



245-F1311

**Funding Agreement No. 006D-F-12/13-BOS
between the
County of El Dorado and Marble Valley, LLC
for
Preparation of an Environmental Impact Report
for The Village of Marble Valley Specific Plan**

COUNTY FILE NUMBER PA12-0004

THIS FUNDING AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Marble Valley, LLC; a California limited liability company, (hereinafter referred to as "Applicant") whose principal place of business is located at 4525 Serrano Parkway, El Dorado Hills, CA 95762.

WITNESSETH

WHEREAS, Applicant is proposing to develop real property composed of approximately 2,341 acres in the El Dorado Hills area. The property is located on the south side of State Highway 50 and southeast of the intersection of Marble Valley Road and Marble Ridge Road (Assessor's Parcels 087-200-74; 119-020-56, -57; 119-030-13 thru -19; 119-330-01). Applicant is applying for a Specific Plan (identified as The Village of Marble Valley), as well as a General Plan Amendment, Rezone, Tentative Subdivision Map, and Planned Development. Applicant proposes to construct approximately 3,235 residential units and 505,000 square feet of commercial use with approximately 1,315 acres of open space and 69 acres of public facility uses; and

WHEREAS, County has determined an Environmental Impact Report (hereinafter to as "EIR") is required for the processing of the Project pursuant to CEQA Guidelines Section 15064; and

WHEREAS, the California Environmental Quality Act, Section 21082.1 authorizes County to enter into agreements to prepare environmental documents for a proposed project including the preparation of an EIR and Mitigation Monitoring Program; and

WHEREAS, the California Environmental Quality Act, Section 21089 authorizes the County to collect fees to recover the costs for the preparation and processing of environmental documents.

NOW, THEREFORE, County and Applicant mutually agree 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 planning 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: 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 planning 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: County shall engage ICF Jones & Stokes ("Consultant") as an independent contractor to prepare an Environmental Impact Report (hereinafter referred to as "EIR") and Pacific Municipal Consultants (PMC) ("Consultant") to provide planning 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 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: Funding of this Agreement is provided entirely by Applicant. Upon execution of this Agreement, Applicant shall deposit with County the sum of **One Hundred Eight Thousand Three Hundred Eighty Nine Dollars and 00/100 (\$108,389.00)**. This represents 30% of the estimated cost of preparation of the EIR and related planning services. Applicant agrees to maintain a minimum of \$108,389 in the account until there is less than 30% of the costs remaining. Applicant agrees to replenish the account within 15 days of receipt of written notice by the County.

The total amount of this Agreement **SHALL NOT EXCEED Three Hundred Sixty One Thousand Two Hundred Ninety Seven Dollars and 00/100 (\$361,297.00)**.

It is understood that the funds deposited by Applicant are the only source of funding for the Agreement 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 V

Deposit: County will place all deposits paid by Applicant pursuant to this Agreement into a separate fund. The deposit shall not bear interest.

ARTICLE VI

Reimbursement: Upon completion of the EIR or termination of this Agreement, County shall reimburse Applicant for any difference between County's costs to fund its Consultants, as set forth above, and the amounts deposited.

ARTICLE VII

Interest of Applicant and Consultant: Applicant covenants that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with Consultant's services hereunder. Applicant covenants that it will notify the County if the County

engages, or attempts to engage, a Consultant who has performed any work or provided any services under contract or agreement directly with the project or any part of the project herein described or who has performed work or provided services for Applicant on any other development project within the preceding five (5) years.

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 addressed as follows:

COUNTY OF EL DORADO
DEVELOPMENT SERVICES DEPARTMENT
2850 FAIRLANE COURT
PLACERVILLE, CA 95667
ATTN: ROGER P. TROUT, DEVELOPMENT SERVICES DIRECTOR

Or to such other location as the County directs.

Notices to Consultant shall be addressed as follows:

MARBLE VALLEY, LLC
c/o KIRK BONE
4525 SERRANO PARKWAY
EL DORADO HILLS, CA 95762

Or to such other location as the Applicant directs.

ARTICLE IX

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE X

Administrator: The County officer or employee with responsibility for administering this Agreement is Roger Trout, Director, Development Services Department, or successor.

ARTICLE XI

Termination: Either County or Applicant may terminate this Agreement by presentation to the other party hereto of written notice of said termination fifteen (15) days prior to effective date of said termination. In the event of termination by either party, County shall retain fees from the funds deposited in an amount equal to all consultant fees and other costs

incurred prior to the effective date of said termination. The balance of funds deposited by Applicant shall be reimbursed to Applicant.

ARTICLE XII

Assignment: This Agreement shall be binding upon the successors-in-interest and assigns of Applicant.

ARTICLE XIII

Agreement Negotiated: It is agreed and understood by the parties hereto that this Agreement has been arrived at through negotiation and that neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654.

ARTICLE XIV

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

ARTICLE XV

Indemnity: Applicant shall defend, indemnify, and hold County harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with Applicant's obligations and performance under this Agreement regardless of the existence or degree of fault or negligence on the part of County, Applicant, Consultant, subconsultant(s) and employee(s) of any of these, except for the sole, or active negligence of County, its officers and employees, or as expressly prescribed by statute. This duty of Applicant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

Requesting Contract Administrator Concurrence:

By: _____
Roger Trout, Director
Development Services Department

Dated: _____

Requesting Department Head Concurrence:

By: _____
Roger Trout, Director
Development Services Department

Dated: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____

Chair
Board of Supervisors
"County"

ATTEST:
Terri Daly, Acting Clerk
of the Board of Supervisors

By: _____ Dated: _____

Deputy Clerk

-- APPLICANT --

By: _____ Dated: _____

Kirk Bone
"Applicant"

(MLW)

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