

# COPY

## PARK PURCHASE, DEVELOPMENT, AND REIMBURSEMENT AGREEMENT FOR BLACK MOUNTAIN RANCH NORTH

THIS Agreement shall be for the purchase of property, the development of such property, and the reimbursement for costs thereof, 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 referred to as "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. The Black Mountain Ranch (Subarea I) Plan, 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, designates a five (5.0) net useable acre parcel as a future neighborhood park site known as Black Mountain Ranch North Neighborhood Park.
2. Subdivider is the master developer for certain real property within the Black Mountain Ranch Facilities Benefit Assessment Area, formerly Subarea I of the North City Future Urbanizing Area, in the City and County of San Diego [Property]. The Property is depicted in Exhibit A and is more particularly described in Exhibit B. In addition to serving as master developer of the Property, Subdivider also has an ownership interest in a portion of the Property, including that portion of the Property on which the Black Mountain Ranch North Neighborhood Park will be constructed.
3. North Village at Black Mountain Ranch Subdivision Vesting Tentative Map number 40-0528 [VTM] was approved by City Council on November 27, 2001, by Resolution No. R-295794, subject to certain conditions [VTM Conditions].
4. VTM Condition number 41, attached as Exhibit C, requires the Subdivider to enter into an Agreement with the City for Property acquisition for the Black Mountain Ranch North Neighborhood Park, rough grading of the Property, design and construction of the neighborhood park facilities, contiguous half-width street improvements and utilities to serve the Property [Project], and to define the method of reimbursement for funds expended and work performed associated with such acquisition, grading, and construction.
5. City's Fiscal Year 2003 Black Mountain Ranch Public Facilities Financing Plan and Facilities Benefit Assessment [Financing Plan] adopted on January 14, 2003, by Resolution number R-297551, identifies the Project as Project number P-5, attached as Exhibit D. The Financing Plan identifies sources of funding for the Project.
6. The Financing Plan is subject to annual review and updates by the City Council at which time the Estimated Cost and the amounts subject to appropriation for the Project are subject to change.
7. The Estimated Cost for Project number P-5, according to the Financing Plan, is two million two hundred fifty thousand dollars (\$2,250,000). An update to the Financing Plan is expected to be presented to the City Council for review and adoption by August 2005. At the time of the update, the Financing Plan is expected to contain an increase to Estimated Cost of Project number P-5 in the amount of seven hundred and fifty thousand dollars (\$750,000), reflecting an increase in the costs of construction and other associated costs, for a total of three million dollars (\$3,000,000).
8. The Reimbursable Cost of the Project, however, shall be determined in accordance with the terms of this Agreement. Unless and until an update to the Financing Plan is adopted and City Council approves an increase in the Estimated Cost, the Reimbursable Costs shall not exceed two million two hundred fifty thousand dollars (\$2,250,000).

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9. Subdivider has been actively engaged in the development of the North Village at Black Mountain Ranch Subdivision and the Parties are prepared to proceed with land acquisition, rough grading and construction of the Project.
10. Subdivider is willing to complete the Project, as a public improvement, according to plans and specifications approved by City, for an amount not to exceed the Estimated Cost, and desires to accept Facilities Benefit Assessment [FBA] credits from City, as compensation for acquisition of the Property and Reimbursable Costs associated with construction of the Project.
11. Subdivider is entering into this Agreement on the condition that City accepts performance of Subdivider's obligations under this Agreement as complete satisfaction of Subdivider's obligations under condition number 41 of the VTM.

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 City Inspection Team following the Final Inspection that Project Improvements are complete and work required on the Punch List has been finished.

**Actual Cost:** The total actual cost of Project, including Professional Services, Construction, and Project Administration.

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

**CEQA:** California Environmental Quality Act.

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

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

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

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

**City's Project Administration Costs:** Charges that City incurs to: (i) administer the acquisition of the Property, (ii) review and approve the plans and specifications for the project improvements, and (iii) inspect the project improvements during construction, until completion and Acceptance of the Project.

**Consultant(s):** A party or third parties hired by Subdivider to provide the services necessary for the design and construction of the Project.

**Contract:** May be used throughout this Agreement as a synonym for Agreement.

**Contract 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.

**DIF:** Development Impact Fees.

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

**Equivalent Project:** A project used as a reference or standard for design, quality, durability, and functionality.

**Estimated Cost:** The total cost of the Project as estimated in preliminary cost estimates as shown in Exhibit F. As Estimated Cost is not initially the result of competitive bids for the actual design and construction, it is subject to change during the competitive bid process as well as during the design and construction phases, subject to approval.

**Extra Work:** Any City additions, modifications, or deletions to work or Subdivider obligations under this Agreement not within the original Scope of Work contemplated by this Agreement.

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

**Financing Plan:** Public Facilities Financing Plan and Facilities Benefit Assessment, as it may be updated by City Council from time to time.

**Greenbook:** The most recent edition of the Standard Specifications for Public Works Construction (including the City of San Diego 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:** The 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

**Improvements:** Those improvements required to complete the Park pursuant to the General Development Plan, including but not limited to: (a) rough grading of the Park Site at a maximum two percent (2%) grade (excluding slopes outside of the net useable area in accordance with the approved grading plans); (b) construction of landscaping, irrigation systems, play fields (if any), paths, benches and other park uses and facilities as shown on the approved plans and specifications, (c) required utilities to serve the Park from the closest point of connection, including but not limited to potable water; reclaimed water; sanitary sewer, if required; storm drains; electricity; gas and telephone, if required (but excluding cable television); (d) an erosion control and storm water protection plan; (e) landscaping within the right-of-way on the roads that abut the Park; (f) construction of half-width street improvements for the streets that abut the Park; and (g) other improvements as may be required by the City during the City's review and approval process as described in Article IX.

**Improvement Costs:** Improvement Costs include costs associated with preparation of the Project budget, the cost of appraisal fees for the Property, Escrow Costs pursuant to section 5.5, carry costs for the Property (e.g., interest, real property taxes, assessments, insurance, etc.), and other costs associated with acquisition of the Property, professional services for design, engineering and construction drawings preparation, net rough grading cost for the

**Property** (net rough grading cost means a pro-rata share of cost paid by Subdivider to rough grade the Property, less any savings realized by Subdivider in balancing the cut and fill soil of the subdivision site), costs associated with the provision of potable and reclaimed water, sanitary sewer system, storm drain system, paving, and electricity, if any, to serve the Project from the closest point of public connection, half-width street improvements which abut the Property, insurance premiums, bonds, erosion control and storm water protection plan, and all other fees and charges (i.e. permit fees, inspection fees, City processing fees, etc.) associated with actual rough grading and construction of Improvements on the Property, Landscaping Costs (if applicable), City's Project Administration Costs, and Subdivider's Project administration and construction management costs.

**Milestones:** Dates shown on the Project Schedule by which Subdivider shall complete major tasks either during design or construction of the Project.

**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 the Project was completed. The warranty and stop notice periods commence on the date the Notice of Completion is recorded.

**Notice to Proceed:** City's written notice authorizing Subdivider to commence Work and/or Services on the Project.

**Notice of Termination:** A written notice from City to Subdivider terminating the Contract in accordance with section 3.5.

**PR:** City of San Diego Park and Recreation Department.

**PR Project Manager:** The City's Representative from the Park and Recreation Department, acting as the City's overseer of the Project design and construction.

**RE:** The City's Representative from the Engineering and Development Department, acting as the City's Resident Engineer for construction inspection and oversight.

**RFI:** Request for Information.

**Reimbursable Costs:** Costs of Project that have been expended and approved by the City either through the adoption of a Public Facilities Financing Plan or through other approval procedures described in the Agreement, such as those for Change Orders.

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

**Standard Drawings:** City of San Diego Standard Drawings, including all Regional Standard Drawings.

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

**Useable Park Land:** That portion of the Property not exceeding a grade of two percent (2.0%), unconstrained by environmental restrictions that would prevent its use as a park and recreational facility, free of structures and unencumbered by any easements, except as to title exceptions that have received the prior written approval of City.

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

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

## 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 Except as expressly provided in this Agreement, Subdivider shall design and construct Project number P-5, a five (5.0) net useable acre park in accordance with the VIM grading conditions, including neighborhood park facilities, half-width street improvements and utilities to serve the park in accordance with all the terms of this Agreement, approved Plans and Specifications, and the Financing Plan within the timeframe established by the Preliminary Project Schedule [Exhibit E] and for the Estimated Cost [Exhibit F].
- 2.2 Subdivider shall provide a complete and functional Project.
- 2.3 Upon Project Completion, Subdivider shall transfer title to the Project number P-5, including the Property and Improvements made thereon, pursuant to the terms and conditions of this Agreement.

### ARTICLE III. DURATION OF AGREEMENT

- 3.1 **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. The term of this Agreement will extend for a period of fifteen (15) years following the date of execution unless this Contract is earlier terminated, or its term modified in writing agreed to by both Parties.
- 3.2 **Time of Essence.** Time is of the essence for this Agreement and each provision of this Agreement, including the Project Schedule, Start Date, Milestones, and Project Completion Date contained herein, unless otherwise specified in this Agreement.
- 3.3 **Notification of Delay.** If the Subdivider anticipates or has reason to believe that the performance of work under this Agreement will be delayed, the Subdivider shall immediately notify the PR Project Manager. A written notice of the delay must be delivered to the City within thirty (30) Calendar Days of the initial notification, unless the 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. The Subdivider shall include a written statement that the time adjustment requested is the entire time adjustment to which Subdivider has reason to believe it is entitled as a result of the cause of the delay. An increase in Project Schedule does not necessarily mean that Subdivider is entitled to an increase in Reimbursable Costs. If in the opinion of the City, the delay affects a material part of the Project, the City may exercise its rights under sections 3.4 and 3.5 of this Agreement.
- 3.4 **Delay.** If delays in the performance of work required under this Agreement are caused by unforeseen events beyond the control of the Parties, such delay may entitle the Subdivider to a reasonable extension of time or to additional compensation. Any such extension of time must be approved in writing by the PR Project Manager. The following conditions may justify such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the Subdivider's work; inability to obtain materials, equipment, or labor; required additional Professional Services; or other specific reasons agreed to between the City and the Subdivider; provided, however, that: (i) this provision shall not apply to, and the Subdivider shall not be entitled to an extension of time, additional costs, or expenses for, a delay caused by the acts or omissions of the Subdivider, its consultants, contractors, employees, or other agents; and (ii) a delay caused by the inability to obtain materials, equipment, or labor shall not entitle the Subdivider to an extension of time unless the Subdivider furnishes the City, in a timely manner, documentary proof satisfactory to City of the Subdivider's inability to obtain materials, equipment, or labor.
- 3.5 **City's Right to Terminate for Default.** If the Subdivider fails to perform or adequately perform any obligation required by this Agreement, the Subdivider's failure constitutes a Default. If the Subdivider fails to undertake all reasonable efforts to the satisfaction of the City, within thirty (30) Calendar Days of receiving written notice from the 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, the City may immediately cancel and/or terminate this Agreement, and terminate each and every right of the Subdivider, and any person claiming any rights by or through the Subdivider under this Agreement. The rights and remedies of the City enumerated in this Section are cumulative and shall not limit, waive, or deny any of the 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 the City against the Subdivider. A delay shall not constitute a Default if Subdivider has made good faith and reasonable efforts to adhere to the Project Schedule and has provided notice of delay pursuant to section 3.3; however, Subdivider shall pay all costs attributable to Delay pursuant to section 3.7.

- 3.6 **City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors.** If the Subdivider files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to or demand upon the Subdivider, immediately cancel and/or terminate this Agreement, and terminate each and every right of the Subdivider under this Agreement, and any person claiming any rights by or through the Subdivider. The rights and remedies of the City enumerated in this Section are cumulative and shall not limit, waive, or deny any of the 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 the City against the Subdivider.
- 3.7 **Costs of Delay.** City and Subdivider recognize that time is of the essence in this Agreement and that City will suffer financial loss if the Project is not completed according to the Project Schedule by the Completion Date or any extensions subsequently approved. Parties agree that City will be entitled to recover City's Project Management Costs caused by the delay if the Project is not completed on time. Such costs shall be calculated by determining the actual costs incurred by the City that are attributable to the Delay. City and Subdivider agree that Subdivider shall pay this amount in the form of deductions to FBA credits earned as Reimbursement.

#### ARTICLE IV. PROJECT COSTS

- 4.1 **Estimated Cost.** The Estimated Cost of Project, according to the Financing Plan is two million two hundred fifty thousand dollars (\$2,250,000). Subdivider, however, now estimates an increase in the Project cost in the amount of seven hundred fifty thousand dollars (\$750,000). The Subdivider's new estimate shall not become effective as the Estimated Cost unless and until the City Council adopts an updated Financing Plan and approves the increase in the Estimated Cost. Until such time as City Council approves an increase in Estimated Cost, the Amount of Reimbursement, pursuant to section 16.1.3, shall not exceed two million two hundred fifty thousand dollars (\$2,250,000). Estimated Cost is subject to change pursuant to methods established in this Agreement.
- 4.1.1 *Annual Adjustments to Estimated Cost.* Without further amendments to this Agreement, the Estimated Cost 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.
- 4.1.2 *Adjustments to Estimated Cost Based on Approved Change Orders.* Estimated Costs may be changed, increased or decreased, based on Change Orders approved pursuant to Article XIII.
- 4.1.3 *Adjustments Based on Other Cost Increases.* The 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. The Estimated Cost may be increased by the amount of such increases, subject to approval by City Council.
- 4.2 **Duty to Advance Costs.** Subdivider shall advance all costs for Project for an amount not to exceed the Estimated Cost, which is subject to change pursuant to section 4.1. All of the following shall be included in Estimated Costs:



- 4.2.1 **City's Project Management Costs.** Within thirty (30) Calendar Days of the effective date of this Agreement, Subdivider shall deposit with the City an amount of fifty thousand dollars (50,000) for the initial deposits to cover any and all costs that City has or anticipates it will incur for work performed to date directly related to Project, and any and all costs City anticipates it will incur for its activities and work prior to review of the General Development Plan (GDP). In addition, Subdivider shall deposit an additional one hundred thousand dollars (\$100,000) at least fifteen (15) Calendar Days prior to entering into a contract with a consultant selected as provided for section 8.1, to cover any and all costs that City anticipates it will incur for all its activities and work, including Project Management, prior to construction and related to Project number P-5. Another deposit of one hundred fifty thousand dollars (\$150,000) shall be made thirty (30) Calendar Days prior to the commencement of construction of Project number P-5 for the balance of the City's Project Management Costs, including twelve (12) months of a part time (thirty (30) hours/week) City Resident Engineer [RE]. If construction extends beyond twelve months, or if additional engineering time is necessary, these costs may be increased and additional payments will be required. City costs include, but are not limited to, Project management, construction administration, City survey and test lab services and environmental review.
- 4.2.2 **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 Improvement Costs.
- 4.2.3 **Project Contingency.** Subdivider shall include in Estimated Costs a Project Contingency of twenty-five percent (25%) 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 contingency.
- 4.2.3.1 **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.
- 4.3 **Notification of Increased Costs.** If, at any time, the Subdivider anticipates that the amount expended on the Project will exceed the Estimated Costs, the Subdivider shall immediately, not more than ten (10) Working Days from becoming aware of the potential increase, notify the City in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions which the Subdivider believes will bring the construction cost to within the Estimated Costs. The 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).

#### ARTICLE V. PROPERTY VALUATION AND CONVEYANCE

- 5.1 **Conveyance of Property.** Subdivider agrees to sell and City agrees to acquire the Property at a Purchase Price which shall be determined in accordance with section 5.4. Following payment of the Purchase Price or the transfer of FBA credits to Subdivider by City and Acceptance of the Project pursuant to Article XXI, Subdivider shall by grant deed convey title to the Property to the City.
- 5.2 **City's Obligation to Conduct Environmental Review.** Prior to the construction of Improvements on the Property, and without resulting in a delay in the Project Schedule, the City shall conduct a Phase I environmental review. If the Phase I environmental review, indicates that Hazardous Materials affect or have significant potential to affect the ability to develop the Property as a park and recreational facility, a Phase II Report shall be prepared. The Phase II Report shall confirm whether the potential Hazardous Materials exist. If such Hazardous Materials are found to exist, the City shall ascertain what types of materials are present, whether they exist in quantities that require them to be reported or remediated, and the approximate level of contamination required to be remediated or removed. Upon determining that remediation or removal is required, the City shall immediately notify the Subdivider and provide Subdivider with a copy of the Phase I and Phase II Report and any related documentation.



