REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO		CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) N/A
TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): DSD - Facilities Financing	DATE: 06/28/2013
SUBJECT: Joint Community Facilities Agreement By and Among Poway Unified School District, City of San Diego, and Black Mountain Ranch, LLC		
PRIMARY CONTACT (NAME, PHONE): Angela Abeyta,(619) 533-3674, MS 606F	SECONDARY CONTACT (NAME, PHONE): John Tracanna, (619) 533-3682, MS 606F	

COMPLETE FOR ACCOUNTING PURPOSES

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00
FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE):

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:		APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Liaison Office		ORIG DEPT.	Tomlinson, Tom	6/28/2013
Environmental Analysis		CFO		
Financial Management		DEPUTY CHIEF		
Comptroller		COO		
		CITY ATTORNEY		
		COUNCIL PRESIDENTS OFFICE		

PREPARATION OF:	☒ RESOLUTIONS	☐ ORDINANCE(S)	☐ AGREEMENT(S)	☐ DEED(S)

Approve the Joint Community Facilities Agreement By and Among Poway Unified School District, City of San Diego, and Black Mountain Ranch, LLC.

STAFF RECOMMENDATIONS: Approve the requested actions.	
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)	
COUNCIL DISTRICT(S):	5
COMMUNITY AREA(S):	Black Mountain Ranch
ENVIRONMENTAL IMPACT:	All of these facilities are included in the Black Mountain Ranch FBA Financing Plan approved on October 25, 2012 (R-307790). The amendments to the Financing Plan are covered by the Black Mountain Ranch Environmental Impact Report and Mitigation Monitoring and Reporting Program, LDR No. 96-7902, SCH No. 97111070. The development of any of the projects listed in the Financing Plan would be subject to environmental and permit review at the appropriate time, in accordance with CEQA Guidelines Section 15004
CITY CLERK INSTRUCTIONS:	

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 06/28/2013
ORIGINATING DEPARTMENT: DSD - Facilities Financing
SUBJECT: Joint Community Facilities Agreement By and Among Poway Unified School District, City of San Diego, and Black Mountain Ranch, LLC
COUNCIL DISTRICT(S): 5
CONTACT/PHONE NUMBER: Angela Abeyta/(619) 533-3674, MS 606F

DESCRIPTIVE SUMMARY OF ITEM:
This action is to authorize the execution of the Joint Community Facilities Agreement (JCFA) By and Among Poway Unified School District, City of San Diego, and Black Mountain Ranch, LLC for the provision of public facilities in Black Mountain Ranch.
STAFF RECOMMENDATION:
Approve the requested actions.
EXECUTIVE SUMMARY OF ITEM BACKGROUND:
Pursuant to the application of the Owner of certain properties located within the City commonly known as Black Mountain Ranch and/or Del Sur, the Board of Education of the Poway Unified School District (PUSD) has initiated proceedings to: (1) establish a communities facilities district (CFD) pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982; (2) designate one or more improvement areas to include certain territory within the CFD; (3) authorize the CFD to finance certain City facilities in addition to school facilities; and (4) authorize the levy of special taxes within each improvement area to finance such City and school facilities.

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

The PUSD and the City have determined that entering into a joint community facilities agreement to enable the CFD to finance the construction of certain City facilities will be beneficial to each entity and residents of the area.

The City is willing to enter into such agreement provided the owners agree to indemnify the City as provided for in the agreement and design and construct the facilities in accordance with the terms and conditions of an existing reimbursement agreement.

All of these facilities are included in the Black Mountain Ranch FBA Financing Plan approved on October 25, 2012 (R-307790). These facilities are also included in a separate reimbursement between Black Mountain Ranch LLC, and the City of San Diego, approved August 7, 2006 (R-301820).

FISCAL CONSIDERATIONS:

This agreement will help expedite the construction of the public facilities needed in the Black Mountain Ranch community.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):
Exempt from EOC per 11/14/11 memo.

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):
None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:
City Council and the community planning board in Rancho Penasquitos have previously approved the Black Mountain Ranch financing plan (October 25, 2012, R-307790), which includes the list of facilities in the CFD.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:
This agreement will expedite the construction of the public facilities needed by the residents in the Black Mountain Ranch community.

