



## **AGENDA**

### **BOARD OF SUPERVISORS, COUNTY OF MONO**

### **STATE OF CALIFORNIA**

Regular Meetings: The First, Second, And Third Tuesday of each month. Location of meeting is specified at far right.

#### **Regular Meeting**

MEETING LOCATION  
County Courthouse,  
Bridgeport, CA 93517

**October 9, 2012**

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**TELECONFERENCE LOCATIONS:** 1) First and Second Meetings of Each Month: Mammoth Lakes CAO Conference Room, 3rd Floor Sierra Center Mall, 452 Old Mammoth Road, Mammoth Lakes, California, 93546; 2) Third Meeting of Each Month: Mono County Courthouse, 278 Main, 2nd Floor Board Chambers, Bridgeport, CA 93517. Board Members may participate from a teleconference location. Note: Members of the public may attend the open-session portion of the meeting from a teleconference location, and may address the board during any one of the opportunities provided on the agenda under Opportunity for the Public to Address the Board.

**NOTE:** In compliance with the Americans with Disabilities Act if you need special assistance to participate in this meeting, please contact the Clerk of the Board at (760) 932-5534. Notification 48 hours prior to the meeting will enable the County to make reasonable arrangements to ensure accessibility to this meeting (See 42 USCS 12132, 28CFR 35.130).

Full agenda packets are available for the public to review in the Office of the Clerk of the Board (Annex I - 74 North School Street, Bridgeport, CA 93517), and in the County Offices located in Minaret Mall, 2nd Floor (437 Old Mammoth Road, Mammoth Lakes CA 93546). Any writing distributed less than 72 hours prior to the meeting will be available for public inspection in the Office of the Clerk of the Board (Annex I - 74 North School Street, Bridgeport, CA 93517). **ON THE WEB:** You can view the upcoming agenda at [www.monocounty.ca.gov](http://www.monocounty.ca.gov). If you would like to receive an automatic copy of this agenda by email, please send your request to Lynda Roberts, Clerk of the Board : [lroberts@mono.ca.gov](mailto:lroberts@mono.ca.gov).

***UNLESS OTHERWISE SPECIFIED BY TIME, ITEMS SCHEDULED FOR EITHER THE MORNING OR AFTERNOON SESSIONS WILL BE HEARD ACCORDING TO AVAILABLE TIME AND PRESENCE OF INTERESTED PERSONS. PUBLIC MAY COMMENT ON AGENDA ITEMS AT THE TIME THE ITEM IS HEARD.***

**9:00 AM**      **Call meeting to Order**

**Pledge of Allegiance**

**OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD** on items of public interest that are within the subject matter jurisdiction of the Board. (Speakers may be limited in speaking time dependent upon the press of business and number of persons wishing to address the Board.)

Approximately  
thru 10:' 0 a.m.

## **CLOSED SESSION**

### **BOARD OF SUPERVISORS**

- 1a) **Closed Session - Conference with Legal Counsel** - CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION. Significant exposure to litigation pursuant to subdivision (b) of Government Code section 54956.9. Number of potential cases: one.
- 1b) **Closed Session - Conference with Legal Counsel** - CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION. Subdivision (a) of Government Code section 54956.9. Name of case: County of Mono v. Mammoth Mountain Ski Area, et al. (Sup. Ct. Case No. 16624).
- 1c) **Closed Session - Conference with Legal Counsel** - CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION. Significant exposure to litigation pursuant to subdivision (b) of Government Code section 54956.9. Number of potential cases: one. Facts and circumstances: grant compliance dispute related to Conway Ranch.
- 1d) **Closed Session - Performance Evaluation** - PUBLIC EMPLOYEE PERFORMANCE EVALUATION. Government Code section 54957. Title: County Counsel.
- 1e) **Closed Session--Human Resources** - CONFERENCE WITH LABOR NEGOTIATORS. Government Code Section 54957.6. Agency designated representative(s): Marshall Rudolph, Brian Muir, and Jim Arkens. Employee Organization(s): Mono County Sheriff's Officers Association (aka Deputy Sheriff's Association), Local 39--majority representative of Mono County Public Employees (MCPE) and Deputy Probation Officers Unit (DPOU), Mono County Paramedic Rescue Association (PARA), Mono County Public Safety Officers Association (PSO), and Mono County Sheriff Department's Management Association (SO Mgmt). Unrepresented employees: All.

**OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD** on items of public interest that are within the subject matter jurisdiction of the Board. (Speakers may be limited in speaking time dependent upon the press of business and number of persons wishing to address the Board.)

### **2) APPROVAL OF MINUTES**

None

### **3) BOARD MEMBER REPORTS**

The Board may, if time permits, take Board Reports at any time during the meeting and not at a specific time.

Approximately  
10 Minutes

## **COUNTY ADMINISTRATIVE OFFICE**

- 4) CAO Report regarding Board Assignments (Jim Arkens)  
RECOMMENDED ACTION: Receive brief oral report by County Administrative Officer (CAO) regarding his activities.

10:' 0 a.m.  
Approximately  
15 minutes

## **DEPARTMENT REPORTS/EMERGING ISSUES** (PLEASE LIMIT COMMENTS TO FIVE MINUTES EACH)

Approximately 5  
minutes for  
Consent Items

## **CONSENT AGENDA**

*(All matters on the consent agenda are to be approved on one motion unless a board member requests separate action on a specific item.)*

## **CLERK OF THE BOARD**

5a) **No Consent -**

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## REGULAR AGENDA

### CORRESPONDENCE RECEIVED (INFORMATIONAL)

All items listed are available for review and are located in the Office of the Clerk of the Board

- 5b) **Fitch Response Letter from Michael Geary** - Letter received from Michael Geary, President of the Mono County Paramedic Rescue Association regarding Fitch and Associates EMS System Report. This is the MCPRA's response and position regarding the report.

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### PUBLIC WORKS - ROAD DIVISION

- 6a) **Proposed Motor Pool Vehicle Replacements** (Jeff Walters) - Fourteen Motor Pool vehicles have exceeded their useful life and/or are proposed for replacement/reassignment. These vehicles consist of one ambulance, seven Sheriff vehicles, one Animal Control truck, one Road truck and four Pool cars.

15 minutes

**Recommended Action:** Hear status of existing vehicles proposed for replacement. Provide any desired direction for staff.

**Fiscal Impact:** \$546,000 from Motor Pool.

### HEALTH DEPARTMENT

- 7a) **2012-13 Public Health Emergency Preparedness Agreements** (Lynda Salcido, Public Health Director. Dr. Richard Johnson, Public Health Officer) - In October, 2003, the Board of Supervisors approved the first Public Health Preparedness and Response to Bioterrorism plan for FY 2002/3 (minute order 02-219). This program has been funded ever since by Federal CDC money, with 70% of the total funds being passed to the locals through the California Department of Public Health (CDPH).

15 minutes

**Recommended Action:** The Board of Supervisors (1) Approve and authorize the Chair's signature on the NON-SUPPLANTATION CERTIFICATION FORM for the AGREEMENT outlined below, and (2) Authorize the Public Health Director to sign the 2012-13 CDC Public Health Emergency Preparedness (PHEP), State General Fund (GF) Pandemic Influenza, HHS Hospital Preparedness Program (HPP) Funding AGREEMENT and CERTIFICATION REGARDING LOBBYING, and any additional contract amendments.

**Fiscal Impact:** The allocations for Mono County for FY 2012-13 total \$300,884, which is included in the approved County Budget: Centers for Disease Control (CDC) Public Health Emergency Preparedness Program (PHEP) - \$108,039 (was \$107,001 during 2011-12); State General Fund (GF) Pandemic Influenza Planning - \$60,490 (was \$60,458 during 2011-12); Hospital Preparedness Program (HPP) - \$132,355 (plus \$7,000 pre-designated to ICEMA) (was \$139,141 during 2011-12).

### COUNTY ADMINISTRATIVE OFFICE

- 8a) **CAO - Director of Human Resources** (Jim Arkens) - Presentation by Jim Arkens regarding restructuring CAO's office.

15 minutes

**Recommended Action:** Authorize recruiting and hiring a Director of Human Resources. Provide any desired direction to staff.

**Fiscal Impact:** Approximately \$65,000 annually.

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## **LUNCH**

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**OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD** on items of public interest that are within the subject matter jurisdiction of the Board. (Speakers may be limited in speaking time dependent upon the press of business and number of persons wishing to address the Board.)

## **PUBLIC WORKS - ENGINEERING DIVISION**

**9a)**

10 minutes

**Authorization to Bid for the School Street Plaza Project** (Garrett Higerd) - This project will construct a pedestrian plaza with landscaping and benches along the east side of School Street from US 395 to Bryant Street adjacent to the historic county courthouse in the community of Bridgeport.

The project plans, which are too large to attach with this item, may be viewed as a separate link by going to: [www.monocounty.ca.gov](http://www.monocounty.ca.gov).

**Recommended Action:** Approve bid package, including the project manual and project plans, for the School Street Plaza Project. Authorize the Public Works Department to advertise an Invitation for Bids and to issue the project for bid. Provide any desired direction to staff.

**Fiscal Impact:** \$225,000 of Transportation Enhancement Activities (TEA) funds. No impact to General Fund.

**9b)**

15 minutes

**Tract Map 37-59A&B, Rock Creek Canyon Final Map** (Garrett Higerd) - Tentative Tract Map No. 37-59A&B was conditionally approved by the Mono County Board of Supervisors at a public hearing held on December 21, 2010. The Final Map will divide APN 026-330-003, totaling 29 acres, into fourteen lots: twelve market-rate single family residential lots, and two parcels devoted to complementary uses including a trailhead parking lot and a 5.59 acre open space parcel.

**Recommended Action:** 1. Approve the Final Map for Tract No. 37-59A&B, Rock Creek Canyon – Phases 1 & 2, finding that all conditions of approval have been met, and authorize the Board Clerk's signature on said map certifying approval of such; 2. Reject on behalf of the public the offer of dedication for Lot A, as shown on said map. 3. Reject on behalf of the public the offer of dedication for the Public Access Trail Easement, as shown on said map. 4. Reject on behalf of the public the offer of dedication for the Conservation Easement for rock wall and historic ditch, as shown on said map. 5. Direct the Public Works Director to file for recordation a notarized copy of a Notice of Development Conditions on Property for the project in the office of the County Recorder.

**Fiscal Impact:** None. All subdivision improvements benefiting Tract No. 37-59A&B have been installed by the Developer as a condition of map approval and at no expense to the County.

## **INFORMATION TECHNOLOGY**

**Additional Departments:** County Counsel

**10a)**

30 minutes

**Digital 395 - LMPP: Revenue Generation and Incentive Concepts** (Nate Greenberg)  
- Review concepts and basis for generating revenue from Internet Service Providers, and/or incentivizing the development of certain projects through Franchise Fees and agreements.

**Recommended Action:** Receive feedback and direction to further develop applicable

policies.

**Fiscal Impact:** None.

**ADJOURNMENT**

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OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

**MEETING DATE** October 9, 2012

**DEPARTMENT** Board of Supervisors

**ADDITIONAL  
DEPARTMENTS**

**TIME  
REQUIRED**

**SUBJECT** Closed Session - Conference  
with Legal Counsel

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

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### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION. Significant exposure to litigation pursuant to subdivision (b) of Government Code section 54956.9. Number of potential cases: one.

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### RECOMMENDED ACTION:

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### FISCAL IMPACT:

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### CONTACT NAME:

**PHONE/EMAIL:** /

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SUBMIT THE ORIGINAL DOCUMENT WITH  
ATTACHMENTS TO THE OFFICE OF  
THE COUNTY ADMINISTRATOR  
**PRIOR TO 5:00 P.M. ON THE FRIDAY**  
**32 DAYS PRECEDING THE BOARD MEETING**

### SEND COPIES TO:

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### MINUTE ORDER REQUESTED:

☐ YES ☒ NO

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### ATTACHMENTS:

[Click to download](#)

No Attachments Available

History		
Time	Who	Approval
10/3/2012 11:58 AM	County Administrative Office	Yes
10/3/2012 11:19 AM	County Counsel	Yes
10/3/2012 12:49 PM	Finance	Yes



OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

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**MEETING DATE** October 9, 2012

**DEPARTMENT** Board of Supervisors

**ADDITIONAL  
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CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION. Subdivision (a) of Government Code section 54956.9. Name of case: County of Mono v. Mammoth Mountain Ski Area, et al. (Sup. Ct. Case No. 16624).

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### RECOMMENDED ACTION:

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### FISCAL IMPACT:

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Time	Who	Approval
10/3/2012 11:58 AM	County Administrative Office	Yes
10/3/2012 11:19 AM	County Counsel	Yes
10/3/2012 12:50 PM	Finance	Yes



OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

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**MEETING DATE** October 9, 2012

**DEPARTMENT** Board of Supervisors

**ADDITIONAL  
DEPARTMENTS**

**TIME  
REQUIRED**

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### FISCAL IMPACT:

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History		
Time	Who	Approval
10/2/2012 4:06 PM	County Administrative Office	Yes
10/2/2012 4:04 PM	County Counsel	Yes
10/2/2012 4:14 PM	Finance	Yes



OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

**MEETING DATE** October 9, 2012

**DEPARTMENT** Board of Supervisors

**ADDITIONAL  
DEPARTMENTS**

**TIME  
REQUIRED**

**SUBJECT** Closed Session - Performance  
Evaluation

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

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### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION. Government Code section 54957. Title: County  
Counsel.

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### RECOMMENDED ACTION:

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### FISCAL IMPACT:

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### CONTACT NAME:

**PHONE/EMAIL:** /

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### MINUTE ORDER REQUESTED:

☐ YES ☒ NO

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History		
Time	Who	Approval
10/2/2012 4:07 PM	County Administrative Office	Yes
10/2/2012 4:04 PM	County Counsel	Yes
10/2/2012 4:15 PM	Finance	Yes



OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

**MEETING DATE** October 9, 2012

**DEPARTMENT** Board of Supervisors

**ADDITIONAL  
DEPARTMENTS**

**TIME  
REQUIRED**

**SUBJECT** Closed Session--Human  
Resources

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

---

### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

CONFERENCE WITH LABOR NEGOTIATORS. Government Code Section 54957.6. Agency designated representative(s): Marshall Rudolph, Brian Muir, and Jim Arkens. Employee Organization(s): Mono County Sheriff's Officers Association (aka Deputy Sheriff's Association), Local 39--majority representative of Mono County Public Employees (MCPE) and Deputy Probation Officers Unit (DPOU), Mono County Paramedic Rescue Association (PARA), Mono County Public Safety Officers Association (PSO), and Mono County Sheriff Department's Management Association (SO Mgmt). Unrepresented employees: All.

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### RECOMMENDED ACTION:

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### FISCAL IMPACT:

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**CONTACT NAME:** Jim Arkens

**PHONE/EMAIL:** 760-932-5413 / jarkens@mono.ca.gov

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### MINUTE ORDER REQUESTED:

☐ YES ☒ NO

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## ATTACHMENTS:

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No Attachments Available

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History		
Time	Who	Approval
9/27/2012 7:39 AM	County Administrative Office	Yes
10/2/2012 4:08 PM	County Counsel	Yes
9/24/2012 1:33 PM	Finance	Yes



OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

**MEETING DATE** October 9, 2012

**DEPARTMENT** Clerk of the Board

**ADDITIONAL  
DEPARTMENTS**

**TIME  
REQUIRED**

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

**SUBJECT** No Consent

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### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

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### RECOMMENDED ACTION:

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### FISCAL IMPACT:

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### CONTACT NAME:

**PHONE/EMAIL:** /

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### MINUTE ORDER REQUESTED:

☐ YES ☒ NO

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No Attachments Available

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**History**

<b>Time</b>	<b>Who</b>	<b>Approval</b>
10/3/2012 7:57 AM	Clerk of the Board	Yes

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OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

**MEETING DATE** October 9, 2012

**DEPARTMENT** Clerk of the Board

**ADDITIONAL  
DEPARTMENTS**

**TIME  
REQUIRED**

**PERSONS  
APPEARING  
BEFORE THE  
BOARD**

**SUBJECT** Fitch Response Letter from  
Michael Geary

### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Letter received from Michael Geary, President of the Mono County Paramedic Rescue Association regarding Fitch and Associates EMS System Report. This is the MCPRA's response and position regarding the report.

\*\*\*\*\*

### RECOMMENDED ACTION:

### FISCAL IMPACT:

**CONTACT NAME:** Shannon Kendall

**PHONE/EMAIL:** x5533 / skendall@mono.ca.gov

SUBMIT THE ORIGINAL DOCUMENT WITH  
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### MINUTE ORDER REQUESTED:

☐ YES ☒ NO

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 [Fitch Response Letter](#)

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**History**

Time	Who	Approval
10/3/2012 7:55 AM	Clerk of the Board	Yes

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# *MCPRA*

## **Mono County Paramedic Rescue Association**

**President**  
**Michael Geary**

**Vice President**

**Treasurer/Sec.**  
**Kevin Smith**

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**PO Box 2632 Mammoth Lakes, CA 93546 \* Phone (530) 495-2112 \* Fax (530) 495-9162**

To: The Honorable Board of Supervisors, County of Mono California.

Re: Fitch and Associates EMS System Report

Please let this serve as the official position of the MCPRA regarding the Fitch and Associates report of the EMS system in Mono County.

We wish to challenge the validity and credibility of this report. We believe that a consultant should perform a comprehensive and objective evaluation of the system and make recommendations based on industry standards and “best practices”. This report has fallen short in these areas.

According to the published meeting schedule the consulting team spent a little over two days meeting with stakeholders. We have first-hand knowledge of meetings that were not kept and requests for meetings that went unanswered. Despite claims and promises of “extensive” stakeholder input, we find that the limited time spent in county as both insufficient and unacceptable given the firms responsibility to provide a comprehensive review.

A glaring omission of this report is the Tri-Valley / Highway 6 Corridor. We believe that a comprehensive report would have included this area. Especially since this area has been the subject of recent discussion in terms of EMS service amongst the Board and other County Officials. The exclusion of this area of the county should, at the very least be considered a breach of trust, and possibly a breach of contract.

The report states that EMS operations would be compared to benchmarks “using the framework for the optimal EMS system”, and “comments are provided relative to the organizational structure and leadership of the system”. The proposal suggests that the evaluation will be conducted with “no preconceptions”. Again, we believe that if the system is to be compared to the rest of the industry, then any recommendation should be made objectively relative to industry standard and best practices, and not relative to the existing system.

The report suggests that our personnel should not be involved with firefighting activities for a variety of reasons. It is stated that some employees are not interested in performing these activities. All of our personnel are willing to perform on the fire ground, even if only in a

support role. Even the most basic of auxiliary tasks require a training standard, so that the persons performing them have an acceptable recognition of the needs on scene. We have attempted to implement a training curriculum on several occasions which has been started and stopped. Many local Fire Districts have offered to continue this training at minimal or no cost so that all employees could be brought to a standardized level of training. Once this level of training is completed Mono County Paramedics would act as a Mutual Aid resource to the local Fire Districts, allowing us to set and standardize our own response capabilities and guidelines to be used by the Incident Commander. Our current job description already includes activities that are traditional fire department functions. Increasing our capabilities simply provides greater levels of consistent service to the community. If we were to decrease from our current level of involvement with local Fire Districts on a fire scene, what is to say that they would not decrease their level of assistance to us on medical responses?

To suggest that firefighting activities should be voluntary is ludicrous. Having no standard as a standard is not a best practice in any industry and is potentially wrought with liability issues. It is simply unacceptable to have the community wondering what response capabilities we will provide on a day to day basis.

The report suggests that we will experience a turnover of employees if firefighting is mandated because; we will not be able to attract employees interested in community paramedicine. We believe that this is simply not true. Historically most EMS employees align themselves with public safety much more than with healthcare. With community paramedicine in its infancy and still an unproven discipline, this shift of interest may take years if not generations. People with community health and outreach interests tend to gravitate to nursing and other healthcare professions because of better pay and increased opportunity for employment diversity.

It was revealed at the Bridgeport town hall meeting that an executive decision was made by Mr. Keller to recommend that we **NOT** participate in firefighting activities against the opinions of other members of his team. This potentially indicates some bias on his part, and perhaps the influence of County officials, as this topic has been the subject of negotiations for several years. Again we believe that this discounts the objectivity of this report.

Mr. Keller stated that to suggest the inclusion of firefighting duties was contradictory to his task of finding cost saving measures for the County. Yet he suggests that we venture into the field of community paramedicine. This endeavor will require an increase in training costs and possibly in supplies with no potential for reimbursement for these services in the foreseeable future.

The report states that the EMCC should take a more active role in operational issues. Under authority of statute and its own by-laws, the EMCC could have possibly conducted a system evaluation of better quality and lower cost than the one performed by Fitch and Associates.

The report states that the current leadership structure of our agency works well. While that may be true at some levels, it is not the industry standard. Even private ambulance services utilize a paramilitary command structure with dedicated full time management and supervision. The creation of a "Lead Captain" might lighten the administrative load on the Interim EMS Chief, but does not give consistent full time operational support to field employees. As our current

Captains work the same work schedule as field employees, a “Lead Captain” would only be readily available to one third of employees.

The recommendation of staffing our units with an EMT 1 and a paramedic in the future will result in some cost savings. However, the savings suggested in the report are anecdotal and insignificant. If this were to occur it would constitute a decrease in the level of service we provide. For example in the event of an MCI (mass causality incident) dual paramedic crews would have the ability to split and accompany patients in BLS (basic life support) ambulances operated by Mammoth Fire and MWTC. A paramedic could also be left on scene to provide patient care or assume a command role while awaiting additional transport resources. Given our rural setting, these resources are far away and often hampered by weather.

The report suggests that studies have not conclusively proven the benefit of two paramedics on an ambulance. However, recent studies have proven that having two paramedics on a scene reduced the “time to task” in critical patient scenarios. Since we are the only paramedic level provider in the County the current staffing levels should remain.

The report recommends that we use part time per-diem employees to backfill shifts, in an attempt to lessen overtime costs. Per-diem employees are again, not industry standard or a best practice. We believe that most patients would prefer full time trained professionals in their time of need, over fill in employees involved in EMS as a hobby. The report correctly states that per diem employees have been used in the past but does not indicate why they were phased out. Again, the stated cost savings are anecdotal and insignificant when compared to the potential service deficiencies.

The report has concerns about skills maintenance of paramedics in a dual paramedic system with our low call volume because of the need to share skills with a partner. While this may be a valid concern the report doesn’t address the inability of a per-diem employee to maintain a state of readiness in a low call volume system where per-diem shifts may be few and far between.

It was stated by several local Fire Chiefs in the town hall meetings, that EMT 1 is not the standard that exists in the local fire districts, because of the investment of time and money required. Therefore, the “pool” of potential per-diem employees within the County does not exist as suggested in the report. Again the report shows a lack of comprehension and due diligence.

Past Association leadership and County administrations have developed the system that currently exists. Mono County Paramedics has become a destination employer, producing the first retirees in its history roughly within the last five years. Per-diem and full time EMT 1 are generally not career goals. If individuals filling these roles do not have at least the perception that the possibility of full time employment or advancement exists they will take their training and experience, that Mono County paid for, and move on to serve other communities. A perfect example of this is the three former Mono County Paramedics currently employed by East Fork Fire and Paramedic District, our neighbors to the north in Douglas County NV.

The report states that Mono County should raise its charges for ambulance transportation. It also states that California rates are some of the highest in the nation. If we do increase our rates this will not affect contractual allowances. While this may increase revenue from some payor sources, it could also possibly increase uncollectable accounts. While we certainly support any potential increases in the revenue stream, the decision to raise rates should be carefully considered. While the report suggests that our collection rate is excellent, we believe it could always be better. They offer no suggestions for improvement.

The report also offers no other suggestions for improving the revenue stream or alternative funding. A national consulting group should be aware of grant opportunities that exist and offer assistance in this area. Another possibility that was never explored is the BLS transport service that is offered for free to patients from MMSA to Mammoth Hospital. Why couldn't we take this over or develop a partnership with Mammoth Hospital to establish and collect a fee for service? This would be a good use of an EMT per-diem pool. Again, this shows a lack of due diligence on the part of the consulting team in a comprehensive analysis.

The only cost saving measures that are addressed in the report are in the areas of staffing, and as stated earlier, are anecdotal and relatively small. This would suggest that our current system is reasonably cost efficient. In current times, no public agency should be exempt from belt tightening, and we are no exception. However, we believe that the given recommendations do not outweigh the decrease in quality and level of service that would result. We believe that the numbers and information were available to have performed a thoughtful and accurate analysis of our financial situation. We again remain disappointed at the apparent lack of due diligence in the preparation in this report.

The report recommends that we should move in the direction of community paramedicine. This could mean anything from Blood Pressure checks at local events (which we already do), to full blown home health care duties. We also currently provide TB test reading and are trained to administer immunizations. Home health includes several disciplines from nursing to physical therapies to medical social work, none of which we are trained for. While we would support expanding our role in the community, a move in this direction will need further evaluation, as it would likely require costly infrastructure improvements. It will also lead to increased training and supply costs which will come with no reimbursement potential.

On several occasions, the report quotes a "former NHTSA Administrator" as being in support of this concept. What does the current Administrator think? He has been in office since early 2010, so ideas of any of his predecessors (we don't even know which one), are not fresh.

It was suggested that firefighting duties should be voluntary because of a perceived lack of interest in our employees. Wouldn't the same logic apply to community paramedicine? No one asked if we were interested in this.

In conclusion we believe that this report proves an if / then hypothesis. If any part of the report is questionable, then the report is questionable as a whole. It is based in ideology rather than evidence, and appears agenda driven rather than the objective document that it should have been.

We, as well as, others on our behalf felt that this entire process was adversarial. We are very disappointed in the outcome and feel that this was a missed opportunity to produce quality results in a collaborative manner.

We would also like to express disappointment in the County and the consultants for the lack of promised transparency during the process, including the dedicated web page that was never updated, and then disappeared prior to the release of the report. The amount of time spent in county by the consulting team was woefully insufficient. The “town hall” meetings were not adequately publicized, and as a result, poorly attended. The citizens and taxpayers should have had greater input in this process, as the community should be allowed opportunity to help determine the level of service they receive.

We appreciate the opportunity to participate in this process, and stand ready to offer any future opinion, guidance or assistance that we can.

Thank You

Michael Geary  
President  
Mono County Paramedic Rescue Association





OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

**MEETING DATE** October 9, 2012

**DEPARTMENT** Public Works - Road Division

**ADDITIONAL  
DEPARTMENTS**

**TIME  
REQUIRED** 15 minutes

**PERSONS  
APPEARING  
BEFORE THE  
BOARD** Jeff Walters

**SUBJECT** Proposed Motor Pool Vehicle  
Replacements

### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Fourteen Motor Pool vehicles have exceeded their useful life and/or are proposed for replacement/reassignment. These vehicles consist of one ambulance, seven Sheriff vehicles, one Animal Control truck, one Road truck and four Pool cars.

### RECOMMENDED ACTION:

Hear status of existing vehicles proposed for replacement. Provide any desired direction for staff.

### FISCAL IMPACT:

\$546,000 from Motor Pool.

**CONTACT NAME:** Jeff Walters

**PHONE/EMAIL:** 760 932 5459 / jwalters@mono.ca.gov

SUBMIT THE ORIGINAL DOCUMENT WITH  
ATTACHMENTS TO THE OFFICE OF  
THE COUNTY ADMINISTRATOR  
**PRIOR TO 5:00 P.M. ON THE FRIDAY  
32 DAYS PRECEDING THE BOARD MEETING**

### SEND COPIES TO:

Nancy Boardman, Animal Control  
Rick Scholl, Sheriff  
Lynda Salcido, Paramedics

### MINUTE ORDER REQUESTED:

☒ YES ☐ NO

### ATTACHMENTS:

**Click to download**

-  [Proposed Motor Pool Vehicle Replacements - BOS Staff Report 10.09.12](#)
-  [Exhibit 1 - Proposed Motor Pool Vehicle Replacements](#)

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**History**

<b>Time</b>	<b>Who</b>	<b>Approval</b>
9/24/2012 8:51 AM	County Administrative Office	Yes
10/2/2012 4:07 PM	County Counsel	Yes
9/21/2012 10:24 AM	Finance	Yes



## MONO COUNTY DEPARTMENT OF PUBLIC WORKS

POST OFFICE BOX 457 • 74 NORTH SCHOOL STREET • BRIDGEPORT, CALIFORNIA 93517  
760.932.5440 • Fax 760.932.5441 • [monopw@mono.ca.gov](mailto:monopw@mono.ca.gov) • [www.monocounty.ca.gov](http://www.monocounty.ca.gov)

**Date:** October 9, 2012  
**To:** Honorable Chair and Members of the Board of Supervisors  
**From:** Jeff Walters, Director of Road Operations/Fleet Services  
**Subject:** Proposed 2012-13 Motor Pool Vehicle Replacements

### **Recommended Action:**

Receive staff report regarding current status of Mono County's Motor Pool vehicles proposed for reassignment and/or replacement. Discuss vehicle replacement protocol and new vehicle specifications. Provide any desired direction to staff.

### **Fiscal Impact:**

\$546,000 out of the Motor Pool. Should the Paramedics' request for a complete ambulance replacement rather than a remount be approved the funds designated and approved in the 2012-13 Mono County Budget might be insufficient to cover the cost. However, there is sufficient funds remaining in the Motor Pool should the Board approve this purchase.

### **Discussion:**

At the request of the Board of Supervisors, the Department of Public Works initiated a County Vehicle Purchase Policy in 2006. The adopted Motor Pool policy established protocols for the purchase, replacement, and disposal of vehicles, including mileage and maintenance thresholds for replacement criteria, vehicle specifications, bidding procedures, vehicle assignment protocol, and sale of obsolete vehicles.

The Motor Pool Program has a specific formula in determining the mileage costs that it charges per type of vehicle, which are; cost of the vehicle, replacement value, salvage value, useful life, and average maintenance costs per type of vehicle, insurance and overhead. Each month the various County departments are charged specific rates per mile and per type of vehicle. Through this policy the Motor Pool receives the income required to replace departmental vehicles when needed.

This year fourteen vehicles were deemed in need of replacement or reassignment to other departments. These include:

- One Paramedic Ambulance (2012-13 approved Budget was for a remount although Paramedics are requesting a complete new vehicle and box)
- One 2003 Animal Control Truck (replace a Ford F-250 with a Ford F-150)

- One 1999 Road Truck with 223,000 miles (replace with Dodge 2500)
- Five 2008/09 Sheriff Expeditions, one 2001 Dodge Truck and one 2005 Subaru Outback (replace with three Ford Explorers, one Ford Police Interceptor, and three Ford Expeditions)
- Four 1999 Subaru Impreza Pool cars (replace with three Subaru Imprezas)

A chart showing the proposed replacement vehicles and their current and expected mileages at time of replacement is attached as Exhibit 1.

If you have any questions regarding this item, please contact Jeff Walters at 932-5459.

Respectfully submitted,



Jeff Walters  
Director of Road Operations/Fleet Services

Attachments: Exhibit 1 – Proposed Replacement Vehicles

2012-13 Motor Pool  
Proposed Replacement Vehicles

Department	Vehicle	Maintenance Cost/Year	Current Mileage	Estimated Mileage at turn-in	Surplus	Reassigned to	Alternate Vehicle to be placed in Surplus	Comments
<b>Sheriff</b>	SO702 2008 Ford Expedition	\$1,854	109,889	113,739	yes			
	SO709 2008 Ford Expedition	\$2,175	132,000	145,110	yes			
	SO750 2009 Ford Expedition	\$2,770	104,085	115,245	yes			
	SO753 2009 Ford Expedition	\$1,725	111,978	126,928	yes			
	SO715 2008 Ford Expedition	\$1,063	85,000	91,675	no	Road Op Supervisor	PO070 2004 Jeep Liberty with 117,922 miles	
	SO713 2001 Dodge pickup	\$788	139,028	139,800	yes			
	MO743 2005 Subaru Outback	\$1,235	97,646	105,986	yes			
<b>Animal Control</b>	AC896 2003 Ford F-250	\$1,142	183,463	185,713	yes			
<b>Road</b>	RD031 1999 Dodge 2500	\$2,702	223,000	227,800	yes			
<b>Motor Pool</b>	PO921 1999 Subaru Impreza	\$864	121,320	123,645	yes			
	PO922 1999 Subaru Impreza	\$1,033	118,392	120,472	yes			
	PL925 1999 Subaru Impreza	\$1,088	116,809	119,159	yes			
	PL929 1999 Subaru Impreza	\$1,478	117,791	120,956	yes			
<b>Paramedics</b>	MD888 1997 Chevy K3500	\$1,532	140,000	141,000	yes			Remount or New?



OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

**MEETING DATE** October 9, 2012

**DEPARTMENT** Health Department

**ADDITIONAL  
DEPARTMENTS**

**TIME  
REQUIRED** 15 minutes

**PERSONS  
APPEARING  
BEFORE THE  
BOARD** Lynda Salcido, Public Health  
Director. Dr. Richard Johnson,  
Public Health Officer

**SUBJECT** 2012-13 Public Health  
Emergency Preparedness  
Agreements

### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

In October, 2003, the Board of Supervisors approved the first Public Health Preparedness and Response to Bioterrorism plan for FY 2002/3 (minute order 02-219). This program has been funded ever since by Federal CDC money, with 70% of the total funds being passed to the locals through the California Department of Public Health (CDPH).

### RECOMMENDED ACTION:

The Board of Supervisors (1) Approve and authorize the Chair's signature on the NON-SUPPLANTATION CERTIFICATION FORM for the AGREEMENT outlined below, and (2) Authorize the Public Health Director to sign the 2012-13 CDC Public Health Emergency Preparedness (PHEP), State General Fund (GF) Pandemic Influenza, HHS Hospital Preparedness Program (HPP) Funding AGREEMENT and CERTIFICATION REGARDING LOBBYING, and any additional contract amendments.

### FISCAL IMPACT:

The allocations for Mono County for FY 2012-13 total \$300,884, which is included in the approved County Budget: Centers for Disease Control (CDC) Public Health Emergency Preparedness Program (PHEP) - \$108,039 (was \$107,001 during 2011-12); State General Fund (GF) Pandemic Influenza Planning - \$60,490 (was \$60,458 during 2011-12); Hospital Preparedness Program (HPP) - \$132,355 (plus \$7,000 pre-designated to ICEMA) (was \$139,141 during 2011-12).