- 5.3 **Subdivider to Remediate "De Minimus" Contamination.** If City identifies Hazardous Materials on or under the Property as a result of the Phase II Report conducted pursuant to section 5.2 prior to initiation of construction of the Improvements, Subdivider shall be obligated, at Subdivider's expense, to diligently cause the remediation or removal of such Hazardous Materials before the close of escrow, as long as the remediation or removal can be completed for a cost of two hundred fifty thousand dollars (\$250,000) or less. If the Subdivider is required to remediate or remove Hazardous Materials under this section, the close of escrow shall be extended by the amount of time reasonably necessary to complete the remediation or removal, including without limitation preparation of a work plan for the remediation or removal and obtaining all necessary governmental approvals for the work. Except as provided under section 5.3.1, Subdivider shall have no remediation or removal obligations hereunder if the actual cost of remediation or removal of the Hazardous Materials exceeds \$250,000. As long as Subdivider completes the remediation or removal of the identified Hazardous Materials under this section, City shall have no right to terminate this Agreement on account of its discovery of Hazardous Materials.
- 5.3.1 **Remediation in Excess of \$250,000.** In the event that the remediation or removal of Hazardous Materials cannot be conducted for a cost of \$250,000 or less, the Subdivider shall either (i) complete the remediation or removal of Hazardous Materials at its own expense regardless of cost or (ii) provide an alternate equivalent five-net-usable-acre site, acceptable to the City, for use as the park.
- 5.4 **Purchase Price.** The Purchase Price of the Property shall not exceed the fair market value of five (5) net acres of Useable Park Land at the time of the filing of the first substantially complete map for development in Subarea I, February 1995 [Market Value], plus the costs associated with the maintenance of the Property, including the taxes and assessments against Property from the date of reservation, February 2, 1995, to the close of escrow, interest not to exceed the rate specified in the Financing Plan incurred on any internal financing or loan covering the Property from the date of reservation, February 2, 1995, to the date of conveyance to the City, and any other costs incurred by the Subdivider in the maintenance of the Property [Purchase Price]. Any acreage of Property, which is not Useable Park Land, or in excess of five (5) acres, though part of the Property, shall not be included in the Purchase Price. Parties agree that the Market Value of the Property is \$40,000 per acre of Useable Park Land, the Market Value established as part of the development of the Black Mountain Ranch South Neighborhood Park. In February 1995, the property that became the Black Mountain Ranch South Neighborhood Park and the Property at issue in this Agreement were included in the same VTML. Subdivider agrees that any relocation of the Project to another location at a later date shall not increase the value of the relocated property site from the original appraised value.
- 5.5 **Escrow.** The conveyance of the Property shall occur and be effective upon the Acceptance, as that term is defined in Article XXI, section 21.1, of the Project by City. The Parties may mutually agree to extend the date for conveyance of the Property to City. Prior to the Acceptance of the Project, the Parties shall open escrow with Chicago Title to facilitate conveyance by Subdivider of the Property to City. The Parties agree to enter into mutually acceptable escrow instructions. The escrow instructions shall contain all pertinent terms and conditions of this Agreement. The escrow instructions shall set forth that Subdivider will pay the closing costs, document transfer taxes, prorated real estate taxes, title insurance policy premiums, and escrow fees associated with the purchase of the Property [Escrow Costs]. Subdivider shall convey title to the Property to City free and clear of all liens and encumbrances except as to title exceptions that have received the prior written approval of City.

#### ARTICLE VI. PROJECT SCHEDULE

- 6.1 **Project Schedule.** The Subdivider shall perform and complete the work under this Agreement according to the Preliminary Project Schedule or a subsequent revised Project Schedule.
- 6.1.1 **Preliminary Project Schedule.** Subdivider shall create a Preliminary Project Schedule based on its estimate of the time necessary to complete the Project number P-5. The Preliminary Project Schedule shall be attached as Exhibit E.

- 6.1.2 **Subdivider's Obligation.** Subsequent to the effective date of this Agreement, Subdivider shall provide, coordinate, revise, and maintain the Project Schedule for all phases of the Project.
- 6.1.2.1 During the Project initiation and design phases, the Subdivider shall submit an updated Project Schedule on a quarterly basis (four (4) times a year) to City for approval.
- 6.1.2.2 During Construction, Subdivider shall submit an updated Project Schedule monthly to the City and shall include:
- 6.1.2.2.1 Forecast Data with the intended plan for the remainder of the contract duration.
- 6.1.2.2.2 Actual Data with indications of when and how much Work and/or Services was performed (% complete)
- 6.1.2.2.3 Logic changes or other changes required to maintain the Project Schedule
- 6.1.3 **Detail and Format.** The Project Schedule shall be substantially similar in detail and form to Exhibit E, or it shall be in the form subsequently agreed to by the Parties.
- 6.1.4 **Submittal.** Project Schedule shall be submitted to City on a computer disk in PRIMAVERA Project Planner P3e/c Release 4.1 SP1 software in conformance with Construction Plans & Scheduling by AGC or America, or other software specifically designated by the City.
- 6.2 **Project Completion.** Subdivider acknowledges that all work on the Project under this Agreement will be complete and ready for occupation by the Project Completion Date, December 15, 2008.
- 6.3 **Changes in Project Schedule.** Changes in Project Schedule, whether to logic, definition, or relationship must be approved by the City in writing pursuant to the method applied in Article XIII, section 13.3.

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

- 7.1 **Compliance.** Subdivider shall bid and award contracts to complete the Project, excluding rough grading, in accordance with all applicable public contract laws; rules; regulations set forth in The 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 Contract; and State law.
- 7.2 **Bidding Documents.** 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.
- 7.2.1 **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 four (4) weeks of submittal date.
- 7.2.2 **Obtain all Permits and Approvals.** Subdivider shall obtain all necessary permits, including but not limited to, environmental, grading, building, mechanical, electrical, and plumbing. Final Building Official approval of Construction Documents will be evidenced by City's issuance of a letter indicating Subdivider may proceed with competitive bidding.
- 7.3 **Solicitation of Bids.** Other than for rough grading of the Property, 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 thirty (30) 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.

7.4 **Bid Opening and Award of Contract.** Subdivider shall open sealed bids in the presence of City's authorized representative(s). The bidding contractors may be present at the bid opening. City's representative(s) shall be provided with a copy of the tabulation of bid results. 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). In the event that the lowest responsible bid, combined with a reasonable amount for contingencies, exceeds the Estimated Cost, the increase in the costs must be approved by City pursuant to Article IV, section 4.1.3 prior to awarding the contract. In the event City Council does not approve the increased cost, this Agreement, at the City's option, may be terminated, or the Project may be rebid and/or redesigned. In the event the Agreement is terminated, the obligations of Subdivider, with the exception of Property acquisition, pursuant to this Agreement for the construction of the Project and the obligations of Subdivider under VTM condition number 41 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 termination of this Agreement pursuant to Article XVI. Subdivider shall provide City with copies of all executed contracts.

7.5 **Equal Employment Opportunities and Equal Opportunity Contracting.**

7.5.1 *Equal Employment Opportunity Nondiscrimination.* Subdivider shall comply with the City of San Diego's Equal Opportunity Contracting Program [Exhibit G]. 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.

7.5.2 *Equal Employment Opportunity Duty to Submit Reports.* 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 the City for signature.

7.5.3 *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. The language of this Subsection shall be inserted in contracts between Subdivider and any subcontractors, vendors, or suppliers.

7.5.4 *Local Contracts/Investigation.* Upon City's request, Subdivider agrees to provide the City, within sixty (60) Calendar Days a truthful and complete list of the names of all subcontractors, vendors, and suppliers the 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 the City pursuant to the 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 VIII. CONSULTANTS**

8.1 **Selection of Consultant.** Subdivider's hiring of an appropriate third party to perform services related to the Project [Consultant] is subject to prior approval by City. Subdivider shall give written notice to the City of the selected Consultant at least fifteen (15) Calendar Days before entering into a contract with Consultant. Further, Subdivider shall cause the following provisions to be included in its Consultant contract(s) for the Project:



- 8.1.1 "Third Party Beneficiary. The City of San Diego is an intended third party beneficiary of this contract. In addition, it is expected that upon completion of design, the City will become the owner of the Project design and work products, and City shall be entitled to enforce all of the provisions of this contract as if it were a party hereto. Except as expressly stated herein, there are no other intended third party beneficiaries of this contract."
- 8.1.2 "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 the City of San Diego. Consultant shall submit this written justification to the City of San Diego prior to beginning work on such plans or specifications. Whenever Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project."
- 8.1.3 "Professional Services Indemnification. As to Consultant's professional obligations, work or services involving this Project, Consultant agrees to indemnify and hold harmless the City of San Diego, and its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney's fees, losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of Consultant or Consultant's employees, agents or officers. This indemnity obligation shall apply for the entire time that any third party can make a claim against, or sue the City of San Diego for liabilities arising out of Consultant's provision of services under this Agreement."
- 8.1.4 "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 the 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 the City of San Diego, its agents, officers or employees."
- 8.1.5 "Enforcement Costs. Consultant agrees to pay any and all reasonable costs the City of San Diego may incur to enforce the indemnity and defense provisions set forth in this Agreement."
- 8.1.6 "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 the City of San Diego's exposure to loss."
- 8.1.7 "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."

- 8.1.8 "Insurance Policy Requirements. Except for professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. Additional insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City of San Diego. Further, all insurance required by express provision of this agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VII" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City of San Diego. The policies cannot be canceled, non-renewed, or materially changed except after thirty (30) Calendar Days prior written notice by Consultant or Consultant's insurer to the City of San Diego by certified mail, as reflected on an endorsement which shall be submitted to the City of San Diego, except for non-payment of premium, in which case ten (10) Calendar Days notice must be provided. Before performing any work in accordance with this Agreement, Consultant shall provide the City of San Diego with all Certificates of Insurance accompanied with all endorsements."
- 8.1.9 "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 the City of San Diego and its respective elected officials, officers, employees, agents and representatives."
- 8.1.10 "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."
- 8.1.11 "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 the 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 the City of San Diego with complete copies of final Project design and construction plans and project cost estimate."

#### ARTICLE IX. PLANS AND SPECIFICATIONS

- 9.1 **Preparation of General Development Plan [GDP] and Estimated Budget.** Subdivider shall require its Consultant to prepare a GDP and Estimated Budget covering the Project consistent with all local, state and federal disabled access laws and requirements, as well as the applicable City's Park and Recreation Department's "Consultant's Guide to Park Design and Development."
- 9.1.1 *Final Approval of GDP and Estimated Budget.* Subdivider's Consultant shall present the GDP and Estimated Budget to, and obtain a recommendation of approval from the local Recreation Council, applicable Area Committee, Design Review Committee, and City's Park and Recreation Board in accordance with Council Policy 600-33, "COMMUNITY NOTIFICATION AND INPUT FOR PARK DEVELOPMENT PROJECTS". Following Park and Recreation Board approval, Consultant

shall submit to the PR Project Manager a 24" by 36" reproducible mylar copy and a digital copy of the approved GDP.

- 9.1.2 *Changes to the GDP.* As a result of any presentations and recommendations described in Section 9.1.1, City may request changes in the GDP, if applicable, and Subdivider shall make those changes provided that the sum of all the requested changes does not cause the Estimated Budget to increase by more than five percent (5%).
- 9.2 **Construction Documents.** Subdivider shall obtain City approval, in writing, of the Construction Drawings at 60% and 90% completion.
- 9.2.1 *Condition Precedent.* City approval of the Construction Drawings is a condition precedent to authorization to proceed with subsequent work on the Project.
- 9.2.2 *Sixty Percent (60%).* At 60% completion, City will notify Subdivider in writing within the timeframe established in the Project Schedule following receipt of Construction Drawings of approval, or of request for modifications. If modifications are requested, Subdivider shall modify and resubmit Construction Drawings for City approval.
- 9.2.3 *Ninety Percent (90%).* At 90% completion, City will notify Subdivider in writing within the timeframe established in the Project Schedule following receipt of Construction Drawings of approval, or of request for modifications. If modifications are requested, Subdivider shall modify and resubmit Construction Drawings for City approval.
- 9.3 **Final Review of Plans and Specifications.** Subdivider shall deliver to City complete Construction Documents, including Construction Drawings, Plans and Specifications, Estimated Budget, and bid documents, consistent with the GDP, for the design and construction of the Project within twelve (12) months of completion of the review required in section 9.1.1. 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 XXXI. Approval shall not be unreasonably withheld. Construction Documents shall include City's standard drawings and specifications as described in Article X, section 10.3. 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.

#### ARTICLE X. DESIGN AND CONSTRUCTION STANDARDS

- 10.1 **Standard of Care.** 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.
- 10.2 **Compliance with all Laws.** Subdivider shall comply with all laws, including but not limited to:
- 10.2.1 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.
- 10.2.2 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].



- 10.2.3 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.
- 10.2.4 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.
- 10.2.5 Subdivider shall comply with the Essential Services Building Seismic Safety Act, SB 239 & 132.
- 10.2.6 Subdivider shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.
- 10.3 **Compliance with Design and Construction Standards.** Subdivider shall comply with the most current editions of Design and Construction Standards.
- 10.3.1 *Standard Specifications.* Subdivider shall comply with the most current editions of the following reference specifications when designing and constructing the Project, including:
- 10.3.1.1 The most recent edition of the Standard Specifications for Public Works Construction, including the Regional and City of San Diego Supplement Amendments [Greenbook].
- 10.3.1.2 California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones.
- 10.3.2 *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:
- 10.3.2.1 City of San Diego's Drainage Design Manual.
- 10.3.2.2 City of San Diego's Landscape Technical Manual produced by the Planning Department.
- 10.3.2.3 City of San Diego's Consultant's Guide to Park Design and Development produced by the Park and Recreation Department.
- 10.3.2.4 City of San Diego's Street Design Manual.
- 10.3.2.5 City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.
- 10.3.2.6 City of San Diego's Technical Guidelines for Geotechnical Reports.
- 10.3.2.7 City of San Diego Standard Drawings including all Regional Standard Drawings.
- 10.3.2.8 City of San Diego Data Standards for Improvement Plans.
- 10.3.2.9 Green Building. The Project design and construction shall comply with City Council Policy 900-14, "GREEN BUILDING POLICY". Project number P-5 shall be designed and constructed to achieve energy consumption levels at least twenty-five percent (25%) below the then current Title 24 standards. An average pay-back period of five (5) years shall be used as a guide for the aggregate of all energy efficiency measures included in Project number P-5. Subdivider shall submit and obtain LEED Silver Rating Certification from the United States Green Building Council for building projects over 5,000 square feet.
- 10.3.3 *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 the 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.

