absent such express approval of additional funds, Subdivider and City shall cooperate in good faith to pursue value engineering for the Project in order to construct the Project within the total Estimated Cost.

## ARTICLE XVIII. REIMBURSEMENT

### 18.1 **Reimbursement to Subdivider**

- 18.1.1 *Notification of Reimbursable Project.* For each Project subject to this Agreement, Subdivider shall submit a "Notification of Reimbursable Project" form, attached as Exhibit J, to the Responsible Department at the following times:
- 18.1.1.1 Type I Project. Subdivider shall submit a "Notification of Reimbursable Project" form to the Responsible Department prior to commencement of any work on a Type I Project, including hiring a Consultant.
- 18.1.1.2 Type II or Type III Project. The Project descriptions in Exhibit C of Type II and III Projects shall constitute Subdivider's submittal of the "Notification of Reimbursable Project" form to the Responsible Department for those Type II and Type III Projects listed.
- 18.1.2 *Type of Reimbursement.* Subdivider shall be entitled to cash reimbursement or FBA credits for the Reimbursable Costs advanced by Subdivider in accordance with the Financing Plan. Subdivider may choose to receive FBA credits or cash reimbursement. Any changes to the timing of reimbursement shall be reflected in future updates to the Financing Plan without further amendment to this Agreement. Subdivider shall not receive cash reimbursement until there are sufficient funds to reimburse Subdivider, in whole or in part, from the FBA. If sufficient funds are unavailable in the FBA, City shall reimburse Subdivider as funds accrue in the FBA. Where FBA credit reimbursement is requested, FBA credit reimbursement shall be made at the time identified in the

Financing Plan. Subdivider may receive FBA credits for Developer Advances prior to the time identified in the Financing Plan.

- 18.1.3 *Funds for Reimbursement.* For each Project, Subdivider shall only be entitled to reimbursement from FBA funds collected by City from the Black Mountain Ranch Facilities Benefit Assessment Area in the amounts described in the Financing Plan, as such funds become available, pursuant to the method of reimbursement described in section 18.1.6, and in the priority of reimbursement described in section 18.1.8.
- 18.1.4 *Amount of Reimbursement.* Except as provided for in section 5.1.4, for each Project, Subdivider shall be entitled to reimbursement in an amount not to exceed the Estimated Cost of that Project. Subdivider is not entitled to reimbursement for unapproved expenses, unapproved increases in costs, or other increases caused by Subdivider negligence, omissions, or failure to seek approval for additional or increased costs.
- 18.1.5 *Interest.* Interest will accrue on Reimbursable Costs in the manner identified in Article XXXIII, section 33.4.
- 18.1.6 *Method of Reimbursement.* Subdivider shall submit to City a request for reimbursement for all Reimbursable Costs incurred or advanced for a Project for which Subdivider was not previously reimbursed or granted credit [Reimbursement Request]. The Reimbursement Request must clearly identify the Project for which reimbursement is requested. Reimbursement Requests for different Projects must be submitted as separate requests. The Reimbursement Request must also include all relevant documents in accordance with section 18.1.7. If City determines that all relevant documents have not been submitted, City shall request that Subdivider provide additional documentation. Subdivider shall provide additional documentation within ten (10) Working Days of request. City is not obligated to reimburse Subdivider until City has received all relevant documentation to support Reimbursement Request and interest shall not accrue if Reimbursement Request submission is incomplete. After City approves the Reimbursement Request, and all appropriate cost documentation has been received, City shall reimburse Subdivider in either cash, provided funds are available in the FBA for the Project, or FBA credits within sixty (60) Calendar Days of receipt of a complete Reimbursement Request, and provided the Project is scheduled in the Financing Plan for reimbursement at that time.
- 18.1.6.1 *Withholding.* From each reimbursement payment, ten percent (10%) will be deducted and retained by City, and the remainder will be paid in accordance with the terms and conditions of this Agreement. After fifty percent (50%) of the work has been completed and if progress on the work is satisfactory to City, the deduction to be made from the remaining payments and from the final payment may be limited to five percent (5%) [Withholding]. No payment made to Subdivider or its sureties will constitute a waiver of any rights City has under this Contract. This Section is not intended to limit any rights City may have under the Payment Bond.
- 18.1.6.2 *Reimbursement of Withholding.* City will reimburse Subdivider for the amounts withheld forty-five (45) Calendar Days from recordation of the Notice of Completion, providing that no Stop Notices or Mechanic's Liens have been filed since the recordation of the Notice of Completion.
- 18.1.6.2.1 Where a Stop Notice or Mechanic's Lien has been filed following the recordation of the Notice of Completion, the amount in controversy shall continue to be withheld until a fully executed release of Stop Notice or Mechanic's Lien has been filed and a conformed copy delivered to City.
- 18.1.6.2.1.1 If the Withholding is insufficient to fully cover the amount in controversy under the Stop Notice or Mechanic's Lien, the deficiency shall be withheld from any outstanding balance of

Reimbursable Costs or deducted from FBA or DIF credits previously granted.

- 18.1.6.3 Timing of Submissions of Reimbursement Requests. Prior to the Acceptance of a Project, Subdivider may submit Reimbursement Requests on a monthly basis for all costs not previously submitted or reimbursed.
- 18.1.6.4 Cutoff for Submission of Reimbursement Requests. Subdivider shall submit all Reimbursement Requests within nine (9) months of the date on which the transfer of ownership of a Project, as described in section 23.1.3, occurs [Cutoff Date]. Any Reimbursement Request submitted after the Cutoff Date shall not be reviewed or included in Reimbursable Cost.
- 18.1.7 *Verification of Reimbursement Request.* Subdivider shall supply 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:
  - 18.1.7.1 Subdivider shall submit two (2) copies of a Reimbursement Request (cover letter, invoice, and documentation) to the RE for work completed per plan and specification and/or "Extra Work". Work deemed "Extra Work" as defined in Section 3 of the "Greenbook" Standard Specifications for Public Works Construction, must be approved by the RE.
  - 18.1.7.2 Prior to the approval of the Reimbursement Request, the RE shall verify whether or not 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 bid list, contract estimates and plans and specifications. The RE shall review change order requests, and approve minor change orders as described in Article XV, while keeping the Sr. Civil Engineer apprised of increases in the Project cost. The RE shall also review as-builts and BMPs, and verify that a Release of Claims has been prepared.
  - 18.1.7.3 The RE shall initial the Reimbursement Request package, noting any disallowed costs, maintain a copy, and forward a copy to the Sr. Civil Engineer for review.
  - 18.1.7.4 The Sr. Civil Engineer shall review project invoices and monitor the RE's expenses charged to the Project, as well as other City administrative costs. The Sr. Civil Engineer shall also serve as the liaison between the RE and the Facilities Financing Project Manager [FF Project Manager].
  - 18.1.7.5 After review and approval, the Sr. Civil Engineer shall prepare a memorandum to Facilities Financing indicating the reimbursement amount and the invoice is appropriate to pay if/as funds are/become available. The memorandum shall indicate any costs to be disallowed and the reason for the disallowance. The Reimbursement Request shall be forwarded to the FF Project Manager with the memorandum recommending payment.
  - 18.1.7.6 The FF Project Manager shall verify that reimbursements are scheduled in the PFFP and verify FBA cash/credits are available for reimbursement. The FF Project Manager shall also report the distribution of FBA credits to the Auditor on a periodic basis, including at fiscal year end.
- 18.1.8 *Priority of Reimbursement.* City agrees that reimbursement to Subdivider from the FBA for the Project will be subsequent to reimbursement of City's Administrative expenses, but take priority



over any private Subdivider added to the FBA subsequent to the Effective Date, with the following exceptions:

- 18.1.8.1 Any State or Federally mandated project.
- 18.1.8.2 To the extent Subdivider has failed to notify City in writing of any actual or anticipated cost increases, not yet approved, the reimbursement for the cost increases will be subsequent in priority to those projects, whose funds have been identified prior to the notice of increased costs.
- 18.1.8.3 The FBA identifies another project for funding in an earlier fiscal year than this Project prior to the Effective Date.
- 18.1.9 *Non-reimbursable Costs.* Except to the extent that City expressly assumes the risk of loss under this Agreement, City shall exclude from the amounts payable to Subdivider the fair value, as determined by City, of property that is destroyed, lost, stolen, or damaged rendering it undeliverable or unusable for City. In addition, Subdivider is not entitled to reimbursement for any cost or expenditure that has not been approved by City in the manner required by this Agreement or City Charter and rules, regulations, or laws promulgated there-under.
- 18.1.10 *Cash Advances.* Subdivider has agreed to make Cash Advances in the manner identified in Exhibit E. These Cash Advances shall be treated as Reimbursable Costs according to this Agreement. Cash Advances shall not be subject to the Withholding provision in section 18.1.6.1.
  - 18.1.10.1 *Notice of Funding.* With respect to Cash Advances to an agency other than City, upon receipt of the Cash Advance, the agency shall deliver a Notice of Payment and Satisfaction of Funding Obligation to City [Notice of Funding]. The Notice of Funding may be used for Verification of Reimbursement Request in section 18.1.7.
  - 18.1.10.2 *Cash Payments to City.* Any Cash Advances paid directly to City shall identify the public facility that the Cash Advance is intended to fund and shall be recorded by City as a credit to Subdivider's obligation with respect to funding that specific facility.
- 18.1.11 *Financial Guarantee.* Subdivider may request that the City grant FBA credits in advance of completion of a Project provided Subdivider issues a letter of credit in favor of the City or other financial guarantee in a form acceptable to the City in the amount of the requested FBA credit and the granting of such credits does not adversely affect the FBA cash flow in a manner that would prevent or delay the construction of scheduled public facilities covered by Financing Plan and within the FBA area.

## XIX. PRIORITY OF DOCUMENTS

19.1 **Conflict, Priority, and Precedence of Documents.** If there is a conflict between Construction Documents, the document highest in precedence shall control.

- 19.1.1 *Order of Precedence.* The following documents are incorporated into this Agreement by this reference and are hereinafter collectively referred to as Agreement Documents. The Agreement Documents shall follow the order of precedence listed below, with the document listed first controlling as to any inconsistency with documents listed thereafter:
  - 19.1.1.1 Permits from other agencies as may be required by law.
  - 19.1.1.2 Project Special Provisions
  - 19.1.1.3 Project Plans
  - 19.1.1.4 Agency Standard Drawings
  - 19.1.1.5 Regional Standard Drawings
  - 19.1.1.6 Agency Supplement Amendments.

- 19.1.1.7 Regional Supplement Amendments
- 19.1.1.8 "Greenbook" Standard Specifications for Public Works Contracts
- 19.1.1.9 Standard Specifications.
- 19.1.1.10 Reference Specifications.

## ARTICLE XX. PUBLIC RELATIONS

- 20.1 **Presentations.** Subdivider's, and Subdivider's agents' responsibilities shall include all presentations required to be made to City Council, Council Committees, associated Boards or Commissions, applicable Area Committee, Design Review Committee, Responsible Department, 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.
- 20.2 **City as Primary Contact.** Subdivider agrees that City is the primary contact with the media regarding the Project and should forward all questions regarding Project status to the Responsible Department's Public Information Officer or such Information Officer's replacement as may occur from time to time.
- 20.3 **Advertising.** Subdivider acknowledges that advertising referring to City as a user of a product, material, or service by Subdivider and/or Subdivider's agents, material suppliers, vendors or manufacturers is expressly prohibited without City's prior written approval.
- 20.4 **Recognition.** Upon City's request, Subdivider shall place a sign, placard, or other similar monument on the Project site during construction, which shall acknowledge Subdivider's and City's joint efforts in designing and constructing the Project, and identifying that the Project is funded with Black Mountain Ranch FBA funds. Subdivider shall properly recognize City and include the Responsible Department'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 Public Information Office. For assistance with proper recognition, or if Subdivider is contemplating a dedication or ground breaking ceremony, Subdivider shall contact the Responsible Department's Public Information Officer, who is equipped to provide guidelines and examples.
- 20.5 **Dedication Ceremony.** City or Subdivider shall have the opportunity to conduct and host a public dedication ceremony, ground-breaking, or similar ceremony on the Project site at any reasonable time following the Acceptance of the Project, provided Subdivider receives prior approval from the Responsible Department for the ceremony and provides an opportunity for appearances by the Mayor, Council members and other appropriate City officials. Subdivider shall contact the Responsible Department's Public Information Officer to arrange a mutually acceptable date and time for any ceremony. Invitations shall not be sent out or a date set until the Responsible Department's Public Information Officer has approved the time and date for the ceremony.
- 20.5.1 *Cleanup.* Subdivider shall be responsible for the clean up of the Project site and the restoration and repair of any damage to the Project site attributable to a Subdivider-sponsored ceremony.

## ARTICLE XXI. INSPECTION

- 21.1 **Inspection Team.** The Project shall be inspected by a team composed of representatives from the following: (i) City's Engineering and Capital Projects Department, (ii) the Responsible Department, (iii) Subdivider's Representative, (iv) Subdivider's Consultant(s), and (e) Subdivider's construction superintendent [Inspection Team]
- 21.2 **Inspection Stages.** The Project shall be inspected by the Inspection Team at minimum during the following stages: (i) Rough grading and drainage certification; (ii) Mainline irrigation pressure test; (iii) Hardscape (staking and layout); (iv) Finish grading and soil preparation; (v) Irrigation coverage test; (vi) Selection of plant material at nursery; (vii) Plant placement approval; (viii) Pre-assembled equipment and/or on-site construction facilities.

## XXII. PROJECT COMPLETION

- 22.1 **Notice to City.** When Subdivider determines that a Project is complete, Subdivider shall notify City in writing of the Project's status within seven (7) Calendar Days of Subdivider's determination. The notice shall certify to City that the Project has been completed in accordance with the Construction Documents, all applicable building codes and regulations, all permits, licenses, and certificates of inspection, use and occupancy, and ordinances relating to the Project.
- 22.2 **Walk-Through Inspection.** A preliminary Walk-Through Inspection shall be conducted by City within ten (10) Working Days following Subdivider's notice to City of completion [Walk-Through Inspection]. The Walk-Through Inspection will be conducted by the Inspection Team identified in Article XXI, section 21.1.
- 22.2.1 *Punch List.* A Punch List, if necessary, shall be prepared by City during the Walk-Through Inspection. The Punch List shall be presented to Subdivider by the RE within three (3) Working Days of the Walk-Through Inspection. Subdivider shall correct the items listed on the Punch List within thirty (30) Calendar Days of receipt of the punch list and prior to the Final Inspection.
- 22.2.2 *Failure to Identify Items.* As to any items not included on the Punch List or later discovered, nothing in this Section is intended to limit Subdivider's obligations under this Agreement and City will maintain all remedies available under this Agreement and the law.
- 22.3 **Equipment Demonstration.** Prior to final inspection and where applicable, Subdivider shall demonstrate to City the operation of each system in the Project, and instruct City personnel in operation, adjustment and maintenance of equipment and systems, using the operation and maintenance data.
- 22.4 **Cost Estimates.** Pursuant to California Government Code section 66499.7, within forty five (45) calendar days of the receipt of the Punch List, Subdivider may provide City with cost estimates for the incomplete work. City shall have forty five (45) calendar days to review the cost estimates, comment, approve, modify, or disapprove. Such cost estimates are only for the purpose of determining whether and in what amount to release performance security related to the Project, and approval of the cost estimate does not indicate approval of additional costs for the Project.
- 22.5 **Final Inspection.** Provided Subdivider has corrected the Punch List items and notified City of the correction [Notice of Correction], the Final Inspection for the Project shall be scheduled and conducted within ninety (90) Calendar Days of the Notice of Correction.