**CONTACT NAME:** Lynda Salcido

**PHONE/EMAIL:** 760-924-1842 / lsalcido@mono.ca.gov

SUBMIT THE ORIGINAL DOCUMENT WITH  
ATTACHMENTS TO THE OFFICE OF

**SEND COPIES TO:**  
Lynda Salcido, Public Health Director

THE COUNTY ADMINISTRATOR  
**PRIOR TO 5:00 P.M. ON THE FRIDAY**  
**32 DAYS PRECEDING THE BOARD MEETING**

---

**MINUTE ORDER REQUESTED:**

☒ YES ☐ NO

---

**ATTACHMENTS:**

Click to download

-  [Attachments 12-13](#)
  -  [attachments 12-12](#)
  -  [signature page](#)
  -  [Staff Report](#)
- 

**History**

Time	Who	Approval
9/14/2012 7:34 AM	County Administrative Office	Yes
10/2/2012 4:06 PM	County Counsel	Yes
9/17/2012 7:44 AM	Finance	Yes

## Special Terms and Conditions

*(For federally funded service contracts or agreements and grant agreements)*

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition.

The terms "contract", "Contractor" and "Subcontractor" shall also mean, "agreement", "grant", "grant agreement", "Grantee" and "Subgrantee" respectively.

The terms "California Department of Public Health" and "CDPH" shall have the same meaning and refer to the California State agency that is a party to this Agreement.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this Agreement unless the provisions are removed by reference on the face of this Agreement, the provisions are superseded by an alternate provision appearing elsewhere in this Agreement, or the applicable conditions do not exist.

### Index of Special Terms and Conditions

1. Federal Equal Employment Opportunity Requirements	17. Human Subjects Use Requirements
2. Travel and Per Diem Reimbursement	18. Novation Requirements
3. Procurement Rules	19. Debarment and Suspension Certification
4. Equipment Ownership / Inventory / Disposition	20. Smoke-Free Workplace Certification
5. Subcontract Requirements	21. Covenant Against Contingent Fees
6. Income Restrictions	22. Payment Withholds
7. Audit and Record Retention	23. Performance Evaluation
8. Site Inspection	24. Officials Not to Benefit
9. Federal Contract Funds	25. Four-Digit Date Compliance
10. Intellectual Property Rights	26. Prohibited Use of State Funds for Software
11. Air or Water Pollution Requirements	27. Use of Small, Minority Owned and Women's Businesses
12. Prior Approval of Training Seminars, Workshops or Conferences	28. Alien Ineligibility Certification
13. Confidentiality of Information	29. Union Organizing
14. Documents, Publications, and Written Reports	30. Contract Uniformity (Fringe Benefit Allowability)
15. Dispute Resolution Process	31. Lobbying Restrictions and Disclosure Certification
16. Financial and Compliance Audit Requirements	



## 1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements entered into by the California Department of Public Health (CDPH) formerly known as California Department of Health Services (CDHS).)

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or CDPH, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment

Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- g. The Contractor will include the provisions of Paragraphs a through g in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or Section 503 of the Rehabilitation Act of 1973 or (38 U.S.C. 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or CDPH may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by CDPH, the Contractor may request in writing to CDPH, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

## 2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with agreement funds.)

Reimbursement for travel and per diem expenses from CDPH under this Agreement shall, unless otherwise specified in this Agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in CDPH's Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary. Exceptions to DPA rates may be approved by CDPH upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from CDPH. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

## 3. Procurement Rules

(Applicable to all agreements in which equipment, property, commodities and/or supplies are furnished by CDPH or expenses for said items are reimbursed with state or federal funds.)

### a. Equipment definitions

Wherever the term equipment /property is used, the following definitions shall apply:

- (1) **Major equipment/property:** A tangible or intangible item having a base unit cost of **\$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.
  - (2) **Minor equipment/property:** A tangible item having a base unit cost of **less than \$5,000** with a life expectancy of one (1) year or more and is either furnished by CDPH or the cost is reimbursed through this Agreement.
- b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.
  - c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this Agreement.
    - (1) Equipment purchases shall not exceed \$50,000 annually.

To secure equipment above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate CDPH Program Contract Manager, to have all remaining equipment purchased through CDPH's Purchasing Unit. The cost of equipment purchased by or through CDPH shall be deducted from the funds available in this Agreement. Contractor shall submit to the CDPH Program Contract Manager a list of equipment specifications for those items that the State must procure. The State may pay the vendor directly for such arranged equipment purchases and title to the equipment will remain with CDPH. The equipment will be delivered to the Contractor's address, as stated on the face of the Agreement, unless the Contractor notifies the CDPH Program Contract Manager, in writing, of an alternate delivery address.

- (2) All equipment purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.
- (3) Nonprofit organizations and commercial businesses, shall use a procurement system that meets the following standards:
  - (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
  - (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
  - (c) Procurements shall be conducted in a manner that provides for all of the following:
    - [1] Avoid purchasing unnecessary or duplicate items.
    - [2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
    - [3] Take positive steps to utilize small and veteran owned businesses.
- d. Unless waived or otherwise stipulated in writing by CDPH, prior written authorization from the appropriate CDPH Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by CDPH, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- e. In special circumstances, determined by CDPH (e.g., when CDPH has a need to monitor certain purchases, etc.), CDPH may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. CDPH reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that CDPH determines to be unnecessary in carrying out performance under this Agreement.
- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- h. CDPH may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of

inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

#### 4. Equipment Ownership / Inventory / Disposition

(Applicable to agreements in which equipment and/or property is furnished by CDPH and/or when said items are purchased or reimbursed with state or federal funds.)

- a. Wherever the terms equipment and/or property are used in Provision 4, the definitions in Provision 3, Paragraph a, shall apply.

Unless otherwise stipulated in this Agreement, all equipment and/or property that are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement shall be considered state equipment and the property of CDPH.

- (1) CDPH requires the reporting, tagging and annual inventorying of all equipment and/or property that is furnished by CDPH or purchased/reimbursed with funds provided through this Agreement.

Upon receipt of equipment and/or property, the Contractor shall report the receipt to the CDPH Program Contract Manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by CDPH's Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with CDPH Funds) does not accompany this Agreement, Contractor shall request a copy from the CDPH Program Contract Manager.

- (2) If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or property to the CDPH Program Contract Manager using a form or format designated by CDPH's Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of CDPH-Funded Equipment) does not accompany this Agreement, Contractor shall request a copy from the CDPH Program Contract Manager. Contractor shall:

- (a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
- (b) Submit the inventory report to CDPH according to the instructions appearing on the inventory form or issued by the CDPH Program Contract Manager.
- (c) Contact the CDPH Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by CDPH's Asset Management Unit.

- b. Title to state equipment and/or property shall not be affected by its incorporation or attachment to any property not owned by the State.
- c. Unless otherwise stipulated, CDPH shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.
- d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.

- (1) In administering this provision, CDPH may require the Contractor and/or Subcontractor to repair or replace, to CDPH's satisfaction, any damaged, lost or stolen state equipment and/or property. Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the CDPH Program Contract Manager.

- e. Unless otherwise stipulated by the program funding this Agreement, equipment and/or property purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, shall only be used for performance of this Agreement or another CDPH agreement.
- f. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Contractor shall provide a final inventory report of equipment and/or property to the CDPH Program Contract Manager and shall, at that time, query CDPH as to the requirements, including the manner and method, of returning state equipment and/or property to CDPH. Final disposition of equipment and/or property shall be at CDPH expense and according to CDPH instructions. Equipment and/or property disposition instructions shall be issued by CDPH immediately after receipt of the final inventory report. At the termination or conclusion of this Agreement, CDPH may at its discretion, authorize the continued use of state equipment and/or property for performance of work under a different CDPH agreement.

g. **Motor Vehicles**

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH under this Agreement.)

- (1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, within thirty (30) calendar days prior to the termination or end of this Agreement, the Contractor and/or Subcontractor shall return such vehicles to CDPH and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to CDPH.
- (2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this Agreement.
- (3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.
- (4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this Agreement or any extension period during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

**Automobile Liability Insurance**

- (a) The Contractor, by signing this Agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by CDPH under the terms of this Agreement, to the Contractor and/or Subcontractor.
- (b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the CDPH Program Contract Manager. The certificate of insurance shall identify the CDPH contract or agreement number for which the insurance applies.
- (c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this Agreement or until such time as the motor vehicle is returned to CDPH.
- (d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this

Agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.

- (e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:
  - [1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Public Health (CDPH)).
  - [2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this Agreement and any extension or continuation of this Agreement.
  - [3] The insurance carrier shall notify CDPH, in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to each agreement number for which the insurance was obtained.
- (f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by CDPH, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
- (g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, CDPH may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

## 5. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.
  - (1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.
  - (2) The State may identify the information needed to fulfill this requirement.
  - (3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
    - (a) A local governmental entity or the federal government,
    - (b) A State college or university from any State,
    - (c) A Joint Powers Authority,
    - (d) An auxiliary organization of a California State University or a California community college,
    - (e) A foundation organized to support the Board of Governors of the California Community Colleges,
    - (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
    - (g) Entities of any type that will provide subvention aid or direct services to the public,
    - (h) Entities and/or service types identified as exempt from advertising in State Contracting Manual 5.80. View this publication at the following Internet address:

<http://www.ols.dgs.ca.gov/Contract+Manual/Chapters4through6.htm>.

- b. CDPH reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.
  - (1) Upon receipt of a written notice from CDPH requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by CDPH.
- c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of CDPH. CDPH may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by CDPH.
- d. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by CDPH, make copies available for approval, inspection, or audit.
- e. CDPH assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.
- f. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.
- g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.
- h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from CDPH to the Contractor, to permit CDPH or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
- i. Unless otherwise stipulated in writing by CDPH, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.
- j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, and 31 or other numbered provisions herein that deemed applicable.

## 6. Income Restrictions

Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to CDPH, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by CDPH under this Agreement.

## 7. Audit and Record Retention

(Applicable to agreements in excess of \$10,000.)

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection,

audit, and reproduction.

- c. Contractor agrees that CDPH, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).
- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.
  - (1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
  - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.
- g. The Contractor shall, if applicable, comply with the Single Audit Act and the audit reporting requirements set forth in OMB Circular A-133.

## **8. Site Inspection**

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

## **9. Federal Contract Funds**

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

- a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
- b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this



Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.

- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- d. CDPH has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

## 10. Intellectual Property Rights

### a. Ownership

- (1) Except where CDPH has agreed in a signed writing to accept a license, CDPH shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.
- (2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
  - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.
- (3) In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of CDPH's Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of CDPH's Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of CDPH. **Except as otherwise set forth herein, neither the Contractor nor CDPH shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to CDPH, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDPH in the third-party's license agreement.
- (4) Contractor agrees to cooperate with CDPH in establishing or maintaining CDPH's exclusive rights in the Intellectual Property, and in assuring CDPH's sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to CDPH all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or CDPH and which result directly or indirectly from this Agreement or any subcontract.

- (5) Contractor further agrees to assist and cooperate with CDPH in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce CDPH's Intellectual Property rights and interests.

**b. Retained Rights / License Rights**

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Agreement. Contractor hereby grants to CDPH, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of CDPH or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

**c. Copyright**

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Paragraph a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to CDPH to any work product made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement.
- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement, shall include CDPH's notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2007, etc.], Department of Public Health. This material may not be reproduced or disseminated without prior written permission from the Department of Public Health." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

**d. Patent Rights**

With respect to inventions made by Contractor in the performance of this Agreement, which did not result from research and development specifically included in the Agreement's scope of work, Contractor hereby grants to CDPH a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the Agreement's scope of work, then Contractor agrees to assign to CDPH, without additional compensation, all its right, title and interest in and to such inventions and to assist CDPH in securing United States and foreign patents with respect thereto.

**e. Third-Party Intellectual Property**

Except as provided herein, Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining

CDPH's prior written approval; and (ii) granting to or obtaining for CDPH, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon the these terms is unattainable, and CDPH determines that the Intellectual Property should be included in or is required for Contractor's performance of this Agreement, Contractor shall obtain a license under terms acceptable to CDPH.

**f. Warranties**

(1) Contractor represents and warrants that:

- (a) It is free to enter into and fully perform this Agreement.
- (b) It has secured and will secure all rights and licenses necessary for its performance of this Agreement.
- (c) Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.
- (d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
- (e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
- (f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to CDPH in this Agreement.
- (g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.

(2) CDPH MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

**g. Intellectual Property Indemnity**

- (1) Contractor shall indemnify, defend and hold harmless CDPH and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the

representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDPH's use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDPH and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. CDPH reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDPH.

- (2) Should any Intellectual Property licensed by the Contractor to CDPH under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve CDPH's right to use the licensed Intellectual Property in accordance with this Agreement at no expense to CDPH. CDPH shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for CDPH to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, CDPH shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- (3) Contractor agrees that damages alone would be inadequate to compensate CDPH for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDPH would suffer irreparable harm in the event of such breach and agrees CDPH shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

#### **h. Federal Funding**

In any agreement funded in whole or in part by the federal government, CDPH may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the Agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

#### **i. Survival**

The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule.

### **11. Air or Water Pollution Requirements**

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

### **12. Prior Approval of Training Seminars, Workshops or Conferences**

Contractor shall obtain prior CDPH approval of the location, costs, dates, agenda, instructors, instructional

materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this Agreement and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this Agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

### **13. Confidentiality of Information**

- a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.
- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDPH Program Contract Manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than CDPH without prior written authorization from the CDPH Program Contract Manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.
- f. As deemed applicable by CDPH, this provision may be supplemented by additional terms and conditions covering personal health information (PHI) or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions will be outlined in one or more exhibits that will either be attached to this Agreement or incorporated into this Agreement by reference.

### **14. Documents, Publications and Written Reports**

(Applicable to agreements over \$5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contractual communications) prepared as a requirement of this Agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts or agreements and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds \$5,000.

### **15. Dispute Resolution Process**

- a. A Contractor grievance exists whenever there is a dispute arising from CDPH's action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDPH, the Contractor must seek resolution using the procedure outlined below.
  - (1) The Contractor should first informally discuss the problem with the CDPH Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.

- (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.
- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5, commencing with Section 251, California Code of Regulations.)
- c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the Agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.
- d. Unless otherwise stipulated in writing by CDPH, all dispute, grievance and/or appeal correspondence shall be directed to the CDPH Program Contract Manager.
- e. There are organizational differences within CDPH's funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDPH Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

## 16. Financial and Compliance Audit Requirements

- a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.
- b. Direct service contract means a contract or agreement for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code section 38020). Direct service contracts shall not include contracts, agreements, grants, or subventions to other governmental agencies or units of government nor contracts or agreements with regional centers or area agencies on aging (H&S Code section 38030).
- c. The Contractor, as indicated below, agrees to obtain one of the following audits:
- (1) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives \$25,000 or more from any State agency under a direct service contract or agreement; the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
- (2) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives less than \$25,000 per year from any State agency under a direct service contract or agreement; the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this Agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
- (3) If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$500,000 or more in

Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:

- (a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or
  - (b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.
- (4) If the Contractor submits to CDPH a report of an audit other than an OMB A-133 audit, the Contractor must also submit a certification indicating the Contractor has not expended \$500,000 or more in federal funds for the year covered by the audit report.
- d. Two copies of the audit report shall be delivered to the CDPH program funding this Agreement. The audit report must identify the Contractor's legal name and the number assigned to this Agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the CDPH Program Contract Manager shall forward the audit report to CDPH's Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.
  - e. The cost of the audits described herein may be included in the funding for this Agreement up to the proportionate amount this Agreement represents of the Contractor's total revenue. The CDPH program funding this Agreement must provide advance written approval of the specific amount allowed for said audit expenses.
  - f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.
  - g. Nothing in this Agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.
  - h. Nothing in this provision limits the authority of the State to make audits of this Agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.
  - i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.
  - j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.
  - k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

**17. Human Subjects Use Requirements**

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this Agreement, Contractor agrees that if any performance under this Agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

**18. Novation Requirements**

If the Contractor proposes any novation agreement, CDPH shall act upon the proposal within 60 days after receipt of the written proposal. CDPH may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, CDPH will initiate an amendment to this Agreement to formally implement the approved proposal.

**19. Debarment and Suspension Certification**

(Applicable to all agreements funded in part or whole with federal funds.)

- a. By signing this Agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
- b. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
  - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
  - (2) Have not within a three-year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
  - (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
  - (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
  - (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the CDPH Program Contract Manager.



- d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
- e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the CDPH may terminate this Agreement for cause or default.

## **20. Smoke-Free Workplace Certification**

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.
- b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- c. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.
- d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

## **21. Covenant Against Contingent Fees**

(Applicable only to federally funded agreements.)

The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, CDPH shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

## **22. Payment Withholds**

(Applicable only if a final report is required by this Agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this Agreement, CDPH may, at its discretion, withhold 10 percent (10%) of the face amount of the Agreement, 50 percent (50%) of the final invoice, or \$3,000 whichever is greater, until CDPH receives a final report that meets the terms, conditions and/or scope of work requirements of this Agreement.

## **23. Performance Evaluation**

(Not applicable to grant agreements.)

CDPH may, at its discretion, evaluate the performance of the Contractor at the conclusion of this Agreement.

If performance is evaluated, the evaluation shall not be a public record and shall remain on file with CDPH. Negative performance evaluations may be considered by CDPH prior to making future contract awards.

#### **24. Officials Not to Benefit**

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Agreement if made with a corporation for its general benefits.

#### **25. Four-Digit Date Compliance**

(Applicable to agreements in which Information Technology (IT) services are provided to CDPH or if IT equipment is procured.)

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

#### **26. Prohibited Use of State Funds for Software**

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

#### **27. Use of Small, Minority Owned and Women's Businesses**

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

- (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

#### **28. Alien Ineligibility Certification**

(Applicable to sole proprietors entering federally funded agreements.)

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

## **29. Union Organizing**

(Applicable only to grant agreements.)

Grantee, by signing this Agreement, hereby acknowledges the applicability of Government Code Sections 16645 through 16649 to this Agreement. Furthermore, Grantee, by signing this Agreement, hereby certifies that:

- a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.
- b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.
- c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.
- d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

## **30. Contract Uniformity (Fringe Benefit Allowability)**

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, CDPH sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

- a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- b. As used herein, fringe benefits do not include:
  - (1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
  - (2) Director's and executive committee member's fees.
  - (3) Incentive awards and/or bonus incentive pay.
  - (4) Allowances for off-site pay.
  - (5) Location allowances.
  - (6) Hardship pay.
  - (7) Cost-of-living differentials
- c. Specific allowable fringe benefits include:
  - (1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- d. To be an allowable fringe benefit, the cost must meet the following criteria:
  - (1) Be necessary and reasonable for the performance of the Agreement.
  - (2) Be determined in accordance with generally accepted accounting principles.

(3) Be consistent with policies that apply uniformly to all activities of the Contractor.

e. Contractor agrees that all fringe benefits shall be at actual cost.

f. Earned/Accrued Compensation

(1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.

(2) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision f (3)(b) for an example.

(3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) **Example No. 1:**

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

(b) **Example No. 2:**

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

(c) **Example No. 3:**

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to CDPH, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

### 31. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded agreements in excess of \$100,000 per Section 1352 of the 31, U.S.C.)

a. Certification and Disclosure Requirements

(1) Each person (or recipient) who requests or receives a contract or agreement, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.

(2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract, or grant or any extension or amendment of that contract, or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.

- (3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:
- (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
  - (b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
  - (c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.
- (4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract or agreement, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or agreement, or grant shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to CDPH Program Contract Manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan, or cooperative agreement.

**STATE OF CALIFORNIA**  
**CALIFORNIA DEPARTMENT OF PUBLIC HEALTH**  
**CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S.C., any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Name of Contractor

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Printed Name of Person Signing for Contractor

---

Contract / Grant Number

---

Signature of Person Signing for Contractor

---

Date

---

Title

After execution by or on behalf of Contractor, please return to:

California Department of Public Health

CDPH reserves the right to notify the contractor in writing of an alternate submission address.

## Attachment 2

**CERTIFICATION REGARDING LOBBYING**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure)

Approved by OMB  
0348-0046

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: Year _____ quarter _____ date of last report _____.
4. Name and Address of Reporting Entity:  <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier ____, if known:  Congressional District, If known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:   Congressional District, If known:	
6. Federal Department/Agency	7. Federal Program Name/Description:  CDFA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known:  \$	
10.a. Name and Address of Lobbying Registrant (If individual, last name, first name, MI):	b. Individuals Performing Services (including address if different from 10a. (Last name, First name, MI):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. required disclosure shall be subject to a not more than \$100,000 for each such failure.	Signature: _____	
	Print Name: _____	
	Title: _____	
	Telephone No.: _____ Date: _____	
<b>Federal Use Only</b>		Authorized for Local Reproduction Standard Form-LLL (Rev. 7-97)

**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.



**EXHIBIT E**

**2012-13 Public Health Emergency Preparedness (PHEP), General Fund Pandemic Influenza (GF Pan Flu) and Hospital Preparedness Program (HPP) Funding**

**NON-SUPPLANTATION CERTIFICATION FORM**

**Mono County Health Department**

(County Name of Local Health Department and Local HPP Entity)

I hereby certify that the above-named Local Health Department (LHD) and Local HPP Entity shall not use funds allocated by the California Department of Public Health (CDPH) to supplant funding for existing levels of service and that funds shall only be used for the purposes specified in the Fiscal Year (FY) 2012-2013 PHEP, GF Pan Flu, and HPP Funding Agreement as approved by the CDPH.

I further certify that funds received shall be deposited in an interest-bearing Local Public Health Preparedness Trust Fund as per the Health and Safety Code, Section 101317 and expended only for the purposes stated in the LHDs and Local HPP Entity's Grant Application Work Plan and Budget, as approved by the CDPH.

**Chairperson, Board of Supervisors, Mayor of a City or designee:**

Signature:
Printed Name:
Title:
Phone:
Date:

Please return the original signed certification with your FY 2012-2013 PHEP, GF Pan Flu and HPP Funding Agreement Funding Agreement to:

California Department Public Health  
Emergency Preparedness Office  
Attn: Local Management Unit  
MS 7002  
P.O. Box 997377  
Sacramento, CA 95899-7377

**2012-13 Public Health Emergency Preparedness (PHEP), General Fund Pandemic Influenza (GF Pan Flu) and Hospital Preparedness Program (HPP) Funding**

**AGREEMENT**

**PHEP and HPP Funding Opportunity Number CDC-RFA-TP12-1201  
GF Pan Flu Funding Authority – 2012 Budget Act, Chapter 21**

1. This Agreement is entered into between the California Department of Public Health, hereinafter referred to as “CDPH” and the County of Mono, hereinafter referred to as “Local Health Department (LHD)” and “Local HPP Entity”.
2. The term of this Agreement is July 1, 2012 through June 30, 2013.
3. The maximum amount payable under this Agreement is \$300,884, and is allocated as follows:
  - \$108,039, PHEP Base Allocation (7/1/12 – 6/30/13)
  - \$0, Laboratory Allocation (7/1/12 – 6/30/13)
  - \$0, Cities Readiness Initiative Allocation (7/1/12 – 6/30/13)
  - \$132,355, HPP Allocation (7/1/12 – 6/30/13)
  - \$60,490, GF Pan Flu Allocation (7/1/12 – 6/30/13)
4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Scope of Work	03 Pages
Exhibit B – Budget Detail and Budget Provisions	04 Pages
Exhibit B – Attachment 1, Criteria for Payments	01 Page
Exhibit C – Additional Provisions	02 Pages
Exhibit D(F) – Special Terms and Conditions (Federal)	25 Pages
Notwithstanding provisions 3, 4, 6, 12, 13, 17, 22, 23, 27, and 30 which do not apply to this Agreement.	
Exhibit E – Non-Supplantation Certification Form	01 Page

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

<b>CONTRACTOR</b>	
CONTRACTOR'S NAME  County of Mono	
BY ( <i>Authorized Signature</i> )	DATE SIGNED (Do not type -signor must date)
PRINTED NAME AND TITLE OF PERSON SIGNING Lynda Salcido, Health Director	
ADDRESS Mono County Health Department, POB 3329, 437 Old Mammoth Rd., Ste Q, Mammoth Lakes, CA 93546	
<b>STATE OF CALIFORNIA</b>	
AGENCY NAME  California Department of Public Health	
BY ( <i>Authorized Signature</i> )	DATE SIGNED
ADDRESS  1615 Capitol Avenue, MS 7002, P.O. Box 997377, Sacramento, CA 95899-7377	

# COUNTY of MONO

HEALTH DEPARTMENT

P.O. BOX 3329

MAMMOTH LAKES, CA 93546

Public Health (760) 924-1830

Fax (760) 924-1831

Environmental Health (760) 924-1800

Fax (760) 924 1801



Oct 9, 2012

**To:** Honorable Board of Supervisors

**From:** Lynda Salcido, Public Health Director

**Subject:** 2012-13 Public Health Emergency Preparedness Agreements

**Recommended Action:** The Board of Supervisors (1) Approve and authorize the Chair's signature on the NON-SUPPLANTATION CERTIFICATION FORM for the AGREEMENT outlined below, and (2) Authorize the Public Health Director to sign the 2012-13 CDC Public Health Emergency Preparedness (PHEP), State General Fund (GF) Pandemic Influenza, HHS Hospital Preparedness Program (HPP) Funding AGREEMENT and CERTIFICATION REGARDING LOBBYING, and any additional contract amendments.

**Discussion:** In October, 2003, the Board of Supervisors approved the first Public Health Preparedness and Response to Bioterrorism plan for FY 2002/3 (minute order 02-219). This program has been funded ever since by Federal CDC money, with 70% of the total funds being passed to the locals through the California Department of Public Health (CDPH).

The following agreements are being funded this year:

- Centers for Disease Control (CDC) Public Health Emergency Preparedness Program (PHEP) - \$108,039 (was \$107,001 during 2011-12)
- State General Fund (GF) Pandemic Influenza Planning - \$60,490 (was \$60,458 during 2011-12)
- Hospital Preparedness Program (HPP) - \$132,355 (plus \$7,000 pre-designated to ICEMA) (was \$139,141 during 2011-12)

This agreement provides funds for Public Health to address planning, preparedness, response, mitigation, and recovery for all hazards and events that potentially impact the health of the public. The Work Plans are attached.

**Fiscal Impact/ Budget Projections:** The allocations for Mono County for FY 2012-13 total \$300,884, which is included in the approved County Budget. The amount for 2011-12 was \$306,600, and for 2010-11 was \$334,307.

For questions regarding this item, please call Lynda Salcido at (760) 924-1842.

Submitted by: \_\_\_\_\_  
Lynda Salcido, Public Health Director Date

**Richard O. Johnson, M.D., MPH, Public Health Officer**

Contact

Office: (760) 924-1828

Fax: (760) 924-1831

E-Mail: rjohnson@mono.ca.gov

24/7/365 Emergency Contact

Cell phone : 760-914-0496



OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

<b>MEETING DATE</b>	October 9, 2012	<b>DEPARTMENT</b>	County Administrative Office
<b>ADDITIONAL DEPARTMENTS</b>			
<b>TIME REQUIRED</b>	15 minutes	<b>PERSONS APPEARING BEFORE THE BOARD</b>	Jim Arkens
<b>SUBJECT</b>	CAO - Director of Human Resources		

### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Presentation by Jim Arkens regarding restructuring CAO's office.

### RECOMMENDED ACTION:

Authorize recruiting and hiring a Director of Human Resources. Provide any desired direction to staff.

### FISCAL IMPACT:

Approximately \$65,000 annually.

\*\*\*\*\*

### LUNCH

\*\*\*\*\*

**OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD** on items of public interest that are within the subject matter jurisdiction of the Board. (Speakers may be limited in speaking time dependent upon the press of business and number of persons wishing to address the Board.)

**CONTACT NAME:** Jim Arkens

**PHONE/EMAIL:** 760-932-5414 / jarkens@mono.ca.gov

SUBMIT THE ORIGINAL DOCUMENT WITH  
ATTACHMENTS TO THE OFFICE OF  
THE COUNTY ADMINISTRATOR  
**PRIOR TO 5:00 P.M. ON THE FRIDAY**  
**32 DAYS PRECEDING THE BOARD MEETING**

### SEND COPIES TO:

---

**MINUTE ORDER REQUESTED:**

☐ YES ☒ NO

---

**ATTACHMENTS:**

Click to download

 [Staff Report - CAO](#)

 [Org Chart Current](#)

 [Org Chart Revised](#)

---

**History**

Time	Who	Approval
9/27/2012 8:04 AM	County Administrative Office	Yes
10/2/2012 4:08 PM	County Counsel	Yes
9/27/2012 11:34 AM	Finance	Yes

## **Staff Report**

TO: Mono County Board of Supervisors

FROM: Jim Arkens, CAO and Director of Human Resources

DATE: September 27, 2012

SUBJECT: Reorganization of the CAO's office

### **DISCUSSION:**

Since the promotion of the Director of Human Resources to the role of CAO, the CAO has been doing both functions. The Board has expressed the desire to have Director of Human Resources reporting to the CAO. With the upcoming retirement of a member of the CAO's team, the desire of the CAO is to reorganize the department and hire a full-time Director of Human Resources.

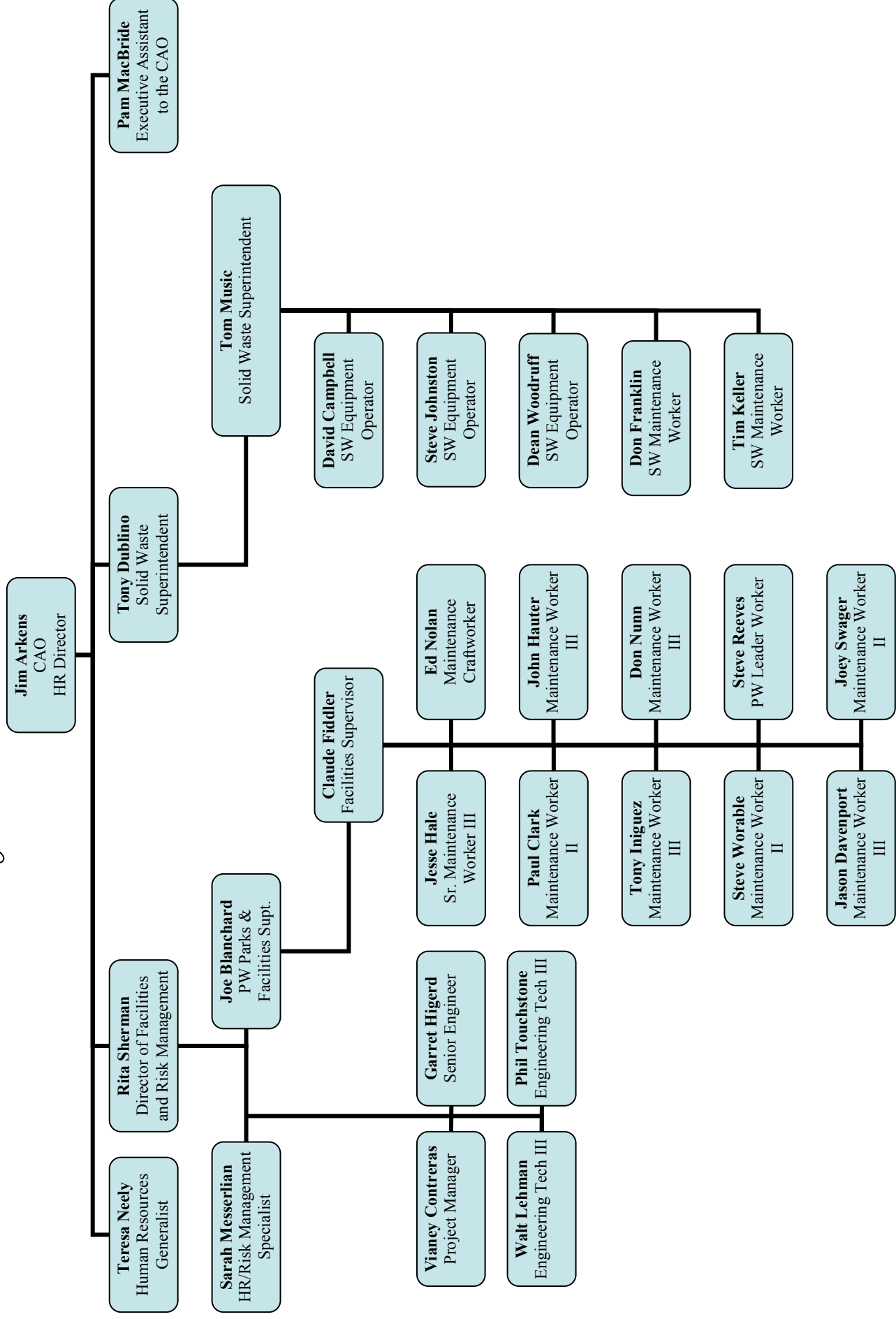
### **FISCAL IMPACT:**

The desire of the CAO would to retain the same number of positions but hire a Director of Human Resources to replace the upcoming retirement. Estimate cost difference is approximately \$65,000 annually.

### **RECOMMENDATION:**

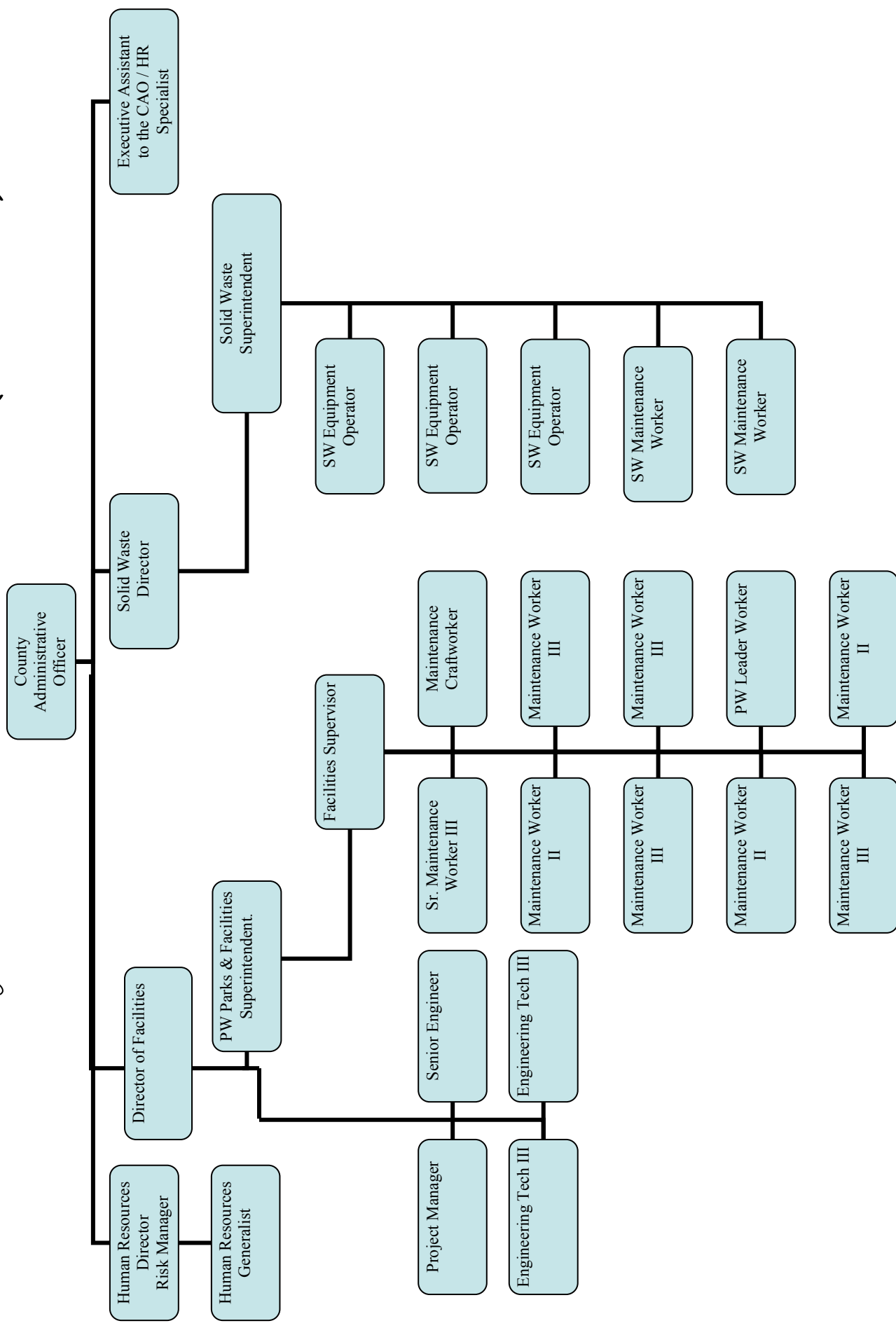
The Board of Supervisors recommends that the CAO can proceed with recruitment and hiring a new Director of Human Resources.

