

## **COMMUNITY BENEFIT AGREEMENT**

This Community Benefit Agreement (“Agreement”) is entered into to be effective as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (“Effective Date”) by and between ACI Sunbow, LLC, a limited liability corporation (referred to as “Owner”) and the City of Chula Vista, a California chartered municipal corporation (“City”). City and Owner are sometimes singularly referred to herein as a “Party” and collectively as “Parties.” This Agreement is made and entered into with respect to the following Recitals and in consideration of the following covenants and conditions:

### **RECITALS**

- A. Owner owns that certain undeveloped real property consisting of 54 acres, located in the City, and more particularly shown on the attached Exhibit “A” (the “Property”).
- B. The Property is part of a master-planned community subject to the Sunbow General Development Plan (“GDP”) and Sectional Planning Area (“SPA”) Plan, approved by the City in 1989, and commonly known as “Sunbow.”
- C. Land uses to the north of the Property include the built-out sections of the Sunbow II Master Plan, including 2,000 residential units, a neighborhood commercial center, parks, and City of Chula Vista Fire Station #3. The land further to the west includes open space areas preserved by the Multiple Species Conservation Program (“MSCP”). The Otay Landfill is located at the southeastern boundary of the Property and will be separated from any proposed development on the Property. To the east of the Property is the Otay Ranch Village 2 West property, which is currently designated with a combination of residential and industrial uses.
- D. Access to the Property is via Olympic Parkway, which has been designated a “Scenic Roadway” by the City. The City has already previously approved two curb cuts via Olympic Parkway for access to the Property that would accommodate a roadway configuration suitable for access to development.
- E. The Property is currently designated under the GDP, SPA, and the City’s General Plan as “IL (Limited Industrial),” which allows for light manufacturing, warehousing, auto repair, and auto salvage yards.
- F. The Property’s current IL designation reflected in part, past efforts to buffer areas of the Otay Landfill (the “Landfill”) that were active in the 1990s. The Landfill operations that occurred in these areas have since ceased, as operations have moved to other areas in the Landfill (i.e., the portion of the Landfill eligible to accept waste). Today, the area to the north of the then active Landfill is surrounded by residential uses, and other areas

that were previously zoned as IL, have since been rezoned to residential uses.

G. The Owner is proposing to amend the City's General Plan and the Sunbow GDP and SPA to change the existing General Plan land use designation on the Property from IL to residential designations that will provide for a range of housing opportunities. The amendment would accommodate approximately 725 units on the site that will provide moderately-priced new housing for Chula Vista residents ("Project"). Open space will be located within the residential areas of the site and around the entire southeast perimeter of the Property that will further separate the Project from the Landfill. It is anticipated that development of the Property will occur at least 1,000 feet from the active operational areas of the Landfill.

H. The Property has remained undeveloped for the last thirty (30) years, and the development of the site under its current General Plan designation as IL has proven infeasible. The costs to bring the Property to a finished industrial lot condition exceed the market value of the Property as an industrial site. Site development costs to create industrial pads are estimated at well over \$20 million, which exceeds the Property's value as finished industrial lots.

I. The City is interested in facilitating the creation of high-quality jobs and economic growth within the City by providing opportunities that target and attract industries and businesses that contribute to diversification and stabilization of the local economy. A key aspect of facilitating such economic growth is encouraging the development of spaces that can be used by high technology and large manufacturing businesses within the SR-125 corridor or academic, institutional, and innovation-related businesses within the University Innovation District Master Plan. The construction of such spaces will benefit the citizens of the City and the region by providing a catalyst for development that will generate high-quality jobs within the SR-125 corridor or the University Innovation District Master Plan.

J. The Community Benefit Agreement will provide funding that can be used by the City to direct the construction of either: a Class "A" office building that would facilitate high quality job enhancement uses along the SR-125 corridor or a commercial/academic building that can facilitate either an academic or private-sector market-rate project to advance the vision of the University Innovation District Master Plan enabling the development of the Institute for International Studies, or some other notable project at the City's discretion.