## XXIII. PROJECT ACCEPTANCE AND FINAL COMPLETION

- 23.1 **Acceptance.** Upon approval by the Inspection Team during the Final Inspection that a Project is complete and that work required on the Punch List has been finished, City shall accept the Project [Acceptance]. Upon Acceptance, Subdivider shall do all of the following:
- 23.1.1 *Notice of Completion.* Subdivider shall execute and file a Notice of Completion with the County Recorder of San Diego County and shall provide the RE with a conformed copy of the recorded Notice of Completion.
- 23.1.2 *Lien and Material Releases.* Subdivider shall cause all contractors and subcontractors to provide lien and material releases as to the Project and provide copies of such lien and material releases to the RE or, upon approval of City which shall not be unreasonably withheld, provide bonds in lieu of lien and material releases in a form reasonably acceptable to City for all such work.
- 23.1.3 *Transfer Ownership.* Subdivider shall transfer ownership of the Project and any associate easements or property rights to City.

23.2 **Final Completion.** Final Completion of a Project shall be deemed to occur on the last date of the following events: (i) recordation of the Notice of Completion with a conformed copy to City; or (ii) submission of all documents required to be supplied by Subdivider to City pursuant to this Agreement, including As-Built Drawings, warranties, warranty bonds, and operating and maintenance manuals.

23.2.1 *As-Builts.* City, including, but not limited to, Engineering and Capital Projects Department, will evaluate the submitted As-Builts for accuracy and completeness and may return comments. Subdivider shall meet with City until all issues are resolved. Upon issue resolution, in accordance with disputed work procedures in Article XXVI, section 26.6, Subdivider shall submit a Mylar set and three (3) final blue-line sets of As-Builts stamped by the architect/engineer of record as required by law.

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

#### ARTICLE XXIV. PROJECT DELIVERABLES

24.1 **Project Deliverables.** Prior to Acceptance of a Project, Subdivider shall deliver all of the following to City in the format required, unless excepted by the Responsible Department:

24.1.1 *Agreement Documents.*

24.1.2 *Working Drawings.* Subdivider 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.

24.1.2.1 **Quality.** Subdivider 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.

24.1.2.2 **Font and Contents.** Specifications shall be typewritten with one type face, using carbon ribbon or equivalent on bond paper utilizing Greenbook format. Subdivider will furnish only the technical "Special Provisions" Section of the Specifications to supplement or modify the Greenbook standards as needed.

24.1.3 *Surveys.* Subdivider shall provide all surveying services required for the design of a 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 City of San Diego Engineering and Capital Projects Department's "Data Standards for Improvement Plans," August 2004.

24.1.4 *Schematic Design Documents.* Subdivider shall consult with City to ascertain requirements of a Project and to prepare Schematic Design Documents.

24.1.4.1 Schematic Design Documents shall conform with City Policies and include, but not be limited to the following:

24.1.4.1.1 Sketches with sufficient detail to illustrate the scale and location of Project components.

- 24.1.4.1.2 Floor plans with sufficient cross-sections to illustrate the scale and relationship of building components, exterior elevations and exterior colors and textures.
  - 24.1.4.1.3 Analysis of parameters affecting design and construction for each alternate considered.
  - 24.1.4.1.4 Description and recommendation for structural, mechanical and electrical systems, showing alternatives considered.
  - 24.1.4.1.5 Probable construction costs for the base Project and all additive alternates considered.
  - 24.1.4.1.6 Summary of Project requirements and a recommendation.
  - 24.1.4.1.7 Artistic renderings of the Project (Rendered General Development Plan).
- 24.1.4.2 Form. Subdivider's Schematic Design Documents 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.
- 24.1.5 *Design Development Documents.* Subdivider 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:
- 24.1.5.1 Site plan, indicating the nature and relational location, via dimensions, of all proposed Project components.
  - 24.1.5.2 Traffic circulation and landscaping should also be indicated at this stage if applicable.
  - 24.1.5.3 Plans, elevations, cross-sections, and notes as required to fix and to describe the Project components.
  - 24.1.5.4 Proposed construction schedules.
  - 24.1.5.5 Technical 'Special Provisions' Section of the Specifications.
  - 24.1.5.6 Outline of Specifications prepared in accordance with the latest recommended format of the Construction Specification Institute.
  - 24.1.5.7 Probable Project construction costs, for each component of the Project being considered in this phase.
  - 24.1.5.8 Color board with material samples.
- 24.1.6 *Construction Documents.* Subdivider shall provide, based on the approved Design Development Documents, Working Drawings and Contract Specifications setting forth in detail the requirements for construction of the Project, including the necessary bidding information.
- 24.1.7 *Utility Location Requests.* Along with initial submission of Construction Documents, Subdivider shall furnish copies of the Service and Meter Location Request and all utility companies verifications.
- 24.1.8 *Cost Estimate.* Subdivider shall provide a construction cost estimate based on the Construction Documents.
- 24.1.9 *H, G, & E Reports.* Subdivider shall provide hydrologic, geotechnical, environmental documents, and other related documents or reports requested by City.
- 24.1.10 *As-Builts.* Subdivider shall provide As-Builts.

24.1.10.1 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. Subdivider shall clearly identify the item by accurate note such as "cast iron drain," galvanized water, etc. Subdivider 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. Subdivider 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.

24.1.10.2 Subdivider shall include all of the following on the As-Builts:

- 24.1.10.2.1 Depth of foundation in relation to finished first floor.
- 24.1.10.2.2 Horizontal and vertical locations of underground utilities and appurtenances, with references to permanent surface improvements.
- 24.1.10.2.3 Locations of internal utilities and appurtenances, with references to visible and accessible features of the structure.
- 24.1.10.2.4 Field changes of dimensions and details.
- 24.1.10.2.5 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.
- 24.1.10.2.6 Details not issued with original Construction Drawings, design/build plans, deferred approvals, etc.
- 24.1.10.2.7 Upon completion of work, obtain signature of licensed surveyor or civil engineer on the Project record set verifying layout information.
- 24.1.10.2.8 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.
- 24.1.10.2.9 The title "PROJECT RECORD" in 3/8" letters.

24.1.10.3 Subdivider shall maintain a set of As-Builts at the Project site for reference. Subdivider shall ensure that changes to the As-Builts are made within twenty-four (24) 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.

24.1.11 *Operation and Maintenance Manuals.* Subdivider shall submit all Operation and Maintenance manuals prepared in the following manner:

24.1.11.1 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.

24.1.11.2 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:

- 24.1.11.2.1 Part 1: Directory, listing names, addresses, and telephone numbers of Subdivider's agents, suppliers, manufacturers, and installers.
- 24.1.11.2.2 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 Subdivider's agents, suppliers, manufacturers, and installers. In addition, list the following: (i) appropriate design criteria; (ii) list of equipment; (iii) parts

list; (iv) operating instructions;(v) maintenance instructions, equipment; (vi) maintenance instructions, finishes; (vii) shop drawings and product data; and (viii) warranties.

24.2 **Ownership of Project Deliverables.** Upon Final Completion or Termination, Project Deliverables shall become the property of City. Subdivider and City mutually agree that the Contract Documents for the Project shall not be used on any other work without the consent of each Party.

#### ARTICLE XXV. WARRANTIES

25.1 **Warranties Required.** For each Project, Subdivider shall provide and for Type I Projects require its 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.

25.1.1 *Materials and Workmanship.* Subdivider shall guarantee, and shall require its agents to guarantee, all work on the Project against defective workmanship and materials furnished by Subdivider for a period of one (1) year from the date of Project's Final Completion. Subdivider shall replace or repair any such defective work in a manner satisfactory to City, after notice to do so from City, and within the time specified in the notice.

25.1.2 *New Materials and Equipment.* Subdivider shall warrant and guarantee, and shall require its agents to warrant and guarantee, to City that all materials and equipment incorporated into the Project are new unless otherwise specified.

25.1.3 *Design, Construction, and Other Defects.* Subdivider shall warrant and guarantee, and shall require its agents to warrant and guarantee to City that all work is in accordance with the Plans and Specifications and is not defective in any way in design, construction or otherwise.

25.2 **Form and Content.** Except manufacturer's standard printed warranties, all warranties shall be on Subdivider's and Subdivider's agent's, 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, modified as approved by City to suit the conditions pertaining to the warranty.

25.2.1 *Durable Binder.* Obtain warranties, executed in triplicate by Subdivider, Subdivider's agents, installers, and manufacturers. Provide Table of Contents and assemble in binder with durable plastic cover.

25.2.2 *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.

25.2.3 *Index Tabs.* Separate each warranty with index tab sheets keyed to the Table of Contents listing.

25.2.4 *Detail.* Provide full information, using separate typewritten sheets, as necessary. List Subdivider's agents, installer, and manufacturer, with name, address and telephone number of responsible principal.

25.2.5 *Warranty Start Date.* Except for items put into use with Subdivider's permission with date mutually agreed upon in writing, leave date of beginning of time of warranty open until the date of Final Completion.

25.2.6 *Signature and Notarization.* All warranties shall be signed and notarized. Signatures shall be required from Subdivider's construction contractor and where appropriate, the responsible subcontractor.

25.3 **Term of Warranties.** Unless otherwise specified or provided by law, warranties shall extend for a term of one (1) year from the date of Final Completion.

25.3.1 *Plants, Trees, and Shrubs.* Notwithstanding above, all shrubs and ground cover shall have a ninety (90) Calendar Day warranty period and trees shall have a one (1) year warranty period. All plant warranties shall commence from the date of Final Completion.

25.4 **Meetings.** During the one (1) year warranty period described in section 25.3, Subdivider shall meet, and shall require its design Consultant, construction contractor, and key subcontractors to meet, with City representatives, including the 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 that City discovers in design, construction, or furnishing, fixtures, and equipment of the Project during the one (1) year warranty period.

#### ARTICLE XXVI. DEFECTIVE WORK

26.1 **Correction, Removal, or Replacement.** If within the designated warranty period, or such additional period as may be required by law or regulation, the Project is discovered to contain Defective Work, Subdivider 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.

26.2 **City's Right to Correct.** If circumstances warrant, including but not limited to an emergency or Subdivider's failure to adhere to section 26.1, City may correct, remove, or replace the Defective Work. In such circumstances, Subdivider 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.

26.3 **Non-Reimbursable Costs.** All costs incurred by Subdivider or Subdivider's agents to remedy defects are non-reimbursable costs. If City has already reimbursed Subdivider for the 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 Subdivider's bond if Subdivider has been paid in full.

26.4 **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, will be extended for an additional one (1) year from the date of the satisfactory completion of the correction, removal, or replacement.

26.5 **No Limitation on other Remedies.** Exercise of the remedies for defects pursuant to this Article shall not limit the remedies City may pursue under this Agreement or law.

26.6 **Disputes.** If Subdivider and City are unable to reach agreement on disputed work, City may direct Subdivider to proceed with the work and compensate Subdivider for undisputed amounts. Payment of disputed amounts shall be as later determined by mediation, if City and Subdivider agree thereto, or as fixed in a court of law. Subdivider shall maintain and keep all records relating to disputed work for a period of three (3) years in accordance with Article XXXI.

#### ARTICLE XXVII. MAINTENANCE OF LANDSCAPING & IRRIGATION WORK

27.1 **Maintenance Period.** If Subdivider is required to install or maintain landscaping and/or irrigation, Subdivider shall provide a maintenance period, which shall begin on the first day after all landscape and irrigation work on the Project is complete, checked, approved by City, and City has given written approval to begin the maintenance period, and shall continue thereafter for ninety (90) Calendar Days or until Project Acceptance, whichever is longer [Maintenance Period].

27.2 **Maintenance Area.** Subdivider or Subdivider's Contractor shall maintain all involved areas of a Project.



- 27.3 **Maintenance Required.** Subdivider or Subdivider's Contractor shall 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. Subdivider or Subdivider's Contractor shall replace all plants found to be dead or in an impaired condition within fourteen (14) days. Maintenance shall also include the following: (i) Filling and replanting of any low areas which 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; (vi) Protecting all planting areas against traffic or other potential causes of damage.
- 27.4 **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 ninety (90) Calendar Days after the plant maintenance period commencement, or when Subdivider or Subdivider's contractor notifies City that they are ready for the final inspection, whichever comes last. City will notify Subdivider of all deficiencies revealed by the inspection before acceptance.
- 27.5 **Extension of Maintenance Period.** Subdivider shall 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. Subdivider shall be responsible 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 not Reimbursable Costs.
- 27.6 **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) Working Days of notification by City. Subdivider shall include, at Subdivider's or Subdivider's Contractor's expense, a timely written diagnosis of plant health by a certified Arborist, should a dispute arise. Arborist's report shall indicate reason for lack of vigor, potential remedies, if any, and estimate of time required to regain vigor and specified size.
- 27.6.1 *Same Kind and Size.* Plants used for replacement shall be same kind and size as specified and shall be furnished, planted and fertilized as originally specified. Cost of all repair work to existing improvements damaged during replacements shall be borne by Subdivider and shall not be Reimbursable Costs.