- 10.3.4 *Materials Standards.* Subdivider acknowledges that this facility is for public use and shall use industrial grade, not residential grade, equipment and accessories for all facets of design and construction. Subdivider agrees to follow all City standards and requirements specific to Park and Recreation improvements while working on the Project.
  - 10.3.5 *Architectural Compatibility.* Subdivider shall design the Project in a fashion which is architecturally compatible with the surrounding community, subject to the City's discretion.
  - 10.3.6 *Child Safety Standards.* Subdivider shall provide a certification from a third party independent National Playground Safety Institute (NPSI) certified playground inspector that the installed equipment is compliant with all applicable codes. Surfacing shall be tested on-site to determine that Head Impact Criteria (HIC) rating meets minimum safety specifications per the latest version of the American Society of Testing Materials (ASTM) F1951.
- 10.4 **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.
- 10.5 **City Approval Not a Waiver of Obligations.** Where approval by City, the 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 XI. CONSTRUCTION

- 11.1 **Compliance with Project Schedule.** Subdivider shall commence construction of the Project in accordance with the Project Schedule, as described in Article VI. Subdivider shall use its best efforts to adhere to the Project Schedule and shall notify the City of Delay in accordance with Article III, section 3.3. Subdivider shall pay costs attributable to Delay pursuant to Article III, section 3.7. Subdivider shall diligently pursue construction to completion. This section shall not limit City's remedies described in Article III, sections 3.3-3.5, or any other remedies, which may be otherwise available to the City.
- 11.2 **Preconstruction Meeting.** 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.
- 11.2.1 *Attendance.* Subdivider shall ensure that the preconstruction meeting is attended by Subdivider's construction contractor, the Project Superintendent, all Subdivider's major subcontractors, the City Inspection Team as set forth in Article XIX, section 19.1, and all other persons necessary as determined by Subdivider or City.
  - 11.2.2 *Agenda.* The preconstruction meeting agenda shall at a minimum address the topics described in Exhibit I, attached hereto and incorporated herein.
  - 11.2.3 *Minutes.* Subdivider shall take corresponding meeting minutes and distribute copies to all attendees.
- 11.3 **Progress Meetings.** 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 City Park and Recreation Department representatives, PR Project Manager, and Resident Engineer.
- 11.3.1 *Agenda.* Agenda shall include items as defined in Exhibit I.

- 11.3.2 *As-Builts.* Subdivider shall bring updated As-Builts and verify that the latest changes have been made.
- 11.3.3 *Special Meetings.* Special meetings shall occur at Project phases as outlined in Exhibit I.
- 11.3.4 *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.
- 11.4 **Site Safety, Security, and Compliance.** Subdivider shall be responsible for site safety, security, and compliance with all related laws and regulations.
- 11.4.1 *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.
- 11.4.2 *Other.* Subdivider is responsible for the Project, site, materials, equipment, and all other incidentals until the Project has been Accepted by the City pursuant to Article XXI.
- 11.4.3 *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, the Subdivider shall prepare and incorporate into the Construction Documents a Stormwater Pollution Prevention Plan [SWPPP] to be implemented by the 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.
- 11.5 **Access to Project Site.**
- 11.5.1 *Field Office.* If City requires, Subdivider shall provide in the construction 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.
- 11.5.2 *Site Access.* Other than PR 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. PR Project Manager and RE shall have the right to access the site at any time for Project related purposes.
- 11.6 **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:
- 11.6.1 *Existing Conditions.* Subdivider shall obtain all necessary soils investigation and conduct agronomic testing required for design of the Project. The Soils Consultant shall prepare a statement that will be included in the Bidding Documents as to the nature of soils, ground water conditions and any other information concerning the existing conditions of the site.
- 11.6.2 *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.

- 11.6.3 **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.
- 11.7 **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 the City.
- 11.7.1 **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.
- 11.7.2 **Surveying.** Subdivider shall pay for and coordinate with City's Survey Section all surveying required within the Public right-of-way.
- 11.7.3 **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.
- 11.8 **Traffic Control.** Subdivider shall address all traffic control requirements for the Project including, if necessary, separate traffic control plans and/or notes.
- 11.9 **Inspections.** Subdivider shall coordinate any and all special inspections required for compliance with all State Building Codes as specified in the Contract Documents.
- 11.9.1 **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.
- 11.9.2 **Remedies.** Remedies for compliance shall be approved by Subdivider, Subdivider's Consultants, City's Development Services Department, and City representatives.
- 11.9.3 **Concealing Work.** Prior to concealing work, Subdivider shall obtain approval of work from the following three (3) entities: (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.
- 11.10 **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". 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 Public Facilities Financing Plans, or any applicable Development Agreement.
- 11.11 **Permits.** The Parties acknowledge that the construction work to be performed on the 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 improvements 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 and Improvement Costs, 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.

- 11.12 **Maintenance.** Subdivider shall maintain and be responsible for the Project site until Acceptance of the Project, including ongoing erosion prevention measures. Upon Acceptance of the Project, City shall be responsible for all maintenance of Project site.
- 11.13 **Drug-Free Workplace.** The Subdivider agrees to comply with the 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. The Subdivider shall certify to the City that it will provide a drug-free workplace by submitting a Subdivider Certification for a Drug-Free Workplace form [Exhibit J].
- 11.13.1 *Subdivider Notice to Employees.* The 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.
- 11.13.2 *Drug-Free Awareness Program.* The Subdivider shall establish a drug free awareness program to inform employees about all of the following:
- 11.13.2.1 The dangers of drug abuse in the work place.
  - 11.13.2.2 The policy of maintaining a drug free work place.
  - 11.13.2.3 Available drug counseling, rehabilitation, and employee assistance programs.
  - 11.13.2.4 The penalties that may be imposed upon employees for drug abuse violations.
  - 11.13.2.5 In addition to section 11.13.1 above, the Subdivider shall post the drug free policy in a prominent place.
- 11.13.3 *Subdivider's Agreements.* The Subdivider further certifies that each contract for Consultant or Contractor Services for this Project shall contain language that binds the Consultant or Contractor to comply with the provisions of Article XI, section 11.13 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.
- 11.14 **Request for Information [RFI].** Parties acknowledge that the RFI process is solely for correspondence between Subdivider and its agents. However, Subdivider shall submit copies of each RFI to City at the time Subdivider receives the RFI. Unless Subdivider specifically requests a City response, City will not respond to RFIs.

## ARTICLE XII. PRODUCTS

- 12.1 **Submittals.** 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 plans and specifications, 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.
- 12.2 **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.

- 12.2.1 *Substantiate Request.* Subdivider shall include with each substitution request complete data which substantiates that the proposed substitution conforms to requirements of the Contract Documents.
- 12.2.2 *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.
- 12.2.3 *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.

### 12.3 Samples.

- 12.3.1 *Postage.* Samples shall be sent to Subdivider's office, carriage prepaid.
- 12.3.2 *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.
  - 12.3.2.1 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.
  - 12.3.2.2 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.
  - 12.3.2.3 All materials, finishes, and workmanship in the complete building shall be equal in every respect to that of the reviewed sample.
  - 12.3.2.4 City will return one submitted sample upon completion of City review.
  - 12.3.2.5 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.
- 12.3.3 *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 Contract documents.

## ARTICLE XIII. CHANGE ORDERS

- 13.1 Forms Required. City form E&D-1 shall be used for Change Orders greater than \$200,000, which require Council approval. City form E&D-25(rev) shall be used for Change Orders approved by the City Manager. All Change Orders must be approved or rejected by the City in writing as provided in section 13.3 and delivered to Subdivider, as identified in Article XXXI.
- 13.2 Written Approval of Change Orders. Change Orders which will not result in an increase in the Estimated Cost may be approved by the PR Project Manager, who is the person responsible for overseeing Project design



and construction. If a requested Change Order would result in an increase in the Estimated Cost, approval of the Change Order shall require City Council approval.

13.3 **Process for Approval of Change Orders.** Subdivider shall notify the PR Project Manager in writing, of the need for a Change Order. Subject to section 13.4, the Change Order must indicate whether the change will affect, in any way, by increasing or decreasing, the Estimated Cost, Project Schedule, or project quality established during the design and submittal review process.

13.3.1 ***Project Manager Approval.*** If the Change Order request does not result in an increase in the Estimated Cost, the PR Project Manager 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.

13.3.2 ***City Council Approval.*** For Change Orders not subject to section 13.3.1, City Council approval is required. The 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, the 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 13.3.1.

13.4 **Field Orders.** Notwithstanding the above, Subdivider has the authority, with the RE's prior written consent, to order minor changes in the work, which do not cost more than ten thousand dollars (\$10,000) per change, do not result in an increase in the Estimated Cost, and do not alter Project Schedule. Subdivider shall, within twenty-four (24) hours prior to implementation of any such change, notify the PR Project Manager (or Supervisor if PR Project Manager is not available) of the nature and cost of the change. The total combined amount of the changes permitted pursuant to this section shall not exceed one hundred thousand dollars (\$100,000).

13.4.1 ***Full Compensation.*** Payment to Subdivider for Field Order items shall provide full compensation for all equipment, materials, labor, field and home office overhead, mark-ups, and profit necessary to complete the work. By executing a Field Order, the Subdivider or Subdivider's representative acknowledges that no additional compensation or claims for items of work listed in the Field Order will be allowed.

13.5 **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.

13.6 **City Refusal to Approve Change Order.** Subdivider shall not have the right to terminate this Agreement for the City's refusal to approve a Change Order pursuant to sections 13.2 and 13.3.

#### ARTICLE XIV. EXTRA WORK

14.1 **City Authority to Order Extra Work.** City may at any time prior to Project Completion order Extra Work on the Project. The sum of all Extra Work ordered shall not exceed five percent (5%) of the Estimated Cost at the time of the Bid Award, without invalidating this Contract and without notice to any surety.

14.1.1 ***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.

14.2 **Bonds Required for Extra Work.** Subdivider's and its agents' bonds, under Article XXVI shall cover any Extra Work provided that the Extra Work is paid for by the Project Budget

- 14.3 **Reimbursement for Extra Work.** Work performed by Subdivider as Extra Work is reimbursable in the same manner described in Article XVI. The Project contingency as described in Article IV, section 4.2.3, will be used first to cover the costs of Extra Work.
- 14.4 **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 XV. CHANGED CONDITIONS

- 15.1 **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, the Project shall not exceed the Estimated Cost without express City Council approval of an increase to the Project Budget. Absent such express approval of additional funds, Subdivider shall provide City with value engineering and Parties will return Project to within the total Project cost.

#### ARTICLE XVI. REIMBURSEMENT

##### 16.1 **Reimbursement to Subdivider**

- 16.1.1 **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. The Financing Plan currently has the Estimated Cost scheduled for reimbursement on or after Fiscal Year 2007. 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.
- 16.1.2 **Funds for Reimbursement.** Subdivider shall only be entitled to reimbursement from Facility Benefit Assessment [FBA] funds collected by City from Black Mountain Ranch Facilities Benefit Assessment Area in the amounts and respective fair share percentages as described for Project number P-5 in the Black Mountain Ranch Public Facilities Financing Plan, as such funds become available, pursuant to the method of reimbursement described in section 16.1.5, and in the priority of reimbursement described in section 16.1.7.
- 16.1.3 **Amount of Reimbursement.** Subdivider shall be entitled to reimbursement in an amount not to exceed the Estimated Cost. 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.
- 16.1.4 **Interest.** Subdivider shall receive interest on the Reimbursable Cost at an interest rate equivalent to the interest rate earned by the FBA for the fiscal year in which interest accrues, from the date of Subdivider's submittal of Reimbursement Request to the date of reimbursement to Subdivider.
- 16.1.5 **Method of Reimbursement.** Subdivider shall submit to City a request for reimbursement for all Reimbursable Costs incurred or advanced for the Project for which Subdivider was not previously reimbursed or granted credit [Reimbursement Request]. The Reimbursement Request must include all relevant documents in accordance with section 16.1.6. If the 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 within sixty (60) Calendar Days of receipt of a complete Reimbursement Request, provided funds are available in the

FBA for the Project, and the Project is scheduled in the Financing Plan for reimbursement at that time, or, if Subdivider is being reimbursed with FBA credits, the FBA credits shall be based on approved Reimbursement Requests and shall be granted when Subdivider has completed at least 1320 Dwelling Units [DUs] and in a manner that is consistent with the Financing Plan.

16.1.5.1 **Withholding.** From each reimbursement payment, ten percent (10%) will be deducted and retained by the City, and the remainder will be paid in accordance with the terms and conditions of this Contract. After fifty percent (50%) of the work has been completed and if progress on the work is satisfactory to the City, the deduction to be made from the remaining payments and from the final payment may be limited to five percent (5%). No payment made to Subdivider or its sureties will constitute a waiver of any rights the City has under this Contract. This section is not intended to limit any rights the City may have under the Payment Bond.

16.1.5.2 **Reimbursement of Withholding.** The City will reimburse the 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.

16.1.5.2.1 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 the City.

16.1.5.2.1.1 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.

16.1.5.3 **Cutoff for Submission of Reimbursement Requests.** Subdivider shall submit all Reimbursement Requests within six (6) months of the date on which the transfer of ownership of the Property and Project, as described in section 21.1.3, occurs [Cutoff Date]. Any Reimbursement Request submitted after the Cutoff Date shall not be reviewed or included in Reimbursable Cost.

16.1.6 **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:

16.1.6.1 Subdivider shall submit two (2) copies of a Reimbursement Request (cover letter, invoice, and documentation) to the Resident Engineer, with a copy of the cover letter and invoice to the Facilities Financing Project Manager [FF Project Manager]. If requested by the FF Project Manager, Subdivider shall also provide the FF Project Manager a copy of the support documentation submitted as part of the Reimbursement Request.

16.1.6.2 After review and approval, the RE will initial the invoices and forward both copies of the Reimbursement Request to the PR Project Manager for review.

16.1.6.3 After review and approval, the PR Project Manager shall prepare a memorandum to Facilities Financing indicating that 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. One (1) set of the Reimbursement Request (without the support documentation) shall be forwarded to the FF Project Manager with the memorandum recommending payment, and one (1) set of the Reimbursement Request

(including the support documentation) shall be retained by the PR Project Manager for his/her files.

- 16.1.6.4 Prior to the approval of the Reimbursement Request, City has the right to 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.
- 16.1.7 *Priority of Reimbursement.* City agrees that reimbursement to Subdivider from the FBA for the Project will take priority over any private Subdivider added to the FBA subsequent to the effective date of the Agreement, with the following exceptions:
  - 16.1.7.1 Any State or Federally mandated project.
  - 16.1.7.2 To the extent Subdivider has failed to notify the 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.
  - 16.1.7.3 The FBA identifies another project for funding in an earlier fiscal year than this Project prior to the effective date of this Agreement.
- 16.1.8 *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 the City in the manner required by this Agreement or the City Charter and rules, regulations, or laws promulgated there-under.

## XVII. PRIORITY OF DOCUMENTS

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

- 17.1.1 *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:
  - 17.1.1.1 Permits from other agencies as may be required by law.
  - 17.1.1.2 Project Special Provisions
  - 17.1.1.3 Project Plans
  - 17.1.1.4 Agency Standard Drawings
  - 17.1.1.5 Regional Standard Drawings
  - 17.1.1.6 Agency Supplement Amendments.
  - 17.1.1.7 Regional Supplement Amendments
  - 17.1.1.8 "Greenbook" Standard Specifications for Public Works Contracts
  - 17.1.1.9 Standard Specifications.
  - 17.1.1.10 Reference Specifications.

## ARTICLE XVIII. PUBLIC RELATIONS

18.1 Presentations. Subdivider's, and Subdivider's agents' responsibilities shall include all presentations required to be made to City Council, Council Committees, local Recreation Council, applicable Area Committee, Design Review Committee, City's Park and Recreation Board, 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.

- 18.2 **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 Park and Recreation Department's Public Information Officer as identified in section 18.4.
- 18.3 **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.
- 18.4 **Recognition.** 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 the City and include the Park and Recreation Department's logo on permanent and temporary signs, invitations, flyers, or other correspondence. Any recognition of the City shall be reviewed and approved by the Park and Recreation 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 Park and Recreation Department's Public Information Officer at (619) 533-6434, who is equipped to provide guidelines and examples.
- 18.5 **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 Park and Recreation Department for the ceremony and provides an opportunity for appearances by the Mayor, Council members and other appropriate City officials. Subdivider shall contact the Park and Recreation Department's Public Information Officer to arrange a mutually acceptable date and time for any ceremony. Invitation shall not be sent out or a date set until the Park and Recreation Department's Public Information Officer has approved the time and date for the ceremony.
- 18.5.1 **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 XIX. INSPECTION

- 19.1 **Inspection Team.** The Project shall be inspected by a team composed of representatives from the following: (i) the City's Engineering and Capital Projects Department, (ii) the City's Park and Recreation Department, (iii) Subdivider's Representative, (iv) Subdivider's Consultant(s), and (e) the Subdivider's construction superintendent [Inspection Team]
- 19.2 **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.