K. The Community Benefit Agreement provides the City with an opportunity to facilitate development within the SR-125 corridor or the University Innovation District Master Plan in the academic, high technology and innovation fields that produces high paying jobs for the residents of Chula Vista. The commitments of the Owner made in

this Agreement allow the City to realize significant economic, social, or other public benefits. These public benefits will advance the interests and meet the needs of Chula Vista's residents and visitors to a significantly greater extent than would development of the Project under the current entitlements and absent this Agreement.

M. The Owner has previously satisfied its park obligations for the Sunbow SPA and provided an additional community benefit of \$1.3 million toward park facilities for the Sunbow community. Owner shall meet the additional park obligation created by the Project through payment of a Park Benefit Fee. The Park Benefit Fee shall be in an amount equal to and in lieu of the Parkland Acquisition and Development (PAD) fees that would otherwise have been due for the Project pursuant to Chapter 17.10 of the Chula Vista Municipal Code ("Parklands and Public Facilities"). The Park Benefit Fee shall be due and payable no earlier than building permit issuance, but no later than final inspection and shall be assessed using the PAD fee rates in effect as of the date of payment. Park Benefit Fees may be utilized by the City to acquire or develop parkland, as the City determines appropriate and in the best interest of the City.

**NOW, THEREFORE,** in consideration of the above Recitals and of the mutual covenants hereinafter contained, and for other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, Owner and City agree as follows:

## **ARTICLE 1 DEFINITIONS**

1.1. Definitions. This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized when used in this Agreement. The defined terms include the following:

"**Eastern Chula Vista**" means, the territory of the City of Chula Vista generally located east of Interstate 805.

"**Effective Date**" means the date the Agreement becomes effective and is set forth in the first paragraph of this Agreement.

"**Entitlements**" means: (i.) amendments to the City's General Plan and the Sunbow General Development Plan, dated July 26, 1989; (ii) amendment to the Sunbow Sectional Planning Area (SPA) adding approximately 725 residential units; (iii) vesting tentative subdivision map to subdivide the Property in accordance with the SPA; (iv) Development Agreement; (v)

related entitlement documents, such as a Public Facilities Financing Plan, necessary to implement the Project; (vi) application to waive the City's Parkland Acquisition and Development Fees set forth in Municipal Code Section 17.10 *et seq.*; and (vii) appropriate California Environmental Quality Act compliance for the discretionary actions (i) and (vi) above.

**"Favorable Outcome"** means a final, non-appealable judgment affirming the validity of the Entitlements or other resolution mutually acceptable to the parties.

**"Final Draft Entitlements"** means a draft of the Entitlements in which the City has completed its final review, including all of the conditions and mitigation measures associated with the Project.

**"Growth Management Program"** means the City policies and standards intended to regulate the timing and phasing or rate of growth within the City, as set forth in the City's Growth Management Element of the City's General Plan and Chapter 19.09 of the Chula Vista Municipal Code in effect as of the Effective Date of this Agreement.

**"Processing Schedule"** means the time frame needed to process the Entitlements for final consideration by the City Council in accordance with Exhibit "B."

**"Project"** means the development of the Property with approximately 725 residential units, consistent with the provisions of the Entitlements and applicable City policies and standards, including the City's Growth Management Program.

**"Property"** means the real property described and shown in Exhibit "A" to this Agreement.

**"Term"** shall mean the period of time from the Effective Date until the termination of this Agreement, as set forth in Paragraph 4.6.

**"Third-Party Litigation"** means any claim, action, referendum or proceeding filed and served against the City and/or Owner by anyone not a party to this Agreement or their agents or successors in interest to challenge, set aside, void or annul the approval of this Agreement or the Entitlements, including without limitation, attacks upon California Environmental Quality Act compliance.