#### ARTICLE XXVIII. BONDS

- 28.1 **Payment Bond.** For each Project, Subdivider shall provide or require its Construction Contractor to provide City with a Payment (material and labor) Bond in favor of City for one hundred percent (100%) of the proposed construction costs, as determined by competitive bidding.
- 28.2 **Performance Bond.** For each Project, Subdivider shall provide or require its Construction Contractor to provide City with a Faithful Performance Bond in favor of City for one hundred percent (100%) of the proposed construction costs, as determined by competitive bidding.
- 28.3 **Warranty Bond.** For each Project, Subdivider shall provide or require its Construction Contractor to provide a Warranty Bond in the full amount of the Estimated Cost of the Project. The Warranty Bond shall be posted prior to or concurrent with the release of the Performance Bond.
- 28.4 **Term.** The Payment Bond shall remain in full force and effect at least until Acceptance of the Project with which it is associated and all claims for materials and labor are paid, for a minimum of forty-five (45) Calendar Days after the filing of the Notice of Completion, except as otherwise provided by law or regulation. The Performance Bond shall be released in the manner required by California Government Code section 66499.7. The Warranty Bond shall remain in full force and effect until the end of all warranty periods set forth in this

Agreement provided no claims are made under the warranties. Where a claim is made under the warranty within the warranty period, but not resolved prior to the expiration of the warranty period, the Warranty Bond may be reduced to the amount of the claim and shall remain in effect until the claim is resolved.

- 28.5 **Certificate of Agency.** All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- 28.6 **Licensing and Rating.** The bonds shall be duly executed by responsible surety companies 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, secured through an authorized agent with an office in California, and have a minimum AM Best rating of "A-" to an amount not to exceed ten percent (10%) of its capital and surplus.
- 28.7 **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, Subdivider shall within seven (7) Calendar Days thereafter substitute or require the substitution of another bond and surety, acceptable to City.

#### ARTICLE XXIX. INDEMNITY & DUTY TO DEFEND

- 29.1 **Indemnification and Hold Harmless Agreement.** With respect to any liability, including but not limited to claims asserted, demands, causes of action, costs, expenses, losses, attorney fees, injuries, or payments for injury to any person or property, including injury to Subdivider's employees, agents, or officer, caused or claimed to be caused by the acts or omissions of Subdivider, or Subdivider's employees, agents, and officers, arising out of or arising from any services performed involving this Agreement, except liability for the Professional Services covered under section 29.2, Subdivider agrees to defend, indemnify, protect, and hold harmless City, its agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of City, its agents, officers, or employees that may be in combination with the active or passive negligent acts or omissions of Subdivider, its employees, agents or officers, or any third party. Subdivider's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of City, its agents, officers or employees.
- 29.2 **Indemnification for Professional Services.** As to professional obligations, work, or services of an architect, engineer, or other professional related to this project, Subdivider 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, and losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of the professional, architect, engineer, its employees, agents, or officers. In the Contracts entered into after the Effective Date, Subdivider shall also require its Architect, Engineer, or other professional of record to 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, and losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of the professional, architect, engineer, its employees, agents, or officers. This Section in no way alters, affects or modifies Subdivider's, Architect's, Engineer's, or other professional's obligations and duties under this Agreement.
- 29.3 **Indemnification for Liens and Stop Notices.** Subdivider shall keep each Project and the Property free of any mechanic's liens and immediately secure the release of any stop notices. Subdivider 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. Subdivider shall be responsible for payment of all persons entitled to assert liens and stop notices.
- 29.4 **Enforcement Costs.** Subdivider agrees to pay any and all costs City incurs to enforce the indemnity and defense provisions set forth in section 29.1, 29.2, and 29.3.

## ARTICLE XXX. INSURANCE

- 30.1 **General.** Subdivider shall not begin work on a Project 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 section 30.2; (ii) obtained City approval of each company or companies; and (iii) confirmed that all policies contain specific provisions required by City pursuant to section 30.2.
- 30.1.1 **Exception.** For those Projects on which construction commenced prior to the Effective Date of this Agreement, Subdivider shall obtain Required Insurance prior to performing additional work on the Project. For those Projects on which construction was completed prior to the Effective Date of this Agreement, if any, Subdivider certifies that at all times during the performance of the Work related to Project, Subdivider maintained insurance in the amount and type that would have been required by City for an equivalent project built during the period of time Project was under construction. Typical Insurance provisions are attached as Exhibit K.
- 30.2 **Type and Amount of Insurance.** For each Project, the Responsible Department shall confer with Risk Management and determine the appropriate dollar amount and type of insurance, including any endorsements or specific clauses, necessary for the Project [Required Insurance]. Subdivider shall obtain the Required Insurance prior to the commencement of construction.
- 30.2.1 *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 Subdivider to City by certified mail, except for non-payment of premium, in which case ten (10) Calendar Days notice shall be provided.
- 30.2.1.1 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.
- 30.3 **Rating Requirements.** Except for State Compensation Insurance Fund, all insurance required by express provision of this Contract 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.
- 30.3.1 *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.
- 30.4 **Additional Insurance.** Subdivider may obtain additional insurance not required by this Agreement.
- 30.5 **Obligation to Provide Documents.** Prior to performing any work on a Project, except as noted in section 30.1.1, Subdivider 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.
- 30.6 **Deductibles/Self Insured Retentions.** All deductibles and self-insurance retentions on any policy shall be the responsibility of Subdivider. Deductibles and self-insurance retentions shall be disclosed to City at the time the evidence of insurance is provided.
- 30.7 **Policy Changes.** Subdivider shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Agreement.
- 30.8 **Reservation of Rights.** City reserves the right, from time to time, to review the Subdivider's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to City. City will

reimburse the Subdivider 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.

- 30.9 **Not a Limitation of Other Obligations.** Insurance provisions under this Section shall not be construed to limit Subdivider's obligations under this Agreement, including Indemnity.
- 30.10 **Material Breach.** Failure to maintain, renew, or provide evidence of renewal during the term of this Agreement may be treated by City as a material breach of contract.

#### ARTICLE XXXI. RECORDS AND AUDITS

- 31.1 **Retention of Records.** Subdivider, Contractors, and subcontractors shall maintain data and records related to this Agreement for a period of not less than three (3) years following receipt of final payment under this Agreement.
- 31.2 **Audit of Records.** At any time during normal business hours and as often as City deems necessary, Subdivider and any or all Contractors or subcontractors shall make available to City for examination at reasonable locations within City/County of San Diego all of the data and records with respect to all matters covered by this Agreement. Subdivider and all Contractors or subcontractors will 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 City/County of San Diego, then Subdivider shall pay all City's travel related costs to audit the records associated with this Agreement at the location where the records are maintained. Such costs will not be Reimbursable Costs.
- 31.2.1 *Costs.* Subdivider and Subdivider'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 XXXII. NOTICES

- 32.1 **Writing.** Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing.
- 32.2 **Effective Date.** Except in relation to Change Orders as provided for in section 32.4 or 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 successful transmission of facsimile.
- 32.3 **Recipients.** Except in relation to Change Orders, all demands or notices required or permitted to be given shall be sent to all of the following:
- 32.3.1 Director, Engineering & Capital Projects Department  
City of San Diego  
City Administration Building  
202 C Street, M.S. #9B  
San Diego, California 92101  
Facsimile No: (619) 533-4736

- 32.3.2 Facilities Financing Manager  
Planning Department  
City of San Diego  
1010 Second Avenue, Suite 600 M.S. #606F  
San Diego, California 92101  
Facsimile No.: (619) 533-3687
- 32.3.3 Fredric J. Maas, President  
Black Mountain Ranch, LLC  
A California Limited Liability Company  
16010 Camino Del Sur  
San Diego, CA 92127  
Facsimile No.: (858) 792-7625
- 32.3.4 Gordon Cloes  
BMR Construction, Inc.  
A Delaware Corporation  
16010 Camino Del Sur  
San Diego, CA 92127  
Facsimile No.: (858) 792-7625
- 32.3.5 Allen Haynie  
Latham & Watkins  
600 W. Broadway, 18<sup>th</sup> Floor  
San Diego, CA 92101  
Facsimile No.: (619) 696-7419

32.4 **Recipients of Change Orders.**

- 32.4.1 Director, Engineering & Capital Projects Department  
City of San Diego  
City Administration Building  
202 C Street, M.S. #9B  
San Diego, California 92101  
Facsimile No: (619) 533-4736
- 32.4.2 Fredric J. Maas, President  
Black Mountain Ranch, LLC  
A California Limited Liability Company  
16010 Camino Del Sur  
San Diego, CA 92127  
Facsimile No.: (858) 792-7625
- 32.4.3 Gordon Cloes  
BMR Construction, Inc.  
A Delaware Corporation  
16010 Camino Del Sur  
San Diego, CA 92127  
Facsimile No.: (858) 792-7625

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

**ARTICLE XXXIII. FBA CREDITS**

33.1 **Use of FBA Credits.** As City Improvements benefit all of the Property and land within CFD #4, the FBA credits granted pursuant to this Agreement may be used by Subdivider in connection with development within

the Property and CFD#4 boundaries. In addition, City agrees that the improvements being acquired by CFD#4 also benefit the Property and land with CFD #4; therefore, the FBA credits granted pursuant to the Reimbursement Agreement for CFD #4 may be used by Subdivider in connection with development within the Property and CFD #4 boundaries. To the extent that this provision conflicts with the Reimbursement Agreement for CFD #4 [Previous Agreement], this provision shall act to amend the Previous Agreement.

33.2 **FBA Fee Credit Notification.** City acknowledges that Subdivider has entered into agreements and may enter into additional agreements with third parties in connection with the construction of infrastructure and that such agreements include or may include allowing the third parties to utilize a portion of the FBA Credits that Subdivider 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 Subdivider's FBA credits, Subdivider shall deliver an executed copy of an FBA Fee Credit Notification [FBA Notification], a copy of which is attached hereto as Exhibit L, to City. The FBA Notification shall notify City of the amount of the FBA credit Subdivider intends to make available to a third party that is constructing development within the boundaries of the Property or CFD #4. After receipt of the FBA Notification and concurrent with issuance of building permits to third parties or certificates of occupancy to third parties pursuant to an approved FBA deferral agreement, City shall reduce any FBA fees that normally would be collected by City for the development of the third party in the amount stated in the FBA Notification. The FBA fees charged to the third party shall be based on the FBA fee schedule in effect at the time building permits are issued. Any FBA fees not collected by City as a result of the receipt of an FBA Notification executed by Subdivider shall be deducted from the total FBA credit available to Subdivider pursuant to this Agreement.

33.3 **FBA Credit Balance Report.** Each quarter of a calendar year that this Agreement is in effect, Subdivider shall provide to City an accounting of the balance of its FBA credits [the FBA Credit Balance Report]. The FBA Credit Balance Report shall list the amount of FBA credits available at the end of the prior quarter, the amount of the FBA credits received from City since the prior FBA Credit Balance Report was delivered to City, the amount of FBA credits used during the quarter and when used, and the amount of the total FBA credits outstanding as of the end of the reporting quarter. The FBA Credit Balance Report shall be submitted to City in writing within thirty (30) days of the end of a quarter. City shall review the FBA Credit Balance Report within thirty (30) days of its receipt and if in agreement need not take any further action. However, if City does not agree to the amount of the outstanding FBA credits shown on the FBA Credit Balance Report, City shall provide in writing to Subdivider City's reasons for not approving the FBA Credit Balance Report. In this event, the Parties shall meet in good faith to review their records and determine the correct amount of outstanding FBA credits.

33.4 **Interest Accrual.** Provided that the Financing Plan includes the cost of financing the Projects (the interest expense that City will incur from the time the submittal of a Reimbursement Request is complete to the date FBA credits are made available for Subdivider's use) in the cost basis of the Projects that are identified in the Financing Plan and Subdivider does not utilize all of its FBA credits in one fiscal year, the value of the unused FBA credits shall appreciate as if held in cash in trust deposited in the fund in the same account as the FBA fund. The appreciation shall be based upon an accrual of interest at the same interest rate earned by the FBA Trust Funds, as identified in the Financing Plan, pursuant to the following formula:

33.4.1 The unused FBA credits on the last day of the fiscal year (June 30) shall be multiplied by the interest rate identified in the 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 that is referenced in section 33.3 above.

#### ARTICLE XXXIV. MISCELLANEOUS PROVISIONS

34.1 **Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.

34.2 **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.

- 34.3 **Reference to Paragraphs.** Each reference in this Agreement to a Section refers, unless otherwise stated, to a Section this Agreement.
- 34.4 **Incorporation of Recitals.** All recitals herein are incorporated into this Agreement and are made a part hereof.
- 34.5 **Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of City or the Subdivider, shall be deemed to be both covenants and conditions.
- 34.6 **Integration.** This Agreement and the 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 an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.
- 34.7 **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.
- 34.8 **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. 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.
- 34.9 **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.
- 34.10 **Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.
- 34.11 **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.
- 34.12 **Further Assurances.** City and Subdivider each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.
- 34.13 **Exhibits.** Each of the following Exhibits is attached hereto and incorporated herein by this reference:
- Exhibit A - Property Depiction
  - Exhibit B - Legal Description of Property
  - Exhibit C - List of Projects [City Improvements] and Project Types
  - Exhibit D - Joint Community Facilities Agreement
  - Exhibit E - Cash Advances
  - Exhibit F - Schedule of Estimated Costs
  - Exhibit G - Phasing Plan
  - Exhibit H - Subdivider Certification for Title 24/ADA Compliance
  - Exhibit I - Preconstruction Meeting Agenda
  - Exhibit J - Notification of Reimbursable Project
  - Exhibit K - Typical Insurance Provisions
  - Exhibit L - FBA Fee Credit Notification

- 34.14 **Compliance with Controlling Law.** Subdivider shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and preconstruction phases of a project, including inspection and land surveying work. In addition, the Consultant shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.
- 34.15 **Jurisdiction, Venue, and Attorney Fees.** The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, 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.
- 34.16 **Municipal Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of City as a chartered city of the State of California.
- 34.17 **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 Subdivider's contracts, purchase orders and other contracts between Subdivider and third party services. Subdivider shall incorporate this provision into its contracts, supply agreements and purchase orders.
- 34.18 **Non-Assignment.** Subdivider shall not assign the 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. Any assignment in violation of this paragraph 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.
- 34.19 **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.
- 34.20 **Independent Contractors.** Subdivider, any consultants, contractors, subcontractors, and any other individuals employed by Subdivider shall be independent contractors and not agents of City. Any provisions of this Agreement that may appear to give City any right to direct Subdivider concerning the details of performing the Services under this Agreement, or to exercise any control over such performance, shall mean only that Subdivider shall follow the direction of City concerning the end results of the performance.
- 34.21 **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.
- 34.22 **No Waiver.** No failure of either City or the Consultant 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.
- 34.23 **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 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.



IN WITNESS WHEREOF, this Agreement is executed by City of San Diego acting by and through its City Manager pursuant to Resolution No. R- 301820, authorizing such execution, and by Black Mountain Ranch, LLC and BMR Construction, Inc..

