

BAY AREA AIR CLEAN AIR FOUNDATION

FARIA PRESERVE RESIDENTIAL DEVELOPMENT AND VTM 9342

MITIGATION PROJECT AGREEMENT

1. **PARTIES** - The parties to this Mitigation Project Agreement ("Agreement"), for a mitigation project that concerns the Faria Preserve Residential Development and VTM 9342 ("Faria Residential Development") located between Purdue Road and Bollinger Canyon Road in the City of San Ramon, are the **Bay Area Clean Air Foundation** ("FOUNDATION"), whose address is 375 Beale Street, San Francisco, CA 94105, and **Faria Preserve, LLC**, a limited liability corporation ("Faria Preserve"), whose address is 4750 Willow Road, Suite 150 Pleasanton, CA 94588.
2. **RECITALS** -
 - A. The FOUNDATION is a nonprofit public benefit corporation whose purpose is to provide financial, administrative, programmatic and other forms of support to the Bay Area Air Quality Management District ("BAAQMD"), a state political subdivision as described in section 107 (c) (1) of the Internal Revenue Code of 1986, as amended; and (2) to engage in any activities that further such purposes.
 - B. In October 2012, Faria LT Ventures, LLC, the owner of the Faria Residential Development parcel filed Vesting Tentative Map 9342 for 738 residential units and a 12-acre community park with the City of San Ramon to obtain a permit to construct, operate and maintain the Faria Preserve Residential Development.
 - C. The City of San Ramon approved Faria LT Ventures, LLC's Vesting Tentative Map in September 2014. The City of San Ramon approved Faria LT Ventures, LLC's Initial Study/Negative Declaration on May 6, 2014 subject to conditions, including Mitigation Measure 3.3-1(b), which requires that Faria LT Ventures, LLC mitigate 13.64 total tons of oxides of nitrogen ("NOx") emissions from the Faria Residential Development ("Mitigation Measure 3.3-1(b)") in order to comply with the California Environmental Quality Act ("CEQ").
 - D. Thereafter, Faria LT Ventures, LLC transferred ownership of the parcel to Faria Preserve as well as all rights and obligations to construct, operate and maintain the Faria Residential Development to be located in San Ramon, California. Such obligations include Faria Preserve's obligation to satisfy the requirements of Mitigation Measure 3.3.1(b) in order to comply with the CEQA requirements for development of the Faria Residential Development.
 - E. It is Faria Preserve's position that by having transferred the Funds, it has satisfied its obligations under Mitigation Measure 3.3-1(b). The FOUNDATION neither concurs nor opposes that position. It is the FOUNDATION's understanding that the BAAQMD has neither concurs nor opposes that position. It is the FOUNDATION's position that the obligation to satisfy Mitigation Measure 3.3-1(b) is solely that of Faria Preserve and not of the FOUNDATION nor of BAAQMD.

- F. The FOUNDATION and Faria Preserve agree to enter into this Agreement, for good and valuable consideration, to assist Faria Preserve in satisfying the requirements of Mitigation Measure 3.3-1(b), and to ensure the proper funding and management of an emissions reduction program to offset ozone precursor emissions attributable to construction of the Faria Preserve Residential Development.
3. STATEMENT OF WORK - The purpose of this Agreement is to carry out an emissions reduction program ("Project"). The parties to this Agreement shall have the following responsibilities:
- A. Faria Preserve will provide the Funds for the Project to the FOUNDATION, as provided for and in accordance with the requirements of Paragraph 5, "Payment of Project Expenses," below.
- B. The FOUNDATION is the Project administrator and will, through its contractor, the BAAQMD, solicit for, evaluate, administer, calculate emissions reductions for, inspect, contract with, verify, pay and report on reduction of NO_x and Reactive Organic Gases ("ROG"), together referred to as "ozone precursors"; emissions reductions projects using funds provided by Faria Preserve pursuant to this Agreement. The FOUNDATION shall have the flexibility to choose which type of emissions reduction projects will be funded through the Project. The FOUNDATION shall seek to achieve a minimum reduction of 13.64 tons of ozone precursors through the selection of qualifying emissions reduction projects.
- C. Light-duty voluntary accelerated vehicle retirement ("VAVR") reduction projects may be funded by the FOUNDATION in accordance with the California Air Resources Board's (CARB) Carl Moyer Program Guidelines or other BAAQMD-approved incentive programs' guidelines. Projects that meet these requirements will be deemed qualifying emissions reduction projects.
- E. Over the term of this Agreement, the FOUNDATION will select qualifying emissions reduction projects. Faria Preserve agrees that if the FOUNDATION is able to achieve more emissions reductions than the minimum amount requested by Faria Preserve, the FOUNDATION shall have no responsibility to refund any of the Project funds already provided, as outlined in Section 5, below. Nor shall Faria Preserve, LLC be required to fund more than indicated in Table 1, below.
- F. Faria Preserve agrees that if the FOUNDATION is unable to achieve the emission reductions stipulated in Section 3.b of this Agreement, the FOUNDATION shall not be held liable for achieving additional emission reductions, funding any emission offsets, or reimbursing any Funds to Faria Preserve.
- G. The FOUNDATION will provide a report to Faria Preserve of all qualifying emissions reductions projects selected for funding, the type and amount of emissions they reduce, their location, the cost-effectiveness of the emissions reductions, and the dollar amount allocated to each project within 90 days of disbursing all Project Funds.
4. CONTRACT EFFECTIVE DATE, TERM AND PROJECT SCHEDULE - This contract shall be effective as of the date this Agreement is executed by the President of the Clean Air Foundation and shall expire two years following start-up of the Faria Residential Development. The Project schedule shall be as follows:

