

**CONTRACTS
SCAN SHEET**

CONTRACT NUMBER:	5290
AMENDMENT NUMBER:	
CONTRACT TYPE:	IMPLEMENTATION
CONTRACT NAME:	HERITAGE FIELDS EL TORO, LLC;
CONTRACT DATE:	07/01/06
EXPIRATION DATE:	
ENTRY DATE:	
CONTRACT SUBJECT:	ORANGE COUNTY GREAT PARK; OCGP; MASTER IMPLEMENTATION; HAZARDOUS MATERIAL REMOVAL
ITEM NUMBER:	3.9
CONTRACT AMOUNT:	\$9,575,000
MEETING DATE:	06/27/06
COUNCIL ACTION:	APPROVED

MASTER IMPLEMENTATION AGREEMENT

By and Between

HERITAGE FIELDS EL TORO, LLC

and

CITY OF IRVINE

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	CERTAIN DEFINITIONS.....2
1.1	Backbone Infrastructure 2
1.2	Boundary Conditions..... 2
1.3	Business Day 2
1.4	Demolition Work..... 2
1.5	Governmental Authorities 2
1.6	GPC 2
1.7	Hazardous Materials..... 2
1.8	Reasonable Costs and Expenses..... 2
1.9	Regulatory Permits 3
1.10	Utility Permits..... 3
ARTICLE II	ENGAGEMENT AND DUTIES OF DEVELOPER.....3
ARTICLE III	DEVELOPMENT OF MASTER SCHEDULE.....3
3.1	Master Schedule 3
3.2	Modification of Master Schedule 4
ARTICLE IV	DEVELOPMENT OF MASTER PHASING PLAN4
4.1	Master Phasing Plan 4
4.2	Funding Sources 4
4.3	Modification of Phasing Plan 5
ARTICLE V	BACKBONE INFRASTRUCTURE5
5.1	Design and Engineering 5
5.2	Construction..... 6
5.3	Developer Duties 8
5.4	City Duties..... 9
5.5	Licenses 11
5.6	Easements 11
5.7	Cooperation Obligations..... 12
5.8	Development Agreement Requirements..... 12
ARTICLE VI	MASTER SUBDIVISION MAP.....12
6.1	Scope 12
6.2	Coordination with GPC 13
6.3	Coordination with Third Parties 13
6.4	Dedication of Backbone Infrastructure Alignment 13
6.5	Subdivision Bonds and Agreements..... 13
6.6	Cost Sharing 13

	<u>Page</u>
ARTICLE VII PERMITS AND APPROVALS	13
7.1 Processing of Regulatory Permits	13
7.2 Cooperation on Other Approvals and Agreements	14
7.3 Cost Sharing	14
ARTICLE VIII DESIGN AND DEVELOPMENT GUIDELINES	14
ARTICLE IX INSURANCE.....	15
9.1 Coverages	15
9.2 Blanket Policies	15
9.3 Contractors.....	15
9.4 Waiver of Subrogation	16
ARTICLE X RELEASE.....	16
ARTICLE XI ENVIRONMENTAL MATTERS	17
ARTICLE XII TERM AND TERMINATION	17
12.1 Term.....	17
12.2 Termination By City for Just Cause	17
12.3 Termination by Developer for Cause	18
12.4 Effect of Termination	19
12.5 Survival.....	19
ARTICLE XIII DISPUTE RESOLUTION.....	19
13.1 JUDICIAL REFERENCE OF DISPUTES	19
13.2 ARBITRATION OF DISPUTES	21
ARTICLE XIV GENERAL PROVISIONS.....	21
14.1 Notices.....	21
14.2 Entire Agreement.....	22
14.3 Modifications.....	22
14.4 Governing Law	23
14.5 No Waiver; Cumulative Remedies.....	23
14.6 Assignment; Binding Agreement	23
14.7 Further Instruments	23
14.8 City Review of Documents	23
14.9 Consultants	24
14.10 Common Defense to Third Party Claims	24
14.11 CEQA Processing.....	24
14.12 Costs and Expenses	24
14.13 Authority to Implement	24

	<u>Page</u>
14.14 Force Majeure.....	25
14.15 Annual Review.....	25
14.16 Commercially Reasonable Efforts.....	25
14.17 Interpretation.....	25
14.18 Execution in Counterparts.....	26
14.19 Attorneys' Fees.....	26
14.20 Exhibits.....	26
14.21 No Third-Party Beneficiary.....	26
14.22 Rights of Lenders.....	26
14.23 Limitation of Developer's Liability.....	26
14.24 No Partnership/Fiduciary Relationship.....	27
14.25 No Recordation.....	27
14.26 Estoppel Certificate.....	27
14.27 Additional Reasonable Costs and Expenses.....	27

EXHIBITS

Exhibit A	Description of Backbone Infrastructure
Exhibit B	Developer's Duties
Exhibit C	Bidding Procedures
Exhibit D	Existing Consultants

MASTER IMPLEMENTATION AGREEMENT

THIS MASTER IMPLEMENTATION AGREEMENT ("Agreement") is made effective as of the 27th day of June, 2006, by and between HERITAGE FIELDS EL TORO, LLC, a Delaware limited liability company ("Developer"), and the CITY OF IRVINE, a California charter city ("City"). Developer and City are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties".

R E C I T A L S :

A. Developer and City are the parties to that certain Great Park Development Agreement (the "Development Agreement") recorded in the Official Records of Orange County, California (the "Official Records") on July 12, 2005, as Instrument No. 2005000538136, with respect to that certain real property formerly known as the Marine Corps Air Station El Toro (the "Base Property"). The Development Agreement was assigned from Heritage Fields LLC, a Delaware limited liability company, to Developer pursuant to that certain Assignment and Assumption of Development Agreement recorded in the Official Records on December 22, 2005, as Instrument No. 2005001023682. Capitalized terms not defined herein shall have the meanings given such terms in the Development Agreement.

B. The portions of the Base Property owned or leased by Developer are hereinafter referred to as the "Developer Property". The portions of the Base Property owned or leased by City are hereinafter referred to as the "City Property". The Developer Property and the City Property are hereinafter collectively referred to as the "Property".

C. City and Developer desire to coordinate, among other things (collectively, the "Master Implementation Activities"), (i) preparation of a master schedule with respect to the Parties' plans for development of the Property, (ii) development of a master phasing plan for the Property, (iii) design and construction of the Backbone Infrastructure, (iv) processing of the Master Subdivision Map for the Property, (v) processing of regulatory and utility permits for the Property, and (vi) development of design and development guidelines for the Property, all subject to the terms and conditions set forth in this Agreement.

D. The Parties desire to enter into this Agreement to set forth their understanding relative to, among other things, the respective responsibilities of City and Developer in connection with the performance of the Master Implementation Activities.

E. In accordance with the Development Agreement the City has the right to designate the Developer to perform one or more of the responsibilities, obligations or undertakings of the City under the Development Agreement, provided that the City and Developer have entered into an agreement for Developer to serve as City's Designee for any such responsibility, obligation or undertaking. In accordance with the Development Agreement Developer is to serve as "City's Designee" with respect to certain specified obligations as described herein. In addition, this Agreement is to serve as the Infrastructure Agreement referred to in Section 6.4.2 of the Development Agreement.

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT:

ARTICLE I
CERTAIN DEFINITIONS

1.1 **Backbone Infrastructure.** "**Backbone Infrastructure**" means those certain Proposed Public Benefit Facilities identified in Exhibit "E" of the Development Agreement including streets, sidewalks, associated right of way landscaping, underground wet and dry utilities and drainage systems required in connection with development of the Property as distinguished from the "Park Facilities". The scope, or the specific components, of such Backbone Infrastructure may be modified from time to time based on mutual agreement of the Parties.

1.2 **Boundary Conditions.** "**Boundary Conditions**" means (a) matters pertaining to development of the Property that impact both the Developer Property and the City Property (rather than development of the Developer Property or City Property individually), and (b) matters pertaining to development of the Property that impact the common boundary areas between the Developer Property and the City Property.

1.3 **Business Day.** "**Business Day**" means any day that the Irvine City Hall is open to the public for business.

1.4 **Demolition Work.** "**Demolition Work**" means the demolition work necessary or desirable in connection with the design and construction of the Backbone Infrastructure.

1.5 **Governmental Authorities.** "**Governmental Authorities**" shall mean all federal, state and local governmental and quasi-governmental agencies, bodies, entities, boards and authorities having jurisdiction over the Property, the furnishing of utilities or other services to the Property, or the subdivision, improvement, development, occupancy, sale or use of any portion of the Property.

1.6 **GPC.** "**GPC**" means Orange County Great Park Corporation, a California non-profit corporation.

1.7 **Hazardous Materials.** "**Hazardous Materials**" shall include and mean any substance, material, or waste that, because of its quantity, concentration or physical or chemical characteristics poses an unacceptable present or potential risk of harm to human health and/or safety or to the environment, including, but not limited to, petroleum, petroleum-based products, natural gas, or any substance, material or waste that is, or shall be, listed, regulated or defined by federal, state, or local statute, regulation or rule, ordinance or other governmental requirement to be hazardous, acutely hazardous, extremely hazardous, toxic, radioactive, biohazardous, infectious, or otherwise dangerous.

1.8 **Reasonable Costs and Expenses.** "**Reasonable Costs and Expenses**" include the actual costs and expenses incurred by Developer in connection with the performance of its

obligations under this Agreement. These generally include, but are not limited to, those items listed on attached Exhibit A.

1.9 Regulatory Permits. "**Regulatory Permits**" means the various regulatory and resource permits, approvals, certifications and agreements required in connection with impacts to natural resources from development of the Property, including, without limitation, the following: (a) a federal Clean Water Act Section 404 Permit issued by the United States Army Corps of Engineers, (b) a California Fish and Game Code Section 1602 Streambed Alteration Agreement issued by the California Department of Fish and Game, (c) a Section 401 Water Quality Certification issued by the Santa Ana Regional Water Quality Control Board, (d) compliance with the Natural Community Conservation Plan & Habitat Conservation Plan (Central and Coastal Subregion) and Implementation Agreement, and (e) approvals and/or permits necessary for "incidental take" of state or federally listed species under the federal Endangered Species Acts and the California Endangered Species Act.

1.10 Utility Permits. "**Utility Permits**" means the various authorizations, agreements, permits, licenses (including surety bonds) and similar documents with the appropriate Governmental Authorities and utility companies relating to access, traffic, utilities and other matters pertaining to the Backbone Infrastructure Activities, including, but not limited to, an Irvine Ranch Water District Subarea Master Plan approved by the Irvine Ranch Water District, and a master dry utility master plan.

ARTICLE II

ENGAGEMENT AND DUTIES OF DEVELOPER

City hereby engages Developer as an independent contractor for the sole purpose of performing the Master Implementation Activities with respect to the Property. Developer shall perform the Master Implementation Activities on the terms and conditions set forth herein. Developer is an independent contractor, and nothing in this Agreement or in the relationship between Developer and City shall constitute a partnership, joint venture, agency or any other similar relationship. In no event shall Developer act as or undertake the duties of an architect, engineer, general contractor or subcontractor for or in connection with the performance of the Master Implementation Activities.