Tomlinson, Tom
Originating Department

_____
Deputy Chief/Chief Operating Officer

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

THIS JOINT COMMUNITY FACILITIES AGREEMENT BY AND AMONG POWAY UNIFIED SCHOOL DISTRICT, CITY OF SAN DIEGO, AND BLACK MOUNTAIN RANCH LLC [Agreement] is made and entered into as of the __ day of _____, 2013 among POWAY UNIFIED SCHOOL DISTRICT [School District], a school district duly organized and validly existing pursuant to the laws of the State of California, acting on behalf of itself and COMMUNITY FACILITIES DISTRICT NO. 15 (Del Sur East) OF THE POWAY UNIFIED SCHOOL DISTRICT [CFD], a community facilities district formed pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, as amended [Act], the CITY OF SAN DIEGO, a municipal corporation [City], and BLACK MOUNTAIN RANCH LLC, a California limited liability company [BMR]. BMR may also be referred to as the "Owner/Applicant".

RECITALS

A. Pursuant to the application of Owner/Applicant as the owner of certain properties located within City and commonly known as the Black Mountain Ranch and/or Del Sur (a description of which is attached as Exhibit A), the Board of Education of School District initiated proceedings to: (i) establish the CFD; (ii) designate one or more improvement areas to include certain territory within the CFD; (iii) authorize the CFD to finance certain City facilities in addition to school facilities; (iv) authorize the levy of special taxes within each improvement area to finance such City and school facilities; and (v) authorize the CFD to incur a bonded indebtedness for each improvement area to finance such City and school facilities, pursuant to the terms and provisions of the Act. School District approved the formation of the CFD on December 17, 2012 pursuant to Resolution No. 30-2013.

B. Owner/Applicant requested and proposed that the CFD be formed for the purpose of providing the means of financing the construction of school facilities of School District and the acquisition of certain public facilities to be constructed by or on behalf of Owner/Applicant and to be owned and maintained by City. The facilities to be owned, operated or maintained by City that Owner/Applicant has requested be financed through the CFD are described in Exhibit B attached hereto and incorporated herein by this reference. Individually, each may be referred to as a "City Facility" or collectively as "City Facilities." The City Facilities are located within City and, upon construction of such City Facilities by or on behalf of Owner/Applicant and following the Acceptance thereof by City; the City Facilities will become a part of the transportation, park, fire protection, library, water, and sewer infrastructure system of City. Exhibit B is not intended to indicate priority of City Facilities, whether for construction or reimbursement or act as approval of costs.

C. The Act provides that the CFD may finance the City Facilities pursuant to a joint community facilities agreement adopted pursuant to Government Code Section 53316.2.

D. City is willing to enter into this Agreement provided, however, that Owner/Applicant agrees to do the following: (1) indemnify City as provided for herein, and (2) design and construct the City Facilities in accordance with the terms and conditions of the existing Reimbursement Agreement for Black Mountain Ranch North, approved on September 5, 2006, pursuant to Resolution No. 301820 [Existing Reimbursement Agreement].

E. School District and City have determined that entering into this Agreement to enable the CFD to finance the acquisition of right-of-way and construction of the City Facilities will be beneficial to the residents of each entity and, therefore, desire to enter into this Agreement pursuant to Government Code Section 53316.2.

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

ARTICLE I. DEFINITIONS

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

1.1 Acceptance: City's acceptance of a City Facility shall occur upon Owner/Applicant's receipt of a letter of Substantial Completion from City. When Owner/Applicant determines that the City Facility is substantially complete, Owner/Applicant shall request a letter of Substantial Completion from the Resident Engineer. The letter of Substantial Completion shall include the Field Engineering Division's acceptance of the improvements only for substantially complete and utilization in accordance with Section 6-8 "Completion, Acceptance, and Warranty" and Section 6-10 "Use of Improvements During Construction" of City's Greenbook.

1.2 Act: The "Mello-Roos Community Facilities Act of 1982," Chapter 2.5, Part 1, Division 2, Title 5 of the California Government Code, as amended from time to time.

1.3 Agreement: This Joint Community Facilities Agreement By and Among Poway Unified School District, City of San Diego, and Black Mountain Ranch LLC.

1.4 Approval Notice: Notification from City to School District that a City Facility has been completed and the costs have been approved in accordance with the Existing Reimbursement Agreement.

