

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) N/A
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Planning	DATE: 6/5/2015
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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	SECONDARY CONTACT (NAME, PHONE): John Tracanna, (619) 533-3682
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COMPLETE FOR ACCOUNTING PURPOSES

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
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
Environmental Analysis	ORIG DEPT.	Tomlinson, Tom	06/09/2015
Financial Management	CFO		
Comptroller	DEPUTY CHIEF	Graham, David	07/08/2015
Liaison Office	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 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:	The facilities covered under this agreement are included in the Black Mountain Ranch Public Facilities Financing Plan approved December 12, 2014 (R-309395). The Black Mountain Ranch Financing Plan is 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: 6/5/2015

ORIGINATING DEPARTMENT: Planning

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

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 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, as amended; (2) designate one or more improvement areas to include certain territory within the CFD; (3) authorize the CFD to finance certain public improvements to be owned, operated or maintained by the City and certain fair share revenue contributions towards facilities operated by the State of California [State] [collectively, City Facilities] in addition to school facilities; (4) authorize the levy of special taxes within each improvement area to finance such City and school facilities; and (5) authorize the CFD to incur a bonded indebtedness for each improvement area to finance the City Facilities and school facilities, pursuant to the terms and provisions of the Act. School District approved the formation of the CFD on November 17, 2014 pursuant to Resolution No. 20-2015.

The Mello-Roos Community Facilities Act of 1982 provides that the CFD may finance the City facilities 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.

These facilities are included in the Black Mountain Ranch Public Facilities Financing Plan approved on December 12, 2014 (R-309395). These facilities are also included in a separate

reimbursement agreement between Black Mountain Ranch LLC, and the City of San Diego, approved August 7, 2006 (R-301820).

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):

Goal #2: Work in partnership with all of our communities to achieve safe and livable neighborhoods.

Objective #3: Invest in infrastructure.

Goal #3: Create and sustain a resilient and economically prosperous City.

Objective #1: Create dynamic neighborhoods that incorporate mobility, connectivity, and sustainability.

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 November 14, 2011 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 (December 12, 2014, R-309395), which includes the list of facilities included in this agreement.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

This agreement will expedite the construction of the public facilities needed by the residents in Black Mountain Ranch and surrounding communities.

Tomlinson, Tom

Originating Department

Graham, David

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 _____, 2015 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. 16 (Del Sur East II) 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 public improvements to be owned, operated or maintained by the City and certain fair share revenue contributions towards facilities operated by the State of California [State] [collectively, City Facilities] in addition to school facilities; (iv) authorize the levy of special taxes within each improvement area to finance the City Facilities and school facilities; and (v) authorize the CFD to incur a bonded indebtedness for each improvement area to finance the City Facilities and school facilities, pursuant to the terms and provisions of the Act. School District approved the formation of the CFD on November 17, 2014 pursuant to Resolution No. 21-2015.
- 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 the City Facilities to be constructed by or on behalf of Owner/Applicant and to be owned and maintained by City or State (as it pertains to State-operated City Facilities to which fair share revenue contributions are contemplated). The City Facilities 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 August 10, 2006, pursuant to Resolution No. R-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. In cases involving State-operated City Facilities to which fair share contributions are contemplated, acceptance shall occur upon receipt of funds by City/State from Owner/Applicant. 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 or in cases involving State-operated City Facilities in which a fair share contribution shall be received from or on behalf of Owner/Applicant, acknowledgement that a fair share contribution has been received by City/State.
 - 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 or funded through a fair share contribution 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. 16 (Del Sur East II) 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 August 10, 2006 pursuant to Resolution No. R-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, 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. In cases involving State-operated City Facilities in which a fair share contribution is programmed, Final Completion shall occur upon receipt of funds by City/State from Owner/Applicant.
- 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 ACQUISITION 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 or funded (as it pertains to a State-operated City Facility to which a fair share contribution is contemplated) 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 or funding (as it pertains to a State-operated City Facility to which the Owner/Applicant is authorized to contribute revenue as a fair share contribution), including the submission of documents supporting costs of the City Facility, verification of such costs or fair share contribution 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. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed on the City Facilities is subject to State prevailing wage laws. For construction work performed on the City Facilities cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed on the City Facilities cumulatively exceeding \$15,000, the Owner/Applicant and its contractors and subcontractors shall comply with State prevailing wage laws.