## ARTICLE 2 COMMUNITY BENEFITS

**2.1. Approval of Entitlements.** If the Entitlements are approved by the City Council within twelve (12) to sixteen (16) months after the Owner's Entitlement application has been deemed complete by the City, as such time may be extended as provided for in Paragraph 4.7 (Force Majeure), and the approved Entitlements are substantially the same in substance as the Final Draft Entitlements, or in such corrected form as necessary to preserve the Entitlements as agreed upon by the Parties, the Owner shall provide the City with the sum of eight million dollars ("Job Enhancement Funds") in three payments. The first payment of up to one million dollars will be made upon the City's issuance of the first building permit based upon the City's sole determination that such amount is needed to provide start-up funding for a first phase of a University or Innovation District opportunity. The second payment of one million dollars will be made upon the issuance of the one-hundredth (100th) building permit for the Project. The third payment of six million dollars plus the amount that may have not been requested by the City in the first payment, will be made upon the issuance of the two-hundredth (200th) building permit for the Project. (All such Job Enhancement Funds shall be subject to the provisions set forth in Article 2 and Article 3 of this Agreement.) Notwithstanding the foregoing time frame for processing the Entitlements as described herein, the Owner and the Director of Development Services can agree to extend said time frame for any reason and shall memorialize such extension in writing. The Parties agree to diligently work towards the timely issuance of the first building permit, the one-hundredth (100th) building permit and the two hundred (200) building permits needed to trigger the Owner's obligation to deposit the Job Enhancement Funds with the City, such efforts will include the City's expedited processing of grading plans, improvement plans, and other plans or permits, as needed to issue a building permit. The approved Entitlements will be considered substantially the same in substance as the Final Draft Entitlements if the Project as described in both documents are essentially the same as to its land-use designations, density and intensity of such uses, infrastructure requirements, and timing and phasing of such development. In the event the Entitlements are not approved as provided for herein, this Agreement shall be terminated, and the Owner shall have no obligation to provide the Job Enhancement Funds and any Entitlements that have been approved by the City shall be considered void ab initio and be of no effect. The City shall vacate any Acknowledgments of Offers of Dedications that may have been provided by the Entitlements within thirty (30) days of the Owner's request. Should the Owner sell the Project at any time prior to the payment of the full amount of the Job Enhancement Funds to the City, the Owner shall remit the full eight million dollars or remaining portion thereof with the

City, upon the close of escrow of the Project sale.

**2.2. Job Enhancement Funds.** The Owner shall provide the Job Enhancement Funds to the City in three payments. The first payment of up to one million dollars will be made upon the City's issuance of the first building permit based upon the City's sole determination that such amount is needed to provide start-up funding for a first phase of a University or Innovation District opportunity. The second payment of one million dollars will be made upon the issuance of the one-hundredth (100th) building permit. The third payment of six million dollars plus any amount not requested by the City in the first payment will be made upon the issuance of the two-hundredth (200th) building permit for the Project. The Job Enhancement Funds shall be held by the City in a separate account to be used pursuant to the terms set forth in paragraph 2.3 of this Agreement.

**2.3 Disbursement of Job Enhancement Funds.** The City will invest the Job Enhancement Funds into the construction of a project in furtherance of the goals set forth in the University Innovation District Master Plan, on a site located within the University Innovation District Master Plan or within the SR-125 corridor that is owned by the City or under the control or ownership of a non-profit entity that has been established to effectuate the goals of the University Innovation District Master Plan. The Parties understand that the Owner shall not be required to provide any other additional funds or investments into such project identified by the City and as described herein. By way of example only, such projects could involve: (i) the construction of a class "A" office building, or an academic, commercial or innovation facility or building that will attract job enhancing uses into the SR-125 corridor or the University Innovation District Master Plan; (ii) such other building or facility that would enable the development of the Institute for International Studies; or (iii) some other notable project at the City's discretion consistent with the goals of the University Innovation District Master Plan.