# County Administrative Office





# County Administrative Office (Revised)





OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

**MEETING DATE** October 9, 2012

**DEPARTMENT** Public Works - Engineering  
Division

**ADDITIONAL  
DEPARTMENTS**

**TIME  
REQUIRED** 10 minutes

**PERSONS  
APPEARING  
BEFORE THE  
BOARD** Garrett Higerd

**SUBJECT** Authorization to Bid for the  
School Street Plaza Project

### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

This project will construct a pedestrian plaza with landscaping and benches along the east side of School Street from US 395 to Bryant Street adjacent to the historic county courthouse in the community of Bridgeport.

The project plans, which are too large to attach with this item, may be viewed as a separate link by going to:  
[www.monocounty.ca.gov](http://www.monocounty.ca.gov).

### RECOMMENDED ACTION:

Approve bid package, including the project manual and project plans, for the School Street Plaza Project. Authorize the Public Works Department to advertise an Invitation for Bids and to issue the project for bid. Provide any desired direction to staff.

### FISCAL IMPACT:

\$225,000 of Transportation Enhancement Activities (TEA) funds. No impact to General Fund.

**CONTACT NAME:** Garrett Higerd

**PHONE/EMAIL:** 760.932.5457 / ghigerd@mono.ca.gov

SUBMIT THE ORIGINAL DOCUMENT WITH  
ATTACHMENTS TO THE OFFICE OF  
THE COUNTY ADMINISTRATOR  
**PRIOR TO 5:00 P.M. ON THE FRIDAY  
32 DAYS PRECEDING THE BOARD MEETING**

### SEND COPIES TO:

---




**MINUTE ORDER REQUESTED:**

☒ YES ☐ NO

---

**ATTACHMENTS:**

Click to download

-  [Staff Report](#)
  -  [EXHIBIT A - NEPA-CEQA Docs](#)
  -  [Project Manual](#)
- 

**History**

Time	Who	Approval
9/24/2012 8:51 AM	County Administrative Office	Yes
10/3/2012 12:13 PM	County Counsel	Yes
9/20/2012 10:57 AM	Finance	Yes



## MONO COUNTY DEPARTMENT OF PUBLIC WORKS

POST OFFICE BOX 457 • 74 NORTH SCHOOL STREET • BRIDGEPORT, CALIFORNIA 93517  
760.932.5440 • Fax 760.932.5441 • [monopw@mono.ca.gov](mailto:monopw@mono.ca.gov) • [www.monocounty.ca.gov](http://www.monocounty.ca.gov)

**Date:** October 9, 2012  
**To:** Honorable Chair and Members of the Board of Supervisors  
**From:** Garrett Higerd, Senior Engineer  
**Re:** Authorization to Bid for the School Street Plaza Project

### Recommended Action:

Approve bid package, including the project manual and project plans, for the School Street Plaza Project. Authorize the Public Works Department to advertise an Invitation for Bids and to issue the project for bid. Provide any desired direction to staff.

### Fiscal Impact:

This project is funded with federal and state grants. On September 11, 2012 the Federal Highways Administration (FHWA) and Caltrans approved the use of \$225,000 of Transportation Enhancement Activities (TEA) funds for the construction phase of this project. Contractor payments will not impact the General Fund.

### Background:

This project was first programmed for use of Transportation Enhancement Activities (TEA) funds by the Mono Local Transportation Commission in the 2006 Regional Transportation Improvement Plan (RTIP). It consists of constructing a pedestrian plaza with landscaping and benches along the east side of School Street from US 395 to Bryant Street adjacent to the historic county courthouse in the community of Bridgeport. The project manual (contract documents, special provisions, technical specifications, etc.) and the project plans, which show the proposed project, are attached to this staff report for Board reference.

Approval of the bid documents at this meeting will allow advertising to take place and completion of the project during the 2013 construction season. This project is categorically exempt under CEQA and categorically excluded under NEPA. The Environmental documents are attached as Exhibit A.

Please contact me at 760.932.5457 or by email at [ghigerd@mono.ca.gov](mailto:ghigerd@mono.ca.gov) if you have any questions regarding this matter.

Respectfully submitted,

A handwritten signature in blue ink that reads "Garrett Higerd".

Garrett Higerd, PE  
Senior Engineer

Attachments: Exhibit A – Notice of Exemption  
Project Manual  
Project Plans

## CATEGORICAL EXEMPTION/ CATEGORICAL EXCLUSION DETERMINATION FORM

II09-MNO-LSR

LSR

N/A

RPSTPLE-5947 (041)

Dist.-Co.-Rte. (or Local Agency)

P.M/P.M.

E.A. (State project)

Federal-Aid Project No. (Local project)/ Proj. No.

**PROJECT DESCRIPTION:**

(Briefly describe project, purpose, location, limits, right-of-way requirements, and activities involved.)

*Enter project description in this box. Use Continuation Sheet, if necessary*

Mono County Public Works is proposing to widen School Street to include diagonal parking and a pedestrian plaza. Improvements will include landscaping and benches. Construction will include the demolition of the existing sidewalk, planter, and juniper hedge. Sidewalk, planters, planting areas, and benches will be constructed. Staging for the project will occur within the confines of Mono County's ROW within the project area and this area, School Street between US 395 and Bryant Street will be closed for the duration of the project. The project will not include any modifications, changes, or effects to the historic nature of the Mono County Courthouse or the Courthouse's fence.

**CEQA COMPLIANCE** (for State Projects only)

Based on an examination of this proposal, supporting information, and the following statements (See 14 CCR 15300 et seq.):

- If this project falls within exempt class 3, 4, 5, 6 or 11, it does not impact an environmental resource of hazardous or critical concern where designated, precisely mapped and officially adopted pursuant to law.
- There will not be a significant cumulative effect by this project and successive projects of the same type in the same place, over time.
- There is not a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances.
- This project does not damage a scenic resource within an officially designated state scenic highway.
- This project is not located on a site included on any list compiled pursuant to Govt. Code § 65962.5 ("Cortese List").
- This project does not cause a substantial adverse change in the significance of a historical resource.

**CALTRANS CEQA DETERMINATION** (Check one)☐ Exempt by Statute. (PRC 21080[b]; 14 CCR 15260 et seq.)

Based on an examination of this proposal, supporting information, and the above statements, the project is:

☐ Categorically Exempt. Class \_\_\_\_\_. (PRC 21084; 14 CCR 15300 et seq.)☐ Categorically Exempt. General Rule exemption. [This project does not fall within an exempt class, but it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment (CCR 15061[b][3])]

Print Name: Environmental Branch Chief

Print Name: Project Manager/DLA Engineer

Signature

Date

Signature

Date

**NEPA COMPLIANCE**

In accordance with 23 CFR 771.117, and based on an examination of this proposal and supporting information, the State has determined that this project:

- does not individually or cumulatively have a significant impact on the environment as defined by NEPA and is excluded from the requirements to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS), and
- has considered unusual circumstances pursuant to 23 CFR 771.117(b)  
(<http://www.fhwa.dot.gov/hep/23cfr771.htm> - sec. 771.117).

In non-attainment or maintenance areas for Federal air quality standards, the project is either exempt from all conformity requirements, or conformity analysis has been completed pursuant to 42 USC 7506(c) and 40 CFR 93.

**CALTRANS NEPA DETERMINATION** (Check one)☒ Section 6004: The State has been assigned, and hereby certifies that it has carried out, the responsibility to make this determination pursuant to Chapter 3 of Title 23, United States Code, Section 326 and a Memorandum of Understanding (MOU) dated June 7, 2010, executed between the FHWA and the State. The State has determined that the project is a Categorical Exclusion under:☒ 23 CFR 771.117(c): activity (c)(3) (7)☐ 23 CFR 771.117(d): activity (d) (\_\_\_\_)☐ Activity \_\_\_\_ listed in the MOU between FHWA and the State☐ Section 6005: Based on an examination of this proposal and supporting information, the State has determined that the project is a CE under Section 6005 of 23 U.S.C. 327.

Kelly Hobbs

Forest Becket

Print Name: Environmental Branch Chief

Print Name: Project Manager/DLA Engineer

Signature

Date

Signature

Date

Briefly list environmental commitments on continuation sheet. Reference additional information, as appropriate (e.g., air quality studies, documentation of conformity exemption, FHWA conformity determination if Section 6005 project; §106 commitments; §4(f); §7 results; Wetlands Finding; Floodplain Finding; additional studies; and design conditions). Revised June 7, 2010

# EXHIBIT A

09-MNO-LSR	LSR	N/A	RPSTPLE-5947 (041)
Dist.-Co.-Rte. (or Local Agency)	P.M/P.M.	E.A. (State project)	Federal-Aid Project No. (Local project)/ Proj. No.

Continued from page 1: Environmental Commitments  
#1) Re-design of the sidewalk in the southwest corner of the parcel will be done so that the southern fence and corner post in that area remain unaltered.  
#2) Landscape elements and site furniture should be of a design compatible with the historic material and period of the 1881 courthouse.



EXHIBIT A

FILED

APR 14 2011

LYNDA ROBERTS  
MONO COUNTY CLERK

**COUNTY OF MONO**  
**DEPARTMENT OF PUBLIC WORKS**

RECORDER USE ONLY

MC-11-09

**NOTICE OF EXEMPTION**

To: Mono County Clerk  
Post Office Box 537  
Bridgeport, California 93517

From: Mono County Department of Public Works  
Post Office Box 457  
Bridgeport, California 93517

Subject: Filing of Notice of Exemption pursuant to Title 14 of the California of Regulations §15062.

**Project Information**

**Project Title:** School Street Plaza

**Location:** School Street between US 395 and Bryant Street

**Community:** Bridgeport

**County:** Mono

**Proponent:** Mono County Department of Public Works

**Description:** The project will widen School Street to include diagonal parking and a pedestrian plaza. Improvements will include landscaping and benches. Construction will include the demolition of the existing sidewalk, planter, and juniper hedge. Sidewalk, planters, planting areas, and benches will be constructed. Staging for the project will occur within the confines of Mono County's ROW within the project area. School Street between US 395 and Bryant Street will be closed for the duration of the project. The project will occur on the west side of the historic Mono County Courthouse, and will not include any modifications, changes, or effects to the historic nature of the Courthouse or the Courthouse fence.

This is to advise that the Mono County Department of Public Works has approved the above-described project on December 14, 2010, and has determined that the project is exempt from CEQA pursuant to the following section(s) of the California Public Resources Code and Title 14 of the California Code of Regulations:

- ☐ Ministerial [Sec. 21080(b)(1); 15268];
- ☐ Declared Emergency [Sec. 21080(b)(3); 15269(a)];
- ☐ Emergency Project [Sec. 21080(b)(4); 15269(b)(c)];
- ☒ Categorical Exemption: Type 2(b), Section 15302;
- ☐ Statutory Exemption: State Code No. \_\_\_\_\_;

Reason(s) Project is Exempt: The project will alter the current configuration of parking, sidewalk, and landscaping along the eastern side of School Street to increase available parking and make the area more pedestrian accessible.

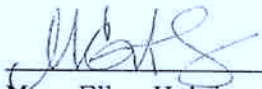
Posted thru 6/14/2011  
Mono County Clerk-Recorder



# EXHIBIT A

**Contact:** Mary Ellen Halpin  
**e-mail:** mhalpin@mono.ca.gov

**Phone:** (760) 932-5444  
**Fax:** (760) 932-5441

**Signature:**   
**Name:** Mary Ellen Halpin

**Date:** 4.14.11  
**Title:** Project Manager



**PROJECT MANUAL**  
FOR  
***SCHOOL STREET PLAZA PROJECT***  
***Project No. RPSTPLE-5947(041)***  
***MONO COUNTY, CALIFORNIA***



***Invitation for Bids***  
***Instructions to Bidders***  
***Proposal Forms***  
***Standard Agreement***  
***Special Provisions***  
***Technical Specifications***  
***Federal Provisions***  
***Construction Quality Assurance Program***

**CONTRACTING AGENCY:**

COUNTY OF MONO  
Department of Public Works  
Post Office Box 457  
74 North School Street  
Bridgeport, California 93517  
760.932.5440

**PRE-BID CONFERENCE:**

11:00 am, Thursday, October 25, 2012  
County of Mono  
Department of Public Works

**BID SUBMITTAL DEADLINE:**

4:30 pm, Thursday, November 8, 2012  
Clerk of the Board of Supervisors  
74 North School Street / P.O. Box 715  
Bridgeport, California 93517

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**CERTIFICATION PAGE**

*SCHOOL STREET PLAZA PROJECT*  
*Project No. RPSTPLE-5947(041)*

Project Manual and Technical Specifications Prepared for:

County of Mono  
Department of Public Works  
74 North School Street  
Bridgeport, California 93517

Prepared by:

---

Christian N. Heinbaugh, PE

Nichols Consulting Engineers, Chtd.  
1885 S Arlington Ave, Suite 111  
Reno, NV 89509  
(775) 329-4955

Date:\_\_\_\_\_

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*Project No. RPSTPLE-5947(041)*

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**SECTION I**

**INVITATION FOR BIDS AND PROPOSAL**





## **INVITATION FOR BIDS**

### ***SCHOOL STREET PLAZA PROJECT Project No. RPSTPLE-5947(041)***

Notice is hereby given that the Mono County Department of Public Works calls for bids from qualified General Engineering and Earthwork and Paving contractors for the School Street Plaza Project. The major work items of this Project are: removal of existing sidewalk, curb, gutter, asphalt and landscape and placement of new sidewalk, curb and gutter, pedestrian ramps, electrical installation, and landscaping, all of which is further described in the Project Manual.

The Project Manual and Project Plans provide in detail the County's requirements for the project. Project documents are available by contacting the Mono County Department of Public Works in person at 74 N. School Street in Bridgeport, California, by telephone at 760.932.5440, by regular mail at P.O. Box 457, Bridgeport, California, 93517, or by email to [monopw@mono.ca.gov](mailto:monopw@mono.ca.gov). Project documents may also be viewed and/or obtained on-line by following the links on the Mono County website at [www.monocounty.ca.gov](http://www.monocounty.ca.gov). Please note that if you choose to download the bid package from our website, be sure to contact us to be added to the planholders list; otherwise, you may not be notified of bid addenda. Up to two sets of the Project Manual and Project Plans will be provided to each bidder at no charge. Additional sets may be downloaded from the County website or they may be purchased for a non-refundable fee of \$50 per set. Checks should be made payable to "County of Mono."

Each bid shall be made on the proposal forms contained in the Project Manual and must be accompanied by bid security in the amount of not less than 10 percent of the total bid.

A **mandatory** pre-bid conference and site visit will be held at the offices of the Mono County Department of Public Works, 74 North School Street, Bridgeport, California. The meeting is scheduled for 11:00 am, Thursday, October 25, 2012.

An Annual Anticipated Disadvantaged Business Enterprise (DBE) Participation Level of 3.20% has been established by Mono County for this project.

Bids may be mailed to the Clerk of the Board of Supervisors, P.O. Box 715, Bridgeport, California, 93517, or delivered to the office of the Clerk of the Board of Supervisors, 74 North School Street, Bridgeport, California. In either event, to be considered, bids must be **received** by the Clerk of the Board of Supervisors no later than 4:30 pm, Thursday, November 8, 2012. As soon thereafter as is practicable, all bids received by the Clerk by the bid submission deadline will be taken to the Department of Public Works conference room, located on the second floor of Courthouse Annex 1, 74 North School Street, Bridgeport, and there publicly opened, read aloud, and recorded. All interested parties are invited to attend.



Garrett Higerd, Senior Engineer  
Mono County Department of Public Works

## **INSTRUCTIONS TO BIDDERS**

### *SCHOOL STREET PLAZA PROJECT*

*Project No. RPSTPLE-5947(041)*

#### **1. SECURING BID DOCUMENTS**

The Project Manual (Invitation for Bids, Instructions to Bidders, Proposal Forms, Standard Agreement, Special Provisions, Technical Specifications and Federal Provisions) and Project Plans, all of which comprise the Contract Documents, provide in detail the County's requirements for the project. Contract documents are available by contacting the Mono County Department of Public Works in person at 74 N. School Street in Bridgeport, California, by telephone at 760.932.5440, by regular mail at P.O. Box 457, Bridgeport, California, 93517, or by email to [monopw@mono.ca.gov](mailto:monopw@mono.ca.gov). Project documents may also be viewed and/or obtained on-line by following the links on the Mono County website at [www.monocounty.ca.gov](http://www.monocounty.ca.gov). Please note that if you choose to download the bid package from our website, be sure to contact us to be added to the planholders list; otherwise, you may not be notified of bid addenda. Up to two sets of the Project Manual and Project Plans will be provided to each bidder at no charge. Additional sets may be downloaded from the County website or they may be purchased for a non-refundable fee of \$50 per set. Checks should be made payable to "County of Mono." Allow three to five business days for the printing of additional sets.

#### **2. PRE-BID CONFERENCE**

A **mandatory** pre-bid conference and site visit will be held at the County of Mono Department of Public Works, 74 North School Street, Bridgeport, California. The meeting is scheduled for 11:00 am, Thursday, October 25, 2012. Should the Department of Public Works determine there is a need to reschedule the pre-bid conference based on severe weather and/or road conditions, all plan-holders will be notified in advance. Bids received from non-attendees will be deemed non-responsive.

#### **3. INTERPRETATION OF PROJECT PLANS AND SPECIFICATIONS**

- A. For information not provided in the Project Manual or the Project Plans, the bidder shall refer to the Standard Plans or Standard Specifications.
- B. Should a bidder find discrepancies in, ambiguities, or omissions from, the Project Manual and Project Plans, or should there be doubt as to their meaning, he or she shall at once notify the Public Works Director and, should it be found necessary, a written addendum or bulletin of instructions will be sent to all plan-holders and posted online. Failure to raise such concerns prior to the submission of a bid will be deemed to waive such issues following the award of a contract.
- C. No representative of the County or its agent, or anyone else, is authorized to give oral instructions, interpretations, or explanations of the Project Manual and Project Plans, and a submission of a bid constitutes agreement by the bidder that he or she has placed no reliance on any such oral explanation or interpretation. Oral instructions may, however, be given by the County or its agent upon inquiry by a bidder to direct the bidder's attention to the specific provisions of the Project Manual or Project Plans that cover the subject of the inquiry.

#### **4. APPROXIMATE QUANTITIES**

The quantities given in the Bid Schedule are approximate only, being given as a basis for the comparison of bids. The County does not, expressly or by implication, agree that the actual amount of work will correspond therewith, and reserves the right to increase or decrease the amount of any class or portion of the work, or to omit portions of the work, as may be deemed necessary.

---

## 5. PROPOSALS

- A. For bids to receive consideration, they shall be made in accordance with the Invitation for Bids, the Proposal Forms, and these Instructions to Bidders. All bids shall be submitted on the unaltered Proposal Forms contained in the Project Manual with all items completely filled out with typewritten or legible handwritten responses. Signatures of all persons signing shall be in longhand. The completed Bid Proposal forms shall be without interlineations, alterations, or erasures.
- B. ALL BID SUBMITTALS SHALL REMAIN BOUND TOGETHER. Proposal Forms (contained herein on pages BD-1 through BD-39) may be separated from the Project Manual for purposes of bid submittal. For convenience, a separate additional copy of the Proposal Forms is furnished to all plan-holders.
- C. Bids shall not contain any recapitulation of the work to be done. Alternative proposals will not be considered unless called for. No oral, telegraphic, or telephonic proposals or modifications will be considered. Unauthorized conditions, limitations, or provisions attached to a bid will render it informal and may cause its rejection.
- D. Bidders are advised that there is limited funding available for this project. Consequently, the County has developed a base project and three additive alternatives. After bid opening, the County will determine available funding and accordingly select a project (with or without one or more additive alternatives) for construction; and, if it chooses to do so, will award a contract for construction of that project. For purposes of comparing bids and determining the apparent low bidder, however, the County will use the amount entered as the "Bidder's Grand Total" on page BD-6.
- E. Each bid is to be in accordance with the Contract Documents. Before submitting a bid, bidders shall carefully read this Project Manual, including the form of the Standard Agreement, and the Project Plans, and inform themselves fully as to all existing conditions and limitations, which must include a visit to the site of the work, and shall include in the bid a sum to cover the cost of all work contemplated in the Contract Documents. The submission of a bid shall be conclusive evidence that the Bidder has reviewed and is satisfied as to the conditions to be encountered, as to the character, quality, and quantities of work to be performed and the materials to be furnished, and as to the requirements of the Project Manual and Project Plans. The submission of a bid shall also be conclusive evidence that the person signing the Proposal Form is authorized to bind or obligate the bidder to any agreement.
- F. Bidder's attention is directed to the insurance and bond requirements described below and as provided in the Standard Agreement. It is highly recommended that the bidders confer with their respective insurance carriers or brokers to determine the availability of surety bonds, insurance certificates, and endorsements as prescribed and provided herein in advance of bid submission. If an apparent low bidder fails to comply strictly with the bonding and insurance requirements, that bidder may be disqualified from award of the contract and its bid security may be forfeited. The cost of such bonds and insurance shall be included in the Bidder's bid.
- G. Each Bidder shall inform itself of, and the Bidder awarded the contract shall comply with, all federal, state, and local laws, statutes and ordinances relative to the execution of the work. This requirement includes, but is not limited to, applicable regulations concerning employment of labor, fair labor practices, equal opportunity, drug-free workplace, construction and building, Americans with Disabilities Act, protection of public and employee health and safety, environmental protection, the protection of natural resources, fire protection, burning and non-burning requirements, permits, fees, and similar subjects.
- H. Bid Forms (pages BD-1 through BD-39) and Bidder's bid security must be received in a sealed, opaque envelope clearly labeled with SCHOOL STREET PLAZA PROJECT printed on the

outside of the envelope. Bids received unsealed or unlabeled will not be considered. Bids submitted by facsimile (fax) transmission will not be considered.

- I. To be considered, bids must be **received** by the Clerk of the Board of Supervisors no later than 4:30 pm, Thursday, November 8, 2012. Bids may be mailed to the Clerk of the Board of Supervisors, P.O. Box 715, Bridgeport, California, 93517, or delivered to the office of the Clerk of the Board of Supervisors, 74 North School Street, Bridgeport, California, 93517.
- J. Bidders are advised that due to the remote nature of central Mono County, "overnight" delivery by the US Postal Service, UPS, FedEx, and other carriers is actually scheduled as a two-day delivery. Bidders should also take potential holiday mail delays into consideration.

#### 6. MODIFICATION OF BID

A Bidder may modify its bid by written communication provided such communication is received by the Board Clerk up to, but not later than, the bid-submission deadline described above. The written communication shall not reveal the bid price but shall state the amount of addition or subtraction or other modification so that the final prices or terms will not be known by the County until the sealed bid is opened.

#### 7. WITHDRAWAL OF BID

Bids may be withdrawn without prejudice by the Bidder up to, but not later than, the time fixed for the bid submission deadline. Such withdrawal may be made by written letter or by email or facsimile (fax) request. Such request shall be signed by an authorized representative of the Bidder. Bids so withdrawn will be returned unopened to the Bidder by the County. Bids withdrawn following bid opening shall be permitted only as allowed by the Public Contract Code and may subject the accompanying bid security to forfeiture and retention by the County as in the case of failure to execute the awarded contract as provided below. Negligence on the part of the Bidder in preparing the bid shall not empower the Bidder to withdraw the bid subsequent to the opening of bids.

#### 8. AGREEMENT AND BONDS

- A. Bidders are required to submit, along with the Proposal Forms, a certified or cashier's check or bidder's bond in an amount of at least 10 percent (10%) of the bid made payable to the County of Mono. This security shall be given as a guarantee that the Bidder will enter into a contract if awarded the work, and may be forfeited by the Bidder and retained by the County if the Bidder refuses, neglects, or fails to enter into said contract (including a failure to provide required insurance certificates and bonds) within five calendar days after award of contract by the County.
- B. The successful Bidder will be required to furnish a labor and materials bond in an amount equal to 100 percent of the contract price, and a faithful performance bond in an amount equal to 100 percent of the contract price. In addition, the successful Bidder, as Contractor, will be required to furnish a one-year warranty bond upon project completion, pursuant to the requirements in the Standard Agreement and the Special Provisions. Only surety bonds issued by an Admitted Surety Insurer, as defined in Paragraph 11 of the Standard Agreement (SA-1-18), will be accepted. Bonds shall be in a form acceptable to the Mono County Counsel; a sample of an acceptable form of each type of bond required is included with this Project Manual.
- C. The Contract Documents include a Standard Agreement, which the successful Bidder, as Contractor, will be required to execute, and the insurance and bonds, which he will be required to furnish.
- D. All alterations, extensions of time, extra and additional work, and other changes authorized by the County consistent with applicable provisions of the Contract Documents, may be made without securing the consent of the surety or sureties on the contract bonds.

## 9. OPENING OF BIDS

As soon after the bid-submission deadline as is practicable to do so, all bids received before that deadline will be taken to the Public Works conference room, located on the second floor of Courthouse Annex 1, 74 North School Street, Bridgeport, and there publicly opened, read aloud, and recorded. All interested parties are invited to attend. Any bids received after the bid-submission deadline will be returned to the bidder unopened.

## 10. BID EVALUATION

After all bids are opened and publicly announced, personnel from the Mono County Department of Public Works (Public Works) will evaluate the bids, identify the lowest responsive bid by a responsible Bidder, and distribute to all bidders a Notice of Intent to Award the contract to that identified Bidder along with a ranked tabulation of all bid amounts submitted. In the event of a discrepancy between the numeric total bid written and the numeric total bid calculated, the bid amount calculated by multiplying each item quantity by the unit price and then adding each item of the proposal shall prevail.

Bid evaluation will consist of reviewing submitted bids for responsiveness, ranking the responsive bid amounts from lowest to highest, and investigating whether the apparent low Bidder, and such other Bidders as Public Works deems appropriate, appears to be a "responsible bidder." Said investigation will involve checking the Contractor's and any listed subcontractor's license status and eligibility to contract for public works, and may also include a request for Bidder references and/or insurance certificates, a request for documents demonstrating the Bidder's solvency and available resources to timely complete the work, and consideration of the Bidder's performance on any prior contracts with the County. The County reserves the right to waive any informality or irregularity in any bid.

## 11. BID PROTEST PROCEDURE

A bid protest period shall commence immediately upon distribution of the Notice of Intent to Award the contract, during which time any interested person or entity may file a protest in accordance with the directions below with respect to that apparent low bid, or to any other bid submitted, and/or with respect to the qualifications or responsibility of the apparent low Bidder, or of any other Bidder.

Bidders who wish to lodge a protest as to the award of the contract must do so before 4:30 p.m. of the 5th business day following the notice of intent to award the contract. Bid protests must be received by the Mono County Department of Public Works, located at 74 North School Street, Post Office Box 457, Bridgeport, California, 93517, before the bid protest deadline. Delivery may be by mail or hand delivery to this address, or by facsimile (fax) to 760.932.5441, or by email to ghigerd@mono.ca.gov. Failure to timely file a written protest shall constitute a waiver of the right to protest. Untimely protests will not be accepted or considered.

Bid protests must be submitted in writing to the Director of the Department of Public Works and include the following: 1) the name of the person or entity making the protest, 2) the name of the bid project, 3) a complete statement of all legal and factual grounds for the protest, 4) any documentation supporting the protestor's grounds for the protest, and 5) the form of relief requested and the legal basis for such relief.

If a valid protest is timely filed, the Department of Public Works shall investigate the bid protest. The protested Bidder shall have three (3) business days to respond to the Department and to provide any information requested by the Department. The Department shall respond to the protesting party, stating its findings. The Director of the Department of Public Works shall make a recommendation to the Board of Supervisors regarding the bid protest.

The protest procedure described herein must be pursued and exhausted before any person or entity may commence litigation against the County of Mono, or any of its officers, agents, or employees

related to or arising out of the award of a contract for the construction of the project to a Bidder whose winning bid could have been the subject of a protest as outlined above.

## 12. AWARD OR REJECTION OF BIDS

- A. After expiration of the bid protest deadline, the County may, in its discretion: Award a contract notwithstanding the filing of a bid protest; refrain from awarding a contract pending resolution of any or all bid protests; or otherwise proceed as it deems appropriate, including without limit rejecting all bids received. If it chooses to award one, the County shall award the contract to the Bidder found responsible by the County which has submitted the lowest responsive bid. Bidders are advised that should this Invitation for Bids result in the award of a contract, the contract will not be in force until it is approved and fully executed by the County and the Bidder.
- B. Payment under any contract resulting from this Invitation for Bids will be consistent with the contract agreement, a sample of which has been provided with this Invitation for Bids. Any contract awarded as a result of this Invitation for Bids will be awarded without discrimination based on race, color, religion, age, sex, sexual orientation, or national origin.
- C. Contract award, if made, is anticipated to occur within two weeks after the date of bid opening but could, however, occur up to 60 days after said date. In such an event, all Bidders will be notified in writing that additional time will be required. No bid can be withdrawn during that period unless such withdrawal is authorized under the Public Contract Code and the bid security shall remain in full force and effect. Mono County assumes no responsibility for any costs the Bidder may incur, regardless of whether or not a contract is awarded, in preparing and/or submitting a bid.

## 13. CONTRACT EXECUTION

- A. Accompanying the County's Notice of Award will be the Agreement, which the successful Bidder will be required to execute and return, together with the required bonds and certificates of insurance, to the County within seven calendar days following receipt of such Agreement and Notice of Award. Failure to do so shall be just cause for annulment of the contract award and forfeiture of the bid security, which shall be retained by the County as liquidated damages, and it is agreed by both parties that the bid security sum is a fair estimate of such failure. Signature by both parties constitutes execution of the Agreement.
- B. In the event the successful Bidder is unable to physically deliver the required bonds and insurance certificates, the Bidder shall, prior to the commencement of the work, submit evidence satisfactory to the County that such bonds and certificates will be furnished in a timely manner.
- C. In the event of failure of the lowest responsible Bidder to sign and return the Agreement with acceptable evidence of bonds and insurance certificates as prescribed herein, the County may award the contract to the next lowest responsible Bidder, and so forth, until a fully-executed Agreement and acceptable bonding and insurance certificates are received by the County.
- D. The bid security of all Bidders will be retained by the County until an Agreement is executed by the successful Bidder and evidence of bonds and insurance acceptable to the County is received, after which those bid securities, except any that may have been forfeited, will be returned to the respective Bidders whose proposals they accompanied.

## 14. LISTING OF AND SUBSTITUTIONS OF SUBCONTRACTORS

- A. If awarded a contract, the Bidder shall perform with his own organization contract work amounting to not less than 30 percent (30%) of the original total contract price. The Bidder shall give his/her personal attention to the fulfillment of the contract and shall keep the work under his/her control. All persons engaged in the project work will be held responsible for their work, which shall be subject to the provisions of these Contract Documents.

- B. Each Bidder shall in its bid or offer, set forth the name and location of the office, shop, or mill of each subcontractor who will perform work or labor or render service to the Bidder in or about the construction of the work or improvement and the portion of the work which will be done by each subcontractor if the amount of the subcontractor's work will be in excess of one-half of one percent (0.5%), or \$10,000, whichever is greater, of the Bidder's bid.
- C. If the Bidder fails to specify a subcontractor for any portion of the work to be performed under the contract as specified above, it shall be deemed to have agreed to perform such portion itself, and it shall not be permitted to subcontract that portion of the work except under conditions hereinafter set forth.
- D. No Contractor whose bid is accepted shall, without consent of the Public Works Director, either:
  - (1) Substitute any person as subcontractor in place of the subcontractor designated in the original bid; or,
  - (2) Permit any subcontractor to be assigned or transferred or allow the work to be performed by anyone other than the original subcontractor listed in the bid; or,
  - (3) Sublet or subcontract any portion of the work in excess of one-half of one percent (0.5%) of the Bidder's bid as to which its original bid did not designate a subcontractor.
- E. Subletting or subcontracting any portion of the work as to which no subcontractor was designated in the original bid shall be permitted only in case of public emergency, necessity, or otherwise in accordance with the Public Contract Code, and then only after a finding has been made in writing, by and as public record of the Public Works Department, setting forth the facts constituting such emergency, necessity, or statutory basis for the substitution.
- F. It is the County's opinion that if haulers are used merely to convey materials and will not excavate or load the material and if they will not apply judgment as to the suitability of the material to meet project specifications, they do not need to be identified on the "List of Subcontractors" in the bid forms.

#### 15. BIDDERS INTERESTED IN MORE THAN ONE BID

No person, firm, or corporation shall be allowed to make or file or be interested in more than one bid for the same work unless alternative bids are called for. A person, firm, or corporation who has submitted a sub-proposal to a bidder or who has quoted prices on materials to a bidder, is not hereby disqualified from submitting a sub-proposal or quoting prices to other bidders.

#### 16. COORDINATION WITH OTHER CONTRACTORS

Bidders are required to inform themselves fully of the conditions relating to construction and labor under which the work will be performed, and the Bidder must employ, as far as possible, such methods and means in the carrying out of its work as will not cause any interruptions or interference with any other contractor or the operations of the facility at which the work is being performed.