ARTICLE III

DEVELOPMENT OF MASTER SCHEDULE

3.1 Master Schedule. Within sixty (60) days following the date of this Agreement, (a) Developer will prepare and deliver to City an estimated schedule of key milestone dates for Developer's proposed development of the Developer Property and performance of the Backbone Infrastructure Activities (as hereinafter defined) ("**Developer's Estimated Schedule**"), and (b) City will prepare and deliver to Developer an estimated schedule of key milestone dates for City's proposed development of the City Property ("**City's Estimated Schedule**"). Developer's Estimated Schedule and City's Estimated Schedule are sometimes hereinafter referred to individually as the "**Estimated Schedule**". Within sixty (60) days following the date of this Agreement, City and Developer shall jointly select a software program (the "**Integration Software**") to integrate Developer's Estimated Schedule and City's Estimated Schedule.

Promptly following selection of the Integration Software and completion of Developer's Estimated Schedule and City's Estimated Schedule, Developer and City shall run the Integration Software to create a master schedule of key milestone dates for the proposed development of the Property (the "**Master Schedule**"). Notwithstanding anything to the contrary set forth herein, the Parties agree that the Master Schedule shall be used as a tool for the Parties to coordinate their development of the Property and neither the Master Schedule nor such Party's Estimated Schedule shall be binding on the Parties.

3.2 **Modification of Master Schedule.** Six (6) months following the date of this Agreement and thereafter every three (3) months, Developer and City agree to deliver to the other Party a revised Estimated Schedule, which revised Estimated Schedule shall be used to update the Master Schedule. All modifications, amendments and/or changes to the Master Schedule shall be undertaken by the GPC Chief Executive Officer (the "CEO") or designee on behalf of City and by the Authorized Signatories (as hereinafter defined) on behalf of Developer.

ARTICLE IV DEVELOPMENT OF MASTER PHASING PLAN

4.1 **Master Phasing Plan.** As contemplated pursuant to Section 7.4 of the Development Agreement, Developer shall develop and prepare a plan (the "**Phasing Plan**") for City approval, which Phasing Plan shall address the Parties' obligations to coordinate their respective development activities on the Property with respect to Boundary Conditions (as defined above). The Phasing Plan shall address, among other things, the implementation, design, planning, use, installation, integration and phasing of the Backbone Infrastructure Activities, grading activities, recycling activities (including coordination with any agreement entered into pursuant to that certain Agreement Regarding Hardscape Recycling dated as of March 28, 2006, by and among Developer, City and GPC), drainage issues, permit applications, financing sources (including public financing), and sizing of facilities. In no event shall Developer be required to cause the Phasing Plan to address matters pertaining exclusively to the Developer Property or the City Property. The Phasing Plan shall not constitute or be deemed to constitute a regulatory "master plan" under the Irvine Development Code. Rather, the Parties intend for the Phasing Plan to be used as a comprehensive coordination document between adjoining land owners.

4.2 **Funding Sources.** In connection with the Phasing Plan, Developer shall prepare and submit for City review and approval a draft schedule identifying proposed sources of funds for construction of the Backbone Infrastructure (and such other items described in Exhibit E of the Development Agreement as City and Developer may agree upon), which schedule shall include, among other things, (a) preliminary sizing of a community facilities district (the "**CFD**"), (b) a drawdown schedule for incremental payment of CFD bond revenues and amounts payable under the Development Agreement (e.g., upon completion of certain portions of the Backbone Infrastructure), (c) timing of formation of the CFD, (d) timing of authorization and issuance of bonds in connection with the CFD, and (e) reimbursement of Developer's costs associated with the design and construction of the Backbone Infrastructure from (i) Developer Agreement Fees previously paid by Developer to City, (ii) credits against future Development Agreement Fee obligations of Developer, or (iii) proceeds of the CFD financing, all as described in Section 6.4.2 of the Development Agreement. Within forty (40) business days following receipt of this schedule from Developer, City shall approve a schedule addressing the issues set

forth above. In the event that the City's proposed schedule varies significantly from the draft schedule prepared by Developer, the City shall meet and confer with Developer regarding the City's modifications to the draft schedule prepared by Developer.

4.3 Modification of Phasing Plan. All modifications, amendments and/or changes to the Phasing Agreement shall be undertaken by the CEO or designee on behalf of City and by the Authorized Signatories (as hereinafter defined) on behalf of Developer.

ARTICLE V

BACKBONE INFRASTRUCTURE

5.1 Design and Engineering.

5.1.1 City hereby engages Developer as an independent contractor for the purpose of assisting City in the performance of the Demolition Work and the design, development, engineering and construction of the Backbone Infrastructure (collectively, the "**Backbone Infrastructure Activities**"). Developer shall perform the Backbone Infrastructure Activities on the terms and conditions set forth herein. Developer is an independent contractor and nothing in this Agreement or in the relationship between City and Developer shall constitute a partnership, joint venture, agency or any other similar relationship; provided, in no event, however, shall Developer act or undertake the duties of an architect, engineer, general contractor or subcontractor for or in connection with the Backbone Infrastructure Activities. Developer shall not be responsible or liable for the architectural or engineering design or quality of the Backbone Infrastructure, or for the construction means, methods, techniques, sequences or procedures employed by contractors in the performance of their contracts for City or with respect to the City Property. City further agrees that Developer shall not be liable or responsible for (a) the budget or schedule for the Backbone Infrastructure, (b) any breach or default by any architect, engineer, contractor, subcontractor or consultant under their respective contracts for the Backbone Infrastructure, or (c) any defective work or defective design by the any architect, engineer, contractor, subcontractor or consultant in connection with the Backbone Infrastructure unless such defective work or defective design is caused by Developer's material breach of a material provision of this Agreement (after being given written notice of and a reasonable period of time to cure such breach) or willful misconduct. Notwithstanding the foregoing, Developer shall remain responsible for assisting City in the performance and completion of the Backbone Infrastructure Activities in a manner consistent with the terms of Sections 5.2 and 5.3 of this Agreement unless and until this Agreement is terminated pursuant to the terms of Article XII.

5.1.2 Developer shall cause its engineer to prepare and deliver to City for review and approval plans and specifications for the design, engineering and construction of the Backbone Infrastructure, including, without limitation, the streets, walks, utilities for drainage, sewage, telephone, gas, electrical power, lighting, CATV, and other utilities relating to the Boundary Conditions (the "**Plans and Specifications**"), as well as an estimate of the cost for implementation of such Plans and Specifications (the "**Estimated Budget**"). In connection with preparation of the Plans and Specifications, Developer shall cause its engineer to (a) utilize City's design standards (including, without

limitation, City's Master Streetscape Plan approved by City's Planning Commission), as such standards may be amended, enhanced or modified from time to time, and (b) consider the Master Schedule and the Phasing Plan (as such documents may be amended or modified from time to time). Developer shall use commercially reasonable efforts to coordinate with the Irvine Ranch Water District, the Orange County Flood Control District and other applicable utility providers and regulators in connection with preparation of the Plans and Specifications.

5.2 Construction

5.2.1 Developer shall provide all services reasonably necessary or appropriate to arrange, supervise and manage the Backbone Infrastructure Activities and the Backbone Infrastructure Contracts (as hereinafter defined), including, without limitation, the duties described in Exhibit B attached hereto. Performance of the Backbone Infrastructure Activities by Developer and the Backbone Contractors (as hereinafter defined) shall be subject to City's rights of inspection.

5.2.2 Subject to the terms and conditions set forth in this Section 5.2.2, Developer shall negotiate and enter into agreements (the "**Backbone Infrastructure Contracts**") for performance of the Backbone Infrastructure Activities with architects, engineers and contractors (collectively, the "**Backbone Contractors**") selected by Developer and reasonably approved by City in writing. Developer shall utilize the selection procedures set forth in Section 14.9 below, or the bidding procedures contained on attached Exhibit C, as applicable, in connection with its selection of the Backbone Contractors. Such bidding documents for the Backbone Contractors shall be subject to review by City and shall follow customary City requirements including, but not limited to, (i) performance of services in accordance with the approved Plans and Specifications (as amended or modified from time to time), (ii) insurance naming Developer, City and their respective designees as additional insureds, (iii) performance and labor bonds, and (iv) retention amounts. The Parties agree that Developer shall use commercially reasonable efforts to cause the Backbone Infrastructure Contracts with the Backbone Contractors to address the following matters:

- (a) Payment of prevailing wages if, and to the extent, required by applicable laws;
- (b) A schedule for performance of such Backbone Contractor's services (subject to force majeure) in conjunction with the Master Schedule and the Phasing Plan, as such documents may be amended or modified from time to time;
- (c) Identification and handling of Hazardous Materials discovered during the course of such Backbone Contractor's activities on the Property;
- (d) Insurance obligations of the Backbone Contractor and its contractors, subcontractors and agents;
- (e) Obligations of the Backbone Contractor to indemnify, reimburse, defend and hold harmless Developer and City against actions, proceedings, suits,

demands, claims, liabilities, losses, damages, penalties, obligations, costs and expenses (including attorneys' and expert witness' fees and costs) arising from the acts and omissions of such Backbone Contractor on the Property or in connection with performance of its obligations under the Backbone Infrastructure Contract;

(f) Obligations of the Backbone Contractor to complete services on a lien-free basis and in accordance with the terms of its Backbone Infrastructure Contract;

(g) Rights of the City as a third party beneficiary under such Backbone Infrastructure Contract;

(h) Obligations of the Backbone Contractor to comply with all applicable laws and code restrictions, licenses, policies, permits and certificates required in connection with performance of its services; and

(i) Obligations of the Backbone Contractor to comply with all of the terms and provisions of the applicable LIFOC (as hereinafter defined) with respect to performance of any services in a LIFOC Area (as hereinafter defined).

5.2.3 Notwithstanding anything to the contrary set forth herein, within ten (10) business days from the date the City receives written notice of Developer's intention to retain or enter into a contract with a Backbone Contractor, City shall have the right to veto or disqualify any Backbone Contractor with respect to the performance of services affecting the City Property if City, in its sole and absolute discretion, deems such Backbone Contractor not responsible or such Backbone Contractor's bid not responsive.

5.2.4 If the lowest responsible bid from any Backbone Contractor exceeds the Estimated Budget (or portion thereof applicable to such Backbone Contractor's services), as such may be modified from time to time, Developer and City shall, within ten (10) business days following the receipt of applicable bids, meet and confer to reconcile the discrepancy between the Estimated Budget and the Backbone Contractor's bid.

