

ORIGINAL

P&C 245-F1311
CDA 13-53784

Marble Valley Company, LLC

FIRST AMENDMENT TO FUNDING AGREEMENT No. 006D-F-12/13-BOS

COUNTY FILE NUMBER PA12-0004

THIS FIRST AMENDMENT to that Funding Agreement No. 006D-F-12/13-BOS made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Marble Valley Company, LLC, a Delaware limited liability company duly qualified to conduct business in the State of California, whose principal place of business is 4525 Serrano Parkway, El Dorado Hills, California 95762 (hereinafter referred to as "Applicant");

RECITALS

WHEREAS, Funding Agreement No. 006D-F-12/13-BOS, dated November 27, 2012, incorporated herein and made by reference a part hereof (hereinafter referred to as "Agreement"), provides a mechanism for Applicant to reimburse County for the costs incurred in the preparation of an Environmental Impact Report (EIR) and related planning services for the Village of Marble Valley Specific Plan (Project); and

WHEREAS, County has determined that due to an increased level of public interest, unanticipated delays, and additional complexity of the Project resulting in a longer timeline, additional funding is required to complete the preparation of the EIR and provide related planning and professional consulting services for the Project; and

WHEREAS, the parties hereto have mutually determined and agreed to amend **ARTICLE I, Purpose**, and **ARTICLE II, Work**, to add professional consulting services for the Project; and

WHEREAS, the parties hereto have mutually determined and agreed to amend **ARTICLE III, Employment of Consultant as Independent Contractor**, to add Goodwin Consulting Group, Inc. to provide professional consulting services for the Project; and

WHEREAS, the parties hereto have mutually determined and agreed to amend **ARTICLE IV, Funding for this Agreement**, to increase the not-to-exceed amount of the Agreement by \$240,794.00, and to increase the deposit amount by \$72,238.00; and

WHEREAS, the parties hereto have mutually determined and agreed to amend **ARTICLE VIII, Notice to Parties**; and

WHEREAS, the parties hereto have mutually determined and agreed to amend **ARTICLE X, Administrator**, to change County's Administrator; and

WHEREAS, the parties hereto have mutually determined and agreed to amend the Agreement to add **ARTICLE XVI, Change of Address; ARTICLE XVII, Audit by California State Auditor; ARTICLE XVIII, No Third Party Beneficiaries; ARTICLE XIX, Counterparts; and ARTICLE XX, Taxes**, to reflect updated County contracting provisions;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter contained, County and Applicant mutually agree to amend the terms of the Agreement in this First Amendment to Funding Agreement No. 006D-F-12/13-BOS, as follows:

ARTICLE I, Purpose, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:

ARTICLE I

Purpose: The purpose of this Agreement is to provide a mechanism for Applicant to reimburse County for the costs incurred in the preparation of an EIR and to provide related planning and professional consulting services for the Project. Both County and Applicant make this Agreement with full knowledge of the requirements of the California Environmental Quality Act (CEQA) of 1970 (Public Resources Code, §21000 et seq.) and the State CEQA Guidelines (California Administrative Code, Title 14, Division 6, §15000 et seq.) adopted pursuant thereto. This Agreement is subject to all other applicable laws, regulations, and ordinances including those of the County of El Dorado relating to payment of monies for services rendered.

ARTICLE II, Work, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:

ARTICLE II

Work: The work to be funded is the preparation of an EIR which considers the impacts of and alternatives to the proposed Project for The Village of Marble Valley Specific Plan, and related planning and professional consulting services to implement the plan on that real property described as Assessor Parcel Numbers: 087-200-74; 119-020-56, -57; 119-030-13 thru -19; 119-330-01.

ARTICLE III, Employment of Consultant as Independent Contractor, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:

ARTICLE III

Employment of Consultant as Independent Contractor: County shall engage ICF Jones & Stokes, Inc. ("Consultant") as an independent contractor to prepare an EIR and Pacific Municipal Consultants, doing business as PMC ("Consultant"), as an independent contractor to provide planning services and Goodwin Consulting Group, Inc. ("Consultant") as an independent contractor to provide professional consulting

services for the development of The Village of Marble Valley Specific Plan located in El Dorado Hills in El Dorado County, California.