#### 17. SUBSTITUTIONS

Throughout the Project Plans and specifications, materials may be specified that are in short supply or that are restricted by government limitation orders. For the purpose of submitting proposals, the Bidder shall assume that the County will require all materials to be furnished as specified. No substitutions will be permitted until all sources or supply have been exhausted and written notice is given to the Public Works Director stating such fact. Substituted materials shall have the written approval of the Public Works Director, or its authorized agent, before installation in the project.

#### 18. CONTRACTOR'S LICENSING LAWS

- A. The successful bidder, as Contractor, will be required to furnish a valid Mono County Business License issued by the Mono County Treasurer prior to commencing the work.
- B. In order to be eligible for award of a contract for the project, a bidder must possess at least one of the following classification(s) of contractor's license: **Class A – General Engineering, C8 – Concrete, C12 – Earthwork and Paving, C27 Landscaping, C32 – Parking and Highway Improvements.**
- C. Attention is directed to the provisions of Article 4, Chapter 9, of the California Business & Professions Code concerning the licensing of contractors. All bidders, contractors, and subcontractors shall be licensed in accordance with the laws of the State of California and any bidder, contractor, or subcontractor not so licensed is subject to the penalties imposed by such laws. The contractor shall possess the appropriate licenses to cover the above advertised work.

## 19. LABOR REQUIREMENTS

The services and work to be provided by Contractor for this project constitute a public work within the meaning of California Labor Code Sections 1720 and 1720.3. Accordingly, and as required by Section 1771 of the California Labor Code, the successful bidder, as Contractor, and any subcontractor under it, shall pay not less than the general prevailing rate of per diem wages ("prevailing wage") specified for each craft and classification to all workers employed in the execution of the project. Copies of prevailing wages, as determined by the Director of the California Department of Industrial Relations, are on file at the office of the Mono County Department of Public Works, located at 74 North School Street in Bridgeport, California, and are available to any interested party upon request. These wages are not included in the Contract Documents for the project. Changes, if any, to prevailing wage rates will be available at the same location.

Attention is directed to the Federal minimum wage rate requirements. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the Contractor and subcontractors shall pay not less than the higher wage rate. The County will not accept lower State wage rates not specifically included in the Federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the Federal wage determinations. Where Federal wage determinations do not contain the State wage rate determination otherwise available for use by the Contractor and subcontractors, the Contractor and subcontractors shall pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question. Federal Wage Rates can be downloaded at: <http://www.wdol.gov>

## 20. PROJECT SCHEDULE AND LIQUIDATED DAMAGES

The work shall be completed within 60 calendar days. By submitting a bid proposal, Bidder acknowledges that the Bidder has fully read Sections 5.6 and 5.7 of the Special Provisions, that it has had ample opportunity to consult with legal counsel and obtain an explanation of these liquidated damage provisions, and that it is agreed by both parties that Contractor will pay Mono County the liquidated damages specified in the Special Provisions.



## **PROPOSAL**

### **SCHOOL STREET PLAZA PROJECT**

**Project No. RPSTPLE-5947(041)**

Proposal of \_\_\_\_\_ (hereinafter, "Bidder"), organized and existing under the laws of the State of California, doing business as \_\_\_\_\_ (e.g., "a partnership;" "a corporation;" "an individual"), as applicable to the County of Mono, (hereinafter, "the County"). This bid proposal consists of the attached pages BD-1 through BD-39.

In compliance with your Invitation for Bids and Instructions to Bidders, Bidder hereby proposes to perform all work for SCHOOL STREET PLAZA PROJECT in strict accordance with the Instructions to Bidders, Project Plans, Federal Provisions, Special Provisions, Technical Specifications, Agreement, Construction Quality Assurance Program, any applicable addenda, and other Contract Documents within the time set forth therein and at prices stated on the attached Bid Schedule. Prices quoted in this proposal include, but are not limited to, the cost for all labor, materials, tools, equipment, supplies, transportation, permits, services, and applicable local, state, and/or federal taxes, fees, patent rights, and/or royalties necessary to complete the work contemplated under the Agreement.

By submission of this Bid Proposal, Bidder certifies (and in the case of a joint bid, each party thereto certifies as to his own organization) that this bid has been arrived at independently without consultation, communication, or agreement as to any matter relating to this bid with any other bidder or with any competitor.

Bidder hereby agrees to commence work under the Agreement on or before 14 calendar days following the award of contract by the County, unless a later date is specified by the County in the Notice to Proceed, and to **fully complete the project within 60 calendar days thereafter**, pursuant to the provisions specified in the Special Provisions.

It is understood that, except for lump sum items, the quantities set forth in the Bid Schedule are approximate only and are solely for the purpose of facilitating the comparison of bids, and that the Bidder's compensation will be computed on the basis of documented final quantities in completed work, measured as specified, whether they be more or less than those shown.

Bidder's Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

Office Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

Contractor's Calif. License No.: \_\_\_\_\_ Class: \_\_\_\_\_

Mono County Business Lic. No.: \_\_\_\_\_

Name of Company Officer: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_  
Bidder's Signature

\_\_\_\_\_  
Date

(Add seal if by a corporation)

**BID SCHEDULE**

**SCHOOL STREET PLAZA  
PROJECT**  
*Project No. RPSTPLE-5947(041)*

BID ITEM	ESTIMATED QUANTITY	UNIT	ITEM & UNIT BID PRICE (in words)	UNIT PRICE (in numbers)	BID AMOUNT
<b>BASE BID: Construct School Street Plaza Project Excluding Additive Alternates</b>					
1	1	LS	Mobilization at _____ _____ Per Lump Sum	\$ _____	\$ _____
2	1	LS	Maintaining Traffic/Traffic Control, at _____ _____ Per Lump Sum	\$ _____	\$ _____
3	1	LS	Removal of Existing Improvements, at _____ _____ Per Lump Sum	\$ _____	\$ _____
4	40	CY	Overexcavation of Unsuitable Material (Contingent Item), at _____ _____ Per Square Foot	\$ _____	\$ _____
5	149	LF	PCC Curb and Gutter, at _____ _____ Per Linear Foot	\$ _____	\$ _____
6	180	LF	PCC Curb, at _____ _____ Per Linear Foot	\$ _____	\$ _____
7	2,197	SF	PCC Sidewalk, at _____ _____ Per Square Foot	\$ _____	\$ _____

BID ITEM	ESTIMATED QUANTITY	UNIT	ITEM & UNIT BID PRICE (in words)	UNIT PRICE (in numbers)	BID AMOUNT
<b>BASE BID: Construct School Street Plaza Project Excluding Additive Alternates</b>					
8	358	SF	PCC Pedestrian Ramps, at _____ _____ Per Square Foot	\$ _____	\$ _____
9	815	SF	HMA Patch, at _____ _____ Per Square Foot	\$ _____	\$ _____
10	3	EA	Protect Valve and Replace G5 Christy Box, at _____ _____ Per Each	\$ _____	\$ _____
11	10	LF	12-inch Solid Yellow Line (Paint), at _____ _____ Per Linear Foot	\$ _____	\$ _____
12	156	SF	Unit Pavers, at _____ _____ Per Square Foot	\$ _____	\$ _____
13	70	LF	6-inch Concrete Mow Edge, at _____ _____ Per Linear Foot	\$ _____	\$ _____
14	660	SF	Sod Lawn Replacement, at _____ _____ Per Square Foot	\$ _____	\$ _____
15	4	CY	Landscape Mulch, at _____ _____ Per Cubic Yard	\$ _____	\$ _____

BID ITEM	ESTIMATED QUANTITY	UNIT	ITEM & UNIT BID PRICE (in words)	UNIT PRICE (in numbers)	BID AMOUNT
<b>BASE BID: Construct School Street Plaza Project Excluding Additive Alternates</b>					
16	1	LS	Irrigation Sprinkler Retrofit, at _____ _____ Per Lump Sum	\$ _____	\$ _____
17	1	LS	Electrical Conduit and Pull Boxes, at _____ _____ Per Lump Sum	\$ _____	\$ _____

<b>BASE BID TOTAL:</b> (sum of items 1 – 17)	\$ _____
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BID ITEM	ESTIMATED QUANTITY	UNIT	ITEM & UNIT BID PRICE (in words)	UNIT PRICE (in numbers)	BID AMOUNT
<b>ALTERNATE 1: Landscape</b>					
A1-1	3	EA	Evergreen Trees, at _____ _____ Per Each	\$ _____	\$ _____
A1-2	6	EA	Deciduous Trees, at _____ _____ Per Each	\$ _____	\$ _____
A1-3	34	EA	Shrubs, at _____ _____ Per Each	\$ _____	\$ _____
A1-4	4	EA	Benches, at _____ _____ Per Each	\$ _____	\$ _____

BID ITEM	ESTIMATED QUANTITY	UNIT	ITEM & UNIT BID PRICE (in words)	UNIT PRICE (in numbers)	BID AMOUNT
<b>ALTERNATE 1: Landscape</b>					
A1-5	22	EA	Trash Receptacles, at _____ _____ Per Each	\$ _____	\$ _____
A1-6	78	LF	Wrought Iron Fence, at _____ _____ Per Linear Foot	\$ _____	\$ _____

<b>ALTERNATE 1 TOTAL:</b> (sum of items A1-1 – A1-6 only)	\$ _____
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BID ITEM	ESTIMATED QUANTITY	UNIT	ITEM & UNIT BID PRICE (in words)	UNIT PRICE (in numbers)	BID AMOUNT
<b>ALTERNATE 2: Electrical Installation</b>					
A2-1	1	LS	Electrical, at _____ _____ Per Lump Sum	\$ _____	\$ _____
A2-2	4	EA	Lamps, at _____ _____ Per Each	\$ _____	\$ _____

<b>ALTERNATE 2 TOTAL:</b> (sum of items A2-1 and A2-2 only)	\$ _____
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BID ITEM	ESTIMATED QUANTITY	UNIT	ITEM & UNIT BID PRICE (in words)	UNIT PRICE (in numbers)	BID AMOUNT
<b>ALTERNATE 3: Veteran's Memorial Area</b>					
A3-1	104	LF	6-inch Concrete Mow Edge, at _____ _____ Per Linear Foot	\$ _____	\$ _____
A3-1	216	SF	Unit Pavers, at _____ _____ Per Square Foot	\$ _____	\$ _____

<b>ALTERNATE 3 TOTAL:</b> (sum of items A3-1 and A3-2 only)	\$ _____
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BID	BID AMOUNT
BASE BID	\$ _____
ALTERNATE 1: LANDSCAPE	\$ _____
ALTERNATE 2: ELECTRICAL INSTALLATION	\$ _____
ALTERNATE 3: VETERAN'S MEMORIAL AREA	\$ _____

<b>BIDDER'S GRAND TOTAL*</b> (INCLUDES BASE BID AND ALTERNATES 1-3)	\$ _____
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\* County will use this total to compare bids and determine apparent low bidder.

COUNTY OF MONO, DEPARTMENT OF PUBLIC WORKS

## **LIST OF SUBCONTRACTORS**

**SCHOOL STREET PLAZA PROJECT**  
**Project No. RPSTPLE-5947(041)**

Listed hereinafter are the names and addresses of all subcontractors (both DBE and non-DBE), in accordance with Section 2-1.33C of the Standard Specifications and per Title 49, Section 26.11 of the Code of Federal Regulations, who will be employed in the completion of project work and the type of work that each will perform if the contract is awarded to the undersigned Bidder. I understand that under California Public Contract Code Section 4104, contained in the Subletting and Subcontracting Fair Practices Act (Public Contract Code §4100 et seq.) I must clearly set forth the name and address of each subcontractor who will perform work or labor or render service to me in or about the construction of the work in an amount in excess of one-half of one percent (0.5%) of my total bid, or ten thousand dollars (\$10,000), whichever is greater, and that as to any work in which I fail to do so, I agree to perform that portion myself or be subject to penalty under the Act.

- Notes:** A. In the event that more than one subcontractor is named for the same type of work, state the portion of which each will perform; provide Contractor's license number of each subcontractor.  
B. Vendors or suppliers that will be providing materials only need not be listed.  
C. If further space is required, copies of this sheet or additional sheets showing the required information, as indicated below, shall be attached hereto and made a part of the proposal.  
D. The above statement constitutes a part of the proposal and signature on the signature portion of the bid proposal constitutes signature on this statement.  
E. This listing is required in addition to listing DBE Subcontractors elsewhere in the proposal.

<b>Firm Name &amp; Address</b>	<b>Phone, Fax, &amp; License</b>	<b>Annual Gross Receipts</b>	<b>Description of Portion of Work to be Performed</b>	<b>Local Agency Use Only (Certified DBE?)</b>
<i>Name</i>	<i>Phone</i>	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
<i>Address</i>	<i>Fax</i>	<input type="checkbox"/> < \$10 million		<i>If YES list DBE #:</i>
		<input type="checkbox"/> < \$15 million		
<i>City State ZIP</i>	<i>License</i>	<input type="checkbox"/> > \$15 million	Value of work: \$	Age of Firm (Yrs.)
<i>Name</i>	<i>Phone</i>	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
<i>Address</i>	<i>Fax</i>	<input type="checkbox"/> < \$10 million		<i>If YES list DBE #:</i>
		<input type="checkbox"/> < \$15 million		
<i>City State ZIP</i>	<i>License</i>	<input type="checkbox"/> > \$15 million	Value of work: \$	Age of Firm (Yrs.)

Firm Name & Address	Phone, Fax, & License	Annual Gross Receipts	Description of Portion of Work to be Performed	Local Agency Use Only (Certified DBE?)
Name	Phone	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
Address	Fax	<input type="checkbox"/> < \$10 million		If YES list DBE #:
		<input type="checkbox"/> < \$15 million		
City State ZIP	License	<input type="checkbox"/> > \$15 million	Value of work: \$	Age of Firm (Yrs.)
Name	Phone	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
Address	Fax	<input type="checkbox"/> < \$10 million		If YES list DBE #:
		<input type="checkbox"/> < \$15 million		
City State ZIP	License	<input type="checkbox"/> > \$15 million	Value of work: \$	Age of Firm (Yrs.)
Name	Phone	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
Address	Fax	<input type="checkbox"/> < \$10 million		If YES list DBE #:
		<input type="checkbox"/> < \$15 million		
City State ZIP	License	<input type="checkbox"/> > \$15 million	Value of work: \$	Age of Firm (Yrs.)
Name	Phone	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
Address	Fax	<input type="checkbox"/> < \$10 million		If YES list DBE #:
		<input type="checkbox"/> < \$15 million		
City State ZIP	License	<input type="checkbox"/> > \$15 million	Value of work: \$	Age of Firm (Yrs.)
Name	Phone	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
Address	Fax	<input type="checkbox"/> < \$10 million		If YES list DBE #:
		<input type="checkbox"/> < \$15 million		
City State ZIP	License	<input type="checkbox"/> > \$15 million	Value of work: \$	Age of Firm (Yrs.)



COUNTY OF MONO, DEPARTMENT OF PUBLIC WORKS

**DBE INFORMATION**

SCHOOL STREET PLAZA  
PROJECT  
Project No. RPSTPLE-5947(041)

The bidder shall list all subcontractors who provided a quote or bid but were not selected to participate as a subcontractor on this project. This is required for compliance with Title 49, Section 26 of the Code of Federal Regulations. Photocopy this form for additional firms.

Firm Name & Address	Phone & Fax	Annual Gross Receipts	Description of Portion of Work to be Performed	Local Agency Use Only (Certified DBE?)
Name	Phone	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
Address		<input type="checkbox"/> < \$10 million		If YES list DBE #:
	Fax	<input type="checkbox"/> < \$15 million		
City State ZIP		<input type="checkbox"/> > \$15 million		Age of Firm (Yrs.)
Name	Phone	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
Address		<input type="checkbox"/> < \$10 million		If YES list DBE #:
	Fax	<input type="checkbox"/> < \$15 million		
City State ZIP		<input type="checkbox"/> > \$15 million		Age of Firm (Yrs.)
Name	Phone	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
Address		<input type="checkbox"/> < \$10 million		If YES list DBE #:
	Fax	<input type="checkbox"/> < \$15 million		
City State ZIP		<input type="checkbox"/> > \$15 million		Age of Firm (Yrs.)

Firm Name & Address	Phone & Fax	Annual Gross Receipts	Description of Portion of Work to be Performed	Local Agency Use Only (Certified DBE?)
Name	Phone	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
Address		<input type="checkbox"/> < \$10 million		If YES list DBE #:
	Fax	<input type="checkbox"/> < \$15 million		
City State ZIP		<input type="checkbox"/> > \$15 million		Age of Firm (Yrs.)
Name	Phone	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
Address		<input type="checkbox"/> < \$10 million		If YES list DBE #:
	Fax	<input type="checkbox"/> < \$15 million		
City State ZIP		<input type="checkbox"/> > \$15 million		Age of Firm (Yrs.)
Name	Phone	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
Address		<input type="checkbox"/> < \$10 million		If YES list DBE #:
	Fax	<input type="checkbox"/> < \$15 million		
City State ZIP		<input type="checkbox"/> > \$15 million		Age of Firm (Yrs.)
Name	Phone	<input type="checkbox"/> < \$1 million		<input type="checkbox"/> YES
		<input type="checkbox"/> < \$5 million		<input type="checkbox"/> NO
Address		<input type="checkbox"/> < \$10 million		If YES list DBE #:
	Fax	<input type="checkbox"/> < \$15 million		
City State ZIP		<input type="checkbox"/> > \$15 million		Age of Firm (Yrs.)

## EXHIBIT 15-G LOCAL AGENCY BIDDER DBE COMMITMENT (CONSTRUCTION CONTRACTS)

NOTE: PLEASE REFER TO INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM

LOCAL AGENCY: \_\_\_\_\_

LOCATION:

PROJECT DESCRIPTION:

TOTAL CONTRACT AMOUNT: \$

BID DATE:

BIDDER'S NAME:

[illegible]

**For Local Agency to Complete:**

Local Agency Contract Number: \_\_\_\_\_

Federal-aid Project Number:

Federal Share: \_\_\_\_\_

Contract Award Date: \_\_\_\_\_

Local Agency certifies that all DBE certifications have been verified and information is complete and accurate.

Print Name \_\_\_\_\_  
Local Agency Representative \_\_\_\_\_

Signature

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Date

(Area Code) Telephone Number:

Total Claimed DBE Participation

\$

%

Signature of Bidder

Date  
(Area Code) Tel. No.

Local Agency Bidder DBE Commitment (Construction Contracts)  
(Rev 6/26/09)

## Distribution

- (1) Copy - Fax or scan a copy to the Caltrans District Local Assistance Engineer (DLAE) within 30 days of contract execution. Failure to send a copy to the DLAE within 30 days of contract execution may result in de-obligation of funds for this project.
- (2) Copy - Include in award package to Caltrans District Local Assistance
- (3) Original - Local agency files

**INSTRUCTIONS - LOCAL AGENCY BIDDER  
DBE COMMITMENT (CONSTRUCTION CONTRACTS)**

**ALL BIDDERS:**

**PLEASE NOTE:** This information may be submitted with your bid. If it is not, and you are the apparent low bidder or the second or third low bidder, it must be submitted and received as specified in the Special Provisions. Failure to submit the required DBE commitment will be grounds for finding the bid nonresponsive

The form requires specific information regarding the construction contract: Local Agency, Location, Project Description, Total Contract Amount, Bid Date, Bidder's Name, and Contract DBE Goal.

The form has a column for the Contract Item Number and Item of Work and Description of Services to be Subcontracted or Materials to be provided by DBEs. Prime contractors shall indicate all work to be performed by DBEs including, if the prime is a DBE, work performed by its own forces, if a DBE. The DBE shall provide a certification number to the Contractor and expiration date. Enter the DBE prime's and subcontractors' certification numbers. The form has a column for the Names of DBE contractors to perform the work (who must be certified on the date bids are opened and include the DBE address and phone number).

**IMPORTANT:** Identify **all** DBE firms participating in the project regardless of tier. Names of the First-Tier DBE Subcontractors and their respective item(s) of work listed should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your bid.

There is a column for the DBE participation dollar amount. Enter the Total Claimed DBE Participation dollars and percentage amount of items of work submitted with your bid pursuant to the Special Provisions. (If 100% of item is not to be performed or furnished by the DBE, describe exact portion of time to be performed or furnished by the DBE.) See Section "Disadvantaged Business Enterprise (DBE)," of the Special Provisions (construction contracts), to determine how to count the participation of DBE firms.

Exhibit 15-G must be signed and dated by the person bidding. Also list a phone number in the space provided and print the name of the person to contact.

**Local agencies** should complete the Local Agency Contract Award, Federal-aid Project Number, Federal Share, Contract Award Date fields and verify that all information is complete and accurate before signing and filing.

**EXHIBIT 15-H DBE INFORMATION —GOOD FAITH EFFORTS**  
DBE INFORMATION - GOOD FAITH EFFORTS

Federal-aid Project No. RPSTPLE-5947(041) Bid Opening Date: November 8, 2012

The County of Mono established a Disadvantaged Business Enterprise (DBE) goal of 3.20% for this project. The information provided herein shows that a good faith effort was made.

Lowest, second lowest and third lowest bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the "Local Agency Bidder DBE Commitment" form indicates that the bidder has met the DBE goal. This will protect the bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the "Local Agency Bidder DBE Commitment" form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions:

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

<u>Publications</u>	<u>Dates of Advertisement</u>

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

<u>Names of DBEs Solicited</u>	<u>Date of Initial Solicitation</u>	<u>Follow Up Methods and Dates</u>

- C. The items of work which the bidder made available to DBE firms including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

Items of Work	Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract

- D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

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Names, addresses and phone numbers of firms selected for the work above:

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- E. Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs:

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- F. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

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- G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results

- H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

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**NOTE:** USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

## Disadvantaged Business Enterprises (DBE) Certification Status Change

**EXHIBIT 17-O DISADVANTAGED BUSINESS ENTERPRISES (DBE) CERTIFICATION STATUS CHANGE**STATE OF CALIFORNIA – DEPARTMENT OF TRANSPORTATION  
CP-CEM-2403(F) (New. 10/99)

CONTRACT NUMBER	COUNTY	ROUTE	POST MILES	ADMINISTERING AGENCY	CONTRACT COMPLETION DATE
PRIME CONTRACTOR	BUSINESS ADDRESS			ESTIMATED CONTRACT AMOUNT	

*Prime Contractor: List all DBEs with changes in certification status (certified/decertified) while in your employ, whether or not firms were originally listed for good credit.**Attach DBE certification/Decertification letter in accordance with the Special Provisions*

CONTRACT ITEM NO.	SUBCONTRACT NAME AND BUSINESS ADDRESS	BUSINESS PHONE	CERTIFICATION NUMBER	AMOUNT PAID WHILE CERTIFIED	CERTIFICATION/ DECERTIFICATION DATE Letter attached
				\$	
				\$	
				\$	
				\$	
				\$	
				\$	
				\$	
				\$	
				\$	
				\$	

Comments:

**I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT**

CONTRACTOR REPRESENTATIVE SIGNATURE	TITLE	BUSINESS PHONE NUMBER	DATE
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**TO THE BEST OF MY KNOWLEDGE, THE ABOVE INFORMATION IS COMPLETE AND CORRECT**

RESIDENT ENGINEER	BUSINESS PHONE NUMBER	DATE
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**Distribution** Original copy -DLAE  
Copy -1) Business Enterprise Program 2) Prime Contactor 3) Local Agency 4) Resident Engineer



Form CP-CEM 2403(F) (New 10/99)

## DISADVANTAGED BUSINESS ENTERPRISES (DBE) CHANGE IN CERTIFICATION STATUS REPORT

The top of the form requires specific information regarding the construction project: Contract Number, County, Route, Post Miles, the Administering Agency, the Contract Completion Date, and the Estimated Contract Amount. It requires the Prime Contractor's name and Business Address. The focus of the form is to substantiate and verify the actual DBE dollar amount paid to contractors on federally funded projects that had a changed in Certification status during the course of the completion of the contract. The two situations that are being addressed by CP-CEM 2403(F) are, if a firm certified as a DBE and doing work on the contract during the course of the project becomes Decertified, and if a non-DBE firm doing work on the contract during the course of the project becomes Certified as a DBE.

The form has a column to enter the Contract Item No (or Item Nos.) as well as a column for the Subcontractor's Name, Business Address, Business Phone, and contractor's Certification Number.

The column entitled Amount Paid While Certified will be used to enter the actual dollar value of the work performed by those contractors who meet the conditions as outlined above during the time period they are Certified as a DBE. This column on the CP-CEM-2403(F) should only reflect the dollar value of work performed while the firm was Certified as a DBE.

The column called Certification/Decertification Date (Letter attached) will reflect either the date of the Decertification Letter sent out by the Civil Rights Program or the date of the Certification Certificate mailed out by the Civil Rights Program. There is a box to check that support documentation is attached to the CP-CEM-2403 (F) form.

There is a Comments section for any additional information that may need to be provided regarding any of the above transactions.

The CEM-2403(F) has an area at the bottom where the Contractor and the Resident Engineer sign and date that the information provided is complete and correct.

There is a Comments section for any additional information that may need to be provided regarding any of the above transactions.

The CEM-2403(F) has an area at the bottom where the Contractor and the Resident Engineer sign and date that the information provided is complete and correct.

## Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
**FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES  
 (DBE), FIRST-TIER SUBCONTRACTORS**

CEM-2402F (REV 02/2008)

**ADA Notice**

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814

CONTRACT NUMBER		COUNTY	ROUTE	POST MILES	FEDERAL AID PROJECT NO.	ADMINISTERING AGENCY		CONTRACT COMPLETION DATE	
PRIME CONTRACTOR				BUSINESS ADDRESS				ESTIMATED CONTRACT AMOUNT \$	
ITEM NO.	DESCRIPTION OF WORK PERFORMED AND MATERIAL PROVIDED	COMPANY NAME AND BUSINESS ADDRESS	DBE CERT. NUMBER	CONTRACT PAYMENTS			DATE OF FINAL PAYMENT		
				NON-DBE	DBE	DATE WORK COMPLETE			
				\$	\$				
				\$	\$				
				\$	\$				
				\$	\$				
				\$	\$				
				\$	\$				
				\$	\$				
				\$	\$				
				\$	\$				
				\$	\$				
ORIGINAL COMMITMENT \$			TOTAL	\$	\$				
DBE									
List all First-Tier Subcontractors, Disadvantaged Business Enterprises (DBEs) regardless of tier, whether or not the firms were originally listed for goal credit. If actual DBE utilization (or item of work) was different than that d at time of award, provide comments on back of form. List actual amount paid to each entity.									

**I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT**

CONTRACTOR REPRESENTATIVE'S SIGNATURE		BUSINESS PHONE NUMBER	DATE
<b>TO THE BEST OF MY INFORMATION AND BELIEF, THE ABOVE INFORMATION IS COMPLETE AND CORRECT</b>			
RESIDENT ENGINEER'S SIGNATURE		BUSINESS PHONE NUMBER	DATE

Copy Distribution-Caltrans contracts:

**Original** - District Construction**Copy**- Business Enterprise Program**Copy**- Contractor**Copy** Resident Engineer

Copy Distribution-Local Agency contracts:

**Original** - District Local Assistance Engineer  
(submitted with the Report of Expenditure)**Copy**- District Local Assistance Engineer**Copy**- Local Agency file

FINAL REPORT – UTILIZATION OF  
DISADVANTAGED BUSINESS ENTERPRISES (DBE),  
FIRST-TIER SUBCONTRACTORS  
CEM 2402(F) (Rev. 02/2008)

The form requires specific information regarding the construction project: Contract Number, County, Route, Post Miles, Federal-aid Project No., the Administering Agency, the Contract Completion Date and the Estimated Contract Amount. It requires the prime contractor name and business address. The focus of the form is to describe who did what by contract item number and descriptions, asking for specific dollar values of item work completed broken down by subcontractors who performed the work both DBE and non-DBE work forces. DBE prime contractors are required to show the date of work performed by their own forces along with the corresponding dollar value of work.

The form has a column to enter the Contract Item No. (or Item No's) and description of work performed or materials provided, as well as a column for the subcontractor name and business address. For those firms who are DBE, there is a column to enter their DBE Certification Number. The DBE should provide their certification number to the contractor and notify the contractor in writing with the date of the decertification if their status should change during the course of the project.

The form has six columns for the dollar value to be entered for the item work performed by the subcontractor.

The Non-DBE column is used to enter the dollar value of work performed for firms who are not certified DBE.

The decision of which column to be used for entering the DBE dollar value is based on what program(s) status the firm is certified. This program status is determined by the California Unified Certification Program by ethnicity, gender, ownership, and control issues at time of certification. To confirm the certification status and program status, access the Department of Transportation Civil Rights web site at: <http://www.dot.ca.gov/hq/bep> or by calling (916) 324-1700 or the toll free number at (888) 810-6346.

Based on this DBE Program status, the following table depicts which column to be used:

DBE Program	Column to be used
If program status shows DBE only with no other programs	DBE

If a contractor performing work as a DBE on the project becomes decertified and still performs work after their decertification date, enter the total dollar value performed by this contractor under the appropriate DBE identification column.

If a contractor performing work as a non-DBE on the project becomes certified as a DBE, enter the dollar value of all work performed after certification as a DBE under the appropriate identification column.

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Enter the total of each of the six columns in Form CEM-2402(F).

Any changes to DBE certification must also be submitted on Form-CEM 2403(F).

Enter the Date Work Completed as well as the Date of Final Payment (the date when the prime contractor made the “final payment” to the subcontractor for the portion of work listed as being completed).

The contractor and the resident engineer sign and date the form indicating that the information provided is complete and correct.

### **SUBCONTRACTOR AND DBE RECORDS**

The Contractor shall maintain records showing the name and business address of each first-tier subcontractor. The records shall also show the name and business address of every DBE subcontractor, DBE vendor of materials and DBE trucking company, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all of these firms. DBE prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

Upon completion of the contract, a summary of these records shall be prepared on “Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors” Form CEM-2402(F) and certified correct by the Contractor or the Contractor's authorized representative, and shall be furnished to the Engineer. The form shall be furnished to the Engineer within ninety days from the date of contract acceptance. The amount of \$10,000 will be withheld from payment until a satisfactory form is submitted.

Prior to the fifteenth of each month, the Contractor shall submit documentation to the Engineer showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Engineer showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

The Contractor shall also obtain and submit documentation to the Engineer showing the truck number, owner's name, California Highway Patrol CA number, and if applicable, the DBE certification number of the owner of the truck for all trucks used during that month. This documentation shall be submitted on “Monthly DBE Trucking Verification” Form CEM-2404(F).

### **DBE CERTIFICATION STATUS**

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to the Engineer.

Upon completion of the contract, “Disadvantaged Business Enterprises (DBE) Certification Status Change” Form CEM-2403(F) indicating the DBE's existing certification status shall be signed and certified correct by the Contractor. The certified form shall be furnished to the Engineer within ninety days from the date of contract acceptance.

## **ACKNOWLEDGEMENTS**

*SCHOOL STREET PLAZA  
PROJECT  
Project No. RPSTPLE-5947(041)*

### **RECEIPT OF ADDENDA**

The County of Mono is advised that Bidder has received the following addenda for the Contract Documents, including plans, specifications, and special provisions for the above-referenced project:

Addendum Number:                      Issuance Date:                      —

Subject Matter: \_\_\_\_\_

Addendum Number:                      Issuance Date:                      —

Subject Matter: \_\_\_\_\_

Addendum Number:                      Issuance Date:                      —

Subject Matter: \_\_\_\_\_

Addendum Number:                      Issuance Date:                      —

Subject Matter: \_\_\_\_\_

If you did not receive any addenda for the above-referenced project, please initial here: \_\_\_\_\_

### **ACKNOWLEDGEMENT OF SITE VISIT(S)**

The County of Mono is advised that I have visited the project site as acknowledged by my initials below. In doing so, I have made myself aware of the conditions that exist and have prepared the attached proposal accordingly.

School Street Plaza:                      Yes \_\_\_\_\_                      No \_\_\_\_\_

Note: This questionnaire constitutes a part of the proposal, and signature on the signature portion of the proposal constitutes signature on this questionnaire.

## **DISCLOSURES AND CERTIFICATIONS**

*SCHOOL STREET PLAZA  
PROJECT  
Project No. RPSTPLE-5947(041)*

### **QUESTIONNAIRE A**

In accordance with Public Contract Code Section 10162, the Bidder shall complete the following questionnaire:

Has the Bidder, or any officer or employee of the Bidder who has a proprietary interest in the Bidder, ever been disqualified, removed, or otherwise prevented from bidding on or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes: \_\_\_\_\_ No: \_\_\_\_\_

If the answer is yes, please explain the circumstances in the space provided below and/or attach separate sheet(s) as necessary, with signature affixed.

### **QUESTIONNAIRE B**

Under penalty of perjury, the Bidder shall complete the following questionnaire:

Within the past three years, has the Bidder, or any officer or employee of the Bidder who has a proprietary interest in the Bidder, ever been convicted by a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any federal or state antitrust law in connection with the bidding upon, award of, or performance of, any Public Works Contract, as defined in Section 1101, with any public entity as defined in Section 1100 of the California Public Contract Code, the Regents of the University of California or the Trustees of the California State University?

Yes: \_\_\_\_\_ No: \_\_\_\_\_

If the answer is yes, please explain the circumstances in the space provided below and/or attach separate sheet(s) as necessary, with signature affixed.

Note: This questionnaire constitutes a part of the proposal, and signature on the signature portion of the proposal constitutes signature on this questionnaire.

**WORKERS' COMPENSATION CERTIFICATION**

I do hereby certify that I am aware of the provisions of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of work in this contract.

**NON-COLLUSION AFFIDAVIT**

In accordance with Title 23 United States Code Section 112 and Section 7106 of the California Public Contract Code, the Bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the Bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the Bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note: This questionnaire constitutes a part of the proposal, and signature on the signature portion of the proposal constitutes signature on this questionnaire. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

The bidder \_\_\_\_\_, proposed subcontractor \_\_\_\_\_, hereby certifies that it has \_\_\_\_\_, has not \_\_\_\_\_, participated in a previous Contract subject to the equal opportunity clauses required by Executive Order 10925, or Executive Order 11114, or Executive Order 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**NOTE:** If the Bidder has participated in a previous Contract subject to the equal opportunity clause and has not submitted compliance reports due under applicable filing requirements, the Bidder shall submit a compliance report on Standard Form 100, "Employee Information Report EEO-1" prior to the award of the Contract.

The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7 (b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Note: This questionnaire constitutes a part of the proposal, and signature on the signature portion of the proposal constitutes signature on this questionnaire.