TABLE 1 – PROJECT SCHEDULE

Date	Required Action
Completed	Payment of \$472,262.70 (“Funds”) provided to FOUNDATION by Faria Preserve
No later than __, 2018	The FOUNDATION shall distribute all project funds provided to the FOUNDATION by Faria Preserve at the FOUNDATION’s discretion to the approved emission reduction projects
Within 90 days of disbursing all Project funds	The FOUNDATION shall provide a report to Faria Preserve on all qualifying emissions reduction projects selected and funded and emissions reductions achieved

5. PAYMENT OF PROJECT EXPENSES

- A. Faria Preserve shall pay a total of \$472,262.70 to the FOUNDATION (“Funds”) for the purpose of satisfying requirements under Mitigation Measure 3.3-1(b), which Funds comprise Project funds of \$449,774.00 (“Project Funds”) and administrative fees of \$22,488.70 for the FOUNDATION to administer this Project and Agreement (“Administrative Fees”).
- B. Faria LT Ventures, LLC provided the FOUNDATION with the first payment of Funds of \$89,756.95 on September 25, 2015, which included Project Funds to fund qualifying emission reduction projects to offset expected emissions associated with Phase 1 of land development and FOUNDATION Administrative Fees.
- C. Faria Preserve provided the FOUNDATION with the second and final payment of Funds of \$382,505.75, which included Project Funds to fund qualifying emission reduction projects to offset expected emissions associated with Phase 2 of land development and FOUNDATION Administrative Fees.
- D. All Funds provided to the FOUNDATION by Faria Preserve pursuant to this Agreement shall be used by the FOUNDATION exclusively for (i) the funding of qualifying emissions reduction projects, and (ii) reimbursement of the FOUNDATION for administrative expenses incurred administering the Project in an amount no greater than 5% of the Funds distributed to qualifying emissions reduction projects.

- 6. **TERMINATION** – Either party to this Agreement may terminate this Agreement at will by providing written notice of termination to the other party which written notice of termination specifies the effective date of termination, which shall be no less than thirty (30) calendar days from the date of delivery of such notice. Such termination shall be without penalty or further liability between the parties arising from or related to alleged nonperformance or breach of this Agreement. Following receipt or distribution of such notice the FOUNDATION will cease distribution of any funds provided by Faria Preserve and return any such Funds not previously awarded to a qualifying emissions reduction project or applied as a 5 % administrative fee for such project.

7. PUBLICITY AND PUBLICATION - The parties agree that neither party will use the name of the other party or its employees in any advertisement, press release or publicity with reference to this Agreement or any product or service resulting from this Agreement, without prior written approval of the other party.
8. FORCE MAJEURE - No party shall be responsible for delays or failures in performance resulting from acts beyond the control of the offending party. Such acts shall include but shall not be limited to acts of God, fire, flood, earthquake, other natural disaster, nuclear accident, strike, lockout, riot, freight embargo, public regulated utility, or governmental statutes or regulations superimposed after the fact.
9. DISPUTES - Any dispute arising under this Agreement that is not settled by agreement of the parties may be settled by mediation, non-binding arbitration or other appropriate legal proceedings.
10. NOTICES - All notices that are required under this Agreement shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. PST. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five (5) business days after the date of mailing.