5.2.5 Subject to Developer's obligations to enforce the terms of the Backbone Infrastructure Contracts as provided in Section 5.3.2 below, the Parties agree that, notwithstanding any other provision of this Agreement or any rights the Parties may otherwise have at law, equity or by statute, whether based on contract or some other claim, in the event of a dispute between any Party and any Backbone Contractor with respect to performance of the work for which such Backbone Contractor is responsible under its Backbone Infrastructure Contract (including, without limitation, disputes regarding the quality of such work and/or defects in the performance of such work), such Party shall look solely to the Backbone Contractor for redress and/or resolution of such dispute and shall not seek redress or resolution from the other Party to this Agreement. Notwithstanding the foregoing, Developer shall remain responsible for assisting City in the performance and completion of the Backbone Infrastructure Activities in a manner consistent with the terms of Sections 5.2 and 5.3 of this Agreement unless and until this Agreement is terminated pursuant to the terms of Article XII.

5.3 Developer Duties.

5.3.1 Developer shall use commercially reasonable efforts to coordinate the services of the Backbone Contractors with engineers, architects, attorneys, consultants, designers, contractors or subcontractors hired by the City (collectively, the "City Consultants") with respect to the design and construction of the Backbone Infrastructure.

5.3.2 Developer shall enforce the terms of the Backbone Infrastructure Contracts and any other contracts or agreements entered into with third parties in connection with the Backbone Infrastructure Activities in the prudent judgment of Developer. Without limiting the foregoing, Developer shall have the right to commence or threaten to commence any legal proceeding and/or settle any action or dispute in performing its obligations under this Article V without the need for any approval or consent from City, provided that any such settlement does not require the City or the CFD to pay any funds in excess of that previously approved by the City or CFD

5.3.3 Developer shall undertake commercially reasonable and good faith efforts to cause all Backbone Contractors to secure all Utility and Regulatory Permits required in connection with the Backbone Infrastructure Activities; provided, however, that City, in its capacity as an adjoining landowner, shall cooperate with Developer to obtain the timely issuance of any such Utility and Regulatory Permits. Regulatory Permits shall be processed in accordance with Section 7.1 below. Developer's review and/or supervision of the Backbone Contractors as provided in this Article V does not constitute and shall not be deemed to constitute a representation or warranty against defects or non-compliance with the obligations of the Backbone Contractors under their respective Backbone Infrastructure Contracts, and by its review and/or supervision, Developer does not assume any liability or responsibility for the obligations of the Backbone Contractors or for any defect or non-compliance with the obligations of such Backbone Contractors; provided, however, that Developer shall remain responsible for assisting City in the performance and completion of the Backbone Infrastructure Activities in a manner consistent with the terms of Sections 5.2 and 5.3 of this Agreement unless and until this Agreement is terminated pursuant to the terms of Article XII.

5.3.4 Developer shall organize and administer periodic meetings with City in order to review progress on the Backbone Infrastructure Activities and establish direction as necessary.

5.3.5 Developer shall perform such other related business functions pertaining to the Backbone Infrastructure Activities as reasonably agreed to between Developer and City.

5.3.6 Notwithstanding the obligations of Developer under this Article V,

(a) Nothing set forth in this Agreement shall be deemed to require Developer to perform any services of any kind for which a California contractor's license would be required;

(b) Developer in no way guarantees the performance of any of the Backbone Contractors and/or contractors or subcontractors retained to complete any of the work with respect to the Backbone Infrastructure Activities as provided herein. City's sole recourse in connection with the performance of the Backbone Infrastructure Activities undertaken by the Backbone Contractors shall be against the Backbone Contractors; provided, however, that Developer shall remain responsible for assisting City in the performance and completion of the Backbone Infrastructure Activities in a manner consistent with the terms of Sections 5.2 and 5.3 of this Agreement unless and until this Agreement is terminated pursuant to the terms of Article XII; and

(c) Developer's approval of the Backbone Infrastructure Contracts or any of the Backbone Infrastructure Activities undertaken by the Backbone Contractors shall not be deemed to be a representation or warranty by Developer as to the adequacy or sufficiency of the Backbone Infrastructure Contracts or the Backbone Infrastructure Activities or any of the actions contemplated thereby, and by its approval thereof, Developer does not assume any liability or responsibility for the Backbone Infrastructure Activities or for any defect in any product related or made pursuant thereto. Notwithstanding the foregoing, Developer shall remain responsible for assisting City in the performance and completion of the Backbone Infrastructure Activities in a manner consistent with the terms of Sections 5.2 and 5.3 of this Agreement unless and until this Agreement is terminated pursuant to the terms of Article XII.

5.4 City Duties.

5.4.1 During the term of this Agreement, City shall: (a) provide Developer with full information regarding City's requirements for the Backbone Infrastructure, including relevant information regarding City's plans for development of the City Property, (b) designate, in writing to Developer, a representative who shall be fully acquainted with the terms and conditions of this Agreement and the scope of the work required hereunder, and who, in compliance with the budget therefor approved by the Parties, shall have authority to render decisions on behalf of City and the authority to execute change orders on City's behalf with respect to the Backbone Infrastructure Activities pursuant to Section 5.4.4 below, and (c) subject to compliance with the budget therefor approved by the Parties, pay or cause the payment of all costs and expenses required to be paid by City under this Agreement when due.

5.4.2 City shall approve or reasonably disapprove all documents submitted to City for review and approval in connection with the Backbone Infrastructure Activities, including, without limitation, the Estimated Budget, within the timeframes and in accordance with the procedures set forth in Section 14.8 below.

5.4.3 City shall act expeditiously and in good faith to process Regulatory Permits, Utility Permits, applications, approvals and/or entitlements submitted by Developer and/or any utility providers in connection with the development and construction of the Backbone Infrastructure. Additionally, City hereby agrees to take

commercially reasonable steps to support any effort by Developer consistent with this Agreement, the Development Agreement, and resolutions and ordinances adopted by the City (by transmitting letters and/or by attending meetings at the request of Developer) in order to secure from all other applicable Governmental Authorities , the approvals and development entitlements necessary in connection with the Backbone Infrastructure Activities.

5.4.4 City shall approve or reasonably disapprove in writing all change orders submitted to City for review and approval in connection with the Backbone Infrastructure Activities. Change orders regarding Backbone Infrastructure Activities subject to review and approval by City's representative pursuant to Section 5.4.1 above, shall be limited to those which constitute a Material Change. A Material Change is one that would result in a cost increase for a particular activity which exceeds the currently applicable budget for such activity by the greater of 10% or \$10,000. The City's representative shall complete any review of a change order within five (5) business days of receipt from Developer of complete and relevant documentation. If City fails to respond in writing to a request from Developer with respect to any change order, such change order shall be deemed approved forty eight (48) hours after Developer provides City written notice that City has not responded. If for any reason City, Developer and Contractor cannot agree on the terms of a change order within ten (10) business days of submittal by Developer (including but not limited to an assertion by City that it has not received complete and relevant documentation with respect to the change order from Developer), Developer may, at its option, either (i) accept the change order, together with any attendant costs or delays, reserve its rights with respect to the City and resolve any disputes with City in accordance with the Dispute Resolution provisions contained in Article XIII below or (ii) stop work until the matter is resolved.

5.4.5 Provided Developer does not use an outside project manager to perform the duties detailed in this Article V, City shall pay Developer a management fee ("Management Fee"), over and above Reasonable Costs and Expenses to be reimbursed pursuant to Section 5.4.6, for the Developer's performance of management responsibilities set forth in this Article V. Such management fee shall be equal to five percent (5%) of such Reasonable Costs and Expenses related to the Backbone Infrastructure.

5.4.6 City shall reimburse Developer for one hundred percent (100%) of the Reasonable Costs and Expenses in connection with the duties to be performed pursuant to this Section 5. Following initiation of Developer activities under this Article V, Developer shall, no more frequently than monthly, provide written documentation to City detailing all Reasonable Costs and Expenses incurred by Developer in performance of its responsibilities under this Article V along with the applicable Management Fee. Within sixty (60) calendar days of receipt of such documentation City shall reimburse Developer for such Reasonable Costs and Expenses and pay such applicable Management Fee. In the event City does not make any such payment, Developer shall provide written notice to the City of such failure. If such payment is not received by Developer within ten (10) calendar days following delivery of such notice to the City, Developer, as an alternative to any other rights under this Agreement, at its election, shall have the right to a credit for

the amount of such payment against the next installment of the Development Agreement fees to be paid by Developer to the City pursuant to Section 4.2 of the Development Agreement.

5.4.7 City hereby agrees to grant Developer and its consultants full and complete access to all existing environmental documentation and studies prepared by City and/or its consultants and any additional environmental documentation prepared by or at the request of City relating to the Property; provided, however, that such access shall not extend to any documents that are protected from disclosure under the applicable exemption provisions of the Public Records Act as contained in California Government Code Sections 6250 et seq.

5.4.8 The requirements and limitations imposed upon the City by Sections 5.4.1, 5.4.2, 5.4.3 and 5.4.7 shall not apply to activities of the City in reviewing, analyzing, processing, and considering approval of land use entitlements, subdivisions, and other local development approvals undertaken by the City in the exercise of its police power pursuant to its Charter, Development Code or State law.

5.5 Licenses. City hereby grants to Developer for the benefit of Developer and its employees, agents and contractors (including, without limitation, the Backbone Contractors), a temporary license (the "**Temporary License**") to enter the City Property as reasonably necessary to carry out the obligations and exercise the rights of Developer under this Agreement; provided, however, that any such entry shall not interfere with or delay any work being performed by City on the City Property. The Temporary License shall commence upon execution of this Agreement and terminate upon completion of the Backbone Infrastructure Activities in accordance with the terms of the Backbone Infrastructure Contracts. Developer shall promptly repair any damage to the City Property or other property, and defend and indemnify the City for any personal injury, in any way caused by Developer or its agents in connection with Developer's exercise of its rights pursuant to the Temporary License, but excluding property damage or personal injury resulting from the sole active negligence or willful misconduct of the City. Such Developer obligation shall not apply to the activities of contractors performing activities pursuant to the Backbone Infrastructure Contracts but shall require such contractors to undertake the following, in compliance with Section 5.2.2 above: (i) indemnify the City and (ii) provide insurance coverage. For purposes hereof, the Parties agree that activities contemplated by and performed in accordance with the Plans and Specifications and/or the Backbone Infrastructure Contracts shall not be deemed "damage" to the City Property.

5.6 Easements. Each Party hereby agrees to grant and convey such easements, rights and rights-of-way over the granting Party's property to the other Party and to utility providers, governmental or quasi-governmental authorities that may be required by any such Party, utility provider, governmental or quasi-governmental authority in connection with the construction of the Backbone Infrastructure, subject to the reasonable approval of the granting Party as to the location and scope of any such easement. No Party shall be obligated to convey any such easement in the event the conveyance of such easement would prevent, interfere with or impede such Party's development of its property. In addition to the foregoing, City agrees to use all appropriate City powers to cause third parties to grant such easements to utility providers, governmental or quasi-governmental authorities that may be required by any such utility

provider, governmental or quasi-governmental authority in connection with the construction of the Backbone Infrastructure.