**DEBARMENT AND SUSPENSION CERTIFICATION****TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29**

The bidder, under penalty of perjury, certifies that, except as noted below, she/he or any other person associated therewith in the capacity of owner, partner, director, officer manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exception in the following space:

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of actions.

NOTES: Providing false information may result in criminal prosecution or administrative sanction. The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this certification.

Note: This questionnaire constitutes a part of the proposal, and signature on the signature portion of the proposal constitutes signature on this questionnaire.

**NONLOBBYING CERTIFICATION OF FEDERAL AID CONTRACTS**

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an office or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL\*, "Disclosure of Lobbying Activities," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite imposed by Section 1352, Title 31, of the United States Code for making or entering into this transaction. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

Note: This questionnaire constitutes a part of the proposal, and signature on the signature portion of the proposal constitutes signature on this questionnaire.

**DISCLOSURE OF LOBBYING ACTIVITIES**

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

**1. Type of Federal Action:**☐

- a. contract
- b. grant
- c. cooperative agreement
- d. loan
- e. loan guarantee
- f. loan insurance

**2. Status of Federal Action:**☐

- a. bid/offer/application
- b. initial award
- c. post-award

**3. Report Type:**☐

- a. initial
- b. material change

For Material  
Change Only:year \_\_\_\_\_ quarter \_\_\_\_\_  
date of last report \_\_\_\_\_**4. Name and Address of Reporting Entity**☐ Prime☐ Subawardee

Tier \_\_\_\_\_, if known

Congressional District, if known

**6. Federal Department/Agency:****5. If Reporting Entity in No. 4 is Subawardee,  
Enter Name and Address of Prime:**

Congressional District, if known

**7. Federal Program Name/Description:****8. Federal Action Number, if known:****9. Award Amount, if known:****10. a. Name and Address of Lobby Entity**  
(If individual, last name, first name, MI)**b. Individuals Performing Services (including  
address if different from No. 10A)**  
(last name, first name, MI)

(attach Continuation Sheet(s) if necessary)

**11. Amount of Payment (check all that apply)**\$ \_\_\_\_\_ ☐ actual ☐ planned**13. Type of Payment (check all that apply)**

- ☐ a. retainer
- ☐ b. one-time fee
- ☐ c. commission
- ☐ d. contingent fee
- ☐ e. deferred
- ☐ f. other, specify \_\_\_\_\_

**12. Form of Payment (check all that apply):**

- ☐ a. cash
- ☐ b. in-kind; specify nature \_\_\_\_\_  
value \_\_\_\_\_

**14. Brief Description of Services Performed or to be performed and Date(s) of Service, including  
officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:**

(attach Continuation Sheet(s) if necessary)

**15. Continuation Sheet(s) attached:**Yes ☐No ☐**16.**

Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Date: \_\_\_\_\_

Authorized for Local Reproduction  
Standard Form - LLL  
Federal Use Only:

**INSTRUCTION FOR COMPLETION OF SF-LLL  
DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of covered Federal action or a material change to previous filing pursuant to Title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and or has been secured to influence, the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state, and zip code for the reporting entity. Include Congressional district if known. Check the appropriate classification of the reporting entity that designates if it is or expects to a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal Agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001".
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
11. Enter the full name of individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).  
Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or plan to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with Federal officials. Identify the Federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name title and telephone number.

*Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget Paperwork Reduction Project (0348-0046). Washington D.C. 20503.*

SF-LLL instructions  
Rev. 06-04-9

## **BIDDER'S QUALIFICATION STATEMENT**

### *SCHOOL STREET PLAZA PROJECT*

*Project No. RPSTPLE-5947(041)*

This Qualifications Statement will be used by Mono County to determine if a Bidder is qualified to do the work to be performed and therefore to find if the Bidder is a "responsible" bidder. The Qualifications Statement should be completed on behalf of the Bidder by an officer or other individual who is knowledgeable about the Bidder's past and current operations, policies, and practices. A response must be provided to each question. If a particular question does not apply, the response should state "not applicable" or "N/A". **Qualifications statements that contain missing or incomplete answers may render the proposal non-responsive.** The County reserves the right, however, to allow the bidder to submit additional information pertaining to its qualifications after the bid-submission deadline if circumstances warrant and to waive any error or defect in a Bidder's Statement.

Answers may be expanded upon by attaching additional pages. Use 8½" x 11" paper and mark each additional page with the Bidder's name and identification of the particular question to which an answer is being given. For the purposes of this Statement, the terms "company," "firm," "bidder," "proposer," and "contractor" are used interchangeably and have the same meaning.

The following documents or information must be included with your Qualifications Statement for this Bid Proposal (Existing certification and license information on file with the County and current may meet the requirements of this section subject to verification prior to award of any contract):

Insurance: Contractor must provide proof that the firm is insured at least to the limits identified in the Draft Agreement.

Licenses: Copies of all applicable and current trade licenses issued to the Contractor which legally allow the Contractor to perform the work identified for this Project.

Previous Work History: This Statement includes a form titled "Experience on Completed or Ongoing Projects." Please use this form to detail the work that the firm has performed within the last three years. A minimum of three successfully-completed highway and/or roadway rehabilitation construction projects are required. Use one page per project and reproduce copies of the form as necessary. In each project description, identify your firm as a prime contractor, subcontractor, or joint venture partner.

OSHA Violations: If at any time within the past five years the Contractor has received an OSHA serious violation, you must provide copies of the *Citation and Notification of Penalty*, signed *Settlement Agreement*, and narrative which details the specific issue(s) cited, remedial action required and taken by the Contractor, amount of fine initially imposed, and ultimate resolution.

Resumes and Organizational Chart: The Contractor must include current resumes for each Principal and key individual identified in Question 2B below. The statement must also include a copy of the firm's current Organizational Chart.

Equipment: The Contractor must provide a list of equipment that would be available for the work.

Note: This Statement constitutes a part of the proposal, and signature on the signature portion of the proposal constitutes signature on this Statement.

# **1. GENERAL INFORMATION:**

A. Type of organization: \_\_\_\_\_

If Corporation, include year and state incorporated

If Partnership, state whether general or limited

If Sole Proprietorship, include name of owner

If Joint Venture\*, include name all partnering firms

(\*Bidder's submitting a bid as joint venture must obtain a joint venture contractor's license before they may be awarded a contract, per Business and Professions Code §7029.1).

B. Is the firm certified as a Minority Business Enterprise (MBE) or Women Business Enterprise (WBE)?

\_\_\_\_\_ Yes (attach certification letter) \_\_\_\_\_ No

# **2. PERSONNEL:**

A. Identify the current number of employees below:

Employee Type	Full-Time	Part-Time
Office		
Field		

B. Principals and Key Personnel: On the chart below, supply the required information. Principals and Key Personnel include proprietors, partners, directors or officers of the firm; any manager or individual who participates in overall policy-making or financial decisions of the firm; any person who makes significant financial contributions to the firm's operations; any person in a position to control and direct the firm's overall operations or any significant part of its operation (including site foremen and superintendents). Resumes for Principals and Key Personnel must be provided herewith. Use additional sheets if necessary to identify all Principals and Key Personnel.

Description	Person 1	Person 2	Person 3
Name			
Title			
% Ownership			

(Use additional sheets if necessary to identify all Principals and Key Personnel)

**3. FINANCIAL INFORMATION:**

A. Are there any liens outstanding against the Contractor? ☐ Yes ☐ No  
(if yes, provide a detailed explanation on an attached sheet)

B. Has the Contractor, Principals or Key Personnel been party to a bankruptcy or reorganization proceeding with the last five years? ☐ Yes ☐ No  
(if yes, provide a detailed explanation on an attached sheet)

C. Annual sales dollar volume of Contractor: \$ \_\_\_\_\_

**4. INTEGRITY OF CONTRACTOR:** Please provide an explanation on an attached sheet for any of the following questions with the answer "yes".

A. During the past five years has the Contractor:

i. Been subject of a lien or claim of \$25,000 or more by a subcontractor or supplier? ☐ Yes ☐ No

ii. Failed to complete a contract? ☐ Yes ☐ No

iii. Been suspended, debarred, disqualified or otherwise declared ineligible to bid? ☐ Yes ☐ No

iv. Been defaulted on any contract? ☐ Yes ☐ No

v. Had a contract terminated? ☐ Yes ☐ No

vi. Had liquidated damages assessed against it upon completion of a contract? ☐ Yes ☐ No

vii. Been a plaintiff or defendant in any lawsuits arising out of public or private construction contracts? ☐ Yes ☐ No

B. During the past five years has the Contractor, Principals or Key Personnel:

i. Been a plaintiff or defendant in any lawsuits arising out of public or private construction contracts? ☐ Yes ☐ No

ii. Been the subject of an investigation involving any alleged violation of criminal law, civil antitrust law or other federal, state, or local civil law? ☐ Yes ☐ No

iii. Been convicted after trial or by plea of any felony under state or federal law? ☐ Yes ☐ No

iv. Entered a plea of nolo contendere to a charge of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or violation of an antitrust law? ☐ Yes ☐ No

v. Been the subject of an investigation of any alleged violation of federal, state, or local regulations by any public agency? ☐ Yes ☐ No



- vi. Been found to have committed a violation of any labor law or regulation including prevailing wage rates and fair labor practices? ☐ Yes ☐ No
- vii. Been found to have committed an OSHA "serious violation"? ☐ Yes ☐ No
- viii. Been found to have committed a construction-related violation of federal, state, or local environmental law or regulation? ☐ Yes ☐ No

**5. BIDDING CAPABILITY AND PREVIOUS EXPERIENCE:**

- A. Provide a detailed narrative of the Contractor's experience and involvements in highway and/or roadway rehabilitation construction projects. Previous experience in this field of construction is necessary for the contractor to be found responsible specific to this Project. Additional information can be provided on an attached sheet.

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☐ mark if continued on attached sheet

B. Identify Contractor Specialty capabilities (check all appropriate). Bidder must have self-performing capability for each specialty selected by the Bidder.

- |   |   |
|---|---|
| <input type="checkbox"/> 1. Sitework                      | <input type="checkbox"/> 13. Conveying Systems        |
| <input type="checkbox"/> 2. Concrete                      | <input type="checkbox"/> 14. Mechanical               |
| <input type="checkbox"/> 3. Masonry                       | <input type="checkbox"/> 15. Electrical               |
| <input type="checkbox"/> 4. Metals                        | <input type="checkbox"/> 16. Plumbing                 |
| <input type="checkbox"/> 5. Carpentry                     | <input type="checkbox"/> 17. HVAC                     |
| <input type="checkbox"/> 6. Thermal & Moisture Protection | <input type="checkbox"/> 18. Sprinkler                |
| <input type="checkbox"/> 7. Doors & Windows               | <input type="checkbox"/> 19. ATC                      |
| <input type="checkbox"/> 8. Finishes                      | <input type="checkbox"/> 20. Balancing                |
| <input type="checkbox"/> 9. Specialties                   | <input type="checkbox"/> 21. Fire Alarms              |
| <input type="checkbox"/> 10. Equipment                    | <input type="checkbox"/> 22. Security                 |
| <input type="checkbox"/> 11. Furnishings                  | <input type="checkbox"/> 23. Pre-fabricated Equipment |
| <input type="checkbox"/> 12. Special Construction         |   |

C. Contract Capability (determined by size of previous work and bonding capacity):

- ☐ 1. \$0 - \$10,000
- ☐ 2. \$0 - \$50,000
- ☐ 3. \$0 - \$100,000
- ☐ 4. \$0 - \$250,000
- ☐ 5. \$0 - \$500,000
- ☐ 6. \$0 - \$1,000,000
- ☐ 7. \$0 - \$5,000,000
- ☐ 8. \$0 - \$10,000,000
- ☐ 9. \$0 - >\$10,000,000

D. Use the following forms (i.e. pages BD-37 – BD-39) to describe bidder's experience on completed or ongoing projects over the last five years (a separate sheet must be completed for each project – three minimum).

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PROJECT EXPERIENCE WITH CONCRETE AND/OR  
LANDSCAPING CONSTRUCTION PROJECTS

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Project Status:

- ☐ Project completed  
☐ Work in progress

Contractor's Role\*:

- ☐ Prime Contractor  
☐ Subcontractor  
☐ Joint Venture Partner

\* Entity submitting proposal is considered "Contractor"

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Facility / Project Name: \_\_\_\_\_

Address of Project: \_\_\_\_\_

Project Owner: \_\_\_\_\_

Contract Amount (Contractor's Share): \$\_\_\_\_\_ Was project bonded? ☐ Yes ☐ No

% of total project performed by Contractor by Contractor's own forces: \_\_\_\_\_%

Was Contractor required to possess a Performance Bond and/or Payment Bond? ☐ Yes ☐ No

Start Date:\_\_\_\_\_ Scheduled Completion Date:\_\_\_\_\_ Actual Completion Date:\_\_\_\_\_

Construction Manager / Project Manager:

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ email: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Architect / Engineer:

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ email: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Reference familiar with Contractor's performance:

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ email: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Description of work performed by Contractor: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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PROJECT EXPERIENCE WITH CONCRETE AND/OR  
LANDSCAPING CONSTRUCTION PROJECTS

---

Project Status:

- ☐ Project completed  
☐ Work in progress

Contractor's Role\*:

- ☐ Prime Contractor  
☐ Subcontractor  
☐ Joint Venture Partner

\* Entity submitting proposal is considered "Contractor"

---

Facility / Project Name: \_\_\_\_\_

Address of Project: \_\_\_\_\_

Project Owner: \_\_\_\_\_

Contract Amount (Contractor's Share): \$\_\_\_\_\_ Was project bonded? ☐ Yes ☐ No

% of total project performed by Contractor by Contractor's own forces: \_\_\_\_\_%

Was Contractor required to possess a Performance Bond and/or Payment Bond? ☐ Yes ☐ No

Start Date:\_\_\_\_\_ Scheduled Completion Date:\_\_\_\_\_ Actual Completion Date:\_\_\_\_\_

Construction Manager / Project Manager:

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ email: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Architect / Engineer:

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ email: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Reference familiar with Contractor's performance:

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ email: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Description of work performed by Contractor: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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PROJECT EXPERIENCE WITH CONCRETE AND/OR  
LANDSCAPING CONSTRUCTION PROJECTS

---

Project Status:

- ☐ Project completed  
☐ Work in progress

Contractor's Role\*:

- ☐ Prime Contractor  
☐ Subcontractor  
☐ Joint Venture Partner

\* Entity submitting proposal is considered "Contractor"

---

Facility / Project Name: \_\_\_\_\_

Address of Project: \_\_\_\_\_

Project Owner: \_\_\_\_\_

Contract Amount (Contractor's Share): \$\_\_\_\_\_ Was project bonded? ☐ Yes ☐ No

% of total project performed by Contractor by Contractor's own forces: \_\_\_\_\_%

Was Contractor required to possess a Performance Bond and/or Payment Bond? ☐ Yes ☐ No

Start Date:\_\_\_\_\_ Scheduled Completion Date:\_\_\_\_\_ Actual Completion Date:\_\_\_\_\_

Construction Manager / Project Manager:

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ email: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Architect / Engineer:

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ email: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Reference familiar with Contractor's performance:

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ email: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Description of work performed by Contractor: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **BID BOND**

*(MINIMUM 10% OF TOTAL BID AMOUNT)*

KNOW ALL BY THESE PRESENTS that we, \_\_\_\_\_,  
the Contractor in the contract hereto annexed, as Principal, and \_\_\_\_\_,  
as Surety, jointly and severally, bind ourselves, our heirs, representatives, successors and assigns,  
as set forth herein to the County of Mono (hereinafter, "Owner") in the sum of \$ \_\_\_\_\_  
lawful money of the United States. Principal has submitted the accompanying bid for

### **SCHOOL STREET PLAZA PROJECT**

If the Principal is awarded the contract and enters into a written contract, in the form prescribed by the Owner, at the price designated by his bid, and files two bonds with the Owner, one to guarantee payment for labor and materials and the other to guarantee faithful performance, in the time and manner specified by the Owner, and carries all insurance in the type and amount which conforms to the Contract Documents, and furnishes required certificates and endorsements thereof, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Forfeiture of this bond shall not preclude the Owner from seeking all other remedies provided by law to cover losses sustained as a result of the Principal's failure to do any of the foregoing.

Principal and Surety agree that if the Owner is required to engage the services of an attorney in connection with the enforcement of this bond, each shall pay Owner's reasonable attorney's fees incurred with or without suit.

**PRINCIPAL:**

Executed on: \_\_\_\_\_

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

(Seal of Corporation)

Title: \_\_\_\_\_

(Attach notary acknowledgment for Contractor's authorized representative and for Attorney-in-Fact of Surety)

NOTICE: No substitution or revision to this bond form will be accepted. Sureties must be authorized to do business in and have an agent for service of process in California. A certified copy of Power of Attorney must be attached.

Any claims under this bond may be addressed to:

\_\_\_\_\_ (Name and address of Surety)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (Name and address of Surety's agent for service  
of process in California, if different from above)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (Telephone number of Surety's agent in Calif.)

(Attach notary acknowledgement)

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_  
(Attorney-in-Fact)





**SECTION II**

**STANDARD AGREEMENT**



**AGREEMENT BETWEEN THE COUNTY OF MONO  
AND [CONTRACTOR] FOR  
SCHOOL STREET PLAZA PROJECT  
Project No. RPSTPLE-5947(041)**

WHEREAS, the County of Mono, a political subdivision of the State of California (hereinafter referred to as “the County”), may have the need for the various construction services of [Corporation]/[Name(s)], [an individual[s]], doing business as [Contractor] of [City], [State] (hereinafter referred to as “Contractor”), and in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

**TERMS AND CONDITIONS**

**1. SCOPE OF WORK**

This Agreement includes and is subject to the provisions of the Bid & Contract Documents, including the Project Manual as well as the Caltrans Standard Specifications (2010) and the Caltrans Standard Plans (2010) issued by the California Department of Transportation, as they may have been amended for County’s use, which documents are referenced and incorporated herein.

Contractor shall furnish the services, perform the work, and provide the associated materials and equipment for the County described in the Scope of Work (Attachment A), attached hereto and by reference incorporated herein. Requests by the County to Contractor to perform under this Agreement shall be made by the Director of the Mono County Department of Public Works, or an authorized representative thereof. Requests to Contractor for services and work to be performed under this Agreement shall be based upon the County’s need for such services or work.

Services and work provided at the County’s request by Contractor under this Agreement will be performed in a manner consistent with the requirements and standards established by applicable federal, state, and County laws, ordinances, regulations, and resolutions. Such laws, ordinances, regulations, and resolutions include, but are not limited to, those to which reference is made in this Agreement such as the Federal Provisions, attached hereto and by reference incorporated herein.

**2. TERM**

The term of this Agreement shall be from [start date], through [end date], unless sooner terminated as provided below.

**3. CONSIDERATION**

**A. Compensation.**

The County shall pay Contractor in accordance with the “Schedule of Fees” (set forth in Attachment A) for the services and work described in “Scope of Work” (also set forth in Attachment A) which are performed by Contractor at the County’s request.

**B. Travel and Per Diem.**

Unless otherwise stated in the Scope of Work (Attachment A), Contractor will not be paid or reimbursed for travel expenses or per diem which Contractor incurs in providing services and work requested by the County under this Agreement.

**C. No Additional Consideration.**

Except as expressly provided in this Agreement, Contractor shall not be entitled to, nor receive from the County, any additional consideration, compensation, salary, wages, or other type of remuneration for services or work rendered under this Agreement. Specifically, Contractor shall not be entitled, by virtue of this Agreement, to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

D. Limit Upon Amount Payable Under Agreement.

The total sum of all payments made by the County to Contractor for services and work performed under this Agreement shall not exceed [contract limit] (\$[contract limit]) (hereinafter referred to as "contract limit"). The County expressly reserves the right to deny any payment or reimbursement requested by Contractor for services or work performed which is in excess of the contract limit.

E. Billing and Payment.

Contractor shall submit to the County, not more than once per month, an itemized statement of all services and work described in the Scope of Work (Attachment A), which were done at the County's request. The statement to be submitted will cover the period from the first day of the preceding month through and including the last day of the preceding month. Alternatively, Contractor may submit a single request for payment at the conclusion of the work. All statements submitted in request for payment should identify the date on which the services and work were performed and describe the nature of the services and work which were performed on each day. Invoicing shall be informative and concise regarding work performed during that billing period. Upon finding that Contractor has satisfactorily completed the work and performed the services called for in the Scope of Work (Attachment A), the County shall make payment to Contractor within 30 days of its receipt of the itemized statement. Should the County determine the services or work have not been completed or performed as called for in the Scope of Work (Attachment A) and/or should Contractor produce an incorrect statement, the County shall withhold payment until the services and work are satisfactorily completed or performed and/or the statement is corrected and resubmitted.

F. Federal and State Taxes.

(1) Except as provided in subparagraph (2) below, the County will not withhold any federal or state income taxes or social security from any payments made by the County to Contractor under the terms and conditions of this Agreement.

(2) The County shall withhold California State income taxes from payments made under this Agreement to non-California resident independent contractors when it is anticipated that total annual payments to Contractor under this Agreement will exceed one-thousand five-hundred dollars (\$1,500.00).

(3) Except as set forth above, the County has no obligation to withhold any taxes or payments from sums paid by the County to Contractor under this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. The County has no responsibility or liability for payment of Contractor's taxes or assessments.

(4) The total amounts paid by the County to Contractor, and taxes withheld from payments to non-California residents, if any, will be reported annually to the Internal Revenue Service and the State Franchise Tax Board.

#### **4. WORK SCHEDULE**

Upon the County's issuance of a "Notice to Proceed," Contractor's obligation is to perform, in a timely manner, those services and work identified in the Scope of Work (Attachment A) which are requested by the County. It is understood by Contractor that its performance of those services and work will require a varied schedule. Contractor, in arranging its own schedule, will coordinate with the County to ensure that all services and work requested by the County under this Agreement will be performed within the time frame set forth by the County in Attachment A.

#### **5. REQUIRED LICENSES, CERTIFICATES, AND PERMITS**

Any licenses, certificates, or permits which it is reasonably foreseeable will be required by federal, state, County, or municipal governments for Contractor to provide the services and work described in Attachment A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to, driver's licenses, professional licenses or certificates, contractor's licenses, and business licenses. Such licenses, certificates, and permits will be procured and maintained in force by Contractor at no expense to the County. Contractor will provide the County, upon execution of this Agreement, with evidence of current and valid licenses, certificates and permits which are required to perform the services and work identified in Attachment A. Where there is a disagreement between Contractor and the County as to what licenses, certificates, and permits are required to perform the services and work identified in Attachment A, the County reserves and shall have the right to make such determinations for purposes of this Agreement.

#### **6. OFFICE SPACE, SUPPLIES, EQUIPMENT, ETC.**

Contractor shall provide such office space, supplies, equipment, vehicles, reference materials, support services, and telephone service as is necessary for Contractor to provide the services and work identified in Attachment A to this Agreement. The County is not obligated to reimburse or pay Contractor for any expense or cost incurred by Contractor in procuring or maintaining such items. The costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

#### **7. COUNTY PROPERTY**

##### **A. Personal Property of the County.**

Any personal property such as, but not limited to, protective or safety devices, badges, identification cards, keys, uniforms, etc., provided to Contractor by the County pursuant to this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the County. Contractor will use reasonable care to protect, safeguard, and maintain such items while they are in Contractor's possession. Contractor will be financially responsible for any loss or damage to such items, partial or total, which is the result of Contractor's negligence.

##### **B. Products of Contractor's Services and Work.**

Any and all compositions, publications, plans, designs, specifications, blueprints, maps, formulas, processes, photographs, slides, video tapes, computer programs, computer disks, computer tapes, memory chips, soundtracks, audio recordings, films, audio-visual presentations, exhibits, reports, studies, works of art, inventions, patents, trademarks, copyrights, or intellectual properties of any kind which are created, produced, assembled, compiled by, or are the result, product, or manifestation of, Contractor's services or work under this Agreement are, and at the termination of this Agreement remain, the sole and exclusive property of the County. At the termination of the Agreement, Contractor will convey possession and title to all such properties to the County.

#### **8. WORKERS' COMPENSATION**

Contractor shall provide workers' compensation insurance coverage, in the legally required amount, for all Contractor's employees utilized in providing services and work pursuant to this Agreement. By executing a copy of this Agreement, Contractor acknowledges its obligations and responsibilities to its employees under the California Labor Code, and warrants that Contractor has complied and will comply during the term of this Agreement with all provisions of the California Labor Code with regard to its employees. Contractor, at the time of execution of this Agreement, will provide the County with evidence of the required workers' compensation insurance coverage.

## 9. PUBLIC WORK

### A. Determination.

Some of the services and work to be provided by Contractor under this Agreement may constitute a public work within the meaning of California Labor Code Sections 1720 and 1720.3. Accordingly, and as required by Section 1771 of the California Labor Code, Contractor and any subcontractor under him, shall pay not less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holiday and overtime work, to all workers employed in the execution of those services and work requested by the County as described in Attachment A of this Agreement that constitute a public work. California Labor Code Section 1771 is incorporated herein by this reference, and a copy of that Section is attached to this Agreement as a part of Attachment B.

### B. Prevailing Wage Rate.

The general prevailing rate of per diem wages applicable to each class of worker employed in the execution of those services and work that constitute a public work under this Agreement has been determined by the Director of the California Department of Industrial Relations (hereinafter referred to as "Director"). Copies of the Director's determination are on file at the Mono County Department of Public Works office, 74 North School Street, Bridgeport, California, and are available to any interested party upon request.

### C. Apprentices.

Pursuant to Section 1777.5 of the California Labor Code, properly registered apprentices performing services and work that constitute a public work, if any, shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered. California Labor Code Section 1777.5 is incorporated herein by this reference, and a copy of that section is attached to this contract as a part of Attachment B.

### D. Penalty for Non-Payment of Prevailing Wages.

Pursuant to Section 1775 of the California Labor Code, Contractor, and any subcontractor under him, shall, as a penalty to the County, forfeit not more than fifty dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the general rate of per diem wages for the performance of services and work that constitute a public work, as determined by the Director, for the work or craft for which the worker is employed in the performance of services and work provided under this Agreement that constitute a public work, except as provided by subdivision (b) of Section 1775 of the California Labor Code. California Labor Code Section 1775 is incorporated herein by this reference, and a copy of that section is attached to this Agreement as a part of Attachment B.

### E. Payroll Records.

Pursuant to Section 1776 of the California Labor Code, Contractor, and any subcontractor under him, shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the performance of the

services and work requested by the County, as described in the Scope of Work (Attachment A) of this Agreement.

F. Inspection of Payroll Records.

Contractor, and any subcontractor under him, shall comply with each of the additional requirements set forth in California Labor Code Section 1776, regarding: (1) the form of records; (2) the provision of records upon request to the County, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the California Department of Industrial Relations; and, (3) the inspection of records by the public. California Labor Code Section 1776 is incorporated herein by this reference, and a copy of that section is attached to this Agreement as a part of Attachment B.

G. Posting of Prevailing Wages at Job Site.

Pursuant to California Labor Code Section 1773.2, Contractor shall post at each job site in connection with this Agreement a copy of the Director's determination of the general prevailing rate of per diem wages for each classification of worker required in the execution of those services and work requested by the County, as described in the Scope of Work (Attachment A) of this Agreement that constitute a public work.

H. Hours.

Pursuant to Section 1810 of the California Labor Code, the time of service of any worker employed by Contractor, or by any subcontractor under him, in the performance of services and work requested by the County, as described in the Scope of Work (Attachment A) of this Agreement that constitute a public work, is limited and restricted to eight hours during any one calendar day, and 40 hours during any one calendar week, except as otherwise provided by the California Labor Code.

I. Overtime.

Pursuant to California Labor Code Section 1815, the performance of services and work, as described in the Scope of Work (Attachment A) of this Agreement that constitute a public work by employees of Contractor, or employees of any subcontractor under him, in excess of eight hours per calendar day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight hours per calendar day at not less than one and one-half (1½) times the basic rate of pay. California Labor Code Section 1815 is incorporated herein by this reference, and a copy of that section is attached to this contract as a part of Attachment B.

J. Records of Hours.

Contractor, and any subcontractors under him, shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the performance of the services and work requested by the County that constitute a public work, as described in the Scope of Work (Attachment A) of this Agreement. The record shall be kept open at all reasonable hours to the inspection of the County and to the Division of Labor Standards Enforcement as required by Labor Code Section 1812.

K. Penalty for Violation of Work Hours.

Pursuant to California Labor Code Section 1813, Contractor, and any subcontractors under him, shall, as a penalty to the County, forfeit twenty-five dollars (\$25.00) for each worker employed by the respective contractor or subcontractor in the execution of the services and work requested by the County that constitute a public work, as described in the Scope of Work (Attachment A) of this Agreement, for each calendar day during which the worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the California Labor Code. California Labor Code Section 1813 is incorporated herein by this reference, and a copy of that section is attached to this contract as a part of Attachment B.

## 10. INSURANCE

### A. General Liability.

Contractor shall procure, and maintain during the entire term of this Agreement, a policy of general liability insurance which covers all the services and work to be performed by Contractor under this Agreement. Such policy shall have a per occurrence combined single limit coverage of not less than one million dollars (\$1,000,000). Such policy shall not exclude or except from coverage any of the services and work required to be performed by Contractor under this Agreement. The required policy of insurance shall be issued by an insurer authorized to sell such insurance by the State of California, and have at least a “Best’s” policyholder’s rating of “A” or “A+”. Prior to commencing any work under this Agreement, Contractor shall provide the County: 1) a certificate of insurance documenting evidence of the required coverage; 2) an additional insured endorsement applying to the County of Mono, its agents, officers and employees; and, 3) a notice of cancellation or change of coverage endorsement indicating that the policy will not be modified, terminated, or canceled without 30 days’ written notice to the County.

### B. Business Vehicle.

Contractor shall procure and maintain in force throughout the duration of this Agreement, a business auto liability insurance policy with minimum coverage levels of one million dollars (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability. The coverage shall include all Contractor-owned, non-owned, and hired vehicles employed by the Contractor in the performance of the services and work requested by the County, as described in the Scope of Work (Attachment A). A certificate of insurance shall be provided to the County by Contractor prior to commencing any work under this Agreement. The policy shall maintain a provision prohibiting the cancellation or modification of said policy except upon 30 days’ prior written notice to the County.

### C. Pollution Liability

Contractor shall purchase and thereafter maintain Pollution Liability insurance of not less than one million dollars (\$1,000,000) each occurrence/two million dollars (\$2,000,000) policy aggregate covering liability arising from the sudden and accidental release of pollution.

### D. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions shall be declared by Contractor and must be approved by the County prior to Contractor commencing services and work requested by the County under this Agreement. If possible, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the County, its officials, officers, employees, and volunteers, or Contractor shall provide evidence satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

### E. Subcontractors.

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein for Contractor.

### F. Unemployment, Disability, and Liability Insurance

Contractor shall maintain, if so required by law, unemployment, disability and liability insurance in an amount to be determined by the State which is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the Contractor in performing work associated with this Agreement.

## 11. BOND REQUIREMENTS



Contractor shall furnish and maintain in effect the following bonds: 1) a labor and materials payment bond in an amount equal to one hundred percent (100%) of the contract price; 2) a faithful performance bond in an amount equal to one hundred percent (100%) of the contract price; and, 3) upon project completion and acceptance by the County, a one-year warranty bond in an amount equal to ten percent (10%) of the contract price. The bonds shall comply with the requirements of California Civil Code Section 3248 and must be issued by an “Admitted Surety Insurer.” For purposes of this Agreement, an Admitted Surety Insurer means a corporate insurer or inter-insurance exchange to which the California State Insurance Commissioner has issued a certificate of authority to transact surety insurance in California, as defined in Section 105 of the California Insurance Code. Bonds shall be in a form acceptable to the Mono County Counsel. The Attorney-in-Fact (resident agent) who executes the bonds on behalf of the surety company must attach a copy of his Power of Attorney as evidence of his authority. A notary shall acknowledge this Power of Attorney as of the date of the execution of the surety bond that it covers. If any surety becomes unacceptable to the County or fails to furnish reports as to its financial condition as requested by the County, Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the County and of persons supplying labor or materials in the prosecution of the work contemplated by this Agreement.

## 12. STATUS OF CONTRACTOR

All acts of Contractor, its agents, officers, employees, and subcontractors relating to the performance of this Agreement, shall be performed by independent contractors, and not as agents, officers, or employees of the County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of, or exercise any right or power vested in, the County. No agent, officer, or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and the County that this Agreement shall not under any circumstances be construed or considered to create an employer-employee relationship or a joint venture. As an independent contractor:

A. Contractor (unless otherwise specified herein) shall determine the method, details, and means of performing the services and work to be provided by Contractor under this Agreement.

B. Contractor shall be responsible to the County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to the County’s control with respect to the physical action or activities of Contractor in fulfillment of this Agreement.

C. Contractor, its agents, officers and employees are, and at all times during the term of this Agreement shall, represent and conduct themselves as independent contractors, and not as employees of the County.

## 13. DEFENSE AND INDEMNIFICATION

Contractor shall defend, indemnify, and hold harmless the County, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney’s fees, arising out of, resulting from, or in connection with, the performance of this Agreement by Contractor, or Contractor’s agents, officers, employees, or subcontractors. Contractor’s obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless applies to any actual or alleged personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Contractor’s obligation under this paragraph extends to any claim, damage, loss, liability, expense, or other cost which is caused in whole or in part by any act or omission of Contractor, its agents, employees, suppliers, or anyone directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable.

Contractor’s obligation to defend, indemnify, and hold the County, its agents, officers, and employees harmless under the provisions of this paragraph is not limited to, or restricted by, any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

This provision shall survive any termination or expiration of this Agreement and remain in effect to meet the intent of this paragraph.

**14. RECORDS AND AUDIT****A. Records.**

Contractor shall prepare and maintain all records required by the various provisions of this Agreement, and federal, state, County, and municipal law, ordinances, regulations, and directions. Contractor and all subcontractors shall maintain these records for a minimum of four years after Contractor or all subcontractors make final payments and all other pending matters are closed. Contractor may fulfill its obligation to maintain records as required by this paragraph by substitute photographs, micrographs, or other authentic reproduction of such records.

**B. Inspections and Audits.**

Any authorized representative of the County shall have access to any books, documents, papers, records, including, but not limited to, financial records of Contractor, which the County determines to be pertinent to this Agreement, for the purposes of making audit, evaluation, examination, excerpts, and transcripts during the period such records are to be maintained by Contractor. Further, the County has the right, at all reasonable times, to audit, inspect, or otherwise evaluate the work performed or being performed under this Agreement.

