

**AMENDMENT I TO ACQUISITION AGREEMENT BY AND BETWEEN THE
COUNTY OF EL DORADO AND DBW, A PARTNERSHIP**

AGMT 11-53270

Amendment I

THIS AMENDMENT I to that Acquisition Agreement is made and entered into between the COUNTY OF EL DORADO (the “Local Agency”), a political subdivision of the State of California and DBW, A Partnership (the “Developer”), a California general partnership.

WHEREAS, Local Agency and Developer entered into that certain Acquisition Agreement (the “Agreement”) effective on November 8, 2011, a copy of which Agreement is attached hereto concerning the acquisition of certain public capital improvements (the “Acquisition Improvements”);

WHEREAS, the Developer has applied and been granted financing of the Acquisition Improvements and capital improvement fees through the Statewide Community Infrastructure Program administered by the California Statewide Communities Development Authority (the “Authority”) and such application has been approved by the Local Agency;

WHEREAS, Article II, Section 2.02 of the Agreement states that the Developer shall sell the Acquisition Improvements to the Local Agency for an amount not to exceed the lesser of (i) the amount of funds allocable to the Acquisition Improvements and deposited in the DBW acquisition account by the Authority (“Available Amount”) or (ii) the actual cost of the Acquisition Improvements;

WHEREAS, the actual costs of the Acquisition Improvements exceeded the Available Amount as allowed in Exhibit A to Acquisition Agreement, and Developer has requested that the Local Agency process this Amendment I to allow the reallocation of funds by the Authority to increase the Available Amount to \$139,669.49;

WHEREAS, sufficient funds exist in the Developer’s allocation of funds that have been deposited in the DBW Road Impact Fee and Water & Wastewater Impact Fee accounts by the Authority to accommodate this request;

WHEREAS, the parties desire to amend this Agreement to reflect these changes;

NOW THEREFORE, the parties hereto, in consideration of the recitals and conditions herein, do hereby agree to amend the terms of the Agreement #11-53270 as follows:

Article II, Section 2.02, paragraph 1, is hereby amended to read as follows:

The Developer agrees to sell to the Local Agency the Acquisition Improvements to be constructed by Developer (including any rights-of-way or other easements necessary for the operation and maintenance of the Acquisition Improvements, to the extent not already publicly owned) when such Acquisition Improvements are completed to the satisfaction of the Local Agency for an amount not to exceed the lesser of (i) the Available Amount or (ii) the

Actual Cost of the Acquisition Improvements. Amended Exhibit A, marked "Description of Acquisition Improvements and Amended Budgeted Amounts", attached hereto and incorporated herein, contains a description of the Acquisition Improvements. At the time of completion of each Acquisition Improvement, the Developer shall deliver to the District Engineer a written request for acquisition, accompanied by an Actual Cost Certificate and executed Title Documents for the transfer of the Acquisition Improvement, where necessary. In the event that the District Engineer finds that the supporting paperwork submitted by the Developer fails to demonstrate the required relationship between the subject Actual Cost and the related Acquisition Improvement, the District Engineer shall advise the Developer that the determination of the Actual Cost (or the ineligible portion thereof) has been disallowed and shall request further documentation from the Developer. If such further documentation is still not adequate, the District Engineer may revise the Actual Cost Certificate to delete any disallowed items, and such determination shall be final and conclusive.

Except as herein amended, all other parts and sections of that certain Acquisition Agreement effective November 8, 2011, shall remain unchanged and in full force and effect.

Contract Administrator Concurrence:

By: _____
Ruth Young
Chief Fiscal Officer

Dated: _____

Requesting Department Concurrence:

By: _____
Kimberly A. Kerr, Interim Director
Department of Transportation

Dated: _____

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

COUNTY OF EL DORADO

By _____

Board of Supervisors

ATTEST:
James S. Mitrison
Clerk of the Board of Supervisors

By _____

DBW, A PARTNERSHIP,
a California general partnership

By _____

Bruce Wirtanen
General Partner

ACKNOWLEDGMENT

State of California

County of _____

On _____ before me, _____,
(here insert name and title of the officer)

personally appeared _____

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

Amended Exhibit A to Acquisition Agreement

DESCRIPTION OF ACQUISITION IMPROVEMENTS AND AMENDED BUDGETED AMOUNTS

ACQUISITION IMPROVEMENTS

Roadway Improvements – Capital improvements including, but not limited to, streets, roads, highways and public ways, as well as supporting improvements and related facilities such as construction, widening and installation of grading, paving, curbs, gutters, street name signs, and survey monuments, associated with the Diamond Center development. The improvements are located along Fowler Lane on the outside perimeter of the development.

Water Improvements – Funding for capital improvements including, but not limited to, facilities for the water system such as construction and installation of water pipes and mains, as well as supporting improvements and related facilities, to meet the potable and non-potable water needs of the Diamond Center development.

Incidental Costs – Funding of Incidental Costs associated with the capital improvements including contingency, design, engineering, and construction management.

AMENDED BUDGETED AMOUNTS:

Roadway Improvements (Including Incidental Costs)	\$62,522.79
<u>Water Improvements (Including Incidental Costs)</u>	<u>\$77,137.70</u>
Subtotal Improvements	\$139,669.49