

**DUPLICATE**

**FIRST AMENDMENT TO REIMBURSEMENT AGREEMENT FOR  
BLACK MOUNTAIN RANCH NORTH**

This First Amendment (First Amendment) to the Reimbursement Agreement for Black Mountain Ranch North (Reimbursement Agreement) is made and entered into on \_\_\_\_\_, 2020 (“Effective Date”) by and between the City of San Diego, a municipal corporation (the “City”), and BMR, LLC, a California Limited Liability Company, and BMR Construction Inc., a California corporation (“Developer”) for reimbursement of design and construction of certain public improvements included in the Black Mountain Ranch Public Facilities Financing Plan (“Financing Plan”). The City and Developer when referenced herein collectively shall be referred to as Party or Parties. This First Amendment is entered into with reference to the following recitals:

**RECITALS**

A. City Council approved the Reimbursement Agreement on file at the City Clerk's Office as Document No. RR-301820, dated August 7, 2006 for a term not to exceed fifteen (15) years (“Term”) to design and construct various public improvements located in the Black Mountain Ranch and surrounding communities and included in the Financing Plan.

B. The Term expires on September 5, 2021 and Developer will not complete all of the public improvements identified in Exhibit C of the Reimbursement Agreement.

C. The Parties wish to extend the Term to allow Developer to complete the remaining public improvements that are substantially complete, but require final inspection and closeout (“Projects”), identified and attached to this First Amendment as Exhibit A.

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

**AGREEMENT**

1. Any term or word that is defined in the Reimbursement Agreement shall be deemed to have the same meaning when it is used in this First Amendment, except when the context expressly states otherwise.

2. Section 4.1 is deleted in its entirety and replaced as follows:

Term of Agreement. Following the final passage of the City Council [Ordinance No. 00- 21235 authorizing this First Amendment and the subsequent execution of the same by the Parties, this First Amendment shall be effective upon the date it is executed by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, the First Amendment shall be effective until (i) the date the final reimbursement payment is made; or (ii) one year after the Warranty Bond terminates, whichever is later, but not to exceed ten (10) years.

Document No. 00- 21235-1  
Filed SEP 15 2020  
Office of the City Clerk  
San Diego, California

3. Any improvement(s) other than those listed in Exhibit A subsequently constructed by Developer and seeking reimbursement from the Black Mountain Ranch Facilities Benefit Assessment Fund will require the execution of a new, standalone reimbursement agreement.

4. All other provisions of the Reimbursement Agreement shall remain in full force and effect, unless otherwise amended as set forth herein.

IN WITNESS WHEREOF, this First Amendment is signed by both Parties and is executed on \_\_\_\_\_ 2020.

THE CITY OF SAN DIEGO,  
a municipal corporation

Date: 10/27/20

By: Elyse W. Lowe

Name: Elyse W. Lowe

Title: Director

Approved as to form:  
MARA W. ELLIOTT,  
City Attorney

By: [Signature] 10/28/2020

Katherine A. Malcolm  
Deputy City Attorney

BMR LLC,  
A California Limited Liability Company

00-21235-1

Date: 5/22/20

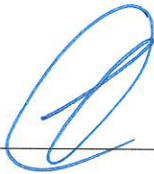
By:  \_\_\_\_\_

Name: Thomas Atkin

Title: Vice President

BMR Construction Inc.,  
A Delaware corporation

Date: 5/22/20

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

Name: Thomas Atkin

Title: Vice President

## Exhibit A

### List of Projects for Black Mountain Ranch North

- 1- Community Park Phase II – P-1 in the Financing Plan
- 2- Camino Del Sur Widening – T-10 in the Financing Plan
- 3- Camino Del Sur Wildlife Crossing – T-12 in the Financing Plan
- 4- Camino Del Sur Widening – T-14 in the Financing Plan
- 5- Carmel Valley Rd Widening – T-25.3 in the Financing Plan
- 6- Carmel Valley Rd Wildlife Crossing – T-27 in the Financing Plan
- 7- Rancho Bernardo Rd Widening – T-40 in the Financing Plan
- 8- West Bernardo Dr. @ Bernardo Center Dr. Intersection Improvement – T-45 in the Financing Plan
- 9- Paseo Del Sur Phase II – T-47.1 in the Financing Plan
- 10- Camino San Bernardo – T-47.2 in the Financing Plan

Item #55  
9/15/2020

(O-2021-11)

ORDINANCE NUMBER O- 21235 (NEW SERIES)

DATE OF FINAL PASSAGE SEP 22 2020

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING A FIRST AMENDMENT TO A REIMBURSEMENT AGREEMENT FOR BLACK MOUNTAIN RANCH NORTH AND A PARK DEVELOPMENT AGREEMENT FOR PROJECT NO. P-1, BLACK MOUNTAIN RANCH COMMUNITY PARK, IN THE BLACK MOUNTAIN RANCH COMMUNITY PLAN AREA.