**2.4. Park Facilities.** The Property, which is a part of the master-planned community described in the Sunbow SPA, has been largely built out except for this site. Owner satisfied its park obligations for the previously developed portions of the Sunbow SPA in accordance with Chapter 17.10 of the Chula Vista Municipal Code ("Chapter 17.10"). The Owner shall satisfy its park obligations for the Project in the manner set forth as follows: the City shall waive the parkland dedication and development requirements set forth in Chapter 17.10 (including the Parkland Acquisition and Development Fees/Quimby Fees); in lieu thereof, the Owner shall pay a Park Benefit Fee, equal to the PAD fees that would have otherwise been due pursuant to Chapter 17.10, using the PAD fee rates in effect as of the date of payment. The Park Benefit

Fee shall be due and payable no earlier than issuance of the first building permit, but no later than final inspection as solely determined by the Director of Development Services. Park Benefit Fees may be utilized by the City to acquire or develop parkland, as the City determines appropriate and in the best interest of the City.

### ARTICLE 3

#### PROCESSING OF ENTITLEMENTS

**3.1 Entitlements Processing.** Owner will file with the City all applications and pay all applicable fees for the review, processing, and consideration of the Entitlements by the City pursuant to the terms provided in the City's standard Staffing and Processing Agreement ("Processing Agreement"). City will diligently process the Entitlements, in accordance with the Processing Schedule, attached hereto as Exhibit "B," for final consideration by the City Council. Owner acknowledges and agrees that the City has not made any representations or warranties as to the viability of any of the land uses contemplated in the Entitlements or the approval of such Entitlements.

**3.2 Review Period.** Owner shall have thirty (30) days after the Final Draft Entitlements has been provided to the Owner to review such documents and decide whether to proceed with processing the Entitlements. During the Owner's thirty-day review period, City agrees to meet with Owner in good faith to discuss the Final Draft Entitlements and consider any changes that the Owner may request. Owner shall notify the City in writing, at the conclusion of the thirty-day review period, as to whether the Owner wishes to continue processing the Final Draft Entitlements. The Parties acknowledge that the City has the discretion to apply such conditions as entitled by law provided there shall be a reasonable relationship between the condition and the Project. The Owner is not required to provide forms of extraordinary public benefit or in which there is no reasonable relationship to the Project other than the benefits that provided for herein or as may be agreed upon by the Parties in a development agreement. For purposes of this paragraph "reasonable relationship" between the Project and any requirement imposed thereon shall mean an "essential nexus" and "rough proportionality" between the Project and such requirement in accordance with Federal or State law. Owner may decide to stop the processing of said documents if Owner determines, in its sole discretion, that it is economically infeasible or undesirable to continue. If the City is notified to stop processing the Final Draft Entitlements and the reasons thereof, this Agreement shall terminate, and the Entitlement application shall be considered withdrawn by the Parties.

**3.3. Third-Party Litigation.** In the event of an outcome to Third Party Litigation other than a Favorable Outcome, the Parties agree to meet and confer regarding corrective action necessary to preserve the Entitlements, and the Parties may elect to proceed with the corrective action necessary to preserve the Entitlements. In the event either Party determines it is not in such Party's interest to proceed with the corrective action necessary to preserve the Entitlements, written notice not to proceed with such corrective action, shall be provided to the other Party at which time this Agreement shall be terminated, and the Owner shall have no further obligations as set forth in Article 3. Any Entitlements that have been approved by the City shall be considered void ab initio and be of no effect. The Parties agree to mutually cooperate to take such actions necessary to formally dispose of the Third-Party Litigation.

**3.4. Option to withdraw from Litigation.** In the event of Third-Party Litigation, the Parties may mutually decide (irrespective of whether the Owner is named in such Third-Party Litigation) that it is no longer desirable to defend against said Litigation. In such event, the Parties agree to mutually cooperate to take such actions necessary to formally dispose of the Third-Party Litigation, and upon such termination of the litigation, the Entitlements that have been approved by the City shall be considered null and void, and this Agreement shall be terminated, at which time the Owner shall have no further obligation to provide the Job Enhancement Funds, as described in Article 2.