1.5 Approved Plans and Specifications: The Construction Documents, including construction drawings, plans and specifications, estimated budget, and bid documents for the design and construction of the City Facilities as provided for in the Existing Reimbursement Agreement.

1.6 BMR: Black Mountain Ranch LLC, a California limited liability company.

1.7 City: The City of San Diego, State of California, a municipal corporation.

1.8 City Facilities or Facility: The public facilities to be constructed by or on behalf of the Owner/Applicant and financed through the CFD, consisting of the improvements, together with appurtenances and appurtenant work set forth and described in the attached Exhibit B. Exhibit B also identifies which City Facilities will be designed, constructed, and reimbursed pursuant to the Existing Reimbursement Agreement.

1.9 CFD: The Community Facilities District No. 15 (Del Sur East) of the Poway Unified School District.

1.10 Construction Documents: The construction drawings and documents prepared for the City

Facilities as provided for in the Existing Reimbursement Agreement.

1.11 Existing Reimbursement Agreement: Reimbursement Agreement for Black Mountain Ranch North, approved on September 5, 2006 pursuant to Resolution No. 301820 that provides for the design and construction of certain City Facilities.

1.12 Final Completion: Final completion of a City Facility shall occur after approval of the as-built plans, a signed as final approval for grading or public right-of-way permit, operating and maintenance manuals and other deliverables, and any required certificate of occupancy and/or property transfers.

1.13 Owner/Applicant: BMR.

1.14 Party/Parties: City, School District, and BMR, individually or collectively.

ARTICLE II. APPLICATION

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

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

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

3.1 **Obligations.** The obligations for the formation, costs, and administration of the CFD are as follows:

3.1.1 *The Board of Education of School District.* The Board of Education of School District has sole jurisdiction and shall be solely responsible for having undertaken the proceedings to establish the CFD, to designate the improvement areas within the CFD, to authorize the levy of special taxes within each of such improvement area, and to incur bonded indebtedness of the CFD for each such improvement area pursuant to the Act, all for the purpose of financing the City Facilities and school facilities.

3.1.2 *City*. Notwithstanding anything to the contrary in this Agreement, as City is neither Owner/Applicant, nor School District, City shall have no obligation, authority, or responsibility to form the CFD, to approve the levy of special taxes, to designate the improvement areas, to issue bonds, to make payment on the principal of and/or interest on such bonds, or to incur any costs whatsoever related to the formation or the administration of the CFD, nor shall City incur any liability therefrom.

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

ARTICLE IV. CITY FACILITIES - DESIGN AND CONSTRUCTION

4.1 **Design and Engineering.** Owner/Applicant, at Owner/Applicant's own expense, shall design, prepare, and process, or cause to be designed, prepared, and processed, all construction plans and specifications and all other Construction Documents for the City Facilities in accordance with the Existing Reimbursement Agreement and City's design criteria. The Construction Documents shall be subject to the review and approval of the City as provided for in the Existing Reimbursement

Agreement.

4.2 **Construction.** The City Facilities must be constructed and completed in accordance with the Approved Plans and Specifications and in accordance with terms and conditions of the Existing Reimbursement Agreement.

4.3 **Liability for Design and Construction.** Neither City, nor School District, nor the CFD shall have any liability or obligation with respect to the design or construction of the City Facilities, including bidding and contracting.

4.4 **Condition Precedent to Construction.** No construction shall begin on any City Facility prior to the holding of a preconstruction meeting with City for that City Facility.

ARTICLE V. PAYMENT OF ACQUISTION PRICE

5.1 **Payment of Acquisition Price for City Facilities.** Upon receipt by School District of notification from City that a City Facility has been completed and the costs have been approved in accordance with the Existing Reimbursement Agreement [Approval Notice], the City Facility shall be deemed eligible for acquisition and payment of the amount of the approved costs by School District, acting on behalf of the CFD.

5.1.1 *Request of Owner/Applicant.* Following completion of a City Facility, including the submission of documents supporting costs of the City Facility, verification of such costs pursuant to the terms and conditions of the Existing Reimbursement Agreement, and upon Final Completion of the City Facility as determined by City, in its sole discretion, City shall, upon request of Owner/Applicant, send the Approval Notice to School District.

5.2 **Liability for Purchase Price.** City is not directly or indirectly obligated, indebted or otherwise liable for the payment of the acquisition price, or any portion thereof, of the City Facilities.