#### XX. PROJECT COMPLETION

- 20.1 **Notice to City.** When Subdivider determines that the Project is complete, Subdivider shall notify the City in writing of the Projects status within seven (7) Calendar Days of the 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.
- 20.2 **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 XIX, section 19.1.



- 20.2.1 **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.
- 20.2.2 **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.
- 20.3 **Equipment Demonstration.** Prior to final inspection, 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.
- 20.4 **Final Inspection.** Provided Subdivider has corrected the Punch List items and notified the 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.

## XXI. PROJECT ACCEPTANCE AND FINAL COMPLETION

- 21.1 **Acceptance.** Upon approval by the Inspection Team during the Final Inspection that Project improvements are 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:
- 21.1.1 **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.
- 21.1.2 **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.
- 21.1.3 **Transfer Ownership.** If Subdivider has completed 1320 Dwelling Units [DU], Subdivider shall transfer ownership of the Project and Property to City pursuant to Article V, section 5.1. If Subdivider has been unable to complete 1320 DU due to constraints in the Subdivider's Transportation Phasing Plan or otherwise, but the Project has met all other requirements of Acceptance, pursuant to Article XXI, then Subdivider shall maintain ownership of the Property until such time as it completes the 1320 DU or for 24 months after Project Acceptance, whichever occurs first. During this extended period of ownership, the Subdivider shall be entitled to reimbursement for holding costs related to the Property and the Project.
- 21.2 **Final Completion.** Final Completion of the 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, and operating and maintenance manuals.
- 21.2.1 **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 XXIV, section 24.6, 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.
- 21.2 **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 the 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 XXII. PROJECT DELIVERABLES

- 22.1 **Project Deliverables.** Prior to Acceptance, Subdivider shall deliver all of the following to the City in the format required:
- 22.1.1 *Master Contract Documents.*
  - 22.1.2 *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.
    - 22.1.2.1 *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.
    - 22.1.2.2 *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.
  - 22.1.3 *Surveys.* Subdivider shall provide all surveying services required for the design of this Project in accordance with all applicable legal regulations, the Technical Guidelines produced by the California Council of Civil Engineers & Land Surveyors under the title "A Guide to Professional Surveying Procedures," and the City of San Diego Engineering and Capital Projects Department's "Data Standards for Improvement Plans," August 2004.
  - 22.1.4 *Schematic Design Documents.* Subdivider shall consult with City to ascertain requirements of the Project and to prepare Schematic Design Documents.
    - 22.1.4.1 Schematic Design Documents shall conform with Park Recreation Board Policy No. 1011 and include, but not be limited to the following:
      - 22.1.4.1.1 Sketches with sufficient detail to illustrate the scale and location of Project components.
      - 22.1.4.1.2 Floor plans with sufficient cross-sections to illustrate the scale and relationship of building components, exterior elevations and exterior colors and textures.
      - 22.1.4.1.3 Analysis of parameters affecting design and construction for each alternate considered.
      - 22.1.4.1.4 Description and recommendation for structural, mechanical and electrical systems, showing alternatives considered.
      - 22.1.4.1.5 Probable construction costs for the base Project and all additive alternates considered.
      - 22.1.4.1.6 Summary of Project requirements and a recommendation.
      - 22.1.4.1.7 Artistic renderings of the Project (Rendered General Development Plan).
    - 22.4.1.2 *Form.* Subdivider's Schematics shall conform to the quality levels and standards in size, equipment, and all facets of its design and deliverables as set forth in City specifications and as may be updated prior to commencement of construction.

- 22.1.5 *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:
- 22.1.5.1 Site plan, indicating the nature and relational location, via dimensions, of all proposed Project components.
  - 22.1.5.2 Traffic circulation and landscaping should also be indicated at this stage if applicable.
  - 22.1.5.3 Plans, elevations, cross-sections, and notes as required to fix and describe the Project components.
  - 22.1.5.4 Proposed construction schedules.
  - 22.1.5.5 Technical 'Special Provisions' section of the Specifications.
  - 22.1.5.6 Outline of Specifications prepared in accordance with the latest recommended format of the Construction Specification Institute.
  - 22.1.5.7 Probable Project construction costs, for each component of the Project being considered in this phase.
  - 22.1.5.8 Color board with material samples.
- 22.1.6 *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.
- 22.1.7 *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.
- 22.1.8 *Cost Estimate.* Subdivider shall provide a construction cost estimate based on the Construction Documents.
- 22.1.9 *H, G, & E Reports.* Subdivider shall provide hydrologic, geotechnical, environmental documents, and other related documents or reports requested by the City.
- 22.1.10 *As-Builts.* Subdivider shall provide As-Builts.
- 22.1.10.1 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.
  - 22.1.10.2 Subdivider shall include all of the following on the As-Builts:
    - 22.1.10.2.1 Depth of foundation in relation to finished first floor.
    - 22.1.10.2.2 Horizontal and vertical locations of underground utilities and appurtenances, with references to permanent surface improvements.
    - 22.1.10.2.3 Locations of internal utilities and appurtenances, with references to

- 22.1.10.2.4 visible and accessible features of the structure.
- 22.1.10.2.4 Field changes of dimensions and details.
- 22.1.10.2.5 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.
- 22.1.10.2.6 Details not issued with original Construction Drawings, design/build plans, deferred approvals, etc.
- 22.1.10.2.7 Upon completion of work, obtain signature of licensed surveyor or civil engineer on the Project record set verifying layout information.
- 22.1.10.2.8 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.
- 22.1.10.2.9 The title "PROJECT RECORD" in 3/8" letters.

22.1.10.3 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.

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

22.1.11.1 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.

22.1.11.2 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:

22.1.11.2.1 Part 1: Directory, listing names, addresses, and telephone numbers of Subdivider's agents, suppliers, manufacturers, and installers.

22.1.11.2.2 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.

22.2 **Ownership of Project Deliverables.** Upon Final Completion or Termination, Project Deliverables shall become the property of the 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 XXIII. WARRANTIES

23.1 **Warranties Required.** Subdivider shall provide and 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.

23.1.1 **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 two (2) years 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.

23.1.2 *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.

23.1.3 *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.

23.2 **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.

23.2.1 *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.

23.2.2 *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.

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

23.2.4 *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.

23.2.5 *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.

23.2.6 *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.

23.3 **Term of Warranties.** Unless otherwise specified or provided by law, warranties shall extend for a term of two (2) year(s) from the date of Final Completion.

23.3.1 *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.

23.4 **Meetings.** During the two (2) year warranty period described in Section 23.3, Subdivider shall meet, and shall require its design Consultant, construction contractor, and key subcontractors to meet, with the City representatives, including the PR Project Manager and one or more Park and Recreation 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 two (2) year warranty period.

#### ARTICLE XXIV. DEFECTIVE WORK



- 24.1 **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, the Subdivider shall promptly and in accordance with the 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.
- 24.2 **City's Right to Correct.** If circumstances warrant, including but not limited to an emergency or Subdivider's failure to adhere to section 24.1, 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 the City for all City's costs, whether direct or indirect, associated with the correction or removal and replacement.
- 24.3 **Non-Reimbursable Costs.** All costs incurred by Subdivider or Subdivider's agents to remedy defects are non-reimbursable costs. If the City has already reimbursed the 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.
- 24.4 **Extension of Warranty.** When Defective Work, or damage therefrom, has been corrected, removed, or replaced during the warranty period, the two (2) year, or relevant warranty period, will be extended for an additional two (2) years from the date of the satisfactory completion of the correction, removal, or replacement.
- 24.5 **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.
- 24.6 **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 XXVII.

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

- 25.1 **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, until Project Acceptance, or until 1320 DUs have been completed, whichever is longer. *Section 21*
- 25.2 **Maintenance Area.** Subdivider or Subdivider's Contractor shall maintain all involved areas of the Project.
- 25.3 **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.
- 25.4 **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 the Subdivider or Subdivider's contractor notifies the City that

they are ready for the final inspection, whichever comes last. The City will notify Subdivider of all deficiencies revealed by the inspection before acceptance.

25.5 **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.

25.6 **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.

25.6.1 **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 XXVI. BONDS

26.1 **Payment Bond.** 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.

26.2 **Performance Bond.** Subdivider shall provide or require its Construction Contractor to provide City with a Faithful Performance Bond in favor of the City for one hundred percent (100%) of the proposed construction costs, as determined by competitive bidding.

26.3 **Term.** The Payment Bond shall remain in full force and effect at least until the Project is accepted by the City 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 remain in full force and effect for one (1) year after Acceptance, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of all warranty periods set forth in this Agreement.

26.4 **Certificate of Agency.** All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

26.5 **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.

26.6 **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 the City.

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

27.1 **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 the Subdivider, or the 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 27.2, the Subdivider agrees to defend, indemnify, protect, and hold harmless the 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 the City, its agents, officers, or employees that may be in combination with the active or passive negligent acts or omissions of the Subdivider, its employees, agents or officers, or any third party. The 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 the City, its agents, officers or employees.

- 27.2 Indemnification for Professional Services.** As to professional obligations, work, or services of an architect, engineer, or other professional related to this project, the Subdivider shall defend, indemnify, protect, and hold harmless the 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. The Subdivider shall require its Architect, Engineer, or other professional of record to defend, indemnify, protect, and hold harmless the 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 the Subdivider's, Architect's, Engineer's, or other professional's obligations and duties under this Agreement.
- 27.3 Indemnification for Liens and Stop Notices.** The Subdivider shall keep the Project and Property free of any mechanic's liens and immediately secure the release of any stop notices. The Subdivider shall defend, indemnify, protect, and hold harmless, the 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.
- 27.4 Indemnification for Hazardous Materials.** Subdivider agrees to defend, indemnify, and hold harmless, the City, its agents, officers and employees from and against any and all costs, damages, claims, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly, arising from or related to the Hazardous Materials identified in the Phase I or Phase II Reports, if any, conducted pursuant to Article V. Subdivider's indemnity shall survive the close of escrow. Seller expressly preserves its rights against other parties and does not release, or waive its rights to contribution against, any other party.
- 27.5 Enforcement Costs.** The Subdivider agrees to pay any and all costs the City incurs to enforce the indemnity and defense provisions set forth in section 27.1, 27.2, 27.3, and 27.4.

#### ARTICLE XXVIII. INSURANCE

- 28.1 General.** Subdivider shall not begin work under this Agreement until it has: (i) obtained, and upon the City's request provided to the City, insurance certificates reflecting evidence of all insurance required in section 28.2; (ii) obtained City approval of each company or companies; and (iii) confirmed that all policies contain the specific provisions required by section 28.4.
- 28.2 Types of Insurance.** At all times during the term of this Contract, Subdivider shall maintain insurance coverage as follows:
- 28.2.1 Commercial General Liability.** Contractor 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).

- 28.2.2 *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.
- 28.2.3 *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.
- 28.2.4 *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.
- 28.2.4.1 Prior to the execution of the Contract 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."
- 28.2.5 *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.

- 28.3 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 "VT" 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 the City.
- 28.3.1 Non-Admitted Carriers.** The 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 [LESLI list].
- 28.4 Endorsements Required.** Each policy required under Article XXVIII, section 28.2 of this Agreement shall expressly provide, and an endorsement shall be submitted to the City, that:
- 28.4.1 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.
- 28.4.1.1 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.
- 28.4.1.2 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.

- 28.4.2 **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.
- 28.4.3 **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.
- 28.4.3 **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.
- 28.4.3.1 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.
- 28.4.4 **Additional Insurance.** Subdivider may obtain additional insurance not required by this Agreement.
- 28.4.5 **Prior to Starting Work.** Before performing any work, Subdivider shall provide the City with all Certificates of Insurance accompanied by all endorsements.
- 28.5 **Obligation to Provide Documents.** The 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. The City reserves the right to require complete, certified copies of all insurance policies required herein.
- 28.6 **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 the City at the time the evidence of insurance is provided.
- 28.7 **Policy Changes.** Subdivider shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Contract.
- 28.8 **Reservation of Rights.** The City reserves the right, from time to time, to review the Contractor's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Contractor for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.

28.9 **Not a Limitation of Other Obligations.** Insurance provisions under this section shall not be construed to limit the Subdivider's obligations under this Agreement, including Indemnity.

28.10 **Material Breach.** Failure to maintain, renew, or provide evidence of renewal during the term of this Agreement may be treated by the City as a material breach of contract.

#### ARTICLE XXIX. RECORDS AND AUDITS

29.1 **Retention of Records.** Subdivider, contractors, and subcontractors shall maintain data and records related to this contract for a period of not less than three (3) years following receipt of final payment under this Agreement.

29.2 **Audit of Records.** At any time during normal business hours and as often as the City deems necessary, Subdivider and any or all Contractors or subcontractors shall make available to the City for examination at reasonable locations within the City/County of San Diego all of the data and records with respect to all matters covered by this Agreement. Subdivider and all contractors or subcontractors will permit the City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement. If records are not made available within the City/County of San Diego, then Subdivider shall pay all the 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.

29.2.1 **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 XXX. SATISFACTION OF SUBDIVIDER OBLIGATIONS

30.1 **Satisfaction of Obligations.** Compliance with this Agreement satisfies Subdivider's obligations under VTM Condition #41.

#### ARTICLE XXXI. NOTICES

31.1 **Writing.** Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing.

31.2 **Effective Date.** Except in relation to Change Orders as provided for in section 31.4 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.

31.3 **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:

31.3.1 Director, Park and Recreation Department  
City of San Diego  
City Administration Building  
202 "C" Street, M.S. #9B  
San Diego, CA 92101  
Facsimile No.: (619) 533-3687

31.3.2 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

31.3.3 Fredric J. Maas, President  
Black Mountain Ranch, LLC  
A California Limited Liability Company  
12770 High Bluff Drive, Suite 260  
San Diego, CA 92130  
Facsimile No.: (858) 792-7625

31.3.4 Gordon Cloes  
BMR Construction, Inc.  
A Delaware Corporation  
12770 High Bluff Drive, Suite 260  
San Diego, CA 92130  
Facsimile No.: (858) 792-7625

31.3.5 Donna Jones  
Sheppard Mullin Richter & Hampton  
501 W. Broadway, 19<sup>th</sup> Floor  
San Diego, CA 92101  
Facsimile No.: (619) 515-4141

**31.4 Recipients of Change Orders.**

31.4.1 Deputy Director, Park and Recreation Department  
Park Planning and Development Division  
City of San Diego  
202 "C" Street, M.S. #35  
San Diego, CA 92101-3860

31.4.2 Fredric J. Maas, President  
Black Mountain Ranch, LLC  
A California Limited Liability Company  
12770 High Bluff Drive, Suite 260  
San Diego, CA 92130  
Facsimile No.: (858) 792-7625

31.4.3 Gordon Cloes  
BMR Construction, Inc.  
A Delaware Corporation  
12770 High Bluff Drive, Suite 260  
San Diego, CA 92130  
Facsimile No.: (858) 792-7625

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

**ARTICLE XXXII. MISCELLANEOUS PROVISIONS**

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

**32.2 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.



- 32.3 **Reference to Paragraphs.** Each reference in this Agreement to a section refers, unless otherwise stated, to a section this Agreement.
- 32.4 **Incorporation of Recitals.** All recitals herein are incorporated into this Agreement and are made a part hereof.
- 32.5 **Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the Consultant, shall be deemed to be both covenants and conditions.
- 32.6 **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.
- 32.7 **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.
- 32.8 **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.
- 32.9 **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.
- 32.10 **Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.
- 32.11 **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 Contract.
- 32.12 **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.
- 32.13 **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 - VTM Condition 41
  - Exhibit D - Project P-5 from Black Mountain Ranch PFFP FY03
  - Exhibit E - Preliminary Project Schedule
  - Exhibit F - Estimated Cost
  - Exhibit G - Equal Opportunity Contracting Program Requirements
  - Exhibit H - Subdivider Certification for Title 24/ADA Compliance
  - Exhibit I - Preconstruction Meeting Agenda
  - Exhibit J - Drug Free Workplace Certificate
- 32.14 **Compliance with Controlling Law.** The Consultant 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 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.