**3.5. Discretion of City.** Owner understands and agrees that the City reserves the right to exercise its discretion as to all matters in which the City is by law entitled or required to exercise its discretion with respect to the Entitlements, including but not limited to the California Environmental Quality Act and other similar laws. In addition, the Entitlements shall be subject to and brought to City Council for consideration in accordance with applicable legal requirements, including laws related to notice, public hearings and due process. In addition, nothing herein shall be construed as to restrict the City's ability to exercise its discretion as provided by the City's Growth Management Program or to condition the Project in the manner City determines appropriate in accordance with its general police powers.

## **ARTICLE 4 GENERAL PROVISIONS**

**4.1 Infrastructure for Off-site Property.** The Project shall not be conditioned to fund or construct any public infrastructure including, without limitation, streets, sewer, storm drain, basins, water connections, park, open space, landscaping, and dry utility facilities, that may be needed to serve the site upon which the class "A"



building or such other project will be constructed within the University Innovation District Master Plan, as set forth in Article 2 above.

**4.2. TDIF Obligations.** The Transportation Development Impact Fee (“TDIF”) credits for each development neighborhood within the Sunbow SPA was calculated as of February 1, 2003. The City acknowledges and agrees that the Owner is entitled to \$455,330.67 in cash credits and 109.41 EDU (“Equivalent Dwelling Units”) credits resulting from construction of improvements, such as East Palomar Street phases I B and I C, which may be used for the Project.

**4.3. Developer’s Potential Obligations Under CVMC 19.09.09 Remain.**

Developer acknowledges and agrees that its obligation to pay the Job Enhancement Funds under this Agreement shall be in addition to, and not in lieu of, any obligation Developer may have pursuant to Chula Vista Municipal Code section 19.09.09 to provide funding or make any shortfall payments to the City for periods where Project expenditures exceed projected revenues.

**4.4. Development Agreement.** The Parties agree to negotiate in good faith to enter into a binding development agreement authorized under California Government Code sections 65864 *et seq.*, as a part of the Entitlements considered for approval by the City. Any negotiated Development Agreement shall, among other things, contain and not be inconsistent with, the terms and conditions set forth as follows: (i) the extraordinary public benefits identified in Article 2 of this Agreement shall be recognized as consideration for the Development Agreement; (ii) Owner shall receive vested rights to develop and maintain the Property to the land uses, densities and intensities of use set forth in the approved Entitlements; and (iii) the terms and conditions set forth in Article 4 of this Agreement as related to the development of the Project shall be included in the development agreement.

**4.5. Formation of Community Facilities Districts.** City understands that the Owner may seek to form a Community Facilities District(s) (“CFDs”) or a Statewide Community Infrastructure Program (“SCIP”) to fund the Project’s related improvements, fees related to such improvements, and the maintenance of such improvements. In addition, City agrees that the current City policy with regard to CFDs limiting the total assessment to two percent (2%) of home sales prices shall remain in effect for Owner’s Property. City agrees to memorialize the above described provisions as a part of the Entitlements.

**4.6. Term.** Notwithstanding any provision of this Agreement to the contrary, the

term of this Agreement and the rights, duties and obligations of the Parties under this Agreement shall not extend beyond seven (7) years from the Effective Date unless mutually agreed to by the Parties in writing, except for the provisions of paragraph 5.22 which expressly survive beyond the expiration of this seven-year term. Upon termination of this Agreement, the provisions of paragraph 5.18 shall apply.

**4.7. Force Majeure.** Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the Party's control (including the Party's employment force), governmental regulations beyond the City's reasonable control, court actions (such as restraining orders or injunctions), or other causes beyond the Party's reasonable control. If any such Force Majeure event shall occur or should delay be caused by Owner failing to submit plans or other documents in a timely manner that causes a delay in the City's processing of the Entitlements, or requests further changes or amendments to the Project or Entitlements, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than seven (7) years from the Effective Date, unless mutually agreed to by the Parties in writing.

## **ARTICLE 5 MISCELLANEOUS PROVISIONS**

**5.1. Entire Agreement.** This Agreement contains the entire understanding and agreement of the Parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings, or agreements which are not contained or expressly referred to as an exhibit herein. No testimony or evidence of any such representations, understandings, or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

**5.2. Severability.** If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then this Agreement shall terminate in its entirety, unless the Parties otherwise agree in writing.

