

APPENDIX Q

Fire and Emergency Services Agreement

**FIRE AND EMERGENCY SERVICES AGREEMENT
SAN DIEGO COUNTY AND BOULDER BRUSH LLC**

THIS FIRE AND EMERGENCY SERVICES AGREEMENT (“Agreement”) is entered into by and between the COUNTY OF SAN DIEGO (“County”) and BOULDER BRUSH LLC (“Applicant”) (individually, “Party” and collectively, “Parties”).

RECITALS

WHEREAS, San Diego County Fire Authority (“Fire Authority”) supports the delivery of high-quality emergency medical and fire services to a 1.5 million-acre area of unincorporated San Diego County, and coordinates regional fire prevention for unincorporated San Diego County;

WHEREAS, Applicant has applied for a Major Use Permit (Project No. PDS2019-MUP-19-002) for certain real property located within the unincorporated area of the County of San Diego, as more particularly described on the attached Exhibit A, incorporated herein by reference (“Property”);

WHEREAS, Applicant seeks approval from County to construct the Boulder Brush Facilities Project (“Project”) on the Property, as more fully described on the attached Exhibit B, incorporated herein by reference, with a generation transmission line, substation, switchyard, and other electrical components;

WHEREAS, the potential for significant environmental impacts associated with the Project was studied in a Final Environmental Impact Report;

WHEREAS, as a condition of County's approval of the Project and to mitigate the Project's wildfire impacts to a less than significant level, prior to issuance of a grading permit, Applicant is required to enter into this Agreement with the County to contribute funds to support Fire Authority capabilities and services during construction, operation and decommissioning phases of the Project pursuant to the County General Plan Safety Element; and

WHEREAS, County desires to receive such funds and use them as specified in this Agreement to support Fire Authority capabilities and services to the Project during the construction, operation and decommissioning phases of the Project;

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree as follows:

1. The Project

The description of the Project is contained in Exhibit B and incorporated herein by reference.

2. Scope of Agreement

Provided that Applicant timely complies with each of its obligations under this Agreement, County agrees to use the funds it receives under the Agreement to support Fire Authority capabilities and services to the Project, as more fully set forth in the Scope of Services attached as Exhibit C and incorporated herein by reference (the “Services”). County has issued a Project Facility Availability Form for Fire Services to Applicant for the Project, which is contingent upon receipt of all the following: (a) Applicant's signature on this Agreement; (b) confirmation that the Initial Compensation (as defined in Section 4(A) below) has been delivered to County; (c) documentation that establishes legal access to the Property, as provided in Section 12 below; and (d) a Fire Protection Plan accepted by County, attached as Exhibit D and incorporated herein by reference.

3. Term

This Agreement shall be effective on _____ (“Effective Date”). The initial term of this Agreement shall begin upon issuance of any grading permit for the Project and be in effect for a

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period of ten (10) years thereafter (the “Initial Term”). The Applicant shall give notice to the County within thirty (30) calendar days of obtaining a grading permit.

This Agreement shall be automatically renewed following the Initial Term for consecutive five (5)-year periods (each referred to as a “Renewal Term”) for the life of the Project, and which shall terminate only after the Applicant has complied with a County-approved decommissioning plan. The Applicant may terminate this Agreement pursuant to Section 7 below.

4. Compensation

(A) Initial Compensation

Within thirty (30) calendar days of the issuance of any grading permit for the Project, Applicant shall make a one-time payment to County in the amount of Fifty Four Thousand One Hundred Thirty-Four Dollars and Sixty-Two Cents (\$54,134.62) (“Initial Compensation”). If not paid timely, the Initial Compensation shall bear interest from the due date until paid at the rate of ten percent (10%) per annum. The Initial Compensation shall be used as the County sees fit to support Fire Authority capabilities and services to the Project and southeast portion of CSA No. 135.

(B) Annual Compensation

(1) For any Fiscal Year, or portion thereof, after Applicant has received the final building inspection and Certificate of Occupancy, Applicant shall pay annually to County \$54,134.62.00 (the “Base Rate”) for the Services. “Fiscal Year” means the period starting on July 1 and ending on the following June 30. After the first year, the Base Rate shall increase by three percent (3%) each fiscal year.