5.7 Cooperation Obligations. Each Party shall have ultimate decision-making authority with respect to, but shall confer with the other Party regarding, a schedule (including timing and location) for the Demolition Work and construction of the Backbone Infrastructure on the portions of the Property owned or leased by such Party; provided, however, that as between the Parties, Developer shall have ultimate decision-making authority regarding activities located within portions of the Property (the "LIFOC Areas") owned by the United States Department of the Navy (the "Navy") and leased to Developer or City, as applicable, pursuant to a Lease in Furtherance of Conveyance (a "LIFOC") and shall comply with all laws and directions of the Navy and work cooperatively with City with respect to such LIFOC Areas. Notwithstanding the foregoing, in the event City reasonably objects to any proposed action by Developer involving a LIFOC Area located within City Property (a "City Objected-To Action"), then Developer shall either (i) develop, with or without the assistance of City, an alternative action plan with respect to the City Objected-To Action that is acceptable to City or (ii) proceed with the City Objected-To Action and indemnify and defend City, its employees, representatives and agents (collectively, the "City Parties") for all claims and liabilities arising from such City Objected-To Action, provided that the foregoing indemnity and defense shall not apply to any claims or liabilities caused by the gross negligence or willful misconduct of City or any of the City Parties. City, in its capacity as a regulatory authority and as an adjoining landowner, shall cooperate with Developer and the Backbone Contractors with respect to the timely issuance of the Utility Permits required in connection with the Backbone Infrastructure Activities. Developer shall have no obligation to perform or cause the performance of the Demolition Work or construction of the Backbone Infrastructure unless all Utility Permits required in connection therewith, and subject to City's regulatory authority, have been issued by City. Developer shall use commercially reasonable efforts to timely apply for and process the Regulatory and Utility Permits in accordance with City rules and regulations relating to such permits.

5.8 Development Agreement Requirements. Notwithstanding the fact that this Agreement is being entered into more than ninety (90) days following the Effective Date, this Agreement shall satisfy the requirements of Developer and City to enter into an Infrastructure Agreement as contemplated by Section 6.4.2 of the Development Agreement.

ARTICLE VI **MASTER SUBDIVISION MAP**

6.1 Scope. Developer shall be responsible for the preparation and processing of the Master Subdivision Map with respect to the Property as contemplated by Section 7.1 of the Development Agreement. Developer shall use commercially reasonable efforts to deliver to City a draft of the Master Subdivision Map within thirty (30) days following the date of this Agreement. The Master Subdivision Map shall include the City Property. City and GPC shall cooperate with and assist Developer, as requested by Developer, in its efforts to process and record the Master Subdivision Map, including, without limitation, participating in discussions with utility providers and adjacent property owners. Notwithstanding Developer's responsibility for the preparation and processing of the Master Subdivision Map, City shall have the right, as the owner of the City Property, to review, approve and execute the Master Subdivision Map.

6.2 Coordination with GPC. Developer agrees to coordinate with City and GPC, and City and GPC each agree to coordinate with Developer, in connection with the preparation of the Master Subdivision Map with respect to those aspects of the Master Subdivision Map that affect both the City Property and the Developer Property. Notwithstanding Developer's agreement to coordinate with City and GPC as provided in this Section 6.2, in no event shall Developer be obligated to develop, prepare, process or incorporate into the Master Subdivision Map subdivisions or mapping elements relating to the City Property other than the exterior boundary lines of the City Map Parcels.

6.3 Coordination with Third Parties. Developer, City and GPC each agree to keep the others apprised of their respective interactions with utility providers and adjacent property owners and, if requested, provide the others an opportunity to be present during discussions and/or meetings with such utility providers and adjacent property owners.

6.4 Dedication of Backbone Infrastructure Alignment. To the extent reasonably feasible, (a) Developer shall cause the Master Subdivision Map to reflect the alignment of the Backbone Infrastructure (or portions thereof) and other portions of the Property that, as of the filing of the Master Subdivision Map, are identified therein as parcels or property interests to be dedicated to City (collectively, the "City Map Parcels"), and (b) cause the City Map Parcels to be dedicated to City upon recordation of the Master Subdivision Map.

6.5 Subdivision Bonds and Agreements. Each Party shall be responsible for posting all bonds and entering into all subdivision agreements necessary or useful in connection with the recordation of subdivision maps pertaining to such Party's property.

6.6 Cost Sharing. City shall reimburse Developer for City's proportionate share of the Reasonable Costs and Expenses in connection with the preparation and processing of the Master Subdivision Map within thirty (30) days following Developer's delivery to City of an invoice for such Reasonable Costs and Expenses together with such back-up documentation as may be reasonably requested by City. For purposes of this Section 6.6, City's proportionate share of the Reasonable Costs and Expenses shall be equal to ten percent (10%) of such Reasonable Costs and Expenses. Following initiation of the processing of the Master Subdivisions Map, Developer shall, no more frequently than monthly, provide written documentation to City detailing all Reasonable Costs and Expenses incurred by Developer in performance of its responsibilities under this Article VI. Within sixty (60) days of receipt of such documentation City shall reimburse Developer for such Reasonable Costs and Expenses.

ARTICLE VII

PERMITS AND APPROVALS

7.1 Processing of Regulatory Permits. Subject to the provisions of this Article VII, Developer shall apply for and use commercially reasonable efforts to process the Regulatory Permits with respect to the Property. In furtherance of the foregoing, Developer shall use commercially reasonable efforts to apply for the Regulatory Permits on or before September 1, 2006. City acknowledges and agrees that Developer's ability to apply for and process the Regulatory Permits with respect to the City Property is contingent upon City's delivery to Developer of definitive plans for City's development of the City Property, including, without

limitation, the specific locations of improvements identified in such plans. Developer shall use commercially reasonable efforts to coordinate with City with respect to the timing and submission of applications for the Regulatory Permits. All application and submissions made pursuant to this Article VII with respect to the City Property shall be subject to City's review and approval. Additionally, City shall have the right to approve all mitigation and/or exaction measures affecting the City Property and required in connection with the issuance of the Regulatory Permits. City shall, upon Developer's request, cooperate with and use commercially reasonable efforts to assist Developer in Developer's efforts to obtain the Regulatory Permits, including allowing use of open space and corridor areas of City Property for mitigation of impacts, to the extent such land is not already committed to mitigate the impacts of other City activities or projects, and subject to City's concurrence with regard to operation and maintenance of the mitigation area. Developer shall have the right, in its discretion, to apply for the Regulatory Permits with respect to the Developer Property separately from the Regulatory Permits with respect to the City Property. If Developer decides to proceed separately from City, Developer shall still process required Regulatory Permits for City Property unless City determines, at its own election, to process such Regulatory Permits.

7.2 Cooperation on Other Approvals and Agreements. The Parties agree to use commercially reasonable efforts to cooperate with respect to the application, processing and/or negotiation of other approvals and agreements with Governmental Agencies and utility providers required in connection with development of the Property.

7.3 Cost Sharing. In exchange for Developer assuming City's proportionate share of the Reasonable Costs and Expenses in connection with the preparation and processing of applications and submissions with respect to the Regulatory Permits and other agreements described in this Article VII required in connection with development of the Property, Developer is hereby authorized to utilize up to thirty (30) acres of land within the open space and corridor portions of the City Property for purposes of meeting mitigation requirements for impacts within the Developer's Property unrelated to the Backbone Infrastructure Facilities.

ARTICLE VIII

DESIGN AND DEVELOPMENT GUIDELINES

Developer shall, within ninety(90) days following the date of this Agreement, prepare and deliver to City for City's review draft guidelines for the master design and development of the Property as described in Section 7.3 of the Development Agreement (the "Design and Development Guidelines"). The Design and Development Guidelines prepared by Developer shall include provisions for sustainable and "green" (i.e., environmentally sensitive) development standards and requirements including, but not limited to, sustainable site planning, safeguarding water quality and water efficiency, optimizing energy performance, conserving and recycling materials and resources and improving indoor environment quality. Following delivery of the draft Design and Development Guidelines, Developer shall use commercially reasonable efforts cooperate with City to finalize the Design and Development Guidelines.

ARTICLE IX **INSURANCE**

9.1 **Coverages.** Developer shall procure and maintain at all times during the term of this Agreement, the following policies of insurance:

9.1.1 **Comprehensive General Liability Insurance.** A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than \$5,000,000 combined single limits covering the following: Personal Injury Liability Property Damage Liability, Contractual Liability, Contractors' Protective Liability, Products and/or Completed Operations Liability.

9.1.2 **Automobile Insurance.** A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than either (i) bodily injury liability limits of \$2,000,000 per person and \$2,000,000 per occurrence and property damage liability limits of Five Hundred Thousand Dollars \$500,000 per occurrence and \$500,000 in the aggregate or (ii) combined single limit liability of \$2,000,000. Said policy shall include coverage for owned, non-owned, leased, and hired cars.

9.1.3 **Worker's Compensation Insurance.** A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California.

The policies of insurance required hereunder shall be satisfactory only if issued by companies qualified to do business in California and rated "A: VII" or better in the most recent edition of Best's Insurance Guide. All of the aforescribed policies of insurance shall be primary insurance and shall name City and its officers, officials, employees and lenders as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against City and its insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled, nor the amount of the coverage thereof reduced, without providing thirty (30) days prior written notice to City. In the event any of said policies of insurance are cancelled, Developer shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Article IX. No work to be performed by Developer pursuant to this Agreement shall commence until Developer has provided City with certificates of insurance or appropriate insurance binders evidencing the above insurance coverage and said certificates or binders are approved by City.

9.2 **Blanket Policies.** Any policy required by the provisions of this Article IX may be made a part of a blanket policy of insurance so long as such blanket policy contains all of the provisions required herein and does not reduce the coverage, impair the rights or in any way negate the requirements of this Agreement.

9.3 **Contractors.** Neither Party shall permit any architect, engineer, contractor, subcontractor or consultant to commence work on or relating to its property until such individual or entity has named the other Party as an additional insured on such individual or entity's general liability insurance policy.

9.4 Waiver of Subrogation. The Parties hereby waive all rights against one another for damage to property caused by fire and other perils and any other risk to the extent that such damage is covered by each of such Party's policies of insurance.

ARTICLE X
RELEASE

Each Party hereto expressly acknowledges that the other Party and its respective divisions, subsidiaries, partners, members, affiliated companies and its and their respective employees, directors, council members, board members, shareholders, agents, partners, members, representatives, attorneys, successors and assigns (collectively, the "**Released Parties**") shall not have any liability or obligation for claims, liabilities, losses, damages, suits, actions, proceedings, obligations, costs and expenses (including, without limitation, actual attorneys' and expert fees) arising out of or in connection with the Master Implementation Activities (including, without limitation, the Backbone Infrastructure Activities) performed on or in connection with or with respect to the Property (collectively, "**Losses**"), each such Party's sole remedy being to proceed against the contractors performing such work and/or the professional consultants designing and/or overseeing such work.