**5.3. Interpretation and Governing Law.** This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement, all Parties having been represented by counsel in the negotiation and preparation hereof.

**5.4. Paragraph Headings.** All Paragraph heading and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

**5.5. Singular and Plural.** As used herein, the singular of any word includes the plural.

**5.6. Time of Essence.** Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

**5.7. Waiver.** Failure of a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

**5.8. No Third-Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit for the Parties and their successors and assigns. No other person shall have any right of action based upon any provisions of this Agreement.

**5.9. Mutual Covenants.** Unless expressly provided otherwise in this Agreement, the covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby.

**5.10. Successors in Interest.** Unless expressly provided otherwise in this Agreement, this Agreement shall be binding upon and inure to the benefit of the successors, assigns, and interests of the Parties as to any or all of the Property until released by the mutual consent of the Parties. The burden of the covenants contained in this Agreement benefit and burdens the Property, its successors and assigns and any successor in interest thereto as well as benefit the City. City is deemed the beneficiary of such covenants for and in its own right and for the purposes of protecting the interest of the community and other parties public or private, in whose favor and for whose benefit of such covenants running with the land have been provided without regard to whether City has been, remained or are owners of any particular land or interest therein.

**5.11. Counterparts.** The Parties may execute this Agreement in counterparts, which counterparts shall be construed together and have the same effect as if all the Parties had executed the same instrument.

**5.12. Jurisdiction and Venue.** Any action or law or in equity arising under this Agreement or brought by a Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Diego, State of California, and the Parties

hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

**5.13. Further Actions and Instruments.** Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings reasonably acceptable to such Party and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement, provided that neither Party will be obligated to modify any rights or accept any additional obligations or liabilities in connection therewith.

**5.14. Amendments in Writing/Cooperation.** This Agreement may be amended only by written consent of both Parties, specifically approving the amendment.

**5.15. Notices.** Any notice called for in this Agreement shall be sent by hand delivery, overnight courier service, or by registered or certified mail as follows:

To City:           City of Chula Vista  
                          Development Services  
                          276 Fourth Avenue  
                          Chula Vista, CA 91910  
                          Attn: Director of Development Services

With Copy to: City of Chula Vista  
                          City Attorney's Office  
                          276 Fourth Avenue  
                          Chula Vista, CA 91910  
                          Attn: City Attorney

To Owner:       ACI Sunbow, LLC.  
                          550 West C Street, Suite 1470  
                          San Diego, CA. 92101

or such other address as a Party may inform the others of from time to time. Any such notices sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received three (3) business days after the same is so addressed and mailed with postage prepaid. Notices delivered by overnight service shall be deemed to have been given upon delivery, charges prepaid to the U.S. Postal Service or private courier.

**5.16. Authority to Execute.** Owner and the City each warrant and represent that the person or persons executing this Agreement on their behalf have the authority to execute this Agreement.

**5.17. Exhibits and Attachments.** All Exhibits referenced within the Agreement are incorporated herein and made a part of this Agreement.

**5.18. Termination.** In the event this Agreement terminates as provided in Paragraphs 3.2, 3.3, 3.4, and 2.1, herein, the Entitlements shall be withdrawn, any approved Entitlements shall be null and void, and of no further force and effect, any Processing Agreement shall also terminate, and Owner shall have no obligation to provide the Job Enhancement Funds as provided in Article 2 herein. Owner agrees to promptly pay any outstanding processing fees due the City in accordance with a Processing Agreement as may be applicable.

**5.19. Private Undertaking.** It is specifically understood by City and Owner that (i) the Project is a private development; (ii) City has no interest and/or responsibilities for or duty to the Owner or third parties concerning any improvements to the Property; (iii) Owners shall have the full power and exclusive control of the Property subject to the obligations of Owner set forth in this Agreement, any other agreements with City and applicable law; (iv) the Project is not a joint venture or partnership between the City and Owner; and (v) Owner has no interest and/or responsibilities for or duty to the City or third parties concerning any project funded in whole or in part by the Job Enhancement Funds.