This Agreement is dated \_\_\_\_\_, 2006 and this date shall constitute the effective date of this Agreement.

THE CITY OF SAN DIEGO,  
A Municipal Corporation

By: [Signature]

Black Mountain Ranch LLC,  
A California Limited Liability Company

By: [Signature]

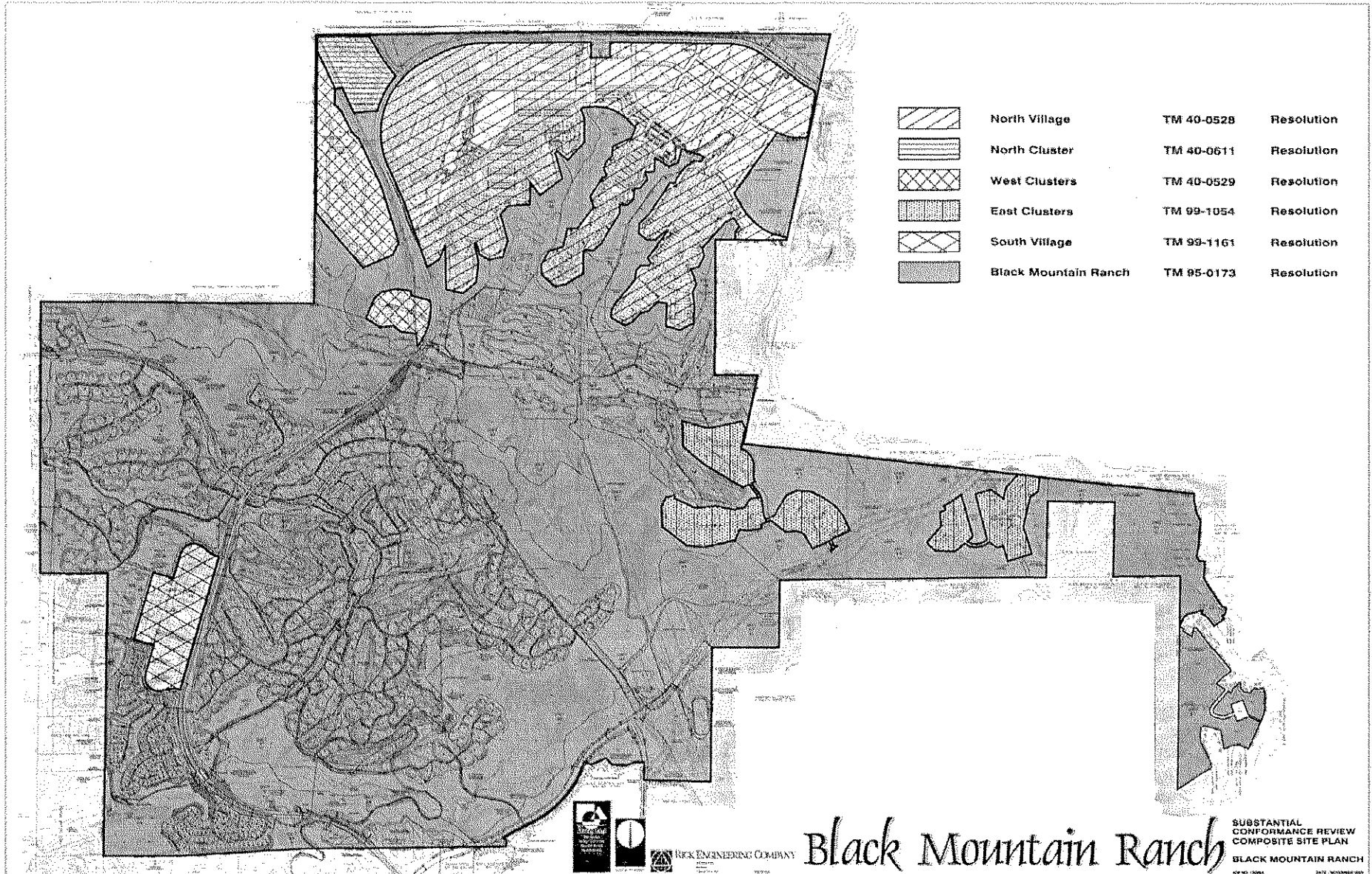
BMR Construction, Inc.  
A Delaware Corporation

By: [Signature]

Approved as to form and legality: Dated 9/8/06, 2006.

MICHAEL J. AGUIRRE, City Attorney

By: [Signature]  
Deputy City Attorney



**Parcel "A"**

All of Parcels 2 and 3 of Parcel Map No. 17995 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 March 11, 1998.

**Parcel "B"**

All of Black Mountain Ranch South Village in the City of San Diego, County of San Diego, State of California according to Map thereof No. 14338 filed in the Office of the County Recorder of San Diego County January 24, 2002.

**Parcel "C"**

All of Parcels 1 through 8 inclusive, 10, 13, 16, 17, 20 through 25 inclusive, "A", "B", "C", "D", "E" and "F" of Parcel Map No. 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 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.

**ALSO EXCEPTING THEREFROM:**

Any portion lying within 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.

**ALSO EXCEPTING THEREFROM:**

Any portion lying within Black Mountain Ranch West Cluster 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.

**ALSO EXCEPTING THEREFROM:**

Any portion lying within Black Mountain Ranch West Cluster Unit No. 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.

**Parcel "D"**

All of Parcel Map No. 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.

**Parcel "E"**

All of Parcel Map No. 19546 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 August 16, 2004.

**Parcel "F"**

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.

**Parcel "G"**

All of Black Mountain Ranch West Cluster 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.

**Parcel "H"**

All of Black Mountain Ranch West Cluster Unit No. 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.

**Parcel "I"**

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.

**Parcel "J"**

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.

**Parcel "K"**

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.

**Parcel "L"**

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.

**Parcel "M"**

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.

**Parcel "N"**

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.

**Parcel "O"**

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.

**Parcel "P"**

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.

**Parcel "Q"**

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.

**Parcel "R"**

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.

**Parcel "S"**

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.

**Parcel "T"**

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.

**Parcel "U"**

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.

**Parcel "V"**

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.

**Parcel "W"**

Lots "A" and "B" 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.

**Parcel "X"**

Lots 8 and "A" 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.

**Parcel "Y"**

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.

**Parcel "Z"**


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.

**Parcel "AA"**

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.

**Parcel "BB"**

All of Black Mountain Unit No. 15 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 14589 filed in the Office of the County Recorder of San Diego County May 12, 2003.

  
Patrick A. McMichael, L.S. 6187



## EXHIBIT C

## CITY IMPROVEMENTS

Project No.	Project Type (See Agm't for definitions)	Project Description
<b>CITY TRANSPORTATION PROJECTS:</b>		
T-4	III	Rancho Penasquitos Intersections
T-5	III	Camino Del Sur (San Dieguito Road to Bing Crosby Drive - 2 Lanes)
T-6	II	Camino Del Sur Widening ( San Dieguito Road to Bing Crosby Drive - add 2 Lanes)
T-7	III	Camino Del Sur North Wildlife Crossing (2 lane bridge)
T-8	III	Camino Del Sur North Wildlife Crossing Widening (add second bridge)
T-10	II	Camino Del Sur Widening ( San Dieguito Road south to Carmel Valley Road - add 2 Lanes)
T-12	II	Camino Del Sur South Wildlife Crossing Widening (add second bridge)
T-14	I	Camino Del Sur Widening (Carmel Valley Road south to SR-56)
T-15.2	I	SR-56 Bike Interchanges
T-22.2	II	Carmel Valley Road (Widen to 4 Lanes: Camino del Sur to Black Mountain Road)
T-25	III	Carmel Valley Road (Black Mountain Road east to Camino Crisalida-4 Lanes)
T-27	III	Carmel Valley Road East Wildlife Crossing (between Black Mountain Road & Camino Crisalida-4 Lanes)
T-29.1	I	El Camino Real Widening (Half Mile Drive north to San Dieguito Road-add 2 Lanes)
T-29.2	II	El Camino Real Widening (San Dieguito Road north to Via de la Valle-add 2 Lanes)
T-29.3	II	El Camino Real (Studies to support EIS/EIR)
T-32.1	II	Via de la Valle Widening (West El Camino Real to San Andres Dr-add 2 Lanes)
T-32.2	II	Via de la Valle (Retaining Walls for bike path)
T-34	II	Camino Del Sur (Bing Crosby Drive east to City Limits - 4 Lanes)
T-37	I	Camino Del Norte at Bernardo Center Drive Intersection Improvements
T-38	II	Camino Del Norte at I-15 Ramp Improvements
T-40	I	Rancho Bernardo Road Widening (I-15 east to Bernardo Center Drive-add 2 lanes)
T-43	I	West Bernardo Drive Spot Improvements (I-15 South to Aguamiel Road)
T-44	II	West Bernardo Drive at I-15 Ramp Improvements
T-45	I	West Bernardo Drive at Bernardo Center Drive Intersection Improvements
T-46	II	Bernardo Center Drive at I-15 Ramp Improvements
T-47.1	III	Paseo Del Sur (Camino del Sur east to Camino San Bernardo - 4 Lanes)
T-47.2	II	Camino San Bernardo (Paseo del Sur east to City Limit)
T-53	II	San Dieguito Road Spot Improvements (El Camino Real east to City Limit/Subarea I)
T-54.1	na	SR-56 Debt Service
T-54.2	II	SR-56 Widening (I-5 to I-15-add 2 lanes/HOV lanes and Auxiliary Lane)
T-55	II	Interstate 15 Enhancements (Lake Hodges Bridge south to SR-56)
T-56	III	SR-56 at I-15 Interchange Improvements
T-57	I	Black Mountain Road Widening (Twin Trails Road south to Mercy Road)
T-58	II	SR-56 at I-5 Interchange Improvements
T-59	I	Subarea I Transit Program
T-60	I	El Camino Real (Extension of right turn lane between Valley Center and Carmel Valley Road)

EXHIBIT C

CITY IMPROVEMENTS

PFFP Project No.	Project Type (See Agrm't for definitions)	Project Description
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**PARK PROJECTS:**

P-1	III	Community Park
P-2	II	Community Recreation Building
P-3	II	Community Swimming Pool
P-5	III	North Neighborhood Park
P-9	III	Trail-North Loop

**FIRE PROTECTION PROJECTS:**

F-2	I	North Fire Station
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**LIBRARY PROJECTS:**

L-1	na	Branch Library
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**WATER/SEWER PROJECTS:**

U-1	III	Carmel Valley Trunk Sewer
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**Note:** Refer to the JCFA, attached as Exhibit D to this Agreement, for the list of City facilities that are eligible for acquisition by the CFD.



ORIGINAL

**JOINT COMMUNITY FACILITIES AGREEMENT  
BY AND AMONG POWAY UNIFIED SCHOOL DISTRICT,  
CITY OF SAN DIEGO,  
BLACK MOUNTAIN RANCH, LLC**

THIS AGREEMENT is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2005 by and between POWAY UNIFIED SCHOOL DISTRICT [District], a school district duly organized and validly existing pursuant to the laws of the State of California, acting on behalf of itself and COMMUNITY FACILITIES DISTRICT NO. 14 (Del Sur) OF THE POWAY UNIFIED SCHOOL DISTRICT [CFD], a community facilities district proposed to be formed pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, as amended [Act], the CITY OF SAN DIEGO, a charter city [City], and BLACK MOUNTAIN RANCH, LLC, a California limited liability company [BMR]. BMR may also be referred to as the "Owner/Applicant".

**RECITALS**

- A. Pursuant to the application of the Owner/Applicant as the owner of certain properties located within the City commonly known as Black Mountain Ranch and/or Del Sur (a description of which is attached as Exhibit A), the Board of Education of the District has initiated proceedings to: (i) establish the CFD; (ii) designate one or more improvement areas to include certain territory within the CFD; (iii) authorize the CFD to finance certain City facilities in addition to school facilities; (iv) authorize the levy of special taxes within the CFD to finance such City and school facilities; and (v) authorize the CFD to incur a bonded indebtedness to finance such City and school facilities, pursuant to the terms and provisions of the Act.
- B. The Owner/Applicant has requested and proposed that the CFD be formed for the purpose of providing the means of financing the construction of school facilities of the District and the acquisition of certain public facilities to be constructed by or on behalf of the Owner/Applicant and to be owned and maintained by the City. The facilities to be owned, operated or maintained by the City that the Owner/Applicant has requested be financed through the CFD are described in Exhibit B attached hereto and incorporated herein by this reference. Individually, each may be referred to as a "City Facility" or collectively as "City Facilities". The City Facilities are located within the City and, upon construction of such City Facilities by or on behalf of the Owner/Applicant and following the inspection and Acceptance thereof by the City, the City Facilities will become a part of the transportation, park, fire protection, library, water, and sewer infrastructure systems of the City as appropriate for the specific project. Exhibit B is not intended to indicate priority of City Facilities, whether for construction or reimbursement, or act as approval of costs.
- C. The Act provides that the CFD may finance the City Facilities only pursuant to a joint community facilities agreement adopted pursuant to Government Code Section 53316.2.
- D. The City is willing to enter into such an agreement provided, however, that the Owner/Applicant agrees to indemnify the City as provided for herein, to enter into a Reimbursement Agreement for the City Facilities, and to design and construct the City Facilities in accordance with the terms and conditions of such Reimbursement Agreement.
- E. The District and the City have determined that entering into a joint community facilities agreement to enable the CFD to finance the acquisition of right-of-way and construction of the City Facilities will be beneficial to the residents of each entity and, therefore, desire to enter into this joint community facilities agreement pursuant to Government Code Section 53316.2.

NOW, THEREFORE, IT IS MUTUALLY AGREED between the parties as follows:

**ARTICLE I. DEFINITIONS**

1. **Definitions.** The following terms shall have the following meanings whenever used in this Agreement, except where the context clearly indicates otherwise.