WHEREAS, on November 27, 2001, by San Diego Resolution No. R-295794, the Council of the City of San Diego (City Council) granted Vesting Tentative Map No. 40-0528 (VTM) to Black Mountain Ranch, LLC, a California limited liability company, and BMR Construction, Inc., a California corporation (collectively, Developer), subject to certain conditions determined to be necessary for development of the Black Mountain Ranch Community Park project (Development); and

WHEREAS, effective June 21, 2017, by San Diego Resolution No. R-311199, the City Council adopted the Black Mountain Ranch Public Facilities Financing Plan for Fiscal Year 2017, on file in the Office of the City Clerk as Document No. RR-311199, (Financing Plan), which identifies Project No. P-1 Black Mountain Ranch Community Park and additional public improvements (Project), a component of the Development; and

WHEREAS, City Council approved a Reimbursement Agreement for Black Mountain Ranch North, dated September 5, 2006, pursuant to San Diego Resolution No. R-301820, which details the terms and conditions for the Project and reimbursement by Developer (Reimbursement Agreement); and

WHEREAS, the City of San Diego (City) and Developer desire to amend the Reimbursement Agreement to allow additional time for Developer to complete the Project (First Amendment); and

WHEREAS, Developer completed Phase I of the Project and is ready to begin the design and construction of Phase II of the Project and seek reimbursement for anticipated costs, in accordance with the Financing Plan (Park Development Agreement); and

WHEREAS, the Financing Plan sets forth \$9,677,642 for the Project, which constitutes the total and maximum funds potentially available for reimbursement by the City to Developer; and

WHEREAS, under Charter section 99, no contract, agreement or obligation extending for a period of more than five years may be authorized except by ordinance approved by a two-thirds majority vote of the City Council; NOW, THEREFORE,

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

Section 1. The First Amendment, a copy of which is on file in the Office of the City Clerk as Document No. OO- 21235<sup>-1</sup>, is approved.

Section 2. The Park Development Agreement, a copy of which is on file in the Office of the City Clerk as Document No. OO- 21235<sup>-2</sup>, is approved.

Section 3. The Chief Financial Officer, as delegated, is authorized to appropriate and expend an amount not to exceed \$9,677,642 from Fund No. 400091, Black Mountain Ranch Facilities Benefit Assessment, in accordance with the Reimbursement Agreement, First Amendment, and Park Development Agreement, contingent on certification by the Chief Financial Officer that funds necessary for expenditure are available.

Section 4. The Chief Financial Officer, upon advice from the administering department, is authorized to transfer excess funds, if any, to the appropriate reserves.

Section 5. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 6. That this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Katherine A. Malcolm  
Katherine A. Malcolm  
Deputy City Attorney

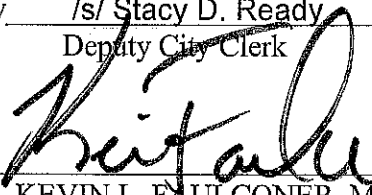
KAM:soc  
07/23/2020  
Or.Dept: Facilities Financing  
Doc. No.: 2403811

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 09/15/2020.

ELIZABETH S. MALAND  
City Clerk

By /s/ Stacy D. Ready  
Deputy City Clerk

Approved: 9/22/2020  
(date)

  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

(The date of final passage is September 22, 2020, which represents the day this ordinance was returned to the Office of the City Clerk with the Mayor's signature of approval.)

Passed by the Council of The City of San Diego on SEP 15 2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage SEP 22 2020

AUTHENTICATED BY:

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

(Seal)

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

By *Sty Brady*, Deputy

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

AUG 04 2020, and on SEP 22 2020

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

(Seal)

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

By *Sty Brady*, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- <u>21235</u>



Passed by the Council of The City of San Diego on September 15, 2020, by the following vote:

**YEAS:** **BRY, CAMPBELL, WARD, MONTGOMERY, KERSEY, CATE, SHERMAN,  
MORENO & GÓMEZ.**

**NAYS:** **NONE.**

**NOT PRESENT:** **NONE.**

**RECUSED:** **NONE.**

AUTHENTICATED BY:

**KEVIN L. FAULCONER**

Mayor of The City of San Diego, California

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(Seal)

By: **Stacy D. Ready**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of ORDINANCE NO. **O-21235** (New Series) of The City of San Diego, California.

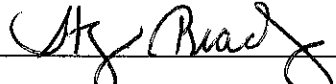
I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on **August 4, 2020**, and on **September 22, 2020**.

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

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy