

**AGENDA
SPECIAL CITY COUNCIL MEETING
CITY OF BANNING
BANNING, CALIFORNIA**

September 27, 2016
3:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

I. CALL TO ORDER

- Roll Call – Councilmembers Franklin, Miller, Moyer, Peterson, Mayor Welch

II. PUBLIC COMMENTS – *On Items Not on the Agenda*

A five-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. No member of the public shall be permitted to "share" his/her five minutes with any other member of the public. (Usually, any items received under this heading are referred to staff or future study, research, completion and/or future Council Action.) (See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

III. WORKSHOP

1. Review and discuss the Development Agreement between the City of Banning and Rancho San Gorgonio, LLC **1**
(Staff Report – Rochelle Clayton, Deputy City Manager/Administrative Services Director)

IV. ADJOURNMENT

Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Friday, 8 a.m. to 5 p.m.

The City of Banning promotes and supports a high quality of life that ensures a safe and friendly environment, fosters new opportunities and provides responsive, fair treatment to all and is the pride of its citizens.

NOTICE: Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public.

Any member of the public may address this meeting of the Mayor and Council on any item which does not appear on the agenda, but is of interest to the general public and is an item upon which the Mayor and Council may act. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (951) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II]



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Rochelle Clayton, Deputy City Manager

MEETING DATE: September 27, 2016

SUBJECT: Review and Discuss the Development Agreement between the City of Banning and Rancho San Gorgonio, LLC.

RECOMMENDATION:

Review and Discuss the Development Agreement between the City of Banning and Rancho San Gorgonio, LLC.

BACKGROUND:

The purpose of this workshop item is to introduce the development agreement and deal points of the agreement. Listed below some of the major deal points of the agreement:

- Term is 30 years with an option to extend 5 years on the condition that the Developer has completed 1,000 homes and is not in default of the agreement. A second option to extend 5 years is available on the condition that the Developer has completed 2,000 homes and is not in default. The term of the agreement, with extensions, may not exceed 40 years.
- Developer shall receive credit for improvements against certain Development Impact Fees.
- Developer shall construct four publicly accessible parks, ranging from 1 acre to 25 acres, including park facilities and a community center.
- Developer shall construct and install improvements relating to water connections, treatment and transmission, reclaimed water, and wastewater treatment.
- Developer shall dedicate 1 acre of land for a fire station, where they will construct a "super pad" with wet utilities stubbed to the site at time of dedication
- Developer shall contribute up to \$10M for TUMF Improvements, where the City or Developer may construct the TUMF Project, and Developer shall receive TUMF credits against the Project. This allows 100% of the TUMF Fee to apply to the City's TUMF Project. (City has identified the Sunlakes Extension Project).
- Developer shall make improvements to intersections where Project impacts are greater than 50%, and shall pay the City for their share of impacts less than 50%.

ATTACHMENTS:

- A. Proposed Development Agreement between the City of Banning and Rancho San Gorgonio, LLC.

Prepared by:



Rochelle Clayton
Deputy City Manager

Reviewed and Approved by:



Michael Rock
City Manager

WHEN RECORDED RETURN TO:
City Clerk
City of Banning
99 E. Ramsey Street
Banning, CA 92220

No Recording Fee Required – Government Code Section 27383

DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF BANNING

(“CITY”)

AND

**RANCHO SAN GORGONIO, LLC,
a Delaware limited liability company**

(“DEVELOPER”)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into on _____, 2016, between the CITY OF BANNING, a California municipal corporation and general law city (the “**City**”), and RANCHO SAN GORGONIO, LLC, a Delaware limited liability company (the “**Developer**”), pursuant to Article 2.5 of Chapter 4 of Division 1 of Title 7, §§ 65864 through 65869.5 of the Government Code. The City and the Developer shall be referred to within this Agreement jointly as the “**Parties**” and individually as a “**Party**”.

RECITALS:

A. Capitalized Terms. The capitalized terms used in these Recitals and throughout this Agreement shall have the meaning assigned to them in Section 1. Any capitalized terms not defined in Section 1 shall have the meaning otherwise assigned to them in this Agreement or apparent from the context in which they are used.

B. Development of the Developer’s Property. Developer has legal title to that certain real property of approximately 831 acres in size, a portion of which is located within the jurisdictional boundaries of City, commonly known as Rancho San Gorgonio and more particularly described on **Exhibit “A”** attached hereto and incorporated herein by this reference (the “**Developer’s Property**”). Concurrent with the approval of this Agreement, the City has approved the Specific Plan, which contemplates very low, low, medium and medium-high density residential development, to a maximum total of 3,385 dwelling units, 9.3 acres of neighborhood commercial development, parks and other public uses, and a general plan amendment and a zone change for the Developer’s Property, and City has certified a Final Environmental Impact Report for said project, State Clearinghouse No. 2015041064.

C. Legislation Authorizing Development Agreements. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Statute, authorizing the City to enter into an agreement with any person having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein. The legislative findings and declarations underlying the Development Agreement Statute and the provisions governing contents of development agreements state, in Government Code §§ 65864(c) and 65865.2, that the lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing, and that applicants and local governments may include provisions in development agreements relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

D. Intent of the Parties. The Developer and the City have determined that the Project is a development for which a development agreement is appropriate. The Parties desire to define the parameters within which the obligations of the Developer for infrastructure and public improvements and facilities will be met and to provide for the orderly development of the Developer’s Property, assist in attaining the most effective utilization of resources within the City and otherwise achieve the goals of the Development Agreement Statute.

E. Purpose of Agreement. The purpose of this Agreement is to facilitate the implementation of the Project Approvals through the development of the Project, thereby realizing the public benefits to the City and private benefits to Developer, including those described in these Recitals. The development of the Project requires a major investment by the Developer in public facilities, substantial front-end investment in on-site and off-site improvements, dedications of land, participation in other programs for public benefit and purposes, and substantial commitments of resources to achieve both private benefits of the Project for the Developer and the public purposes and benefits of the Project for the City. The Developer will be unable to make and realize the benefits from such commitments of land and resources without the assurances of a realized Project provided by this Agreement.

F. Additional Obligations of Developer. Some or all of those expenditures and dedications of land by Developer specified in this Agreement may be over and above those that City could require of Developer in the normal course of granting project approvals. Developer is willing to make said additional expenditures and/or grant such additional dedications in consideration for receiving the benefits conferred on Developer by this Agreement.

G. City Findings of Public Interest. City desires the timely, efficient, orderly, and proper development of the Project, and believes it is in the public interest to accept the benefits conferred by the additional expenditures and additional dedications by Developer referred to above. City further believes it is in the public interest to provide for the vesting of Developer's rights to develop the Project in conformance with the Project Approvals and the terms and conditions contained herein so that such vested rights shall not be disturbed by changes in laws, rules, or regulations, including measures passed by initiative, that occur after the Effective Date of this Agreement.

H. Public Benefits of the Project. This Agreement provides assurances that the public benefits identified below in this Recital H will be achieved in accordance with the terms of this Agreement. Developer is willing, pursuant to the terms of this Agreement, to make expenditures and provide benefits to the City including, without limitation, construction of improvements in a manner that benefits a wider area, and mitigates impacts resulting in part from certain existing conditions and cumulative development in addition to those impacts caused by the Project, thus conferring a public benefit on the City. The Project will provide local and regional public benefits to the City, including, without limitation:

1. Increased Tax Revenues. The development of the Developer's Property in accordance with the terms of this Agreement will result in increased real property and sales taxes and other revenues to the City.

2. Reduced Vehicle Miles Travelled. The Project will reduce vehicle trips by implementing a transportation demand management program that takes advantage of alternative modes of mass transit within the City.

3. Pedestrian Mobility. The Project encourages pedestrian mobility through the provision of walking paths, through signage guiding pedestrians to nearby destinations and through preservation of significant open space to create pleasant environments that will encourage walking.

4. Sustainable Design. The Developer will, to the extent reasonably feasible, include sustainable design for commercial and industrial uses and green building standards for residential construction.

5. Pedestrian Connection. The Project will include a series of public pedestrian trails throughout the Developer's Property.

6. Reduced Traffic Congestion. The Project will include improvements and contribute fees to improvements that will reduce congestion on local streets and the regional transportation network. In addition, the Project may fund additional regional transportation improvements in excess of those required to serve the Project.

7. Parks and Recreation and Community Facilities. Park and recreation and community facilities improvements, a portion of which may be in excess of normal City requirements, including:

- (a) approximately 50 acres of community and neighborhood parks,
- (b) a 12,000 square foot community center facility, and
- (c) approximately 160 acres of paseos, trails and other open space.

8. Employment. Providing both short-term construction employment and long-term permanent employment within the City.

9. Goals. Fulfilling long-term economic and social goals for the City and surrounding communities.

I. Public Hearings: Findings. In accordance with the requirements of the California Environmental Quality Act (Public Resources Code § 21000, et seq. ("CEQA")), appropriate studies, analyses, reports and documents were prepared and considered by the Planning Commission and the City Council. The Planning Commission, after a public hearing on _____, recommended, and the City Council, after making appropriate findings, certified, by Resolution No. _____ adopted on _____ a Final Environmental Impact Report for the Project, more specifically identified as the Final Environmental Impact Report for the Rancho San Geronio Specific Plan, State Clearinghouse No. _____, as having been prepared in compliance with CEQA. On _____, the Planning Commission, after giving notice pursuant to Government Code §§ 65090, 65091, 65092 and 65094, held a public hearing on the Developer's application for this Agreement. On _____, the City Council, after providing the public notice required by law, held a public hearing to consider the Developer's application for this Agreement. The Planning Commission and the City Council have found on the basis of substantial evidence based on the entire administrative record, that this Agreement is consistent with all applicable plans, rules, regulations and official policies of the City.

J. Consistency Findings. The City Council has found that, among other things, this Agreement is consistent with the City's General Plan; that this Agreement is compatible with the uses authorized in, and the regulations prescribed for, the Property; that this Agreement is in conformity with public convenience, general welfare, and good land use practice; that this Agreement will not be detrimental to the health, safety, or general welfare; and that this Agreement

will not adversely affect the orderly development of property or the preservation of property values.

K. Mutual Agreement. Based on the foregoing and subject to the terms and conditions set forth herein, City has determined that development of the Developer's Property is appropriate for a development agreement under the Development Agreement Statute, and Developer and City desire to enter into this Agreement on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and having determined that the foregoing recitals are true and correct and should be, and hereby are, incorporated into this Agreement, the Parties agree as follows:

1. DEFINITIONS.

The following words and phrases are used as defined terms throughout this Agreement. Each defined term shall have the meaning set forth below.

1.1 Acquisition Agreement. "**Acquisition Agreement**" shall have the meaning set forth in Section 5.1 below.

1.2 A Map. "**A Map**" means a map within the meaning of the Subdivision Map Act, as further defined in Section 9.8.

1.3 Anniversary Date. "**Anniversary Date**" means the date of the anniversary of each year following the Effective Date established in Section 3.5.

1.4 Annual Review. "**Annual Review**" means the annual review of the Developer's performance of the Agreement in accordance with Section 12.1 of the Agreement and Government Code § 65865.1.

1.5 Applications. "**Application(s)**" means a complete application for the applicable land use approvals (such as a subdivision map, conditional use permit, etc.) meeting all of the current ordinances of the City provided that any additional or alternate requirements in those ordinances enacted after the Effective Date which affect the Project application shall apply only to the extent permitted by this Agreement.

1.6 Authorizing Ordinance. "**Authorizing Ordinance**" means Ordinance No. _____ approving this Agreement, introduced on _____, 2016, and adopted on _____, 2016.

1.7 Building Permit. "**Building Permit**", with respect to any building or structure to be constructed on the Developer's Property, means a building permit for not less than the shell and core of such building or structure issued by the City's Division of Building and Safety.

1.8 CC&Rs. "**CC&Rs**" shall have the meaning set forth in Section 14.4 below.

1.9 Certificate of Occupancy. “**Certificate of Occupancy**”, with respect to a particular building or other work of improvement, means the final certificate of occupancy issued by the City with respect to such building or other work of improvement.

1.10 CFD. “**CFD**” means a community facilities district allowed to be formed pursuant to the CFD Act by a Local Agency.

1.11 CFD Act. “**CFD Act**” means the Mello-Roos Community Facilities Act of 1982 (Government Code § 53311 et seq.), as it may be amended from time to time.

1.12 City. “**City**” means the City of Banning, California.

1.13 City Council. The “**City Council**” means the governing body of the City.

1.14 City Development Agreement Ordinance. “**City Development Agreement Ordinance**” means Chapter 17.60 of the Zoning Ordinance which establishes a procedure for the consideration and approval of development agreements pursuant to the Development Agreement Statute.

1.15 City Manager. “**City Manager**” means the City Manager of City.

1.16 City Wide Traffic Improvements. “**City Wide Traffic Improvements**” means those traffic improvements identified in the Traffic Impact Mitigation Fee established in Article 7.

1.17 Claims or Litigation. “**Claims or Litigation**” means any challenge by adjacent owners or any other third parties (i) to the legality, validity or adequacy of the General Plan, Land Use Regulations, this Agreement, Development Approvals or other actions of the City pertaining to the Project, or (ii) seeking damages against the City as a consequence of the foregoing actions, for the taking or diminution in value of their property or for any other reason.

1.18 Dedicate or Dedication. “**Dedicate**” or “**Dedication**” means to offer the subject land to the City.

1.19 Default. “**Default**” refers to any material default, breach, or violation of a provision of this Development Agreement as defined in Section 13 below. “**City Default**” refers to a Default by the City, while “**Developer Default**” refers to a Default by the Developer.

1.20 Developed Property. “**Developed Property**” shall mean residential property for which a certificate of occupancy has been issued or a final inspection conducted.

1.21 Developer. “**Developer**” means Rancho San Gorgonio, LLC, a Delaware limited liability company, and its successors and assigns.

1.22 Developer’s Property. “**Developer’s Property**” means the 831 acres of land, more or less, described in **Exhibit “A”** in which Developer holds a legal or equitable interest and upon which the Project will be developed.

1.23 Develop or Development. “**Develop**” or “**Development**” means the improvement of the Developer’s Property for purposes of effecting the structures, improvements and facilities composing the Project including, without limitation: grading, the construction of infrastructure and public facilities related to the Project, whether located within or outside the Developer’s Property, and formation of CFDs for Eligible Facilities; the construction of structures and buildings; the installation of landscaping; and the operation, use and occupancy of, and the right to maintain, repair, or reconstruct, any private building, structure, improvement or facility after the construction and completion thereof, provided that such repair, or reconstruction takes place during the Term of this Agreement on parcels subject to this Agreement.

1.24 Development Agreement Statute. “**Development Agreement Statute**” means §§ 65864 through 65869.5 of the Government Code as it exists on the Effective Date.

1.25 Development Approvals. “**Development Approvals**” means all site-specific (meaning specifically applicable to the Developer’s Property only and not generally applicable to some or all other properties within the City) plans, maps, permits, and entitlements to use of every kind and nature. Development Approvals includes, but is not limited to, specific plans, site plans, tentative and final subdivision maps, vesting tentative maps, variances, zoning designations, planned unit developments, conditional use permits, grading, building and other similar permits, the site-specific provisions of general plans, environmental assessments, including environmental impact reports, and any amendments or modifications to those plans, maps, permits, assessments and entitlements. The term Development Approvals does not include rules, regulations, policies, and other enactments of general application within the City.

1.26 Development Goals. “**Development Goals**” shall have the meaning set forth in Section 6.2 below.

1.27 Development Impact Fees. “**Development Impact Fees**” or “**DIFs**” means the monetary consideration, other than a tax or assessment, charged or collected by the City in connection with mitigating the Project’s specific impacts and the development of the public facilities related to the Development of the Project, including those fees, calculated on the basis of the number of residential units or square footage of non-residential development to be constructed, as set forth on **Exhibit “D”** attached hereto as well as those Development Impact Fees which may be amended or adopted in accordance with Section 6.5.2 hereof. Development Impact Fees do not include Processing Fees.

1.28 Development Plan. “**Development Plan**” means the Existing Development Approvals, Future Development Approvals and Existing Land Use Regulations.

1.29 Director. “**Director**” means the City’s Director of Community Development or equivalent official.

1.30 Effective Date. “**Effective Date**” means the date this Agreement becomes effective as set forth in Section 3.5.

1.31 Eligible Facilities. “**Eligible Facilities**” means the Proposed Project Facilities and other public facilities, fees and contributions for public facilities, as described in the Financing Plan.

1.32 Estoppel Certificate. “**Estoppel Certificate**” shall mean a certificate substantially in the form attached hereto as **Exhibit “C”**. The Parties will cooperate if a request for ministerial or nonmaterial changes to said form of estoppel certificate is reasonably requested by a third party hereafter dealing with City, Developer, or the Developer’s Property.

1.33 Exaction. “**Exaction**” means Dedications, payment of Development Impact Fees and/or construction of public infrastructure by the Developer as part of the Development of the Project. .

1.34 Existing Development Approvals. “**Existing Development Approvals**” means only the Development Approvals which are listed on **Exhibit “B”**.

1.35 Existing Land Use Regulations. “**Existing Land Use Regulations**” means those Land Use Regulations applicable to the Property in effect on the Effective Date, including the City General Plan; City Subdivision Ordinance, Municipal Code Title 16; City Zoning Code, Municipal Code Title 17; City Grading, Erosion and Sediment Control Ordinance, Municipal Code Title 18; and all other ordinances, resolutions, rules and regulations, and written adopted policies of the City governing the development and use of the Property.

1.36 Financing Plan. “**Financing Plan**” means **Exhibit “G”** attached hereto.

1.37 Flood Control District. “**Flood Control District**” means the Riverside County Flood Control and Water Conservation District.

1.38 Force Majeure. “**Force Majeure**” shall have the meaning set forth in Section 19.2 below.

1.39 Future Development Approvals. “**Future Development Approvals**” means those Development Approvals applicable to the Developer’s Property approved by the City after the Effective Date such as tentative tract maps, subdivision improvement agreements and other more detailed planning or engineering approvals.

1.40 General Plan. “**General Plan**” means the City’s General Plan as it exists on the Effective Date, and as expressly amended by (i) General Plan Amendment No. 13-2503 approved by the City Council concurrently with this Agreement; and (ii) future amendments applicable to the Developer’s Property, if permitted, by Article II.

1.41 Goals and Policies for Financing. “**Goals and Policies for Financing**” or “**Goals and Policies**” means the City’s goals and policies for CFDs adopted in accordance with Section 5.1.

1.42 Grading Permit. “**Grading Permit**” means a permit issued by the City’s Division of Building and Safety which allows the excavation or filling, or any combination thereof, of earth.

1.43 Improvement Area. “**Improvement Area**” shall have the meaning set forth in Section 5.1 below.

1.44 Innocent Owner. “**Innocent Owner**” shall have the meaning set forth in Section 13.6 below.

1.45 LAFCO. “**LAFCO**” means the Riverside County Local Agency Formation Commission.

1.46 Land Use Regulations. “**Land Use Regulations**” means those ordinances, laws, statutes, rules, regulations, initiatives, policies, requirements, guidelines, constraints, codes or other actions of the City which affect, govern, or apply to the Developer’s Property or the implementation of the Development Plan. Land Use Regulations include the ordinances and regulations adopted by the City which govern permitted uses of land, density and intensity of use and the design of buildings, applicable to the Property, including, but not limited to, the General Plan, the Specific Plan, zoning ordinances, development moratoria, implementing growth management and phased development programs, ordinances establishing development exactions, subdivision and park codes, any other similar or related codes and building and improvements standards, mitigation measures required in order to lessen or compensate for the adverse impacts of a project on the environment and other public interests and concerns or similar matters. The term Land Use Regulations does not include, however, regulations relating to the conduct of business, professions, and occupations generally; taxes and assessments; regulations for the control and abatement of nuisances; building codes; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; any exercise of the power of eminent domain; or similar matters.

1.47 Local Agency. “**Local Agency**” means any public agency authorized to levy, create or issue any form of land secured financing over all or any part of the Project, including, but not limited to, the City.

1.48 Lot. “**Lot**” means any of the parcels legally created within the Project as a result of any approved final subdivision, parcel or tract map, pursuant to the Subdivision Map Act or recordation of a condominium plan pursuant to Civil Code § 1352 .

1.49 Major Review. “**Major Review**” means the review performed upon the 6th, 14th, 22nd, 30th, 35th and 40th anniversaries of the Effective Date as provided in Section 6.5.

1.50 Master Tract Map. “**Master Tract Map**” means Tract Map No. 36586 covering all Planning Areas which may include all infrastructure necessary to Develop the tract and a Phasing Plan as to the development of the infrastructure and the subsidiary subdivisions within the tract. The Master Tract Map is a subdivision map within the meaning of the Subdivision Map Act and shall meet the requirements of the Act and of this Agreement.

1.51 Mortgage. “**Mortgage**” means a mortgage, deed of trust, sale and leaseback arrangement or other transaction in which all, or any portion of, or any interest in, the Developer’s Property is pledged as security.

1.52 Mortgagee. “**Mortgagee**” refers to the holder of a beneficial interest under a Mortgage.

1.53 Mortgagee Successor. “**Mortgagee Successor**” means a Mortgagee or any third party who acquires fee title or any rights or interest in, or with respect to, the Developer’s Property, or any portion thereof, through foreclosure, trustee’s sale, deed in lieu of foreclosure, lease termination, or otherwise from, or through, a Mortgagee. If a Mortgagee acquires fee title or any right or interest in, or with respect to, the Developer’s Property, or any portion thereof, through foreclosure, trustee’s sale or by deed in lieu of foreclosure and such Mortgagee subsequently conveys fee title to such portion of the Developer’s Property to a third party, then such third party shall be deemed a Mortgagee Successor.

1.54 Municipal Code. “**Municipal Code**” means the City’s Municipal Code as it existed on the Effective Date and as it may be amended from time to time consistent with the terms of this Agreement.

1.55 Non-Defaulting Party. “**Non-Defaulting Party**” shall have the meaning set forth in Section 13.1 below.

1.56 Owner. “**Owner**” means Rancho San Gorgonio, LLC, a Delaware limited liability company, and any successors during the period of time that each such person or entity owns fee title to any portion of the Developer’s Property prior to the development of such portion of the Developer’s Property and subject to the terms of this Agreement.

1.57 Park Fees. “**Park Fees**” means Development Impact Fees levied by the City for Open Space and Park Development pursuant to Chapter 15.68 of the Municipal Code.

1.58 Phasing Plans. “**Phasing Plans**” shall mean the detailed plans for development of the Proposed Project Facilities and other infrastructure and for the Project which are developed pursuant to Section 6.4 as a part of processing the Subdivision Maps.

1.59 Planning Area. “**Planning Area**” means each of the 44 planning areas described in the Specific Plan, and shown on **Exhibit “A”**.

1.60 Planning Commission. “**Planning Commission**” means the City’s Planning Commission.

1.61 Property Owner’s Association or POA. “**Property Owner’s Association**” or “**POA**” means one or more associations formed among the owners of real estate located within the Property (as the same may be subdivided from time to time), including, but not limited to, one or more associations of homeowners and/or other associations of owners of industrial, commercial, educational and retail property.

1.62 Processing Fees. “**Processing Fees**” means (i) the City’s normal fees for processing, environmental assessment/review, tentative tracts/parcel map review, plan checking, site review, site approval, administrative review, building permit (plumbing, mechanical, electrical, building), inspection and similar fees imposed to recover the City’s costs associated with processing, review and inspection of applications, plans, specifications, etc., and (ii) fees and charges levied by any other public agency, utility, district or joint powers authority, whether or not City is a member of such body or such fees are collected by the City, and whether or not such fees are used for maintenance or capital outlay purposes.

1.63 Project. “**Project**” means the Development of the Developer’s Property, pursuant to this Agreement and the Existing Land Use Regulations, as depicted on **Exhibit “A”** attached hereto.

1.64 Proposed Project Facilities. “**Proposed Project Facilities**” means all improvements of the Project, installed or to be installed by Developer during the Term on and within the Developer’s Property and the lands subdivided in the Master Tract Map, including, but not limited to, the improvements set forth or described in the Specific Plan, the Conditions of Approval for Tentative Tract Map 36586, the Master Plan of Water, Master Plan of Sewer, Master Plan of Drainage, Traffic Impact Analysis, Final Water Quality Management Plan, and all amendments and succeeding documents related thereto.

1.65 Reimburse or Reimbursement. “**Reimburse**” or “**Reimbursement**” means the provision by the City of cash or credit in return for land, improvements, goods or services provided to the City by the Developer.

1.66 Reservation of Authority. “**Reservation of Authority**” shall have the meaning set forth in Article II below.

1.67 Specific Plan. “**Specific Plan**” means the Rancho San Gorgonio Specific Plan, prepared by RBF Consulting and approved by the City Council by Ordinance No. __ introduced on _____, 2016, and adopted on _____, 2016.

1.68 Subdivision Map. “**Subdivision Map**” (or “**B Map**”) means the subsidiary subdivision maps for the Development of any Planning Area or portion thereof which shall be consistent with the conditions of the Master Tract Map and shall contain its own Phasing Plan for the installation of the infrastructure and other improvements within the subdivision. All subdivision maps shall meet the requirements of the Subdivision Map Act.

1.69 Subdivision Map Act. “**Subdivision Map Act**” means Government Code § 66412 et seq. as implemented by Title 16 of the Municipal Code.

1.70 Taxes. “**Taxes**” means general or special taxes, including but not limited to ad valorem property taxes, sales taxes, transient occupancy taxes, utility taxes or business taxes of general applicability citywide which do not burden the Developer’s Property disproportionately to similar types of development in the City and which are not imposed as a condition of approval of a development project. Taxes do not include Development Impact Fees or Processing Fees.

1.71 Term. “**Term**” means that period of time during which this Agreement shall be in effect and bind the Parties, as defined in Article 3 below.

1.72 Traffic Control Facility Fee. “**Traffic Control Facility Fee**” means the DIF set forth in **Exhibit “D”** attached hereto, as it may be amended pursuant to Section 6.5.2 hereof.

1.73 TUMF. “**TUMF**” means the Transportation Uniform Mitigation Fee promulgated by the Western Riverside Council of Governments and implemented by Chapter 15.76 of the Municipal Code.

1.74 Zoning Code. “**Zoning Code**” means Title 17 of the Municipal Code as it existed on the Effective Date except (i) as amended by any zone change relating to the Developer’s Property approved concurrently with the approval of this Agreement, including Zone Change No. 13-3501, and (ii) as the same may be further amended from time to time consistent with this Agreement.

2. EXHIBITS.

The following are the Exhibits to this Agreement:

Exhibit “A”: Map and Legal Description of the Developer’s Property

Exhibit “B”: Existing Development Approvals

Exhibit “C”: Estoppel Certificate

Exhibit “D”: Development Impact Fees

Exhibit “E”: [Intentionally Omitted]

Exhibit “F”: [Intentionally Omitted]

Exhibit “G”: Rancho San Geronio Project Financing Plan

Exhibit “H”: Form of Assignment and Assumption Agreement

Exhibit “I”: Summary of Prevailing Wage Requirements

Exhibit “J”: Form of TUMF Credit Agreement

3. TERM.

3.1 Term. The term of this Development Agreement (the “**Term**”) shall commence on the Effective Date and shall continue for a period of thirty (30) years. In addition, Developer shall have two options to extend the Term for periods of five (5) additional years each (the “**Options**”), at Developer’s sole discretion. Developer may exercise the first Option at any time prior to expiration of the Term by written notice to the City upon satisfaction of the following conditions: (a) one thousand (1,000) homes within the Project have been completed and have received certificates of occupancy from the City, and (b) Developer is not in default of its obligations under this Agreement at the time of exercise of the Option, and there is no other failure of Developer to perform hereunder at the time of exercise of the first Option which would become a default upon the passage of time. Developer may exercise the second Option at any time prior to expiration of the Term (as extended by the first Option) by written notice to the City upon satisfaction of the following conditions: (a) two thousand (2,000) homes within the Project have been completed and have received certificates of occupancy from the City, and (b) Developer is not in default of its obligations under this Agreement at the time of exercise of the Option, and there is no other failure of Developer to perform hereunder at the time of exercise of the second Option which would become a default upon the passage of time.

3.2 Termination Upon Completion of Construction. This Agreement shall terminate with respect to any Lot, and such Lot shall be released and no longer subject to this Agreement, without the execution or recordation of any further document, when a certificate of occupancy has been issued for the last building on the Lot or, if no certificate is issued, when the final inspection for the last building on the Lot has taken place. Notwithstanding the foregoing, City shall cooperate in the execution of any further documentation or releases in recordable form that may be reasonably requested by Developer or the title insurer of the purchaser or mortgagee of any Lot so that title to such Lot shall be insured free and clear of this Agreement.

3.3 Termination for Default. This Agreement may be terminated due to the occurrence of any default in accordance with California law and the procedures in Article 13.

3.4 Effective Date. This Agreement shall become effective upon the date thirty (30) days after the adoption of the Authorizing Ordinance if no Claim or Litigation have been filed which would prevent the Authorizing Ordinance from taking effect. If such a Claim or Litigation has been filed, then the Effective Date shall be the date that the Claim or Litigation has been successfully resolved by final judgment or dismissal with prejudice in City's favor, so that the Authorizing Ordinance shall be effective. The City shall give Developer notice as to the date established as the Effective Date. The Effective Date shall not otherwise be tolled for any other event of Force Majeure as described in Section 19.2.

4. DEVELOPMENT OF THE DEVELOPER'S PROPERTY.

4.1 Right to Develop. During the Term, the Developer shall have a vested right to develop the Developer's Property (subject to Article 11 below) to the full extent permitted by the Development Plan and this Agreement. Except as provided within this Agreement, the Development Plan shall exclusively control the development of the Developer's Property (including the uses of the Developer's Property, the density or intensity of use, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes and the design, improvement and construction standards and specifications applicable to the Project). The maximum number of residential units authorized to be constructed hereunder and the approximate acreage of commercial development, without regard to any density bonus or incentive or concession for child care pursuant to Government Code §§ 65915 through 65918 or other similar legislation or regulation, is 3,385 units and approximately 9.3 acres of commercial development. In furtherance of the foregoing, the Developer retains the right to apportion the uses, intensities and densities, between itself and any other Owners, upon the sale, transfer, or assignment of any portion of the Developer's Property, so long as such apportionment is consistent with the Existing Land Use Regulations and this Agreement. In addition, in order to implement the density transfer provisions of the Specific Plan and notwithstanding any other provisions of the Specific Plan to the contrary, the City agrees that in connection with a transfer of units to an area designated as "Low Density Residential" the density of such area may be up to eight (8) dwelling units per acre.

4.2 Right To Future Approvals. Subject to the City's exercise of its police power authority as specified in Article 11 below, the Developer shall have a vested right: (i) to receive from the City all future Development Approvals for the Developer's Property that are consistent with, and implement, the Existing Land Use Regulations and this Agreement; (ii) not to

have such approvals be conditioned or delayed for reasons which are inconsistent with the Existing Land Use Regulations or this Agreement; and (iii) to Develop the Developer's Property in a manner consistent with such approvals in accordance with the Existing Land Use Regulations and this Agreement. All future Development Approvals for the Developer's Property, including without limitation General Plan amendments, zone changes, or parcel maps or tract maps, shall upon approval by the City, be vested in the same manner as provided in this Agreement for the Existing Land Use Regulations, for the Term of this Agreement.

4.3 Existing Development Approvals. Only those items specifically set forth on **Exhibit "B"** hereto are deemed Existing Development Approvals for purposes of this Agreement. Any approvals not included within **Exhibit "B"** shall not apply to the Project with the exception of those reservations set forth in Article 11 below.

4.4 Specific Plan. Land use and Development of the Property shall be governed by the Specific Plan and this Agreement. Notwithstanding any other provision of this Agreement, the Developer shall have the right, but not the obligation, to Develop the Developer's Property for the uses specified in the Specific Plan at the locations specified in the Specific Plan.

4.5 Priority Of Specific Plan. The City has determined that the Specific Plan is consistent with the General Plan and the Zoning Code. As such, the Specific Plan shall be the primary document governing the use and Development of the Developer's Property and, in the event of a conflict, shall prevail over any other of the Existing Land Use Regulations except for this Agreement, which prevails over the Specific Plan.

4.6 Later Enacted Measures. This Agreement is a legally binding contract which will supersede any initiative, measure, moratorium, statute, ordinance, or other limitation enacted after the Effective Date, except as provided in Article 11. Any such enactment which affects, restricts, impairs, delays, conditions, or otherwise impacts the implementation of the Development Plan (including the issuance of all necessary Future Project Approvals or permits for the Project) in any way contrary to the terms and intent of this Agreement shall not apply to the Project unless otherwise mandated by State law.

5. FINANCING AND THE CITY'S OBLIGATIONS.

5.1 Adoption of Goals and Policies. Within ninety (90) days following the Effective Date and in accordance with Government Code Section 53312.7, the City shall adopt goals and policies governing the use of the Mello-Roos Community Facilities Act of 1982, and such goals and policies shall thereafter be the Goals and Policies. The Goals and Policies shall be consistent with the Financing Plan or, if inconsistent, the inconsistent provisions in the Financing Plan shall be controlling with respect to the Project. The City may amend the Goals and Policies from time to time, but such amendments shall not be applicable to the Project unless they are consented to by the Developer.

5.2 Formation of CFD(s). Subject to the provisions of this Article 5, the Parties intend that some or all of the Eligible Facilities shall be funded through the City's formation of one or more CFDs and the levy of a special tax of the CFD(s) (the "**Facilities Special Tax**") and issuance of bonds secured by the Facilities Special Tax (the "**Bonds**") in accordance with the

Financing Plan set forth in **Exhibit “G”**. Such CFD(s) shall, pursuant to Section 5.3, also be authorized to finance park maintenance through the levy of a special tax (the “**Services Special Tax**”).

5.2.1 Procedures for Formation. The City and the Developer shall cooperate in good faith to form one or more CFDs and/or designate improvement areas therein (the “**Improvement Areas**”), which are consistent with the Financing Plan and which in the aggregate will encompass and encumber the Developer’s Property. Final terms and conditions regarding the formation of the CFDs, their boundaries, Improvement Area boundaries, the rate and method of apportionment of the Services Special Taxes and Facilities Special Taxes to be levied in any CFD, and/or Improvement Area (including any tax zones therein), any acquisition or construction agreements related thereto, and the terms of one or more series of Bonds to be issued in conjunction therewith shall be determined jointly by City and the Developer in accordance with the Financing Plan and the City’s Goals and Policies for Financing. In conjunction with the formation of any CFD, the Developer and the City shall cooperate in good faith to negotiate and finalize any acquisition and funding agreement prior to the formation of the first CFD addressing the terms of construction, acquisition and financing of any of the Eligible Facilities to be funded by the CFD (such agreement to be referred to herein as the “**Acquisition Agreement**”).

5.2.2 Timing of Formation. Developer shall prepare all studies and submit all documents necessary to form each CFD not less than approximately one hundred and eighty (180) days prior to the issuance of the first Building Permit within the portion of the Developer’s Property to be included in the CFD. Developer shall execute and deliver to the City a petition as described in Government Code Section 53318(c), and after the delivery of such petition the City shall conduct the required proceedings as set forth in Government Code Section 53311, et seq., including without limitation the City’s consideration of the adoption of a resolution of intention to establish the CFD, and holding a public hearing on the establishment of the CFD. The City shall undertake the procedures for formation of the CFD consistent with this Agreement, the Goals and Policies for Financing and State Law. City shall complete formation proceedings within 180 days after Developer makes all required submissions. While the Parties acknowledge that this Agreement cannot require the City or the City Council to form a CFD, the City agrees that it shall not refuse Developer’s requests to form a CFD except for good and reasonable cause. The Developer shall cooperate with the City and take all reasonable actions necessary to accomplish the formation of the CFD, the designation of improvement areas, the imposition of special taxes within each improvement area, and the authorization of bonded indebtedness within each improvement area. The Developer shall indemnify the City and its officers, employees, consultants, attorneys and agents, and hold the City and such parties harmless against Claims or Litigation brought in connection with the formation of the CFD.

5.2.3 Failure to Form CFDs. If the CFD(s) requested by Developer pursuant to Section 5.2 are not formed, or are formed in a manner that does not comply with all terms and provisions set forth in Section 5.2 and the other applicable terms of this Agreement, the Developer shall have the right, but not the obligation, to terminate this Agreement upon providing 30 days written notice to the City prior to the actual termination date. City acknowledges that the obligations of the Developer and conditions imposed upon the Project pursuant to Sections 5.3 and 7.5.2 of this Agreement are subject to the condition precedent that all CFD(s) requested by Developer shall be formed in accordance with Section 5.2 hereof.

5.3 Services Special Tax. The City shall take, and Developer shall support, all steps necessary to include a Services Special Tax in the CFD to fund the actual reasonable cost of annual maintenance of the City parks and community center facility located in Planning Areas 10, 11, 12 and 13 (the “**Eligible Services**”).

5.4 Planning Areas 15A and 15B Drainage Facilities. The flood control improvements within Planning Areas 15A and 15B shall be considered Proposed Project Facilities and, upon request of Developer, construction thereof shall be funded through the CFD(s) to be formed pursuant to Section 5.2. The portion of the land within Planning Areas 15A and 15B dedicated for flood control improvements shall be improved by Developer to the Master Plan Standards of the Flood Control District and then transferred to the City (or another public agency or non-profit entity) for conservation purposes. The remaining land within Planning Areas 15A and 15B will be retained by Developer and reserved for use as public open space. City shall be responsible for maintenance of such public open space. Plans for developing the necessary flood control improvements shall be developed as a part of the Phasing Plans pursuant to Section 6.4, but said improvements may not be required until the City Engineer determines that development will (i) intrude into the flood plain or (ii) cause the alteration of Smith Creek. The City Engineer may approve temporary improvements until such time as the scale of that portion of the Project completed requires permanent flood control structures.

5.5 Reimbursement Agreements. If, and to the extent that, the Developer constructs or installs any infrastructure and/or facilities that have a capacity or size in excess of that required to serve the Project or to mitigate its impacts, and one or more undeveloped properties will be benefitted by such infrastructure and facilities, the City shall enter into a reimbursement agreement with the Developer which provides for the reimbursement of some or all excess costs and expenses incurred by the Developer in constructing such improvements in accordance with Government Code § 66485 et seq. The City further shall adopt ordinances, including but not limited to those authorized by Government Code § 66485, et seq., as may be required in order to impose a payment obligation on other properties which may be served or benefitted by such oversized infrastructure or facilities. The terms of the Reimbursement Agreements shall otherwise be consistent with the City’s forms generally used with other development projects. Such reimbursement shall be paid to the Developer at the earliest opportunity out of, and upon collection of, available fees from benefitted property.

5.6 Obligations of Developer Respecting Financing. Except as specifically provided herein, it is expressly understood that the Developer is fully responsible for the cost of the Project and obtaining any necessary construction or long term financing therefore.

6. TIME FOR CONSTRUCTION AND COMPLETION OF PROJECT.

6.1 Timing of Development. The Parties acknowledge that the substantial public benefits to be provided by the Developer to the City pursuant to this Agreement are in consideration for, and in reliance upon, assurances that the City will permit Development of the Developer’s Property in accordance with the terms of this Agreement. Accordingly, the City shall not attempt to restrict or limit the Development of the Developer’s Property in any manner that would conflict with the provisions of this Agreement. The City acknowledges that the Developer cannot at this time predict the timing or rate at which the Developer’s Property will be Developed.

The timing and rate of Development depend on numerous factors such as market demand, interest rates, absorption, completion schedules and other factors, which may not be within the control of the Developer or the City. In Pardee Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance notwithstanding that the construction company and the city had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property in accordance with the zoning. The California Supreme Court reached this result on the basis that the consent judgment failed to address the timing of development. It is the intent of the Parties to avoid the result of the Pardee case by acknowledging and providing in this Agreement that the Developer shall have the vested right, but not the obligation, to Develop the Developer's Property in such order and at such rate and at such time as the Developer deems appropriate, but in accordance with the Development Goals and the Phasing Plans developed in accordance with Section 6.4, and in accordance with other terms hereof or in the Development Approvals related to project phasing and timing. In addition to, and not in limitation of, the foregoing, but except as set forth in the following sentence, it is the intent of the Parties that no City moratorium or other similar limitation relating to the rate or timing of the Development of the Developer's Property or any portion thereof, whether adopted by initiative, referendum or otherwise, shall apply to the Developer's Property to the extent that such moratorium, referendum or other similar limitation is in conflict with this Agreement. Notwithstanding the foregoing, the Developer acknowledges that nothing herein is intended or shall be construed as (i) overriding any provision of the Existing Land Use Regulations to the phasing of Development of the Project; or (ii) restricting the City from exercising the powers described in Section 11 of this Agreement to regulate Development of the Property. Nothing in this Section 6.1 is intended to excuse or release the Developer from any obligation set forth in this Agreement which is required to be performed on or before a specified calendar date or event without regard to whether or not Development of any portion of the Project is proceeding. The City acknowledges that none of the provisions relating to Project phasing set forth in the Specific Plan require that the Development of the Project occur in any specific order but, instead, are only illustrative of how such Development may occur. The phasing of the Project is instead controlled by this Agreement.

6.2 Development of Detailed Phasing Plans. Detailed Phasing Plans for each subdivision phase may be developed in accordance with Section 6.4, shall be subject to the City's review and approval as conditions of approval of the applicable Subdivision Map and, as approved, shall become a part of the Existing Approvals.

6.3 Public Improvements. The Parties understand and agree that the Specific Plan identifies the public infrastructure and although it contains phasing concepts, it does not specify precisely the phasing of the construction of public infrastructure. Such phasing will be consistent with the Specific Plan and this Agreement and in accordance with the guidelines specified below. City shall retain the right to condition any Future Approvals to require Developer to dedicate necessary land, pay the development fees specified in this Agreement, and/or to construct the required public infrastructure ("**Exactions**"), at such time as City shall determine in accordance with the limitations set forth in this Agreement and the process in Section 6.4 and provided:

A. The dedication, payment or construction must be reasonably related to an impact caused by the Project or be of benefit to the Project; and

B. The timing of the Exaction should be reasonably related to the phasing of the Development of the Project and said public improvements shall be phased to be commensurate with the logical progression of the Project Development as well as the reasonable needs of the public, and the improvements shall be completed based upon the needs of the general public existing from time to time.

When the Developer is required by this Agreement and/or the Development Plan to construct any public improvements which will be dedicated to the City or any other public agency, upon completion, and if required by applicable laws to do so, the Developer shall perform such work in accordance with all applicable codes and construction standards.

6.4 Development of Phasing Plans During Subdivision Map Approvals. The phasing and timing requirements for the construction of all public improvements shall generally be in accordance with the Development Approvals, Specific Plan, and applicable provisions of this Agreement (for example, Sections 6.2, 6.3, etc.). Although the overall timing of Project Development remains subject to the Developer's discretion based on market conditions in accordance with Section 6.1, there is a logical sequence to the Development and certain improvements are required to be complete before phases of the Project can be considered complete and ready for occupancy. Phasing Plans may be prepared over time in accordance with the following process.

6.4.1 Subdivision Maps. The Master Tract Map creates separate parcels corresponding to the Planning Areas. It is expected that one or more Subdivision Maps shall also be approved for each Planning Area which shall show all infrastructure necessary for the development of the subdivision. Each subdivision will have a written Phasing Plan approved by the Director and the City Engineer prior to commencement of Development of the subdivision specifying when the Lots within the subdivision will be developed and when all public infrastructure within the subdivision will be constructed.. All conditions which require the provision of Proposed Project Facilities and subdivision improvements for the area covered by each tentative Subdivision Map must be satisfied, either through performance or through the provisions of a subdivision improvement agreement, prior to the approval and recordation of the applicable phase of the Subdivision Map.

6.4.2 Proposed Project Facilities. Detailed phasing of construction of the Proposed Project Facilities and major public infrastructure of the Project will be provided through the applicable Phasing Plans subject to Sections 6.2 and 6.3.

6.4.3 Time for Map Submission. All tentative maps and vesting tentative maps for the Project or any part or portion thereof shall have a term equal to the remaining Term of this Agreement.

6.5 Major Reviews.

6.5.1 Generally. On or about the sixth (6th) , fourteenth (14th) , twenty-second (22nd), thirtieth (30th), thirty-fifth (35th) (if the first Option has been exercised) and fortieth (40th) (if the second Option has been exercised) anniversaries of the Effective Date, the City shall conduct a Major Review in which the City and the Developer shall review the performance of the Parties of their obligations to have been performed pursuant to this Agreement and the development of the Project. The Major Review shall include the annual review for that year to be conducted pursuant to Section 12.1. The reasonable cost of each Major Review shall be borne by the Developer and the Developer shall pay a deposit in an amount requested by City to reimburse the City for its staff time for such review, in accordance with then-applicable charges applicable to planning personnel of the City.

As part of each Major Review, sixty (60) days before each applicable anniversary of this Agreement, the Parties shall mutually meet and outline the review process, including (i) the information needed and formats, (ii) the schedule for performing the review, (iii) efficiency and timeliness of the processing, comment, and approval procedures of City and other governmental permitting agencies, (iv) identifying any needed consultants and studies, (v) the adequacy of DIFs applicable to the Project under Section 7.2.2 and any anticipated need for changes, (vi) any adjustments to needed public infrastructure, (vii) the estimated deposit needed to pay the City's costs of performing the review, and (viii) other matters necessary for the review.

The Developer shall deliver to the City all information reasonably requested by City (i) regarding the Developer's performance under this Agreement demonstrating that the Developer has complied in good faith with the terms of this Agreement and (ii) as required by this Agreement or the Existing Land Use Regulations.

The Developer shall submit its report on or within a reasonable time of the applicable anniversary. Thereafter, the Director shall prepare and submit to City Council a written report on the performance of the Project. The Developer's written response shall be included in the Director's report. The report and recommendations to City Council shall be made within 45 days of the anniversary, and staff shall submit same to the City Council for its review and consideration. Nothing in this section shall require a public hearing for a Major Review. City Council will receive and file the report, as approval of the report is not required.

6.5.2 Adjustment to DIFs. As provided in Section 7.2.2, certain Development Impact Fees applicable to the Project that will not otherwise be fully satisfied in accordance with this Agreement may be periodically adjusted, provided (i) the adjustment is based on the preparation of a suitable analysis by an independent professional consultant experienced in performing such studies, demonstrating the basis for the increase, (ii) the study is performed on a City-wide basis and applies to all development projects of 200 or more residential units, (iii) all infrastructure financed is included within the City's General Plan and capital projects master plan, (iv) the study demonstrates a reasonable nexus to the Project and the fees are proportionate to the benefit received in accordance with applicable legal standards. City is currently in the process of adjusting existing DIFs and adopting new DIFs, and anticipates that the first such adjustment will occur within one year after the Effective Date. Such new DIFs shall only include a new Traffic Control Impact Fee that will replace the existing Traffic Control Facility Fee. If the new Traffic

Control Impact Fee is adopted, it shall be applicable to the Project, provided it is applicable in the same amount City-wide. The Traffic Control Impact Fee shall be administered as noted in section 7.5.1. Such adjustment of existing DIFs and adoption of specified new DIFs shall be applicable to the Project, provided the amount of the existing DIFs that are not otherwise fully satisfied pursuant to this Agreement, as specified in Exhibit "D," shall not increase by more than seven percent (7%), and the new and adjusted DIFs are legally authorized to be levied City wide commencing no later than January 1, 2018. Thereafter, the timing of City's adjustment of existing DIFs and adoption of new DIFs shall be in the City's sole discretion; provided, however, that such changes shall only become applicable to the Project upon the January 1 following the completion of each Major Review and shall be subject to the limitations set forth in Section 7.2.2 below.

6.5.3 No Other Changes to Development Plan. Other than the Development Impact Fee adjustments provided in Section 6.5.2, no other changes to the Development Approvals may be made by City without the consent of Developer. Nothing herein shall restrict the City's reservations of rights under Section 11 hereof.

The termination of this Agreement shall not alter the provisions of the Specific Plan concerning the zoning, density of development or any other regulatory provisions concerning the development of the Project, though the limitations provided in Article 4 on enactment of Future Land Use Regulations would be null and void.

6.6 Prevailing Wages. With respect to the construction of the Project, Developer and its contractors and subcontractors shall comply with Labor Code Section 1720, *et seq.*, and its implementing regulations, regarding the payment of prevailing wages, employment of apprentices in compliance with Labor Code Section 1770, *et seq.*, keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto (the "Prevailing Wage Law"), to the extent such sections are applicable by law to the construction of the Project and the development of the Property. Developer shall be solely responsible for determining the applicability of the Prevailing Wage Law, and City makes no representation as to the applicability or non-applicability of the Prevailing Wage Law to the construction of the Project and the development of the Property, or any part thereof. The Developer shall, upon request of the City, certify to the City that it is in compliance with the requirements of this paragraph. A current summary of the Prevailing Wage Law requirements is set forth in greater detail in **Exhibit "I"** attached hereto, which is incorporated herein.

Developer shall indemnify, protect, defend and hold harmless the City and its officers, employees, consultants, attorneys, contractors and agents, with counsel reasonably acceptable to the City, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which, in connection with the construction and development of the Project and the Property, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (a) the noncompliance by Developer with any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (b) compliance with Labor Code Section 1781, as the same may be

amended from time to time, or any other similar law; and/or (c) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the Parties that, in connection with the construction of the Project, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages under California law and/or the requirements of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. "Increased costs," as used in this Section, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction of the Project by the Developer.

7. FEES, TAXES AND ASSESSMENTS.

7.1 Processing Fees. During the Term of this Agreement, the City may require the Developer to pay all Processing Fees applicable to the Development of the Project at the rates in effect on the applicable application date or as described in this Agreement unless a specific amount is stated herein.

7.2 Development Impact Fees.

7.2.1 Limit on Exactions, Mitigation Measures, Conditions and Development Fees. Developer shall construct and install improvements relating to water connections, treatment and transmission and reclaimed water, parks, community center facilities, open space and trails, and wastewater treatment (if an onsite wastewater treatment facility is required to be constructed by Developer as provided in Section 7.3.2 hereof). Unless and until Developer is determined to be in breach of such requirements pursuant to Section 13 of this Agreement, no DIFs shall be payable with respect to such matters including, without limitation, the DIFs for parks and recreation facilities, general city facilities, water connection and facilities and sewer connection and facilities (if the on-site wastewater treatment facility is required as provided in Section 7.3.2 hereof). In addition, DIFs for fire facilities shall be determined as provided in Section 8.4. Subject to applicable credits, and the provisions of Section 6.5.2 and Article 8 hereof, the Developer shall be subject to payment of the stated amount of all other DIFs, which shall be subject to subsequent adjustment in accordance with Sections 6.5.2 and 7.2.2. Notwithstanding any other provision of this Agreement, Development Impact Fees shall be chargeable to the Project only as provided and in accordance with this Agreement.

7.2.2 Periodic Adjustment. The Developer shall pay increases to the DIFs not excluded or subject to a credit under Section 7.2.1 if said DIFs are increased by the same amount applicable City-wide after the preparation of, and are justified by, a suitable analysis demonstrating the basis for the increase in accordance with the conditions and requirements set forth in Section 6.5.2, as further provided in this Section 7.2.2. Subsequent to January 1, 2018, and provided the conditions and requirements set forth in Section 6.5.2 are satisfied, the City shall be entitled to increase the DIFs that are not excluded or subject to a credit under Section 7.2.1, effective on the January 1 following each Major Review. For the first such adjustment to DIFs that are subject to increase on the January 1 after the first Major Review, the increase shall not exceed the greater of (i) one percent (1%) multiplied by the number of years since the Effective Date or, if a DIF has been increased in accordance with Section 6.5.2, the date on which said increased DIF

became applicable, or (ii) the percentage change in the Consumer Price Index for All Urban Consumers in Los Angeles-Riverside-Orange County, California published by the U.S. Bureau of Labor Statistics (the “Index”) since the Effective Date, or, if a DIF has been increased in accordance with Section 6.5.2, the date on which said increased DIF became applicable. For adjustments to DIFs that are subject to increase on the January 1 after the second and the subsequent Major Reviews during the Term, the increase shall not exceed the greater of (i) one percent (1%) multiplied by the number of years since the date on which the previous adjustment became applicable, or (ii) the percentage change in the Index since the date on which the previous adjustment became applicable.

7.2.3 Payment of Development Impact Fees. Except as otherwise provided in this Agreement, the Developer shall pay all Development Impact Fees with respect to Development commenced on the portion of the Developer’s Property owned by the Developer. The Development Impact Fees shall be paid at the time such fees are due in accordance with the Municipal Code. Unless otherwise specified herein, all other fees, including Processing Fees shall be paid at issuance of building permits or otherwise when required by the Municipal Code.

7.2.4 Credit Against Development Impact Fees. If the Developer is required to design, engineer or construct any improvement, or contribute funds to the City for any improvement that is included in any DIF program, the Developer shall be entitled to credit against the applicable DIF in an amount equal to the costs incurred by the Developer with respect to the improvement and the amount of funds contributed to the City for the improvement. Such DIF credits may be used by the Developer on a dollar-for-dollar basis in satisfaction of an equal amount of DIF and/or assigned by the Developer to any third party for such use. If the costs incurred by the Developer, or the funds advanced by the Developer for any DIF improvement exceeds the remaining unpaid total obligation of the Project for the corresponding DIF, the City shall reimburse the Developer the excess from 100% of the DIFs that are subsequently collected by the City.

7.3 Wastewater, Domestic and Reclaimed Water Facilities Development Impact Fees.

7.3.1 Wastewater Fees and Facilities. The City levies two DIFs related to wastewater: (i) a sewer connection fee; and (ii) a sewer frontage fee (collectively such fees are referred to herein as “**sewer connection fees**”). In the event that Developer is required to construct a wastewater treatment plant in accordance with Section 7.3.2 hereof, Developer shall receive a reimbursement of all sewer connection fees paid previously for the Project and receive a 100% credit against the sewer connection fees that may be payable for the Project for the full remaining Term. The sewer frontage fee shall only be applicable to the portion of the Project fronting Westward Avenue.

7.3.2 Construction of Wastewater Collection Infrastructure in Lieu of Fees. The Development Approvals provide that if City fails to timely construct improvements to the existing City wastewater treatment plant, the Developer will be required to construct a stand-alone wastewater treatment and collection system to serve the Project at its sole cost and expense, in lieu of Developer’s payment of the sewer connection fees. The City shall develop the project specifications and shall undertake a design process to develop project plans and drawings for the system meeting the City’s specifications. The City may require the Developer to develop

the plans and drawings if City determines that the design costs are competitive and Developer has retained competent design professionals who can timely perform the services. The Developer shall include the construction of the onsite wastewater treatment plant within the Phasing Plan developed pursuant to Section 6.4.

7.3.3 Domestic and Reclaimed Water Facilities. The Development Approvals require various additions, improvements and/or upgrades to the City's water system, both domestic and/or reclaimed, in connection with the Development of the Project. Without limiting the generality of the foregoing, this includes the water tanks, pipelines and appurtenant facilities described in Section 8.5. The City shall reasonably determine the size of water storage facilities which are required, and may elect to size and construct such facilities larger than required by the Project alone. The City shall conduct such studies as are necessary to reasonably determine the Project's fair share of the cost of such facilities and, if the City elects to construct a larger facility than required by the Project alone, the Developer shall advance its fair share of the cost at the time or times required in the studies prepared by the City. The Project shall not be subject to DIFs for potable or reclaimed water supply, storage or transmission.

7.4 Park Fees.

7.4.1 Construction of Facilities. The Developer shall dedicate the land for and construct, install and improve the park and recreation facilities listed below, which are deemed to be park, recreation and/or open space for the purpose of complying with the Municipal Code's park fee requirements. All parkland and open space shall be maintained by the City or such other governmental entity as may be approved by the City. Unless and until Developer is determined, pursuant to Section 13 of this Agreement, to be in breach of the requirements of the Specific Plan and this Agreement, no park and general facilities DIFs shall be payable with respect to the Project. The Developer shall construct and install within the Project's boundaries the following park and recreation facilities:

7.4.1.1 Four publicly accessible parks (each ranging in size from approximately less than 1 acre to over 25 acres), equipped by Developer with typical park facilities, which may include picnic facilities, shade structures, playgrounds, turf areas, and related facilities as further defined in the Specific Plan and in accordance with the plans developed in Section 8.1; and

7.4.1.2 Approximately 160 acres of additional open space as described in the Specific Plan.

7.5 Traffic Impact Mitigation.

7.5.1 Traffic Control Facility Fee. The City expects the new Traffic Control Impact Fee will fund the cost of traffic signals, intersection and roadway improvements, including such improvements required for the Project pursuant to the Existing Development Approvals. The Existing Development Approvals provide that the City will construct improvements located at intersections in which the impact of the Project is determined to be less than 50%, and the Developer will be required to advance to the City funds equal to the Project's fair share of the cost of such improvements. The advance of these funds will be required before

the first Certificate of Occupancy is issued within the Phase which requires the improvement. The Existing Development Approvals provide that the Developer shall make improvements to intersections in which the impact of the Project is determined to be 50% or greater. These improvements will be completed before the last Certificate of Occupancy is issued within the Phase which requires the improvement. The Developer shall receive a full credit against the Traffic Control Impact Fees for all costs incurred or anticipated to occur for such improvements and all funds advanced or anticipated to be advanced for improvements constructed by the City from the first building permit issuance of Phase 1 until the Project has received credit equal to the full amount of costs incurred and advanced by the Developer for such improvements. If the credit exceeds the maximum amount of the Traffic Control Impact Fee which may be collected from the Project, the Developer will be entitled to a Reimbursement Agreement as set forth in City Municipal Code Sections 12.08.150 and 16.28.040, which are incorporated by reference into this Agreement as though set forth in full and shall remain in effect as to the Parties' rights and obligations under this Agreement in said form notwithstanding any amendment thereof by City subsequent to the date of execution of this Agreement.

7.5.2 TUMF. Some of the roadway improvements that are required to be constructed by the Developer to serve the Project are included in the TUMF program. The City agrees that the Developer shall be entitled to credit against the TUMF fees otherwise applicable to the Project as a result of Developer's funding or construction of such improvements and shall enter into an agreement with the Developer which provides for application of such credits for the specified TUMF improvements. In the event that the Developer will be responsible for constructing such improvements, such agreement shall be substantially in the form attached hereto as **Exhibit "J"**. In the event the City will be responsible for constructing the improvements, and the Developer will be responsible for funding such improvements, such agreement shall be in a form mutually acceptable to City, Developer and the Western Riverside Council of Governments. In addition to the TUMF roadway improvements that are required above, the City may identify additional roadway improvements in the City south of I-10 that are also included in the TUMF program (the "**Additional TUMF Improvements**") to which Developer shall contribute up to Ten Million Dollars (\$10,000,000) subject to the following conditions:

(i) The City shall have completed all design, engineering, right-of-way acquisition, CEQA approvals and other agency permitting required for the construction of the Additional TUMF Improvements, all of which are subject to reimbursement by Developer in exchange for TUMF credit as set forth in this Agreement.

(ii) The City shall have completed the bidding process for the construction of the Additional TUMF Improvements and be prepared to exercise the contract for construction of the Additional TUMF Improvements.

(iii) All conditions of approval of Tentative Tract Map No. 36586 applicable to Phases 1 and 2 have been satisfied, a subdivision map has been recorded in Phases 1 or 2 for 200 or more dwelling units and all conditions of approval have been satisfied that are required for the issuance of Building Permits for 200 or more dwelling units.

(iv) All CFDs have been formed in accordance with Section 5.2 above.

(v) The City and Developer have entered into a credit agreement that grants full credit against TUMF per dwelling unit from the first Building Permit issuance even if conditions (i) and (ii) above have not been satisfied, and shall continue until the Project has received credit equal to the amount advanced.

8. DEDICATIONS AND CONVEYANCES OF PROPERTY INTERESTS.

8.1 Park Improvements.

8.1.1 Neighborhood/Community Parks and Community Center. Prior to the construction of any parks, the Developer shall meet with both the Director and the Director of Parks and Recreation to review the provisions set forth in the Specific Plan outlining the facilities to be provided at each park and discuss the Developer's plans for near term construction of the parks. Prior to development of each park, a detailed site plan consistent with the Specific Plan shall be prepared by the Developer and approved by the Director and the Parks and Recreation Commission. The Developer shall complete the construction of the neighborhood parks in Planning Areas 10, 11, 12 and 13 (including the community center in Planning Area 10), and the paseos in the SCE easement, Planning Areas 14A, 14B, 14C and 14D, within the times set forth in Condition of Approval No. 75(a) attached as **Exhibit "B"** to City Ordinance No. 1500. Upon completion of each neighborhood park, the City shall, within 10 working days after the ninety (90) day maintenance period has expired, develop final punch lists of items to be corrected prior to acceptance by the City. Upon correction of final punch list items by the Developer, the City shall accept the park within 30 days of the date of the final inspection.

8.2 Drainage Facilities. Planning Areas 15A and 15B are required areas of detention, recharge and conveyance of Project created and natural storm flows through the Project as set forth in Section 5.4 above. Planning Area 11 will include water quality basins and flood conveyance facilities. A portion of each applicable Planning Area may be ultimately transferred to the City (or another public agency or non-profit entity) for acceptance and maintenance, but the Developer shall have the right to utilize it until such time as Development has fully or partially occurred for erosion control purposes.

8.3 Satellite Water Treatment Plant. Planning Area 16A shall be the location for the onsite treatment of Project-related and other localized wastewater flows.

8.4 Fire Station. Developer shall be required to pay fire DIFs within the Project in the amounts of \$1,335 per dwelling unit and \$506 per 1,000 square feet of commercial development, which amounts shall not increase during the Term. Prior to the issuance of the 1,350th building permit for the Project, Developer shall dedicate an approximately 1.0 acre site for a fire station at the location on the easterly portion of PA-10 designated by Developer ("**Fire Station Site**"). The Fire Station Site shall be in a "super pad" state with wet utilities stubbed to the site at the time of dedication. The City shall forthwith construct and equip a fire station on the Fire Station Site ("**Fire Station**"), which the City anticipates will be between 7,000 and 8,000 square feet in size and will contain two or three apparatus bays, five bedrooms sufficient to accommodate a staff of ten personnel, and four restrooms. The design of the Fire Station shall be in accordance with County Fire Department design guidelines. The City shall have the right, at its option, to transfer approximately one (1) acre of the park adjacent to the Fire Station Site to the

Fire Station Site for Fire Station use. The Parties shall jointly agree upon the portion of the adjacent park site which will be reserved for future fire station expansion, and the design of such park shall not preclude such expansion.

8.5 Water Storage. The City's water facilities and improvements described in Section 7.3.4 include certain water tanks, pipelines, access roads and appurtenant facilities which largely serve the Development. All of the water tanks are located outside of the Project.

The Developer shall construct the on-site domestic water improvements in accordance with Section 7.3.2 and shall contribute its fair share of the costs of the off-site water tanks as and when required by the Development Approvals, applicable Phasing Plans and Section 7.3.3 above.

8.6 Electric Substation. Developer shall dedicate to City the 0.25 acre site in PA 16B for an electrical substation to be constructed by City.

9. PROCESSING OF REQUESTS AND APPLICATIONS: OTHER GOVERNMENT PERMITS.

9.1 Processing. In reviewing Future Development Approvals which are discretionary, the City may impose only those conditions, Exactions, and restrictions which are allowed by the Development Plan and this Agreement. Upon satisfactory completion by the Developer of all required preliminary actions, meetings, submittal of required information and payment of appropriate processing fees, if any, the City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the development by the Developer of the Project in accordance with the Existing Development Approvals. In this regard, the Developer, in a timely manner, will provide the City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and will cause the Developer's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefor. It is the express intent of this Agreement that the parties cooperate and diligently work to implement any zoning or other land use, site plan, subdivision, grading, building or other approvals for development of the Project in accordance with the Existing Development Approvals.

9.2 Developer to Pay for Expedited Processing. If Developer elects, in its sole and absolute discretion, to request the City to incur overtime or third party consulting services to receive expedited processing by the City, the Developer shall pay all such overtime or third party consulting service costs, charges or fees incurred by City for such expedited processing.

9.3 General Time Periods for Processing.

9.3.1 Plan Review and Approval. The City shall provide comments for all plan checks for required infrastructure, building, grading, both mass and finished, architectural, erosion control or any other required plan submittal within reasonable and customary times, and will not unduly extend the number of plan checks. In the event that consensus between the City and the Developer regarding the content of the plans after the third submittal cannot be made, a meeting will be scheduled at the request of Developer to discuss how to reconcile the differences.

9.3.2 Architectural Plan Submittal Process. The Developer shall submit architectural plans to the Planning Department for review of the entire plan set for each submittal to ensure that they conform to the guidelines set forth in Specific Plan. In the event that consensus cannot be made after the third plan check, a meeting will be coordinated with the plan checker, Planning Department and the Developer or the Developer's representative. The Planning Department, upon determining compliance with the guidelines set forth in the Specific Plan, shall approve the plans. Additional architectural enhancements that are above and beyond the design guidelines will be implemented at the Developer's sole and absolute discretion but are subject to review by City if proposed.

9.4 Precise Grading/Plot Plan Revisions. In the event that the Developer wishes to revise house plan type or elevation on an approved plot plan or revised grading plan, City Engineering and Planning staff review and approval shall be done over the counter.

9.5 Additional Inspectors and Plan Checkers. In the event that the Developer requests it, the City shall permit overtime, including both additional days and hours, for inspections and plan checking at the Developer's expense. In the event that the City is unable to provide inspectors or plan checkers capable of meeting the demand for inspections or plan checks required for the Development of the Project in a timely fashion, the City shall, if requested to do so by the Developer and at the Developer's expense, employ additional private entities or persons to perform such services.

9.6 Tentative Subdivision Maps. The City shall extend through the Term hereof (pursuant to Government Code § 66452.6) all Master Tract Maps and all tentative and vesting tentative Subdivision Maps applied for by the Developer during the term of this Agreement and approved by the City in the future.

9.7 Multiple Final Subdivision Maps. The Developer may file as many final maps over a tentative Subdivision Map as it deems appropriate in its sole and absolute discretion.

9.8 A Maps. The Developer may have an A Map approved for the purpose of conveying portions of the Developer's Property to others and/or for the purpose of creating legal lots which may be used as security for loans to develop the Developer's Property. Any such map shall not authorize any Development and shall not be subject to any conditions, Exactions or restrictions, other than monumentation and conditions which do not require the payment of money or the installation or construction of improvements.

9.9 Water Availability. Any final Subdivision Map prepared for the Developer's Property, or any portion of the Developer's Property, shall comply with the provisions of Government Code § 66473.7.

9.10 Other Governmental Permits. The Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. The City shall cooperate with the Developer in its efforts to obtain such permits and approvals.

9.11 Public Agency Coordination. The City and Developer shall cooperate and use reasonable efforts in coordinating the implementation of the Development Plan with other public agencies, if any, having jurisdiction over the Property or the Project.

9.12 Annexation. This Agreement's effectiveness over land within the Developer's Property that is currently not within the City is subject to the annexation of that land into the City. If the land is annexed into the City, the terms of this Agreement shall automatically apply to all portions of that land upon its annexation. In the event that annexation of portions of the Developer's Property not currently within the City is not approved by LAFCO, or for any other reason is not annexed to the City, then any such portions shall be excluded from this Agreement. The City shall, subject to the negotiation of a tax allocation agreement with the County of Riverside acceptable to City, use its best efforts to expeditiously accomplish the annexation of those portions of the Developer's Property not within the City, or such portions thereof as may be approved by the Developer, to the City.

10. AMENDMENT AND MODIFICATION OF DEVELOPMENT AGREEMENT.

10.1 Initiation of Amendment. Either Party may propose an amendment to this Agreement.

10.2 Procedure. Except as set forth in Section 10.4 below, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance, and meet the requirements of the Development Agreement Statute § 65867.

10.3 Consent. Except as expressly provided in this Agreement, no amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by duly authorized representatives of each of the Parties hereto and recorded in the Official Records of Riverside County.

10.4 Minor Modifications.

10.4.1 Flexibility Necessary. The provisions of this Agreement require a close degree of cooperation between the City and the Developer. Implementation of the Project may require minor modifications of the details of the Development Plan and affect the performance of the Parties under this Agreement. The anticipated refinements to the Project and the Development of the Developer's Property may demonstrate that clarifications to this Agreement and the Existing Land Use Regulations are appropriate with respect to the details of performance of the City and the Developer. The Parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. Therefore, non-substantive and procedural modifications of the Development Plan may be made in accordance with the procedures on Section 5.1.5 of the Specific Plan.

10.4.2 Hearing Rights Protected. Notwithstanding the foregoing, City will process any change to this Development Agreement consistent with state law and will hold public hearings thereon if so required by state law and the parties expressly agree nothing herein is intended to deprive any party or person of due process of law.

10.5 Effect of Amendment to Development Agreement. Except as expressly set forth in any such amendment, an amendment to this Agreement will not alter, affect, impair, modify, waive, or otherwise impact any other rights, duties, or obligations of either Party under this Agreement.

11. RESERVATIONS OF AUTHORITY.

11.1 Limitations, Reservations and Exceptions. Notwithstanding anything to the contrary set forth hereinabove, in addition to the Existing Land Use Regulations, only the following Land Use Regulations adopted by City hereafter shall apply to and govern the Development of the Developer's Property ("**Reservation of Authority**"):

11.1.1 Future Regulations. Future Land Use Regulations which (i) are not in conflict with the Existing Land Use Regulations, (ii) which would be applicable under the Development Agreement statute (§ 65866); (iii) if in conflict with the Existing Land Use Regulations but the application of which to the Development of the Developer's Property has been consented to in writing by Developer.

11.1.2 State and Federal Laws and Regulations. As provided in Government Code §65869.5, and notwithstanding any other provisions of this Agreement, this Agreement shall not preclude the application to the Property of changes in City laws, regulations, plans or policies to the extent that such changes in the City laws, regulations, plans or policies are specifically mandated and required to be applied to the Property by changes in state or federal laws or regulations enacted after the Effective Date of this Agreement. Where such state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of the Development Agreement, those provisions shall be modified, through revision or suspension, to the extent necessary to comply with such state or federal laws or regulations.

11.1.3 Public Health and Safety/Uniform Codes.

11.1.3.1 Adoption Automatic Regarding Uniform Codes. This Agreement shall not prevent the City from adopting Future Land Use Regulations or amending Existing Regulations which are Uniform Building, Electrical, Plumbing, Mechanical, or Fire Codes applicable throughout the City.

11.1.3.2 Adoption Regarding Public Health and Safety/Uniform Codes. This Development Agreement shall not prevent the City from adopting Future Land Use Regulations respecting public health and safety to be applicable throughout the City which directly result from findings by the City that failure to adopt such Future Land Use Regulations would result in a condition injurious or detrimental to the public health and safety and that such Future General Regulations are necessary to correct or avoid such injurious or detrimental condition.

11.1.4 Amendments to Codes for Local Conditions. Notwithstanding the foregoing, no construction within the Project shall be subject to any provision in any of the subsequent Uniform Construction Codes, adopted by the State of California, but modified by the City to make it more restrictive than the provisions of previous Uniform Construction Codes of the City, notwithstanding the fact that the City has the authority to adopt such more restrictive

provision pursuant to the California Building Standards Law, including, but not limited to, Health and Safety Code § 18941.5, unless such amendment applies City-wide. The City shall give Developer prior written notice of the proposed adoption of such amendment and Developer shall have the right to present its objections to the amendment.

11.2 Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not within the control of the City possess authority to regulate aspects of the Development of the Developer's Property separately from, or jointly with, the City and this Agreement does not limit the reasonable authority of such other public agencies.

11.3 Fees, Taxes and Assessments. Notwithstanding any other provision herein to the contrary, the City retains the right (i) to impose or modify Processing Fees and Development Impact Fees as provided in Article 7, (ii) to impose or modify business licensing or other fees pertaining to the operation of businesses, (iii) to impose or modify taxes and assessments which apply City-wide such as utility taxes, sales taxes and transient occupancy taxes, (iv) to impose or modify fees and charges for City services such as electrical utility charges, water rates, and sewer rates, (v) to impose or modify a community-wide or area-wide assessment district which does not predominately apply to the Developer's Property, and (vi) to impose or modify any fees, taxes or assessments similar to the foregoing.

11.4 Police Power. In all respects not provided for in this Agreement, the City shall retain full rights to exercise its police power to regulate the development of the Property, and any uses or developments requiring a site plan, tentative tract map, or other discretionary permit or approval as required pursuant to the Existing Land Use Regulations shall require a permit or approval pursuant to this Agreement; provided, however, that the City's discretion with respect to such actions shall be executed consistent with Developer's vested rights under this Agreement. Nothing in this Agreement shall preclude the City from attaching usual and customary conditions to such discretionary approvals provided such conditions (i) are applied in the same or substantially equivalent form to other similar approvals throughout the City, (ii) do not affect the use, density, or intensity of development previously approved for the Project, and (iii) are not materially inconsistent with this Agreement.

12. ANNUAL REVIEW.

12.1 Annual Monitoring Review. Following Commencement of Construction, the City and the Developer shall review the performance of this Agreement, and the Development of the Project, on or about each anniversary of the Effective Date (the "**Annual Review**"). The reasonable cost of the Annual Review shall be borne by Developer and Developer shall pay a deposit in an amount requested by City to pay for such review. As part of each Annual Review, within ten (10) days after each anniversary of this Agreement, the Developer shall deliver to the City all information reasonably requested by City (i) regarding the Developer's performance under this Agreement demonstrating that the Developer has complied in good faith with the terms of this Agreement and (ii) as required by the Existing Land Use Regulations.

The Director shall prepare and submit to Developer and thereafter to City Council a written report on the performance of the Project, and identify any deficiencies. If any deficiencies are noted, or if requested by a Councilmember a public hearing shall be held before the City

Council on the report to Council. The Developer's written response shall be included in the Director's report. The report to Council shall be made within 45 days of the anniversary date.

If the City determines that the Developer has substantially complied with the terms and conditions of this Agreement, the Annual Review shall be concluded. If the City finds and determines that the Developer has not substantially complied with the terms and conditions of this Agreement for the period under review, the City may declare a default by the Developer in accordance with Section 13.1.

12.2 Estoppel Certificate. If, at the conclusion of an Annual Review, the City finds that the Developer is in substantial compliance with this Agreement, the City shall, upon request by the Developer, issue an Estoppel Certificate to the Developer substantially in the form shown on **Exhibit "C"**.

12.3 Failure to Conduct Annual Review. The failure of the City to conduct the Annual Review shall not be a Developer Default unless Developer fails to cooperate in providing necessary information.

13. DEFAULT, REMEDIES AND TERMINATION.

13.1 Rights of Non-Defaulting Party after Default. The Parties acknowledge that both Parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a Default or to enforce any covenant or agreement herein except as provided in Section 13.2 below. Before this Agreement may be terminated or action may be taken to obtain judicial relief, the Party seeking relief ("**Non-Defaulting Party**") shall comply with the notice and cure provisions of this Article 13.

13.2 No Recovery for Monetary Damages. The nature of a development agreement under the Development Agreement Statute is a very unusual contract involving promoting a very large development project facing many complex issues including geologic, environmental, finance, market, regulatory and other constantly evolving factors over an extremely long time frame. The high level of uncertainty and risk involved justify the extraordinary commitments made to the Developer. However, the original persons representing the parties and approving the transaction are only likely to be involved with the Project for a limited time in comparison to the overall life of the Project.

It is highly likely that misunderstandings will develop over time. Moreover, municipal budgets are extremely constrained, and a threat of recovery of damages against a municipal entity may pressure a municipality with limited resources to settle in a manner adverse to its interests and those of its citizens. Finally, the municipal entity represents the public welfare of the entire community, a community who cannot directly represent themselves. The City Council has come to believe that entering into a development agreement with the Developer vesting the Developer with the extraordinary rights provided herein is in the best interests of the community through the Developer's active engagement with the community and open communications over several years. It is critical to the success of this Project that as inevitable obstacles are met, and the persons implementing the Project change over the long time span of the Project, that close working relationships be maintained. Accordingly, in this Agreement, the rights of enforcement are limited

as follows (i) the remedy of monetary damages is not available to either Party, and (ii) there is no shortcut to a mediation or arbitration procedure where a nonelected representative can arbitrarily determine land use development issues.

For purposes of enforcement, stated positively, the Parties shall have the equitable remedies of specific performance, injunctive and declaratory relief, or a mandate or other action determining that a Party has exceeded its authority, and similar remedies, other than recovery of monetary damages, to enforce their rights under this Agreement. The City shall have all administrative rights and remedies available to it upon a default of Developer, including without limitation any right it may have to withhold building permits and certificates of occupancy and to engage in code enforcement procedures. The Parties shall have the right to recover their attorney fees and costs pursuant to Section 19.9 in such action. Moreover, the Developer shall have the right to a public hearing before the City Council before any default can be established under this Agreement, as provided in Section 13.6.

13.3 Recovery of Monies Other Than Damages.

13.3.1 Restitution of Improper Exactions. In the event any Exactions, whether monetary or through the provision of land, good or services, are imposed by City on the Development of the Developer's Property other than those authorized pursuant to this Agreement, the Developer shall be entitled to recover from City restitution of all such improperly assessed Exactions, either in kind or the value in lieu of the Exaction, together with interest thereon at the rate of the maximum rate provided by law per year from the date such Exactions were provided to City to the date of restitution.

13.3.2 Monetary Default. In the event the Developer fails to perform any monetary obligation under this Agreement, City may sue for the payment of such sums to the extent due and payable. The Developer shall pay interest thereon at the lesser of: (i) ten percent (10%) per annum, or (ii) the maximum rate permitted by law, from and after the due date of the monetary obligation until payment is actually received by the City.

13.4 Compliance with the Claims Act. Compliance with this Article 13 shall constitute full compliance with the requirements of the Claims Act, Government Code § 900 et seq., pursuant to Government Code § 930.2 in any action brought by the Developer.

13.5 Notice and Opportunity to Cure. A Non-Defaulting Party in its discretion may elect to declare a Default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party ("**Defaulting Party**") to perform any material duty or obligation of the Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and specifying the actions required to cure such breach or failure. The Defaulting Party shall be deemed in Default under this Agreement, if the breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such default within thirty (30) days after the date of such notice. However, if such non-monetary Default cannot reasonably be cured within such thirty (30) day period, or if such Default could reasonably be cured but governmental approvals or permits are required that cannot be obtained with commercially reasonable efforts

within such thirty (30) day period, the Defaulting Party shall not be deemed in breach of this Agreement provided the Defaulting Party:

1. Notifies the Non-Defaulting Party of the Defaulting Party's proposed action to cure the default;
2. Commences commercially reasonable efforts to cure the default within the thirty (30) day period;
3. Makes reasonable periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and
4. Diligently prosecutes such cure to completion.

13.6 Dispute Resolution.

13.6.1 Meet & Confer. Prior to any Party issuing a Default Notice hereunder, the Non-Defaulting Party shall inform the Defaulting Party either orally or in writing of the Default and request a meeting to meet and confer over the alleged default and how it might be corrected. The Parties through their designated representatives shall meet within ten (10) days of the request therefore. The Parties shall meet as often as may be necessary to correct the conditions of default, but after the initial meeting either Party may also terminate the meet and confer process and proceed with the formal Default Notice.

13.6.2 Termination Notice. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Non-Defaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement and other Agreements ("**Termination Notice**"). The Termination Notice shall state that the Non-Defaulting Party will elect to terminate the Agreement and such other Agreements as the Non-Defaulting Party elects to terminate within thirty (30) days and state the reasons therefor (including a copy of any specific charges of default) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Non-Defaulting Party's election to terminate Agreements will only be waived if (i) the Defaulting Party fully and completely cures all defaults prior to the date of termination, or (ii) pursuant to Section 13.6.3 below.

13.6.3 Hearing Opportunity Prior to Termination. Prior to any termination, a termination hearing shall be conducted as provided herein ("**Termination Hearing**"). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. At said Termination Hearing, the Defaulting Party shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, the City Council may, by adopted resolution, act as follows:

- A. Decide to terminate this Agreement,

B. Determine that the alleged Defaulting Party is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or

C. Impose conditions on a finding of default and a time for cure, such that Defaulting Party's fulfillment of said conditions will waive or cure any default.

Findings of a default or a condition of default must be based upon substantial evidence supporting the following three findings: (i) that a default in fact occurred and has continued to exist without timely cure, (ii) that the Non-Defaulting Party's performance has not excused the default; and (iii) that such default has, or will, cause a material breach of this Agreement and/or a substantial negative impact upon public health, safety and welfare, or the financial terms established in the Agreement, or such other interests arising from the Project. Notwithstanding the foregoing, nothing herein shall vest authority in the City Council to unilaterally change any material provision of this Agreement.

Following the decision of the City Council, any Party dissatisfied with the decision may seek judicial relief consistent with this Article 13.

13.7 Waiver of Breach. By not challenging any Development Approval within 90 days of the action of City enacting the same, Developer shall be deemed to have waived any claim that any condition of approval is improper or that the action, as approved, constitutes a breach of the provisions of this Agreement. By recordation of a final map on all or any portion of the Developer's Property, the Developer shall be deemed to have waived any claim that any condition of approval is improper or that the action, as approved, constitutes a breach of the provisions of this Agreement.

13.8 Limitations on Defaults. Notwithstanding any provision in this Agreement to the contrary, a Default by one Owner shall not constitute a Default by an Owner of a portion of the Developer's Property, which is not the owner of the portion of the Developer's Property that is the subject of the Default (an "Innocent Owner"). Likewise, a Default by an Owner with respect to a Lot (or group of Lots) it owns or leases shall not constitute a Default by an Innocent Owner, nor shall the Default by another Owner of a portion of the Developer's Property not owned by an Innocent Owner constitute a Default of the Innocent Owner. Therefore, (i) no Innocent Owner shall have any liability to the City for, or with respect to, any Default by another Owner or any Default of any other Owner, (ii) an Innocent Owner shall have no liability to the City for, or with respect to, any Default by any other Owner, and (iii) the City's election to terminate this Agreement as a result of a Default by an Owner shall not result in a termination of this Agreement with respect to either (x) any portion of the Developer's Property not owned by such Owner or (y) those Lots owned or leased by an Innocent Owner until such time that this Agreement would otherwise terminate in accordance with its terms.

13.9 Venue. In the event of any judicial action, venue shall be in Riverside County.

14. ASSIGNMENT.

14.1 General. Subject to the City's consent pursuant to Section 14.3 hereof, Developer shall not transfer this Agreement or any of the Developer's rights hereunder, directly

or indirectly, voluntarily or by operation of law, unless and until the successor party and Developer sign and deliver to the City an assignment and assumption agreement, substantially in the form attached hereto as **Exhibit “H,”** pursuant to which the successor party shall assume such obligations. The transferee’s and Developer’s execution of the assignment and assumption agreement shall be deemed to release the Developer of liability for performance under this Agreement of the obligations specified in such assignment and assumption agreement and the City shall thereafter look solely to that transferee for compliance with this Agreement with respect to such obligations and the portion of the Developer’s Property so transferred, provided that the Developer shall not be released from liability for any defaults on its part existing at the time of execution of the assignment and assumption agreement (or which would become a default after failure to cure after providing required notices and the passage of time), or for defaults related to other portions of the Property or other obligations of Developer which were not the subject of the assignment and assumption agreement.

14.2 Subject to Terms of Agreement. Following any such transfer or assignment of any of the rights and interests of the Developer under this Agreement, in accordance with Section 14.1 above, the exercise, use and enjoyment of such rights and interests shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were the Developer.

14.3 Termination of Agreement With Respect to Individual Lots. Notwithstanding any provisions of this Agreement to the contrary, this Agreement shall terminate as to any single-family residential Lot which has been finally subdivided and improved with all required public improvements and which is individually (and not in “bulk”) sold or otherwise conveyed to an owner-user and thereupon, and without the execution or recordation of any further document or instrument, such Lot shall be released from and no longer be subject to the provisions of this Agreement. In addition, this Agreement shall terminate as to any Lot or other portion of the Developer’s Property that is sold or otherwise conveyed to a Local Agency, public utility or POA.

14.4 Declaration of Covenants, Conditions and Restrictions. Prior to the transfer of any portion of the Project to a third party, the Developer shall submit a proposed form of Declaration of Covenants, Conditions and Restrictions to be recorded against the applicable subdivision to the City for its review and approval (“**CC&Rs**”). The CC&Rs must be recorded prior to issuance of Certificates of Occupancy, and Developer shall pay City’s review costs. It is anticipated that the CC&Rs will contain, among other things, protective covenants to protect and preserve the integrity and value in the subdivision, including but not limited to use restrictions, maintenance covenants, EIR mitigation measures, restrictions under this Agreement which will continue to apply to the subdivision, covenants for construction and completion of the improvements and a provision giving the City the right to enforce the CC&Rs, including the right to recover its enforcement costs if there is noncompliance following notice and the opportunity to cure.

15. RELEASES AND INDEMNITIES.

15.1 The City’s Release As To Actions Prior To Effective Date. The City forever discharges, releases and expressly waives as against the Developer and its attorneys and employees

any and all claims, liens, demands, causes of action, excuses for nonperformance (including but not limited to claims and/or defenses of unenforceability, lack of consideration, and/or violation of public policy), losses, damages, and liabilities, known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, based in contract, tort, or other theories of direct and/or of agency liability (including but not limited to principles of respondent superior) that it has now or has had in the past, arising out of or relating to the currently existing land use plans for the Developer's Property or any portion thereof.

15.2 The Developer's Release As To Actions Prior To Effective Date. The Developer forever discharges, releases and expressly waives as against the City and its respective councils, boards, commissions, officers, attorneys and employees any and all claims, liens, demands, causes of action, excuses for nonperformance (including but not limited to claims and/or defenses of unenforceability, lack of consideration, and/or violation of public policy), losses, damages, and liabilities, known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, based in contract, tort or other theories of direct and/or of agency liability (including but not limited to principles of respondent superior) that they have now or have had in the past, arising out of or relating to the currently existing land use plans for the Developer's Property or any portion thereof.

15.3 Third-Party Litigation.

15.3.1 Non-liability of City. As set forth above, the City has determined that this Agreement is consistent with the General Plan and that the Development Approvals meet all of the legal requirements of State law. The Parties acknowledge that:

A. In the future there may be challenges to legality, validity and adequacy of the General Plan, Land Use Regulations, Development Approvals and/or this Agreement; and

B. If successful, such challenges could delay or prevent the performance of this Agreement and the development of the Developer's Property.

In addition to the other provisions of this Agreement, including, without limitation, the provisions of this Section 15, the City shall have no liability under this Agreement for any failure of the City to perform under this Agreement or the inability of the Developer to develop the Developer's Property as contemplated by the Development Plan or this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, the Land Use Regulations, the Development Approvals, this Agreement, or portions thereof, are invalid or inadequate or not in compliance with law.

15.3.2 Revision of Land Use Restrictions. If, for any reason, the General Plan, Land Use Regulations, Development Approvals, this Agreement or any part thereof is hereafter judicially determined, as provided above, to not be in compliance with the State or Federal Constitution, laws or regulations and, if such noncompliance can be cured by an appropriate amendment thereof otherwise conforming to the provisions of this Agreement, then this Agreement shall remain in full force and effect to the extent permitted by law. The Development Plan, Development Approvals and this Agreement shall be amended, as necessary,

in order to comply with such judicial decision; provided that City shall retain its discretion as to the approval of legislative changes to the General Plan, Land Use Regulations or other Development Approvals.

15.3.3 Participation in Litigation: Indemnity. The Developer shall indemnify the City and its elected boards, commissions, officers, agents and employees and will hold and save them and each of them harmless from any and all actions, suits, claims, liabilities, losses, damages, penalties, obligations and expenses (including but not limited to attorneys' fees and costs) against the City and/or agent for any such Claims or Litigation (as defined in Section 1.17) and shall be responsible for any judgment arising therefrom. The City shall provide the Developer with notice of the pendency of such action and shall request that the Developer defend such action. The Developer may utilize the City Attorney's office or use legal counsel of its choosing, but shall reimburse the City for any necessary legal cost incurred by City. The Developer shall provide a deposit in the amount of 150% of the City's estimate, in its sole and absolute discretion, of the cost of litigation, including the cost of any award of attorneys' fees, and shall make additional deposits as requested by City to keep the deposit at such level. The City may ask for further security in the form of a deed of trust to land of equivalent value. If the Developer fails to provide or maintain the deposit, the City may abandon the action and the Developer shall pay all costs resulting therefrom and City shall have no liability to the Developer. The Developer's obligation to pay the cost of the action, including judgment, shall extend until judgment. After judgment in a trial court, the parties must mutually agree as to whether any appeal will be taken or defended. The Developer shall have the right, within the first 30 days of the service of the complaint, in its sole and absolute discretion, to determine that it does not want to defend any litigation attacking this Agreement or the Development Approvals, in which case the City shall allow the Developer to settle the litigation on whatever terms the Developer determines, in its sole and absolute discretion, but Developer shall confer with City before acting and cannot bind City to such settlement. In that event, the Developer shall be liable for any costs incurred by the City up to the date of settlement but shall have no further obligation to the City beyond the payment of those costs. In the event of an appeal, or a settlement offer, the Parties shall confer in good faith as to how to proceed. Notwithstanding the Developer's indemnity for claims and litigation, the City retains the right to settle any litigation brought against it in its sole and absolute discretion and the Developer shall remain liable except as follows: (i) the settlement would reduce the scope of the Project by 10% or more, and (ii) the Developer opposes the settlement. In such case the City may still settle the litigation but shall then be responsible for its own litigation expense but shall bear no other liability to the Developer.

15.4 Hold Harmless: Developer's Construction and Other Activities. The Developer shall defend, save and hold the City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, costs (including attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from the Developer's or the Developer's agents, contractors, subcontractors, agents, or employees' operations under this Agreement, whether such operations be by the Developer or by any of the Developer's agents, contractors or subcontractors or by anyone or more persons directly or indirectly employed by or acting as agent for the Developer or any of the Developer's agents, contractors or subcontractors. Nothing herein is intended to make the Developer liable for the acts of the City's officers, employees, agents, contractors of subcontractors.

15.5 Survival of Indemnity Obligations. All indemnity provisions set forth in this Agreement shall survive termination of this Agreement for any reason other than the City's Default.

16. EFFECT OF AGREEMENT ON TITLE.

16.1 Covenant Runs with the Land. Subject to the provisions of Sections 14 and 18 and pursuant to the Development Agreement Statute (§ 65868.5):

A. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Developer's Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns;

B. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law; and

C. Each covenant to do or refrain from doing some act on the Developer's Property hereunder (i) is for the benefit of and is a burden upon every portion of the Developer's Property, (ii) runs with such lands, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and each other person succeeding to an interest in such lands.

17. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION.

17.1 Non-liability of City Officers and Employees. No official, agent, contractor, or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or to its successor, or for breach of any obligation of the terms of this Agreement.

17.2 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which affects the financial interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any state statute or regulation.

17.3 Covenant Against Discrimination. The Developer covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. The Developer shall take affirmative action to insure that employees are treated

during employment without regard to their race, color, creed religion, sex, marital status, national origin or ancestry.

18. MORTGAGEE PROTECTION.

18.1 Definitions. As used in this Section, the term “**mortgage**” shall include any mortgage, whether a leasehold mortgage or otherwise, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term “**holder**” shall include the holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

18.2 Developer’s Breach Not Defeat Mortgage Lien. This Agreement shall be senior and superior to the lien of any Mortgage. Notwithstanding the foregoing, the Developer’s breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render void the lien of any mortgage made in good faith and for value but, unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage whose interest is acquired by foreclosure, trustee’s sale, deed in lieu of foreclosure or otherwise.

18.3 Holder Not Obligated to Construct or Complete Improvements. The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Project or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

18.4 Notice of Default to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer hereunder, the City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to the City therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

18.5 Right to Cure. Each holder (insofar as the rights of City are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, and one hundred twenty (120) days after the Developer’s cure rights have expired, whichever is later, to:

A. Obtain possession, if necessary, and to commence and diligently pursue the cure until the same is completed, and

B. Add the cost of said cure to the security interest debt and the lien or obligation on its security interest; provided that, in the case of a default which cannot with diligence be remedied or cured within such cure periods referenced above in this Section 18.6, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of the Developer under this Section shall be exercised by the holder first in priority or

as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Developer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to City with respect to the Project or any portion thereof in which the holder has an interest. The holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations.

18.6 City's Rights upon Failure of Holder to Complete Improvements. In any case where one hundred eighty (180) days after default by the Developer in completion of construction of improvements under this Agreement, the holder of any mortgage creating a lien or encumbrance upon the Project or portion thereof has not exercised the option to construct afforded in this Section or, if it has exercised such option and has not proceeded diligently with construction, the City may, after ninety (90) days' notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

A. The unpaid mortgage, debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);

B. All expenses, incurred by the holder with respect to foreclosure, if any;

C. The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the applicable portion of the Project, such as insurance premiums or real estate taxes, if any;

D. The costs of any improvements made by such holder, if any; and

E. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by the City.

If the City has not purchased the mortgage within ninety (90) days of the expiration of the ninety (90) days referred to above, then the right of the City to purchase shall expire.

In the event that the holder does not exercise its option to construct afforded in this Section, and if the City elects not to purchase the mortgage of holder, upon written request by the holder to the City, the City shall use reasonable efforts to assist the holder in selling the holder's interest to a qualified and responsible party or parties (as determined by City), who shall assume the obligations of making or completing the improvements required to be constructed by the Developer, or such other improvements in their stead as shall be satisfactory to the City. The

proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs A through E hereinabove and any balance remaining thereafter shall be applied as follows:

(1) First, to reimburse the City for all costs and expenses actually and reasonably incurred by the City, including, but not limited to, payroll expenses, management expenses, legal expenses, and others;

(2) Second, to reimburse the City for all payments made by City to discharge any other encumbrances or liens on the applicable portion of the Project or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees;

(3) Third, to reimburse the City for all costs and expenses actually and reasonably incurred by the City, in connection with its efforts assisting the holder in selling the holder's interest in accordance with this Section; and

(4) Fourth, any balance remaining thereafter shall be paid to the Developer.

18.7 Right of City to Cure Mortgage Default. In the event of a default or breach by the Developer (or entity permitted to acquire title under this Section) prior to completion of the Project or the applicable portion thereof, and the holder of any such mortgage has not exercised its option to complete the development, the City may cure the default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from the Developer or other entity of all costs and expenses incurred by the City in curing the default, to the extent permitted by law, as if such holder initiated such claim for reimbursement, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the applicable portion of the Project to the extent of such costs and disbursements. Any such lien shall be subject to:

A. Any Mortgage; and

B. Any rights or interests provided in this Agreement for the protection of the holders of such Mortgages; provided that nothing herein shall be deemed to impose upon the City any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Project in the event of its enforcement of its lien.

18.8 Right of the City to Satisfy Other Liens on the Developer's Property After Conveyance of Title. After the conveyance of title and prior to completion of construction and development, and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Project, the City shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Project or any portion thereof to forfeiture or sale.

19. MISCELLANEOUS.

19.1 Estoppel Certificates. Either Party (or a Mortgagee under Section 18) may at any time deliver written notice to the other Party requesting an Estoppel Certificate stating:

A. The Agreement is in full force and effect and is a binding obligation of the Parties;

B. The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments; and

C. There are no existing defaults under the Agreement to the actual knowledge of the party signing the Estoppel Certificate.

A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) days after receipt of the request. The Planning Director may sign Estoppel Certificates on behalf of the City. An Estoppel Certificate may be relied on by assignees and Mortgagees. The Estoppel Certificate shall be substantially in the same form as **Exhibit "C"**.

19.2 Force Majeure. The time within which the Developer or the City shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, natural disasters, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions on priority, initiative or referendum, moratoria, processing with governmental agencies other than the City, unusually severe weather, third party litigation as described in Section 15.3 above, or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if written notice by the party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the cause. Any act or failure to act on the part of a Party shall not excuse performance by that Party.

19.3 Interpretation.

19.3.1 Construction of Development Agreement. The language of this Agreement shall be construed as a whole and given its fair meaning. The captions of the sections and subsections are for convenience only and shall not influence construction. This Agreement shall be governed by the laws of the State of California. This Agreement shall not be deemed to constitute the surrender or abrogation of the City's governmental powers over the Developer's Property.

19.3.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and this Agreement supersedes all previous negotiations, discussions, and agreements between the Parties. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

19.3.3 Recitals. The recitals in this Agreement constitute part of this Agreement and each Party shall be entitled to rely on the truth and accuracy of each recital as an inducement to enter into this Agreement.

19.3.4 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefitted thereby of the covenants to be performed hereunder by such benefitted Party.

19.4 Severability. If any provision of this Agreement is adjudged invalid, void or unenforceable, that provision shall not affect, impair, or invalidate any other provision, unless such judgment affects a material part of this Agreement in which case the parties shall comply with the procedures set forth in Section 15.3.3 above.

19.5 Joint and Several Obligations. All obligations and liabilities of the Developer hereunder shall be joint and several among the obligees.

19.6 No Third Party Beneficiaries. The only Parties to this Agreement are the Developer and the City and their successors and assigns. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.

19.7 Notice.

19.7.1 To Developer. Any notice required or permitted to be given by the City to the Developer under this Development Agreement shall be in writing and delivered personally to the Developer or mailed, with postage fully prepaid, registered or certified mail, return receipt requested, or sent by reliable overnight delivery service such as Fed Ex, addressed as follows:

Rancho San Gorgonio, LLC
10621 Civic Center Drive
Rancho Cucamonga, CA 91730
Attention: Peter J. Pitassi, Senior Vice President

With a copy to:

Rancho San Gorgonio, LLC
10621 Civic Center Drive
Rancho Cucamonga, CA 91730
Attention: Matt Jordan

or such other address as the Developer may designate in writing to the City.

19.7.2 To the City. Any notice required or permitted to be given by the Developer to the City under this Development Agreement shall be in writing and delivered personally to the City Clerk or mailed with postage fully prepaid, registered or certified mail, return receipt requested, or sent by reliable overnight delivery service such as Fed Ex, addressed as follows:

City of Banning
99 E. Ramsey Street
Banning, California 92220
Attention: City Manager

With a copy to:

City of Banning
99 E. Ramsey Street
Banning, California 92220
Attention: City Attorney

or such other address as the City may designate in writing to the Developer.

Notices provided pursuant to this Section shall be deemed received at the date of delivery as shown on the affidavit of personal service or the Postal Service or overnight delivery receipt.

19.8 Relationship of Parties. It is specifically understood and acknowledged by the Parties that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. The only relationship between the City and the Developer is that of a government entity regulating the development of private property and the owner of such private property.

19.9 Attorney's Fees. If either Party to this Agreement is required to initiate or defend litigation against the other Party, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and, in addition, a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to a final judgment.

19.10 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

19.11 Time of Essence. Time is of the essence in:

A. The performance of the provisions of this Agreement as to which time is an element; and

B. The resolution of any dispute which may arise concerning the obligations of the Developer and the City as set forth in this Agreement.

19.12 Non-Liability of Officials and Employees of City. No officer, employee, agent or representative of City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by City or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

19.13 Amendments to Agreement. In the event that Developer or its lender requests any amendments to this Agreement, or any of the documents to be executed pursuant to this Agreement, the City shall reasonably consider such request. Any alteration, change, or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party. Any costs incurred by the City in connection with such amendments requested by Developer or its lender, including without limitation attorneys' fees for the review of the request and preparation of an amendment, and the cost of the City's consultants for undertaking analysis of the proposed amendment, shall be borne by the Developer.

19.14 Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

19.15 Time of the Essence. Time is expressly made of the essence with respect to the performance by the Parties of each and every obligation and condition of this Agreement.

19.16 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

19.17 Execution.

19.17.1 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

19.17.2 Recording. The City Clerk shall cause a copy of this Agreement to be executed by the City and recorded in the Official Records of Riverside County no later than ten (10) days after the Effective Date (Gov't Code § 65868.5). The recordation of this Agreement is deemed a ministerial act and the failure of the City to record the Agreement as required by this Section and the Development Agreement Statute does not make this Agreement void or ineffective.

19.17.3 Authority to Execute. The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to sign and deliver this Agreement on behalf of the Party he or she represents. The Parties each represent that (i) such

Party is duly organized and existing, (ii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, (iii) the entering into of this Agreement does not violate any provision of any other Agreement to which such Party is bound and (iv) there is no litigation or legal proceeding which would prevent such Party from entering into this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement on the date first above written.

“CITY”:

THE CITY OF BANNING, a municipal corporation

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

“DEVELOPER”:

RANCHO SAN GORGONIO, LLC,
a Delaware limited liability company

By: Diversified Pacific Opportunity Fund, I,
LLC, a Delaware limited liability
company, Its Member

By: Diversified Pacific Development
Group, LLC, a California limited
liability company, Its Managing
Member

By: _____
Matthew A. Jordan,
Managing Member

EXHIBIT “A”

MAP AND LEGAL DESCRIPTION OF DEVELOPER’S PROPERTY

[ATTACHMENT]

EXHIBIT "A"
MAP AND LEGAL DESCRIPTION OF DEVELOPER'S PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A: (APN(S): 537-200-031 THROUGH 537-200-038)

PARCELS 1 THROUGH 8, INCLUSIVE AND LETTERED LOTS A THROUGH S, INCLUSIVE OF PARCEL MAP 28972, RECORDED IN BOOK 204 PAGES 31 AND 32 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL B: (APN: 537-190-018)

LOT 9 OF ALMCOT TRACT, IN THE CITY OF BANNING, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA AS SHOWN BY MAP ON FILE IN BOOK 18 PAGE 3 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL C: (537-150-005 THROUGH 007; 537-170-002 AND 003; 537-190-001 THROUGH 005)

LOTS 1 THROUGH 8, 15 AND 16, INCLUSIVE, OF ALMCOT TRACT, AS SHOWN BY MAP ON FILE IN BOOK 18 PAGE(S)3 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPT FROM SAID LOT 16 THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 16;
THENCE SOUTH, 200.00 FEET, ON THE EAST LTNE OF SAID LOT 16;
THENCE WEST, 20.00 FEET, PARALLEL WITH THE NORTH LINE OF SAID LOT;
THENCE NORTH 200.00 FEET, PARALLEL WITH SAID EAST LINE TO SAID NORTH LINE; THENCE EAST, 20.00 FEET ON SAID NORTH LINE TO THE POINT OF BEGINNING

PARCEL D: (APN: 537-190-019)

ADJUSTED LOT 11 AS SHOWN ON LOT LINE ADJUSTMENT LLA NO. 1999-04 RECORDED AUGUST 18, 1999 AS INSTRUMENT NO. 371259 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY CALIFORNIA, ALSO DESCRIBED IN THE DOCUMENT AS FOLLOWS:

THAT PORTION OF LOTS 10, 11, 12 AND 13 OF ALMCOT TRACT, AS SHOWN BY MAP ON FILE IN BOOK 18PAGE(S)3 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHWEST CORNER OF LOT 10, SAID POINT BEING THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY OF VICTORY AVENUE (FORMERLY CRAWFORD AVENUE) AND THE WESTERLY RIGHT OF WAY OF TWENTY-SECOND STREET;
THENCE NORTH 00° 34' 00" WEST A DISTANCE OF 166.63 FEET;
THENCE NORTH 49° 31' 00" WEST A DISTANCE OF 37.33 FEET TO THE MOST NORTHERLY CORNER OF SAID LOT 10;. THENCE SOUTHERLY ALONG VARIOUS COURSES OF THE WESTERLY LINE OF SAID LOT 10 DESCRIBED AS FOLLOWS;

THENCE SOUTH 33° 10' 00" WEST A DISTANCE OF 127.15 FEET;
THENCE SOUTH 43° 15' 00" WEST A DISTANCE OF 200.33 FEET;
THENCE SOUTH 13° 31' 00" WEST A DISTANCE OF 139.04 FEET;
THENCE SOUTH 06° 31' 00" EAST A DISTANCE OF 316.07 FEET;
THENCE SOUTH 15° 03' 00" WEST A DISTANCE OF 354.51 FEET;
THENCE SOUTH 03° 48' 00" EAST A DISTANCE OF 222.23 FEET;

THENCE SOUTH 34° 55' 00" EAST A DISTANCE OF 288.59 FEET TO THE NORTH LINE OF THE SOUTH HALF OF SECTION 17, RANGE 1 EAST, TOWNSHIP 3 SOUTH, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN ON SAID MAP;
THENCE NORTH 89° 26' 00" EAST ALONG SAID LINE A DISTANCE OF 1518.59 FEET;
THENCE NORTH 00° 34' 00" WEST A DISTANCE OF 668.46 FEET;
THENCE SOUTH 89° 26' 00" WEST A DISTANCE OF 1360 FEET;
THENCE NORTH 00° 34' 00" WEST A DISTANCE OF 641.47 FEET TO THE POINT OF BEGINNING,

PARCEL E: (APN: 537-190-021 AND 022)

ADJUSTED LOT 14 AS SHOWN ON LOT LINE ADJUSTMENT LLA NO. 1999-04 RECORDED AUGUST 18, 1999 AS INSTRUMENTNO.99-371259 OF OFFICE RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, ALSO DESCRIBED IN THE DOCUMENT AS FOLLOWS:

THAT PORTION OF LOTS 12, 13 AND 14 OF ALMCOT TRACT AS SHOWN BY MAP ON FILE IN BOOK18 PAGE(S)3 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST 1/4 CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 12 OF SAID MAP;
THENCE NORTH 00° 58' 00" WEST ALONG THE EAST LINE OF SAID SECTION 17 A DISTANCE OF 668.48 FEET TO THE TRUE POINT OF BEGINNING;
THENCE SOUTH 89° 26' 00" WEST A DISTANCE OF 695.05 FEET;
THENCE NORTH 00° 34' 00" WEST A DISTANCE OF 783.78 FEET TO THE NORTHWEST CORNER OF SAID LOT 14;
THENCE ALONG VARIOUS COURSES OF THE NORTH LINE OF SAID LOT 14 DESCRIBED AS FOLLOWS:

THENCE NORTH 86° 35' 00" EAST A DISTANCE OF 120.91 FEET;
THENCE SOUTH 67° 02' 00" EAST A DISTANCE OF 122.00 FEET;
THENCE NORTH 88° 05' 00" EAST A DISTANCE OF 216.00 FEET;
THENCE NORTH 67° 02' 00" EAST A DISTANCE OF 200.00 FEET;
THENCE NORTH 88° 43' 00" EAST A DISTANCE OF 56.86 FEET TO THE EAST LINE OF SAID SECTION 17;
THENCE SOUTH 00° 58' 00" EAST ALONG THE EAST LINE OF SAID SECTION 17 A DISTANCE OF 823.10 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL F: (APN: 537-190-020)

ADJUSTED LOT 12 AS SHOWN ON LOT LINE ADJUSTMENT LLA NO. 1999-04 RECORDED AUGUST 18, 1999 AS INSTRUMENTNO.371259 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, ALSO DESCRIBED IN THE DOCUMENT AS FOLLOWS:

THAT PORTION OF LOTS 11, 12 AND 14 OF ALMCT TRACT AS SHOWN BY MAP ON FILE IN BOOK18 PAGE(S)3 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST 1/4 CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 12 OF SAID MAP;
THENCE SOUTH 89° 26' 00" WEST A DISTANCE OF 699.73 FEET;
THENCE NORTH 00° 34' 00" WEST A DISTANCE OF 668.46 FEET;
THENCE NORTH 89° 26' 00" EAST A DISTANCE OF 695.06 FEET;
THENCE SOUTH 00° 58' 00" EAST A DISTANCE OF 668.48 FEET TO THE POINT OF BEGINNING

PARCEL G: (APN: 543-030-04)

THE WESTERLY 50 FEET OF THE EASTERLY 100 FEET OF BLOCK 317 OF THE LANDS OF THE BANNING LAND COMPANY, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP OF A SUBDIVISION OF LANDS ADJOINING BANNING ON THE SOUTHWEST ON FILE IN BOOK14PAGE662 OF MAPS, SAN DIEGO COUNTY RECORDS.

PARCEL H: (APN: 543-040-01 PORTION, 543-050-02, 543-040-02)

THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER AND THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

EXCEPTING THEREFROM THAT PORTION WITHIN THE FOLLOWING DESCRIBED-1 PROPERTY:

BEGINNING ON THE EAST LINE OF SAID SECTION, 350 FEET SOUTH OF THE NORTHEAST CORNER THEREOF;
THENCE WEST 1320 FEET;
THENCE SOUTH 640 FEET;
THENCE EAST 680 FEET;
THENCE SOUTH 2310 FEET, TO A POINT 650 FEET SOUTH OF THE EAST AND WEST CENTER LINE OF SAID SECTION 16;
THENCE EAST, TO A POINT ON THE EAST LINE, OF SAID SECTION 16, DISTANT 3300 FEET SOUTH OF THE NORTHEAST CORNER OF SAID SECTION 16;
THENCE NORTH, ON THE EAST LINE OF SAID SECTION, 2950 FEET, TO THE POINT OF BEGINNING;

ALSO EXCEPTING THEREFROM THE NORTHERLY 990 FEET OF SAID NORTHEAST QUARTER,

ALSO EXCEPTING THEREFROM THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERLY QUARTER CORNER OF SAID SECTION 16;
THENCE NORTH 1671.66 FEET TO A POINT ON THE EAST LINE OF SECTION 16, WHICH BEARS SOUTH 990 FEET FROM THE NORTHEAST CORNER OF SECTION 16;

THENCE NORTH $89^{\circ} 45' 25''$ WEST AND PARALLEL WITH THE NORTH LINE OF SECTION 16, A DISTANCE OF 1406 FEET;
THENCE SOUTH $00^{\circ} 22' 23''$ EAST A DISTANCE OF 455 FEET;
THENCE SOUTH $39^{\circ} 37' 23''$ EAST, A DISTANCE OF 216.5 FEET;
THENCE SOUTH $40^{\circ} 37' 23''$ EAST, A DISTANCE OF 496.35 FEET;
THENCE SOUTH $18^{\circ} 47' 23''$ EAST, A DISTANCE OF 593.0 FEET;
THENCE SOUTH $01^{\circ} 19' 37''$ WEST, A DISTANCE OF 145 FEET MORE OR LESS TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 16;
THENCE EASTERLY ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 16, A DISTANCE OF 717 FEET MORE OR LESS TO POINT OF BEGINNING.

PARCEL I: (APN: 543-050-01 PORTION)

THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

EXCEPTING THEREFROM THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION.

ALSO EXCEPTING THEREFROM THE NORTHERLY 650 FEET OF THE EASTERLY 640 FEET;

ALSO EXCEPTING THEREFROM THAT PORTION IN THE COUNTY ROAD THROUGH SAID SECTION 16 AND THE PORTION LYING SOUTHERLY THEREOF.

PARCEL J: (APN: 543-050-01 PORTION)

THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

EXCEPTING THEREFROM THAT PORTION INCLUDED IN THE COUNTY ROAD THROUGH SAID SECTION 16 AND THE PORTION LYING SOUTHERLY THEREOF.

PARCEL K: (APN: 543-040-01 PORTION)

THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

EXCEPTING THEREFROM THE NORTHERLY 990 FEET.

PARCEL L: (APN: 543-020-21)

BLOCK 314, AS SHOWN BY MAP CAPTIONED "SUBDIVISIONS OF LAND ADJOINING BANNING ON THE SOUTHWEST, BEING PARTS OF SECTIONS 9 AND 16, TOWNSHIP 3 SOUTH, RANGE 1 EAST, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, SAN BERNARDINO BASE AND MERIDIAN ON FILE IN BOOK 14 PAGE 662 OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA;

EXCEPTING THEREFROM THE NORTH 350 FEET OF THE WEST 140 FEET THEREOF.

PARCEL M: (APN: 543-050-03)

THAT PORTION OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION;
THENCE WEST, ON THE NORTH LINE OF THE SOUTHEAST QUARTER, 640 FEET;
THENCE SOUTH, PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST QUARTER, 650 FEET;
THENCE EAST, PARALLEL WITH THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION, 640 FEET, TO THE EAST LINE OF SAID SECTION;
THENCE NORTH, ON SAID LINE, 650 FEET, TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM THE EASTERLY 20 FEET CONVEYED TO THE COUNTY OF RIVERSIDE BY DEED RECORDED DECEMBER 22, 1925 IN BOOK 660 PAGE 511 OF DEEDS, RIVERSIDE, COUNTY RECORDS.

INDEX MAP

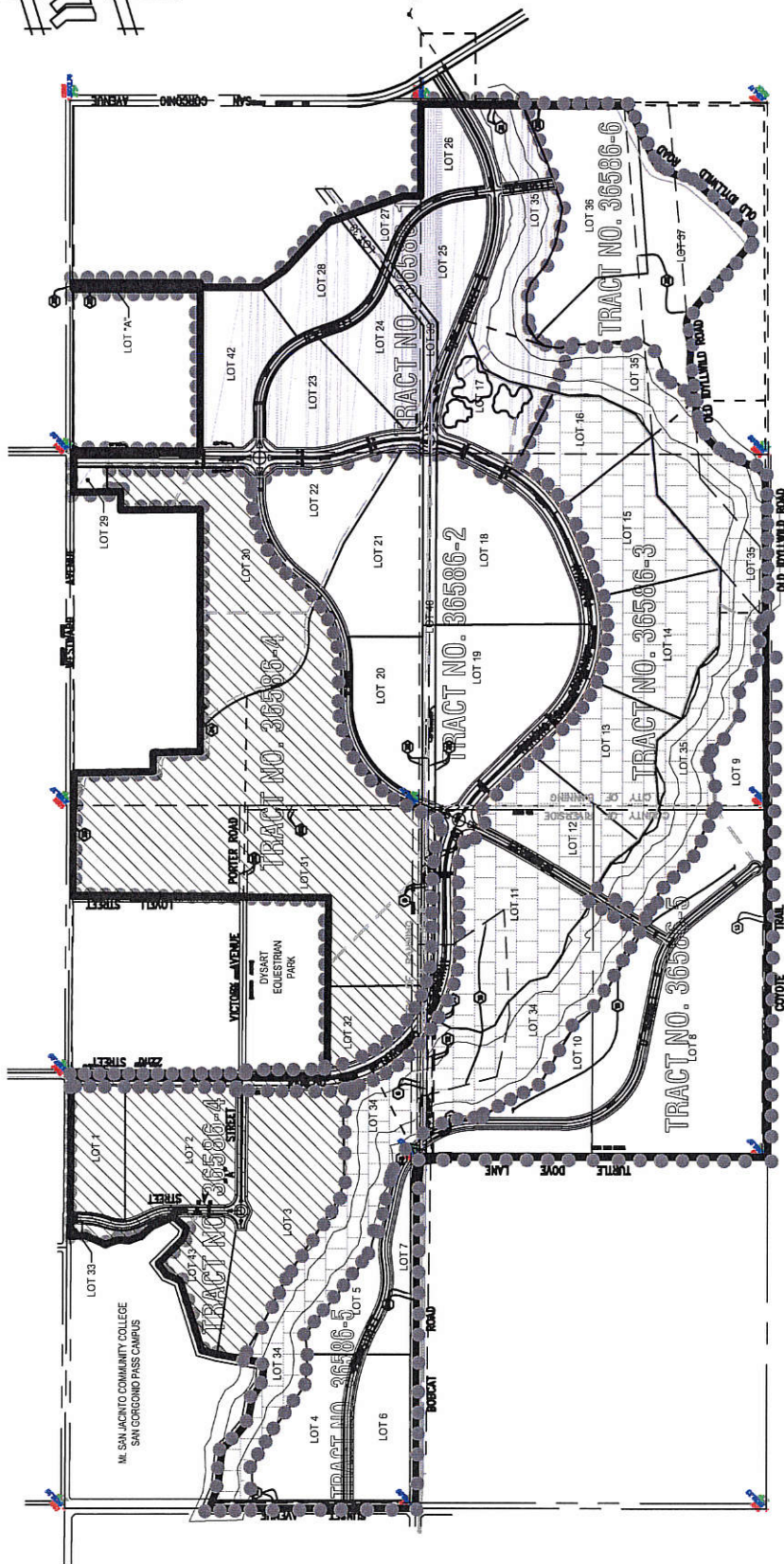
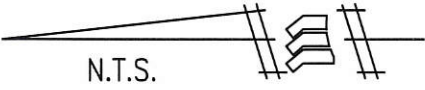


EXHIBIT “B”

EXISTING DEVELOPMENT APPROVALS

1. Resolution No. 2016-83 adopting a Statement of Overriding Considerations and CEQA Findings of Fact, certification of the Final Environmental Impact Report, adoption of the Mitigation Monitoring and Reporting Program for the Rancho San Gorgonio Specific Plan project;
2. Resolution No. 2016-88 approving General Plan Amendment (GPA) No. 13-2503 to change the General Plan Designation from Very Low Density Residential, Medium Density Residential, Very High Density Residential, Rural Residential, and Open Space-Parks to Specific Plan;
3. Ordinance No. 1501 adopting Zone Change No. 13-3501 to reflect the proposed Zoning Ordinance text and map amendments for the Rancho San Gorgonio Specific Plan;
4. Resolution No. 2016-84 approving the Water Supply Assessment for the project based upon Findings of Fact as stated in the resolution;
5. Ordinance No. 1500 approving the Rancho San Gorgonio Specific Plan to create an 831 acre master planned community composed of 44 planning areas that include a variety of residential densities, common open spaces, an elementary school site and commercial area within the City of Banning;
6. Resolution No. 2016-86 approving Master Tentative Tract Map No. 36586 and conditions of approval establishing road right-of-ways, forty-four land use planning areas, parks and open space parcels;
7. Ordinance No. 1499 approving the Development Agreement containing said provisions for financing acquisition and infrastructure construction, and land use development parameters; and
8. Resolution No. 2016-87 approving the annexation of 161 acres of property located in the County of Riverside and within the City’s adopted Sphere of Influence General Planning Area and the Rancho San Gorgonio Specific Plan.
9. The following portion of Condition No. 75 of Rancho San Gorgonio Specific Plan and Tentative Tract Map No. 36586 Conditions of Approval – Revised : "The Developer shall complete the construction of the neighborhood parks as follows: PA-13 shall be completed prior to the issuance of the final certificate of occupancy for Phase 1. PA’s 14C and 14D shall be completed prior to the issuance of the final certificate of occupancy for Phase 1. PA-11 shall be completed prior to the issuance of the final certificate of occupancy for Phase 2. PA-14B shall be completed prior to the issuance of the final certificate of occupancy for Phase 2. PA-12 shall be completed prior to the issuance of the final certificate of occupancy for Phase 3. PA-15B shall be completed prior to the issuance of the final certificate of occupancy for Phase 3. PA-10 shall be completed prior to the

issuance of the final certificate of occupancy for Phase 4. PA-14A shall be completed prior to the issuance of the final certificate of occupancy for Phase 4. PA-15A shall be completed prior to the issuance of the final certificate of occupancy for Phase 4."

EXHIBIT "C"

ESTOPPEL CERTIFICATE

Date Requested: _____

Date of Certificate: _____

To: _____ ("Recipient")

The City of Banning ("City") and Rancho San Gorgonio, LLC, a Delaware limited liability company ("Developer") have entered into a certain Development Agreement dated as of _____ [Developer's interest in the Development Agreement has been assigned to _____]

This Estoppel Certificate certifies that, as of the Date of Certificate set forth above:

1. The Development Agreement remains in full force and effect and binding on City and Developer.
2. The Development Agreement has not been amended [except for the following: _____].
3. To the best of City's knowledge, Developer is not in default under the Development Agreement [except for the following: _____].

This Estoppel Certificate is provided solely for the benefit of Recipient and may not be relied upon or used by any other party.

City of Banning

By: _____
Its: _____

EXHIBIT “D”
DEVELOPMENT IMPACT FEES

[ATTACHMENT]

Residential Development Impact Fees (DIF)¹

| Current Fees | | SFD Fee | Townhouse Duplex | | Multi-Family | | Commercial ² | DIF Adjustment |
|---|--------------------------|----------|--------------------------|----------|--------------------------|----------|--------------------------|------------------------------------|
| City Development Impact Fees | | | | | | | | |
| Police Facilities Development Fee | \$ | 823.00 | \$ | 626.00 | \$ | 913.00 | Reso 2006-075 | Per DA sections 6.5.2 and 7.2.2 |
| Fire Facilities | \$ | 1,335.00 | \$ | 1,335.00 | \$ | 1,335.00 | Reso 2006-075 | Per DA section 8.4 |
| Park Land Fee | \$ | 1,955.00 | \$ | 1,485.00 | \$ | 2,168.00 | Reso 2006-075 | Not Applicable to RSG ³ |
| Traffic Control Facility Fee ⁴ | \$ | 250.00 | \$ | 153.00 | \$ | 172.00 | Reso 2006-075 | Not Applicable to RSG ⁵ |
| General Facilities Fee | \$ | 478.00 | \$ | 363.00 | \$ | 530.00 | Reso 2006-075 | Not Applicable to RSG ³ |
| Water Connection Fee | \$ | 7,232.00 | \$ | 7,232.00 | \$ | 7,232.00 | Reso 2006-075 | Not Applicable to RSG ³ |
| Sewer Connection Fee | \$ | 2,786.00 | \$ | 2,786.00 | \$ | 2,786.00 | Reso 2006-075 | Per DA sections 6.5.2 and 7.2.2 |
| Traffic Control Impact Fee ⁴ | Not Defined At This Time | | Not Defined At This Time | | Not Defined At This Time | | Not Defined At This Time | Per DA Section 6.5.2, 7.2.2, 7.5.1 |
| Additional Fees Identified in the Development Agreement | | | | | | | | |
| Frontage Fee (Sewer) ⁶ | \$27.50 Linear Foot | | \$27.50 Linear Foot | | \$27.50 Linear Foot | | \$27.50 Linear Foot | Per DA section 7.3.1 |
| Frontage Fee (Water) | \$25.00 Linear Foot | | \$25.00 Linear Foot | | \$25.00 Linear Foot | | \$25.00 Linear Foot | Not Applicable to RSG ³ |
| Existing Regional Fees at Effective Date | | | | | | | | |
| MSHCP SBKR Fee | \$500 per acre | | \$500 per acre | | \$500 per acre | | \$500 per acre | Riverside County Standard |
| MSHCP ⁷ | \$ | 1,952.00 | \$ | 1,250.00 | \$ | 1,015.00 | \$6,645 per acre | Riverside County Standard |
| TUMF | \$ | 8,873.00 | \$ | 6,231.00 | \$ | 6,231.00 | \$10.49 per sf | WRCOG Standard |
| School ⁸ | Per BUSD | | Per BUSD | | Per BUSD | | Per BUSD | BUSD Standard |

¹All Fees are current as of the effective date of the Development Agreement and in accordance with Banning's Resolution 2006-075

²Refer to Resolution 2006-075 for DIF that apply to commercial development

³Improvement in Lieu of DIF as outlined in the Development Agreement

⁴Traffic Control Facilities Fee to be replaced by Traffic Control Impact Fee in City Master Fee Update

⁵If the Traffic Control Facilities Fee is not replaced by the Traffic Control Impact Fee, then the Traffic Control Facilities Fee shall be applicable to the project subject to the same credits and reimbursements outlined in the Development Agreement for the replacement Traffic Control Impact Fee. In no event shall both fees be applicable.

⁶Sewer Frontage Fee only applicable to linear footage of project frontage at Westward Avenue as noted in the Development Agreement

⁷Townhouse/Duplex and Multi-family Fees are based on a density of 8-14 du/acre and 14+ du/acre respectively

⁸The actual fee will be based upon livable square footage of each home.

EXHIBIT “E”

[Intentionally Omitted]

EXHIBIT “F”

[Intentionally Omitted]

EXHIBIT “G”

FINANCING PLAN

This Financing Plan sets forth the basic terms and conditions pursuant to which City and Developer will cooperate to establish one or more CFD(s) and designate Improvement Areas therein pursuant to the CFD Act to finance the Eligible Facilities and Eligible Services in connection with the Project. Capitalized terms not otherwise defined in this Financing Plan shall be defined as provided in the Agreement.

1. Goals and Policies for Financing. The principal objectives of this Financing Plan are to:

- a. Provide City and Developer reasonable certainty that each CFD will be established in accordance with the Goals and Policies and this Financing Plan.
- b. Provide basic parameters for the levy of special taxes within each CFD or Improvement Area to pay directly for Eligible Facilities (the “**Facilities Special Taxes**”) and Eligible Services (the “**Services Special Taxes**”) and to secure the issuance of bonds of each CFD or Improvement Area secured by and payable from the Facilities Special Taxes in order to finance the Eligible Facilities (“**Bonds**”).
- c. Provide basic parameters for the issuance of Bonds by or for the CFD(s) and any Improvement Areas therein.

2. Formation. City shall initiate proceedings to establish a CFD upon Developer’s petition request pursuant to the CFD Act and submittal of City’s standard application form and receipt of an advance from Developer in an amount determined by City to pay for City’s estimated costs to be incurred in undertaking the proceedings to establish the CFD (“**Formation Proceedings Costs**”). City agrees that all such advances for Formation Proceedings Costs shall be eligible for reimbursement out of the first available proceeds of Surplus Special Taxes (defined below) and Bonds of the CFD and/or Facilities Special Taxes to the extent approved by the City’s Bond Counsel (“CFD Proceeds”). The exact terms and conditions for the advance of funds by Developer and the reimbursement of such advances shall be memorialized in a separate agreement between City and Developer. City agrees to use its best efforts to complete the proceedings to form each CFD and record the notice of special tax lien for the CFD and each Improvement Area therein within 210 days after City’s receipt of Developer’s complete application and deposit. While the Parties acknowledge that this Agreement cannot require the City or the City Council to form a CFD or issue Bonds, the City agrees that it shall not refuse Developer’s requests to form a CFD or issue Bonds except for good and reasonable cause.

3. Boundaries. The CFD boundary, or the boundaries of all CFDs if more than one is formed, shall encompass the Project. Each CFD may contain multiple Improvement Areas based on phasing of the Project within the CFD.

4. Eligible Public Facilities and Discrete Components. Subject to the Goals and Policies for Financing, and the conditions set forth in the following paragraphs, City shall authorize the CFDs to finance the acquisition or construction of the Eligible Facilities, which may include the following:

- a. public streets and other related improvements within the public right-of-way
- b. water facilities
- c. storm drain facilities
- d. sewer facilities
- e. public parks, open space and landscaping
- f. electrical facilities to the extent reasonable and to the extent authorized by the Act
- g. any public facility to be constructed by City for which Developer is required to make a cash contribution pursuant to the Project's conditions of approval or this Agreement or which is included in any City capital improvement fee program and which public facility is to be owned by the City, subject to credit against the corresponding fee.

The costs of any Eligible Facility to be constructed by Developer that are eligible to be financed with CFD Proceeds ("**Actual Costs**") shall include the following, if permissible under the CFD Act:

- (i) The actual hard costs for the construction or the value of the Proposed Eligible Facility, including labor, materials and equipment costs;
- (ii) The costs of grading related to the Eligible Facility;
- (iii) The costs incurred in designing, engineering and preparing the plans and specifications for the Eligible Facility;
- (iv) The costs of environmental evaluation and mitigation of or relating to the Eligible Facility;
- (v) Fees paid to governmental agencies for, and costs incurred in connection with, obtaining permits, licenses or other governmental approvals for the Eligible Facility;
- (vi) Costs of construction administration and supervision;
- (vii) Professional costs associated with the Eligible Facility, such as engineering, legal, accounting, inspection, construction staking, materials and testing and similar professional services; and

(viii) Costs of payment, performance and/or maintenance bonds and insurance costs directly related to the construction of the Eligible Facility.

(ix) Any other costs permitted by law.

The Eligible Facilities constructed by Developer, and for which Developer elects to submit payment requests, shall be bid, contracted for and constructed in accordance with the Acquisition Agreement to be entered into between City and Developer at the time of formation of the first CFD. The Acquisition Agreement shall provide additional detail, consistent with the provisions of the Goals and Policies for Financing and this Agreement, with respect to the acquisition and construction of the Eligible Facilities, including a more detailed description of the specific Eligible Facilities that will be eligible to be financed through the CFD and discrete components of each Eligible Facility that may be reimbursed prior to the completion of the entire Eligible Facility. The Acquisition Agreement will also provide additional detail with respect to the financing of the City's construction of Eligible Facilities in satisfaction of corresponding City capital improvement fees, as elected by Developer. The CFD financing of the acquisition of an Eligible Facility constructed by Developer that is included in a City Capital improvement fee program or required by the Project conditions of approval, shall not preclude the Developer's receipt of corresponding fee credits.

5. Eligible Services. The Eligible Services consist of the maintenance of City parks in Planning Areas 10, 11, 12 and 13.

6. Financing Parameters. Each CFD shall be authorized to levy Special Taxes of each Improvement Area and issue Bonds of each CFD or Improvement Area in one or more series to finance the Eligible Facilities in accordance with the basic parameters set forth below:

- a. A precondition to the issuance of Bonds shall be that the value of the real property subject to Special Taxes required to repay the Bonds shall be at least three times the amount of the Bonds based on an appraisal and in accordance with Government Code Section 53345.8.
- b. Each series of Bonds shall have a term of at least thirty (30) years and include escalating annual debt service commensurate with any annual escalation in the Facilities Special Taxes. Each series of Bonds shall be sized based upon 110% aggregate debt service coverage on the proposed series and all outstanding parity Bonds from Facilities Special Taxes.
- c. The total effective tax rate within each Improvement Area applicable to any residential parcel on which a residential dwelling has or is to be constructed, taking into account all ad valorem property taxes, voter-approved ad valorem property taxes in excess of one percent (1%) of assessed value, the annual special taxes of existing community facilities districts and community facilities districts under consideration and reasonably expected to be established, the annual assessments (including any administrative surcharge) of existing assessment districts and assessment districts under consideration and reasonably expected to be established, and the Facilities

Special Taxes, shall equal two percent (2.00%) of the projected initial sales price of the residential dwelling unit and such parcel, as estimated at the time of formation of the applicable CFD, or such lesser amount requested by Developer. The Facilities Special Taxes and Services Special Taxes may escalate by up to 2% per year beginning the fiscal year following the base year.

- d. Each CFD shall levy Facilities Special Taxes on parcels for which a Building Permit for residential construction has been issued (“**Developed Property**”) prior to the issuance of Bonds. The Facilities Special Taxes collected by each CFD from Developed Property prior to the issuance of Bonds that are not required to pay reasonable administrative expenses of the CFD shall be deemed “**Surplus Special Taxes.**” Surplus Special Taxes shall be disbursed to pay for Eligible Facilities pursuant to the Acquisition Agreement.
- e. The amount of the Services Special Taxes shall not exceed the amount required to pay the reasonably projected actual costs of providing the Eligible Services.
- f. The City shall not oppose any efforts by the Developer and shall reasonably cooperate with the Developer in its efforts to freeze or reduce the ad valorem real property tax rate applicable to the Property that is attributable to other public agencies.
- g. In no event shall City general funds be used for any shortfall or lack of funds to pay any obligation of the CFD.

EXHIBIT "H"

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

Pursuant to the Development Agreement between the CITY OF BANNING ("City") and RANCHO SAN GORGONIO, LLC, a Delaware limited liability company ("Assignor"), dated _____, 2016 (the "Agreement"), which Agreement is hereby incorporated herein by this reference, and for good and valuable consideration, receipt of which is hereby acknowledged, the undersigned hereby agree as follows:

1. The assignment and assumption provided for under this Assignment and Assumption Agreement ("Assignment") is made together with the sale, transfer or assignment of all or a part of the property subject to the Agreement. The property sold, transferred or assigned together with this Assignment is described in Exhibit "1" attached hereto and incorporated herein by this reference (the "Subject Property").

2. Assignor hereby grants, sells, transfers, conveys, assigns and delegates to _____ ("Assignee"), all of Assignor's rights, title, interest, benefits, privileges, duties and obligations arising under or from the Agreement with respect to the Subject Property except for the following:

(a) Assignor's right to amend the Agreement as it applies to any real property other than the Subject Property; and

(b) **[INSERT OTHER RETAINED RIGHTS, IF ANY]**

3. Assignee hereby accepts the foregoing assignment and, except as otherwise provided herein, unconditionally assumes and agrees to perform all of the duties and obligations of Assignor arising under or from the Agreement as owner of the Subject Property and this Assignment and Assignor is hereby released from all such duties and obligations.

4. The sale, transfer or assignment of the Subject Property and the assignment and assumption provided for under this Assignment are the subject of additional agreements between Assignor and Assignee. Notwithstanding any term, condition or provision of such additional agreements, the rights of the City arising under or from the Agreement and this Assignment shall not be affected, diminished or defeated in any way, except upon the express written agreement of the City.

5. Assignor and Assignee execute this Assignment pursuant to Section 14 of the Agreement. This Assignment may be executed by the parties hereto in counterparts, each of which shall be deemed an original.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption Assignment as of the dates set forth below.

Dated: _____

ASSIGNOR:

[_____]

By: _____

Name: _____

Title: _____

Dated: _____

ASSIGNEE:

[_____]

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Approved by City of Banning:

By: _____

Name: _____

Title: _____

EXHIBIT "1" TO EXHIBIT "H"

DESCRIPTION OF SUBJECT PROPERTY

[ATTACH LEGAL DESCRIPTION]

EXHIBIT I

PREVAILING WAGE AND PUBLIC WORKS REQUIREMENTS

I. Developer's Requirements:

(1) Obtain the prevailing wage rate from the Director of Industrial Relations in accordance with Labor Code Sections 1771 and 1773.

(2) Specify the appropriate prevailing wage rates, in accordance with Labor Code Sections 1773.2 and 1777.5.

(A) The posting requirement is applicable for each job site.

EXCEPTION: If more than one worksite exists on any project, then the applicable rates may be posted at a single location which is readily available to all workers.

(B) If a wage rate for a craft, classification or type of worker is not published in the Director's general prevailing wage determinations, a request for a special determination should be made by the awarding body to Chief, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94142, at least 45 days prior to the project bid advertisement date.

(3) Notify the Division of Apprenticeship Standards, Department of Industrial Relations. See Labor Code Section 1773.3.

(4) Inform prime contractors, to the extent feasible, of relevant public work requirements:

NOTE: Requirement information may be disseminated at a preacceptance of bid conference or in a call for bids or at an award of bid conference.

The public works requirements are:

(A) the appropriate number of apprentices are on the job site, as set forth in Labor Code Section 1777.5.

(B) workers' compensation coverage, as set forth in Labor Code Sections 1860 and 1861.

(C) keep accurate records of the work performed on public works projects, as set forth in Labor Code Section 1812.

(D) inspection of payroll records pursuant to Labor Code Section 1776, and as set forth in Section 16400 (e) of Title 8 of the California Code of Regulations.

(E) and other requirements imposed by law.

(5) Withhold monies. See Labor Code Section 1727.

(6) Ensure that public works projects are not split or separated into smaller work orders or projects for the purpose of evading the applicable provisions of Labor Code Section 1771.

(7) Deny the right to bid on public work contracts to contractors or subcontractors who have been debarred from bidding on public works contracts, as set forth in Labor Code Section 1777.7.

(8) Not permit workers on public works to work more than eight hours a day or 40 hours in any one calendar week, unless compensated at not less than time and a half as set forth in Labor Code Section 1815.

EXCEPTION: If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code Section 1815, then that higher overtime rate must be paid, as specified in subsection 16200(a)(3)(F) of Title 8 of the California Code of Regulations.

(9) Not take or receive any portion of the workers' wages or accept a fee in connection with a public works project, as set forth in Labor Code Sections 1778 and 1779.

(10) Comply with those requirements as specified in Labor Code Sections 1776(g), 1777.5, 1810, 1813, and 1860.

II. Contractor and Subcontractor Requirements.

The contractor and subcontractors shall:

(1) Pay not less than the prevailing wage to all workers, as defined in Section 16000 of Title 8 of the California Code of Regulations, and as set forth in Labor Code Sections 1771 and 1774;

(2) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works jobsites;

(3) Provide workers' compensation coverage as set forth in Labor Code Section 1861;

(4) Comply with Labor Code Sections 1778 and 1779 regarding receiving a portion of wages or acceptance of a fee;

(5) Maintain and make available for inspection payroll records, as set forth in Labor Code Section 1776;

(6) Pay workers overtime pay, as set forth in Labor Code Section 1815 or as provided in the collective bargaining agreement adopted by the Director of Industrial Relations as set forth in Section 16200 (a) (3) of Title 8 of the California Code of Regulations;

(7) Comply with Section 16101 of Title 8 of the California Code of Regulations regarding discrimination;

(8) Be subject to provisions of Labor Code Section 1777.7 which specifies the penalties imposed on a contractor who willfully fails to comply with provisions of Section 1777.5;

(9) Comply with those requirements as specified in Labor Code Sections 1810 and 1813; and

(10) Comply with other requirements imposed by law.

EXHIBIT J

IMPROVEMENT AND CREDIT / REIMBURSEMENT AGREEMENT

TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM

This **IMPROVEMENT AND CREDIT AGREEMENT** ("Agreement") is entered into this ____ day of _____, 2016, by and between the CITY OF BANNING, a California municipal corporation ("AGENCY"), and RANCHO SAN GORGONIO, LLC, a Delaware limited liability company ("Developer"). AGENCY and Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

100. RECITALS

WHEREAS, Developer owns or has an equitable interest in ____ acres of real property located within the City of Banning, California, which is more specifically described in the legal description set forth in Exhibit "A", attached hereto and incorporated herein by this reference ("Property");

WHEREAS, Developer has requested from AGENCY certain entitlements and/or permits for the construction of improvements on the Property, which are more particularly described as

_____ ("Project");

WHEREAS, the AGENCY is a member agency of the Western Riverside Council of Governments ("WRCOG"), a joint powers agency comprised of the County of Riverside and 17 cities located in Western Riverside County. WRCOG is the administrator for the Transportation Uniform Mitigation Fee ("TUMF") Program;

WHEREAS, as part of the TUMF Program, the AGENCY has adopted "Transportation Uniform Mitigation Fee Nexus Study: 2009 Update" ("2009 Nexus Study")

WHEREAS, as a condition to AGENCY's approval of the Project, AGENCY has required Developer to construct certain street and transportation system improvement(s) of regional importance ("TUMF Improvements");

WHEREAS, pursuant to the TUMF Program, the AGENCY requires Developer to pay the TUMF which covers the Developer's fair share of the costs to deliver those TUMF Improvements that help mitigate the Project's traffic impacts and burdens on the Regional System of Highways and Arterials (also known as the "TUMF Network"), generated by the Project and that are necessary to protect the safety, health and welfare of persons that travel to and from the Project using the TUMF Network;

WHEREAS, the TUMF Improvements have been designated as having Regional or Zonal Significance as further described in the 2009 Nexus Study and the 5 year Transportation Improvement Program as may be amended;

WHEREAS, AGENCY and Developer now desire to enter into this Agreement for the following purposes: (1) to provide for the timely delivery of the TUMF Improvements, (2) to ensure that delivery of the TUMF Improvements is undertaken as if the TUMF Improvements were constructed under the direction and authority of the AGENCY, (3) to provide a means by which the Developer's costs for project delivery of the TUMF Improvements and related right-of-ways is offset against Developer's obligation to pay the applicable TUMF for the Project in accordance with the TUMF Administrative Plan adopted by WRCOG, and (4) to provide a means, subject to the separate approval of WRCOG, for Developer to be reimbursed to the extent the actual and authorized costs for the delivery of the TUMF Improvements exceeds Developer's TUMF obligation.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, Developer and AGENCY hereby agree as follows:

TERMS

1.0 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2.0 Construction of TUMF Improvements. Developer shall construct or have constructed at its own cost, expense, and liability certain street and transportation system improvements generally described as **INSERT TUMF IMPROVEMENTS**

_____, and as shown more specifically on the plans, profiles, and specifications which have been or will be prepared by or on behalf of Developer and approved by AGENCY, and which are incorporated herein by this reference ("TUMF Improvements"). Construction of the TUMF Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Developer shall be responsible for the replacement, relocation, or removal of any component of any existing public or private improvement in conflict with the construction or installation of the TUMF Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of AGENCY and the owner of such improvement. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary to fully and adequately complete the TUMF Improvements.

2.1 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any portion of the TUMF Improvements until all plans and specifications for the TUMF Improvements have been submitted to and approved by AGENCY. Approval by

AGENCY shall not relieve Developer from ensuring that all TUMF Improvements conform with all other requirements and standards set forth in this Agreement.

2.2 Permits and Notices. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the TUMF Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer.

2.3 Public Works Requirements. In order to insure that the TUMF Improvements will be constructed as if they had been constructed under the direction and supervision, or under the authority of, AGENCY, Developer shall comply with all of the following requirements with respect to the construction of the TUMF Improvements:

(a) Developer shall obtain bids for the construction of the TUMF Improvements, in conformance with the standard procedures and requirements of AGENCY with respect to its public works projects, or in a manner which is approved by the Public Works Department.

(b) The contract or contracts for the construction of the TUMF Improvements shall be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of the TUMF Improvements.

(c) Developer shall require, and the specifications and bid and contract documents shall require, all such contractors to pay prevailing wages (in accordance with Articles 1 and 2 of Chapter 1, Part 7, Division 2 of the Labor Code) and to otherwise comply with applicable provisions of the Labor Code, the Government Code and the Public Contract Code relating to public works projects of cities/counties and as required by the procedures and standards of AGENCY with respect to the construction of its public works projects or as otherwise directed by the Public Works Department.

(d) All such contractors shall be required to provide proof of insurance coverage throughout the term of the construction of the TUMF Improvements which they will construct in conformance with AGENCY's standard procedures and requirements.

(e) Developer and all such contractors shall comply with such other requirements relating to the construction of the TUMF Improvements which AGENCY may impose by written notification delivered to Developer and each such contractor at any time, either prior to the receipt of bids by Developer for the construction of the TUMF Improvements, or, to the extent required as a result of changes in applicable laws, during the progress of construction thereof.

Developer shall provide proof to AGENCY, at such intervals and in such form as AGENCY may require that the foregoing requirements have been satisfied as to the TUMF Improvements.

2.4 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the TUMF Improvements shall be prepared in accordance with all

applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The TUMF Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with AGENCY, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required, constructing the TUMF Improvements in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to TUMF Improvements. All work shall be done and the TUMF Improvements completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation it is determined that the public interest requires alterations in the TUMF Improvements, Developer shall undertake such design and construction changes as may be reasonably required by AGENCY. Any and all alterations in the plans and specifications and the TUMF Improvements to be completed may be accomplished without first giving prior notice thereof to Developer's surety for this Agreement.

3.0 Maintenance of TUMF Improvements. AGENCY shall not be responsible or liable for the maintenance or care of the TUMF Improvements until AGENCY approves and accepts them. AGENCY shall exercise no control over the TUMF Improvements until accepted. Any use by any person of the TUMF Improvements, or any portion thereof, shall be at the sole and exclusive risk of Developer at all times prior to AGENCY's acceptance of the TUMF Improvements. Developer shall maintain all of the TUMF Improvements in a state of good repair until they are completed by Developer and approved and accepted by AGENCY, and until the security for the performance of this Agreement is released. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by AGENCY. If Developer fails to properly prosecute its maintenance obligation under this section, AGENCY may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. AGENCY shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the TUMF Improvements or their condition prior to acceptance.

4.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of the construction of the TUMF Improvements, including, but not limited to, all plan check, design review, engineering, inspection, sewer treatment connection fees, and other service or impact fees established by AGENCY.

5.0 AGENCY Inspection of TUMF Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the TUMF Improvements, maintain

reasonable and safe facilities and provide safe access for inspection by AGENCY of the TUMF Improvements and areas where construction of the TUMF Improvements is occurring or will occur.

6.0 Liens. Upon the expiration of the time for the recording of claims of liens as prescribed by Sections 8412 and 8414 of the Civil Code with respect to the TUMF Improvements, Developer shall provide to AGENCY such evidence or proof as AGENCY shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment to the construction of the TUMF Improvements, have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation. Rather than await the expiration of the said time for the recording of claims of liens, Developer may elect to provide to AGENCY a title insurance policy or other security acceptable to AGENCY guaranteeing that no such claims of liens will be recorded or become a lien upon any of the Property.

7.0 Acceptance of TUMF Improvements; As-Built or Record Drawings. If the TUMF Improvements are properly completed by Developer and approved by AGENCY, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, AGENCY shall be authorized to accept the TUMF Improvements. AGENCY may, in its sole and absolute discretion, accept fully completed portions of the TUMF Improvements prior to such time as all of the TUMF Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the TUMF Improvements. Upon the total or partial acceptance of the TUMF Improvements by AGENCY, Developer shall file with the Recorder's Office of the County of Riverside a notice of completion for the accepted TUMF Improvements in accordance with California Civil Code sections 8182, 8184, 9204, and 9208 ("Notice of Completion"), at which time the accepted TUMF Improvements shall become the sole and exclusive property of AGENCY without any payment therefore. Notwithstanding the foregoing, AGENCY may not accept any TUMF Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the AGENCY for all such TUMF Improvements. The drawings shall be certified and shall reflect the condition of the TUMF Improvements as constructed, with all changes incorporated therein.

8.0 Warranty and Guarantee. Developer hereby warrants and guarantees all the TUMF Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of the TUMF Improvements, for a period of one (1) year following completion of the work and acceptance by AGENCY ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the TUMF Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of AGENCY, and to the approval of AGENCY. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any TUMF Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following AGENCY's acceptance of the repaired, replaced, or reconstructed TUMF Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any TUMF Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

9.0 Administrative Costs. If Developer fails to construct and install all or any part of the TUMF Improvements, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to AGENCY for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

10.0 Default; Notice; Remedies.

10.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if AGENCY determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, AGENCY may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("Notice"). Developer shall substantially commence the work required to remedy the default or violation within five (5) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, AGENCY may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon AGENCY's issuance of the Notice, Developer and its surety shall be liable to AGENCY for all costs of construction and installation of the TUMF Improvements and all other administrative costs or expenses as provided for in this Section 10.0 of this Agreement.

10.2 Failure to Remedy; AGENCY Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to AGENCY within the time frame contained in the Notice, AGENCY may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. AGENCY's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any of the TUMF Improvements at the time of AGENCY's demand for performance. In the event AGENCY elects to complete or arrange for completion of the remaining work and the TUMF Improvements, AGENCY may require all work by Developer or its surety to cease in order to allow adequate coordination by AGENCY.

10.3 Other Remedies. No action by AGENCY pursuant to this Section 10.0 et seq. of this Agreement shall prohibit AGENCY from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. AGENCY may exercise its rights and remedies independently or cumulatively, and AGENCY may pursue inconsistent remedies. AGENCY may institute an action for damages, injunctive relief, or specific performance.

11.0 Security; Surety Bonds. Prior to the commencement of any work on the TUMF Improvements, Developer or its contractor shall provide AGENCY with surety bonds in the amounts and under the terms set forth below ("Security"). The amount of the Security shall be based on the estimated actual costs to construct the TUMF Improvements, as determined by

AGENCY after Developer has awarded a contract for construction of the TUMF Improvements to the lowest responsive and responsible bidder in accordance with this Agreement ("Estimated Costs"). If AGENCY determines that the Estimated Costs have changed, Developer or its contractor shall adjust the Security in the amount requested by AGENCY. Developer's compliance with this Section 11.0 et seq. of this Agreement shall in no way limit or modify Developer's indemnification obligation provided in Section 12.0 of this Agreement.

11.1 Performance Bond. To guarantee the faithful performance of the TUMF Improvements and all the provisions of this Agreement, to protect AGENCY if Developer is in default as set forth in Section 10.0 et seq. of this Agreement, and to secure the one-year guarantee and warranty of the TUMF Improvements, Developer or its contractor shall provide AGENCY a faithful performance bond in an amount which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The AGENCY may, in its sole and absolute discretion, partially release a portion or portions of the security provided under this section as the TUMF Improvements are accepted by AGENCY, provided that Developer is not in default on any provision of this Agreement and the total remaining security is not less than _____ (____%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period, or any extension thereof as provided in Section 11.0 of this Agreement, provided that Developer is not in default on any provision of this Agreement.

11.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, materialmen, and other persons furnishing labor, materials, or equipment for performance of the TUMF Improvements and this Agreement, Developer or its contractor shall provide AGENCY a labor and materials bond in an amount which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The security provided under this section shall be released by written authorization of AGENCY after six (6) months from the date AGENCY accepts the TUMF Improvements. The amount of such security shall be reduced by the total of all stop notice or mechanic's lien claims of which AGENCY is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of AGENCY's anticipated administrative and legal expenses arising out of such claims.

11.3 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best rating of at least "A" and FSC-VIII, shall be licensed to do business in California, and shall be satisfactory to AGENCY. As part of the obligation secured by the Security and in addition to the face amount of the Security, Developer, its contractor or the surety shall secure the costs and reasonable expenses and fees, including reasonable attorney's fees and costs, incurred by AGENCY in enforcing the obligations of this Agreement. Developer, its contractor and the surety shall stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the TUMF Improvements, or the plans and specifications for the TUMF Improvements shall in any way affect its obligation on the Security.

11.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "B", unless other forms are deemed acceptable by the AGENCY, and when such forms are completed to the satisfaction of AGENCY, the forms and evidence of the Security shall be attached hereto as Exhibit "B" and incorporated herein by this reference.

12.0 Indemnification. Developer shall defend, indemnify, and hold harmless AGENCY, its elected officials, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its employees, contractors, or agents in connection with the performance of this Agreement, or arising out of or in any way related to or caused by the TUMF Improvements or their condition prior to AGENCY's approval and acceptance of the TUMF Improvements ("Claims"). This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorney's fees, and related costs or expenses, and the reimbursement of AGENCY, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any Claim which is caused solely and exclusively by the negligence or willful misconduct of AGENCY as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by AGENCY, its elected officials, employees, or agents.

13.0 Insurance.

13.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors to procure and maintain, during performance of this Agreement, insurance of the types and in the amounts described below ("Required Insurance"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

13.1.1 General Liability. Occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage.

13.1.2 Business Automobile Liability. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any auto owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

13.1.3 Workers' Compensation. Workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, at all times during which insured retains employees.

13.1.4 Professional Liability. For any consultant or other professional who will engineer or design the TUMF Improvements, liability insurance for errors and omissions with limits not less than Two Million Dollars (\$2,000,000) per occurrence, shall be procured and maintained for a period of five (5) years following completion of the TUMF Improvements. Such insurance shall be endorsed to include contractual liability.

13.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by AGENCY. At the option of AGENCY, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects AGENCY, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to AGENCY guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

13.3 Additional Insured; Separation of Insureds. The Required Insurance, except for the professional liability and workers' compensation insurance, shall name AGENCY, its elected officials, officers, employees, and agents as additional insureds with respect to work performed by or on behalf of Developer or its contractors, including any materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to AGENCY, its elected officials, officers, employees, or agents.

13.4 Primary Insurance; Waiver of Subrogation. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering AGENCY, its elected officials, officers, employees, or agents. The policy required for workers' compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against AGENCY in connection with any damage or harm covered by such policy.

13.5 Certificates; Verification. Developer and its contractors shall furnish AGENCY with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by AGENCY before work pursuant to this Agreement can begin. AGENCY reserves the right to require complete, certified copies of all required insurance policies, at any time.

13.6 Term; Cancellation Notice. Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days' prior written notice to AGENCY.

13.7 Insurer Rating. Unless approved in writing by AGENCY, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least "A" and FSC-VIII.

14.0 TUMF Credit.

14.1 Developer's TUMF Obligation. Developer hereby agrees and accepts that as of the date of this Agreement, the amount Developer is obligated to pay to AGENCY pursuant to (insert appropriate reference for city or county) as part of the TUMF Program is **[INSERT DOLLAR VALUE OF TUMF REQUIREMENT]** (\$) ("TUMF Obligation"). This TUMF Obligation shall be initially determined under the nexus study and fee schedule in effect

for the AGENCY at the time the Developer submits a building permit application for the TUMF Improvement. Notwithstanding, this TUMF Obligation does not have to be paid until the Certificate of Occupancy is obtained.

14.2 Fee Adjustments. Notwithstanding the foregoing, Developer agrees that this Agreement shall not estop AGENCY from adjusting the TUMF in accordance with the provisions of (insert appropriate reference for city or county).

14.3 Credit Offset Against TUMF Obligation. Pursuant to (insert appropriate reference for city or county) and in consideration for Developer's obligation under this Agreement for the delivery of TUMF Improvements, credit shall be applied by AGENCY to offset the TUMF Obligation ("Credit") subject to adjustment and reconciliation under Section 14.5 of this agreement. Developer hereby agrees that the amount of the Credit shall be applied after Developer has initiated the process of project delivery of TUMF Improvements to the lowest responsible bidder in accordance with this Agreement. Developer further agrees that the dollar amount of the Credit shall be equal to the lesser of: (A) the bid amount set forth in the contract awarded to the lowest responsible bidder, or (B) the unit cost assumptions for the TUMF Improvement in effect at the time of the contract award, as such assumptions are identified and determined in the 2009 Nexus Study and the TUMF Administrative Plan adopted by WRCOG ("Unit Cost Assumptions").

The bid amount and the Unit Cost Assumptions shall hereafter be collectively referred to as "Estimated Credit". At no time will the Credit exceed the Developer's TUMF Obligation. If the dollar amount of the Estimated Credit exceeds the dollar amount of the TUMF Obligation, Developer will be deemed to have completely satisfied its TUMF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.6 of this Agreement. If the dollar amount of the Estimated Credit is less than the dollar amount of the TUMF Obligation, the Developer agrees the Credit shall be applied to offset the TUMF Obligation as follows:

(1) For residential units in the Project, the Credit shall be applied to all residential units to offset and/or satisfy the TUMF Obligation. The residential units for which the TUMF Obligation has been offset and/or satisfied by use of the Credit, and the amount of offset applicable to each unit, shall be identified in the notice provided to the Developer by AGENCY pursuant to this section.

(2) For commercial and industrial structures in the Project, the Credit shall be applied to all commercial and industrial development to offset and/or satisfy the TUMF Obligation. The commercial or industrial structure(s) for which the TUMF Obligation has been offset and/or satisfied by use of the Credit, and the amount of offset applicable to such structure(s), shall be identified in the notice provided to the Developer by AGENCY pursuant to this section.