- 32.15 **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.
- 32.16 **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.
- 32.17 **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.
- 32.18 **Non-Assignment.** The 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 the 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 the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.
- 32.19 **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.
- 32.20 **Independent Contractors.** The Subdivider, any consultants, contractors, subcontractors, and any other individuals employed by the Subdivider shall be independent contractors and not agents of the City. Any provisions of this Agreement that may appear to give the City any right to direct the Subdivider concerning the details of performing the Services under this Agreement, or to exercise any control over such performance, shall mean only that the Subdivider shall follow the direction of the City concerning the end results of the performance.
- 32.21 **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.
- 32.22 **No Waiver.** No failure of either the 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.
- 32.23 **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.

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IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego acting by and through its City Manager pursuant to Resolution No. R-300868, authorizing such execution, and by Black Mountain Ranch, LLC and BMR Construction, Inc..

This Agreement is dated SEP 26 2005, 2005 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]  
its: President

BMR Construction, Inc.  
A Delaware Corporation

By: [Signature]  
its: President

Approved as to form and legality: Dated  
10/4, 2005.

MICHAEL J. AGUIRRE, City Attorney

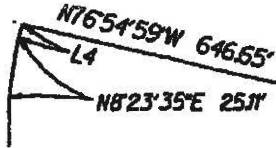
By: [Signature]  
Deputy City Attorney



EXHIBIT "A"

BLACK MOUNTAIN  
RANCH NORTH VILLAGE  
UNIT NO. 2

MAP NO. 14880

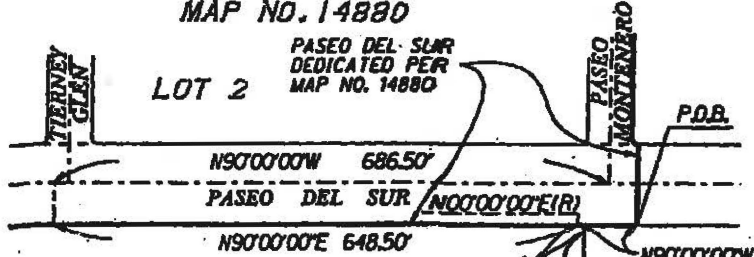


DETAIL 'A'

NO SCALE

LOT 2

PASEO DEL SUR  
DEDICATED PER  
MAP NO. 14880



COURSE TABLE

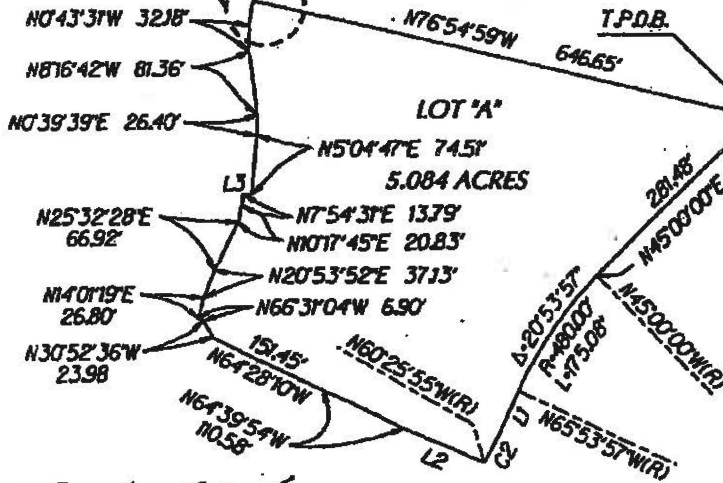
No.	DIRECTION	LENGTH
L1	N 24°06'03" E	53.04
L2	N 67°02'32" W	107.99
L3	N 87°22'39" E	9.98
L4	N 19°09'20" E	5.69

CURVE TABLE

No.	DELTA	RADIUS	ARC
C1	90°00'00"	8.00	12.57
C2	5°28'02"	470.00	44.85

PARCEL 19  
PM 18504

SEE DETAIL 'A'  
THIS SHEET



*Patrick A. McMichael*  
PATRICK A. McMICHAE, LS 6187 DATE 5-23-05

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

ENGINEERING COMPANY

/usr/prj/draw/dwg/ls/ls.dwg, jobno/obnsant, dgn  
2005/05/23  
23:11:24

J-14690

EXHIBIT "B"

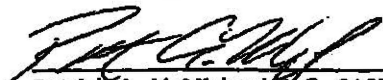
UNIT 4 PARK AREA

That portion of 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 July 18, 2000, being more particularly described as follows:

Parcel "A"

Beginning at the most Southeasterly corner of Black Mountain Ranch North Village Unit No. 2, according to Map thereof No. 14880 filed in the Office of the County Recorder of San Diego County; thence along the Southerly line of said Map 14880 North 90°00'00" West 74.00 feet to the point of cusp of a tangent 8.00 foot radius curve concave Southwesterly; thence leaving said Southerly line Southeasterly along the arc of said curve through a central angle of 90°00'00" a distance of 12.57 feet; thence South 00°00'00" West 355.92 feet to the beginning of a tangent 420.00 foot radius curve concave Northwesterly; thence Southwesterly along the arc of said curve through a central angle of 45°00'00" a distance of 329.87 feet; thence South 45°00'00" West 73.12 feet to the TRUE POINT OF BEGINNING; thence continuing South 45°00'00" West 281.48 feet to the beginning of a tangent 480.00 foot radius curve concave Southeasterly; thence Southwesterly along the arc of said curve through a central angle of 20°53'57" a distance of 175.08 feet; thence South 24°06'03" West 53.04 feet to the beginning of a tangent 470.00 foot radius curve concave Northwesterly; thence Southwesterly along the arc of said curve through a central angle of 05°28'02" a distance of 44.85 feet; thence North 67°02'32" West 107.99 feet; thence North 64°39'54" West 110.58 feet; thence North 64°28'10" West 151.45 feet; thence North 30°52'36" West 23.98 feet; thence North 66°31'04" West 6.90 feet; thence North 14°01'19" East 26.80 feet; thence North 20°53'52" East 37.13 feet; thence North 25°32'28" East 66.92 feet; thence North 10°17'45" East 20.83 feet; thence North 07°54'31" East 13.79 feet; thence North 87°22'39" East 9.98 feet; thence North 05°04'47" East 74.51 feet; thence North 00°39'39" East 26.40 feet; thence North 08°16'42" West 81.36 feet; thence 00°43'31" West 32.18 feet; thence North 08°23'35" East 25.11 feet; thence North 19°09'20" East 5.69 feet; thence South 76°54'59" East 646.65 feet to the TRUE POINT OF BEGINNING.

Containing 5.084 acres, more or less.

 5-23-05  
Patrick A. McMichael, E.S. 6187

Jb/14690.001



## **EXHIBIT "B"**

### **Legal Description of the Property**

**All of that certain real property situated in the County of San Diego, State of California, described as follows:**

**Lots 1, 2, 3, 4, and 5 of Final Map 14880 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, California, September 17, 2004.**

**Lots 1, 2, 3, 4, and 5 of Final Map 14879 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, California, September 17, 2004.**

**Parcels 1, 18, 19, 21, and 23 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, California, July 18, 2000, as file number 2000-377963, Official Records.**

**EXHIBIT "C"**

(R-2002-854)

**RESOLUTION NUMBER R-295794**

**ADOPTED ON NOVEMBER 27, 2001**

WHEREAS, Black Mountain Ranch Limited Partnership, Applicant, and Rick Engineering, Engineer, submitted by an application to the City of San Diego for a 1,137-lot vesting tentative map (Vesting Tentative Map No. 40-0528) for the North Village at Black Mountain Ranch project and the vacation of a public right-way, located east of Camino Ruiz and South of Camino Del Norte, and legally described as Parcel 3 of Parcel Map 17795 and Parcels 19, 21, and 23 of Parcel Map 18504, in the Black Mountain Ranch Subarea I Planning area, in the AR-1-1 zone (which is proposed to be rezoned to the RS-1-14, RX-1-2, RM-1-2, RM-1-3, CC-3-5 and CC-4-5 zones); and

WHEREAS, on November 15, 2001, the Planning Commission of the City of San Diego considered Vesting Tentative Map No. 40-0528, and pursuant to Resolution No. 3193-PC voted to recommend City Council approval of the map; and

WHEREAS, the matter was set for public hearing on November 27, 2001, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Vesting Tentative Map No. 40-0528:

1. The map proposes the subdivision of a 642.09-acre site into 1,797 lots for residential and commercial development (1,655 residential, seven Muti-Unit Residential, one



Commercial, seven Mixed Use, five Employment, six Public Facilities, two Open Space, and 117 Property Owners Association). This type of development is consistent with the City of San Diego's Progress Guide and General Plan and the Black Mountain Ranch Subarea I Plan which designate the area for residential use. The proposed map will retain the community's character by encouraging orderly, sequential development compatible in its intensity with surrounding existing and future land development.

2. The design and proposed improvements for the map are consistent with the zoning and development regulations of the RS-1-14, RX-1-2, RM-1-2, RM-1-3, CC-3-5 and CC-4-5 zones in that:

a. All lots have minimum frontage on a dedicated street which is open to and usable by vehicular traffic, as allowed under a Planned Development Permit [PDP].

b. All lots meet the minimum dimension requirements of the RS-1-14, RX-1-2, RM-1-2, RM-1-3, CC-3-5 and CC-4-5 zones, as allowed under a PDP.

c. All lots are designed so that required improvements do not result in nonconforming lots in respect to building area, setbacks, side yard and rear yard regulations, as allowed under a PDP.

d. Development of the site is controlled by PDP No. 40-0528.

3. The design and proposed improvements for the subdivision are consistent with California Government Code section 66473.1 regarding the design of the subdivision for future passive or natural heating and cooling opportunities.

4. The site is physically suitable for residential and commercial development. The harmony in scale, height, bulk, density, and coverage of development creates a compatible physical relationship to surrounding properties for which this area has been planned.

5. The site is physically suitable for the proposed density of development. This is consistent with the community plan, which provides for residential and commercial uses.

6. The design of the subdivision and the proposed improvements could cause substantial environmental damage or substantially and unavoidably injure fish or wildlife or their habitat based upon the findings of Environmental Impact Report, LDR No. 96-7902, which is included herein by this reference. However, the project as revised now avoids or mitigates the potentially significant environmental effects based upon the findings of an Addendum (LDR No. 40-0528) to Environmental Impact Report, LDR No. 96-7902, which is included herein by reference.

7. The design of the subdivision and the type of improvements will not likely cause serious public health problems inasmuch as needed public services and facilities are available or required by condition of this map to provide for water and sewage facilities, as well as other related public services.

8. The design of the subdivision and the type of improvements are such that they will not conflict with any easements, acquired by the public at large, for access through or use of property within the proposed subdivision as demonstrated by the City Engineer's request for public dedications and adequate improvement on the proposed subdivision map.

9. The City Council has reviewed the adopted Housing Element of the Progress Guide and General Plan of the City of San Diego and finds pursuant to Government Code section 66412.3, that the housing needs of the region are being met because residential development has been planned for the area and public services programmed for installation, as determined by the City Engineer are in accordance with financing and environmental policies of the Council.

10. A portion of Black Mountain Road and Road Survey No. 57 are no longer needed for the public purpose for which they were granted.

11. The building restricted easement over parcels 8, 15, 16, 19 and 23 in Parcel Map 18504 is no longer needed for the public purpose for this it was granted.

12. The property contains a right-of-way which must be vacated to implement the final map in accordance with San Diego Municipal Code section 125.0430.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that pursuant to California Government Code section 66434(g), portions of Black Mountain Road, located within the project boundaries as shown in Vesting Tentative Map No. 40-0528, shall be vacated, contingent upon the recordation of the approved final map for the project.

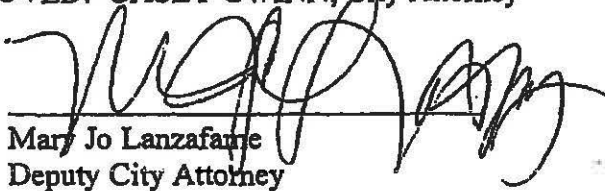
BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Vesting Tentative Map No. 40-0528 is granted to Black Mountain Ranch Limited

Partnership, Applicant, and Rick Engineering, Engineer, subject to the conditions attached hereto and made a part hereof, as modified below:

Condition 44 shall be modified to require that a Storm Water Pollution Prevention Plan [SWPPP] and a Monitoring Program Plan be developed and implemented prior to the commencement of grading.

APPROVED: CASEY GWINN, City Attorney

By

  
Mary Jo Lanzafame  
Deputy City Attorney

MJL:lc  
02/25/02  
Or.Dept:Clerk  
R-2002-854  
Form=tmr-residential.frm  
Reviewed by Vicky Gallagher

**CITY COUNCIL CONDITIONS TO TENTATIVE MAP NO. 40-0528  
NORTH VILLAGE AT BLACK MOUNTAIN RANCH  
ADOPTED BY RESOLUTION NO. R-295794 ON NOVEMBER 27, 2001**

1. This tentative map will expire three years after the effective date of the associated rezone.

Owner/Permittee has entered into a First Amendment to Second Amended and Restated Development Agreement [Development Agreement] with the City that vests certain rights, rules, regulations, and policies for a period of twenty years, as provided for in Paragraph 5.1 of that Development Agreement. In the event of a conflict between the conditions of this permit and the terms of the Development Agreement, the terms of the Development Agreement will prevail.

2. Compliance with all of the following conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the first final map, unless otherwise noted.
3. Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this tentative map, may protest the imposition within 90 days of the approval of this tentative map by filing a written protest with the City Clerk pursuant to California Government Code Section 66020.
4. The final map shall conform to the provisions of Planned Development Permit [PDP] No. 40-0528.
5. The "General Conditions for Tentative Subdivision Maps," filed in the Office of the City Clerk under Document No. 767688 on May 7, 1980, shall be made a condition of map approval. Only those exceptions to the General Conditions which are shown on the tentative map and covered in these special conditions will be authorized.

All public improvements and incidental facilities shall be designed in accordance with criteria established in the Street Design Manual, filed with the City Clerk as Document No. 769830.

6. "Basis of Bearings" means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved, this source will be the California Coordinate System, Zone 6, North American Datum of 1983 (NAD 83).
7. "California Coordinate System" means the coordinate system as defined in Section 8801 through 8819 of the California Public Resources code. The specified zone for San Diego County is "Zone 6," and the official datum is the "North American Datum of 1983."
8. Every final map shall:



- a. Use the California Coordinate System for its "Basis of Bearing" and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true median (theta or mapping angle) and the north point of said map shall appear on each sheet thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomic observations.
  - b. Show two measured ties from the boundary of the map to existing Horizontal Control stations having California Coordinate values of Third Order accuracy or better. These tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e., grid bearings and grid distances). All other distances shown on the map are to be shown as ground distances. A combined factor for conversion of grid-to-ground distances shall be shown on the map.
9. The approval of this tentative map by the City of San Diego does not authorize the subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies, including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. § 1531 et seq.).
  10. The subdivider has reserved the right to record multiple final maps over the area shown on the approved tentative map. In accordance with Article 66456.1 of the Subdivision Map Act, the City Engineer shall retain the authority to review the areas of the tentative map the subdivider is including in each final map. The City Engineer may impose reasonable conditions relating to the filing of multiple final maps, in order to provide for orderly development, such as off-site public improvements, that shall become requirements of final map approval for a particular unit.
  11. The subdivider shall file 18 final maps. The subdivider has requested approval to file final maps out of numerical sequence. This request is approved, subject to the provision that the City Engineer can review the off-site improvements in connection with each unit.
  12. The subdivider shall provide evidence to ensure that an affirmative marketing program is established.
  13. Prior to the recordation of the final map or the issuance of any engineering permit for improvement or grading plans, an updated geotechnical investigation report will be required to be submitted for review and approval by Land Development Review Geology. The geotechnical investigation must be prepared in accordance with the most recent edition of the City of San Diego Technical Guidelines for Geotechnical Reports.