Notwithstanding the foregoing, each Party hereby releases the Released Parties from all such Losses, and waives on its behalf, and on behalf of its successors and assigns, all claims for any such Losses, except to the extent caused by such Party's active negligence or intentional misconduct.

Notwithstanding anything to the contrary in this Agreement, express or implied, (i) the term Released Parties shall not include, and hereby is deemed to exclude, all contractors, subcontractors, engineers and consultants, designing, supervising, constructing or inspecting any physical work on the Property and (ii) Developer shall remain responsible for assisting City in the performance and completion of the Backbone Infrastructure Activities in a manner consistent with the terms of Sections 5.2 and 5.3 of this Agreement unless and until this Agreement is terminated pursuant to the terms of Article XII.

EACH PARTY ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY ITS LEGAL COUNSEL AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

THE PARTIES, BEING AWARE OF SAID CODE SECTION, EACH HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTE OR COMMON LAW PRINCIPLE OF SIMILAR EFFECT IN CONNECTION WITH THE RELEASE GIVEN IN THIS ARTICLE X.



CITY



DEVELOPER

ARTICLE XI
ENVIRONMENTAL MATTERS

Notwithstanding anything to the contrary in this Agreement, by administering the Master Implementation Activities (including, without limitation, the Backbone Infrastructure Activities) as provided in this agreement, Developer is not assuming responsibility for or control over the removal or handling of any Hazardous Materials that may exist on, in or about the Property, including, without limitation, any Hazardous Materials that may exist in the soil, soil vapor and/or groundwater at the Property or that may be discovered through the Master Implementation Activities. Each Party hereto shall be solely responsible, at its sole cost and expense, for investigating, monitoring, assessing, treating, removing, transporting, disposing and/or remediating any such Hazardous Materials discovered on such Party's property, and shall be responsible for executing, or causing the Navy to execute, proper manifests for the material so removed, as may be required by applicable laws.

ARTICLE XII
TERM AND TERMINATION

12.1 Term. The term of this Agreement ("Term") shall commence as of the date hereof and shall expire, if not sooner terminated by one of the Parties, upon completion of the Master Infrastructure Activities (including, without limitation, the Backbone Infrastructure Activities), subject to extensions for Force Majeure Delay (as hereinafter defined). The payment obligations of the Parties under the terms of this Agreement and the release under Article X shall survive the expiration of the Agreement.

12.2 Termination By City for Just Cause. City may terminate this Agreement for Just Cause (as hereafter defined) in accordance with the provisions of this Section 12.2. The term "Just Cause" means any one (1) or more of the following occurrences:

12.2.1 Developer shall materially breach any of its duties or obligations herein, or shall fail to keep, observe or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by Developer, and such default shall continue for a period of thirty (30) days after written notice thereof by City to Developer; provided, however, in the event that such default will take longer than thirty (30) days to cure, Developer shall be entitled to a reasonable period of time to cure such breach so long as Developer commences the cure of such default within such thirty (30) day period and thereafter prosecutes same to completion in a diligent manner.

12.2.2 Developer shall apply for the appointment of a receiver, trustee or liquidator of Developer or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law or file an answer admitting the material allegations of the petition filed against Developer in any bankruptcy, reorganization, or insolvency proceeding, or if an order, judgment or on the application of a creditor, a decree shall be entered by any court of competent jurisdiction adjudicating Developer bankrupt or insolvent or approving a petition seeking reorganization of Developer or appointing a receiver, trustee, or liquidator of Developer or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect any period of thirty (30) consecutive days.

City shall have the right, but not the obligation, to terminate this Agreement as a result of the occurrence and during the continuance (beyond any applicable cure periods) of any of the Just Cause events described above by delivering a written notice to Developer. If City timely gives Developer any such written notice pursuant to this Section 12.2, then such termination shall be effective upon receipt by Developer of such notice and City shall have the obligation to make all payments due and owing to Developer pursuant to the terms of this Agreement as of the termination date. Notwithstanding the foregoing, City shall have the right to set off against all payments due hereunder to Developer all reasonable costs and expenses actually incurred by City which are solely and directly caused by the occurrence of an event constituting Just Cause.

12.3 Termination by Developer for Cause. Developer shall have the right to terminate this Agreement for Cause (as hereinafter defined) in accordance with the provisions of this Section 12.3. The term "Cause" means any one (1) or more of the following occurrences:

12.3.1 City shall materially breach any of its obligations to Developer herein (failure to make any payment to Developer (without the right to do so hereunder) shall be deemed to be a material breach) or shall fail to keep, observe or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by City, and such default shall continue for a period of fifteen (15) days after written notice of a monetary default and thirty (30) days after written notice thereof by Developer to City for nonmonetary defaults; provided, however, in the case of a non-monetary default, in the event that such default will take longer than thirty (30) to cure, City shall be entitled to a reasonable period of time to cure such breach so long as City commences the cure of such default within such thirty (30) day period and thereafter prosecutes same to completion in a diligent manner.

12.3.2 City applies for the appointment of a receiver, trustee or liquidator of City or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law or file an answer admitting the material allegations of the petition filed against City in any bankruptcy, reorganization, or insolvency proceeding, or if an order, judgment or on the application of a creditor, a decree shall be entered by any court of competent jurisdiction adjudicating City bankrupt

or insolvent or approving a petition seeking reorganization of City or appointing a receiver, trustee, or liquidator of City or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect any period of thirty (30) consecutive days.

Developer shall have the right, but not the obligation, to terminate this Agreement as a result of the occurrence and during the continuance (beyond any applicable cure periods) for any of the Cause events described above by delivering a written notice to City. If Developer timely gives City any such written notice pursuant to this Section 12.3, then such termination shall be effective upon receipt by City of such notice and Developer shall be entitled to immediately receive any payments due and owing to Developer pursuant to the terms of this Agreement as of the termination date.

12.4 Effect of Termination. Upon termination of this Agreement:

(a) Developer shall deliver to City a detailed summary of the matters Developer is obligated to provide to City hereunder;

(b) Developer shall deliver to City copies of any and all contracts, licenses, permits and/or other authorizations required in connection with the Backbone Infrastructure Activities with respect to the City Property. Without limiting the foregoing, Developer shall deliver to City copies of all utility contracts, service contracts, licenses and other contracts entered into in connection with the Backbone Infrastructure Activities with respect to the City Property.

(c) Developer shall cease the performance of all services required to be performed by it under this Agreement; and

(d) Developer shall use commercially reasonable efforts to cooperate with City to accomplish an orderly transfer of the responsibilities for the Backbone Infrastructure Activities with respect to the City Property.

(e) Future performance of all activities addressed in this Agreement shall be accomplished in conformance with the terms of the Development Agreement.

12.5 Survival. City's obligation to make payments pursuant to Developer under Sections 12.2, 12.3, and 12.4 and any other terms of this Agreement, and Developer's obligation to cooperate regarding the transition upon termination under Section 12.4, shall survive termination of the Agreement.

ARTICLE XIII DISPUTE RESOLUTION

13.1 JUDICIAL REFERENCE OF DISPUTES. IF ANY CLAIM OR CONTROVERSY THAT ARISES OUT OF OR RELATES TO, DIRECTLY OR INDIRECTLY, THIS AGREEMENT OR ANY DEALINGS BETWEEN THE PARTIES CANNOT BE SETTLED BY THE PARTIES WITHIN FOURTEEN (14) DAYS AFTER EITHER PARTY IS FIRST PROVIDED WRITTEN NOTICE OF THE CLAIM OR

CONTROVERSY BY THE OTHER , THE MATTER SHALL BE DETERMINED BY JUDICIAL REFERENCE PURSUANT TO THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1, EXCEPT AS OTHERWISE MODIFIED HEREIN. THE PARTIES SHALL COOPERATE IN GOOD FAITH TO ENSURE THAT ALL NECESSARY AND APPROPRIATE PARTIES ARE INCLUDED IN THE JUDICIAL REFERENCE PROCEEDING. IN THE EVENT THAT A LEGAL PROCEEDING IS INITIATED BASED ON ANY SUCH DISPUTE, THE FOLLOWING SHALL APPLY:

- 1) THE PROCEEDING SHALL BE BROUGHT AND HELD IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED UNLESS THE PARTIES AGREE TO A DIFFERENT VENUE;
- 2) THE PARTIES SHALL USE THE PROCEDURES ADOPTED BY JAMS FOR JUDICIAL REFERENCE AND SELECTION OF A REFEREE (OR ANY OTHER ENTITY OFFERING JUDICIAL REFERENCE DISPUTE RESOLUTION PROCEDURES AS MAY BE MUTUALLY ACCEPTABLE TO THE PARTIES);
- 3) THE REFEREE MUST BE A RETIRED JUDGE OR LICENSED ATTORNEY WITH SUBSTANTIAL EXPERIENCE IN RELEVANT REAL ESTATE MATTERS;
- 4) THE PARTIES TO THE JUDICIAL REFERENCE PROCEDURE SHALL AGREE UPON A SINGLE REFEREE WHO SHALL HAVE THE POWER TO TRY ANY AND ALL OF THE ISSUES RAISED, WHETHER OF FACT OR OF LAW, WHICH MAY BE PERTINENT TO THE MATTERS IN DISPUTE, AND TO ISSUE A STATEMENT OF DECISION THEREON. ANY DISPUTE REGARDING THE SELECTION OF THE REFEREE SHALL BE RESOLVED BY JAMS OR THE ENTITY PROVIDING THE REFERENCE SERVICES, OR, IF NO ENTITY IS INVOLVED, BY THE COURT IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 AND 640;
- 5) THE REFEREE SHALL BE AUTHORIZED TO PROVIDE ALL REMEDIES AVAILABLE IN LAW OR EQUITY APPROPRIATE UNDER THE CIRCUMSTANCES OF THE CONTROVERSY;
- 6) THE REFEREE MAY REQUIRE ONE OR MORE PRE-HEARING CONFERENCES;
- 7) THE PARTIES SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE;
- 8) A STENOGRAPHIC RECORD OF THE REFERENCE PROCEEDINGS SHALL BE MADE;
- 9) THE REFEREE'S STATEMENT OF DECISION SHALL CONTAIN FINDINGS OF FACT AND CONCLUSIONS OF LAW TO THE EXTENT APPLICABLE;
- 10) THE REFEREE SHALL HAVE THE AUTHORITY TO RULE ON ALL POST-HEARING MOTIONS IN THE SAME MANNER AS A TRIAL JUDGE;
- 11) THE PARTIES SHALL PROMPTLY AND DILIGENTLY COOPERATE WITH EACH OTHER AND THE REFEREE AND PERFORM SUCH ACTS AS MAY BE NECESSARY FOR AN EXPEDITIOUS RESOLUTION OF THE DISPUTE;
- 12) EACH PARTY TO THE JUDICIAL REFERENCE PROCEEDING SHALL BEAR ITS OWN ATTORNEYS' FEES AND COSTS IN CONNECTION WITH SUCH PROCEEDING; AND
- 13) THE STATEMENT OF DECISION OF THE REFEREE UPON ALL OF THE ISSUES CONSIDERED BY THE REFEREE SHALL BE BINDING UPON THE PARTIES, AND UPON FILING OF THE STATEMENT OF DECISION WITH THE CLERK OF THE COURT, OR WITH THE JUDGE WHERE THERE IS NO CLERK, JUDGMENT MAY BE ENTERED THEREON. THE DECISION OF THE REFEREE SHALL BE APPEALABLE AS IF RENDERED BY THE COURT. THIS PROVISION SHALL IN NO WAY BE CONSTRUED TO LIMIT ANY VALID CAUSE OF ACTION, WHICH MAY BE BROUGHT BY ANY OF THE PARTIES. THE PARTIES ACKNOWLEDGE AND ACCEPT THAT THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