8.14.1 **Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, the Owner/Applicant and its contractors and subcontractors shall ensure that all workers who perform work contemplated under this Agreement are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

8.14.1.1 Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies

of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

Owner/Applicant and its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

8.14.1.2 The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Agreement. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Agreement, such wage rate shall apply to the balance of the Agreement.

8.14.2 Penalties for Violations. Owner/Applicant and its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.

8.14.3 Payroll Records. Owner/Applicant and its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Owner/Applicant shall require its contractors and subcontractors to also comply with section 1776. Owner/Applicant and its contractors and subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Owner/Applicant is responsible for ensuring its contractors and subcontractors submit certified payroll records to the City.

8.14.3.1 For contracts entered into on or after April 1, 2015, Owner/Applicant and its contractors and subcontractors shall furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.

8.14.4 Apprentices. Owner/Applicant and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Owner/Applicant is held responsible for the compliance of its contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.

8.14.5 Working Hours. Owner/Applicant and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design

professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

- 8.14.6 Required Provisions for Subcontracts. Owner/Applicant shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor and subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- 8.14.7 Labor Code Section 1861 Certification. Owner/Applicant in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Agreement, Owner/Applicant certifies that “I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work contemplated under this Agreement.”
- 8.14.8 Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego’s Equal Opportunity Contracting Department at 619-236-6000.
- 8.14.9 Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. As of March 1, 2015, no contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. As of April 1, 2015, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5 By signing this Agreement, Owner/Applicant is certifying that he or she has verified or will verify that all contractors or subcontractors used on any public work contemplated under this Agreement are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Owner/Applicant and its contractors or subcontractors shall provide proof of registration to the City upon request.

- 8.14.9.1 A Contractor’s inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered subcontractor pursuant to Public Contract Code section 4107.

- 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.

[signatures on next page]

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

POWAY UNIFIED SCHOOL DISTRICT,
acting on behalf of itself and COMMUNITY
FACILITIES DISTRICT NO. 16 (DEL SUR II)

BLACK MOUNTAIN RANCH LLC a
California limited liability company

By: _____
Superintendent

By: _____
Its: _____

By: _____
Its: _____

ATTEST:

CITY OF SAN DIEGO

By: _____
Its: _____

ATTEST:

Approved as to form

JAN I. GOLDSMITH,
City Attorney

By: _____

Rev. 10/20/2014 JET
Rev. 2/17/2015 JET

Exhibit A

LEGAL DESCRIPTION

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

PARCEL 1: (APN: 678-230-04-00 AND 312-141-02-00)

LOT 5 OF SECTION 30 AND LOT 8 OF SECTION 31, IN TOWNSHIP 13 SOUTH OF RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT OF THE SURVEY OF THE SAID LAND.

PARCEL 2: (APN: 678-237-01-00)

LOT B OF BLACK MOUNTAIN RANCH UNITS 16-19, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 15951 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 31, 2013.

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

PARCEL 1: (312-160-02)

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 13 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM ALL CRUDE OIL, PETROLEUM, GAS, BREA, ASPHALTUM AND ALL KINDRED SUBSTANCES AND OTHER MINERALS UNDER AND IN SAID LAND.

PARCEL 2:

AN EASEMENT FOR INGRESS AND EGRESS FOR ROAD AND UTILITY PURPOSES AND INCIDENTALS THERETO OVER, UNDER, ALONG AND ACROSS THAT PORTION OF LOTS 1 AND 2 IN SECTION 5, TOWNSHIP 14 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE UNITED STATES GOVERNMENT SURVEY LYING WITHIN A STRIP OF LAND 60.00 FEET IN WIDTH THE NORTHERLY LINE BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1, THENCE EAST ALONG THE NORTH LINE OF SAID LOT 1, 60.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE RETRACING WEST ALONG THE NORTH LINE OF SAID LOT 1 AND THE NORTH LINE OF SAID LOT 2, 1372.57 FEET MORE OR LESS TO THE NORTHWEST OF SAID LOT 2.