(2) Applicant shall notify Fire Authority within thirty (30) calendar days of receipt of the final building inspection and Certificate of Occupancy. Fire Authority shall provide Applicant with an invoice setting forth the Annual Compensation due for Year 1 pursuant to Section 4(B)(3). On or before June 1 of each year thereafter, Fire Authority shall deliver to Applicant an invoice setting forth the Annual Compensation amount due for the next Fiscal Year pursuant to Section 4(B)(1), and Applicant shall pay such amount to County on or before July 1.

(3) Applicant’s duty to pay County the Annual Compensation shall commence on the date the Applicant receives the final building inspection and Certificate of Occupancy. If the Certificate of Occupancy is issued on a date other than July 1, County shall prorate the Annual Compensation as follows: (a) calculate the number of days remaining in the current Fiscal Year by determining the days from and including the date of the Certificate of Occupancy is issued to and including the following June 30 (the “Remainder”); and (b) multiply the Base Rate by a fraction, the numerator of which is the Remainder, and the denominator of which is 365, which is equal to the proportionate amount due for the portion of the fiscal year in which Certificate of Occupancy is issued (“Year 1 Amount”). Fire Authority shall calculate the Year 1 Amount and give notice thereof to Applicant. Applicant shall pay the Year 1 Amount within thirty (30) days of notice.

(4) Any amount due to County, if not paid within thirty (30) days of when due, shall bear interest from the due date until paid at the rate of ten percent (10%) per annum.

5. Approvals

Applicant is solely responsible for obtaining all governmental licenses, permits, and/or approvals required of or deemed necessary or appropriate by the Applicant or the County in order to

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begin physical construction of the Project, including without limitation application for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "Approvals"). Applicant acknowledges and agrees that County has no duty or obligation to obtain any such Approvals on behalf of the Applicant.

This Agreement shall not constitute an Approval of the Project by County in any way. To the extent County has separate and distinct permitting authority for an aspect of the Project, this Agreement in no way limits or controls County's discretion in approving, approving with conditions, or denying a particular project or project component.

County's governing body shall not take action to approve this Agreement unless either (a) a CEQA document for the Project has been certified by County lead agency; or (b) County certifies an environmental document in compliance with CEQA.

6. Modification or Amendment

This Agreement or any of its provisions may be modified or amended only by written agreement executed by all Parties to this Agreement.

7. Termination

Applicant may terminate this Agreement by providing County sixty (60) calendar days' prior written notice, pursuant to Section 22 below, if: (a) Applicant fails to obtain the Approvals described more fully in Section 5; or, (b) Project operations on the Property entirely cease subsequent to issuance of the Approvals and Applicant completes a County-approved decommissioning plan, including the removal of any Project improvements from the Property required by the plan.

8. Assignment

Applicant may assign this Agreement if Applicant is transferring the Project to an assignee, provided the following: (a) any such assignment is in writing substantially in the form of Exhibit E ("Assignment"), attached hereto and incorporated herein by this reference; (b) the Assignment provides for Applicant's assignment of all obligations in this Agreement; and (c) Applicant and/or the assignee promptly deliver a fully executed Assignment to County in accordance with Section 22 below within twenty (20) days of receipt of such Assignment.

Notwithstanding the above, a change in ownership of Applicant is not an assignment. In the event of a change in ownership, the Applicant shall provide written notice to the County with the new owner's name, address, telephone number and contact person.

9. Indemnification

Applicant shall indemnify, defend and hold County, and the employees, volunteers, representatives, contractors, agents, successors, and assigns of County (collectively "County Parties") harmless from and against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to the installation, use, maintenance, repair, removal, and/or any other work or service for the Project or otherwise related to this Agreement, and arising either directly or indirectly from any act, error, omission or negligence of Applicant or its contractors, licensees, agents, servants or employees, including, without limitation, Claims caused by the sole passive negligent act or the concurrent negligent act, error or omission, whether active or passive, of County Parties. Applicant shall have no obligation,

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however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of County Parties.

Applicant's obligations under this Agreement shall be effective upon the Effective Date, regardless of whether any or all approvals and/or actions of County regarding the Project remain valid or are invalidated by any court. Applicant's obligations to indemnify, defend, and hold County harmless shall survive the termination of this Agreement, but shall be limited to events that occurred during the term of this Agreement.