DOCUMENT NO. RR 001055

FILED NOV 21 2005

OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

- 1.1 Acceptance: Final approval by the City designated inspection team following the final inspection that City Facilities are complete and work required on the Punch List has been finished.
- 1.2 Agreement: This Joint Community Facilities Agreement By and Among the Poway Unified School District, City of San Diego, and Black Mountain Ranch, LLC.
- 1.3 Act: The "Mello-Roos Community Facilities Act of 1982," Chapter 2.5, Part 1, Division 2, Title 5 of the California Government Code, as amended from time to time.
- 1.4 Approval Notice: Notification from the City to the District that a City Facility has been completed and the costs have been approved in accordance with the Reimbursement Agreement.
- 1.5 Approved Plans and Specifications: The Construction Documents, including construction drawings, plans and specifications, estimated budget, and bid documents for the design and construction of the City Facilities as provided for in the Reimbursement Agreement.
- 1.6 BMR: Black Mountain Ranch, LLC., a California limited liability company.
- 1.7 City: The City of San Diego, State of California, a chartered city.
- 1.8 City Facilities: The public facilities to be constructed by or on behalf of the Owner/Applicant and financed through the CFD, consisting of the improvements, together with appurtenances and appurtenant work set forth and described in the attached Exhibit B.
- 1.9 CFD: The Community Facilities District No. 14 (Del Sur) of the Poway Unified School District.
- 1.10 Construction Documents: The construction drawings and documents prepared for the City Facilities as provided for in the Reimbursement Agreement.
- 1.11 Owner/Applicant: BMR
- 1.12 Party/Parties: City, District, and BMR, either individually as "Party" or collectively as "Parties".
- 1.13 Punch List: A list of correction items and work completion list describing the portion(s), if any, of a City Facility, which City determines have not been completed in accordance with the Approved Plans and Specifications, including a description of the deficiency.
- 1.14 Reimbursement Agreement: An agreement to be entered into between the City and BMR which shall dictate the terms and conditions of reimbursement to BMR of approved costs of the design and construction of City Facilities.

## ARTICLE II. APPLICATION

The above-listed recitals are true and correct and are hereby incorporated by this reference. All attachments to this Agreement as Exhibits are incorporated into this Agreement by this reference.

- 2.1 **Application.** The provisions of this Agreement shall apply only to the City Facilities.

## ARTICLE III. FORMATION, COSTS, AND ADMINISTRATION OF THE CFD

- 3.1 **Obligations.** The obligations for the formation, costs, and administration of the CFD are as follows:
  - 3.1.1 *The Board of Education of the District.* The Board of Education of the District shall have the jurisdiction to and shall be solely responsible for undertaking the proceedings to consider the establishment of the CFD, to authorize the levy of special taxes within the CFD, and to incur bonded indebtedness of the CFD pursuant to the Act, all for the purpose of financing the City Facilities and

school facilities.

3.1.1.1 **No Obligation to Establish CFD.** City and Owners acknowledge that the decision of the Board of Education of the District to establish the CFD as described in Recital A hereto is a legislative action and the District may not enter into an agreement to obligate the Board of Education to exercise its legislative discretion in a particular manner or for a particular result. This Agreement does not, therefore, in any way create a contractual, legal or equitable obligation of or commitment by the District to establish the CFD.

3.1.2 *The City.* As the City is neither the Applicant, nor the District, the City shall have no obligation, authority, or responsibility to form the CFD, to approve the levy of special taxes, to issue bonds, to make payment on the principal of and/or interest on such bonds, or to incur any costs whatsoever related to the formation or the administration of the CFD, nor shall the City incur any liability therefrom.

3.2 **Allocation of Special Tax and Bond Proceeds.** All of the proceeds of any special taxes to be levied by the CFD, or bonds issued by or for the CFD to finance the City Facilities, shall be allocated to the CFD.

#### ARTICLE IV. CITY FACILITIES - DESIGN AND CONSTRUCTION

- 4.1 **Design and Engineering.** Owner/Applicant, at Owner/Applicant's own expense, shall design, prepare, and process, or cause to be designed, prepared, and processed, all construction plans and specifications and all other Construction Documents for the City Facilities in accordance with the Reimbursement Agreement and City's design criteria. The Construction Documents shall be subject to the review and approval of the City as provided for in the Reimbursement Agreement.
- 4.2 **Construction.** The City Facilities must be constructed and completed in accordance with the Approved Plans and Specifications and in accordance with terms and conditions of the Reimbursement Agreement.
- 4.3 **Liability for Design and Construction.** Neither the City, nor the District, nor the CFD shall have any liability or obligation with respect to the design or construction of the City Facilities, including bidding and contracting.
- 4.4 **Condition Precedent to Construction.** No construction shall begin on any City Facility prior to the holding of a preconstruction meeting with the City for that City Facility.

#### ARTICLE V. PAYMENT OF ACQUISITION PRICE

- 5.1 **Payment of Acquisition Price for City Facilities.** Upon receipt by the District of notification from the City that a City Facility has been completed and the costs have been approved in accordance with the Reimbursement Agreement [Approval Notice], the City Facility shall be deemed eligible for acquisition and payment of the amount of the approved costs by the District, acting on behalf of the CFD, in accordance with any agreement for reimbursement that the District may enter into with the Owner/Applicant.
- 5.1.1 *Request of the Owner/Applicant.* Following completion of a City Facility, the submission of documents supporting costs of the City Facility, and approval of such costs pursuant to the terms and conditions of the Reimbursement Agreement, the City shall, upon request of the Owner/Applicant, send the Approval Notice to the District.
- 5.2 **Liability for Purchase Price.** The City is not directly or indirectly obligated, indebted or otherwise liable for the payment of the acquisition price, or any portion thereof, of the City Facilities.
- 5.3 **Non-reimbursable Costs.** Except to the extent that City or District expressly assumes the risk of loss under this Agreement, City and District shall exclude from the amounts payable to Owner/Applicant the fair value, as determined by City, of property that is destroyed, lost, stolen, or damaged rendering it undeliverable or unusable for City. In addition, Owner/Applicant is not entitled to payment for any cost or expenditure for the

City Facilities that has not been approved by the City in the manner required by Reimbursement Agreement or the City Charter and rules, regulations, or laws promulgated there-under.

- 5.4 **Pre-requisite/Condition Precedent to Payment.** The Owner/Applicant shall not be entitled to receive payment for the City Facilities from the CFD, the District, or the City unless and until the Reimbursement Agreement is approved and executed by the City and the Owner/Applicant.

## ARTICLE VI. INDEMNIFICATION

- 6.1 **CFD.** Owner/Applicant shall defend, indemnify and hold harmless the City, its officers, directors, employees and agents, from and against any and all claims, losses, liabilities, damages, including court costs and reasonable attorneys' fees by reason of, or resulting from, or arising out of the CFD proceedings as described in Recital A hereto, the authorization of the levy of special taxes and the issuance of bonds by the CFD to finance the City Facilities, the administration of the CFD and the bonds issued by the CFD, the levy of special taxes by the CFD and the issuance of bonds by the CFD, and initial and continuing disclosure related to such bonds and all expenses of investigating and defending against same.
- 6.2 **Acts and Omissions.** With respect to any liability, including but not limited to claims asserted, demands, causes of action, costs, expenses, losses, attorney fees, injuries, or payments for injury to any person or property, including injury to Owner/Applicant's employees, agents, or officer, caused or claimed to be caused by the acts or omissions of the Owner/Applicant, or the Owner/Applicant's employees, agents, and officers, arising out of or arising from any services performed involving this Agreement, except liability for the Professional Services covered under Section 6.3, the Owner/Applicant agrees to defend, indemnify, protect, and hold harmless the City, the District, the CFD, their respective agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, the District, the CFD, their agents, officers, or employees that may be in combination with the active or passive negligent acts or omissions of the Owner/Applicant, its employees, agents or officers, or any third party. The Owner/Applicant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of the City, the District, the CFD, their respective agents, officers or employees. Said indemnification and agreement to hold harmless shall extend to injuries to persons and damages to or taking of property of adjacent property owners as a consequence of the diversion of waters resulting from the design, construction or maintenance of drainage systems, streets or other improvements included among the City Facilities. Acceptance by the City of the City Facilities and/or payment by the District or CFD for the acquisition of such City Facilities shall not constitute an assumption by the City, the District and/or the CFD of any responsibility for such damage or taking. City, District and/or CFD shall not be an insurer of surety for the design or construction of the City Facilities pursuant to the Approved Plans and Specifications therefore; nor shall any officer or employee thereof be liable or responsible for any accident, loss or damage happening or occurring during the construction of City Facilities, as specified in this Agreement, except as it may be shown that said officer or employee specifically directed that said work or improvement be accomplished in a manner contrary to the wishes and desires of Owners, and this section shall remain in full force and effect for ten (10) years following Acceptance of the City Facilities by the City.
- 6.3 **Professional Services.** As to professional obligations, work, or services of an architect, engineer, or other professional related to this project, the Owner/Applicant shall defend, indemnify, protect, and hold harmless the City, the District, the CFD, their respective agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, and losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of the professional, architect, engineer, its employees, agents, or officers. The Owner/Applicant shall require its architect, engineer, or other professional of record to defend, indemnify, protect, and hold harmless the City, the District, the CFD, their respective agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, and losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of the professional, architect, engineer, its employees, agents, or officers. This Section in no way alters, affects or modifies the Owner/Applicant's, architect's, engineer's, or other professional's obligations and duties under this Agreement.

- 6.4 **Operation and Maintenance.** The City shall defend, indemnify and hold harmless District and the CFD, its officers, directors, employees and agents, from and against any and all claims, losses, liabilities, damages, including court costs and reasonable attorneys' fees by reason of, or resulting from, or arising out of the operation and maintenance of the City Facilities from and after the date of Acceptance of the City Facilities or after the applicable warranty periods, if any, for the City Facilities have expired, whichever occurs later.

## ARTICLE VII. INSURANCE

- 7.1 **General.** Owner/Applicant shall not begin work under this Agreement until it has complied with all the provisions related to insurance in the Reimbursement Agreement.

## ARTICLE VIII. MISCELLANEOUS PROVISIONS

- 8.1 **Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.
- 8.2 **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.
- 8.3 **Reference to Paragraphs.** Each reference in this Agreement to a section refers, unless otherwise stated, to a section this Agreement.
- 8.4 **Incorporation of Recitals.** All recitals herein are incorporated into this Agreement and are made a part hereof.
- 8.5 **Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of the City, the District, or the Owner/Applicant, shall be deemed to be both covenants and conditions.
- 8.6 **Integration.** This Agreement and the 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 an amendment to this Agreement agreed to by all of the Parties. All prior negotiations and agreements are merged into this Agreement.
- 8.7 **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.
- 8.8 **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. 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.
- 8.9 **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.
- 8.10 **Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.
- 8.11 **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

- 8.12 **Further Assurances.** City, District and Owner/Applicant each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.
- 8.13 **Exhibits.** Each of the following Exhibits is attached hereto and incorporated herein by this reference:
- |           |   |                      |
|-----------|---|----------------------|
| Exhibit A | - | Property Description |
| Exhibit B | - | City Facilities      |
- 8.14 **Compliance with Controlling Law.** The Owner/Applicant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and preconstruction phases of a project, including inspection and land surveying work. In addition, the Owner/Applicant shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.
- 8.15 **Jurisdiction, Venue, and Attorney Fees.** The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, 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.
- 8.16 **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.
- 8.17 **Third Party Relationships.** Nothing in this Agreement shall create a contractual relationship between City and/or the District 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 Owner/Applicant's contracts, purchase orders and other contracts between Owner/Applicant and third party services. Owner/Applicant shall incorporate this provision into its contracts, supply agreements and purchase orders.
- 8.18 **Non-Assignment.** The Owner/Applicant shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the prior written approval of the City and the District. Any assignment in violation of this paragraph shall constitute a default and is grounds for immediate termination of this Agreement, at the sole discretion of the City or the District. In no event shall any putative assignment create a contractual relationship between the City and/or the District and any putative assignee.
- 8.19 **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.
- 8.20 **Independent Contractors.** The Owner/Applicant, any consultants, contractors, subcontractors, and any other individuals employed by the Owner/Applicant shall be independent contractors and not agents of the City, the District or the CFD. Any provisions of this Agreement that may appear to give the City any right to direct the Owner/Applicant concerning the details of performing the services under this Agreement, or to exercise any control over such performance, shall mean only that the Owner/Applicant shall follow the direction of the City concerning the end results of the performance.
- 8.21 **General Standard of Reasonableness.** Any provision of this Agreement which requires the consent, approval, discretion or acceptance of any Party hereto or any of their respective employees, officers or agents shall be deemed to require that such consent, approval or acceptance not be unreasonably withheld or delayed, unless such provision expressly incorporates a different standard.

- 8.22 **No Waiver.** No failure of the City, the District or the Owner/Applicant 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.
- 8.23 **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 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.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first hereinabove written.

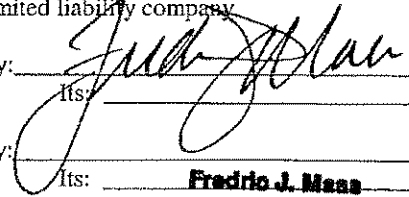
POWAY UNIFIED SCHOOL DISTRICT, acting on behalf of itself and COMMUNITY FACILITIES DISTRICT NO. 14 (DEL SUR)

By: \_\_\_\_\_  
Assistant Superintendent,  
Business Support Services

ATTEST:

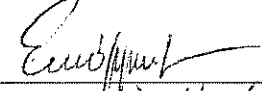
\_\_\_\_\_

BLACK MOUNTAIN RANCH, LLC a California limited liability company

By:   
Its: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: **Fredrio J. Mesa**

**President**

CITY OF SAN DIEGO

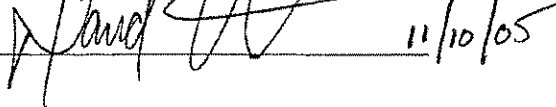
By:   
Its: Deputy City Manager

ATTEST:

\_\_\_\_\_

Approved as to form and legality

MICHAEL A. AGUIRRE  
City Attorney

By:  11/10/05

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of SAN DIEGO

} ss.

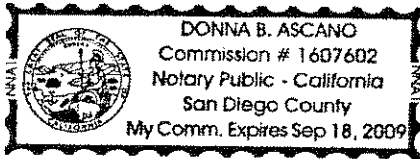
On NOVEMBER 9, 2005 before me,

DONNA B. ASCANO, NOTARY PUBLIC  
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

FREDRIC J. MAAS  
Name(s) of Signer(s)

personally known to me



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

Place Notary Seal Above

WITNESS my hand and official seal.

Donna B. Ascano  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**  
Top of thumb here

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**  
Top of thumb here

Signer Is Representing: \_\_\_\_\_



EXHIBIT A

## CFD No. 14

Parcel 13 of Parcel Map No. 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.

**Excepting therefrom:**

Any portion lying within 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.

**Together with:**

Parcel 19 of Parcel Map No. 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.

**Excepting therefrom:**

Any portion lying within 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.

**Also Excepting therefrom:**

Any portion lying within 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.

**Also Excepting therefrom:**

Any portion lying within 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.

**Together with:**

All of Parcels 16, 17, and "C" of Parcel Map No. 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.

**Together with:**

All of Parcel 2 of Parcel Map No. 19546 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.