**15. NON-DISCRIMINATION**

During the performance of this Agreement, Contractor, its agents, officers, employees, and subcontractors shall not unlawfully discriminate in violation of any federal, state, or local law, against any employee, or applicant for employment, or person receiving services under this Agreement, because of race, religion, color, ancestry, national origin, physical handicap, medical condition, marital status, age, or sex. Contractor and its agents, officers, employees, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), and the applicable regulations promulgated thereunder in the California Code of Regulations. Contractor shall also abide by the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said act.

**16. TERMINATION**

The County reserves the right to terminate this contract in whole or in part at any time, either for the County's convenience or because of the Contractor's failure to fulfill the contract obligations, upon a determination by the Director of the Mono County Department of Public Works, after seeking advice from County Counsel, that termination of the contract is in the best interest of the County and by giving notice to the Contractor.

The Contractor may terminate this contract in accordance with Section 6.10 of the Special Provisions of the Project Manual.

If either party elects to terminate the contract, the termination of the contract and the total compensation payable to the Contractor shall be governed by the Special Provisions of the Project Manual, incorporated herein.

**17. ASSIGNMENT**

This is an agreement for the services of Contractor. The County has relied upon the skills, knowledge, experience, and training of Contractor as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement, or any part of it, without the express written consent of the County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of the County.

**18. WAIVER OF DEFAULT**

Waiver of any default by either party to this Agreement shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or

subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided in paragraph 25 below.

## **19. CONFIDENTIALITY**

Contractor agrees to comply with various provisions of the federal, state, and County laws, regulations, and ordinances providing that information and records kept, maintained, or accessible by Contractor in the course of providing services and work under this Agreement, shall be privileged, restricted, or confidential. Contractor agrees to keep confidential all such privileged, restricted or confidential information and records. Disclosure of such information or records shall be made by Contractor only with the express written consent of the County.

## **20. CONFLICTS**

Contractor agrees that it has no interest, and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services and work under this Agreement.

## **21. POST-AGREEMENT COVENANT**

Contractor agrees not to use any confidential, protected, or privileged information which is gained from the County in the course of providing services and work under this Agreement, for any personal benefit, gain, or enhancement. Further, Contractor agrees for a period of two years after the termination of this Agreement, not to seek or accept any employment with any entity, association, corporation, or person who, during the term of this Agreement, has had an adverse or conflicting interest with the County, or who has been an adverse party in litigation with the County, and concerning such, Contractor by virtue of this Agreement has gained access to the County's confidential, privileged, protected, or proprietary information.

## **22. SEVERABILITY**

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction, or if it is found in contravention of any federal, state, or County statute, ordinance, or regulation, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby, and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

## **23. FUNDING LIMITATION**

The ability of the County to enter into this Agreement is based upon available funding from various sources. In the event that such funding fails, is reduced, or is modified, from one or more sources, the County has the option to terminate, reduce, or modify this Agreement, or any of its terms, within 10 days of its notifying Contractor of the termination, reduction, or modification of available funding. Any reduction or modification of this Agreement made pursuant to this provision must comply with the requirements (except the requirement of mutual consent) of paragraph 25 below.

## **24. VENUE**

This Agreement shall be governed under the laws of the State of California and venue for any litigation under this Agreement shall be the County of Mono, State of California.

**25. AMENDMENT**

This Agreement may be extended, modified, amended, changed, added to, or subtracted from, by the mutual consent of the parties hereto, if such amendment or change is in written form, and executed with the same formalities as this Agreement, and attached to the original Agreement to maintain continuity.

**26. NOTICE**

Any notice, communication, amendments, additions, or deletions to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or the County shall be required, or may desire, to make, shall be in writing and may be personally serviced, or sent by prepaid first class mail to the respective parties as follows:

County of Mono:  
Department of Public Works  
Post Office Box 457  
Bridgeport, California 93517

Contractor:  
[Contractor]  
[Address]  
[City, State ZIP]

**27. ENTIRE AGREEMENT**

This Agreement contains the entire agreement of the parties, and no representations, inducements, promises, or agreements otherwise between the parties not embodied herein or incorporated herein by reference, shall be of any force or effect. Further, no term or provision hereof may be changed, waived, discharged, or terminated, unless the same is in writing executed by the parties hereto. This Agreement includes and is subject to the provisions of the Bid & Contract Documents, including the Project Manual and Project Plans and the Standard Specifications (2010) and the Standard Plans (2010) issued by the California Department of Transportation, as they may have been amended for County's use, which documents are referenced and incorporated herein. Any modification to those documents prior to the bid opening shall be made by Addendum issued by the County. Any modification hereto after the award of contract shall be made by contract change order that is formally executed by both the County and Contractor in accordance with the provisions of paragraph 25 of this Agreement and/or the Public Contract Code, depending on the dollar amount of the change order.

**IN WITNESS THEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEALS  
AS SET FORTH BELOW.**

**COUNTY OF MONO:**

By: DRAFT  
Name: Vikki Bauer  
Title: Chair of the Board of Supervisors  
Date: \_\_\_\_\_

**CONTRACTOR:**

By: DRAFT  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Firm: [Name(s) dba] [Contractor]  
Date: \_\_\_\_\_

Approved as to Form:

Tax ID: \_\_\_\_\_

DRAFT

Tara McKenzie  
Deputy County Counsel

Date

DRAFT

Rita Sherman  
Deputy CAO – Risk Manager

Date

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## ATTACHMENT A

### AGREEMENT BETWEEN THE COUNTY OF MONO AND [CONTRACTOR] FOR SCHOOL STREET PLAZA PROJECT *Project No. RPSTPLE-5947(041)*

**TERM:**  
**FROM:** [Start Date], 2012  
**TO:** December 31, 2012

#### SCOPE OF WORK:

The County has selected and contractor shall construct project bid items 1 through 24 (the base project) and **SELECT ONE OR BOTH** additive alternative(s) 1 and 2. The work to be done generally consists of the following:

The major work items of this Project are: removal of existing sidewalk, curb, gutter, asphalt and landscape and placement of new sidewalk, curb and gutter, pedestrian ramps, electrical installation, and landscaping, and other items or details not mentioned above that shall be performed, placed, constructed, or installed in accordance with Bid & Contract Documents, including the Project Manual and Project Plans and the Standard Specifications (2010) and the Standard Plans (2010) issued by the California Department of Transportation, as they may have been amended for County's use.

Tasks performed in completing the project shall follow generally-accepted practices for the construction industry and shall meet the minimum requirements and guidelines established by federal, state, and local agencies. Work tasks shall be coordinated with the Mono County Department of Public Works.

Note: This Agreement and Scope of Work includes and is subject to the provisions of the Contract Documents, including Project Manual, Project Plans, and the General Prevailing Wage Rates established by the California Department of Industrial Relations in effect on the date of this agreement, which documents are attached hereto and/or by reference incorporated herein.

#### SCHEDULE OF FEES:

See Bid Schedule, attached hereto and incorporated herein.

#### WORK SCHEDULE:

See Contract Documents, attached hereto and incorporated herein. Completion of site improvements shall be specified in a Notice of Completion filed in the Office of the County Recorder by Public Works.

## **ATTACHMENT B**

**AGREEMENT BETWEEN THE COUNTY OF MONO  
AND [CONTRACTOR] FOR  
SCHOOL STREET PLAZA PROJECT  
*Project No. RPSTPLE-5947(041)***

**TERM:**

**FROM: [Start Date], 2012  
TO: December 31, 2012**

**CALIFORNIA LABOR CODE:**

Copies of referenced California Labor Code sections (1771, 1775, 1776, 1777.5, 1813, & 1815),  
presented as Attachment B1, attached hereto and incorporated herein.

**ATTACHMENT B1****CALIFORNIA LABOR CODE:**

Sections 1771, 1775, 1776, 1777.5, 1813, and 1815

**§ 1771. Payment of general prevailing rate**

Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

**§ 1775. Penalties for violations**

- (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.
- (2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:
  - (i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.
  - (ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.
- (B) (i) The penalty may not be less than ten dollars (\$10) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.
- (ii) The penalty may not be less than twenty dollars (\$20) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.
- (iii) The penalty may not be less than thirty dollars (\$30) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.
- (C) When the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

- (D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.
  - (E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.
- (b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:
- (1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
  - (2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.
  - (3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.
  - (4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.
- (c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

#### **§ 1776. Payroll records; retention; noncompliance; penalties; rules and regulations**

- (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
- (1) The information contained in the payroll record is true and correct.
  - (2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.
- (b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:
- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
  - (2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.



(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

**§ 1777.5. Employment of apprentices; wages; standards; number; apprenticeable craft or trade; exemptions; contributions**

(a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m)(1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Division of Apprenticeship Standards.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of

the Government Code, all money in the Apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the Division of Apprenticeship Standards.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

### **§ 1813. Forfeiture for violations; contract stipulation; report of violations**

The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

### **§ 1815. Overtime**

Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1-1/2 times the basic rate of pay.

**FAITHFUL PERFORMANCE BOND**

KNOW ALL BY THESE PRESENTS that we, \_\_\_\_\_,  
the Contractor in the contract hereto annexed, as Principal, and \_\_\_\_\_,  
as Surety, are held and firmly bound unto the County of Mono in the sum of \$ \_\_\_\_\_  
lawful money of the United States, for which payment, well and truly to be made, we bind ourselves,  
jointly and severally, firmly by these presents.

Signed, Sealed, and Dated \_\_\_\_\_

The condition of the above obligation is that if said Principal, its successors and assigns, as Contractor in the Agreement hereto annexed, shall faithfully perform each and all of the conditions of said Agreement to be performed by it, and shall furnish all tools, equipment, apparatus, facilities, transportation, labor and materials, other than material, if any, agreed to be furnished by the County, necessary to perform and complete in a good workmanlike manner the work of SCHOOL STREET PLAZA PROJECT in strict conformity with the terms and conditions set forth in the Agreement hereto annexed, then this obligation shall be null and void, otherwise to remain in full force and effect, and the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall, in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications.

Surety further agrees, in case suit is brought upon this bond, that it will pay, in addition to the basic obligation herein, a reasonable attorney’s fee to be awarded and fixed by the court, and to be taxed as costs, and to be included in the judgment therein rendered, provided however, that the amount of such attorney’s fee and the amount payable hereunder for Contractor’s failure of faithful performance shall not exceed the principal amount of this bond.

**DRAFT**

\_\_\_\_\_  
Contractor Date

APPROVED AS TO FORM:

**DRAFT**

\_\_\_\_\_  
Surety Date

**DRAFT**

\_\_\_\_\_  
County Counsel Date

(Attach acknowledgement)

**LABOR AND MATERIALS PAYMENT BOND**

KNOW ALL BY THESE PRESENTS that we, \_\_\_\_\_,  
the Contractor in the contract hereto annexed, as Principal, and \_\_\_\_\_,  
as Surety, are held and firmly bound unto the County of Mono in the sum of \$ \_\_\_\_\_  
lawful money of the United States, for which payment, well and truly to be made, we bind ourselves,  
jointly and severally, firmly by these presents.

Signed, Sealed, and Dated \_\_\_\_\_

The condition of the above obligation is that if said Principal, its successors and assigns, as Contractor in the Agreement hereto annexed, or its subcontractor, fails to pay for any materials, provisions, provider or other supplies, or teams, used in, upon, for, or about the performance of the work contracted to be done by said Contractor, namely to furnish all tools, equipment, apparatus, facilities, transportation, materials, and labor in a good workmanlike manner for the work of SCHOOL STREET PLAZA PROJECT, in strict conformity with the terms and conditions set forth in the Agreement hereto annexed, or fails to pay for any work or labor done thereon of any kind or fails to pay for amounts due pursuant to Civil Code Section 3248, or fails to pay any of the persons named in Civil Code Section 3181, said Surety will pay for the same in an amount not to exceed the sum hereinabove set forth, and also in case suit is brought upon this bond, a reasonable attorney’s fee to be fixed by the court.

This bond is executed in accordance with the requirements of Title XV of the Civil Code and is subject to the provisions thereof, and shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under and by virtue of the provisions of Civil Code Section 3181, or to their assigns, and the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligations on this bond, and it does hereby waive notice of such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

**DRAFT**

\_\_\_\_\_  
Contractor Date

**DRAFT**

\_\_\_\_\_  
Surety Date  
(Attach acknowledgement)

APPROVED AS TO FORM:

**DRAFT**

\_\_\_\_\_  
County Counsel Date

WARRANTY BOND

KNOW ALL BY THESE PRESENTS that we, \_\_\_\_\_,  
the Contractor in the contract hereto annexed, as Principal, and \_\_\_\_\_,  
as Surety, are held and firmly bound unto the County of Mono in the sum of \$ \_\_\_\_\_  
lawful money of the United States, for which payment, well and truly to be made, we bind ourselves,  
jointly and severally, firmly by these presents.

Signed, Sealed, and Dated \_\_\_\_\_

The condition of the above obligation is that if said Principal, its successors and assigns, as Contractor in the Agreement hereto annexed, or its subcontractor, fails to maintain and remedy in a good workmanlike manner the work of SCHOOL STREET PLAZA PROJECT such that it is free from defects in materials and workmanship for a period of one year commencing on \_\_\_\_\_ (the "Maintenance Period"), said Surety will pay for the same in an amount not to exceed the sum hereinabove set forth, and also in case suit is brought upon this bond, a reasonable attorney's fee to be fixed by the court.

PROVIDED, HOWEVER, that any suit under this bond shall be commenced no later than one (1) year from the expiration date of the Maintenance Period; provided, however, that if this limitation is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law, and said period of limitation shall be deemed to have accrued and shall commence to run on the expiration date of the Maintenance Period.

DRAFT

\_\_\_\_\_  
Contractor Date

DRAFT

\_\_\_\_\_  
Surety Date  
(Attach acknowledgement)

APPROVED AS TO FORM:

DRAFT

\_\_\_\_\_  
County Counsel Date





**SECTION III**

**SPECIAL PROVISIONS**



## **SPECIAL PROVISIONS**

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## SECTION 1. SPECIFICATIONS AND PLANS

### 1.1 GENERAL.

Unless otherwise stated, the work embraced herein shall be done in accordance with the Contract Documents, including these Special Provisions, and the greater of the California General Prevailing Wage Rates or federal Predetermined Minimum Wage and Fringe Benefits, as established by the California Department of Industrial Relations and the U.S. Department of Labor, respectively, and in effect on the date of this contract. Copies of the California General Prevailing Wage Rates are available for review at the offices of the Mono County Department of Public Works and the Federal Predetermined Minimum Wage and Fringe Benefits can be located at <http://www.wdol.gov/> and are further referenced in Attachment C to the Agreement, entitled "Federal Provisions".

In case of conflict between these Special Provisions, Project Plans, Technical Specifications, Quality Assurance Program (QAP) Plan, California Department of Transportation (Caltrans) Standard Plans and Specifications dated 2010 or other portions of the Contract Documents, including the Invitation for Bids, Instructions to Bidders, the Agreement and all its attachments, the County shall determine which provision takes precedence and will be used in lieu of such conflicting portions.

### 1.2 DEFINITIONS AND TERMS.

Where the following terms are used in the Contract Documents, or in any documents or other instruments pertaining to construction where these Special Provisions govern, the intent and meaning shall be interpreted as identified in the Standard Specifications and as follows:

- A. **ADMITTED SURETY INSURER (or, SURETY):** A corporate insurer or inter-insurance exchange to which the State Insurance Commissioner has issued a certificate of authority to transact surety insurance in California, as defined in Section 105 of the Insurance Code.
- B. **AWARD:** The acceptance by the County of the successful bidder's proposal.
- C. **CALENDAR DAY:** Unless otherwise specified, days or calendar days means each and every day shown on the calendar, Saturdays, Sundays, and holidays included.
- D. **CHANGE ORDER:** A written order to the Contractor covering changes in the plans, specifications, or proposal quantities and establishing the basis of payment and contract time adjustment, if any, for the work affected by such changes. The work, covered by a change order, shall be within the scope of the contract.
- E. **CONTRACT (or, CONTRACT DOCUMENTS):** The written and executed agreement between the County and the Contractor covering the work to be performed. The written agreement consists of all attachments as well as all documents incorporated by reference and shall include, but is not limited to, the Agreement, Performance Bond, Labor and Materials Payment Bond, any required insurance certificates, the Project Manual, any addenda issued to bidders, the Project Plans, these Special Provisions, the Technical Specifications, Caltrans Standard Plans and Specifications dated 2010, and QAP Plan.
- F. **CONTRACTOR:** The business entity entering into a contract with the County of Mono for the performance of the work.
- G. **CONTRACT ITEM (or, PAY ITEM):** A specific unit of work for which a price is provided in the Contract.
- H. **CONTRACT TIME:** The number of calendar days or working days, stated in the proposal, allowed for completion of the contract, including authorized time extensions. If a calendar date of completion is stated in the proposal, in lieu of a number of calendar or working days, the contract shall be completed by that date.

- I. **COUNTY:** The County of Mono, a political subdivision of the State of California.
- J. **DEPARTMENT:** The Mono County Department of Public Works, except where Department of Transportation publications and offices are cited, whereupon such citations are to remain as written and refer to the State of California, Department of Transportation.
- K. **ENGINEER:** The individual, partnership, firm, or corporation duly authorized by the County to be responsible for engineering supervision of the contract work and acting directly or through an authorized representative.
- L. **EQUIPMENT:** All machinery, together with the necessary supplies for upkeep and maintenance, and also all tools and apparatus necessary for the proper construction and acceptable completion of the work.
- M. **EXTRA WORK:** An item of work not provided for in the awarded contract as previously modified by change order or supplemental agreement, but which is found by the Engineer to be necessary to complete the work within the intended scope of the contract as previously modified.
- N. **INSPECTOR:** An authorized representative of the Engineer assigned to make all necessary inspections and/or tests of the work performed or being performed, or of the materials furnished or being furnished by the Contractor.
- O. **LABORATORY:** The laboratory or laboratories authorized by the Department to test materials and work involved in the contract.
- P. **LIQUIDATED DAMAGES:** the daily amount set forth in the contract to be deducted from the contract price to cover additional costs incurred by a local agency because of the contractor's failure to complete the contract work within the number of calendar days or workdays specified.
- Q. **NOTICE TO PROCEED:** A written notice from the Department to the Contractor to begin the actual contract work on the Project. If applicable, the Notice to Proceed shall state the date on which the contract time begins.
- R. **PROJECT:** The construction, installation, placement, alteration, or repair of any improvement of any kind, which is required directly or indirectly by the contract.
- S. **SPECIFICATIONS:** A part of the contract containing the written directions and requirements for completing the contract work. Standards for specifying materials or testing which are cited in the contract specifications by reference shall have the same force and effect as if physically included in the contract.
- T. **STANDARD PLANS:** State of California Department of Transportation, 2010 edition of the Standard Plans
- U. **STANDARD SPECIFICATIONS:** State of California Department of Transportation, 2010 edition of the Standard Specifications
- V. **SUPERINTENDENT:** The Contractor's executive representative who is present on the work during progress, authorized to receive and fulfill instructions from the Engineer, and who shall supervise and direct the construction.
- W. **SURVEYOR:** The individual, partnership, firm, or corporation duly authorized by the Contractor to be responsible for verifying placement of the work and acting directly or through an authorized representative.
- X. **UNEXCUSABLE DELAY:** a delay that does not entitle the Contractor to an adjustment of the Contract Sum and does not entitle the Contractor to an adjustment of the Contract Time.
- Y. **WORK:** The construction and services required by the Contract, whether completed in whole or partially completed, and includes all labor, materials, equipment, tools, supplies, tax, transportation, and services provided or to be provided by the Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a part of the Project.

**WORKING DAY:** A working day shall be any day other than a legal holiday, Saturday, or Sunday on which the normal working forces of the Contractor may proceed with regular work for at least 6 hours toward completion of the contract. Unless work is suspended for causes beyond the Contractor's control, Saturdays, Sundays, and holidays on which the Contractor's forces engage in regular work, requiring the presence of an inspector, will be considered working days.

## **SECTION 2. DESCRIPTION OF WORK**

### **2.1 GENERAL.**

The work to be done generally consists of removal of existing sidewalk, curb, gutter, asphalt and landscape and placement of new sidewalk, curb and gutter, pedestrian ramps, electrical installation, and landscaping.

### **2.2 SITE LOCATION.**

The work will take place along School Street, which is located in Bridgeport, California. The improvements will begin at the intersection of School Street and Highway 395 and will end at the intersection of School Street and Bryant Street. A map of the project site relative to County boundaries is presented on Sheet G1 of the Project Plans.

### **2.3 SITE DESCRIPTION.**

Existing on street parallel parking in front of the Mono County courthouse on School Street will be replaced with sidewalk and landscaping features to create a pedestrian plaza that enhances the visitor's experience and compliments the historic nature of the building.

### **2.4 SITE GEOLOGY AND SOILS.**

No geology or soils investigation was performed as part of this project.

### **2.5 SITE ACCESS, USE OF PREMISES, AND HOURS OF WORK.**

- A. Work shall be limited to the hours between 7:00 am and 7:00 pm daily, including weekends and holidays.
- B. Unless otherwise provided, the Contractor accepts full control of any vehicles, equipment, material, or other property delivered to the site in the performance of services and work for the Project. The Contractor is solely responsible for ensuring the security and protection of such vehicles, equipment, materials, property, and Work. The County accepts no responsibility for the security, safety, or liability of said vehicles, equipment, material, property, or, until final acceptance, the Work. The Contractor understands that the project site is a public area and, as such, there may be vandalism or obstructions, protrusions, and undesirable materials on and under the ground surface that may result in damage to the Contractor's vehicles, equipment, materials, project work, or other property.
- C. Authorized representatives or agents of the Engineer and County, state, or federal government shall have the right to enter the project site at any time during execution of the Work for any purpose that will not unreasonably interfere with the Contractor's use, including, but not limited to, the conduct of its own business, facility inspection, or inspection to ensure compliance with the terms and conditions of the Project.

### **2.6 OTHER PROJECTS.**

The Contractor is advised that other projects may be taking place at the site at the same time as this Project. The Contractor will make every effort to coordinate his work with that of other contractors.

## **2.7 PROTECTION OF PROPERTY.**

Attention is directed to Section 5-1.36, "Property and Facility Preservation," of the Standard Specifications. The Contractor shall take all reasonable precautions to preserve and protect all on-site and surrounding public and private property to prevent damage of all kinds to existing structures, signs, fences, gates, roads, drainage facilities, monitoring wells, equipment, and the environment arising from the execution of this Contract, unless otherwise called for on Project Plans or in these Special Provisions. In addition, the Contractor shall be responsible for the preservation and protection of all land monuments and property markers.

The Contractor shall replace, repair, and/or be responsible for any damage or injury to property of any character during the prosecution of the Work, resulting from any act, omission, neglect, or misconduct in the Contractor's manner or method of executing the Work, or at any time due to defective work or materials, and said responsibility shall not be released until the Project is completed and accepted. Repairs or replacement required as a result of such damage shall be performed to the County's satisfaction and at no additional cost to the County.

It is the Contractor's responsibility to identify and document any property or site damage that exists prior to the start of construction. If undocumented damage is discovered by the County that could have been caused as a result of the Contractor's presence, it will be the Contractor's responsibility to repair the damage to the County's satisfaction without cost to the County. If the Contractor does not repair the damage to the County's satisfaction, the County has the right, after 48 hours of written notification, to repair the damage and charge the Contractor for all expenses associated with the repair.

The Contractor shall be responsible for the safety of all persons at or near the project site as it pertains to the Project. The Contractor shall provide signage, temporary protective fencing, or covering over any open trenching, excavation, or other hazardous situation arising from the execution of the Work, to keep out unauthorized persons, at no additional cost to the County.

## **2.8 ENVIRONMENTAL PROTECTION.**

The Contractor shall comply with all federal, state, and local laws and regulations controlling pollution of the environment. All necessary precautions shall be taken to prevent pollution of streams, drainage channels, lakes, ponds, and reservoirs with fuels, oils, bitumens, chemicals, or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter. Any fuel or lubricants stored on-site shall be in appropriate and secure containers provided with secondary containment.

## **2.9 REMOVAL OF ASBESTOS AND HAZARDOUS SUBSTANCES.**

Should the Contractor encounter materials which the Contractor reasonably believes to be asbestos or a hazardous substance as defined in Section 25914.1 of the Health and Safety Code, and the asbestos or hazardous substance has not been rendered harmless, the Contractor may continue work in unaffected areas reasonably believed to be safe, and shall immediately cease work in the affected area and immediately report the condition to the Engineer in writing.

In accordance with Section 25914.1 of the Health and Safety Code, all such removal of asbestos or hazardous substances, including any exploratory work to identify and determine the extent of such asbestos or hazardous substance, will be performed by separate contract.

## **2.10 ARCHAEOLOGICAL AND HISTORICAL FINDINGS.**

The Contractor is advised that the site of the Work is within a property that contains a building, structure, or object listed in the current National Register of Historic Places published by the United

States Department of Interior. A Cultural Memo was prepared for this project and is available upon request.

Should the Contractor encounter, during its operations, any building, part of a building, structure, or object which is incongruous with its surroundings, the Contractor shall immediately cease operations in that location and notify the Engineer. The Engineer will immediately investigate the Contractor's finding and will direct the Contractor to either resume its operations or to suspend operations as directed.

Should the Engineer order suspension of the Contractor's operations in order to protect an archaeological or historical finding, or order the Contractor to perform extra work, such shall be covered by an appropriate contract modification (change order or supplemental agreement).

### **SECTION 3. PROPOSAL REQUIREMENTS AND CONDITIONS**

#### **3.1 GENERAL.**

The bidder's attention is directed to the provisions in Section 2 of this Project Manual, entitled "Instructions to Bidders" and these special provisions for the requirements and conditions which the bidder must observe in the preparation of and the submission of the bid.

#### **3.2 BID BOND.**

The bidder's bond shall conform to the bond form shown on pages BD-40 – 41 of this Project Manual and shall be properly filled out and executed. The bidder's bond form included in this Project Manual may be used.

#### **3.3 ACKNOWLEDGEMENTS, DISCLOSURES, CERTIFICATIONS, AFFIDAVITS.**

The bidder's attention is directed to the pages BD-23 – 31 of this Project Manual, which shall be submitted as required by paragraph 5 of "Instructions to Bidders". In conformance with State and federal law, a Noncollusion Affidavit is included in the Proposal (BD-25).

Section 1352, Title 31, United States Code prohibits Federal funds from being expended by the recipient or any lower-tier sub-recipient of a Federal-aid contract to pay for any person for influencing or attempting to influence a Federal agency or Congress in connection with the awarding of any Federal-aid contract, the making of any Federal grant or loan, or the entering into of any cooperative agreement.

If any funds other than Federal funds have been paid for the same purposes in connection with this Federal-aid contract, the recipient shall submit an executed certification and, if required, submit a completed disclosure form as part of the bid documents. A certification for Federal-aid contracts regarding payment of funds to lobby Congress or a Federal agency is included on pages BD-28 of this Project Manual. Standard Form - LLL, "Disclosure of Lobbying Activities," with instructions for completion of the Standard Form is also included in the Project Manual. Signing the Bid Proposal shall constitute signature of the Certification.

The above referenced certification and disclosure of lobbying activities shall be included in each subcontract and any lower-tier contracts exceeding \$100,000. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the Engineer.

The Contractor, subcontractors and any lower-tier contractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially



affects the accuracy of the information contained in any disclosure form previously filed by the Contractor, subcontractors and any lower-tier contractors. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered federal action; or
- (3) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered Federal Action.

### **3.4 DISADVANTAGED BUSINESS ENTERPRISE (DBE).**

The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of Title 49 CFR (Code of Federal Regulations), Part 26 in the award and administration of US DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate. Each subcontract signed by the bidder must include this assurance.

The Contractor, sub-recipient or subcontractor shall take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the contract (49 CFR 26). To ensure there is equal participation of the DBE groups specified in 49 CFR 26.5, the Agency specifies a goal for DBEs.

It is your responsibility to verify that the DBE firm is certified as DBE at date of bid opening. For a list of DBEs certified by the California Unified Certification Program, go to:

[http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

### **3.5 GOOD FAITH EFFORTS SUBMITTAL**

If you have not met the DBE goal, complete and submit the "DBE Information - Good Faith Efforts," Exhibit 15-H form with the bid showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed towards obtaining participation by DBEs will be considered. If good faith efforts documentation is not submitted with the bid, it must be received by the Agency no later than 4:00 p.m. on the 4th business day after bid opening.

Good faith efforts documentation must include the following information and supporting documents, as necessary:

1. Items of work you have made available to DBE firms. Identify those items of work you might otherwise perform with its own forces and those items that have been broken down into economically feasible units to facilitate DBE participation. For each item listed, show the dollar value and percentage of the total contract. It is your responsibility to demonstrate that sufficient work to meet the goal was made available to DBE firms.
2. Names of certified DBEs and dates on which they were solicited to bid on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty if the DBEs were interested, and the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. You are reminded to solicit certified DBEs through all reasonable and available means and provide sufficient time to allow DBEs to respond.

3. Name of selected firm and its status as a DBE for each item of work made available. Include name, address, and telephone number of each DBE that provided a quote and their price quote. If the firm selected for the item is not a DBE, provide the reasons for the selection.
4. Name and date of each publication in which you requested DBE participation for the project. Attach copies of the published advertisements.
5. Names of agencies and dates on which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. If the agencies were contacted in writing, provide copies of supporting documents.
6. List of efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If you have provided information, identify the name of the DBE assisted, the nature of the information provided, and date of contact. Provide copies of supporting documents, as appropriate.
7. List of efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, and materials, excluding supplies and equipment that the DBE subcontractor purchases or leases from the prime contractor or its affiliate. If such assistance is provided by you, identify the name of the DBE assisted, nature of the assistance offered, and date. Provide copies of supporting documents, as appropriate.
8. Any additional data to support demonstration of good faith efforts.

If your DBE Commitment form shows that you have met the DBE goal or if you are required to submit the DBE Commitment form, you must also submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the County finds that the DBE goal has not been met.

### **3.6 POST-BID SUBMITTALS.**

Failure of the bidder to fulfill the requirements of the Contract Documents for submittals required to be furnished after bid opening, including but not limited to escrowed bid documents, where applicable, may subject the bidder to a determination of the bidder's responsibility in the event it is the apparent low bidder on future public works contracts.

## **SECTION 4. CONTRACT REQUIREMENTS**

### **4.1 SUBCONTRACTING.**

No subcontract releases the Contractor from the contract or relieves the Contractor of its responsibility for a subcontractor's work.

If the Contractor violates Pub Cont Code § 4100 et seq., the County of Mono may exercise the remedies provided under Pub Cont Code § 4110. The County of Mono may refer the violation to the Contractors State License Board as provided under Pub Cont Code § 4111.

The Contractor shall perform work equaling at least 30 percent of the value of the original total bid with the Contractor's own employees and equipment, owned or rented, with or without operators.

Each subcontract must comply with the contract.

Each subcontractor must have an active and valid State contractor's license with a classification appropriate for the work to be performed (Bus & Prof Code, § 7000 et seq.).

The Contractor shall submit copies of subcontracts upon request by the Engineer. Before subcontracted work starts, the Contractor shall submit a Subcontracting Request form to the Engineer. The Contractor shall not use a debarred contractor; a current list of debarred contractors is available at the Department of Industrial Relations web site at: <http://www.dir.ca.gov/dlse/debar.html>

Upon request by the Engineer, the Contractor shall immediately remove and not again use a subcontractor who fails to prosecute the Work satisfactorily.

Each subcontract and any lower-tier subcontract that may in turn be made shall include the "Required Contract Provisions Federal-Aid Construction Contract" located in the Federal Provisions within this Project Manual. Payment for subcontracted work involved will be withheld from progress payments due or to become due, until correction is made. Failure to comply may result in termination of the contract.

## **4.2 PERFORMANCE OF SUBCONTRACTORS**

The subcontractors listed by the Contractor in Project Manual shall list therein the name and address of each subcontractor to whom the bidder proposes to subcontract portions of the work in an amount in excess of one-half of one percent of the total bid or \$10,000, whichever is greater, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code. The bidder's attention is invited to other provisions of the Act related to the imposition of penalties for a failure to observe its provisions by using unauthorized subcontractors or by making unauthorized substitutions.

DBEs must perform work or supply materials as listed in the "Local Agency Bidder DBE Commitment" form provided in Section 1, BD-11 of this Project Manual. Do not terminate a DBE listed subcontractor for convenience and perform the work with your own forces or obtain materials from other sources without prior written authorization from the Agency.

The County grants authorization to use other forces or sources of materials for requests that show any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. You stipulate a bond is a condition of executing the subcontract and the listed DBE fails to meet your bond requirements.
3. Work requires a contractor's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials.
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE delays or disrupts the progress of the work.
7. Listed DBE becomes bankrupt or insolvent.

If a listed DBE subcontractor is terminated, you must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet the DBE goal.

The substitute DBE must be certified as a DBE at the time of request for substitution. The County does not pay for work or material unless it is performed or supplied by the listed DBE, unless the DBE is terminated in accordance with this section.

Only DBE participation will count towards the DBE goal. All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies you purchase from DBEs counts towards the goal in the following manner:

1. 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
2. 60 percent counts if the materials or supplies are obtained from a DBE regular dealer.
3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer, nor a regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

You receive credit towards the goal if you employ a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55.

#### **4.3 PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS.**

A prime contractor or subcontractor shall pay any subcontractor not later than 10 days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the County's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions and other remedies of that section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

#### **4.4 PROMPT PAYMENT OF WITHHELD FUNDS TO SUBCONTRACTORS.**

No retainage will be held by the County from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the County's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

#### **4.5 APPALACHIAN REGIONAL DEVELOPMENT ACT OF 1965.**

As this project is not funded under the Appalachian Regional Development Act of 1965, page FP-13 of the Federal Provisions does not apply to this contract.

## **SECTION 5. PROJECT SCHEDULE**

### **5.1 GENERAL.**

Attention is directed to the provisions in Section 8-1.04 and "Start of Job Site Activities," Section 8-1.05, "Time," of the Standard Specifications. Section 8-1.04 of the Standard Specifications is amended to read as set forth in (A) through (C), as follows:

- A. The Contractor will be considered to have received constructive notice that the contract is awarded by the County on the date that a timely written Notice to Proceed is sent by email to the Contractor.
- B. For the purposes of determining the Contractor's compliance with the time limits for completion of the Project pursuant to the Contract Documents, the Contractor's first Working Day shall be deemed to be the date of the Notice to Proceed.
- C. The Contractor shall diligently prosecute the Project to completion such that the entire Project is complete, to the County's satisfaction, within 60 days of the Notice to Proceed. Failure by the Contractor to meet these time frames shall subject the Contractor to liquidated damages as specified herein.

## **5.2 AWARD AND EXECUTION OF CONTRACT.**

Section 3, "Contract Award and Execution," of the Standard Specifications is replaced in its entirety by applicable provisions of the Invitation for Bids, the Instructions to Bidders, the Agreement, and these Special Provisions.