10. Breach

Failure to abide by any terms of this Agreement shall constitute a breach of this Agreement. The Party asserting a breach must notify the other Party in writing pursuant to Section 22 below. Each Party shall have the right but not the obligation or duty to cure any breach by the other Party of the terms of this Agreement.

An "Event of Default" shall exist if: (a) the breach can be cured solely by the payment of money and the breach is not cured within thirty (30) business days after the notifying Party delivers notice (a "Breach Notice") thereof to the breaching Party; or (b) the breach cannot be cured solely by the payment of money and the breach is not cured within thirty (30) days after the notifying Party delivers a Breach Notice thereof to the breaching Party; provided, however, that if a cure reasonably requires more than thirty (30) days, no Event of Default shall exist so long as the breaching Party is diligently proceeding with a cure. If an Event of Default occurs, the notifying Party shall be entitled to any and all remedies available at law; provided, however, that attorneys' fees are not recoverable.

11. No Waiver

The failure of any Party to require the other Party's strict performance of any term, provision, covenant or condition of this Agreement, or the failure of any Party to exercise any right or remedy upon the breach of any term, provision, covenant or condition of this Agreement, shall not invalidate this Agreement, nor shall it be considered as a waiver by such Party of any term, provision, covenant or condition. Delay by any Party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant or condition shall not prevent such Party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.

12. Access

At all times during the term of this Agreement, Applicant shall ensure that County has twenty-four (24) hours per day, seven (7) days per week, pedestrian and vehicular access to, over, around, and across the Property for purposes of providing the Services as provided by this Agreement. As a condition of this Agreement, prior to the Effective Date of this Agreement, Applicant shall demonstrate to the satisfaction of County that County Parties, and all other local, state, and federal firefighting and/or emergency response agencies and their respective employees, agents, volunteers, representatives, contractors, successors and assigns will have legal access to the Property that will allow fire and emergency personnel and apparatus entry onto the Property for the purpose of providing the Services during the term of this Agreement.

The Parties acknowledge that this Agreement is not intended to expand, limit, or modify in any way County's independent rights as a governmental agency to access the Property for purposes of providing the Services described in this Agreement.

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13. Site Maintenance

Applicant agrees to keep and maintain the Property in good condition and clear of hazardous substances (other than hazardous substances used or useful in the construction, operation or maintenance of the Project in accordance with applicable law) at all times so as to avoid and prevent the creation and/or maintenance of fire or emergency hazards.

14. Project Site Safety

Unless otherwise provided by the Scope of Services in this Agreement, County Parties are not responsible for any condition of the Property or Project site conditions during the term of this Agreement. The Parties acknowledge and agree that Applicant has responsibility for all conditions of the Property and all Project site conditions, including safety of all persons and property.

15. No Third Party Beneficiaries

The Parties hereto agree that there shall be no third-party beneficiaries to this Agreement. This Agreement is not intended to and shall not confer any rights or remedies hereunder upon any other party other than the Parties to this Agreement and their respective assignees and successors in interest.

16. Successors in Interest

This Agreement and all rights and obligations created by this Agreement shall remain in full force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on such Party's successor in interest.

17. Integration

This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made by a written agreement pursuant to Section 6 of this Agreement. All prior negotiations and agreements are merged into this Agreement. The Parties acknowledge and agree that the Recitals set forth above are true and correct and are hereby incorporated by reference.

18. Jurisdiction and Venue

Any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be held in a federal or state court of competent jurisdiction in the County of San Diego, State of California. The Parties each consent to the jurisdiction of these courts and waive any objections that such venue is objectionable or improper. The Parties agree that this Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.

19. Severance

If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and, provided that the fundamental terms

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and conditions of this Agreement remain legal and enforceable, the remainder of this Agreement shall remain operative and binding on the parties.

20. Signing Authority

The representative for each Party signing on behalf of a corporation, partnership, joint venture, or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or governmental entity.

21. Counterparts

This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page. The Parties agree that a signed copy of this Agreement transmitted by one Party to the other Party by facsimile transmission or electronic mail as a PDF shall be binding upon the sending Party to the same extent as if it had delivered a signed original of this Agreement.