ps

DEVELOPER'S INITIALS

cc

CITY'S INITIALS

13.2 ARBITRATION OF DISPUTES. IF FOR ANY REASON THE JUDICIAL REFERENCE PROCEDURES IN SECTION 13.1 ARE LEGALLY UNAVAILABLE AT THE TIME A DISPUTE WOULD OTHERWISE BE REFERRED TO JUDICIAL REFERENCE, THEN, UPON THE WRITTEN DEMAND OF EITHER PARTY, THE DISPUTE SHALL BE RESOLVED BY BINDING ARBITRATION IN ACCORDANCE WITH THE AMERICAN ARBITRATION ASSOCIATION'S COMMERCIAL ARBITRATION RULES EXCEPT THAT THE ARBITRATION SHALL BE CONDUCTED BY ONE ARBITRATOR WHO IS A RETIRED SUPERIOR COURT JUDGE OR AN ATTORNEY WITH NOT LESS THAN FIFTEEN (15) YEARS EXPERIENCE IN REAL ESTATE MATTERS. THE JUDGMENT UPON THE ARBITRATION AWARD SHALL BE FINAL AND BINDING UPON THE PARTIES AND MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. IF THE PARTIES DO NOT AGREE UPON AN ARBITRATOR WITHIN 15 DAYS AFTER DELIVERY OF A WRITTEN DEMAND FOR ARBITRATION, THEN THE ARBITRATOR SHALL BE CHOSEN BY THE AMERICAN ARBITRATION ASSOCIATION. THE ARBITRATOR MAY ALLOCATE THE FEES AND COSTS OF ARBITRATION BETWEEN THE PARTIES AND MAY AWARD COSTS, INCLUDING REASONABLE ATTORNEYS' FEES, TO EITHER PARTY. IN THE ABSENCE OF A DETERMINATION BY THE ARBITRATOR, EACH PARTY SHALL BEAR ITS PROPORTIONATE SHARE OF THE COSTS OF THE ARBITRATION AND THE ARBITRATOR AND ALL OF ITS OWN COSTS. NOTHING CONTAINED IN THIS SECTION SHALL RESTRICT ANY PARTY FROM SEEKING EQUITABLE RELIEF FROM THE COURT SYSTEM PENDING RESOLUTION OF THE ARBITRATION.

MS

DEVELOPER'S INITIALS

cc

CITY'S INITIALS

ARTICLE XIV
GENERAL PROVISIONS

14.1 Notices. All notices, requests, demands, approvals, consents or other communications required or permitted by this Agreement (except as expressly provided elsewhere in this Agreement with respect to matters to be approved by City), shall be addressed as follows and shall be in writing and shall be sent by (a) nationally recognized overnight courier, or (b) facsimile or telecopy and shall be deemed received (i) if delivered by overnight courier, when received as evidenced by a receipt, or (ii) if given by facsimile or telecopy, when sent with confirmation of receipt. Any notice, request, demand, direction or other communication sent by facsimile or telecopy must also be sent within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing.

To Developer: Heritage Fields El Toro, LLC
7130 Trabuco Road
Irvine, California 92618
Attention: Robert L. Santos, Division President
Telephone: (949) 784-4225
Facsimile: (949) 784-4270

With a copy to: Allen Matkins Leck Gamble & Mallory LLP
1900 Main Street, Fifth Floor
Irvine, California 92614
Attn: William R. Devine, Esq.
Telephone No.: (949) 553-1313
Facsimile No.: (949) 553-8354

To City: City of Irvine
City Hall
One Civic Center Plaza
Irvine, California 92623-9575
Attention: Great Park Corporation CEO
Telephone No.: (949) 724-6451
Facsimile No.: (949) 724-6440

With a copy to: Rutan & Tucker, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, California 92626
Attention: Joel D. Kuperberg, Esq.
Telephone No.: (714) 641-5100
Facsimile No.: (714) 546-9035

Notice of change of address shall be given by written notice and in the manner detailed in this Section 14.1. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or other communication sent.

14.2 Entire Agreement. This Agreement, together with the Exhibits attached hereto and the Development Agreement, shall constitute the entire agreement between the parties hereto concerning the subject matter hereof and shall supersede all other prior or contemporaneous agreements, written or oral, between the parties hereto and relating to the Master Implementation Activities. Unless specifically stated in this Agreement, the terms of this Agreement are not meant to supersede or modify any terms of the Development Agreement. In particular, Sections 6.1 and 6.4 of the Development Agreement still govern. In the event there is a conflict between the terms of the Development Agreement and this Agreement, the Development Agreement shall govern.

14.3 Modifications. No modification hereof shall be effective unless made by supplemental agreement in writing executed by the parties hereto.

14.4 Governing Law. This Agreement is made pursuant to, and shall be governed by and construed in accordance with, the laws of the State of California.

14.5 No Waiver; Cumulative Remedies. The failure of either Party to seek redress for violation, or to insist upon the strict performance of any covenant, agreement, provision or condition at subsequent times shall not constitute a waiver of the terms or of any other covenant, agreement, provision or condition, and either Party shall have all remedies provided herein and by applicable law with respect to any subsequent act which would have originally constituted a violation.

14.6 Assignment; Binding Agreement. Except as provided in this Section 14.6, none of the rights, interests, duties or obligations created by this Agreement may be assigned, transferred or delegated in whole or in part by Developer or City without the prior written consent of the other Party to this Agreement, and any such purported assignment, transfer or delegation without such prior written consent shall be void. Notwithstanding the foregoing sentence, (a) City shall have the right, without Developer's consent, to assign all or a portion of its rights under this Agreement to Orange County Great Park Corporation, a California corporation, and (b) Developer shall have the right, without City's consent, to assign this Agreement and/or its rights hereunder to any entity to whom Developer assigns the Development Agreement; provided, however, that (i) the assignee of City and/or Developer, as applicable, shall, by written instrument, assume all obligations of such Party hereunder, and (ii) City and/or Developer, as applicable, shall deliver a copy of the fully executed assignment and assumption agreement to the other Party. Subject to the restrictions on assignment set forth herein, this Agreement shall inure to the benefit of and be binding upon City and Developer and their respective heirs, executors, legal representatives, successors and assigns. Whenever in this instrument a reference is made to City or Developer, such reference shall be deemed to include a reference to their respective heirs, executors, legal representatives, successors and assigns.

14.7 Further Instruments. In connection with this Agreement, as well as all transactions contemplated by this Agreement, each Party agrees to execute and deliver such additional documents and instruments and perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all the terms, provisions and conditions of this Agreement and all transactions contemplated by it.

14.8 City Review of Documents. Except as expressly provided otherwise herein, City shall make all commercially reasonable and good faith efforts to approve or reasonably disapprove in writing all documents, instruments and agreements submitted for review and approval hereunder, including, without limitation, the Estimated Budget, within ten (10) days, but in no event later than thirty (30) calendar days, after delivery of the same. City shall not unreasonably withhold, condition or delay approval of any document submitted to City hereunder. Failure of City to timely approve or reasonably disapprove any documents submitted hereunder, following ten (10) days written notice from Developer that the time period for review and approval has passed, shall be deemed City's approval thereof. In the event of any disapproval, City shall set forth in writing detailed reasons for such disapproval and in such event Developer shall cause such documents, instruments and agreements to be revised and resubmitted to City within ten (10) calendar days of delivery of the notice of disapproval. The foregoing procedures shall be observed until any such documents are approved. City further

covenants that all documents, instruments and agreements submitted to City for review and approval in connection with the Property shall be reviewed as expeditiously as reasonably possible.

14.9 **Consultants.** City acknowledges and agrees that Developer has hired various consultants (the "**Existing Consultants**") in connection with the performance of its obligations under this Agreement, which Existing Consultants are listed on Exhibit D attached hereto. City hereby approves of the Existing Consultants and the contracts and agreements pursuant to which Developer has engaged the Existing Consultants. Prior to hiring any new consultants in connection with the performance of any of its obligations under this Agreement, Developer shall deliver to City for its review and approval a list (the "**Short List**") of proposed consultants (the "**Proposed Consultants**"). City shall have the right, in its reasonable discretion, to disapprove any Proposed Consultant by delivering written notice of such disapproval to Developer. City's failure to disapprove any Proposed Consultant within ten (10) calendar days following receipt of the Short List shall constitute City's approval of the Proposed Consultants identified thereon. Developer shall have the right to hire any Proposed Consultant identified on the Short List approved (or deemed approved) by City.

14.10 **Common Defense to Third Party Claims.** In the event any third-party claims, actions, suits and/or proceedings ("**Third Party Claims**") are brought against City and/or Developer in connection with the matters described in this Agreement, City and Developer may elect to cooperate with respect to the defense of such Third Party Claims.

14.11 **CEQA Processing.** The Parties shall use commercially reasonable efforts to cooperate with respect to the preparation and processing of any subsequent documents, agreements and/or approvals (collectively, the "**CEQA Documents**") required under the California Environmental Quality Act ("**CEQA**") in connection with the planning, design, use and construction of the Backbone Infrastructure and the Boundary Conditions. To the extent reasonably possible and permitted under CEQA, the Parties agree to tier off of (as permitted under CEQA Section 15152 (Tiering)) and/or prepare an addendum to (as permitted under CEQA Section 15164 (Addendum to an Environmental Impact Report)) that certain Program Environmental Impact Report for the development of the Property (State Clearinghouse No. 2002101020), certified by the City Council of City on May 27, 2003 (the "**EIR**"). City shall have the right to approve all mitigation measures required in connection with the CEQA Documents prepared for or in connection with the City Property. Developer shall use commercially reasonable efforts to coordinate with City and GPC with respect to the administration of any mitigation monitoring program required pursuant to the EIR or the CEQA Documents.

14.12 **Costs and Expenses.** Except as otherwise expressly provided herein, each Party shall pay for any and all costs and expenses incurred by such Party in connection with the preparation, negotiation, implementation of and performance under this Agreement.