FOUNDATION: Bay Area Clean Air Foundation
375 Beale Street
San Francisco, CA 94105
Attn: Damian Breen, President

Faria Preserve: 4750 Willow Road, Suite 150 Pleasanton, CA 94588
Attn: Kerri Watt
Kerri.Watt@calatl.com
925-730-1340

11. INDEPENDENT CONTRACTOR - Each party is deemed at all times to be an independent contractor and shall be responsible for the manner in which it performs the work under this Agreement. Nothing contained herein shall imply any partnership, joint venture or agency relationship between the parties and no party shall have the power to obligate or bind another in any manner whatsoever, except to the extent herein provided.
12. CONFIDENTIALITY
 - A. It is expected that the work of this Agreement can be carried out without any of the parties disclosing confidential information to another party.

- B. However, should it become necessary to disclose confidential information, the disclosing party shall notify the receiving party in advance and in writing. All confidential documents disclosed must be clearly marked as "Confidential." If the confidential information is orally disclosed, such confidential information must be reduced to writing by the disclosing party within thirty (30) days of the oral disclosure, and provided to the receiving party. Each party agrees to protect the confidential information of the other parties with the same degree of care as it would its own.
- C. The obligations contained in this clause shall not apply to any confidential information which:
- i) Is publicly known at the time of the disclosure to the receiving party;
 - ii) After disclosure becomes publicly known otherwise than through a breach by the receiving party, its officer, employees, agents or contractors;
 - iii) Can be shown by reasonable proof by the receiving party to have reached its hands otherwise than by being communicated by the other party, including being known to it prior to disclosure, or having been developed by or for it wholly independently of the other party or having obtained from a third party without any restrictions on disclosure on such third party of which the recipient is aware, having made due inquiry;
 - iv) Is required by law, regulation or order of a competent authority (including any regulatory or governmental body or securities exchange) to be disclosed by the receiving party, provided that, where practicable, the disclosing party is given reasonable advance notice of the intended disclosure and provided that the relaxation of the obligations of confidentiality shall only last for as long as necessary to comply with the relevant law, regulation or order and shall apply solely for the purposes of such compliance; or
 - v) Is approved for release, in writing, by an authorized representative of the disclosing party.

13. INDEMNIFICATION

- A. Faria Preserve shall indemnify and hold the FOUNDATION, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the Faria Preserve, its officers, agents, employees.
- B. The FOUNDATION shall indemnify and hold Faria Preserve, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fee, or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the FOUNDATION, its officers, agents, employees.

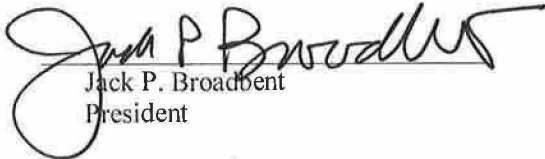
14. ASSIGNMENT - No party shall assign, sell, license, or otherwise transfer any rights or obligations under this Agreement to a third party without the prior written consent of the other party, and any attempt to do so shall be void upon inception, provided however that Faria Preserve may assign this Agreement without consent in connection with a sale of all or substantially all of its assets.

15. WAIVER - No waiver of a breach, or failure of any condition, or of any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies. Further, the failure of a party to enforce performance by the other party of any term, covenant, or condition of this Agreement, and the failure of a party to exercise any rights or remedies hereunder, shall not be deemed a waiver or relinquishment by that party to enforce future performance of any such terms, covenants, or conditions, or to exercise any future rights or remedies.
16. SEVERABILITY - If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them will not be affected.
17. HEADINGS - Headings on the sections and paragraphs of this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.
18. COUNTERPARTS/FACSIMILES/SCANS - This agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. The parties may rely upon a facsimile copy or scanned copy of any party's signature as an original for all purposes.
19. GOVERNING LAW - Any dispute that arises under or relates to this Agreement shall be governed by California law, excluding any laws that direct the application of another jurisdiction's laws.
20. ENTIRE AGREEMENT AND MODIFICATION - This Agreement represents the final, complete, and exclusive statement of the agreement between the parties and supersedes all prior and contemporaneous understandings and agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying upon, any representation or warranty outside those expressly set forth herein. This Agreement may only be amended by mutual agreement of the parties in writing and signed by both parties.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed on their behalf by their authorized representatives.