22. Notices

All letters, statements, or notices required pursuant to this Agreement shall be deemed effective upon receipt when personally served, transmitted by facsimile machine or electronic mail, or sent certified mail, return receipt requested, to the following addresses:

Boulder Brush LLC
Attn: Legal Department
437 Madison Avenue
22nd Floor, Suite A
New York, NY 10022
Telephone No. (646) 829-3900

San Diego County Fire Authority
Attn: Herman Reddick, Director
5510 Overland Ave., Ste. 250
San Diego, CA 92123
Telephone No. (858) 974- 5813
Facsimile No. (858) 974- 5928

Any such notice or demand shall be deemed served at the time of delivery if delivered in person, by facsimile transmission, or electronic mail, or on the business day following deposit thereof in the U.S. Mail where sent by registered or certified mail.

BOULDER BRUSH LLC

COUNTY OF SAN DIEGO

Craig Pospisil
Vice President

Andrew Potter
Clerk of the Board

Date

Date

Approved as to form:

Suedy Alfaro
Senior Deputy County Counsel

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Exhibit "A"

Legal Description of the Property

The land referred to herein is situated in the State of California, County of San Diego Unincorporated and described as follows:

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Exhibit “B”

Project Description

The following documents are hereby incorporated by reference as the project description for the Boulder Brush Facilities Project:

1. Project description provided in Chapter 1 of the Final Environmental Impact Report for the Boulder Brush Facilities Project;
2. Boulder Brush Facilities Plot Plans, as approved.

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Exhibit “C”

Scope of Services

San Diego County Fire Authority (“Fire Authority”) provides fire suppression and emergency medical support services as the first responder provider for the Project area and stands by in a state of readiness to perform these duties when not engaged in active fire suppression or emergency services.

Fire Authority intends to use the funds provided under this Agreement to mitigate risks of wildfires by supporting Fire Authority capabilities and services to the Project and the southeast portion of CSA 135.

Fire Authority will engage in the control or extinguishment of a fire of any type and perform activities which are required for and directly related for and directly related to the control and extinguishment of fires.

Fire Authority has the right to review all building plans to ensure that the plans comply with all applicable fire codes and regulations. Fire Authority’s fire prevention inspectors may conduct periodic inspections of construction activities or facilities to ensure that business operations are conducted in a safe manner and are consistent with all applicable fire suppression rules and regulations.

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Exhibit “D”

Applicant’s Approved Fire Protection Plan, accepted _____

TO BE PROVIDED BY APPLICANT

DRAFT

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Exhibit "E"

Form of Assignment of Agreement for Provision of Fire and Emergency Response Assignment

ASSIGMENT OF AGREEMENT

This assignment of agreement ("Assignment") is made effective as of _____, 20__, by and between _____ ("Assignor"), and _____ ("Assignee").

WHEREAS, Assignor is a party to the Fire and Emergency Services Agreement ("Agreement") entered into with the San Diego County Fire Authority on _____, 20__.

WHEREAS, Assignor wishes to transfer and assign to Assignee, and Assignee wishes to assume, Assignor's rights and obligations in and under the Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Assignor hereby transfers, conveys, sells and assigns to Assignee all of Assignor's right, title and interest in and to Agreement.
2. Assignee hereby affirmatively and unconditionally accepts the assignment and assumes the obligations of Assignor with respect to the Agreement.
3. This Assignment is governed by California law, without regard to its conflicts of law provisions. This Assignment may be executed in any number of counterparts, each of which may be executed by any one of more of the parties hereto, but all of which shall constitute one and the same instrument, and shall be binding and effective when all parties hereto have executed and delivered at least one counterpart.
4. Each party shall take such acts and execute and deliver such documents as may be reasonably required to effectuate the purposes of this Assignment.
5. The terms and provisions of this Assignment shall be binding upon and insure to the benefit of the respective parties hereto, and their respective successors and assigns.
6. The Assignee's contact information is as follows:
Name:
Address:
Telephone number:
Facsimile number:
Email address:

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed as of the day and year first written above.

ASSIGNOR:

ASSIGNEE:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