14.13 **Authority to Implement.** From time to time, Developer shall designate authorized signatories of Developer (the "**Authorized Signatories**") by written notice to City. Except with respect to decisions regarding the execution, amendment or termination of this Agreement, or the initiation of proceedings to enforce this Agreement, all decisions, consents, approvals and other

actions required in connection with this Agreement and implementation of the agreements, proposals, schedules, tasks and documents described herein or contemplated hereby shall be undertaken by the CEO or designee on behalf of City and by the Authorized Signatories on behalf of Developer. Notwithstanding the foregoing, the Authorized Signatories and the CEO shall be authorized to make decisions and execute amendments to this Agreement with respect to activities and expenditures set forth in a budget previously approved by the City or Developer, respectively.

14.14 Force Majeure. Developer shall be excused from performing any service, obligation or undertaking provided in this Agreement and its performance of such services, obligations or undertakings shall be postponed in the event Developer is prevented, delayed or hindered by causes beyond its reasonable control (an event of "Force Majeure Delay") including without limitation any delay caused by any action, inaction, order, ruling, moratorium, regulation, statute, condition or other decision of any private party or Governmental Authorities having jurisdiction over any of the Master Implementation Services (including, without limitation, the Backbone Infrastructure Activities), or by delays in inspections or in issuing approvals by private parties or permits by Governmental Authorities, or by fire, flood, inclement weather, act of God, strikes, lockouts or other labor or industrial disturbance (whether or not on the part of agents or employees of Developer or City), civil disturbance, order of any government, court or regulatory body claiming jurisdiction or otherwise, act of public enemy, war, riot, sabotage, blockage, embargo, failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority, discovery of hazardous or toxic materials, earthquake, or other natural disaster, delays caused by any dispute resolution process, and any act or failure to act by City or its representative, employees, agents, independent contractors, consultants and/or any other person performing or required to perform services on behalf of City.

14.15 Annual Review. Within thirty (30) days following each anniversary of the date of this Agreement until completion of the Master Implementation Activities, the Parties shall meet to discuss the status of the Master Implementation Activities and to review the procedures established under this Agreement and the agreements described herein.

14.16 Commercially Reasonable Efforts. For purposes of this Agreement, the obligation of Developer to use commercially reasonable efforts shall not obligate Developer to expend its own funds or incur costs which are not to be reimbursed by City pursuant to the terms of this Agreement.

14.17 Interpretation. The headings of this Agreement are inserted for convenience and identification only and are not intended to describe, interpret, define or limit the scope, extent, or intent of this Agreement or any provisions hereof. All references herein to Articles or Sections shall refer to the corresponding Articles or Sections of this Agreement unless specific reference is made to Articles or Sections of another document or instrument. Whenever the context requires, the gender of all words used in this Agreement shall include the masculine, feminine and neuter, and the number of words shall include the singular and the plural.

14.18 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

14.19 Attorneys' Fees. In the event any dispute between the Parties or any proceeding is brought by one Party against the other to enforce or for the breach of any of the provisions in this Agreement, the prevailing Party shall be entitled in such proceeding to recover such Party's reasonable attorneys' fees together with the costs and expenses (including experts) of such proceeding therein incurred.

14.20 Exhibits. The Exhibits, including Exhibit A through D, inclusive, attached hereto are hereby incorporated herein by this reference.

14.21 No Third-Party Beneficiary. The covenants and agreements and any and all other terms and provisions herein contained, express or implied, shall be only for the benefit of the Parties hereto and their respective successors and assigns, and such covenants, agreements, terms, and provisions shall not inure to the benefit of the obligees of any indebtedness or any other Party, whomsoever, deemed to be a third-party beneficiary of this Agreement.

14.22 Rights of Lenders. No breach or violation of the terms of this Agreement shall defeat or render invalid the lien of any mortgage, deed of trust or similar instruments encumbering the Property, or any portion thereof, and securing a loan made in good faith and for value; provided, however, that this Agreement and all provisions hereof shall be binding upon and effective against any subsequent owners of any portion of the Property whose title is acquired by foreclosure, trustee's sale, or other remedies provided in such mortgage or deed of trust, but such subsequent owners shall take title free and clear of any violations by their respective predecessors-in-interest of the terms of this Agreement occurring prior to such transfer of title.

14.23 Limitation of Developer's Liability. The Parties agree that, notwithstanding any other provision of this Agreement or any rights which City may otherwise have at law, equity or by statute, whether based on contract or some other claim, any liability of Developer to City arising out of this Agreement, the Backbone Infrastructure Contracts and/or the activities contemplated under either this Agreement or the Backbone Infrastructure Contracts shall be satisfied only from Developer's interest in the Developer Property and the proceeds thereof. No partner, member, employee, officer, director, beneficiary, affiliate, or direct or indirect owner of Developer or any of Developer's affiliates has any personal liability for any of Developer's covenants or other agreements hereunder or in connection with the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, if Developer is or becomes a partnership, the general or limited partners, employees, agents, or affiliates of Developer shall not in any manner be personally or individually liable for the obligations of Developer hereunder or for any claims related to this Agreement. If Developer is or becomes a corporation, no officer, employee, agents or affiliates of Developer shall in any manner be personally or individually liable for the obligations of Developer hereunder or for any claim in any way related to this Agreement.

14.24 No Partnership/Fiduciary Relationship. The Parties acknowledge and agree that the relationship created by this Agreement between Developer and City is one of contract only, and that no partnership, joint venture or other fiduciary or quasi-fiduciary relationship is intended or in any way created hereby.

14.25 No Recordation. No Party shall file or record any instrument or document relative to this Agreement in the public records of any County or State at any time.

14.26 Estoppel Certificate. No more than two (2) times per year upon written request of a Party to this Agreement, the other Party shall deliver to the requesting Party and at such Party's request, to such party's mortgagee, prospective mortgagee or prospective purchaser (including a ground lessee), an estoppel certificate or statement stating whether: (a) it knows of any default under this Agreement; (b) to its knowledge, the Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); and (c) to its knowledge, this Agreement, as of that date, is in full force and effect. Any such statement or certificate may be conclusively relied upon by the Party requesting the statement or certificate.

14.27 Additional Reasonable Costs and Expenses. To the extent Developer incurs Reasonable Costs and Expenses for performing duties under this Agreement, other than those described in Articles V, VI, and VII, such Reasonable Costs and Expenses: (i) shall be shared proportionately by the parties with respect to Developer obligations that serve or benefit both the Developer Property and the City Property; and (ii) shall be paid by a Party if the Developer obligations serve or benefit only that Party's portion of the Property.

(Signatures on Next Page)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

"Developer":

HERITAGE FIELDS EL TORO, LLC,
a Delaware limited liability company

By: Heritage Fields LLC,
a Delaware limited liability company

By: Lennar-LNR Heritage Fields, LLC,
a Delaware limited liability company

By: Lennar Homes of California, Inc.,
a California corporation

By: [Signature]
Name: Robert Santos
Title: Vice President

"CITY":

CITY OF IRVINE,
a California charter city

By: [Signature]
Name: Beth Kraus
Its: Mayor

ATTEST:

[Signature]
City Clerk

APPROVED AS TO FORM:

[Signature]
City Attorney

[Signatures Continued on Next Page]

JOINDER

Orange County Great Park Corporation, a California non-profit corporation, hereby acknowledges that it has received originally executed counterparts or a fully executed original of the foregoing Master Implementation Agreement and agrees to be bound by and perform any covenants of the Orange County Great Park Corporation made therein.

Dated: _____, 2006

ORANGE COUNTY GREAT PARK
CORPORATION,
a California non-profit corporation

By: Colleen Clark
Name: Colleen Clark
Title: Deputy CEO

By: _____
Name: _____
Title: _____

EXHIBIT A

LIST OF REASONABLE COSTS AND EXPENSES

Reasonable Costs and Expenses mean the total actual costs and expenses incurred by Developer in the performance of its obligations under the Agreement including, without limitation, the following:

1. The costs of all permits, fees, entitlements and licenses and other approvals required by local, state or federal governmental agencies in order to undertake and complete the development;
2. The aggregate amount of all contracts and sub-contracts for the furnishing of labor, materials, tools and/or equipment in connection with the construction of on and off-site improvements;
3. The direct cost, including, without limitation, progress or partial payments to or for any and all labor, materials, tools and equipment actually furnished in connection with the construction of the on and off-site improvements;
4. The costs of any and all professional and technical services rendered which are related to the construction of the project, including, but not limited to, accounting, legal, architectural, engineering and consulting services;
5. The costs of off-site and on-site construction supervision, inspection and testing;
6. The cost of payroll contributions, bonuses, taxes and fringe benefits normally paid on behalf of labor and construction supervision that are reasonably allocable to this project plus all contributions to pension or other related retirement plans;
7. The cost of any worker's compensation insurance, comprehensive general liability insurance, or other insurance incurred by the Developer reasonably allocable to the construction;
8. The premium for any completion and/or labor and material bonds required by any local government agencies, and/or any construction lender;
9. All direct costs incurred in purchasing job cost reports from a data processing service bureau;
10. All job site transportation expenses incurred by the Developer in the construction of the Backbone Infrastructure Facilities ("Facilities") and the related improvements;
11. All costs involved in the servicing of the Facilities during construction;
12. All costs of development financing, whether secured or unsecured, interim or permanent, such as interest, points, standby fees, discounts, fees for letters of credit, accommodation

fees, contingency fees, guarantee fees and all other fees and payments however denominated and commissions in connection with such financing and all other costs on connection with the creation and implementation of such financing, such as (but without limitation) broker's fees, legal fees, appraiser's fees and trustee fees and expenses in connection with any of the foregoing as well as any repayments of principal of the development financing;

13. Demolition expenses, other than those paid for by the City or covered by the "Agreement Regarding Hardscape Recycling" entered into between the City and Developer as of March 28, 2006, excavation, site improvements and off-site improvements costs and/or contracts incurred with respect to the Facilities and other related improvements;
14. Taxes (including without limitation real property taxes), licenses, permits, levies, royalties, duties, excise and assessments; completion and/or labor and material bonds; casualty, surety bonds and/or other insurance premiums (including without limitation the cost of worker's compensation insurance and comprehensive general liability insurance);
15. Landscaping and other site improvements; and
16. Project security until the end of construction.

EXHIBIT B

DEVELOPER'S DUTIES

In addition to Developer's duties and obligations under Sections 5.2 and 5.3 of this Agreement, Developer shall use its commercially reasonable and diligent efforts to cause to be performed the following:

1. Preconstruction Phase

(a) Preconstruction Schedule. Developer shall prepare a proposed schedule for the design and construction of the Backbone Infrastructure, including, without limitation, a schedule for the demolition of existing improvements on the Property necessary or useful in connection therewith ("Preconstruction Schedule"), which schedule shall be subject to City's approval pursuant to the process described in Section 5.4.2 of the Agreement.