AGENCY shall provide Developer written notice of the determinations that AGENCY makes pursuant to this section, including how the Credit is applied to offset the TUMF Obligation as described above.

14.4 Verified Cost of the TUMF Improvements. Upon recordation of the Notice of Completion for the TUMF Improvements and acceptance of the TUMF Improvements by AGENCY, Developer shall submit to the AGENCY Public Works Director the information set forth in the attached Exhibit "C". The AGENCY Public Works Director, or his or her designee, shall use the information provided by Developer to calculate the total actual costs incurred by Developer in delivering the TUMF Improvements covered under this Agreement ("Verified Costs"). The AGENCY Public Works Director will use his or her best efforts to determine the amount of the Verified Costs and provide Developer written notice thereof within thirty (30) calendar days of receipt of all the required information from Developer.

14.5 Reconciliation; Final Credit Offset Against TUMF Obligation. The Developer is aware of and accepts the fact that Credits are speculative and conceptual in nature. The actual amount of Credit that shall be applied by AGENCY to offset the TUMF Obligation shall be equal to the lesser of: (A) the Verified Costs or (B) Unit Cost Assumptions for the TUMF Improvements as determined in accordance with Section 14.3 of this Agreement ("Actual Credit"). No Actual Credit will be awarded until the Verified Costs are determined through the reconciliation process. Please be advised that while a Developer may use an engineer's estimates in order to estimate Credits for project planning purposes, the Actual Credit awarded will only be determined by the reconciliation process.

(a) TUMF Balance. If the dollar amount of the Actual Credit is less than the dollar amount of the TUMF Obligation, the AGENCY Public Works Director shall provide written notice to Developer of the amount of the difference owed ("TUMF Balance") and Developer shall pay the TUMF Balance in accordance with (insert appropriate reference for city or county) to fully satisfy the TUMF Obligation (see Exhibit "F" - Example "A").

(b) TUMF Reimbursement. If the dollar amount of the Actual Credit exceeds the TUMF Obligation, Developer will be deemed to have fully satisfied the TUMF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.6 of this Agreement. AGENCY shall provide Developer written notice of the determinations that AGENCY makes pursuant to this section (see Exhibit "F" - Example "B").

(c) TUMF Overpayment. If the dollar amount of the Actual Credit exceeds the Estimated Credit, but is less than the TUMF Obligation, but the Actual Credit plus additional monies collected by AGENCY from Developer for the TUMF Obligation exceed the TUMF Obligation ("TUMF Overpayment"), Developer will be deemed to have fully satisfied the TUMF Obligation for the Project and may be entitled to a refund. The AGENCY's Public Works Director shall provide written notice to WRCOG and the Developer of the amount of the TUMF Overpayment and AGENCY shall direct WRCOG to refund the Developer in accordance with (insert appropriate reference for city or county) (see Exhibit "F" - Example C).

14.6 Reimbursement Agreement. If authorized under either Section 14.3 or Section 14.5 Developer may apply to AGENCY and WRCOG for a reimbursement agreement for the amount by which the Actual Credit exceeds the TUMF Obligation, as determined pursuant to Section 14.3 of this Agreement, (insert appropriate reference for city or county), and the TUMF Administrative Plan adopted by WRCOG ("Reimbursement Agreement"). If AGENCY and WRCOG agree to a Reimbursement Agreement with Developer, the Reimbursement Agreement

shall be executed on the form set forth in Exhibit "D," and shall contain the terms and conditions set forth therein. The Parties agree that the Reimbursement Agreement shall be subject to all terms and conditions of this Agreement, and that upon execution, an executed copy of the Reimbursement Agreement shall be attached hereto and shall be incorporated herein as a material part of this Agreement as though fully set forth herein.

15.0 Miscellaneous.

15.1 Assignment. Developer may assign all or a portion of its rights pursuant to this Agreement to a purchaser of a portion or portions of the Property ("Assignment"). Developer and such purchaser and assignee ("Assignee") shall provide to AGENCY such reasonable proof as it may require that Assignee is the purchaser of such portions of the Property. Any assignment pursuant to this section shall not be effective unless and until Developer and Assignee have executed an assignment agreement with AGENCY in a form reasonably acceptable to AGENCY, whereby Developer and Assignee agree, except as may be otherwise specifically provided therein, to the following: (1) that Assignee shall receive all or a portion of Developer's rights pursuant to this Agreement, including such credit as is determined to be applicable to the portion of the Property purchased by Assignee pursuant to Section 14.0 et seq. of this Agreement, and (2) that Assignee shall be bound by all applicable provisions of this Agreement.

15.2 Relationship Between the Parties. The Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency between AGENCY and Developer. Developer's contractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of AGENCY.

15.3 Warranty as to Property Ownership; Authority to Enter Agreement. Developer hereby warrants that it owns fee title to the Property and that it has the legal capacity to enter into this Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

15.4 Prohibited Interests. Developer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Developer, to solicit or secure this Agreement. Developer also warrants that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Developer, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon the making of this Agreement. For breach of this warranty, AGENCY shall have the right to rescind this Agreement without liability.

15.5 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To AGENCY: City of Banning
 99 E. Ramsey Street
 Banning, CA 92220

Attention: _____

To DEVELOPER: Ranch San Gorgonio, LLC
10621 Civic Center Drive
Rancho Cucamonga, CA 91730
Attention: Peter J. Pitassi, Senior Vice President

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

15.6 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

15.7 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and contractors of Developer, except as otherwise specified in this Agreement. All references to AGENCY include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

15.8 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

15.9 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

15.10 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

15.11 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

15.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

15.13 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or

proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Riverside, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

15.14 Time is of the Essence. Time is of the essence in this Agreement, and the Parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.

15.15 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

15.16 Entire Agreement. This Agreement contains the entire agreement between AGENCY and Developer and supersedes any prior oral or written statements or agreements between AGENCY and Developer.

[SIGNATURES OF PARTIES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

DEVELOPER:

RANCHO SAN GORGONIO, LLC, a Delaware limited liability company

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

CITY OF BANNING, a California municipal corporation:

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

EXHIBIT “A” TO TUMF AGREEMENT

LEGAL DESCRIPTION OF PROPERTY

[TO BE INSERTED]

EXHIBIT “B” TO TUMF AGREEMENT
FORMS FOR SECURITY

[ATTACHED BEHIND THIS PAGE]

BOND NO. _____
INITIAL PREMIUM: _____
SUBJECT TO RENEWAL

PERFORMANCE BOND

WHEREAS, the [INSERT "City" OR "County"] of _____ ("AGENCY") has executed an agreement with _____ (hereinafter "Developer"), requiring Developer to perform certain work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of street and transportation system improvements (hereinafter the "Work");

WHEREAS, the Work to be performed by Developer is more particularly set forth in that certain TUMF Improvement and Credit/Reimbursement Agreement dated _____, (hereinafter the "Agreement"); and

WHEREAS, the Agreement is hereby referred to and incorporated herein by this reference; and

WHEREAS, Developer or its contractor is required by the Agreement to provide a good and sufficient bond for performance of the Agreement, and to guarantee and warranty the Work constructed thereunder.

NOW, THEREFORE, we the undersigned, _____, as Principal and _____, a corporation organized and existing under the laws of the State of _____ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the AGENCY in the sum of _____ (\$ _____), said sum being not less than one hundred percent (100%) of the total cost of the Work as set forth in the Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Developer and its contractors, or their heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless AGENCY, its officers, employees, and agents, as stipulated in the Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by AGENCY in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Agreement or to the Work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work.

IN WITNESS WHEREOF, we have hereto set our hands and seals this ____ day
on _____, 20__.

Principal

By: _____

President

Surety

By: _____

Attorney-in-Fact

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE §1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me,

_____ ,
Date

Here Insert Name and Title of the Officer

personally appeared _____ ,
Name(s) of Signer(s)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title of Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Corporate Officer – Title(s): _____

☐ Partner - ☐ Limited ☐ General

☐ Partner - ☐ Limited ☐ General

☐ Individual

☐ Individual

☐ Attorney in Fact

☐ Attorney in Fact

☐ Trustee

☐ Trustee

☐ Guardian or Conservator

☐ Guardian or Conservator

☐ Other:

Signer is Representing:

☐ Other:

Signer is Representing:

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____
Secretary of the corporation named as principal in the attached bond, that
_____ who signed the said bond on behalf of the principal
was then _____ of said corporation; that I know his
signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and
attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

Signature

Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

BOND NO. _____
INITIAL PREMIUM: _____
SUBJECT TO RENEWAL

LABOR & MATERIAL BOND

WHEREAS, the [INSERT "City" OR "County"] of _____ ("AGENCY") has executed an agreement with _____ (hereinafter "Developer"), requiring Developer to perform certain work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of street and transportation system improvements (hereinafter "Work");

WHEREAS, the Work to be performed by Developer is more particularly set forth in that certain Improvement and Credit / Reimbursement Agreement dated _____, (hereinafter the "Agreement"); and

WHEREAS, Developer or its contractor is required to furnish a bond in connection with the Agreement providing that if Developer or any of his or its contractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the provisions of 3248 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, we the undersigned, _____, as Principal and _____, a corporation organized and existing under the laws of the State of _____ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the AGENCY and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the said Work, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said Work to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid, the sum of (\$ _____), said sum being not less than 100% of the total amount payable by Developer under the terms of the Agreement, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Developer or its contractors, or their heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Work contracted to be done, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development

Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

In case legal action is required to enforce the provisions of this bond, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to court costs, necessary disbursements and other consequential damages. In addition to the provisions hereinabove, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to make claims under Sections 8024, 8400, 8402, 8404, 8430, 9100 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the Agreement or to the Work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work.

IN WITNESS WHEREOF, we have hereto set our hands and seals this ____ day
on _____, 20__.

Principal

By:

President

Surety

By:

Attorney-in-Fact

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE §1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me,

_____ ,
Date

Here Insert Name and Title of the Officer

personally appeared _____ ,
Name(s) of Signer(s)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title of Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner - ☐ Limited ☐ General

☐ Individual

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner - ☐ Limited ☐ General

☐ Individual

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

Signer is Representing:

☐ Other:

Signer is Representing:

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____
Secretary of the corporation named as principal in the attached bond, that
_____ who signed the said bond on behalf of the principal
was then _____ of said corporation; that I know his
signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and
attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

Signature

Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

EXHIBIT “C” TO TUMF AGREEMENT

DOCUMENTATION TO BE PROVIDED TO AGENCY BY DEVELOPER FOR DETERMINATION OF CONSTRUCTION COSTS

To assist AGENCY in determining the Construction Costs for a completed TUMF Improvement, Developer shall provide the following documents to AGENCY:

1. Plans, specifications and Developer’s civil engineer’s cost estimate;
2. List of bidders from whom bids were requested;
3. Construction schedules and progress reports;
4. Contracts, insurance certificates and change orders with each contractor or vendor;
5. Invoices received from all vendors;
6. Canceled checks for payments made to contractors and vendors (copy both front and back of canceled checks);
7. Spreadsheet showing total costs incurred in and related to the construction of each TUMF Improvement and the check number for each item of cost and invoice;
8. Final lien releases from each contractor and vendor; and
9. Such further documentation as may be reasonably required by AGENCY to evidence the completion of construction and the payment of each item of cost and invoice.

For Use Between Public Agency and Developer
"Master Agreement"

EXHIBIT "D" TO TUMF AGREEMENT

**REIMBURSEMENT AGREEMENT
TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM**

THIS REIMBURSEMENT AGREEMENT ("Agreement") is entered into this ____ day of _____, 20____, by and between the [INSERT "City" OR "County"] of _____, [**INSERT "a California municipal corporation" FOR CITY OR "a subdivision of the State of California" FOR COUNTY**] ("AGENCY"), and _____, a California [**INSERT TYPE OF ENTITY - corporation, partnership, sole proprietorship or other legal entity**], with its principal place of business at [**ENTER ADDRESS**] ("Developer"). AGENCY and Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, AGENCY and Developer are parties to an agreement dated _____, 20____, entitled "Improvement and Credit Agreement - Transportation Uniform Mitigation Fee Program" (hereinafter "Credit Agreement");

WHEREAS, Sections 14.1 through 14.3 of the Credit Agreement provide that Developer is obligated to pay AGENCY the TUMF Obligation, as defined therein, but shall receive credit to offset the TUMF Obligation if Developer constructs and AGENCY accepts the TUMF Improvements in accordance with the Credit Agreement;

WHEREAS, Section 14.5 of the Credit Agreement provides that if the dollar amount of the credit to which Developer is entitled under the Credit Agreement exceeds the dollar amount of the TUMF Obligation, Developer may apply to AGENCY and WRCOG for a reimbursement agreement for the amount by which the credit exceeds the TUMF Obligation;

WHEREAS, Section 14.5 additionally provides that a reimbursement agreement executed pursuant to the Credit Agreement (i) shall be executed on the form attached to the Credit Agreement, (ii) shall contain the terms and conditions set forth therein, (iii) shall be subject to all terms and conditions of the Credit Agreement, and (iv) shall be attached upon execution to the Credit Agreement and incorporated therein as a material part of the Credit Agreement as though fully set forth therein; and

WHEREAS, AGENCY and WRCOG have consented to execute a reimbursement agreement with Developer pursuant to the Credit Agreement, (insert appropriate reference for city or county), and the TUMF Administrative Plan adopted by WRCOG.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

For Use Between Public Agency and Developer
"Master Agreement"

TERMS

1.0 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2.0 Effectiveness. This Agreement shall not be effective unless and until the Credit Agreement is effective and in full force in accordance with its terms.

3.0 Definitions. Terms not otherwise expressly defined in this Agreement, shall have the meaning and intent set forth in the Credit Agreement.

4.0 Amount of Reimbursement. Subject to the terms, conditions, and limitations set forth in this Agreement, the Parties hereby agree that Developer is entitled to receive the dollar amount by which the Actual Credit exceeds the dollar amount of the TUMF Obligation as determined pursuant to the Credit Agreement, (insert appropriate reference for city or county), and the TUMF Administrative Plan adopted by WRCOG ("Reimbursement"). The Reimbursement shall be subject to verification by WRCOG. AGENCY and Developer shall provide any and all documentation reasonably necessary for WRCOG to verify the amount of the Reimbursement. The Reimbursement shall be in an amount not exceeding [INSERT DOLLAR AMOUNT] ("Reimbursement Amount"). AGENCY shall be responsible for obtaining the Reimbursement Amount from WRCOG and transmitting the Reimbursement Amount to the Developer. In no event shall the dollar amount of the Reimbursement exceed the difference between the dollar amount of all credit applied to offset the TUMF Obligation pursuant to Section 14.3, 14.4, and 14.5 of the Credit Agreement, and one hundred (100%) of the approved unit awarded, as such assumptions are identified and determined in the Nexus Study and the TUMF Administrative Plan adopted by WRCOG.

5.0 Payment of Reimbursement; Funding Contingency. The payment of the Reimbursement Amount shall be subject to the following conditions:

5.1 Developer shall have no right to receive payment of the Reimbursement unless and until (i) the TUMF Improvements are completed and accepted by AGENCY in accordance with the Credit Agreement, (ii) the TUMF Improvements are scheduled for funding pursuant to the five-year Transportation Improvement Program adopted annually by WRCOG, (iii) WRCOG has funds available and appropriated for payment of the Reimbursement amount.

5.2 Developer shall not be entitled to any interest or other cost adjustment for any delay between the time when the dollar amount of the Reimbursement is determined and the time when payment of the Reimbursement is made to Developer by WRCOG through AGENCY.

6.0 Affirmation of Credit Agreement. AGENCY and Developer represent and warrant to each other that there have been no written or oral modifications or amendments of the Credit Agreement, except by this Agreement. AGENCY and Developer ratify and reaffirm each and every one of their respective rights and obligations arising under the Credit Agreement. AGENCY and Developer represent and warrant that the Credit Agreement is currently an effective, valid, and binding obligation.

For Use Between Public Agency and Developer
"Master Agreement"

7.0 Incorporation Into Credit Agreement. Upon execution of this Agreement, an executed original of this Agreement shall be attached as Exhibit "D" to the Credit Agreement and shall be incorporated therein as a material part of the Credit Agreement as though fully set forth therein.

8.0 Terms of Credit Agreement Controlling. Each Party hereby affirms that all provisions of the Credit Agreement are in full force and effect and shall govern the actions of the Parties under this Agreement as though fully set forth herein and made specifically applicable hereto, including without limitation, the following sections of the Credit Agreement: Sections 10.0 through 10.3, Section 12.0, Sections 13.0 through 13.7, Sections 14.0 through 14.6, and Sections 15.0 through 15.17.

[SIGNATURES OF PARTIES ON NEXT PAGE]

For Use Between Public Agency and Developer
"Master Agreement"

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

("Developer")

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

[INSERT "City" OR "County") of _____

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

EXHIBIT “E” TO TUMF AGREEMENT

TUMF CREDIT / REIMBURSEMENT ELIGIBILITY PROCESS

1. Prior to the construction of any TUMF Improvement, Developer shall follow the steps listed below:
 - a. Prepare a separate bid package for the TUMF Improvements.
 - b. The plans, cost estimate, specifications and contract document shall require all contractors to pay prevailing wages and to comply with applicable provisions of the Labor Code, Government Code, and Public Contract Code relating to Public Works Projects.
 - c. Bids shall be obtained and processed in accordance with the formal public works bidding requirements of the AGENCY.
 - d. The contract(s) for the construction of TUMF Improvements shall be awarded to the lowest responsible bidder(s) for the construction of such facilities in accordance with the AGENCY’s requirements and guidelines.
 - e. Contractor(s) shall be required to provide proof of insurance coverage throughout the duration of the construction.
2. Prior to the determination and application of any Credit pursuant to a TUMF Improvement and Credit Agreement executed between AGENCY and Developer (“Agreement”), Developer shall provide the AGENCY and WRCOG with the following:
 - a. Copies of all information listed under Item 1 above.
 - b. Surety Bond, Letter of Credit, or other form of security permitted under the Agreement and acceptable to the AGENCY and WRCOG, guaranteeing the construction of all applicable TUMF Improvements.
3. Prior to the AGENCY’s acceptance of any completed TUMF Improvement, and in order to initiate the construction cost verification process, the Developer shall comply with the requirements as set forth in Sections 7, 14.2 and 14.3 of the Agreement, and the following conditions shall also be satisfied:
 - a. Developer shall have completed the construction of all TUMF Improvements in accordance with the approved Plans and Specifications.
 - b. Developer shall have satisfied the AGENCY’s inspection punch list.
 - c. After final inspection and approval of the completed TUMF Improvements, the AGENCY shall have provided the Developer a final inspection release letter.

- d. AGENCY shall have filed a Notice of Completion with respect to the TUMF Improvements pursuant to Section 3093 of the Civil Code with the County Recorder's Office, and provided a copy of filed Notice of Completion to WRCOG.
- e. Developer shall have provided AGENCY a copy of the As-Built plans for the TUMF Improvements.
- f. Developer shall have provided AGENCY copies of all permits or agreements that may have been required by various resource/regulatory agencies for construction, operation and maintenance of any TUMF Improvements.
- g. Developer shall have submitted a documentation package to the AGENCY to determine the final cost of the TUMF Improvements, which shall include at a minimum, the following documents related to the TUMF Improvements:
 - i. Plans, specifications, and Developer's Civil Engineer's cost estimates; or Engineer's Report showing the cost estimates.
 - ii. Contracts/agreements, insurance certificates and change orders with each vendor or contractor.
 - iii. Invoices from all vendors and service providers.
 - iv. Copies of cancelled checks, front and back, for payments made to contractors, vendors and service providers.
 - v. Final lien releases from each contractor and vendor (unconditional waiver and release).
 - vi. Certified contract workers payroll for AGENCY verification of compliance with prevailing wages.
 - vii. A total cost summary, in spreadsheet format (MS Excel is preferred) and on disk, showing a breakdown of the total costs incurred. The summary should include for each item claimed the check number, cost, invoice numbers, and name of payee. See attached sample for details. [ATTACH SAMPLE, IF APPLICABLE; OTHERWISE DELETE REFERENCE TO ATTACHED SAMPLE]

EXHIBIT “F” TO TUMF AGREEMENT

RECONCILIATION EXAMPLES

All examples are based on a single family residential development project of 200 dwelling units:
200 SF dwelling units @ \$6,650 / dwelling unit = \$1,330,000 in fees (TUMF Obligation)

Example A: “TUMF BALANCE”

| | |
|---|--------------------|
| CREDIT | |
| TUMF Obligation: | \$1,330,000 |
| Estimated Credit: Bid (\$1,500,000) or unit Cost Assumption (\$1,600,000) whichever is less | <u>\$1,500,000</u> |
| Potential Reimbursement: | (\$170,000) |
| RECONCILIATION | |
| TUMF Obligation: | \$1,330,000 |
| Actual Credit: | <u>\$1,200,000</u> |
| TUMF Balance (Payment to TUMF): | \$130,000 |

Example B: “REIMBURSEMENT”

| | |
|---|--------------------|
| CREDIT | |
| TUMF Obligation: | \$1,330,000 |
| Estimated Credit: Bid (\$1,500,000) or unit Cost Assumption (\$1,600,000) whichever is less | <u>\$1,500,000</u> |
| Potential Reimbursement: | (\$170,000) |
| RECONCILIATION | |
| TUMF Obligation: | \$1,330,000 |
| Actual Credit: | <u>\$1,500,000</u> |
| Reimbursement Agreement with Developer (Based on Priority Ranking): | (\$170,000) |

Example C: “TUMF OVERPAYMENT”

| | |
|---|--------------------|
| CREDIT | |
| TUMF Obligation: | \$1,330,000 |
| Estimated Credit: Bid (\$1,200,000) or unit Cost Assumption (\$1,500,000) whichever is less | <u>\$1,200,000</u> |
| Remaining TUMF Obligation: | \$130,000 |
| Prorated Fee: \$130,000 / 200 du = | \$650 / du |
| RECONCILIATION | |
| Actual Credit: | \$1,300,000 |
| TUMF payments from Developer (\$650 per unit x 200 units) | <u>\$130,000</u> |
| Actual Credit plus TUMF Payment | \$1,430,000 |
| TUMF Obligation: | \$1,330,000 |
| Actual Credit plus TUMF Payment | <u>\$1,430,000</u> |
| TUMF Overpayment (Refund to Developer): | |
| | (\$100,000) |