**Together with:**

Lots "K", "L", "M", and "N" 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.

**Together with:**

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.

**Together with:**

Lots "A" and "B" 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.

**Together with:**

Lot "A" 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.

**Together with:**

All of Black Mountain Ranch North Village Unit No. 1A according to Map thereof No. 15093;

All of Black Mountain Ranch North Village Unit No. 1B according to Map thereof No. 15094;

All of Black Mountain Ranch North Village Unit No. 1C according to Map thereof No. 15076;

All of Black Mountain Ranch North Village Unit No. 1D according to Map thereof No. 15095;

All of Black Mountain Ranch North Village Unit No. 1E according to Map thereof No. 15082;

All of Black Mountain Ranch North Village Unit No. 2A according to Map thereof No. 15099;

All of Black Mountain Ranch North Village Unit No. 2B according to Map thereof No. 15100;

All of Black Mountain Ranch North Village Unit No. 2C according to Map thereof No. 15149;

All of Black Mountain Ranch North Village Unit No. 2D according to Map thereof No. 15150;

All of Black Mountain Ranch North Village Unit No. 2E according to Map thereof No. 15123;

All of Black Mountain Ranch North Village Unit No. 9A according to Map thereof No. 15148;

All of Black Mountain Ranch North Village Unit No. 9B according to Map thereof No. 15164;

All of Black Mountain Ranch North Village Unit No. 9C according to Map thereof No. 15165, all in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County.

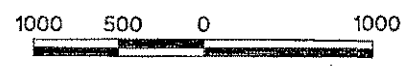
Jb/10517m.012

# CFD #14

COUNTY OF SAN DIEGO  
CITY OF SAN DIEGO



- (A) LOT 'L', MAP 15090
- (B) PARCEL 17, PARCEL MAP 18504
- (C) UNIT 1E, MAP 18082
- (D) UNIT 1A, MAP 15093
- (E) UNIT 2A, MAP 15099
- (F) UNIT 2E, MAP 15123
- (G) UNIT 2C, MAP 15149
- (H) UNIT 2B, MAP 15100
- (I) UNIT 9A, MAP 15148
- (J) UNIT 9C, MAP 15165
- (K) UNIT 9B, MAP 15164
- (L) UNIT 2D, MAP 15150
- (M) UNIT 1C, MAP 15076
- (N) UNIT 1B, MAP 15094
- (O) UNIT 1D, MAP 15095
- (P) BLACK MOUNTAIN RANCH NORTH VILLAGE UNIT 5
- (Q) BLACK MOUNTAIN RANCH NORTH VILLAGE UNIT 3
- (R) BLACK MOUNTAIN RANCH NORTH VILLAGE UNIT 4
- (S) PARCEL 16, PARCEL MAP 18504
- (T) PARCEL 2, PARCEL MAP 19546
- (U) PORTION OF PARCEL 13, PARCEL MAP 18504



GRAPHIC SCALE 1"= 1000'



5620 FRIARS ROAD  
SAN DIEGO, CA 92110  
619.291.0707  
(FAX) 619.291.4165

- PROPOSED LIMIT OF CFD #14
- BLACK MOUNTAIN RANCH LLC OWNERSHIP

EXHIBIT B

**EXHIBIT B**

10/27/2006

**LIST OF CITY FACILITIES  
TO BE ACQUIRED BY  
POWAY UNIFIED SCHOOL DISTRICT CFD NO. 14**

PFFP Proj. No.	Project Description	Amount Funded by CFD No. 14
<b>TRANSPORTATION PROJECTS:</b>		
T-4	Rancho Penasquitos Intersections	\$ 2,000,000
T-5	Camino Del Sur (San Dieguito Road to Bing Crosby Drive - 2 Lanes)	16,000,000
NA	Backbone Potable Water Line in Roadway	2,100,000
NA	Backbone Sewer Line in Roadway	800,000
T-6	Camino Del Sur Widening ( San Dieguito Road to Bing Crosby Drive - add 2 Lanes)	4,100,000
T-7	Camino Del Sur North Wildlife Crossing (2 Lanes)	5,500,000
T-8	Camino Del Sur North Wildlife Crossing Widening (add 2 Lanes)	5,500,000
T-10	Camino Del Sur Widening ( San Dieguito Road south to Carmel Valley Road - add 2 Lanes)	6,900,000
T-12	Camino Del Sur South Wildlife Crossing Widening (add 2 Lanes)	6,500,000
T-14	Camino Del Sur Widening (Carmel Valley Road south to SR-56)	1,100,000
T-15.1	Camino Del Sur at SR-56 (Construct diamond interchange)	12,000,000
T-15.2	SR-56 Bike Interchanges	1,700,000
T-20	Carmel Valley Road (Del Mar Heights Road to Via Abertura, widen to 4 lanes)	4,100,000
T-22.2	Carmel Valley Road (Widen to 4 Lanes: Camino del Sur to Black Mountain Road)	4,000,000
T-25	Carmel Valley Road (Black Mountain Road east to Camino Crisalida-4 Lanes)	24,500,000
T-27	Carmel Valley Road East Wildlife Crossing (between Black Mountain Road & Camino Crisalida-4 Lanes)	3,800,000
T-29.1	El Camino Real Widening (Half Mile Drive north to San Dieguito Road-add 2 Lanes)	1,000,000
T-29.2	El Camino Real Widening (San Dieguito Road north to Via de la Valle-add 2 Lanes)	20,200,000
T-29.3	El Camino Real (Studies to support EIS/EIR)	300,000
T-32.1	Via de la Valle Widening (West El Camino Real to San Andres Dr-add 2 Lanes)	12,600,000
T-32.2	Via de la Valle (Retaining Walls for bike path)	100,000
T-34	Camino Del Sur (Bing Crosby Drive east to City Limits - 4 Lanes)	5,400,000
T-37	Camino Del Norte at Bernardo Center Drive intersection Improvements	2,200,000
T-40	Rancho Bernardo Road Widening (I-15 east to Bernardo Center Drive-add 2 lanes)	400,000
T-43	West Bernardo Drive Spot Improvements (I-15 South to Aguamial Road)	1,600,000
T-45	West Bernardo Drive at Bernardo Center Drive intersection Improvements	600,000
T-47.1	Paseo Del Sur (Camino del Sur east to Camino San Bernardo - 4 Lanes)	11,400,000
NA	Backbone Potable Water Line in Roadway	1,500,000
NA	Backbone Sewer Line in Roadway	800,000
T-47.2	Camino San Bernardo (Paseo del Sur east to City Limit)	2,600,000
T-53	San Dieguito Road Spot Improvements (El Camino Real east to City Limit/Subarea I)	1,400,000
T-57	Black Mountain Road Widening (Twin Trails Road south to Mercy Road)	10,600,000
T-59	Subarea I Transit Program	2,000,000
T-60	El Camino Real (Extension of right turn lane between Valley Center and Carmel Valley Road)	600,000

**Sub-Total Cost of Transportation Facilities Eligible for Acquisition by the CFD: \$ 175,900,000**

**EXHIBIT B**

**PARK PROJECTS:**

P-1	Community Park	\$ 12,000,000
P-2	Community Recreation Building	5,600,000
P-3	Community Swimming Pool	1,700,000
P-5	North Neighborhood Park	3,000,000
P-9	Trail-North Loop	700,000

**Sub-Total Cost of Park Facilities Eligible for Acquisition by the CFD: \$ 23,000,000**

**FIRE PROTECTION PROJECTS:**

F-2	North Fire Station	6,800,000
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**Sub-Total Cost of Fire Facilities Eligible for Acquisition by the CFD: \$ 6,800,000**

**LIBRARY PROJECTS:**

L-1	Branch Library	\$ 5,000,000
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**Sub-Total Cost of Library Facilities Eligible for Acquisition by the CFD: \$ 5,000,000**

**WATER/SEWER PROJECTS:**

U-1	Carmel Valley Trunk Sewer	\$ 2,300,000
NA	Backbone Potable Water Distribution System	3,000,000
NA	Offsite - Recycled Water Line - from Santaluz to Golf Course	400,000
NA	Backbone Recycled Water Distribution System	1,500,000
NA	Backbone Sewer Collection System	2,000,000
NA	Sewer Pump Station No. 90	6,000,000

**Sub-Total Cost of Water & Sewer Facilities Eligible for Acquisition by the CFD: \$15,200,000**

**CITY and CALTRANS PROJECTS**

T-38	Camino Del Norte at I-15 Ramp Improvements	14,200,000
T-44	West Bernardo Drive at I-15 Ramp Improvements	300,000
T-46	Bernardo Center Drive at I-15 Ramp Improvements	1,700,000
T-54.2	SR-56 Widening (I-5 to I-15-add 2 lanes/HOV lanes and Auxiliary Lane)	12,100,000
T-55	Interstate 15 Enhancements (Lake Hodges Bridge south to SR-56)	7,200,000
T-56	SR-56 at I-15 Interchange Improvements	600,000
T-58	SR-56 at I-5 Interchange Improvements	600,000
T-61	SR-56 Auxiliary Lanes (Between west bound off-ramp and west bound on-ramp at Carmel Creek Road)	1,000,000

**Sub-Total Cost of City/Caltrans Facilities Eligible for Acquisition by the CFD: \$ 37,700,000**

**NON-FBA STREETS AND ARTERIALS TO SUPPORT SCHOOLS**

NA	Babcock Street - "AL" Street - Camino Del Sur to Paseo Del Sur	\$ 700,000
NA	Tanner Ridge - Camino Del Sur to Paseo Del Sur	900,000
NA	"AO" Street - Camino Del Sur to Paseo Del Sur	1,400,000
NA	Nicole Ridge Road - Camino Del Sur to Paseo Del Sur	1,000,000
NA	"AS" Street - Lone Quail Road to West Side of "AP" Street	500,000
NA	"AP" Street - "AY" Street to "AS" Street	500,000
NA	"AY" Street - Eastern Boundary to Nicole Ridge Road	700,000
NA	Haaland Glen - Paseo Del Sur to Paseo Montero ("R" Street)	500,000
NA	Paseo Montero - "R" Street - South side of Haaland Glen To Paseo Del Sur	1,500,000

**Sub-Total Cost of Non FBA Facilities Eligible for Acquisition by the CFD: \$ 7,700,000**

**TOTAL COST OF FACILITIES ELIGIBLE FOR ACQUISITION BY THE CFD \$271,300,000**

NA Projects indicated as "not applicable" are City Facilities but are not included in the City's PFFP program.



RESOLUTION NUMBER R- 301055

ADOPTED ON NOV 21 2005

RESOLUTION OF THE COUNCIL OF THE CITY OF SAN  
DIEGO APPROVING THE JOINT COMMUNITY FACILITIES  
AGREEMENT BETWEEN THE POWAY UNIFIED SCHOOL  
DISTRICT AND BLACK MOUNTAIN RANCH, LLC.

WHEREAS, pursuant to the application of Black Mountain Ranch, LLC, the owner of certain properties located within the City commonly known as Black Mountain Ranch, the Board of Education of the Poway Unified School District (PUSD) has initiated proceedings to: 1) establish a community facilities district (CFD) to finance certain City facilities in addition to school facilities, and authorize the levy of special taxes; and

WHEREAS, the City facilities to be financed through the CFD are included in the Black Mountain Ranch Public Facilities Financing Plan and Facilities Benefit Assessment, approved by the City Council on January 14, 2003 through Resolution No. R-297551; and

WHEREAS, the Mello-Roos Community Facilities Act of 1982 provides that the CFD may finance the City facilities only pursuant to a joint community facilities agreement between the parties, pursuant to Government Code section 53316.2; and

WHEREAS, the City is willing to enter into such agreement provided the owners agree to indemnify the City as provided for in the agreement and to warranty the construction of any City facility; and

WHEREAS, the PUSD and the City have determined that entering into a joint community facilities agreement to enable the CFD to finance the construction of the City facilities will be beneficial to the residents of each entity; NOW, THEREFORE,

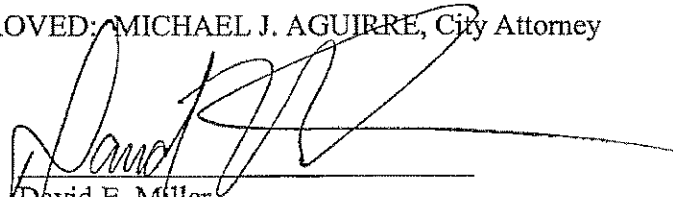
BET IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the Council authorizes the City Manager to execute the Joint Community Facilities Agreement By and Among Poway Unified School District, the City of San Diego, and Black Mountain Ranch, LLC.

BE IT FURTHER RESOLVED, that this activity is not a "project" as defined by CEQA guidelines section 15378; thus, not subject to CEQA Review under section 15060(c)(2).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

  
David E. Miller  
Deputy City Attorney

DEM:cfq  
11/09/05  
Or.Dept Planning  
R-2006-478  
MMS#2757

The agreement is on file  
in the office of the City  
Clerk as document number  
RR-301055.

Passed and adopted by the Council of San Diego on November 21, 2005 by the following vote:

**YEAS: PETERS, ATKINS, YOUNG, MAIENSCHHEIN, FRYE, MADAFFER.**

**NAYS: NONE.**

**NOT PRESENT: NONE.**

**VACANT: DISTRICT 2, DISTRICT 8, MAYOR.**

AUTHENTICATED BY:

**TONI ATKINS**

Deputy Mayor of The City of San Diego, California

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(SEAL)

By: Esther Ramos, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. **R-301055** passed and adopted by the Council of The City of San Diego, California on November 21, 2005.

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(SEAL)

By:  \_\_\_\_\_, Deputy  
Esther Ramos

**Exhibit E**  
**BMR LLC Cash Advances**

<b>No.</b>	<b>Facility Description</b>	<b>Paid by BMRLLC</b>
T 29.3	El Camino Real EIS/EIR Study	\$420,000 Note 1
T 54.1	SR-56 Debt Service	\$569,652
T-32.2	Via De La Valle (Retaining Walls for the Bike Path)	\$100,000
P-1	Community Park	\$750,000
U-1	Carmel Valley Trunk Sewer	\$934,857

Note 1 Current Contract commitments are for \$701,000.

## EXHIBIT F

## SCHEDULE OF ESTIMATED COSTS

PFFP Project No.	Project Type (See Agrm't for definitions)	Project Description	Estimated Cost (FY 2006)	Portion of Estimated Cost to be funded by BMR or CFD on BMR Property
<b>CITY TRANSPORTATION PROJECTS:</b>				
T-4	III	Rancho Penasquitos Intersections	\$ 2,065,000	\$ 1,000,000
T-5	III	Camino Del Sur (San Dieguito Road to Bing Crosby Drive - 2 Lanes)	15,896,959	15,896,959
T-6	II	Camino Del Sur Widening ( San Dieguito Road to Bing Crosby Drive - add 2 Lanes)	4,059,500	4,059,500
T-7	III	Camino Del Sur North Wildlife Crossing (2 lane bridge)	5,499,920	5,499,920
T-8	III	Camino Del Sur North Wildlife Crossing Widening (add second bridge)	5,499,920	5,499,920
T-10	I	Camino Del Sur Widening ( San Dieguito Road south to Carmel Valley Road - add 2 Lanes)	6,827,991	5,556,500
T-12	I	Camino Del Sur South Wildlife Crossing Widening (add second bridge)	6,409,840	6,409,840
T-14	III	Camino Del Sur Widening (Carmel Valley Road south to SR-56)	3,450,000	1,050,000
T-15.2	I	SR-56 Bike Interchanges	9,850,000	605,168
T-22.2	I	Carmel Valley Road (Widen to 4 Lanes: Camino del Sur to Black Mountain Road)	3,959,291	923,317
T-25	III	Carmel Valley Road (Black Mountain Road east to Camino Crisalida-4 Lanes)	24,500,000	15,000,000
T-27	III	Carmel Valley Road East Wildlife Crossing (between Black Mountain Road & Camino Crisalida-4 Lanes)	3,705,600	3,705,600
T-29.1	III	El Camino Real Widening (Half Mile Drive north to San Dieguito Road-add 2 Lanes)	5,156,000	800,000
T-29.2	II	El Camino Real Widening (San Dieguito Road north to Via de la Valle-add 2 Lanes)	20,150,218	578,200
T-29.3	II	El Camino Real (Studies to support EIS/EIR)	300,000	300,000
T-32.1	II	Via de la Valle Widening (West El Camino Real to San Andres Dr-add 2 Lanes)	13,120,748	8,629,448
T-32.2	II	Via de la Valle (Retaining Walls for bike path)	100,000	100,000
T-34	III	Camino Del Sur (Bing Crosby Drive east to City Limits - 4 Lanes)	6,971,440	5,371,440
T-37	I	Camino Del Norte at Bernardo Center Drive Intersection Improvements	2,103,708	440,158
T-40	I	Rancho Bernardo Road Widening (I-15 east to Bernardo Center Drive-add 2 lanes)	1,400,740	385,000
T-43	I	West Bernardo Drive Spot Improvements (I-15 South to Aguamiel Road)	1,540,000	1,540,000
T-45	I	West Bernardo Drive at Bernardo Center Drive Intersection Improvements	509,300	509,300
T-47.1	III	Paseo Del Sur (Camino del Sur east to Camino San Bernardo - 4 Lanes)	11,321,218	11,321,218
T-47.2	I	Camino San Bernardo (Paseo del Sur east to City Limit)	2,572,555	2,572,555

## EXHIBIT F

## SCHEDULE OF ESTIMATED COSTS

PFFP Project No.	Project Type (See Agrm't for definitions)	Project Description	Estimated Cost (FY 2006)	Portion of Estimated Cost to be funded by BMR or CFD on BMR Property
T-53	II	San Dieguito Road Spot Improvements (El Camino Real east to City Limit/Subarea I)	1,570,000	1,320,000
T-57	I	Black Mountain Road Widening (Twin Trails Road south to Mercy Road)	10,600,000	753,237
T-59	I	Subarea I Transit Program	1,914,000	1,914,000
T-60	I	El Camino Real (Extension of right turn lane between Valley Center and Carmel Valley Road)	600,000	600,000

**TOTAL COST ESTIMATE OF TRANSPORTATION PROJECTS: \$ 171,653,948**

**Sub-Total Amount Subject to FBA Credits: \$ 102,341,280**

**CITY and CALTRANS PROJECTS**

T-38	II	Camino Del Norte at I-15 Ramp Improvements	11,482,000	4,620,000
T-44	II	West Bernardo Drive at I-15 Ramp Improvements	220,000	220,000
T-46	II	Bernardo Center Drive at I-15 Ramp Improvements	1,533,000	390,500
T-54.1	na	SR-56 Debt Service	2,517,690	569,652
T-54.2	II	SR-56 Widening (I-5 to I-15-add 2 lanes/HOV lanes and Auxiliary Lane)	33,000,000	12,091,000
T-55	II	Interstate 15 Enhancements (Lake Hodges Bridge south to SR-56)	203,500,000	7,150,000
T-56	III	SR-56 at I-15 Interchange Improvements	25,000,000	580,000
T-58	II	SR-56 at I-5 Interchange Improvements	137,000,000	580,000

**TOTAL CALTRANS PROJECTS \$ 414,252,690**

**Sub-Total Amount Subject to FBA Credits: \$ 26,201,152**

**PARK PROJECTS:**

P-1	III	Community Park	\$ 17,000,000	\$ 11,885,216
P-2	II	Community Recreation Building	6,700,000	5,512,059
P-3	II	Community Swimming Pool	4,161,000	1,623,000
P-5	III	North Neighborhood Park	3,000,000	3,000,000
P-9	III	Trail-North Loop	638,000	638,000

**TOTAL PARK PROJECTS: \$ 31,499,000**

**Sub-Total Amount Subject to FBA Credits: \$ 22,658,275**

**FIRE PROTECTION PROJECTS:**

F-2	I	North Fire Station	6,787,000	6,787,000
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**TOTAL FIRE PROTECTION PROJECTS: \$ 6,787,000**

**Sub-Total Amount Subject to FBA Credits: \$ 6,787,000**

## EXHIBIT F

## SCHEDULE OF ESTIMATED COSTS

PFFP Project No.	Project Type (See Agrm't for definitions)	Project Description	Estimated Cost (FY 2006)	Portion of Estimated Cost to be funded by BMR or CFD on BMR Property
<b><u>LIBRARY PROJECTS:</u></b>				
L-1	na	Branch Library	\$ 12,786,832	\$ 4,979,406
<b>TOTAL LIBRARY PROJECTS:</b>			<b>\$ 12,786,832</b>	
			<b>Sub-Total Amount Subject to FBA Credits:</b>	<b>\$ 4,979,406</b>
<b><u>WATER/SEWER PROJECTS:</u></b>				
U-1	III	Carmel Valley Trunk Sewer	\$ 9,892,000	\$ 2,261,000
<b>TOTAL WATER/SEWER PROJECTS:</b>			<b>\$ 9,892,000</b>	
			<b>Sub-Total Amount Subject to FBA Credits:</b>	<b>\$2,261,000</b>
			<b>TOTAL ESTIMATED AMOUNT, SUBJECT TO FBA CREDITS:</b>	<b>\$165,228,113</b>

Notes: 1 The estimated costs shown above for each FBA Facility are from the 2006 PFFP. The amount shown that is subject to FBA credits, is that portion of the estimated cost that will be funded by BMR, either directly, or indirectly via a CFD as a lien against BMR's Property. The final FBA credit amount is subject to change in accordance with the terms of this Agreement.

EXHIBIT G

**Summary of Required Circulation Improvements by Phase  
Black Mountain Ranch Revised VTM and the Remainder of Black Mountain Ranch Subarea I  
VTM PHASE**

<b>PFFP Proj No.</b>	<b>Facility</b>	<b>Location</b>	<b>Required Improvement Description</b>
	<b>Vesting Tentative Map Phase One:</b> Prior to development in the Vesting Tentative Map area, the following improvements shall be assured to the satisfaction of the City Engineer:		
	<b>On-Site Roads</b>		
T-3	Black Mtn. Rd.	Carmel Valley Rd. to existing Black Mtn. Rd.	Construct 4-lane major street.
T-9	Camino Del Sur	At San Dieguito Rd.	Construct traffic signal.
T-9	Camino Del Sur	San Dieguito Rd. to Carmel Valley Rd.	Construct 2 lanes of an ultimate 4-lane major road.
T-9	Camino Del Sur	At B Street	Construct traffic signal.
T-9	Camino Del Sur	At Carmel Valley Rd.	Construct traffic signal.
T-3	Carmel Valley Rd.	At Black Mountain Rd.	Construct traffic signal.
T-1	San Dieguito Rd.	Property boundary east to Camino Del Sur	Construct a 2-lane collector street with intersection widening.
	<b>Off-Site Roads</b>		
T-4	Black Mtn. Rd.	At Maler Rd.	Construct traffic signal.
T-4	Black Mtn. Rd.	At SR-56 WB Ramp	Widen WB approach for dual lefts and right turn lanes. Modify signal.
T-4	Black Mtn. Rd.	At SR-56 EB Ramp	Widen SB approach for dual lefts; Widen NB approach for exclusive right turn lane.
T-4	Black Mtn. Rd.	At Park Village Rd.	Widen SB approach for exclusive right turn lane.
T-19	Carmel Valley Rd.	Western portion of SR-56 to Via Abertura	Provide striping, signing, and widening improvements as required by City Engineer, enhance existing 2-lane road.
T-21.1, T-21.2	Carmel Valley Rd.	Via Abertura to Black Mtn. Rd.	Construct 2 lanes of an ultimate 4-lane major road with intersection widening.
T-19	Carmel Valley Rd.	At Rancho Santa Fe Farms Rd.	Construct traffic signal.
T-28	El Camino Real	At San Dieguito Rd.	Widen WB approach for shared left and right turn lane.
T-4	Rancho Penasquitos Blvd.	At SR-56 WB Ramp	Widen WB off ramp to provide a center left/through/right turn lane.
	<b>Vesting Tentative Map Phase Two:</b> Prior to exceeding 600 equivalent dwelling units in the Vesting Tentative Map area, the following improvements shall be assured to the satisfaction of the City Engineer:		
	<b>On-Site Roads</b>		
N/A	SR-56 or	Black Mountain Rd. to Camino Del Sur	Extend to Camino Del Sur.
T-9	Camino Del Sur	San Dieguito Rd. to Carmel Valley Rd.	Widen to 4-lane major street.
T-13, T-14	Camino Del Sur	Carmel Valley Rd. to SR-56	Construct 4-lane major street.
	<b>Off-Site Roads</b>		
T-18	Carmel Valley Rd.	At I-5 SB Ramp	Restripe the intersection for a WB shared left/through lane. Modify signal for split phasing.

NAME CHANGE NOTES:

- a) Former North Village Drive has been renamed Paseo Del Sur and is included herein as an Internal Roadway.
- b) Former Camino Ruiz and those portions of Camino del Norte within Subarea I and Subarea IV have been renamed Camino Del Sur.
- c) The portion of Camino Santa Fe within Subarea III at SR-56 and north to Del Mar Heights Road has been renamed Carmel Valley Road.



**Summary of Required Circulation Improvements by Phase  
Black Mountain Ranch Revised VTM and the Remainder of Black Mountain Ranch Subarea I  
PHASE I-A & I-B**

<b>PFFP Proj No.</b>	<b>Facility</b>	<b>Location</b>	<b>Required Improvement Description</b>
<b>Black Mountain Ranch Subarea I Phase I-A:</b> Prior to exceeding 2,610 equivalent dwelling units in the Vesting Tentative Map phase and any equivalent dwelling units in the remainder of Subarea I, the following improvements shall be assured to the satisfaction of the City Engineer.			
<b>On-Site Roads</b>			
T-5	Camino Del Sur	San Dieguito Rd. to Paseo Del Sur	Construct 2 lanes of ultimate 4-lane major street.
T-47, T-48	Internal Roadways	As required by internal development	Construct roadways and traffic signals.
<b>Off-Site Roads</b>			
T-14	Camino Del Sur	Carmel Valley Rd. to SR-56	If not complete, widen to 4 lanes.
T-21.1	Carmel Valley Rd.	Via Abertura to Camino Del Sur	Widen to 4 lanes.
N/A	SR-56	Black Mountain Rd. to Camino Del Sur	Construct 4 lane freeway (3)(4).
T-53	San Dieguito Rd.	At El Apajo	Traffic signal or Contribute funding for improvement.
T-29.1	El Camino Real	San Dieguito Rd. south to Half Mile Dr.	Widen to 4 lanes.
T-32.1	Via de la Valle	El Camino Real West to San Andres Dr.	Widen to 4 lanes (1)(5).
T-32.1	Via de la Valle	San Andres Dr. to I-5	Restripe for 6 lanes (1).
<b>Black Mountain Ranch Subarea I Phase I-B:</b> Prior to exceeding 2,610 equivalent dwelling units in the Vesting Tentative Map phase and 1,282 equivalent dwelling units in the remainder of Subarea I, the following improvements shall be assured to the satisfaction of the City Engineer.			
<b>On-Site Roads</b>			
T-10	Camino Del Sur	San Dieguito Rd. to Carmel Valley Rd.	If not complete, widen to 4 lanes.
T-47, T-48	Internal Roadways	As required by internal development	Construct roadways and traffic signals.
<b>Off-Site Roads</b>			
N/A	Camino Del Sur	SR-56 south to Carmel Mountain Rd.	Construct 4 lanes.
N/A	Camino Del Sur	Carmel Mountain Rd to Dormouse Rd.	Construct 2 lanes (2).
T-19, T-20	Carmel Valley Rd.	Del Mar Heights Rd. to SR-56	Construct 4 lanes.
T-20	Carmel Valley Rd.	Via Abertura west to Del Mar Heights Rd.	Widen to 4 lanes.
T-22.2	Carmel Valley Rd.	Camino Del Sur to Black Mountain Rd.	Widen to 4 lanes.
N/A	Del Mar Heights Rd.	Lansdale Dr. to Carmel Valley Rd.	Construct 4 lanes.
T-2	El Apajo	Via de Santa Fe to San Dieguito Rd.	Widen to 3 lanes.
	SR-56	Camino Del Sur to east of Carmel Country Rd.	Construct 4 lane freeway (3)(4).
T-15.1	SR-56	At Camino Del Sur	Construct diamond interchange.
N/A	SR-56	At Carmel Valley Rd.	Construct diamond interchange.
T-56	SR-56	At I-15	Contribution of \$580,000 for interchange. Improvements.
T-29.2	El Camino Real	Via de la Valle to San Dieguito Rd.	Widen to 4 lanes (2).
T-29.2	Via de la Valle	El Camino Real (E) to El Camino Real (W)	Widen to 4 lanes (2)(5).
N/A	Interstate 5	SR-56 to I-805	Construct dual freeways (3).

(1) If unable to assure at time of first EDU in Phase I-A because of failure to acquire right of way, obtain Coastal Commission approval or other reason beyond City or developer control, improvement will be subject to a bonded deferred improvement agreement and moved into Phase I-B.