14. Undergrounding of existing and proposed public utility systems and service facilities is required according to San Diego Municipal Code.
15. The subdivider shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as applicable, consistent with the Black Mountain Ranch Subarea 1 Environmental Impact Report (LDR No. 96-7902), satisfactory to the City Manager and the City Engineer. All mitigation measures as specifically outlined in the MMRP (Addendum LDR No. 40-0528) shall be implemented for the following areas: Land Use (MHPA); Biology; Landform Alteration/Visual Quality; Hydrology/Water Quality; Historical Resources (Archaeology); Paleontology; Noise.
16. The Affordable Housing Requirements of PDP Permit No. 40-0528 on file with the Development Services Department, are hereby incorporated by reference into this vesting tentative map. Prior to the recordation of the final map, the subdivider shall enter into an agreement with the Executive Director of the Housing Authority of the City of San Diego, or designee and the City Manager of the City of San Diego, or designee. The Affordable Housing Requirements are more thoroughly described through conditions of the accompanying PDP Permit No. 40-0528, such Permit becoming utilized upon filing of the first final map as shown on this Vesting Tentative Map and in the Affordable Housing Program attached as Exhibit "E" to the First Amendment to Second Amended and Restated Development Agreement.
17. Whenever street rights-of-way are required to be dedicated, it is the responsibility of the subdivider to provide the right-of-way free and clear of all encumbrances and prior easements. The subdivider must secure "subordination agreements" for minor distribution facilities and/or "joint-use agreements" for major transmission facilities.
18. The street vacation of a portion of Black Mountain Road is conditioned upon approval and recordation of a final map(s) or parcel map(s) in accordance with the Subdivision Map Act Sections 66434(g) and 66445(j) as appropriate.
19. The street vacation of a portion of Road Survey No. 57 is conditioned upon approval and recordation of a final map(s) or parcel map(s) which states on the map that Road Survey No. 57 is vacated pursuant to City Council Resolution Number R-285404 adopted on October 31, 1995.
20. The vacation of the building restricted easement over parcels 8, 15, 16, 19 and 23 in Parcel Map 18504 is conditioned upon approval and recordation of a final map(s) or parcel map(s) in accordance with the Subdivision Map Act Sections 66434(g) and 66445(j), as appropriate.

21. The drainage system proposed with this development is subject to approval by the City Engineer.
22. The subdivider shall obtain a bonded grading permit from the City Engineer for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner, satisfactory to the City Engineer.
23. The project shall conform to the Black Mountain Ranch/Subarea I Transportation Phasing Plan in the Public Facilities Financing Plan, dated September 1998.
24. Camino Ruiz/Camino Del Norte is classified as a 4-lane major street. The subdivider shall dedicate 122 feet of right-of-way and shall provide 64 feet of pavement, a 38 foot median, curb, gutter, and a 5 foot wide sidewalk within a 10 foot curb to property line distance, satisfactory to the City Engineer.
25. Street "AO" is classified as a four-lane urban collector street. The subdivider shall dedicate 94 feet of right-of-way and shall provide 64 feet of pavement, a 10 foot median, curb, gutter, and a 5 foot wide sidewalk within a 10 foot curb to property line distance, satisfactory to the City Engineer.
26. North Village Drive is classified as a modified two-lane collector street. The subdivider shall dedicate 100 feet of right-of-way and shall provide 56 feet of pavement, a 14 foot median, curb, gutter, and a 5 foot wide sidewalk within a 15 foot curb to property line distance, satisfactory to the City Engineer.
27. Street "AQ" from Camino Del Norte to Street "AS" is classified as a three lane collector street. The subdivider shall dedicate 82 feet of right-of-way and shall provide 52 feet of pavement, a 10 foot median, curb, gutter and a 5 foot wide sidewalk within a 10 foot curb to property line distance, satisfactory to the City Engineer.
28. Street "R" from Street "Z"/Street "Y" to 100 feet north of Kristen Place is classified as a modified two-lane collector street. The subdivider shall dedicate 100 feet of right-of-way and shall provide 40 feet of pavement, a 40 foot median, curb, gutter, and a 5 foot wide sidewalk within a 10 foot curb to property line distance, satisfactory to the City Engineer.
29. Street "AL" from Camino Del Norte to North Village Drive, Street "AS" from Street "AL" to Lone Quail, Street "CB" from Street "AY" to North Village Drive, Street "AQ" from Street "AS" to North Village Drive, Street "AY" from Street "CB" to street "BL" are classified as a two-lane collector streets with two-way-left-turn-lane. The subdivider shall dedicate 70 feet of right-of-way and shall provide 50 feet of pavement, curb, gutter, and a

5 foot wide sidewalk within a 10 foot curb to property line distance, satisfactory to the City Engineer.

30. Street "F", Kristen Place from Camino Del Norte to Street "T" and from North Village Drive (south) to Street "R", Street "AL" from North Village Drive to Street "AN", Street "AM", Street "AN", Street "AP", Street "AR", Street "BL", and Street "CB" from North Village Drive to Camino Del Norte are classified as a two-lane collector streets. The subdivider shall dedicate 60 feet of right-of-way and shall provide 40 feet of pavement, curb, gutter, and a 5 foot wide sidewalk within a 10 foot curb to property line distance, satisfactory to the City Engineer.
31. Street "A" thru Street "E", Kristen Place from Street "C" to North Village Drive (south) and from Street "R" to Street "T", Street "CA", Street "CC", Street "G", Street "I" thru Street "P", Street "R" from Street "K" to 100' north of Kristen Place, Street "R" thru Street "T", Street "W" thru Street "Z", Street "AA" thru Street "AK" as a local residential streets. The subdivider shall dedicate 54/56 feet of right-of-way and shall provide 34/36 feet of pavement, curb, gutter, and a 5 foot wide sidewalk within a 10 foot curb to property line distance, satisfactory to the City Engineer.
32. Street "BO", Street "BP" and Street "BQ" are classified as a local residential streets. The subdivider shall dedicate 48 feet of right-of-way and shall provide 28 feet of pavement, curb, gutter, and a 5 foot wide sidewalk within a 10 foot curb to property line distance, satisfactory to the City Engineer.
33. The subdivider shall construct traffic signals at the following intersections, satisfactory to the City Engineer:
  - a. Street "AS" and Lane Quail Road.
  - b. Camino Del Norte and Street "AL".
  - c. Camino Del Norte and Street "AQ".
  - d. North Village Drive and Street "AL".
  - e. Camino Del Norte and Street "H".
  - f. North Village Drive with Kristen Place North and Kristen Place West.
  - g. North Village Drive with Kristen Place West.
  - h. Camino Del Norte and Kristen Place.
  - i. North Village Drive and Street "H".
  - j. North Village Drive and Street "AP".
  - k. North Village Drive and Street "AM".
  - l. North Village Drive and Street "CB".
  - m. North Village Drive and Street "R".
  - n. North Village Drive and Street "AO".

- o. North Village Drive and Camino Ruiz.
  - p. Kristen Place and Street "R".
  - q. Street "AO" and Street "AR".
  - r. Rancho Bernardo Road/Lone Quail Road and Camino Del Norte.
  - s. North Village Drive, and Street "AQ".
  - t. Street "AO" and street "AS".
  - u. Street "AS" and Street "AQ".
  - v. Street "AO" and Camino Del Norte.
34. The subdivider shall install traffic control at non-signalized intersections, satisfactory to the City Engineer.
35. Where non-contiguous sidewalks are implemented the subdivider shall grant 5 foot wide general utility easements adjacent to the right-of-way on both sides of the street and grading within the easement shall be at a 2% fall towards the street.
36. The subdivider shall submit complete landscape construction documents, including plans, details, and specifications (including a permanent automatic irrigation system unless otherwise approved), for the required right-of-way and median improvements, slope re-vegetation and hydro-seeding of all disturbed land in accordance with the Landscape Standards and to the satisfaction of the City Manager. The landscape construction documents shall be in substantial conformance with Exhibit "A," Landscape Concept Plan, dated November 27, 2001, on file in the Development Services Department. The applicant shall assure by permit and bond the installation of landscaping per landscape construction documents.
37. The subdivider shall submit for review, a bonded Landscape Maintenance Agreement for all landscape improvements within the public right-of-way area consistent with Exhibit "A," dated November 27, 2001, on file in the Development Services Department. The approved bonded Landscape Maintenance Agreement shall be recorded prior to recordation of the (parcel/final map).
38. The subdivider shall identify on a separate sheet titled 'Non-title Sheet' the brush management areas in substantial conformance with Exhibit "A," dated November 27, 2001, on file in the Development Services Department. These brush management areas shall be identified with a hatch symbol with no specific dimensions or zones called out. The following note shall be provided on the 'Non-title sheet' to identify the hatched areas: "Indicates fire hazard zone(s) per Section 142.0412 of the Land Development Code."



39. WATER REQUIREMENTS:

- a. The subdivider shall provide acceptable water studies in a manner satisfactory to the Water Department Director. The studies shall plan the pressure zone(s) and public water facilities, both potable and reclaimed, necessary to serve this development, consistent with previously accepted studies in this area. If phasing of development is proposed, then a phasing plan shall be included in the water study indicating how redundancy will be maintained.
- b. The subdivider shall design and construct all public potable and reclaimed water facilities as required in the accepted water studies for this area, necessary to serve this development and extending to the subdivision boundaries in a manner satisfactory to the Water Department Director. Water facilities, as shown on the approved tentative map, will require modification based on the accepted water study and final engineering.
- c. The subdivider shall install fire hydrants at locations satisfactory to the Fire Marshall, the Water Department Director and the City Engineer. If more than two (2) fire hydrants or thirty (30) dwelling units are located on a dead-end main then the subdivider shall install a redundant water system satisfactory to the Water Department Director.
- d. The subdivider shall provide Covenants, Conditions, and Restrictions [CC&Rs] for the operation and maintenance of on-site private water facilities that serve or traverse more than one lot.
- e. The subdivider agrees to design and construct all proposed public water facilities, including services, meters, and easements, in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards, and practices pertaining thereto. Proposed facilities that do not meet the current standards for construction, operation, maintenance and access, shall be private or redesigned.
- f. The subdivider shall grant adequate water easements, including vehicular access to each appurtenance (meters, blow offs, valves, fire hydrants, etc.), for all public water facilities that are not located within fully improved public rights-of-way, satisfactory to the Water Department Director. Easements shall be located within single lots, when possible, and not split longitudinally. Vehicular access roadbeds shall be a minimum of 20 feet wide and surfaced with suitable approved material satisfactory to the Water Department Director and the City Engineer.

- g. Grants of water easements shall have the following minimum widths: water mains with no appurtenances including valves - 15 feet; water mains with services or fire hydrants - 30 feet with 24 feet of paving and full height curbs. Fire hydrants within easements having no curbs or rolled curbs shall have protective posts per SDW-102. Easements, as shown on the approved tentative map, will require modification based on standards and final engineering.
- h. The subdivider shall process encroachment maintenance and removal agreements for all acceptable encroachments, including, but not limited to, structures, enhanced paving, or landscaping, into any easement. No structures or landscaping of any kind shall be installed in or over any vehicular access roadway.
- i. If any portion of the subdivision will have gated access, then the subdivider shall provide keyed access to the Water Operations Division in a manner satisfactory to the Water Department Director. The City will not be held responsible for any issues that may arise relative to the availability of keys.
- j. Providing water for this development is dependent upon prior construction of certain water facilities in previously approved development in this area including, but not limited to, the completion of the Black Mountain Reservoir and associated pipelines. If facilities have not been constructed when required for this development, then the construction of certain portions of these previously approved water facilities, as required by the City Engineer, will become off-site improvements required for this development.

40. SEWER REQUIREMENTS:

- a. The subdivider shall construct its fair share of the Carmel Valley Trunk Sewer and enter into a Reimbursement Agreement with all developments that construct more than their fair share of the Carmel Valley Trunk Sewer.
- b. The subdivider shall submit a sewer study satisfactory to the Metropolitan Wastewater Department Director, for the sizing, grade and alignment of public gravity sewer mains and to show that the existing and proposed public sewer facilities will provide adequate capacity and have cleansing velocities necessary to serve this development and the drainage basin in which it lies and adjacent areas that cannot gravity sewer to an existing sewer system.
- c. The subdivider shall install all facilities, as required by the accepted sewer study, necessary to serve the proposed development. Sewer facilities, as shown on the

approved tentative map, will require modification based on the accepted sewer study.

- d. The subdivider shall design all proposed public sewer facilities to the most current edition of the City of San Diego's sewer design guide. Proposed facilities that do not meet the current standards shall be private or re-designed.
- e. The subdivider shall grant adequate sewer, and/or access easements, including vehicular access to each manhole, for all public sewer facilities that are not located within public rights-of-way, satisfactory to the Metropolitan Wastewater Department Director. Minimum easement width for sewer mains with manholes - 20 feet. The easements shall be located within single lots. Vehicular access roadbeds shall be a minimum of 20 feet wide and surfaced with suitable approved material satisfactory to the Metropolitan Wastewater Department Director. Vehicular access roadbeds to sewer mains with laterals shall be a minimum 24 foot wide and paved full width. An additional 10 feet of easement width for each additional utility is required for easements carrying more than one utility. Sewer mains greater than 10 feet deep will require an additional 2 feet of easement width for each additional foot of depth beyond 10 feet.
- f. No structures or landscaping that would inhibit or prevent access shall be installed in or over any sewer access easement.
- g. No structures or landscaping, including private sewer facilities, storm drains and enhanced paving, shall be installed in or over any easement prior to the applicant obtaining an Encroachment Maintenance and Removal Agreement.
- h. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any public sewer facilities.
- i. The subdivider shall submit a sewer study satisfactory to the Metropolitan Wastewater Department Director, for the sizing, grade and alignment of private sewer facilities, including sewer laterals to the property line, that serve more than one lot.
- j. The subdivider shall design and construct all proposed private sewer facilities serving more than one lot to the most current edition of the City of San Diego's sewer design guide. Improvement drawings are required for private sewer facilities serving more than one lot.

- k. The subdivider shall obtain a building permit for any private pump station serving more than one ownership.
- l. The subdivider shall process and record a NOTICE & AGREEMENT for each ownership being served by a private pump station/sewer facilities which serves more than one ownership, which indemnifies the City and contains an agreement that the applicant, and successors in interest, will be responsible for the operation and maintenance of the private sewer systems.
- m. The subdivider shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each lot will have its own sewer lateral or provide CC&Rs for the operation and maintenance of private sewer facilities, including private pump stations and force mains, that serve more than one lot.
- n. Providing sewer for this development is dependent upon prior construction of certain sewer facilities in the previously approved Tentative Map 95-0173. If they have not been constructed when required for this development, then the construction of certain portions of these previously approved sewer facilities, as required by the City Engineer, will become off-site improvements required for this development.
- o. For public on-site sewer facilities located within a gated community, the subdivider shall provide the Wastewater Collection Divisions with keyed access satisfactory to the Metropolitan Wastewater Department Director. The City will not be held responsible for any issues that may arise relative to possession of the keys.

41. PARK AND RECREATION:

The developer/owner shall enter into a Park Purchase Agreement and a Park Development Agreement, acceptable to the City Manager, prior to the recordation of the first final map of any Unit within this development. The agreement shall address the following issues.

- a. The park site shown on the approved vested tentative map, Lot 166 of Unit No. 8, is reserved in accordance with Section 66479, et seq., of the California Subdivision Map Act. Provisions of the Act require that the subdivider shall, at the time of the recordation of the first final map within the subdivision, enter into an agreement with the City to acquire the park sites within two (2) years after the completion and acceptance of all public improvements, including but not limited

to streets, storm sewer, water and sanitary sewer, unless such period of time is extended by mutual agreement. The purchase price shall be the fair market value thereof at the time of the filing of the first substantially complete map, February 1995, plus the taxes against such reserved area from the date of reservation, and any other costs incurred by the developer in the maintenance of such reserved areas, including interest costs incurred on any loan covering such reserved areas. In the event the City does not exercise its option to acquire the park site, the reservation shall automatically terminate.

- b. The Developer shall hire a property appraiser, acceptable to the Real Estate Asset Director, for the purpose of appraising the value of the site as raw, unsubdivided land. The appraiser shall be advised of the appropriate City, or State codes that apply to the park site as a portion of a 4,677.0 acre total parcel. The appraisal shall be completed and approved prior to the filing of the first final map of any unit of this subdivision.