5.3 **Non-reimbursable Costs.** Except to the extent that City or School District expressly assumes the risk of loss under this Agreement, City and School District shall exclude from the amounts payable to Owner/Applicant the fair value, as determined by City, of property that is destroyed, lost, stolen, or damaged rendering it undeliverable or unusable for City. In addition, Owner/Applicant is not entitled to payment for any cost or expenditure for the City Facilities that has not been approved by the City in the manner required by the Existing Reimbursement Agreement or the City Charter and rules, regulations, or laws promulgated there-under.

ARTICLE VI. INDEMNIFICATION

6.1 **CFD.** Owner/Applicant shall defend, indemnify and hold harmless City, its officers, directors, employees and agents, from and against any and all claims, losses, liabilities, damages, including court costs and reasonable attorneys' fees by reason of, or resulting from, or arising out of the CFD proceedings as described in Recital A hereto, the authorization of the levy of special taxes and the issuance of bonds by the CFD to finance the City Facilities, the administration of the CFD and the bonds issued by the CFD, the levy of special taxes by the CFD and the issuance of bonds by the CFD, and initial and continuing disclosure related to such bonds and all expenses of investigating and defending against same.

6.2 **Acts and Omissions.** With respect to any liability, including but not limited to claims asserted, demands, causes of action, costs, expenses, losses, attorney fees, injuries, or payments for injury to

any person or property, including injury to Owner/Applicant's employees, agents, or officer, caused or claimed to be caused by the acts or omissions of Owner/Applicant, or Owner/Applicant's employees, agents, and officers, arising out of or arising from any services performed involving this Agreement, except liability for the Professional Services covered under Section 6.3, Owner/Applicant agrees to defend, indemnify, protect, and hold harmless City, School District, the CFD, their respective agents, officers, and employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of City, School District, the CFD, their agents, officers, or employees that may be in combination with the active or passive negligent acts or omissions of Owner/Applicant, its employees, agents or officers, or any third party. Owner/Applicant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or sole willful misconduct of City, School District, the CFD, their respective agents, officers or employees. Said indemnification and agreement to hold harmless shall extend to injuries to persons and damages to or taking of property of adjacent property owners as a consequence of the diversion of waters resulting from the design, construction or maintenance of drainage systems, streets or other improvements included among the City Facilities. Acceptance by City of the City Facilities and/or payment by School District or CFD for the acquisition of such City Facilities shall not constitute an assumption by City, School District and/or the CFD of any responsibility for such damage or taking. City, School District and/or CFD shall not be an insurer of surety for the design or construction of the City Facilities pursuant to the Approved Plans and Specifications therefore; nor shall any officer or employee thereof be liable or responsible for any accident, loss or damage happening or occurring during the construction of City Facilities, as specified in this Agreement, except as it may be shown that said officer or employee specifically directed that said work or improvement be accomplished in a manner contrary to the wishes and desires of Owner/Applicant, and this Section shall remain in full force and effect for ten (10) years following Acceptance of the City Facilities by City.

6.3 **Professional Services.** As to professional obligations, work, or services of an architect, engineer, or other professional related to this project, Owner/Applicant shall defend, indemnify, protect, and hold harmless City, School District, the CFD, their respective agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, and losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of the professional, architect, engineer, its employees, agents, or officers. Owner/Applicant shall require its architect, engineer, or other professional of record to defend, indemnify, protect, and hold harmless City, School District, the CFD, their respective agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, and losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of the professional, architect, engineer, its employees, agents, or officers. This Section in no way alters, affects or modifies Owner/Applicant's, architect's, engineer's, or other professional's obligations and duties under this Agreement.

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

ARTICLE VII. INSURANCE

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

ARTICLE VII. MISCELLANEOUS PROVISIONS

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

8.2 **Gender & Number.** Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine genders and (ii) the singular number includes the plural number.

8.3 **Reference to Paragraphs.** Each reference in this Agreement to a section refers, unless otherwise stated, to a section of this Agreement.

8.4 **Incorporation of Recitals.** All recitals herein are incorporated into this Agreement and are made a part hereof.

8.5 **Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of City, School District, or Owner/Applicant, shall be deemed to be both covenants and conditions.

8.6 **Integration.** This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by all of the Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.