## **5.3 PRE-CONSTRUCTION CONFERENCE.**

Prior to Contractor mobilization, a pre-construction conference will be held at a location, date, and time to be determined by the County for the purpose of discussing with the Contractor the scope of work, Project Plans, Technical Specifications, Special Provisions, CQA Plan, existing conditions, coordination with disposal site operations, equipment and material storage locations, materials testing and construction quality assurance, and all essential matters pertaining to the prosecution of and the satisfactory completion of the Project as required. The Contractor's representative at this conference shall include all major superintendents for the work and may include subcontractors.

## **5.4 PROSECUTION AND PROGRESS.**

The Contractor shall submit a progress schedule for the Engineer's approval within 14 calendar days after the date of the Notice to Award. The Contractor's progress schedule, when approved by the Engineer, may be used to establish major construction operations and to check on the progress of the Work. The Contractor shall provide sufficient materials, equipment, and labor to guarantee the completion of the Project in accordance with and within the time set forth in the Contract Documents.

If, in the sole judgment of the Engineer, the Contractor falls significantly behind the submitted schedule, the Contractor shall, upon the Engineer's request, submit a revised schedule for completion of the Work within the contract time and modify its operations to provide such additional materials, equipment, and labor necessary to meet the revised schedule. Should the prosecution of the Work be discontinued for any reason, the Contractor shall notify the Engineer at least 24 hours in advance of resuming operations.

## **5.5 ORDER OF WORK.**

The project site is located in a climate that can experience freezing temperatures throughout the year. While determination of the means, methods, techniques, sequences, and procedures of construction are the responsibility of the Contractor, such sequencing and procedures must bear climatic conditions in mind. Work shall be scheduled and protected such that inclement weather does not damage the Work or result in a hazardous condition.

## **5.6 LIQUIDATED DAMAGES, GENERAL.**

Section 8-1.10, "Liquidated Damages" of the Standard Specifications is replaced in its entirety by applicable provisions of the Invitation for Bids, the Instructions to Bidders, the Agreement, and these Special Provisions.

The County expects the Contractor to perform its responsibilities and tasks as specified in these Contract Documents. The expectation is reasonable, within normally acceptable business practices, and in the best interest of the County and its residents. The Contractor acknowledges that the County, in entering this Agreement, has considered and relied on the Contractor's representations as to its ability and commitment to quality and timeliness of service; that the provision of reliable and timely services is of utmost importance to the County; and that the County will suffer damages if the Contractor fails to fulfill its obligations under the Contract. The Contractor acknowledges that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages that the County will suffer and that liquidated or actual damages attach and will be payable from any funds due to the Contractor.

The liquidated damages described in Section 5.7, below, represent the projected financial loss and expenditures that may occur as a result of Contractor non-performance, including financial loss as a result of project delays. The County and Contractor agree that the liquidated damages provided for herein do not represent a penalty; rather, the liquidated damages represent a good faith effort by the County and Contractor to establish a reasonable estimate of the damages that will be incurred by the County in the circumstances described, considering all of the circumstances existing on the date of contract award, including the relationship of the sums to the range of harm to the County that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient.

This provision for liquidated damages for delay shall in no manner affect the County's right to terminate the Contract or the Contractor's right to perform the Contract as provided elsewhere in the Contract Documents. The County's exercise of the right to terminate shall not release the Contractor from its obligation to pay said liquidated damages in the amount set out in Section 5.7, below.

## **5.7 LIQUIDATED DAMAGES, SPECIFIED.**

The Contractor shall pay to the County of Mono the sum of seven hundred dollars (\$700.00) per day for each and every calendar day's delay in finishing the Project to the County's satisfaction later than 60 days after the Notice to Proceed. This sum is based on the following recommended calculation located in the Caltrans Local Assistance Procedures Manual at page 12-20 available at [http://www.dot.ca.gov/hq/LocalPrograms/lam/prog\\_p/lapmcomplete-2-2012.pdf](http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_p/lapmcomplete-2-2012.pdf).

However, if such conditions of non-performance continue, they may amount to a material breach for which the County may pursue recovery of actual losses resulting from the Contractor's failure to perform, and the County expressly reserves this right.

The County shall notify the Contractor in writing, for any default specified herein, and such liquidated damages shall be paid by the Contractor within thirty (30) calendar days of the County's notice. The Contractor's failure to pay the assessed liquidated damages within the designated time frame may be deemed by the County as a breach of contract.

## **SECTION 6. PROJECT ADMINISTRATION**

### **6.1 GENERAL.**

Attention is directed to Section 4-1.05, "Changes and Extra Work," and applicable portions of Section 5, "Control of Work," Section 7, "Legal Relations and Responsibility to the Public," and Section 8, "Prosecution and Progress," of the Standard Specifications with respect to administration of this contract and the Project.

**6.2 OMITTED ITEMS.**

The County may, if in its best interest, omit from the Work any Contract Item. Such omission shall not invalidate any other Contract provision or requirement. Should a Contract Item be omitted or otherwise ordered to be non-performed, the Contractor shall be paid for all work performed toward completion of such an item prior to the date of the order to omit such an item.

**6.3 CONTRACTOR REPRESENTATION.**

The County will not recognize any subcontractor on the work. The Contractor shall at all times when work is in progress be represented in person by either a qualified, competent Superintendent or by another designated, qualified, competent representative who is duly authorized to receive and execute orders of the Engineer. The Superintendent shall be satisfactory to the County and shall not be changed except with the express written consent of the County unless the Superintendent proves to be unsatisfactory to the Contractor or ceases to be in its employ.

All communications given to the Superintendent or other authorized representative shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. An authorized representative of the Contractor shall be available for emergency telephone communications from the County on a 24-hour, seven days per week basis during the performance of the Work.

**6.4 CONTRACTOR PERSONNEL.**

The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him or her. The Contractor shall ensure that all workers have sufficient skill and experience necessary to properly perform the work assigned to them and that workmanship shall be of the best trade practice, regardless of the quality of materials. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily. The Contractor shall provide, at all times, sufficient and competent labor to carry on the work properly and ensure completion of each part in accordance with the Project Plans, these Special Provisions, the QAP Plan, and the approved schedule.

An employee of the Contractor or subcontractor who is deemed by the County to be incompetent, disorderly, or otherwise objectionable shall be promptly removed by the Contractor and not reemployed on the Work.

**6.5 METHODS AND EQUIPMENT.**

The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the Work to full completion in the manner and time required by the Contract Documents.

All equipment proposed to be used on the Work shall be of sufficient size and in such mechanical condition as to meet requirements of the Work and to produce a satisfactory quality of work. Equipment used on any portion of the Work shall be such that no injury to previously-completed work, adjacent property, or existing facilities will result from its use.

When the methods and equipment to be used by the Contractor in accomplishing the Work are not prescribed in the Contract Documents, the Contractor is free to use any methods or equipment that will accomplish the work in conformity with the requirements of the Contract Documents.

**6.6 PARTIAL PAYMENTS.**

Unless otherwise agreed by the County, no partial payment will be made for any materials on hand which have been furnished but not incorporated into the work.

**6.7 FINAL ACCEPTANCE.**

Upon due notice from the Contractor of presumptive completion of the entire Project, the Engineer and County will make an inspection. If all construction provided for and contemplated by the Contract is found to be completed in accordance with the Contract Documents, such inspection shall constitute the final inspection. The County shall notify the Contractor in writing of final acceptance as of the date of the final inspection.

If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the County will give the Contractor the necessary instructions for correction of same and the Contractor shall immediately comply with and execute such instructions. Upon correction of the work, another inspection will be made which shall constitute the final inspection, provided the work has been satisfactorily completed. In such event, the County will make the final acceptance and notify the Contractor in writing of this acceptance as of the date of final inspection.

The completion of the contract will be accepted and Notice of Completion recorded by the County only when the entire contract is completed satisfactorily to the County.

**6.8 CLAIMS FOR ADJUSTMENT AND DISPUTES.**

If for any reason the Contractor deems that it is due additional compensation for work or materials not clearly provided for in the Contract Documents or previously authorized as extra work, the Contractor shall notify the County in writing of its intention to claim such additional compensation 24 hours before beginning the work on which the claim is based. If such notification is not given or the County is not afforded a proper opportunity by the Contractor to keep strict account of actual cost as required, then the Contractor hereby agrees to waive any claim for such additional compensation. Such notice by the Contractor and the fact that the Engineer has kept account of the cost of the work shall not in any way be construed as proving or substantiating the validity of the claim. When the work on which the claim for additional compensation is based has been completed, the Contractor shall, within 14 calendar days, submit its written claim to the County for consideration in accordance with local laws or ordinances. Nothing in this subsection shall be construed as a waiver of the Contractor's right to dispute final payment based on differences in measurements or computations.

**6.9 WARRANTY AND GUARANTEE.**

The Contractor warrants to the County that all materials furnished under this Contract shall be new unless otherwise specified and that all Work, including without limitation all materials, will be of good quality, free from faults and defects and in conformance with contract requirements. Any work not so conforming to these standards may be considered defective. The obligations of the Contractor in this subsection shall be in addition to, and not in limitation of, any obligations imposed upon it by those guarantees required by the contract or otherwise prescribed by law.

Neither the recordation of a Notice of Completion, nor the final certification or payment, nor any provision of the Contract or partial or entire use or occupancy of the premises by the County shall constitute an acceptance of the Work not performed in accordance with the Contract or relieve the Contractor of liability with respect to any express warranties or responsibility for faulty materials or workmanship.

The Contractor agrees that all work and materials provided under this contract are guaranteed for a period of one year against defects of any kind or nature and that any defective work or materials resulting from the Contractor's negligence will be repaired or replaced by the Contractor at its own expense immediately upon notification by the County. The Contractor shall furnish a warranty bond in the amount of 10 percent of the contract price as provided for and meeting the requirements specified in the Agreement. The warranty bond shall be furnished and approved prior to final payment and



release and shall remain in effect for the duration of the guarantee period to insure the repair or replacement of defective work or materials. The one-year guarantee period shall commence on the day of recordation of the Notice of Completion.

The County will give notice of observed defects with reasonable promptness. The County is authorized to make such repairs and charge the Contractor the actual costs of such necessary labor and material, if, within 14 calendar days after mailing a notice in writing to the Contractor or its agent, the Contractor neglects to make or undertake with due diligence the aforesaid repairs; provided, however, that in the case of an emergency where, in the opinion of the County, delay would cause hazard to health or serious loss or damage, repairs may be made without notice being sent to the Contractor, and the Contractor shall pay the cost thereof.

If after installation and acceptance, the Work provided for under this Contract proves to be unsatisfactory to the County, the County shall have the right to use the Work until it can, without damage to the County, be taken out of service for correction or replacement. Such period of use of the defective Work pending correction or replacement shall in no way decrease the guarantee period.

Nothing in this section shall be construed to limit, relieve or release the Contractor's, subcontractor's, and supplier's liability to the County for damages sustained as the result of latent defects in the Work caused by the negligence of their respective agents, employees or subcontractors.

#### **6.10 TERMINATION BY CONTRACTOR.**

Subject to below Section 6.11, below, the Contractor shall have the right to terminate the Contract only upon the occurrence of one of the following:

1. Provided that County has not commenced reasonable action to remove any order of a court within the 90 day period, the Work is stopped for 90 consecutive days, through no act or fault of Contractor, any Subcontractor, or any employee or agent of Contractor or any Subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.
2. The County fails to perform any material obligation under the Contract Documents and fails to cure such default within 30 days, or County has not commenced to cure such default within 30 days where such cure will require a reasonable period beyond 30 days and diligently prosecutes the same to completion, after receipt of notice from Contractor stating the nature of such default(s).

Upon occurrence of one of the events listed above, the Contractor may, upon 10 days additional notice to County and Engineer, and provided that the condition giving rise to Contractor's right to terminate is continuing, terminate the Contract.

Upon termination by Contractor, County will pay to Contractor the sum determined by Section 6.12 of these Special Provisions. Such payment will be the sole and exclusive remedy to which Contractor is entitled in the event of termination of the Contract by Contractor pursuant to this section; and Contractor will be entitled to no other compensation or damages and expressly waives the same.

#### **6.11 TERMINATION BY COUNTY FOR CAUSE.**

The County will have the right to terminate the Contract for cause or the Contractor's right to perform the Contract for cause at any time after the occurrence of any of the following events:

1. Contractor becomes insolvent or files for relief under the bankruptcy laws of the United

States.

2. Contractor makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.
3. A receiver is appointed to take charge of Contractor's property.
4. The commencement or completion of any Work activity on the critical path is more than 6 days behind the date set forth in the Contract Schedule for such Work activity as a result of an Unexcusable Delay.
5. Contractor abandons the Work.

Upon the occurrence of any of the following events and subject to the clause entitled "Force Majeure", the County will have the right to terminate the Contract for cause or the Contractor's right to perform the Contract for cause if the Contractor fails to promptly commence to cure such default and diligently prosecute such cure within 5 days after notice from the County, or within such longer period of time as is reasonably necessary to complete such cure:

1. Contractor persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents.
2. Contractor fails to make prompt payment of amounts properly due Subcontractors after receiving payment from County.
3. Contractor disregards Applicable Code Requirements.
4. Contractor persistently or materially fails to execute the Work in accordance with the Contract Documents.
5. Contractor is in default of any other material obligation under the Contract Documents.
6. Contractor persistently or materially fails to comply with applicable safety requirements.

Upon any of the occurrences referred to above the County may, at its election and by notice to the Contractor, terminate the Contract and take possession of the Project site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by Contractor; accept the assignment of any or all of the subcontracts; and then complete the Work by any method County may deem expedient. If requested by County, Contractor shall remove any part or all of Contractor's materials, supplies, equipment, tools, and construction equipment and machinery from the Project site within 7 days of such request; and if Contractor fails to do so, County may remove or store, and after 90 days sell, any of the same at Contractor's expense.

If the Contract or Contractor's right to perform is terminated by the County as provided in this section, the Contractor shall not be entitled to receive any further payment until the expiration of 35 days after Final Completion and acceptance of all Work by County.

If the unpaid balance of the Contract Sum exceeds the cost of completing the Work, including all additional costs and expenses made necessary thereby, including costs for County staff time, plus all losses sustained, including any liquidated damages provided under the Contract Documents, such excess shall be paid to Contractor. If such costs, expenses, losses, and liquidated damages exceed the unpaid balance of the Contract Sum, Contractor shall pay such excess to County.

No termination or action taken by the County after termination shall prejudice any other rights or remedies of the County provided by law or by the Contract Documents upon such termination; and the County may proceed against the Contractor to recover all losses suffered by County.

Termination of the Contract does not relieve the surety of its obligation for any just claims arising out of the work performed.

#### **6.12 TERMINATION BY COUNTY FOR CONVENIENCE.**

The County may, at its option, terminate this Contract, in whole or from time to time in part, at any time by giving notice to Contractor. Upon such termination, the Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of the Contractor, the County shall pay the Contractor in accordance with this Section, below.

Upon receipt of notice of termination under this Section 6.12, Contractor shall, unless the notice directs otherwise, do the following:

1. Immediately discontinue the Work to the extent specified in the notice.
2. Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued.
3. Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work.
4. Thereafter, do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project site or in transit thereto.

Upon such termination, the obligations of the Contract shall continue as the portion of Work already performed and, subject to Contractors obligations under Section 6.11 above, as to bona fide obligations assumed by the Contractor prior to the date of termination. However, termination of the Contract does not relieve the surety of its obligation for any just claims arising out of the work performed.

Section 8-1.14E, "Payment Adjustment for Termination," of the Standard Specifications is replaced in its entirety by the following language:

"Upon such termination, the County shall pay to Contractor the sum of the following:

1. The amount of the Contract Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination, less sums previously paid to Contractor.
2. Plus previously unpaid costs of any items delivered to the Project Site that were fabricated for subsequent incorporation in the Work.
3. Plus any proven losses with respect to materials and equipment directly resulting from such termination.
4. Plus reasonable demobilization costs.
5. Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and losses in connection with such termination.

The above payment shall be the sole and exclusive remedy to which the Contractor is entitled in the event of termination of the Contract by the County pursuant to this Section 6.12; and the Contractor will be entitled to no other compensation or damages and expressly waives same."

**6.13 FORCE MAJEURE.**

Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- a) Acts of God or of the public enemy, and
- b) Acts of the federal or State government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.

**SECTION 7. MATERIALS****7.1 MANUFACTURER'S SPECIFICATIONS AND RECOMMENDATIONS.**

Wherever, in the Contract Documents, a particular brand or make of item is specified, the Contractor shall comply strictly with the specifications and recommendations of that manufacturer as to the installation and/or application of that particular item. This requirement shall be met with respect to the specifications and recommendations of the manufacturer of an "or equal" item approved by the Engineer and installed or applied by Contractor.

**7.2 REFERENCE TO SPECIFICATIONS AND TRADE NAMES.**

Where American Society for Testing Materials (ASTM) or other specifications or standards are mentioned, it shall be understood that the materials or methods mentioned therewith shall conform to all requirements of the same that are in effect on the date of bid submission.

Where the trade name of a product or the name of a product or the name of a manufacturer appears, it shall be understood to specify the product so identified or its "Approved Equal." The words "Or Equal" or "Approved Equal" shall mean equal in the opinion of, and approval by, the Engineer. Any substitutions for products or manufacturers mentioned in the Contract Documents shall be submitted by the Contractor to the County for approval within 14 calendar days following the Award of Contract.

**7.3 STORAGE OF MATERIALS.**

Materials shall be stored as to assure the preservation of their quality and fitness for the Work. Stored materials, even if approved before storage, may again be inspected prior to their use in the Work. Stored materials shall be located so as to facilitate their prompt inspection. The Contractor shall coordinate the storage of all materials with the County and the location of the Contractor's plant and parked equipment or vehicles shall be as directed by the County. Private property shall not be used for storage purposes without written permission of the owner or lessee of the property. The Contractor shall make all arrangements and bear all expenses for the storage of materials on private property. Upon request, the Contractor shall furnish the County a copy of the owner's or lessee's permission. All storage sites on private or County property shall be restored to their original condition by the Contractor at its entire expense, except as otherwise agreed to in writing by the County.

**7.4 BUY AMERICA REQUIREMENTS.**

Attention is directed to the "Buy America" requirements of the Title 23 United States Code, Section 313 and the regulations adopted pursuant thereto. In accordance with said law and regulations, all manufacturing processes for steel and iron materials furnished for incorporation into the work on this

project shall occur in the United States; with the exception that pig iron and processed, pelletized and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of such steel or iron materials shall be considered a manufacturing process subject to the "Buy America" requirements.

A Certificate of Compliance, conforming to the provisions in Section 6-1.07, Certificates of Compliance, of the Standard Specifications, shall be furnished for steel and iron materials. The certificates, in addition to certifying that the materials comply with the specifications, shall also specifically certify that all manufacturing processes for the materials occurred in the United States, except for the exceptions allowed herein. The requirements imposed by said law and regulations do not prevent a minimal use of foreign steel and iron materials if the total combined cost of such materials used does not exceed one-tenth of one percent (0.1%) of the total contract cost or \$2,500, whichever is greater. The Contractor shall furnish the Engineer acceptable documentation of the quantity and value of any foreign steel and iron prior to incorporating such materials into the work

## **SECTION 8. CONSTRUCTION DETAILS**

### **8.1 ORDER OF WORK.**

The location where Project improvements are to be constructed will be exposed to public traffic. The Contractor shall conduct operations so that conditions do not exist that would create a nuisance, hazard, or other damage. Appropriate safety measures, warning devices and protective devices shall be implemented to protect all workers, the traveling public, and the work.

### **8.2 SANITARY, HEALTH, AND SAFETY PROVISIONS.**

The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements of the State and local Health Department, or of other bodies or tribunals having jurisdiction.

Attention is directed to federal, State, and local laws, rules and regulations concerning construction safety and health standards. The Contractor shall not require any worker to work in surroundings or under conditions that are unsanitary, hazardous, or dangerous to that worker's health or safety.

The Engineer and County shall have no responsibility for job site safety. The Contractor and his subcontractors must execute their daily work in accordance with the latest edition of the Occupational Safety and Health Administration (OSHA).

### **8.3 CONSTRUCTION SITE NUISANCE.**

The Contractor shall maintain preventative controls of blowing dust, noise, and other nuisances from construction work. No dogs or other animals are allowed within the project limits.

### **8.4 PUBLIC CONVENIENCE AND SAFETY.**

The Contractor shall provide temporary protective fencing, barriers, and/or covering over any open trenching or excavation arising from the execution of this Contract, to keep out unauthorized persons, at no additional cost to the County. The cost for providing signage, barriers, or any other items associated with public convenience and safety shall be the sole responsibility of the Contractor and no additional payment will be allowed therefor.

### **8.5 HIGHWAY CONSTRUCTION EQUIPMENT.**

Attention is directed to Section 591 of the Vehicle Code and Sections 7-1.01D, "Vehicle Code," and 7-1.02, "Load Limitations," of the Standard Specifications. The Contractor shall take all necessary precautions for safe operation of its equipment and the protection of the public from injury and damage from such equipment.

#### **8.6 PERMITS.**

The Contractor shall give all notices as required and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as drawn and specified. If the Contractor observes that the Project Plans and Technical Specifications are at variance therewith, the Contractor shall notify the County promptly in writing, of any necessary changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the County, the Contractor shall bear all costs arising therefrom. Copies of permits shall be furnished to the County.

#### **8.7 CONSTRUCTION LAYOUT AND STAKES.**

The Contractor shall engage the services of a State of California licensed Professional Land Surveyor to perform construction layout. All staking on the project shall be performed by, or under, the direct supervision of a Professional Land Surveyor. The Contractor will be responsible for establishing and maintaining all survey controls and other layout that may be required for construction of the work.

#### **8.8 TESTING.**

Aside from materials testing and certifications required from the Contractor in the Quality Assurance Program (QAP), Technical Specifications, Standard Specifications, and these Special Provisions, the County will provide testing services for installed work.

#### **8.9 CONTRACTOR QUALITY CONTROL.**

The Contractor shall be responsible for the quality of all materials entering into the work and of the work performed. The County and Engineer shall establish, maintain, and modify if needed, a quality control system that will provide assurance that materials and completed work conform to contract requirements. A copy of the QAP, which establishes testing frequency for materials incorporated into the work and criteria used to monitor the Contractor's conformance with Project Plans and Technical Specifications, is attached at the end of these Special Provisions.

#### **8.10 INSPECTION OF THE WORK.**

All materials and each part or detail of the work shall be subject to inspection by the Engineer. The Engineer shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If the Engineer requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the specifications. Should the work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as extra work; but should the work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at the Contractor's expense.

Any work done or materials used without supervision or inspection by an authorized representative of the County may be ordered removed and replaced at the Contractor's expense unless the County's representative failed to inspect after having been given reasonable notice in writing that the work was to be performed.

**8.11 RETEST OF WORK.**

When, as provided for in the Contract Documents, the County or Contractor performs sampling and test of the work and the tests show a failure to meet the requirements of these Special Provisions, the QAP, Technical Specifications, or Standard Specifications, the expense of re-testing, after re-working or substitution by the Contractor, will be at the expense of the Contractor, and such costs will be deducted from any amounts due to the Contractor.

**8.12 MAINTENANCE DURING CONSTRUCTION.**

The Contractor shall maintain the Work during construction and until the Work is accepted. This maintenance shall constitute continuous and effective Work prosecuted day by day, with adequate equipment and forces so that the work is maintained in satisfactory condition at all times. All costs of maintenance work before the project is accepted shall be included in the unit prices bid on the various Contract Items, and the Contractor will not be paid an additional amount for such work.

Should the Contractor at any time fail to maintain the work as provided herein, the Engineer shall immediately notify the Contractor of such noncompliance. Such notification shall specify a reasonable time within which the Contractor shall be required to remedy such unsatisfactory maintenance condition. The time specified will give due consideration to the exigency that exists. Should the Contractor fail to respond to the Engineer's notification, the Engineer may suspend any work necessary for the County to correct such unsatisfactory maintenance condition, depending on the exigency that exists. Any maintenance cost incurred by the County shall be deducted from monies due or to become due the Contractor.

**SECTION 9. OPERATIONS AND SAFETY****9.1 TEMPORARY CONTRACTOR FACILITIES.**

At a minimum, **the** Contractor shall provide chemical toilets for use by contractor and subcontractor employees. Chemical toilets shall be regularly serviced to maintain a clean and odorless facility.

The Contractor's storage area shall be determined at the pre-construction conference. The Contractor shall secure at his own expense any area required for storage of equipment or materials, or for other supplies.

The County will not be responsible for providing telephone, electrical, water, sewer, or any other temporary utility for use by the Contractor.

The Contractor shall remove all equipment, materials, and rubbish from the work areas which it occupies and shall leave the areas in a clean, safe and presentable condition.

**9.2 BORROW, DISPOSAL AND MATERIAL SITES.**

The operation of any borrow or disposal sites used by the Contractor to produce or dispose of materials for this project shall comply with the requirements of the contract documents. All provisions for water pollution, air pollution, and sound control that apply within the limits of the contract shall apply to all borrow or disposal sites utilized by the Contractor.

Full compensation for complying with the requirements for borrow, disposal and material sites in this section shall be considered as included in the contract prices paid for the items of work which require the use of the sites and no additional compensation will be allowed therefor.

### **9.3 WATER SUPPLY.**

The Contractor is responsible for making its own arrangements to obtain an adequate supply of water required for the proper construction of this project in accordance with the contract documents. The Contractor shall be responsible for all costs associated with obtaining construction water. If the Contractor uses non-potable water on the project, the sources and discharge of non-potable water shall meet the California Department of Health Services water reclamation criteria and the requirements of the Lahontan Regional Water Quality Control Board.

If used, non-potable water shall not be conveyed in tanks or drain pipes which will be used to convey potable water. There shall be no connection between non-potable water supplies and potable water supplies. Non-potable water supply, tanks, pipes, and other conveyances of non-potable water shall be labeled, "NON-POTABLE WATER—DO NOT DRINK."

Full compensation for developing a water supply, loading, and transporting water, labeling as specified, and dust control and moisture-conditioning on the project site shall be considered included in the prices paid for the various Contract Items of work involving the use of water and no additional compensation will be allowed therefor.

The Contractor shall, whenever possible and not in conflict with the above requirements, minimize the use of water during construction of the project. Watering equipment shall be kept in good working order; water leaks shall be repaired promptly; and washing of equipment, except when necessary for safety or for the protection of equipment, shall be discouraged.

When ordered by the Engineer, a dust palliative conforming to the provisions of Section 18, "Dust Palliative," of the Standard Specifications shall be used to control dust on this project. No direct payment shall be made for dust palliative. Payment for dust palliative shall be included in the cost of other work.

### **9.4 EXISTING FACILITIES.**

The Contractor shall be responsible for protecting all existing structures and facilities from damage as a result of the Contractor's activities. Any damage resulting from the Contractor's operations shall be repaired immediately, at the Contractor's expense.

## **SECTION 10. PROGRESS MEETINGS**

### **10.1 WEEKLY PROGRESS MEETINGS.**

The Engineer will conduct Progress Meetings at regularly scheduled times convenient for all parties involved. Progress Meetings are in addition to specific meetings held for other purposes, such as coordination meetings. Discussions will address administrative and technical issues of concern, determining resolutions, and development of deadlines for resolution within allowable time frames.

### **10.2 ATTENDEES.**

As may be required by the Engineer, in addition to representatives of Mono County and the Contractor, each subcontractor, supplier or other entity concerned with current progress or involved in planning, coordination or performance of future activities shall be represented at these meetings by individuals directly involved with the Contract and authorized to conclude matters relating to progress.



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**SECTION 11. PROJECT CLOSEOUT****11.1 RECORD DRAWINGS.**

The Contractor shall maintain a set of accurate record drawings during the course of the project. Any project work completed that varies from the plans as issued shall be legibly noted on the Record Drawings in red ink. Both text and line work shall be used to reflect the changes. At the completion of the project and prior to final payment, the record drawings shall be delivered to the County and, upon receipt, be maintained as the property of the County.



**SECTION III**

**TECHNICAL SPECIFICATIONS**



# TECHNICAL SPECIFICATIONS

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### 1. Description of Work

The work to be done, in general, consists of removal of existing sidewalk, curb, gutter, asphalt and landscape and placement of new sidewalk, curb and gutter, pedestrian ramps, electrical installation, and landscaping.

### 2. Mobilization

Mobilization shall conform to the provisions of Section 9-1.16D, "Mobilization" of the State of California Department of Transportation (Caltrans) Standard Specifications, 2010 Edition (CSS) and these Technical Specifications. Payment will be made for costs associated with mobilization, such as all preparatory work, including but not limited to, movement of personnel, equipment and supplies to and from the site.

The contract LUMP SUM price paid for "MOBILIZATION" shall constitute full compensation for furnishing all labor and materials, including tools, equipment and incidentals, and for performing the work involved in placing, removing, storing, maintaining, moving to new locations, replacing, and disposing of equipment and materials, creating as-built drawings, and for performing all work required for which separate payment is not otherwise provided as specified in the State Standard Specifications and these Technical Specifications, and as directed by the Engineer. The cost of mobilization shall not exceed 5% of the total base bid.

Mobilization shall be paid according the Section 10264 of the California Public Contract Code as follows:

The County will make partial payments for the mobilization costs, not to exceed the following:

- (1) When 5 percent of the original contract amount is earned, 50 percent of the amount bid for mobilization will be paid.
- (2) When 10 percent of the original contract amount is earned, 75 percent of the amount bid for mobilization will be paid.
- (3) When 20 percent of the original contract amount is earned, 95 percent of the amount bid for mobilization will be paid.
- (4) When 50 percent of the original contract amount is earned, 100 percent of the amount bid for mobilization will be paid.

### 3. Control of Work and Materials

Control of Work and Materials shall conform to the provisions in Section 5, "Control of Work," and Section 6, "Control of Materials" of the CSS and these Technical Specifications. Full compensation for Control of Work and Materials shall be considered as included in the prices paid for the various items of work involved, and no separate payment will be made therefor.

No equipment or construction materials shall be stored or staged within the traveled way. The Contractor shall coordinate with the County regarding establishment and operation of storage and staging areas.

**24 Hour Contact Number** - The Contractor shall assign a project superintendent and an assistant who have the complete authority to make decisions on behalf of the Contractor. The project superintendent or the assistant shall be at the project site at all times during the construction and shall be available and on call 24 hours a day, 7 days per week for the duration of the project. The Contractor shall provide the County's Construction Manager and the Mono County Sheriff's Department primary and secondary 24-hour mobile phone numbers for the project superintendent and the assistant. These numbers shall not automatically direct calls to a recorder or other message taking service.

**Advance Public Notification** – At least 7 days and no more than 14 days prior to beginning any work on the project, the Contractor shall deliver written notice to all adjoining residents, businesses, tenants and other applicable parties listed below. Notice shall be given for general construction activity in an area as well as specific activities that will, in any way, inconvenience residents/property owners/tenants or affect their operations or access to their property. Such notices shall include the expected date for start of construction, a general description of the construction activity to take place, expected duration, and the name, address, and contact number of the Contractor's superintendent and of the County's Construction Manager. A follow up notice shall be distributed two days prior to the construction activity. Copies of all notices shall be provided to the Engineer for approval five working days prior to the desired distribution date.

In addition to adjoining residents, businesses and tenants, the Contractor shall provide Advance Public Notice and coordinate the work with the following parties.

Mono County Sheriff's Department	760-932-7549
Mono County Fire / Rescue Department	760-932-9813

**List of Required Submittals:**

The Contractor shall provide four copies of each of the following submittals to the County's Construction Manager:

- A. Construction schedule.
- B. Traffic control plan
- C. HMA mix design and job-mix formula
- D. HMA asphalt binder Certificate of Compliance
- E. PCC mix design
- F. Detectable surface warning tiles
- G. Aggregate Base

The Owner reserves the right to require additional submittals from the Contractor that are not specifically identified above. If so requested, the Contractor shall provide the County's Construction Manager with four copies of any additional submittals.

#### 4. Maintaining Traffic / Traffic Control

Attention is directed to Section 7, "Legal Relations and Responsibility to the Public," and Section 12, "Temporary Traffic Control," of the CSS and these Technical Specifications. Nothing in these Technical Specifications shall be construed as relieving the Contractor from the responsibilities specified in Section 7 or Section 12 of the CSS.

The Contractor shall provide a traffic control plan to be reviewed and approved by the County's Construction Manager prior to starting work. The proposed traffic control plan shall be prepared and signed by a Professional Traffic Operations Engineer (PTOE) or a Traffic Control Supervisor certified by the American Traffic Safety Services Association (ATSSA), hereinafter designated "TCS". Traffic control shall be completely in place prior to the start of each day's work. At the pre-construction meeting, the traffic control requirements for the project shall be reviewed with the Contractor including all of the Contractor's foremen or supervisors.

The Contractor shall post "No Parking" signs, as necessary, not less than 72 hours in advance of scheduled work that will restrict parking. If the work is not performed during the timeframe indicated on the "No Parking" signs, the work shall be rescheduled with at least two (2) working days advance notice. The Contractor shall leave the street open to traffic until just prior to starting the work, and shall provide all barricades, signs and traffic control necessary to protect the work. The Contractor shall perform all reposting of "No Parking" signs and re-notification occasioned by his failure to meet the posted schedule.

Costs from delays caused by failure of the Contractor to adhere to the approved schedule shall be at the Contractor's sole expense and no additional compensation will be allowed therefor.

A minimum of one paved traffic lane, not less than ten (10) feet wide, shall be open for use by public traffic in each direction of travel except for single direction traffic control with flaggers as approved by the County's Construction Manager. Traffic may not be routed over unpaved roadways unless authorized by the Construction Manager.

Except for temporary interruptions approved by the County's Construction Manager, the Contractor shall maintain property owner access to their respective property over both walkways and driveways at all times.

The Contractor shall maintain a safe workplace at all times, including, but not limited to, providing flaggers, safety equipment, barricades, safe pedestrian passage along sidewalks, and maintenance of handicap access throughout the project site where applicable.



The Contractor shall fulfill the requirements of this section 24 hours per day, seven days per week, including holidays, from the time the Notice to Proceed is issued until the project is accepted as complete.

Whenever vehicles or equipment are parked on the shoulder within 6 feet of a traffic lane, the shoulder area shall be closed with fluorescent traffic cones or portable delineators placed on a taper in advance of the parked vehicles or equipment and along the edge of the pavement at 25-foot intervals to a point not less than 25 feet past the last vehicle or piece of equipment. A minimum of 9 cones or portable delineators shall be used for the taper. A C23 (Road Work Ahead) or C24 (Shoulder Work Ahead) sign shall be mounted on a portable sign stand with flags.