Note: The following information shall be provide to any and all appraisers hired to do work on this project. The City acquires only that portion of the identified lot that is useable park land. Useable is defined as that portion of the property not exceeding a grade of two percent (2.0%). The remaining portion of the lot is assumed to be designated open space and has no established value.

- c. If the developers representative's appraisal and the City's appraisal are not within City guidelines the two appraisers shall appoint a third appraiser acceptable to them. Failure to agree upon the third appraiser, arbitrator, the matter will be determined by the Superior Court of San Diego.
- d. The Developer shall rough grade the park site, Lot 166 of Unit No. 8, to the Park and Recreation Department's specifications of a 2% graded pad and shall construct the contiguous street improvements. The agreement shall defines the method of compensation for the work done on the future park site, including mitigation if required, as established by Facilities Financing. Said agreement shall be approved and signed prior to the filing of the first final map of the subdivision. The final drawings shall show the approved grading and require Park and Recreation Department, Northern Parks Division approval.
- e. The Developer/Owner shall design and construct the park improvements proposed for the neighborhood park. Developer shall enter into a park development agreement, acceptable to the Park and Recreation Department and Facility Financing prior to the recordation of the final map of this subdivision or any portion thereof.



42. OPEN SPACE REQUIREMENTS:

- a. Lots OS-1 & OS-2 shall be granted to the city, at no cost, for open space. Said lots shall be free and clear of any private easements, private encroachments, private agreements or liens.
  - b. All POA open space lots shall have an open space easement.
  - c. All zones 2 & 3 brush management lots shall have open space easements.
  - d. All trails shall be dedicated, non-motor vehicle right-of-way, except through the city fee owned public park site. The trails width, location, grade and signs shall be satisfactory to the Park and Recreation Director.
43. The drainage system not located within a dedicated street shall be private. Fossil filters and/or the BMP devices are not permitted within a public system and all subject to approval by the City Engineer.
44. Development of this project shall comply with all requirements of State Water Resources Control Board (SWRCB) Order No. 92-08-DWQ (NPDES General Permit No. CAS000002), *Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity*. In accordance with said permit, a Storm Water Pollution Prevention Plan (SWPPP) and a Monitoring Program Plan shall be developed and implemented prior to the commencement of grading activities, and a complete and accurate Notice of Intent (NOI) shall be filed with the SWRCB. A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received.
- In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 92-08-DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in Section C.7 of SWRCB Order No. 92-08-DWQ.
45. This subdivision is in a community plan area designated in the General Plan as Planned Urbanizing. As such, special financing plans have been, or will be, established to finance the public facilities required for the community plan area.

Therefore, in connection with Council approval of the final map, the subdivider shall comply with the provisions of the financing plan then in effect for this community plan area, in a manner satisfactory to the Development Services Manager. This compliance shall be achieved by entering into an agreement for the payment of the assessment, paying a Facilities Benefit Assessment (FBA) or such other means as may have been established by the City Council.

46. This tentative map is a vesting tentative map. As such, the subdivider shall pay an additional \$300 fee to the Development Services Department for each final map processed in connection with this vesting tentative map.

**FOR INFORMATION:**

- This development may be subject to payment of a park fee prior to the filing of the final subdivision map in accordance with San Diego Municipal Code. This property is also subject to a building permit park fee in accordance with San Diego Municipal Code.
- This development may be subject to payment of School Impact Fees at the time of issuance of building permits, as provided by California Government Code Section 53080(b) (Statutes of 1986, Chapter 887), in accordance with procedures established by the Director of Building Inspection.
- This vesting tentative map will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.

**CITY OF SAN DIEGO  
FACILITIES FINANCING PROGRAM**

PROJECT: P-5  
P= PARK

TITLE: NORTH NEIGHBORHOOD PARK

COUNCIL DISTRICT: 1  
COMMUNITY: Blk. Mtn. Ranch  
PROJECT YEAR: 2007

DEPARTMENT: PARK AND RECREATION

FUNDING:	SOURCE	EXPEND/ ENCUMB	CONT APPROP	2007						
2,250,000	BMR-FBA			2,250,000						
0										
0										
0										
0										
0										
0										
2,250,000	TOTAL	0	0	2,250,000	0	0	0	0	0	0

**DESCRIPTION:** ACQUISITION AND DEVELOPMENT OF A 5.0 ACRE (USEABLE ACRES ) NEIGHBORHOOD PARK ADJACENT TO A PROPOSED ELEMENTARY SCHOOL SITE. THIS PROJECT INCLUDES THE COST OF HALF-WIDTH STREET IMPROVEMENTS FOR THE LOCAL ROADWAY(S) ADJACENT TO THE PROJECT.

**JUSTIFICATION:** THE PARK IS ADJACENT TO A PROPOSED ELEMENTARY SCHOOL. IN ACCORDANCE WITH THE CITY OF SAN DIEGO'S "PROGRESS GUIDE AND GENERAL PLAN", THE REQUIRED SIZE FOR THIS SITE IS 5 ACRES. IN ACCORDANCE WITH GENERAL PLAN STANDARDS, THIS PARK SHALL SERVE A POPULATION OF BETWEEN 3,500 AND 5,000 PERSONS WITHIN A RADIUS OF APPROXIMATELY ONE-HALF MILE.

**SCHEDULE:** THIS SCHEDULE IS DEPENDENT UPON THE ACTUAL RATE OF DEVELOPMENT WITHIN BLACK MOUNTAIN RANCH. INITIAL DEVELOPMENT PROJECTIONS INDICATE THAT THIS COMMUNITY WILL REACH A POPULATION OF 5,000 PEOPLE WITHIN THE VICINITY OF THIS SITE IN FY 2007.

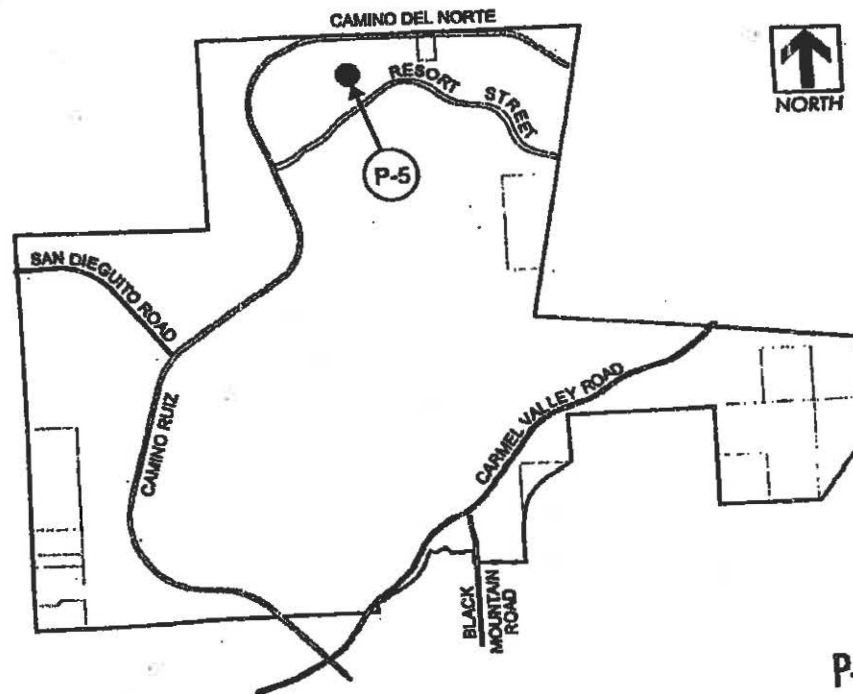


EXHIBIT "D"

P-5

Act ID	Description	Orig Dur	Rem Dur	Early Start	Early Finish
<b>CONCEPTUAL DESIGN</b>					
1000	Design	160d	160d	31MAR05	10NOV05
<b>CONSTRUCTION DOCUMENTS</b>					
1010	Submittal 1	45d	45d	13NOV05	16JAN07
1020	Submittal 2	45d	45d	17JAN07	20MAR07
1030	Submittal 3	45d	45d	21MAR07	22MAY07
1040	Approval / Permit	45d	45d	23MAY07	25JUL07
<b>CONSTRUCTION</b>					
1050	Bid	40d	40d	26JUL07	19SEP07
1060	Construction	180d	180d	20SEP07	30MAY08
1070	Acceptance	140d	140d	02JUN08	15DEC08

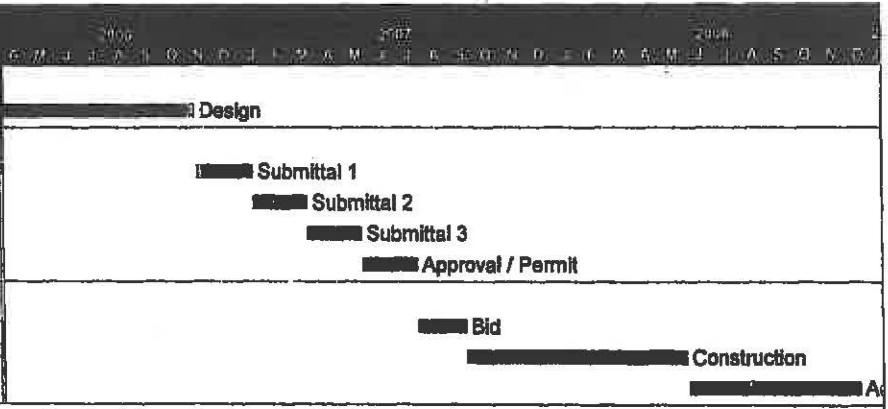


EXHIBIT 13

Start date	30MAR05
Finish date	15DEC08
Data date	31MAR06
Run date	25MAY05
Page number	1A
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**BLACK MOUNTAIN RANCH NORTH NEIGHBORHOOD PARK**

- Early bar
- Progress bar
- Critical bar
- Summary bar
- ◆ Start milestone point
- ◆ Finish milestone point

**EXHIBIT "F"**

9/8/2005

**Black Mountain Ranch North Neighborhood Park**  
 (Sub Area I, PFFP Project P-5)  
**Estimated Total Project Cost**

Item	Units	Unit Price	Total
1 Property Purchase Price (Assumes estimated 1995 appraised value of \$40,000 per acre)	5 acres	\$40,000 per acre	\$200,000
2 Carry Costs (Estimated at 6% per year, simple interest to 2007)	12 years	12,000 per year	144,000
3 Escrow and Closing Costs (Includes appraiser fees, real property taxes, attorney fees, etc.)	1	50,000 LS	50,000
4 Grading Costs (Assumes average cut/fill grading of 5 feet over 5 acres. Includes sub-drains, remedial grading work, erosion control, preparation of SWPPP, NPDES permit, etc.)	40,333 cy	2.25 per cy	90,749
5 Park Improvement Costs (Includes cost of landscaping, hardscape, irrigation, dry utilities, lighting, parking lot, play equipment, etc.)	217,800 sf	6.00 per sf	1,306,800
6 1/2 Width Street Improvement Costs (Includes water, reclaimed water, sewer, storm drain, parkway landscaping and irrigation, dry utilities, street lights, etc.)	500 lf	150.00 per lf	75,000
7 Consulting Services (Includes landscape consultant, civil engineer, geotechnical consultant, utility consultant, grading control, construction survey, monumentation, etc.)	1	200,000 LS	200,000
8 Miscellaneous Costs (Includes bond premiums, insurance, plan check fees, permit fees, etc.)	1	131,980 LS	131,980
9 City's Project Management Costs (Includes \$150,000 for City Administrative Costs and \$150,000 for City inspection services.)	1	300,000 LS	300,000
10 Construction Contingency (At 25% of Construction Costs; Items 4, 5 & 6 above.)	25%	1,472,549	368,137
11 Subdivider's Project Administration Costs (At 5% of Improvement Costs; Items 2 - 10 above.)	5%	2,666,667	133,333

**Estimated Total Project Cost****\$3,000,000**



EXHIBIT "G"

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)  
CONSULTANT REQUIREMENTS

TABLE OF CONTENTS

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I. **City's Equal Opportunity Commitment.** The City of San Diego (City) is strongly committed to equal opportunity for employees and subconsultants of professional service consultants doing business with the City. The City encourages its consultants to share this commitment. Prime consultants are encouraged to take positive steps to diversify and expand their subconsultant solicitation base and to offer consulting opportunities to all eligible subconsultants.

II. **Nondiscrimination in Contracting Ordinance.** All consultants and professional service providers doing business with the City, and their subconsultants, must comply with requirements of the City's *Nondiscrimination in Contracting Ordinance*, San Diego Municipal Code Sections 22.3501 through 22.3517.

A. **Proposal Documents to include Disclosure of Discrimination Complaints.** As part of its bid or proposal, Proposer shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Proposer in a legal or administrative proceeding alleging that Proposer discriminated against its employees, subconsultants, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

B. **Contract Language.** The following language shall be included in contracts for City projects between the consultant and any subconsultants, vendors, and suppliers:

Consultant 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. Consultant shall provide equal opportunity for subconsultants

to participate in subconsulting opportunities. Consultant understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

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

III. **Equal Employment Opportunity.** Consultants shall comply with requirements of San Diego Ordinance No. 18173, Section 22.2701 through 22.2707, Equal Employment Opportunity Outreach Program. Consultants shall submit a *Work Force Report* or an *Equal Employment Opportunity (EEO) Plan* to the Program Manager of the City of San Diego Equal Opportunity Contracting Program (EOCP) for approval.

- A. **Work Force Report.** If a *Work Force Report* (Attachment AA) is submitted, and an EOCP staff Work Force Analysis determines there are under representation when compared to County Labor Force Availability data, Consultant will be required to submit an *Equal Employment Opportunity Plan*.
- B. **Equal Employment Opportunity Plan.** If an *Equal Employment Opportunity Plan* is submitted, it must include at least the following assurances that:
1. The Consultant will maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites and in all facilities at which the Consultant's employees are assigned to work;
  2. A responsible official is designated to monitor all employment related activity to ensure the Consultant's EEO Policy is being carried out and to submit reports relating to EEO provisions;

3. Consultant disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination review and posting with a written record to identify the time, place, employees present, subject matter, and disposition of meetings;
4. The Consultant reviews, at least annually, all supervisor's adherence to and performance under the EEO Policy and maintains written documentation of these reviews;
5. The Consultant discusses its EEO Policy Statement with subconsultants with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request;
6. The Consultant documents and maintains a record of all bid solicitations and outreach efforts to and from subconsultants, consultant associations and other business associations;
7. The Consultant disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request;
8. The Consultant disseminates its EEO Policy to union and community organizations;
9. The Consultant provides immediate written notification to the City when any union referral process has impeded the Consultant's efforts to maintain its EEO Policy;
10. The Consultant maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses;
11. The Consultant maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations with a description of the employment action taken;
12. The Consultant encourages all present employees, including people of color and women employees, to recruit others;
13. The Consultant maintains all employment selection process information with records of all tests and other selection criteria;

14. The Consultant develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Consultant's employment needs;
15. The Consultant conducts, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities;
16. The Consultant ensures the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to assure privacy between the sexes;
17. The Consultant establishes and documents policies and procedures to ensure job classifications, work assignments, promotional tests, recruitment and other personnel practices do not have a discriminatory effect; and
18. The Consultant is encouraged to participate in voluntary associations, which assist in fulfilling one or more of its non-discrimination obligations. The efforts of a consultant association, consultant/community professional association, foundation or other similar group of which the Consultant is a member will be considered as being part of fulfilling these obligations, provided the Consultant actively participates.

**IV. Equal Opportunity Contracting.** Prime consultants are encouraged to take positive steps to diversify and expand their subconsultant solicitation base and to offer contracting opportunities to all eligible subconsultants. To support its Equal Opportunity Contracting commitment, the City has established a voluntary *subconsultant participation level*.