8.7 **Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

8.8 **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

8.9 **Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

Where this Agreement and the Existing Reimbursement Agreement conflict, the more stringent requirements will control.

8.10 **Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.

8.11 **Good Faith Performance.** The parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement.

8.12 **Further Assurances.** School District, City and Owner/Applicant each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.

8.13 **Exhibits.** Each of the following Exhibits is attached hereto and incorporated herein by this reference:

Exhibit A - Property Description
Exhibit B - City Facilities Included in Existing Reimbursement Agreement

8.14 **Compliance with Controlling Law.** Owner/Applicant shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code relating to the payment of prevailing wages during the design and preconstruction phases of a project, including inspection and land surveying work. In addition, Owner/Applicant shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

8.15 **Jurisdiction, Venue, Choice of Law, and Attorney Fees.** The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

8.16 **Municipal Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of City as a chartered city of the State of California.

8.17 **Third Party Relationships.** Nothing in this Agreement shall create a contractual relationship between City and any third party; however, the Parties understand and agree that City, to the extent permitted by law, is an intended third party beneficiary of all Owner/Applicant's contracts, purchase orders and other contracts between Owner/Applicant and third party services. Owner/Applicant shall incorporate this provision into its contracts, supply agreements and purchase orders.

8.18 **Non-Assignment.** Owner/Applicant shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for immediate termination of this Agreement, at the sole discretion of City. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

8.19 **Successors in Interest.** This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.

8.20 **Independent Contractors.** Owner/Applicant, any consultants, contractors, subcontractors, and any other individuals employed by Owner/Applicant shall be independent contractors and not agents of City. Any provisions of this Agreement that may appear to give City any right to direct Owner/Applicant concerning the details of performing the services under this Agreement, or to exercise any control over such performance, shall mean only that Owner/Applicant shall follow the direction of t City concerning the end results of the performance.

8.21 **General Standard of Reasonableness.** Any provision of this Agreement which requires the consent, approval, discretion or acceptance of any party hereto or any of their respective employees, officers or agents shall be deemed to require that such consent, approval or acceptance not be unreasonably withheld or delayed, unless such provision expressly incorporates a different standard.

8.22 **No Waiver.** No failure of either School District, City or Owner/Applicant to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

8.23 **Signing Authority.** The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

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

[remainder of page intentionally left blank]

POWAY UNIFIED SCHOOL DISTRICT, acting on behalf of itself and COMMUNITY FACILITIES DISTRICT NO. 15 (DEL SUR)

By:_____
Superintendent

ATTEST:

_____

CITY OF SAN DIEGO

By:_____
Its: _____

ATTEST:

_____

Approved as to form and legality

JAN I. GOLDSMITH,
City Attorney

By:_____

BLACK MOUNTAIN RANCH LLC a California limited liability company

By:_____
Its: _____

By:_____
Its: _____

6/14/2013 JET

EXHIBIT A

J-16757

CDF NO. 15

All of Parcels 1, 2 and 3 of Parcel Map No. 21002 in the City of San Diego, County of San Diego, State of California according to Map thereof filed in the Office of the County Recorder of said County September 21, 2012.

Excepting Therefrom:

Any Portion lying within BLACK MOUNTAIN RANCH DEL SUR TOWN CENTER in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15919 filed in the Office of the County Recorder of said County June 3, 2013.

Together with:

All of BLACK MOUNTAIN RANCH DEL SUR TOWN CENTER in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15919 filed in the Office of the County Recorder of said County June 3, 2013.

Together with:

All of BLACK MOUNTAIN RANCH NORTH VILLAGE EAST UNIT No. 14 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15875 filed in the Office of the County Recorder of said County July 26, 2012.

Excepting therefrom:

All of RESUBDIVISION OF BLACK MOUNTAIN RANCH NORTH UNIT NO. 14 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15908 filed in the Office of the County Recorder of said County March 25, 2013.

Together with:

All of RESUBDIVISION OF BLACK MOUNTAIN RANCH NORTH UNIT NO. 14 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15908 filed in the Office of the County Recorder of said County March 25, 2013.

Together with:

All of Parcel 2 of Parcel Map No. 20146 in the City of San Diego, County of San Diego, State of California according to Map thereof filed in the Office of the County Recorder of said County November 17, 2006.