(b) Weekly Minutes. During the Preconstruction and Construction Phase, Developer shall cause its architect or engineer to prepare and distribute on a weekly basis minutes of the weekly project job meetings.

(c) Monthly Reports. Commencing January 10, 2007, and continuing thereafter on the tenth (10th) day of each month (or such other day of the month as the Parties may approve from time to time) thereafter until the completion of construction of the Backbone Infrastructure, Developer shall render to City a written report setting forth (1) the results of any meetings held with Governmental Authorities, (2) any anticipated delays in meeting the time schedule set forth in the Preconstruction Schedule and Developer's assessment of why such delay has occurred or will occur, and (3) such other matters that City may reasonably request from time to time.

(d) Status Meetings. During the Preconstruction Phase, Developer shall cause to be held weekly status meetings. Those in attendance should be: the Developer, City and any City Consultants, which City deems to be necessary or appropriate.

2. Construction Phase

(a) Monthly Reports. Commencing on the tenth (10th) day following the commencement of construction of the Backbone Infrastructure and continuing thereafter on the tenth (10th) day of each month (or such other day of the month as the Parties may approve from time to time) during the remaining term of this Agreement, Developer shall render to City a written report setting forth (1) the status of completion of the Backbone Infrastructure and any anticipated delays in the construction thereof and Developer's assessment of why such delay has occurred or will occur, and (2) such other reports that City may reasonably request from time to time.

(b) Coordination. Coordinate the development and construction of the Backbone Infrastructure within the limitations of the authority granted under this Agreement.

(c) Project Job Meetings. During the Construction Phase of the Backbone Infrastructure Activities, Developer shall cause to be held weekly construction job meetings. Those in attendance should be: the architect, Developer, City, the general contractor's field superintendent and project developer, and any other major subcontractor representatives and consultants as are reasonably necessary to undertake the business of the construction of the Backbone Infrastructure. Developer shall cause its architect or engineer to prepare and distribute weekly minutes for such meetings.

(e) General Contractor and Subcontractors. Developer will oversee the bidding, contractor and subcontractor selection process and contractors and/or subcontractor performance for contracts relating to the Backbone Infrastructure. Each contract shall provide that Developer and City are named as additional insureds on all insurance policies and Developer is added as an indemnified party in all indemnity provisions with such parties.

(f) Changes. Developer shall review requests for changes, negotiate general contractor's or subcontractors' proposals, submit recommendations to City, and, if they are approved, prepare change orders and construction change directives which incorporate such modifications.

EXHIBIT C

BIDDING PROCEDURES

- 1) Prepare Contractor Bid List for applicable trades and distribute to City for review/approval.
- 2) Request for prequalification of contractors will be advertised for three successive weeks in the local newspaper in accordance with City publication requirements.
- 3) Prepare bid packages to include samples of:
 - a. Standard Contract
 - b. List of Drawings & Specifications
 - c. Trade Specific Scope of Work
 - d. Proposal/Unit Price Form
 - e. Project Schedule
 - f. Site-specific safety requirements
 - g. Logistics
- 4) Provide a copy of generic Bid Package for City's review.
- 5) Finalize the bid documents prior to issuing to contractors.
- 6) Copy and distribute Bid Packages to prequalified contractors.
- 7) Set-up and conduct pre-bid job walk.
- 8) From the list of prequalified bidders, at least three contract bids will be obtained for each trade.
- 9) Clarify any discrepancies or missing information with Architect and design team resulting from contractor bidding by preparing and issuing Bid Clarifications during the bid period to applicable contractors.
- 10) Analyze contractor bids and prepare Bid Analysis for each trade to normalize the bids and identify missing items.
- 11) Each trade will be awarded to the lowest responsible bidder.
- 12) Prepare Bid Award Letter with copy of Bid Analysis and Scope of Work for each trade.
- 13) Submit Bid Award Letter to City.
- 14) Upon approval of Bid Award Letter by City, prepare and issue contract.
- 15) Comply with any other applicable City bidding procedures.

EXHIBIT D

EXISTING CONSULTANTS

This Exhibit provides a list of current Heritage Fields consultants that may provide services and support relative to the obligations of this Agreement. As noted in Section 14.9 of the Agreement the City approves Existing Consultants under contract to Heritage Fields at the time this agreement is implemented.

ARTICLE III
Master Schedule

Scheduling Consultants, Inc—Scheduling Consultants
SEMA Associates, LLC—Entitlements

ARTICLE IV
Master Phasing Plan

Fuscoe Engineering, HNTB Corporation, —Civil Engineering
CH2M Hill—Environmental Engineering
Austin Foust Associates Inc.—Traffic Engineering
EDAW Inc, FORMA, Cooper Carry—Land planning
Fehr & Peers—Traffic
Recycled Materials Company—Demolition Contractor

ARTICLE V
Backbone Infrastructure

Fuscoe Engineering, HNTB Corporation, RBF Consulting, TAIT & Associates, PSOMAS—
Civil Engineering
CH2M Hill, Shaw Environmental & Infrastructure, Inc—Environmental
Morrow Management—Dry Utilities
Zeiser Kling, Leighton Consulting, Inc—GeoTech
Origins Golf Design—Corridor Management
Springbrook Realty Advisors, Inc—CFD Financing
Al Dyson Consulting—IRWD Consultant

ARTICLE VI
Master Subdivision Map

Fuscoe Engineering—Map Preparation
SEMA Associates, LLC—Processing/Document Preparation
EDAW, Inc—Land Planning/Landscape Submittals
Allen Matkins Leck Gamble Mallory & Natsis LLP—Legal
CTG Energetics, Inc—Sustainability
Austin Faust Associates, Inc—Traffic Study

ARTICLE VII
Permits and Approvals

PCR—Permit Processing/Surveys
Glenn Lukos Associates—Permit Processing
Fusco Engineering—Civil Engineering
EDAW Inc—Landscape
Allen Matkins Leck Gamble Mallory & Natsis LLP—Legal
Sheppard Mullin Richter & Hampton LLP—Legal

ARTICLE VIII
Design and Development Guidelines

EDAW—Land Planning
Cooper Carry—Land Planning
Forma—Land Planning
Ware Malcomb—Land Planning
CTG Energetics, Inc—Sustainability
Dudek & Associates, Inc.—Landscape Planning

CONSENT

The CITY OF IRVINE ("City"), hereby consents to the foregoing Assignment of Master Implementation Agreement dated June 22, 2007 (the "Assignment"), by Heritage Fields El Toro, LLC, a Delaware limited liability company ("Borrower") in favor of El Toro LLC, a Delaware limited liability company (individually and as lead arranger and administrative agent for itself and certain co-lenders, collectively, "Lender"). Except as otherwise defined in this Consent, defined terms herein shall have the meaning given to such terms in the Assignment. City hereby further agrees as follows:

1. Lender Protection. No breach of the Master Implementation Agreement shall defeat, render invalid, diminish, or impair the lien of the Security Instrument; provided, however, any acquisition or acceptance of title or any right or interest in or with respect to the real property encumbered by the Security Instrument (the "Property") or any portion thereof by Lender (whether pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of the Master Implementation Agreement and Lender and/or any successor to Lender who takes title to the Property or any portion thereof shall be entitled to the benefits arising under the Master Implementation Agreement.

2. Lender Not Obligated. Notwithstanding the provisions of Section 1 above, Lender will not have any obligation or duty pursuant to the terms set forth in this Consent to perform the obligations of Borrower or any other affirmative covenants of Borrower under the Master Implementation Agreement, or to guarantee such performance, except that to the extent that any covenant to be performed by Borrower under the Master Implementation Agreement is a condition to the performance of a covenant by City thereunder, the performance thereof shall continue to be a condition precedent to City's performance thereunder.

3. Notice of Default to Lender; Right of Lender to Cure. Lender shall be entitled to receive written notice from City of any default by Borrower of its obligations set forth in the Master Implementation Agreement. Lender shall have a further right, but not an obligation, to cure such default within ten (10) days after receipt of such notice (for monetary defaults), within thirty (30) days after receipt of such notice (for non-monetary defaults), or, if such default can only be remedied or cured by Lender upon obtaining possession of the Property, Lender shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure such defaults within thirty (30) days after obtaining possession, and, except in case of emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in the Master Implementation Agreement until expiration of such thirty (30) day period; provided, however, that in the case of a default which cannot with diligence be remedied or cured within such thirty (30) day period, Lender shall have such additional time as is reasonably necessary to remedy or cure such default provided Lender promptly commences to cure the default within the thirty (30) day period and diligently prosecutes such cure to completion.

4. Notices. All notices to Lender shall be given in writing (including by facsimile) and shall be effective for all purposes (a) if sent by certified or registered United States mail, postage prepaid, (b) expedited prepaid delivery service, with proof of attempted delivery or (c) by facsimile (with a copy sent contemporaneously by certified or registered United States mail, postage prepaid) addressed as follows:

El Toro LLC
399 Park Avenue
11th Floor
New York, New York 10022
Attention: Kevin Dinnie
Telephone: _____
Facsimile: (646) 758-3319

with copies to: Lehman Brothers
399 Park Avenue
11th Floor
New York, New York 10022
Attention: Brett Bossung
Telephone: (212) 526-5350
Facsimile: (646) 758-3644

with copies to: Paul Hastings Janofsky & Walker LLP
515 South Flower Street, 25th Floor
Los Angeles, California 90071
Attention: Philip N. Feder, Esq.
Telephone: (213) 683-6298
Facsimile: (213) 627-0705

with copies to: Heritage Fields El Toro, LLC
c/o Lennar Corporation
7130 Trabuco Road
Irvine, California 92618
Attention: Lynn Jochim and Bill Lee
Telephone: (949) 784-4220
Facsimile: (949) 784-4270

with copies to: Allen Matkins Leck Gamble Mallory & Natsis LLP
1900 Main Street, Fifth Floor
Irvine, California 92618
Attention: Mike Joyce
Telephone: (949) 553-1313
Facsimile: (949) 553-8354

[Signature on following page]

"City"

CITY OF IRVINE,
a municipal corporation

Dated: 6-14, 2007

By: Charles M. Bryant
~~Sharon Landers~~ Charles M. Bryant
Chief Executive Officer
Orange County Great Park Corporation

ATTEST:

Shari Ann
City Clerk

APPROVED AS TO FORM:

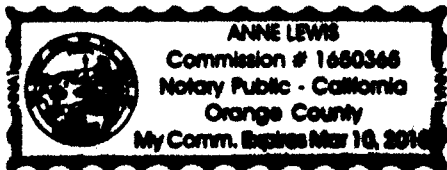
Philip D. Kohn
Philip D. Kohn, Esq.
City Attorney

STATE OF CALIFORNIA)
) ss
COUNTY OF Orange)

On ~~6-14-2007~~ 6-14-2007, before me, Anne Lewis, a Notary Public,
personally appeared Charles M. Bryant

~~personally known to me (or 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.~~

Witness my hand and official seal.



[SEAL]

Anne Lewis
Notary Public