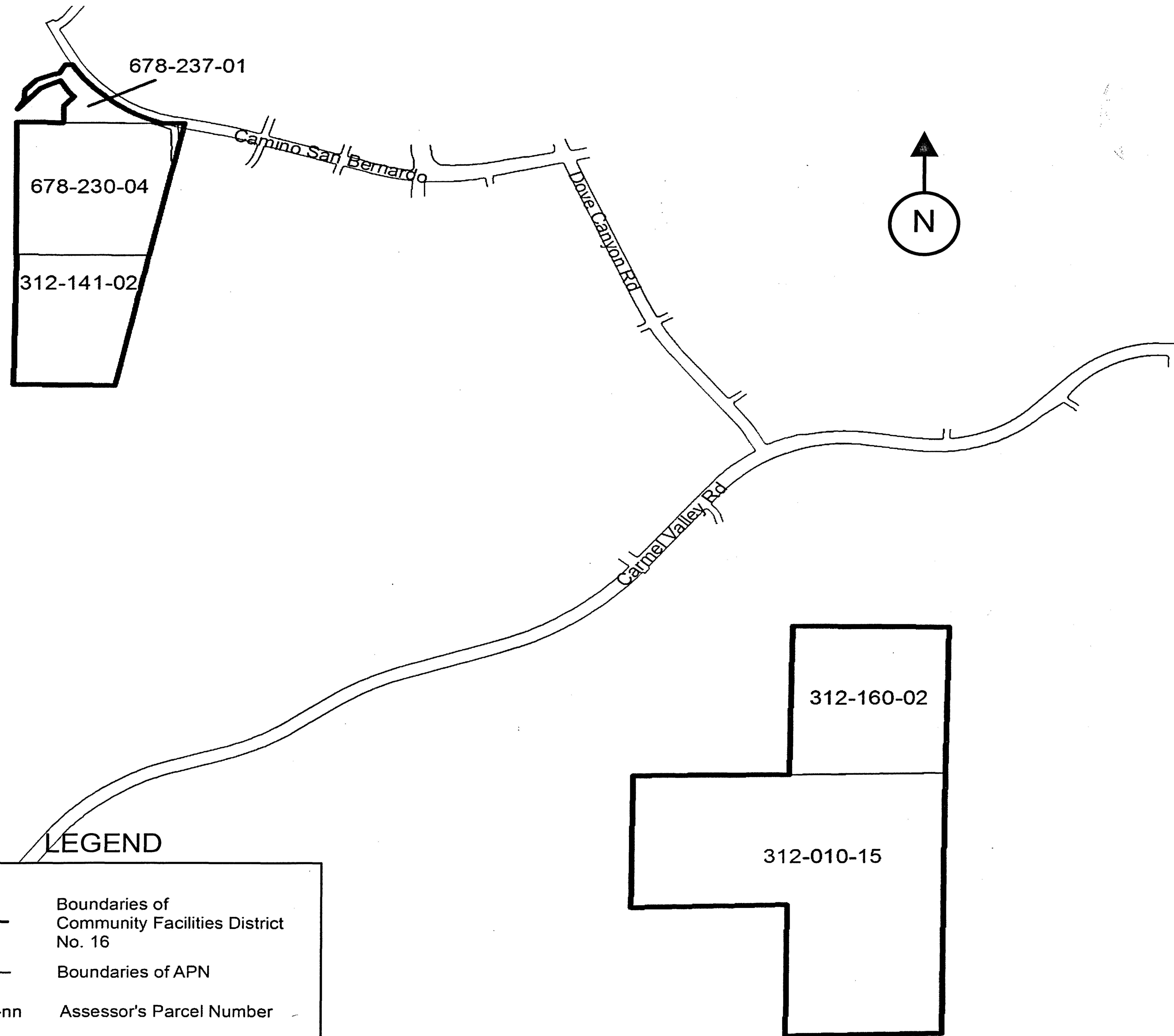
PARCEL 3: (312-010-15)

LOTS 1 AND 2 AND THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 5, TOWNSHIP 14 SOUTH, RG 2 WEST, SAN BERNARDINO MERIDIAN IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING ALL CRUDE OIL, PETROLEUM, GAS, BREA, ASPHALTUM AND ALL KINDRED SUBSTANCES AND OTHER MINERALS UNDER AND IN SAID LAND AS RESERVED IN DEED RECORDED MAY 30, 1960 AS FILE NO. 111628 OF OFFICIAL RECORDS.