The EIR shall be prepared for the County. It shall be prepared to be legally adequate to allow the County to meet its obligations as the CEQA lead agency to consider all discretionary actions necessary for the Project (Public Resources Code, §21082). Consultant shall prepare the EIR to be accurate and objective. Consultant shall act solely as Consultant to County and shall not act in any capacity as consultant to, representative of, or agent of Applicant. Applicant shall not engage in communications or contact with Consultant without prior written authorization of County.

The execution of this Agreement and this First Amendment to Funding Agreement No. 006D-F-12/13-BOS shall not constitute a representation or assurance by County that the EIR shall be certified or that the Project will be approved.

ARTICLE IV, Funding for this Agreement, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:

ARTICLE IV

Funding for this Agreement: Funding for this Agreement is provided entirely by Applicant. Upon execution of this Agreement, Applicant shall deposit with County the sum of \$108,389.00. Upon execution of this First Amendment to Funding Agreement No. 006D-F-12/13-BOS, Applicant shall deposit with County an additional sum of \$72,238.00 for a total deposit amount of \$180,627.00 as compensation for Consultants to be engaged by County for the preparation of an EIR for the Project, and to provide related planning and professional consulting services. The total amended deposit amount represents thirty percent (30%) of the estimated cost for the preparation of the EIR and related planning and professional consulting services. Applicant agrees to maintain a minimum of \$180,627.00 in the account until there is less than thirty percent (30%) of the costs remaining. Applicant agrees to replenish the account within fifteen (15) days of receipt of written notice by County.

The total amount of this Agreement, as amended, shall not exceed \$602,091.00.

It is understood that the funds deposited by Applicant are the only source of funding for the agreements contemplated between County and its Consultants. By deposit of the above-referenced funds and by execution hereof, Applicant agrees that County may utilize said funds to compensate its Consultants to do the necessary work.

ARTICLE VIII, Notice to Parties, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:

ARTICLE VIII

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado
Community Development Agency
Long Range Planning Division
2850 Fairlane Court
Placerville, California 95667

Attn.: David Defanti
Assistant Director

With a copy to:

County of El Dorado
Community Development Agency
Administration and Finance Division
2850 Fairlane Court
Placerville, California 95667

Attn.: Sherrie Busby
Administrative Services Officer
Contract Services Unit

or to such other location as County directs.

Notices to Applicant shall be addressed as follows:

Marble Valley Company, LLC
c/o Kirk Bone
4525 Serrano Parkway
El Dorado Hills, California 95762

or to such other location as Applicant directs.

ARTICLE X, Administrator, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:

ARTICLE X

Administrator: The County Officer or employee with responsibility for administering this Agreement is David Defanti, Assistant Director, Community Development Agency, Long Range Planning Division, or successor.

The original Agreement is further amended to add the following new Articles:

ARTICLE XVI

Change of Address: In the event of a change in address for Applicant's principal place of business, Applicant's Agent for Service of Process, or Notices to Applicant, Applicant shall notify County in writing as provided in Article VIII, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

ARTICLE XVII

Audit by California State Auditor: Applicant acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential

examinations and audits, Applicant shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records and documentation necessary to demonstrate performance under the Agreement.

ARTICLE XVIII

No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

ARTICLE XIX

Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

ARTICLE XX

Taxes: Applicant certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Applicant to County. Applicant agrees that it shall not default on any obligations to County during the term of this Agreement.

Except as herein amended, all other parts and sections of Funding Agreement No. 006D-F-12/13-BOS shall remain unchanged and in full force and effect.

Requesting Administrator and Division Concurrence:

By: 
David Defanti, Assistant Director
Long Range Planning Division
Community Development Agency

Dated: 2/27/14

Requesting Department Concurrence:

By: 
Kimberly A. Kerr, Acting Director
Community Development Agency

Dated: 3/3/14

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Funding Agreement No. 006D-F-12/13-BOS on the dates indicated below.

- - COUNTY OF EL DORADO - -

Dated: _____

By: _____

Board of Supervisors
"County"

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

By: _____
Deputy Clerk

Dated: _____

- - APPLICANT - -

Marble Valley Company, LLC,
a Delaware limited liability company

By: W. R. Parker, Inc.,
A California corporation, Managing Member

By: 
William R. Parker
Its: President

Dated: 2/26/14