Together with:

All of Parcel 1 of Parcel Map No. 20146 in the City of San Diego, County of San Diego, State of California according to Map thereof filed in the Office of the County Recorder of said County November 17, 2006 lying southerly of the southerly boundary line of BLACK MOUNTAIN RANCH DEL SUR TOWN CENTER in the City of San Diego, County of San Diego, State of California according to Map thereof No. 15919 filed in the Office of the County Recorder of said County June 3, 2013.

Together with:

All of Parcels 1 and 2 of Parcel Map No. 20877 in the City of San Diego, County of San Diego, State of California according to Map thereof filed in the Office of the County Recorder of said County April 15, 2011.

6-27-2013

Patrick A. McMichael, LS 6187 Date

LICENSED LAND SURVEYOR
PATRICK McMICHAEL
No. 6187
STATE OF CALIFORNIA

Ec:k:files_16757_legal_CDF No 15

CFD #15

(A) BLACK MOUNTAIN RANCH NORTH VILLAGE EAST UNIT 14, MAP NO. 15875

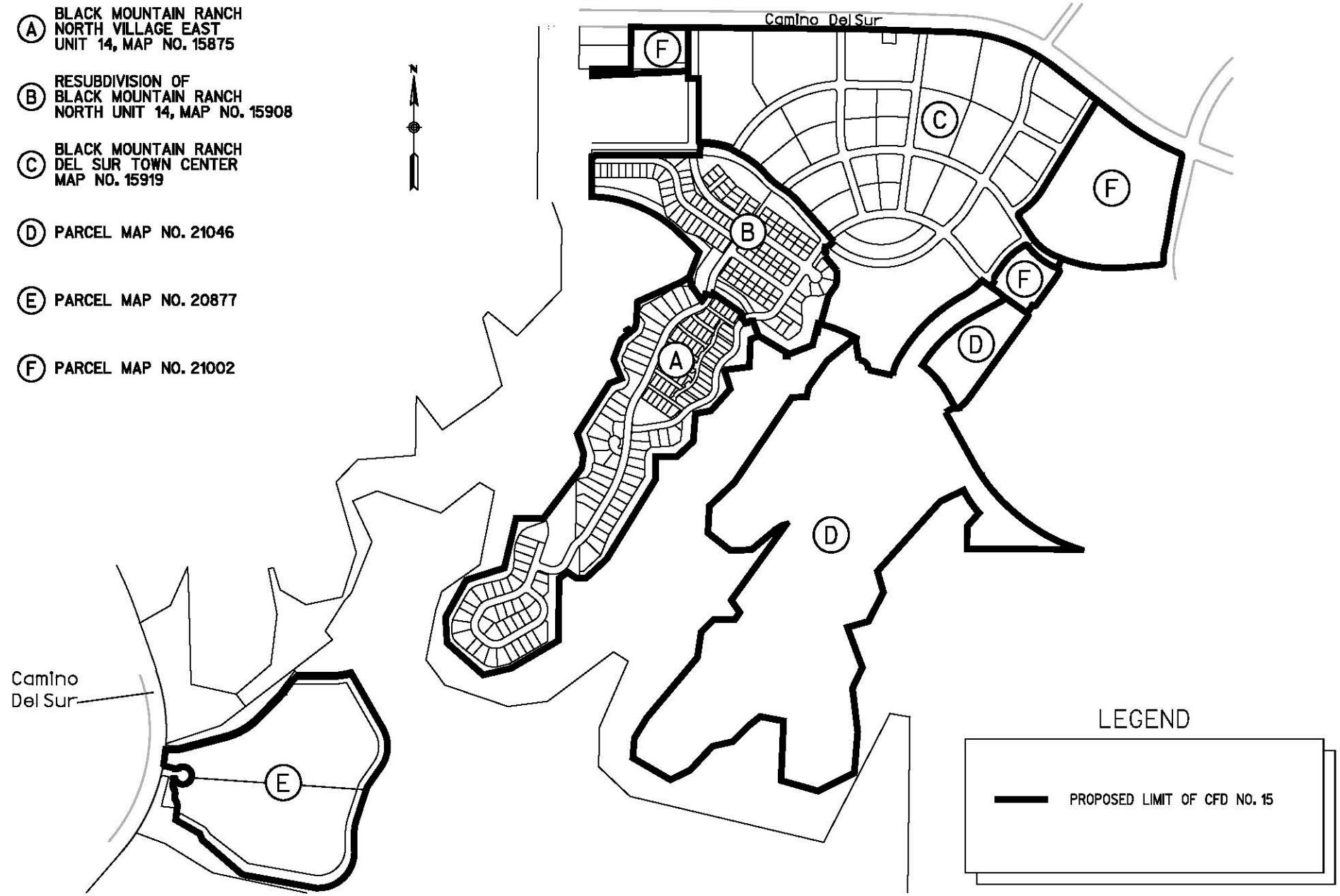
(B) RESUBDIVISION OF BLACK MOUNTAIN RANCH NORTH UNIT 14, MAP NO. 15908

(C) BLACK MOUNTAIN RANCH DEL SUR TOWN CENTER MAP NO. 15919

(D) PARCEL MAP NO. 21046

(E) PARCEL MAP NO. 20877

(F) PARCEL MAP NO. 21002



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GRAPHIC SCALE 1" = 1000'

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Joint Community Facilities Agreement
Exhibit B Facilities Subject to Reimbursement Agreement Filed September 5, 2006
List of Facilities Eligible to be Acquired By PUSD CFD No. 15

BMR PFFP Project	Project Description	BMR FBA Share Per FY 2013 BMR Financing Plan
	CITY TRANSPORTATION PROJECTS	
T-6	Camino Del Sur Widening (San Dieguito Road to Paseo Del Sur - add 2 lanes)	2,727,684
T-10	Camino Del Sur Widening (San Dieguito Road south to Carmel Valley Road - add 2 lanes)	5,892,100
T-12	Camino Del Sur South Wildlife Crossing (San Dieguito Road to Carmel Valley Road - add 2 lanes)	3,726,473