(2) Current City CIP projects. City will assure in Phase I-B; otherwise, Phase II EDUs will not be released until assured

(3) SR-56 is assured by the City and the dual freeways are assured by Caltrans.

(4) SR-56 was formerly described as a single project from Carmel Valley to Black Mountain Road.

Black Mountain Ranch Subarea I Transportation Phasing Plan

06/22/05

(5) Via de la Valle was formerly described as a single project from San Andres Drive to El Camino Real (E).

**Summary of Required Circulation Improvements by Phase  
Black Mountain Ranch Revised VTM and the Remainder of Black Mountain Ranch Subarea I  
PHASE II-A & II-B**

<b>PFFP Proj. No.</b>	<b>Facility</b>	<b>Location</b>	<b>Required Improvement Description</b>
<b>Black Mountain Ranch Subarea I Phase II-A:</b> Prior to exceeding 2,610 equivalent dwelling units in the Vesting Tentative Map phase and 1,582 equivalent dwelling units in the remainder of Subarea I, (totaling 4,192 equivalent dwelling units in all of Subarea I), the following improvements shall be assured to the satisfaction of the City Engineer.			
<b>On-Site Roadways</b>			
T-6, T-34	Camino Del Sur	San Dieguito Rd. to Camino del Norte	Widen to 4 lanes (6).
T-25	Carmel Valley Rd.	Black Mountain Rd. to Camino Crisalida	Construct 2 lanes (7)(8).
T-47, T-48	Internal Roadways	As needed	Construct roadways and traffic signals.
<b>Off-site Roadways</b>			
T-46	Bernardo Center Dr.	At I-15	Construct ramp improvements.
T-35, T-36	Camino del Norte	Camino Del Sur to Camino San Bernardo	If not constructed, construct 4 lanes (9).
T-37	Camino del Norte	At Bernardo Center Dr.	Improve capacity at-grade, pedestrian bridge.
T-38	Camino del Norte	At I-15 Ramps	Complete interchange improvements, NB & SB truck climbing lanes.
T-55	I-15	SR-163 to Escondido	Construct capacity enhancements (HOV, auxiliary lanes or comparable improvements) to facility.
T-39	Rancho Bernardo Rd.	Bernardo Center Dr. to West Bernardo Dr.	Widen to 6 lanes.
T-39	Rancho Bernardo Rd.	At West Bernardo Dr.	Construct intersection improvements.
T-39	Rancho Bernardo Rd.	At I-15 NB/SB Ramps	Construct intersection improvements.
T-45	West Bernardo Dr.	At Bernardo Center Dr.	Construct intersection improvements.
T-43	West Bernardo Dr.	I-15 SB Ramps to Aguamiel Rd.	Improve cross-section.
T-44	West Bernardo Dr.	At I-15 SB Ramp	Construct traffic signal.
T-54.2	SR-56 Westbound	Between Carmel Creek Rd. On & Off Ramps	Contribute fair share of \$1,000,000 for Auxiliary Lane.
T-18	El Camino Real SB	At Carmel Valley Rd./SR-56	Contribute fair share of \$600,000 for turn pocket.
<b>Black Mountain Ranch Subarea I Phase II-B:</b> Prior to exceeding 2,610 equivalent dwelling units in the Vesting Tentative Map phase and 2,602 equivalent dwelling units in the remainder of Subarea I, (totaling 5,212 equivalent dwelling units in all of Subarea I), the following improvements shall be assured to the satisfaction of the City Engineer.			
<b>On-Site Roadways</b>			
T-47, T-48	Internal Roadways	As needed	Construct roadways and traffic signals.
<b>Off-Site Roadways</b>			
N/A	I-5	I-805 to Birmingham	Construct capacity enhancements (HOV, auxiliary lanes or comparable improvements) to facility.
T-25	Carmel Valley Rd.	Black Mountain Rd. to Camino Crisalida	Widen to 4 lanes (8).
N/A	Camino Del Sur	Carmel Mountain Rd to Dormouse Rd.	Widen to 4 lanes.

(6) Project formerly described as three separate increments: Camino Ruiz from San Dieguito Road to North Village Drive, Camino Ruiz from North Village Drive to Camino del Norte and Camino del Norte from the Eastern Project Boundary to the Western Project Boundary.

(7) 138 EDUs will be released with the assurance of two lanes of Carmel Valley Road between Black Mountain Road and Camino Crisalida without regard to other transportation phasing or EDU limitations.

(8) Project formerly described as Black Mountain Rd. to Bernardo Center Dr.

(9) Project formerly described as two separate increments: Camino del Norte from Eastern Project Boundary to 4S Parkway and from 4S Parkway to Existing Terminus which was Camino San Bernardo.

**Summary of Required Circulation Improvements by Phase**  
**Black Mountain Ranch Revised VTM and the Remainder of Black Mountain Ranch Subarea I**  
**PHASE III**

<i>PFFP Proj No.</i>	<i>Facility</i>	<i>Location</i>	<i>Required Improvement Description</i>
	<b>Black Mountain Ranch Subarea I Phase III:</b> Prior to exceeding 2,610 equivalent dwelling units in the Vesting Tentative Map phase and 3,682 equivalent dwelling units in the remainder of Subarea I, (totaling 6,292 equivalent dwelling units in all of Subarea I), the following improvements shall be assured to the satisfaction of the City Engineer.		
	<b>On-Site Roadways</b>		
T-47, T-48	Internal Roadways	As needed	Construct roadways and traffic signals.
	<b>Off-Site Roadways</b>		
N/A	Camino Del Sur	Carmel Valley Rd. to Carmel Mountain Rd.	Widen to 6 lanes.
T-54.2	State Route 56	I-5 to I-15	Widen to 6-lane freeway.
T-58	State Route 56	At I-5	Construct north facing ramps.
T-15.1	State Route 56	At Camino Del Sur	Construct partial cloverleaf interchange.
N/A	Carmel Valley Rd.	Del Mar Heights Rd. to SR-56	Widen to 6 lanes.
T-57	Black Mountain Rd.	Twin Trails Rd. to north of Mercy Rd.	Widen to 6 lanes.

**Black Mountain Ranch Land Uses**

<i>Land Use</i>	<i>Units</i>	<i>Intensity</i>	<i>Daily Trip Rate (Vehicle Trips)</i>	<i>Total Daily Trips (Vehicle Trips)</i>
<b>VTM PHASE</b>				
<b><i>Black Mountain Ranch Land Uses Under VTM 95-0173</i></b>				
Estate Residential	Dwelling Units	71	12	852
Single Family Residential	Dwelling Units	871	10	8,710
Affordable Housing	Dwelling Units	179	8	1,432
Middle School	Acres	17	40	680
Elementary School	Acres	10	60	600
Church (2)	Acres (Total)	6	60	360
Golf Courses (2)	Courses (Total)	2	600	1,200
Neighborhood Park (2)	Acres (Total)	10	10	100
Community Park	Acres	30	10	300
<b>Subtotals:</b>	<b>Dwelling Units:</b>	<b>1,121</b>	<b>Trips:</b>	<b>14,234</b>
<b><i>Black Mountain Ranch Land Uses Under Proposition C 1996 and VTM 99-1161</i></b>				
Neighborhood Commercial	Thousand Sq. Feet	60	120	7,200
Single Family Residential	Dwelling Units	218	10	2,180
Multi-Family Residential	Dwelling Units	42	8	336
<b>Subtotals:</b>	<b>Dwelling Units:</b>	<b>260</b>	<b>Trips:</b>	<b>9,716</b>
<b><i>Perimeter Ownership Land Uses</i></b>				
Single Family Residential	Dwelling Units	190	10	1,900
Affordable Housing	Dwelling Units	36	7	252
<b>Subtotals:</b>	<b>Dwelling Units:</b>	<b>226</b>	<b>Trips:</b>	<b>2,152</b>
<b>VTM PHASE TOTALS:</b>	<b>Dwelling Units:</b>	<b>1,607</b>	<b>Trips:</b>	<b>26,102</b>
<b>PHASE I, II &amp; III</b>				
<b><i>Phase I, II &amp; III Black Mountain Ranch Ownership Land Uses</i></b>				
Estate Residential	Dwelling Units	120	12	1,440
Single Family Residential	Dwelling Units	1,600	10	16,000
Multi-Family Residential	Dwelling Units	830	8	6,640
Age Restricted Residential	Dwelling Units	500	4	2,000
High School (portion)	Acres	40	50	2,000
Middle School	Acres	30	40	1,200
Elementary School	Acres	10	60	600
Employment Center	Thousand Sq. Feet	450	16	7,200
Neighborhood Commercial	Thousand Sq. Feet	75	120	9,000
Office	Thousand Sq. Feet	65	20	1,300
Resort/Hotel (Prop. C – 1996)	Rooms	300	8	2,400
Neighborhood Park	Acres	7	40	280
<b>Subtotals:</b>	<b>Dwelling Units:</b>	<b>3,050</b>	<b>Trips:</b>	<b>50,060</b>
<b><i>Phase I, II &amp; III Perimeter Ownership Land Uses</i></b>				
SW Perimeter – Single Fam.	Dwelling Units	94	10	940
SE Perimeter – Single Fam.	Dwelling Units	349	10	3,490
NE Perimeter – Multi- Fam.	Dwelling Units	300	8	2,400
<b>Subtotals:</b>	<b>Dwelling Units:</b>	<b>743</b>	<b>Trips:</b>	<b>6,830</b>
<b>PHASE I, II &amp; III TOTALS:</b>	<b>Dwelling Units:</b>	<b>3,793</b>	<b>Trips:</b>	<b>56,890</b>
<b>TOTAL DWELLING UNITS BLACK MOUNTAIN RANCH SUBAREA I</b>		<b>5,400</b>		
<b>TOTAL TRIPS BLACK MOUNTAIN RANCH SUBAREA I</b>				<b>82,992 (1)</b>

(1) Total trips are 1028 trips (103 EDU) less than the total trips of 84,020 allocated in the Transportation Phasing Plan. This buffer was created primarily by the deletion of a High School Site that was included in the original VTM 95-0173 and in the original traffic and transportation analysis which is the basis for the Transportation Phasing Plan.

**EXHIBIT H**

**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 name of Consultant/Sub\*] 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: \_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Print Name and Title

**EXHIBIT I**

PRE-CONSTRUCTION MEETING AGENDA  
(INSERT DATE)

1. Introduction
2. Inspection
3. Testing
4. Survey Staking
5. Job Safety
6. Construction Schedule
7. Erosion Control
8. Traffic Control
9. Communication and Correspondence
10. Submittal Process
11. RFI Process
12. Change Order Process
13. Payment Requests
14. Questions

Exhibit J

**Notification of Reimbursable Project**

for

**Type I Projects**

Pursuant to Section 18.1.1 of the “Reimbursement Agreement for Black Mountain Ranch North,” (“Agreement”), adopted pursuant to Resolution No. \_\_\_\_\_ and executed on \_\_\_\_\_, 2006, Black Mountain Ranch, LLC (“Subdivider”) hereby notifies the City of San Diego that work will begin on the following Project, (insert the name of Project and the Project No. from the PFFP), on or about (insert date work is to begin).

Black Mountain Ranch LLC,  
a California limited liability company

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

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

Dated: \_\_\_\_\_

Exhibit J

**Notification of Reimbursable Project**

for

**Type II and Type III Projects**

Pursuant to Section 18.1.1 of the "Reimbursement Agreement for Black Mountain Ranch North," ("Agreement"), adopted pursuant to Resolution No. \_\_\_\_\_ and executed on \_\_\_\_\_, 2006, Black Mountain Ranch, LLC ("Subdivider") hereby notifies the City of San Diego that work has begun on the following Projects, (insert the name(s) of Project(s) and the Project Nos. from the PFFP. Attach a separate sheet listing Projects if necessary).

Black Mountain Ranch LLC,  
a California limited liability company

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

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

Dated: \_\_\_\_\_



## EXHIBIT K – TYPICAL INSURANCE PROVISIONS

- 1 **Types of Insurance.** At all times during the term of this Agreement, Subdivider shall maintain insurance coverage as follows:
- 1.1 *Commercial General Liability.* Subdivider 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. Contractor 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 Policy 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 one million dollars (\$1,000,000).
  - 1.2 *Commercial Automobile Liability.* For all of Subdivider's automobiles used in conjunction with the Project including owned, hired and non-owned automobiles, Subdivider 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 ["Any Auto"]. All costs of defense shall be outside the policy.
  - 1.3 *Architects and Engineers Professional Liability.* For all of Subdivider's employees who are subject to this Agreement, Subdivider shall keep in full force and effect, or Subdivider 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. Subdivider 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 Contract. Subdivider 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 Subdivider's employees who are subject to this Contract and to the extent required by the State of California, Subdivider shall keep in full force and effect, a Workers' Compensation Insurance and Employers' Liability Insurance to protect Subdivider 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 Subdivider to comply with the requirements of this section. That policy shall provide at least the Statutory minimums of \$ million 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. Subdivider 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 Subdivider 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 Contract.”

1.5 *Builder’s Risk.* To the extent commercially available, Subdivider shall provide a policy of “all risk” Builders Risk Insurance. Subdivider 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. Subdivider 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 Subdivider’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 this Agreement 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 of San Diego 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 of San Diego and its respective elected officials, officers, employees, agents, and representatives. The coverage for Projects for which the Engineer’s Estimate 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 Engineer’s Estimate 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 of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego 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 of San Diego 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 of San Diego 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 of San Diego 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 Contractor; 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 of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego 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 of San Diego 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 of San Diego 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 of San Diego, 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 of San Diego and its elected officials, officers, employees, agents, and representatives shall be in excess of Subdivider'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 that will apply only to the Work performed under this Agreement. Claims payments not arising from the Work shall not reduce the Designated Construction Project General Aggregate Limit. The Designated Construction Project General 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 Subdivider 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.
- 2.5 *Prior to Starting Work.* Before performing any work, Subdivider shall provide the City with all Certificates of Insurance accompanied by all endorsements.

Exhibit L

**FBA Fee Credit Notification**

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

Pursuant to Section 33.2 of the "Reimbursement Agreement for Black Mountain Ranch North," ("Agreement"), adopted pursuant to Resolution No. \_\_\_\_\_ and executed on \_\_\_\_\_, 2006, Black Mountain Ranch, LLC ("BMRLLC") hereby grants to \_\_\_\_\_ (insert name of builder), FBA fee credits in the amount of \_\_\_\_\_ (insert dollar amount in writing), (\$ \_\_\_\_\_). 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: \_\_\_\_\_