BAY AREA CLEAN AIR FOUNDATION

By:


Jack P. Broadbent
President

Date:

9/15/16

Approved as to form:

By:


Brian C. Bunker, Esq.

Faria Preserve, LLC, a Delaware limited liability corporation

By: CalAtlantic Group, LLC, a Delaware corporation,
Its Managing Member

By:

Kathryn Watt

Name:

KATHRYN WATT

Title:

OPERATIONAL V.P., SR. PROTECT MANAGER

Date:

13 SEPT. 2016

EXHIBIT A



CITY OF SAN RAMON

2401 CROW CANYON ROAD
SAN RAMON, CALIFORNIA 94583
PHONE: (925) 973-2500
WEB SITE: www.sanramon.ca.gov

April 12, 2016

CalAtlantic Homes
4750 Willow Road, Suite 150
Pleasanton, CA 94588
ATTN: Kerri Watt

Re: Payment of BAAQMD Fee as Mitigation for Project NOx Emissions

Dear Kerri:

I am writing in response to your request for confirmation that CalAtlantic Group, Inc. has satisfied the Northwest Specific Plan Environmental Impact Report (EIR) and Faria Preserve Community Project (Faria Project) Initial Study / Mitigated Negative Declaration (IS/MND) air quality mitigation measures required for the Faria Project.

The Faria Project IS/MND concluded that the Faria Project would generate a total of 13.64 tons of NOx emissions. Mitigation Measure 3.3-1(b) set forth in the IS/MND requires that the project applicant use the Bay Area Air Quality Management District (BAAQMD) Carl Moyer Program or another verifiable emission offsets program to offset regional construction emissions in order to reduce emissions to a less-than-significant level as set forth in the attached Technical Memorandum prepared by First Carbon Solutions dated July 29, 2015 (2015 Technical Memorandum). The mitigation fee is based upon an analysis of emissions which the City of San Ramon also reviewed and approved as set forth in the 2015 Technical Memorandum.

I understand that the BAAQMD has confirmed that the IS/MND mitigation measure of 13.64 tons of NOx emissions will be satisfied by compliance with the BAAQMD's verifiable emission offsets program consisting of the purchase of a mix of 13.64 tons of NOx and ROG emission offsets because those credits currently are available for purchase. Faria LT Ventures, the predecessor in interest to Faria Preserve, LLC (CalAtlantic Homes) funded the payment of the Phase 1 emission offset fee prior to issuance of the corrective grading permit in September 2015.

The total Phase 2 fee is \$382,505.75 (with the 5% administrative fee paid to the Bay Area Clean Air Foundation) to offset the remaining calculated 11.6 tons of NOx emissions. Faria Preserve, LLC (CalAtlantic Homes) will pay the mitigation fees required for Phase 2 grading to

CITY COUNCIL: **BM 2539** 973-2539
CITY MANAGER: 973-2530
CITY ATTORNEY: 973-2549

CITY CLERK: 973-2539
ADMINISTRATIVE SERVICES: 973-2609
PLANNING/COMMUNITY DEVELOPMENT: 973-2560

ENGINEERING SERVICES: 973-2670
POLICE SERVICES: 973-2700
PUBLIC SERVICES: 973-2800

PARKS & COMMUNITY SERVICES: 973-3200
ECONOMIC DEVELOPMENT: 973-2554

Kerri Watt

Page 2

the Bay Area Clean Air Foundation prior to commencement of Phase 2 grading, expected on or about April 15, 2016.

This letter confirms that Faria Preserve, LLC's (CalAtlantic Homes) payment of the BAAQMD fee to the Bay Area Clean Air Foundation will satisfy any and all required NOx emission offsets mitigation required by the EIR and Faria IS/MND to reduce the Project-generated construction emissions to a less-than-significant level.

Please do not hesitate to contact Cindy Yee, Associate Planner at (925) 973-2562 if you have any questions or need further assistance regarding this matter.

Sincerely,

City of San Ramon

By



Phil Wong
Planning Director

ACG:el

cc: Alison Kirk, BAAQMD
Bob Saxe, City Attorney
Brian Bornstein, City Engineer
Robin Bartlett, Special Districts
Marvin Smitherman, Associate Engineer
Cindy Yee, Associate Planner
Debbie Chamberlain, Planning Manager
Trece Herder, Vice President, Land Acquisition