**5.20. No Attorney fees.** No attorney's fees shall be recoverable in connection with this Agreement. Owner agrees that City shall have no liability in monetary damages in regards to any matter concerning this Agreement.

**5.21. Covenant of Cooperation.** City and Owner shall cooperate and deal with each other in good faith, and assist each other in the timely performance of the provisions of this Agreement.

**5.22. Hold Harmless and Indemnification.** Owner shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers, employees, and other persons working on behalf of the City from and against all claims, suits, actions or proceedings whether judicial or administrative, writs, orders, injunctions or other relief, damages, liability, cost and expense (including without limitation attorneys' fees) arising out of or alleged by third parties to be the result of the approval of this Agreement or the City's actions in processing or issuing Owner's Entitlements resulting from or as described in this Agreement.

Notwithstanding the foregoing, the Parties understand and agree that the Owner and its members, officers, managers, affiliates, agents, employees, successors and assigns

shall not be liable to the City, its elected and appointed officers, employees, and other persons or non-profit entities, for any claims, actions, causes of action, suits, proceedings, demands, rights, damages, losses, judgments, provisional relief, fines, penalties, and fees, including, without limitation, any and all claims for compensation, reimbursement, or contribution whatsoever, whether known or unknown, direct or indirect, foreseeable or unforeseeable, related to, arising out of, or alleged by third parties to be the result of, the use of the Job Enhancement Funds or any project funded in whole or in part by the Job Enhancement Funds. This provision shall survive the termination of this Agreement and be included in the Development Agreement.

5.22.1. Waiver of Civil Code Section 1542. With respect to all releases resulting from acceptance of and pursuant to this paragraph 5.22, City hereby waives the application and benefits of California Civil Code § 1542 and hereby verifies that it has read and understands the following provision of California Civil Code § 1542:

***"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."***

City \_\_\_\_\_

Owner \_\_\_\_\_

(NEXT PAGE IS SIGNATURE PAGE)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first set forth above.

CITY OF CHULA VISTA, a California chartered municipal corporation.

By: \_\_\_\_\_  
Mary Casillas Salas  
Mayor

ATTEST:

By: \_\_\_\_\_  
Kerry K. Bigelow  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Glen R. Googins  
City Attorney

ACI SUNBOW, LLC.  
A Limited Liability Corporation

By: \_\_\_\_\_

\_\_\_\_\_  
(Print name and Title)





## **LIST OF EXHIBITS**

Exhibit "A"      Legal Description of the "Property."

Exhibit "B"      Processing Schedule.

PRELIMINARY REPORT  
YOUR REFERENCE:

Chicago Title Company  
ORDER NO.: 00105855-996-SD1-KC

## EXHIBIT "A"

### LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CHULA VISTA, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THAT PORTION OF THE "REMAINDER LOT" OF CHULA VISTA TRACT 90-07 SUNBOW II, UNITS 1 AND 2, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO [MAP THEREOF NO. 13423](#), FILED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN DIEGO, MAY 28, 1997, LYING WITHIN SECTIONS 17 AND 18, TOWNSHIP 18 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THAT PORTION LYING NORTHERLY OF THE SOUTHERLY BOUNDARY OF CHULA VISTA TRACT NO. 90-07, SUNBOW, PHASE 1C UNITS 5, 6, 13, 14 AND 15, ACCORDING TO [MAP THEREOF NO. 13917](#) IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JANUARY 19, 2000.

APN(s): [644-011-06-00](#) AND [644-020-11-00](#)

**Exhibit “B”  
Processing Schedule**

City agrees to use their best efforts to comply with the Project and CEQA review cycle turn-around times set forth below to achieve compliance with the project processing schedule outlined in Paragraph 2.1 of this Agreement:

<b>Submittal</b>	<b>Target Date</b>
Full Submittal of Initial Review Package	30 Working Days
Subsequent Submittals	20 Working Days
First Screencheck Draft EIR	30 Working Days
Subsequent Screencheck Drafts	20 Working Days

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