Prepared by:
Dolinka Group LLC

PROPOSED BOUNDARIES OF
POWAY UNIFIED SCHOOL DISTRICT
COMMUNITIES FACILITIES DISTRICT NO. 16 (DEL SUR EAST II)
SAN DIEGO COUNTY
STATE OF CALIFORNIA



LEGEND

	Boundaries of Community Facilities District No. 16
	Boundaries of APN
nnn-nnn-nn	Assessor's Parcel Number

(1) Filed in the office of the Secretary of the Board of Education this 16th day of September, 20 14.

Joseph Collins
Secretary of the Board of Education

(2) I hereby certify that the within map showing the proposed boundaries of Community Facilities District No. 16, San Diego County, State of California, was approved by the Board of Education of the Poway Unified School District at a regular meeting thereof, held on this 15th day of September, 20 14 by its Resolution No. 03-2015.

Joseph Collins
Secretary of the Board of Education

(3) Filed this 24 day of Sept 20 14, at the hour of 1:35 o'clock p.m., in Book 44 of Maps of Assessment and Community Facilities Districts at page 58 and as Instrument No. 2014-0413414 in the office of the County Recorder of San Diego County, State of California.
Fee: \$10

Ally Jannan, Deputy
County Recorder of San Diego County
Ernest J. Dronenburg, Jr.

Reference is hereby made to the Assessor maps of the County of San Diego for an exact description of the lines and dimensions of each lot and parcel.

EXHIBIT B
Joint Community Facilities Agreement
List of Facilities to be Acquired By PUSD CFD No. 16

BMR PFFP Project	Project Description	BMR FBA Share Per FY 2015 BMR Financing Plan
	CITY TRANSPORTATION PROJECTS	
T-6	Camino Del Sur Widening (San Dieguito Road to Paseo Del Sur - add 2 lanes)	2,749,000
T-10	Camino Del Sur Widening (San Dieguito Road south to Carmel Valley Road - add 2 lanes)	5,679,020
T-12	Camino Del Sur South Wildlife Crossing (San Dieguito Road to Carmel Valley Road - add 2 lanes)	3,839,000
T-14	Camino Del Sur Widening (Carmel Valley Road south to SR-56)	3,388,000
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)	3,491,000
T-27	Carmel Valley Road East Wildlife Crossing (between Black Mountain Road and Camino Crisalida - add 2 lanes)	2,947,000
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)	6,339,060
T-34.2	Camino Del Sur (Bernardo Lakes Drive east to Lone Quail Road - 4 lanes)	6,045,000
T-40	Rancho Bernardo Road Widening (I-15 east to Bernardo Center Drive - add 2 lanes)	1,055,000
T-43	West Bernardo Drive Spot Improvements (I-15 South to Aguamiel Road)	370,000
T-45	West Bernardo Drive at Bernardo Center Drive Intersection Improvements	565,000
T-47.1	Paseo Del Sur (Camino Del Sur east to High School Entrance)	10,287,153
T-47.2	Camino San Bernardo (Nicole Ridge Road east to City Limit - 2 lanes)	1,755,001
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	65,857,463
	PARK PROJECTS	
P-1	Community Park - Phase 2	15,340,000
P-2	Community Recreation Building	8,093,400
P-3	Community Swimming Pool	2,807,298
P-5	North Neighborhood Park	4,300,000
P-9	Trail - North Loop	-
	Subtotal Park Projects	30,540,698
	FIRE-RESCUE PROJECTS	
F-2	North Fire Station - No 48	11,780,000
	Subtotal Fire Protection Projects	11,780,000
	LIBRARY PROJECTS	
L-1	Branch Library	7,592,000
	Subtotal Library Projects	7,592,000
	TOTAL FACILITIES	115,770,161

* Cash Contribution Anticipated