T-14	Camino Del Sur Widening (Carmel Valley Road south to SR-56)	4,314,157
T-15.2 *	SR-56 Bike Interchanges	605,168
T-25.3	Carmel Valley Road (Black Mountain Road east to Camino Crisalida - add 2 lanes)	4,816,052
T-27	Carmel Valley Road East Wildlife Crossing (between Black Mountain Road and Camino Crisalida - add 2 lanes)	2,269,318
T-29.2 *	El Camino Real Widening (San Dieguito Road north to Via de la Valle - add 2 lanes)	714,354
T-32.1	Via de la Valle Widening (West El Camino Real to San Andres Dr - add 2 lanes)	8,615,306
T-34.2	Camino Del Sur (Bernardo Lakes Drive east to Lone Quail Road - 4 lanes)	5,767,192
T-40	Rancho Bernardo Road Widening (I-15 east to Bernardo Center Drive - add 2 lanes)	1,327,008
T-43	West Bernardo Drive Spot Improvements (I-15 South to Aguamiel Road)	2,786,591
T-45	West Bernardo Drive at Bernardo Center Drive Intersection Improvements	701,450
T-47.1	Paseo Del Sur (Camino Del Sur east to High School Entrance)	3,773,574
T-47.2	Camino San Bernardo (Nicole Ridge Road east to City Limit - 2 lanes)	2,414,512
T-54.2 *	SR-56 Widening (Interstate 5 to Interstate 15 - add 2 lanes)	12,091,000
T-57 *	Black Mountain Road Widening (SR-56 south to Mercy Road)	993,000
T-58	SR-56 at I-5 Interchange Improvements	580,000
T-59	Subarea I Transit Program	2,364,707
	Subtotal Transportation Projects	66,479,646
	PARK PROJECTS	
P-1	Community Park	12,436,000
P-2	Community Recreation Building	7,675,200
P-3	Community Swimming Pool	2,448,390
P-5	North Neighborhood Park	3,706,437
	Subtotal Park Projects	26,266,027
	FIRE PROTECTION PROJECTS	
F-2	North Fire Station - No 48	9,540,143
	Subtotal Fire Protection Projects	9,540,143
	Library Projects	
L-1	Branch Library	7,592,000
	Subtotal Library Projects	7,592,000
	WATER/SEWER PROJECTS	
U-1	Carmel Valley Trunk Sewer	1,426,143
	Subtotal Water/Sewer Projects	1,426,143
	TOTAL FACILITIES	111,303,959

* Cash Contribution Anticipated