**A. Subconsultant Participation Level**

1. Projects valued at \$25,000 or more have a voluntary Subconsultant Participation Level goal of 15%. Goals are achieved by contracting with any combination of Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE), Disabled Veteran Business Enterprise (DVBE) or Other Business Enterprise (OBE) level.
2. While attainment of the 15% Subconsultant Participation Level goal is strictly voluntary, the City encourages diversity in your outreach and selection efforts. Historical data indicates that of the overall 15% goal, 25% to 30% Disadvantaged Business Enterprise (DBE) and 1% to 3% Disabled Veteran Business Enterprise (DVBE) participation is

attainable. The remaining percentages may be allocated to Other Business Enterprises (OBE). Participation levels may be used as a tiebreaker in cases of an overall tie between two or more firms.

- B. Contract Activity Reports. To permit monitoring of the successful Consultant's commitment to achieving compliance, *Contract Activity Reports* (Attachment BB) reflecting work performed by subconsultants shall be submitted quarterly for any work covered under an executed contract.

V. **Demonstrated Commitment to Equal Opportunity.** The City seeks to foster a business climate of inclusion and to eliminate barriers to inclusion.

- A. Proposers are required to submit the following information with their proposals:

1. **Outreach Efforts.** Description of Proposer's outreach efforts undertaken on this project to make subconsulting opportunities available to all interested and qualified firms.
2. **Past Participation Levels.** Listing of Proposer's subconsultant participation levels achieved on all private and public projects within the past three years. Include name of project, type of project, value of project, subconsultant firm's name, percentage of subconsultant firm's participation, and identification of subconsultant firm's ownership as a certified Small Business, Disadvantaged Business Enterprise, Disabled Veteran Business Enterprise, or Other Business Enterprise.
3. **Equal Opportunity Employment.** Listing of Proposer's strategies to recruit, hire, train and promote a diverse workforce. These efforts will be considered in conjunction with Proposer's *Workforce Report* as compared to the County's Labor Force Availability.
4. **Community Activities.** Listing of Proposer's current community activities such as membership and participation in local organizations, associations, scholarship programs, mentoring, apprenticeships, internships, community projects, charitable contributions and similar endeavors.

- B. Consultant selection panels will consider and evaluate the Proposer's demonstrated commitment to equal opportunity including the following factors:

1. **Outreach Efforts.** Proposer's outreach efforts undertaken and willingness to make meaningful subconsulting opportunities available to all interested and qualified firms on this project.



2. **Past Participation Levels.** Proposer's subconsultant participation levels achieved on all private and public projects within the past three years.
3. **Equal Opportunity Employment.** Proposer's use of productive strategies to successfully attain a diverse workforce as compared to the County's Labor Force Availability.
4. **Community Activities.** Proposer's current community activities.

**VI. List of Subconsultants.** Consultants are required to submit a *Subconsultant List* with their proposal.

A. **Subconsultants List.** The *Subconsultant List* (Attachment CC) shall indicate the Name and Address, Scope of Work, Percent of Total Proposed Contract Amount, Dollar Amount of Proposed Subcontract, Certification Status and Where Certified for each proposed subconsultant.

1. Subconsultants must be named on the *Subconsultants List* if they receive more than one-half of one percent (0.5%) of the Prime Consultant's fee.

B. **Commitment Letters.** Proposer shall also submit subconsultant *Commitment Letters* on subconsultant's letterhead, no more than one page each, from all proposed subconsultants to acknowledge their commitment to the team, scope of work, and percent of participation in the project.

**VII. Definitions.** Certified "Minority Business Enterprise" (MBE) means a business which is at least fifty-one percent (51%) owned by African Americans, American Indians, Asians, Filipinos, and/or Latinos and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more members of the identified ethnic groups.

Certified "Women Business Enterprise" (WBE) means a business which is at least fifty-one percent (51%) owned by one or more women and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more women.

Certified "Disadvantaged Business Enterprise" (DBE) means a business which is at least fifty-one percent (51%) owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.

**Certified "Disabled Veteran Business Enterprise" (DVBE)** means a business which is at least fifty-one percent (51%) owned by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(ies).

**"Other Business Enterprise" (OBE)** means any business which does not otherwise qualify as Minority, Woman, Disadvantaged or Disabled Veteran Business Enterprise.

#### **VIII. Certification.**

A. The City of San Diego is a signatory to a Memorandum of Understanding (MOU) with the California Department of Transportation (CALTRANS), and therefore has adopted a policy regarding certification of MBE/WBE/DBE/DVBE firms. As a result of the MOU, an MBE, WBE or DBE is certified as such by any of the following methods:

1. Current certification by the City of San Diego as MBE, WBE, or DBE;
2. Current certification by the State of California Department of Transportation (CALTRANS) as MBE, WBE or DBE;
3. Current MBE, WBE or DBE certification from any participating agency in the statewide certified pool of firms known as CALCERT.

B. DVBE certification is received from the State of California's Department of General Services, Office of Small and Minority Business (916) 322-5060.

#### **IX. List of Attachments.**

- AA - *Work Force Report*
- BB - *Subconsultants List*
- CC - *Contract Activity Report*



**THE CITY OF SAN DIEGO**  
**EQUAL OPPORTUNITY CONTRACTING**  
 1010 SECOND AVENUE, SUITE 500  
 SAN DIEGO, CA 92101  
 PHONE (619) 533-4464 • FAX (619) 533-4474

**WORK FORCE REPORT**

The objective of the Equal Employment Opportunity is to ensure that contractors doing business with the City, or receiving funds from the City, will not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training, including apprenticeship.

**NO OTHER FORMS WILL BE ACCEPTED**

**CONTRACTOR IDENTIFICATION**

Type of Contractor:  Construction  Vendor/Supplier  Financial Institution  Lessee/Lessor  
 Consultant  Grant Recipient  Insurance Company  Other

Name of Company: \_\_\_\_\_

ADA/DBA: \_\_\_\_\_

Address (Corporate Headquarters, where applicable): \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ - \_\_\_\_\_ Fax Number: ( ) \_\_\_\_\_ - \_\_\_\_\_

Name of Company CEO: \_\_\_\_\_

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ - \_\_\_\_\_ Fax Number: ( ) \_\_\_\_\_ - \_\_\_\_\_

Type of Business: \_\_\_\_\_ Type of License: \_\_\_\_\_

The Company has appointed: \_\_\_\_\_

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_ - \_\_\_\_\_ Fax Number: ( ) \_\_\_\_\_ - \_\_\_\_\_

For Firm's:  San Diego Work Force and/or  Managing Office Work Force

I, The undersigned representative of \_\_\_\_\_  
 (Firm Name)

(County)

(State)

hereby certify that information provided herein is true and correct. This document was executed on this day of \_\_\_\_\_, 20\_\_

(Authorized Signature)

(Print Authorized Signature Name)

**WORK FORCE REPORT – Page 2**

NAME OF FIRM: \_\_\_\_\_ DATE: \_\_\_\_\_

**INSTRUCTIONS:** For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- (1) African-American, Black
- (2) Latino, Hispanic, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) Caucasian
- (7) Other Ethnicities

OCCUPATIONAL CATEGORY	(1) African American		(2) Latino		(3) Asian		(4) American Indian		(5) Filipino		(6) Caucasian		(7) Other Ethnicities	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Executive, Administrative, Managerial														
Professional Specialty														
Engineers/Architects														
Technicians and Related Support														
Sales														
Administrative Support/Clerical														
Services														
Precision Production, Craft and Repair														
Machine Operators, Assemblers, Inspectors														
Transportation and Material Moving														
Handlers, Equipment Cleaners, Helpers and Non-construction Laborers*														

\*Construction laborers and other field employees are not to be included on this page

TOTALS EACH COLUMN														
--------------------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

GRAND TOTAL ALL EMPLOYEES

INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:

DISABLED														
----------	--	--	--	--	--	--	--	--	--	--	--	--	--	--

NON-PROFIT ORGANIZATIONS ONLY:

BOARD OF DIRECTORS														
VOLUNTEERS														
ARTISTS														

## SUBCONSULTANTS LIST

**INFORMATION REGARDING SUBCONSULTANTS PARTICIPATION:**

1. Subconsultant's List shall include name and complete address of all Subconsultants who will receive more than one half of one percent (0.5%) of the Prime Consultant's fee.
2. Proposer shall also submit subconsultant commitment letters on subconsultant's letterhead, no more than one page each, from subconsultants listed below to acknowledge their commitment to the team, scope of work, and percent of participation in the project.
3. Subconsultants shall be used for scope of work listed. No changes to this Subconsultants List will be allowed without prior written City approval.

NAME AND ADDRESS SUBCONSULTANTS	SCOPE OF WORK	PERCENT OF CONTRACT	DOLLAR AMOUNT OF CONTRACT	MBE/WBE/ DBE/DVBE/ OBE	WBE/CV CERTIFIED

*\*For information only.* As appropriate, Proposer shall identify Subconsultants as:

Certified Minority Business Enterprise	MBE
Certified Woman Business Enterprise	WBE
Certified Disadvantaged Business Enterprise	DBE
Certified Disabled Veteran Business Enterprise	DVBE
Other Business Enterprise	OBE

*\*\*For information only.* As appropriate, Proposer shall indicate if Subconsultant is certified by: —

City of San Diego	CITY
State of California Department of Transportation	CALTRANS



## CONTRACT ACTIVITY REPORT

Consultants are required by contract to report subconsultant activity in this format. Reports shall be submitted via the Project Manager to the *Equal Opportunity Contracting Program (EOCP)* no later than thirty (30) days after the close of each quarter.

PROJECT: \_\_\_\_\_ PRIME CONSULTANT: \_\_\_\_\_

CONTRACT AMOUNT: \_\_\_\_\_ INVOICE PERIOD: \_\_\_\_\_ DATE: \_\_\_\_\_

Include Additional Services Not-To-Exceed Amount

Subconsultant	Indicate MBE, WBE, DBE, DVBE or OBE	Current Period		Paid to Date		Original Commitment	
		Dollar Amount	% of Contract	Dollar Amount	% of Contract	Dollar Amount	% of Contract
Prime Consultant Total:							
Contract Total:							

Completed by \_\_\_\_\_

**CONSULTANT 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\*] 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 "T"**

**BLACK MOUNTAIN RANCH NORTH NEIGHBORHOOD PARK**

**Preconstruction Meeting Agenda**

**Project Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_ **Time:** \_\_\_\_\_

**Work Order No:** \_\_\_\_\_ **Bid No:** \_\_\_\_\_

1. **Circulate Attendance Sheet**
2. **Introductions**
3. **District Engineer Comments**
4. **Equal Opportunity Contracting Program Comments**
5. **Survey Comments**
6. **City Materials Test Lab Comments**
7. **SDG&E Comments**
8. **SBC Telephone Comments**
9. **City Water Utility Comments**
10. **Traffic Engineering Comments**
11. **Communications and Electrical Comments**
12. **Landscape Advisor Comments**
13. **Consultant Comments**
14. **City Project Manager Comments**
15. **Items Specific to the Contract**
16. **Questions and Answers**
17. **Closing Remarks**

**CONSULTANT CERTIFICATION FOR A DRUG-FREE WORKPLACE**

**PROJECT TITLE:** \_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
Name under which business is conducted

has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the Subconsultants agreement to abide by the provisions of Section 4.9.1 subdivisions A through C of the policy as outlined.

Signed \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

RESOLUTION NUMBER R- 300868

ADOPTED ON SEP 26 2005

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE CITY MANAGER TO EXECUTE THE PARK PURCHASE, DEVELOPMENT, AND REIMBURSEMENT AGREEMENT FOR BLACK MOUNTAIN RANCH NORTH WITH BLACK MOUNTAIN RANCH, LLC., AND BMR CONSTRUCTION, INC.

WHEREAS, The Black Mountain Ranch (Subarea I) Plan, 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, designates a five (5.0) net useable acre parcel as a future neighborhood park site known as Black Mountain Ranch North Neighborhood Park; and

WHEREAS, Condition number 41 of Vesting Tentative Map 40-0528 requires the Subdivider to enter into an Agreement with the City for Property acquisition for the Black Mountain Ranch North Neighborhood Park, rough grading of the Property, design and construction of the neighborhood park facilities, contiguous half-width street improvements and utilities to serve the Property [Project], and to define the method of reimbursement for funds expended and work performed associated with such acquisition, grading, and construction; and

WHEREAS, City's Fiscal Year 2003 Black Mountain Ranch Public Facilities Financing Plan and Facilities Benefit Assessment [Financing Plan] adopted on January 14, 2003, by Resolution number R-297551, identifies the Project as Project number P-5 and identifies sources of funding for the Project; and



WHEREAS, This park project is included in the Fiscal Year 2006 Capital Improvement Program Budget as CIP#29-688.0, Black Mountain Ranch North Neighborhood Park.

WHEREAS, the Subdivider will advance all funds to design and construct the park, contiguous street improvements, and associated utilities. The Subdivider will be reimbursed for this work and acquisition of the park site pursuant to the attached agreement in either cash or Facilities Benefit Assessment credits. Cash reimbursements will occur as provided for in the FY2003 Black Mountain Ranch Public Facilities Financing Plan (PFFP) or as cash becomes available. The PFFP allows for reimbursement beginning in Fiscal Year 2007, but not until Subdivider has completed at least 1,320 dwelling units. If the park project is completed prior to reaching the 1,320 dwelling unit threshold, then the Subdivider shall maintain the park until such threshold is met, or for twenty-four months, whichever occurs first. This will ensure that the park is not constructed, and then maintained by the City, prior to the need for the park to serve the new residents.

WHEREAS, all approved costs associated with the design and construction of this project will be funded through the Black Mountain Ranch Facilities Benefit Assessment, Fund No. 79012. Annual maintenance costs, following the transfer of the Park to the City, are estimated to be approximately \$42,500. The funding for these costs will be requested as a new Park and Recreation facility in the fiscal year budget process in which the project is complete.

WHEREAS, this activity is adequately addressed in EIR Amendment #40-0528, Black Mountain Ranch North Village. There are no change in circumstances, additional information, or project changes to warrant additional environmental review; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager is authorized and empowered to execute, for and on behalf of City, an agreement with Black

Mountain Ranch, LLC. and BMR Construction, Inc. for acquisition and site development of the Black Mountain Ranch North Neighborhood Park, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR 300868, together with any reasonably necessary modifications or amendments thereto, which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of this Project and agreement.

BE IT FURTHER RESOLVED, that expenditure of an amount not to exceed \$2,250,000 from CIP No. 29-688.0, Black Mountain Ranch Neighborhood Park North, Facilities Benefit Assessment Fund No. 79012, is authorized for the purpose of providing funds for this Project, contingent upon certification by the City Auditor and Comptroller that revenues are available at the time reimbursement is scheduled for this Project.

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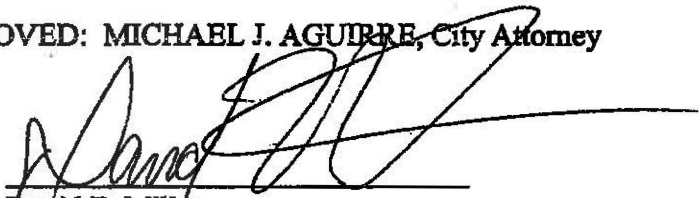
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**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

BE IT FURTHER RESOLVED, that the City Council recognizes the fact that this activity is covered under EIR Amendment #40-0528, Black Mountain Ranch North Village. The activity is adequately addressed in the environmental document and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. As the prior environmental document adequately covered this activity of part of the previously approved project, the City declares that the activity is not a separate project for the purposes of CEQA review per CEQA Guidelines Section 15060 (c)(3) as defined in Section 15378.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



David E. Miller  
Deputy City Attorney

DEM:aml  
08/09/05  
09/26/05 Cor. Copy  
Or.Dept:Park&Rec.  
Aud.Cert:N/A  
R-2006-136  
MMS#2318

Passed and adopted by the Council of San Diego on September 26, 2005 by the following vote:

**YEAS:** PETERS, ATKINS, YOUNG, MAIENSCHNEIN, 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: Manuel E. Ketcham, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R-300868, passed and adopted by the Council of The City of San Diego, California on September 26, 2005.

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

(SEAL)

By: Manuel E. Ketcham, Deputy  
Manuel E. Ketcham