Bicycle lanes shall be maintained by the Contractor at all times. Appropriate warning signs designed for bicyclists shall be posted and maintained by the Contractor, as necessary, so that bicyclists can safely traverse the construction zone.

When entering or leaving roadways carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.

All excess and unsuitable material resulting from the Contractor's operation shall be removed from the project site before the end of each workday.

All hauling on local roads and streets shall be on routes acceptable to the County's Construction Manager. The Contractor shall submit the anticipated haul routes 2 working days prior to the pre-construction meeting.

The contract LUMP SUM price paid for "MAINTAINING TRAFFIC/TRAFFIC CONTROL" shall include full compensation for furnishing all labor, materials (including signs, arrow boards, barricades and cones), tools, equipment and incidentals, preparing the required traffic control plan, and providing construction and detour signs, flaggers, police support and the installation and subsequent removal of signing, and for doing all the work involved in placing, removing, storing, maintaining, moving to new locations, replacing and disposing of the components of the traffic control system as shown on the plans, as specified in the Standard Specifications and these Technical Specifications, and as directed by the County's Construction Manager.

## 5. Erosion Control

The Contractor shall perform necessary work to install and maintain all necessary erosion control best management practices (BMPs). Full compensation for erosion control shall be considered as included in the prices paid for the various items of work involved, and no separate payment will be made therefor.

## 6. Dust Control

The Contractor shall perform necessary work to control dust at all times as required by regulation. Full compensation for dust control including that resulting from public traffic shall be considered as included in the prices paid for the various items of work involved, and no separate payment will be made therefor.

## 7. Removal of Existing Improvements

The Contractor shall remove existing improvements including asphalt, concrete, masonry and existing landscaping as shown on the plans in accordance with Section 16 "Clearing and Grubbing" of the CSS and these Technical Specifications. The contractor shall also perform rough grading and compaction of the subgrade material to required elevations to allow proper installation of the features shown on the plans. Site grading shall be performed in accordance with Section 19 "Earthwork" of the CSS and these Technical Specifications.

The contract LUMP SUM price paid for "REMOVAL OF EXISTING IMPROVEMENTS" shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all work involved in demolishing, removing from site, and disposing all existing asphalt concrete, Portland cement concrete, base, subgrade, masonry, landscaping and other materials as necessary to complete all work, whether or not specifically shown on the plans. The contract LUMP SUM price paid for "REMOVAL OF EXISTING IMPROVEMENTS" shall also include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all work involved in grading and compacting the subgrade material to elevations required for proper installation of the features shown on the plans.

## 8. Overexcavation of Unsuitable Material (Contingent Item)

The Contractor shall immediately notify the County's Construction Manager of any questionable conditions, such as pumping areas or expansive subgrade soils, so an overexcavation determination may be made in a timely fashion. Within all removal areas, if, in the opinion of the County's Construction Manager, the exposed material is not suitable for support, the Contractor shall overexcavate to a depth of 2 feet below top of subgrade, or to competent material, whichever is less.

Where overexcavation and a deep stabilization is required, a geosynthetic as described below shall be placed on the exposed, smoothed, and tightly compacted subgrade surface. The Contractor shall cut and adjust the geosynthetic to fit the size of the repair. Backfill shall consist of Class 2 aggregate base placed in 2 uniform lifts with the initial lift compacted to a minimum of 90% relative compaction. The final lift shall be compacted to a minimum of 95% relative compaction. The maximum dry density and moisture content shall be determined in accordance with the test procedures set forth in ASTM D 1557.

Upon completion of overexcavation and deep stabilization, the Contractor shall provide a water truck or other heavy vehicle for proof rolling of any soft or pumping areas, as directed by the County's Construction Manager.

The geosynthetics used for stabilization shall be Mirafi 500X or approved equal. The geotextile shall consist of woven polypropylene, which conforms to the following requirements:

Test	Test Method	Requirement
Grab Strength	ASTM D 4632	200 pounds
Grab Tensile Elongation	ASTM D 4632	10 Percent Minimum
Sewn Seam Strength	ASTM D 4632	N/A
Tear Strength	ASTM D 4533	75 pounds
CBR Puncture Strength	ASTM D 6241	700 pounds
Permittivity	ASTM D 4491	0.05 sec <sup>-1</sup>
UV Resistance	ASTM D 4355	70% Strength Retained
Apparent Opening Size	ASTM D4751	40 U.S. Sieve

Minimum lap widths shall be in accordance with the manufacturer's recommendation. Construction equipment shall not be allowed to drive directly on the geosynthetic. The Contractor shall limit the construction equipment and traffic required for the placement and grading of the aggregate base materials.

The contract unit price paid per cubic yard for "OVEREXCAVATION OF UNSUITABLE MATERIAL (CONTINGENT ITEM)" shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and doing all work involved in excavating and disposing of existing material, compacting subgrade, furnishing and installing fabric, and placing and compacting backfill, as shown on the plans and as specified in these Technical Specifications or as directed by the County's Construction Manager. Measurement and verification of quantities shall be coordinated with the County's Construction Manager.

Due to the unknown quantity of full depth base repairs that will be required, the actual required quantity could be greatly increased, decreased or reduced to zero and therefore the provisions of Section 4-1.05A of the CSS shall not apply to this item of work. Rather, the unit price for Overexcavation of Unsuitable Material (Contingent Item) entered by the Contractor in the Base Bid Schedule shall govern regardless of the final quantity performed. Further, a decrease of more than 25% of the estimated quantity

shall not constitute a change in the character of the work and the provisions of Section 4-1.05B "Work-Character Changes" of the CSS shall not apply in that instance.

#### 9. PCC Curb and PCC Curb and Gutter

Portland Cement Concrete (PCC) curb and gutter and PCC Curb shall be constructed as shown on the plans and as directed by the County's Construction Manager. Curb and Curb and gutter shall conform to details shown on the plans, except as modified to fit actual field conditions and as directed by the County's Construction Manager. PCC shall be placed on 6 inches of Class 2 Aggregate Base compacted to 95% maximum dry density. Curb and Curb and gutter shall conform to the requirements of Section 73 "Concrete Curbs and Sidewalks" of the CSS and these Technical Specifications.

The contract unit price paid per linear foot for "PCC CURB AND GUTTER" and "PCC CURB" shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and constructing PCC curb and PCC curb and gutter including saw-cutting, sub-grade preparation, providing and placing aggregate base, providing and placing Portland cement concrete and reinforcement, and all other area restoration as shown on the plans, as specified in the CSS and these Technical Specifications and as directed by the County's Construction Manager.

#### 10. PCC Sidewalk

Portland Cement Concrete (PCC) sidewalk shall be constructed as shown on the plans and as directed by the County's Construction Manager. PCC sidewalk shall conform to details shown on the plans, except as modified to fit actual field conditions and as directed by the County's Construction Manager. PCC shall be placed on 4 inches of Class 2 Aggregate Base compacted to 95% maximum dry density. Sidewalk shall conform to the requirements of Section 73 "Concrete Curbs and Sidewalks" of the CSS and these Technical Specifications.

The contract unit price paid per square foot for "PCC SIDEWALK" shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in constructing PCC sidewalk including saw-cutting, sub-grade preparation, providing and placing aggregate base, providing and placing Portland cement concrete and reinforcement, and all other area restoration as shown on the plans, as specified in the CSS and these Technical Specifications and as directed by the County's Construction Manager.

#### 11. PCC Pedestrian Ramps

Portland Cement Concrete (PCC) pedestrian ramps shall be constructed as shown on the plans and as directed by the County's Construction Manager. Pedestrian ramps shall conform to details shown on the plans, except as modified to fit actual field conditions and as directed by the County's Construction Manager. PCC shall be placed

on 4 inches of Class 2 Aggregate Base compacted to 95% maximum dry density. Pedestrian ramps, including detectable warning surface shall conform to the requirements of Section 73 "Concrete Curbs and Sidewalks" of the CSS and these Technical Specifications.

The contract unit price paid per square foot for "PCC PEDESTRIAN RAMPS" shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in constructing PCC pedestrian ramps including saw-cutting, sub-grade preparation, providing and placing aggregate base, providing and placing Portland cement concrete and reinforcement, providing and placing detectable warning surface and all other area restoration as shown on the plans, as specified in the CSS and these Technical Specifications and as directed by the County's Construction Manager.

## 12. HMA Pavement

Hot Mix Asphalt shall be placed according to the details and location shown on the plans. Work under this item shall conform to the provisions in Section 39, "Hot Mix Asphalt" of the CSS and these Technical Specifications. The HMA construction process shall follow the "Method" process as described in the CSS.

Materials: Hot Mix Asphalt (HMA) shall be Type A using the Method construction process complying with Section 39, "Hot Mix Asphalt" of the CSS. Asphalt binder to be mixed with the aggregate shall conform to the provisions of Section 92, "Asphalts", of the CSS and shall be Performance Graded Polymer Modified (PG Polymer Modified) Asphalt Binder PG 64-28 PM. Aggregate for HMA Type A must comply with the 3/4-inch or 1/2-inch grading. Tack Coat shall be applied to all vertical surfaces and shall be asphaltic emulsion in conformance with the provisions of Section 94 "Asphaltic Emulsions" of the CSS.

The contract unit price paid per square foot for "HMA PATCH" shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and doing all work involved in constructing hot mix asphalt installation, including mix design preparation, and contractor quality control according to CSS Section 39 "Hot Mix Asphalt", complete in place, as shown on the plans and as specified in these Technical Specifications and as directed by the County's Construction Manager. Measurement and verification of quantities shall be coordinated with the County's Construction Manager.

Full compensation for furnishing and placing aggregate base as well as furnishing and applying tack coat shall be considered as included in the contract price paid per square foot of HMA pavement and no separate payment will be made therefor.

### 13. Adjustment of Existing Facilities

The work performed in connection with adjusting various existing facilities shall conform to the provisions in Section 15, "Existing Facilities," of the CSS and these Technical Specifications.

All existing underground utility lines may not be shown on the plans. The Contractor shall be responsible for locating and field verifying the location of all existing utilities and utility features prior to the start of construction activities and protecting all facilities during construction. Damage caused by the Contractor to existing facilities shall be repaired within 24 hours at the sole expense of the Contractor.

The Contractor shall notify and coordinate the work of identifying and marking utility facilities with the respective utility companies. The Contractor is required to call Underground Service Alert (USA) at 811 forty-eight (48) hours in advance of any excavation activity. The Contractor shall submit to the County's Construction Manager copies of all USA confirmation numbers including associated documentation. NOTE: The local water companies (CSDs) are not subscribers to USA.

Within areas designated for construction activities, all existing facilities (e.g. utility manhole frame and covers, cleanouts, boxes, gas and water valve boxes, survey monument boxes and other utility facilities) shall be removed and then replaced / reset and adjusted to final grade in conformance with the requirements of the appropriate utility agency or as directed by the County's Construction Manager.

The various utility agencies shall be notified by the Contractor of the Contractor's schedule prior to the commencement of work. Before removing manhole frames and covers, cleanouts, boxes, valve boxes, and monument boxes, the Contractor shall reference the location of and inventory the facilities to be adjusted. The Contractor shall record the exact location and type of facility by labeling the assembly with numbers at the location visible for verification. The labeling shall include facility site, collar, and lid to ensure proper match of hardware when facility adjustment is complete at the conclusion of the project. Any hardware damaged by the Contractor's operations shall be replaced at the Contractor's sole expense.

The Contractor shall submit the facility reference information and inventory list to the County's Construction Manager and utility agencies upon completion of facility lowering activities. The Contractor shall also keep a copy of the facility location reference information and inventory list on the project work site at all times for emergency shutoff purposes. The Contractor shall maintain the list at an approved location, such that the list is accessible 24 hours per day for the duration of the project.

Frames and covers shall be removed, transported and stored without damage. Any items damaged shall be replaced at the Contractor's expense. Pre-existing damage must be brought to the County's Construction Manager's attention prior to commencement of any work. The covers shall be raised by excavating the frame and

cover in a neat line with a dimension not greater than necessary to loosen and adjust the frame with the cover and the concrete collar.

Adjustments shall be accomplished by removing the existing concrete collar around the frame, installing concrete adjusting rings (or others, as needed), raising the frame and cover, and construction of a new concrete collar. When located within pavement areas, the concrete collar shall be constructed so that the top of the collar is no greater than three inches and no less than two inches below the existing pavement grade surrounding the facility. The void between the top of the concrete collar and the finish grade of the pavement around the collar shall be paved to finish grade with HMA. Paving shall be as specified elsewhere in these Technical Specifications.

All existing valve, cleanout and monument boxes shall be removed before grading and replaced after HMA or prior to concrete placement. Water valves must be accessible immediately after paving or concrete placement and water valve covers must be raised within 48 hours of paving or concrete placement. All roads where structures were raised to grade must be paved within 24 hours or the Contractor shall be required to furnish temporary paving.

Adjustment of survey monument casings by the use of extension rings shall not be allowed. Casings to be adjusted shall be removed and replaced with new covers and frames. The covers shall be non-rocking, and designed for a wheel load of 15,000 pounds.

Monument boxes shall be adjusted to the new grade without disturbing the existing monument. If the existing monument is damaged or disturbed by the Contractor's operations, the Contractor shall bear the cost and responsibility for obtaining the services of a registered Land Surveyor or Civil Engineer to tie out the existing monument, remark, and reset the monument. The Contractor shall be responsible for filing the appropriate Corner Records and shall provide a copy of all recorded documentation to the County's Construction Manager prior to project acceptance.

Existing survey monuments shall be preserved, referenced or replaced pursuant to the requirements of State of California Streets and Highways Code Sections 732.5, 1492.5, and 1810.5 and Business and Professions Code Section 8771 and the following:

The Contractor shall not disturb permanent survey monuments or benchmarks except as approved by the County's Construction Manager. The Contractor shall bear the expense of replacing any monuments or benchmarks that may be disturbed without permission. Replacement shall be done only with the direction of and in the presence of the County's Construction Manager.

Should the Contractor during the course of construction encounter a survey monument or benchmark not shown on the plans, he shall promptly notify the County's

Construction Manager so that the monument or benchmarks may be referenced accordingly.

Full compensation for preservation of existing survey monuments as specified in this Section, shall be considered as included in the contract prices paid for the various items of work, and no additional compensation will be allowed therefor.

ADJUSTMENT OF EXISTING FACILITIES as listed below and in the bid schedule (e.g. water valve box, survey monument box, drop inlet grate, and electric vault cover) shall be measured per the actual count of EACH facility type adjusted.

The contract unit price paid per square foot for "HMA PATCH" shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and doing all work involved in constructing hot mix asphalt installation, including mix design preparation, and contractor quality control according to CSS Section 39 "Hot Mix Asphalt", complete in place, as shown on the plans and as specified in these Technical Specifications and as directed by the County's Construction Manager. Measurement and verification of quantities shall be coordinated with the County's Construction Manager.

The contract unit prices paid per each for "PROTECT VALVE AND REPLACE G5 CHRISTY BOX" shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and doing all of the work involved in referencing, lowering, installing temporary covers and surfacing over and installing and adjusting to grade new G5 Christy Box, as specified in these Technical Specifications and as directed by the County's Construction Manager.

#### 14. Painted Traffic Stripes and Pavement Markings

This work shall consist of painting or placing traffic stripes and pavement markings, including applying glass beads. All existing traffic striping and pavement markings not called for replacement that is damaged by the Contractor's operations shall be replaced in kind at no cost to the owner. Approximate locations of all pavement markings are called out on the plans. Prior to replacement, the Contractor shall lay out marking locations for review and approval by the County's Construction Manager. Any markings installed by the Contractor that the County's Construction Manager has not pre-approved, and that the County's Construction Manager determines are installed improperly or in the wrong locations, shall be removed and replaced to the satisfaction of the County's Construction Manager at the Contractor's sole expense.

Equipment, mixing, surface preparation, application, and tolerances for furnishing and applying painted traffic striping and pavement markings shall conform to Section 84, "Traffic Stripes and Pavement Markings" of the CSS and these Technical Specifications



Materials: Paint type shall be Waterborne Traffic Line in accordance with Section 84-3.02A of the CSS and shall be applied in two (2) coats. At least 48 hours shall elapse between application of a bituminous seal coat and permanent pavement marking. Quantities of 12-INCH SOLID YELLOW LINE will be measured by the LINEAR FOOT.

The contract unit price per linear foot paid for "12-INCH SOLID YELLOW LINE" shall include full compensation for furnishing all labor, materials, tools, equipment and incidentals and for doing all of the work involved in painting pavement markings including establishing alignment and layout work complete and in place, as shown on the Plans, as specified in the CSS and these Technical Specifications, and as directed by the County's Construction Manager.

#### 15. Landscaping

This work shall consist of providing and installing all landscaping components of the project as shown on the plans and listed in these Technical Specifications and the bid schedule in the project manual. Landscaping shall conform to Section 20, "Landscape" of the CSS.

The contract price paid per unit for each item in the bid schedule for the various landscaping components shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in removing and replacing the irrigation vault, furnishing and installing all trees, shrubs, benches, trash receptacles, wrought iron fencing, pavers, 6" concrete mow edge, sod lawn replacement and landscape mulch as shown on the plans, as specified in the CSS and these Technical Specifications and as directed by the County's Construction Manager.

#### 16. Irrigation Sprinkler Retrofit

This work shall consist of removing, replacing and installing an irrigation system as shown on the plans. All irrigation facilities not intended for removal or replacement damaged by the Contractor's operations shall be replaced in kind at the Contractor's sole expense and under the direction of the County's Construction Manager. Approximate locations of existing irrigation features are shown on the plans.

All work associated with irrigation shall conform to Section 20-3, "Irrigation" of the CSS and these Technical Specifications.

The contract LUMP SUM price paid for "IRRIGATION SPRINKLER RETROFIT", shall include full compensation for furnishing all labor, materials, tools, equipment and incidentals and for doing all of the work involved in irrigation removal, replacement and installation as shown on the plans, including drip irrigation system, as shown on the Plans, specified in the CSS and these Technical Specifications, and as directed by the County's Construction Manager.

## 17. Electrical

This work shall consist of providing and installing all electrical components of the project as shown on the Plans.

The contract LUMP SUM price paid for "ELECTRICAL CONDUIT AND PULL BOXES" shall constitute full compensation for furnishing all labor and materials, including tools, equipment and incidentals, and for performing the work involved in installing electrical conduit, pull boxes, extension and lids as shown on the Plans, specified in the CSS and these Technical Specifications, and as directed by the County's Construction Manager.

The contract LUMP SUM price paid for "ELECTRICAL" shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in furnishing and installing the electrical service pedestal and wiring for a complete installation as shown on the plans, as specified in the CSS and these Technical Specifications and as directed by the County's Construction Manager.

The contract unit price paid per each for "LAMPS" shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals and doing all work involved in installing the lamps as shown on the Plans and as specified in these Technical Specifications.

**SECTION III**

**FEDERAL PROVISIONS**



## FEDERAL PROVISIONS

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## ATTACHMENT A SECTION 14. FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

**GENERAL.**—The work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, "Form FHWA 1273, are included in this Section 14. Whenever in said required contract provisions references are made to "SHA contracting officer," "SHA resident engineer," or "authorized representative of the SHA," such references shall be construed to mean "Engineer" as defined in Section 1-1.18 of the Standard Specifications.

**PERFORMANCE OF PREVIOUS CONTRACT.**—In addition to the provisions in Section II, "Nondiscrimination," and Section VII, "Subletting or Assigning the Contract," of the required contract provisions, the Contractor shall comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VII of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

**NON-COLLUSION PROVISION.**—The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary projects.

Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28, USC, Sec. 1746, is included in the proposal.

**PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING.**—Part 26, Title 49, Code of Federal Regulations applies to this Federal-aid project. Pertinent sections of said Code are incorporated in part or in its entirety within other sections of these special provisions.

Schedule B—Information for Determining Joint Venture Eligibility

(This form need not be filled in if all joint venture firms are DBE owned.)

1. Name of joint venture \_\_\_\_\_

2. Address of joint venture \_\_\_\_\_

3. Phone number of joint venture \_\_\_\_\_

4. Identify the firms which comprise the joint venture. (The DBE partner must complete Schedule A.) \_\_\_\_\_

a. Describe the role of the DBE firm in the joint venture.

b. Describe very briefly the experience and business qualifications of each non-DBE joint venturer: \_\_\_\_\_

5. Nature of the joint venture's business \_\_\_\_\_

6. Provide a copy of the joint venture agreement.

7. What is the claimed percentage of DBE ownership? \_\_\_\_\_

8. Ownership of joint venture: (This need not be filled in if described in the joint venture agreement, provided by question 6.).

- a. Profit and loss sharing.
- b. Capital contributions, including equipment.
- c. Other applicable ownership interests.

9. Control of and participation in this contract. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision making, including, but not limited to, those with prime responsibility for:

a. Financial decisions \_\_\_\_\_

b. Management decisions, such as:

1. Estimating \_\_\_\_\_

2. Marketing and sales \_\_\_\_\_

3. Hiring and firing of management personnel \_\_\_\_\_

4. Purchasing of major items or supplies \_\_\_\_\_

c. Supervision of field operations \_\_\_\_\_

Note.—If, after filing this Schedule B and before the completion of the joint venture's work on the contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the grantee, either directly or through the prime contractor if the joint venture is a subcontractor.

#### Affidavit

"The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to grantee current, complete and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the grantee or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

Revised 3-95  
08-07-95

.....	.....
Name of Firm	Name of Firm
.....	.....
Signature	Signature
.....	.....
Name	Name
.....	.....
Title	Title
.....	.....
Date	Date

Date \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_, before me appeared (Name) \_\_\_\_\_, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) \_\_\_\_\_ to execute the affidavit and did so as his or her free act and deed.

Notary Public \_\_\_\_\_

Commission expires \_\_\_\_\_

[Seal]

Date \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_, before me appeared (Name) \_\_\_\_\_ to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of firm) \_\_\_\_\_ to execute the affidavit and did so as his or her free act and deed.

Notary Public \_\_\_\_\_

Commission expires \_\_\_\_\_

[Seal]

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

### ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

## I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

## II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.



b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an

agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

## **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the

contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### 10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract

or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This

excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the

classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

### 2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### 3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate

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specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

### b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

### d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such

programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

### 10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

## V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.**

The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and

equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the

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public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

## IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

## X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

### 1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180



and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

## 2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### 2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled



"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**PREVAILING WAGE REQUIREMENTS:  
Federal Predetermined Minimum Wage Rates and Fringe Benefits**

Federal Wage Rates can be downloaded at: <http://www.wdol.gov/>

Revisions to the applicable Federal Wage Rates, up to 10 days before bid opening, shall be identified by the issuance of an addendum with the corresponding Internet web site address of where the revisions can be found. The final contract documents signed by the local agency and the contractor, will physically include the Federal Wage Rates, or Federal Wage Rates as revised by addendums, if any such addendums have been issued.



## **SECTION III**

# **CONSTRUCTION QUALITY ASSURANCE PROGRAM**



# QUALITY ASSURANCE PROGRAM (QAP)

## AGENCY: County of Mono

The County of Mono has established the following Quality Assurance Program (QAP) to provide assurance that the quality of materials incorporated into County construction projects are in conformance with the requirements of the approved plans and contract specifications, including approved changes. The terms of the QAP will be every five years starting from the date of the original activation of this QAP, or upon changes of testing frequencies or to the tests themselves. Testing Standards are found as Appendix A to this document.

### **DEFINITION OF TERMS**

- Acceptance Testing (AT) – Sampling and testing, or inspection, to determine the degree of compliance with contract requirements.
- Independent Assurance Program (IAP) – Verification that AT is being performed correctly by qualified testers and laboratories.
- Quality Assurance Program (QAP) – A sampling and testing program that will provide assurance that the materials and workmanship incorporated into the construction project are in conformance with the contract specifications. The main elements of a QAP are the AT and IAP.
- Source Inspection – AT of manufactured and prefabricated materials at locations other than the job site, generally at the manufactured location.

### **MATERIALS LABORATORY**

The County will use their own materials laboratory or a private consultant materials laboratory to perform Acceptance Testing (AT) on Federal-aid and other designated projects. The materials laboratory shall be under the responsible management of a California registered engineer with experience in sampling, inspection and testing of construction materials. The Engineer shall certify the results of all tests performed by laboratory personnel under the Engineer's supervision. The materials laboratory shall contain certified test equipment capable of performing the tests conforming to the provisions of this QAP.

The materials laboratory used shall provide documentation that the laboratory complies with the following procedures:

1. Correlation Testing Program – The materials laboratory shall be a participant in one or more of the following testing programs:
  - a. AASHTO Materials Reference Laboratory (AMRL)
  - b. Cement and Concrete Reference Laboratory (CCRL)
  - c. Caltrans' Reference Samples Program (RSP)
2. Certification of Personnel – The materials laboratory shall employ personnel who are certified by one or more of the following:
  - a. Caltrans District Materials Engineer
  - b. Nationally recognized non-Caltrans organizations such as the American Concrete Institute, Asphalt Institute, National Institute of Certification of Engineering Technologies, etc.
  - c. Other recognized organizations approved by the State of California and/or recognized by local governments or private associations.
3. Laboratory and Testing Equipment – The materials laboratory shall only use laboratory and testing

equipment that is in good working order. All such equipment shall be calibrated at least once each year. All testing equipment must be calibrated by impartial means using devices of accuracy traceable to the National Institute of Standards and Technology. A decal shall be firmly affixed to each piece of equipment showing the date of the last calibration. All testing equipment calibration decals shall be checked as part of the IAP.

### **ACCEPTANCE TESTING (AT)**

AT will be performed by a materials laboratory certified to perform the required tests. The tests results will be used to ensure that all materials incorporated into the project are in compliance with the contract specifications. Testing methods will be in accordance with the CT Methods or a national recognized standard (i.e., AASHTO, ASTM, etc.) as specified in the contract specifications.

Sample locations and frequencies may be in accordance with the contract specifications. If not so specified in the contract specifications, samples shall be taken at the locations and frequencies as shown in Appendix A. Materials not included in Appendix A shall be tested in accordance with the Quality Assurance Program Manual for Use by Local Agencies (Manual) as produced by the California Department of Transportation.

### **INDEPENDENT ASSURANCE PROGRAM (IAP)**

IAP shall be provided by personnel from Caltrans, the Agency's certified materials laboratory, or consultant's certified materials laboratory. IAP will be used to verify that sampling and testing procedures are being performed properly and that all testing equipment is in good condition and properly calibrated.

IAP personnel shall be certified in all required testing procedures, as part of IAP, and shall not be involved in any aspect of AT. IAP shall be performed on every type of materials test required for the project. Proficiency tests shall be performed on Sieve Analysis, Sand Equivalent, and Cleanness Value tests. All other types of IAP shall be witness tests.

Poor correlation between acceptance tester's results and other test results may indicate probable deficiencies with the acceptance sampling and testing procedures. In cases of unresolved discrepancies, a complete review of AT shall be performed by IAP personnel or an independent materials laboratory chosen by the Agency. IAP samples and tests are not to be used for determining compliance with contract requirements. Compliance with contract requirements is determined only by AT.

### **REPORTING ACCEPTANCE TESTING RESULTS**

The following are time periods for reporting material test results to the Resident Engineer:

- When the aggregate is sampled at material plants, test results for Sieve Analysis, Sand Equivalent and Cleanness Value should be submitted to the Resident Engineer within two working days after sampling.
- When materials are sampled at the job site, test results for compaction and maximum density should be submitted to the Resident Engineer within two working days after sampling.
- When soils and aggregates are sampled at the job site:
  - (1) Test results for Sieve Analysis, Sand Equivalent and Cleanness Value should be submitted to the Resident Engineer within three working days after sampling.
  - (2) Test results for "R" Value and asphalt concrete extraction should be submitted to the Resident Engineer within four working days after sampling.

When sampling products such as Portland Cement Concrete (PCC), cement-treated base (CTB), hot mix asphalt (HMA), and other such materials; the time of such sampling shall be varied with respect to the time of the day insofar as possible, in order to avoid a predictable sampling routine. The reporting of AT results, if not performed by the Resident Engineer's staff, shall be done on an expedited basis such as by fax, e-mail or telephone.

### **TESTING OF MANUFACTURED MATERIALS**

A list of materials that can be typically accepted on the basis of certificates of compliance during construction is found in Appendix A. All certificates of compliance shall conform to the requirements of the contract specifications, for examples see Appendix J of the Manual.



Should the Agency request Caltrans to conduct the source inspection and the request is accepted, all sampling, testing, and acceptance of manufactured and prefabricated materials will be performed by Caltrans' Office of Materials Engineering and Testing Services.

For Federal-aid projects on the National Highway System (NHS), Caltrans will assist in certifying the materials laboratory, and the acceptance samplers and testers. For Federal-aid projects off the NHS, Caltrans may be able to assist in certifying the materials laboratory, and the acceptance samplers and testers.

### **PROJECT CERTIFICATION**

Upon completion of a Federal-aid project, a "Materials Certificate" shall be completed by the Resident Engineer. The Agency shall include a "Materials Certificate" in the Report of Expenditures submitted to the Caltrans District Director, Attention: District Local Assistance Engineer. A copy of the "Materials Certificate" shall also be included in the Agency's construction records. The Resident Engineer in charge of the construction function for the Agency shall sign the certificate. All materials incorporated into the work which did not conform to specifications must be explained and justified on the "Materials Certification", including changes by virtue of contract change orders. See Appendix K of the Manual.


### **RECORDS**

All material records of samples and tests, material releases and certificates of compliance for the construction project shall be incorporated into the Resident Engineer's project file. If a Federal-aid project:

- The files shall be organized as described in Section 16.8 "Project Files" of the Local Assistance Procedures Manual.
- It is recommended that the complete project file be available at a single location for inspection by Caltrans and Federal Highway Administration (FHWA) personnel.
- The project files shall be available for at least three years following the date of final project voucher.
- The use of a "Log Summary," as shown in Appendix H of the Manual, facilitates reviews of material sampling and testing by Caltrans and FHWA and assists the Resident Engineer in tracking the frequency of testing.

When two or more projects are being furnished identical materials simultaneously from the same plant, it is not necessary to take separate samples or perform separate tests for each project; however, copies of the test reports are to be provided for each of the projects to complete the records.

**APPROVED BY:**

  
(Signature)

46777 06.30.11  
(CE# and Expiration Date)

NAME: Evan Nikirk

DATE: 12.09.09

TITLE: Public Works Director, County of Mono

Mono County Department of Public Works  
Quality Assurance Program  
Appendix A - Acceptance Sampling and Testing Frequencies

Construction Materials Accepted by a Certificate of Compliance<sup>1,2,3</sup>

Soil Amendment	
Fiber	
Fly Ash	
Geotextile Fabric	
Mulch	
Stabilizing Emulsion	
Plastic Pipe	
Lime	
Reinforcing Steel	
Structural Timber and Lumber	
Treated Timber and Lumber	
Timber and Lumber	
Culvert and Drainage Pipe Joints	
Reinforced Concrete Pipe	
Corrugated Steel Pipe and Corrugated Steel Pipe Arches	
Structural Metal Plate Pipe Arches and Pipe Arches	
Perforated Steel Pipe	
Polyvinyl Chloride Pipe and Polyethylene Tubing	
Steel Entrance Tapers, Pipe Down Drains, Reduces, Coupling Bands and Slip Joints	
Aluminum Pipe (Entrance Tapers, Arches, Pipe Down Drains, Reduces, Coupling Bands, and Slip Joints)	
Metal Target Plates	
Electrical Conductors	
Portland Cement	
Minor Concrete	
Air Entrainment Mixture	
Water Reducers and Set Retarders	
Waterstop	

<sup>1</sup>If Caltrans Standard Specifications May 2006 is part of contract specifications.

<sup>2</sup>Usually these items are inspected at the site of manufacture or fabrication and reinspected after delivery to the job site.

<sup>3</sup>Mono County reserves the right to test any material supplied for County projects. The conditions of this QAP can be overridden by the conditions of the Standard Specifications.

**Testing and Sampling Requirements**

**Portland Cement (Hydraulic Cement)**

Materials to be Samples or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Cement (Testing Only)	8-lb. sample	If the product is accepted based on a Certificate of Compliance, testing is not required. If the product is not accepted using a Certificate of Compliance, test at least once per job.	ASTM C109, CT 515, AASHTO T106	If testing appears warranted, fabricate six 2-in. mortar cubes using the Portland (or hydraulic) cement. Test for compressive strength.

**Portland Cement Concrete (Hydraulic Cement Concrete)**

Materials to be Samples or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Aggregate for Hydraulic Cement Concrete (Sampling & Testing)	50-lb. sample	Take one aggregate sample for 1,000 CY of PCC/HCC concrete. Test at least one sample per job.	ASTM D75, CT 125, AASHTO M6, T2, M80	Sample aggregate from belt or hooper (random basis).
Water (Sampling & Testing)	Take a two-quart sample using a clean plastic jug (with lining) and sealed lid. Sample at the point of use.	If the water is clean with no record of chlorides or sulfates greater than 1%, no testing is required. If the water is dirty, do not use it. Test only when the chloride AASHTO R23 or sulfates are suspected to be greater than 1%.	CT 405, CT 422, CT 417, AASHTO R23	If testing appears warranted, test for chlorides and sulfates.

**Portland Cement Concrete (Hydraulic Cement Concrete)**

Materials to be Samples or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Air Entraining Admixtures (Sampling & Testing)	Take a one-quart sample using a clean, lined can or plastic bottle, if liquid. If powder, take a 2.5-lb. sample.	If the product is accepted based on a Certificate of Compliance, testing is not required. If not, take one sample per job. Prior to sampling, check with Caltrans (METS) for acceptable brands and dosage rates.	ASTM C233, AASHTO M154, T157, C260	If testing appears warranted, test for chlorides and sulfates. Admixtures with sulfates and chlorides greater than 1% should not be used.
Water Reducers or Set Retarders (Sampling & Testing)	If liquid, take a 1-qt. sample using a clean plastic can. If powder, take a 2.5-lb. sample.	If the product is accepted based on a Certificate of Compliance, testing is not required. If not, test once per job. Prior to using this product, please check with Caltrans (METS) for acceptable brands and dosage rates.	ASTM C494, AASHTO M194	If testing appears warranted, test for chlorides and sulfates. Admixtures with sulfates and chlorides greater than 1% should not be used.
Freshly-Mixed Concrete (Sampling)	Approx. 150 lb. (or 1 CF) near mixer discharge.	When tests are required, take at least one sample for each 500 to 1,000 CY of PCC/HCC.	ASTM C172, C685, CT 539, AASHTO T141, M157	This describes a method to sample freshly-mixed concrete.
Freshly-Mixed Concrete (Testing)	Approx. 150 lb. (or 1 CF) near mixer discharge.	On projects with 500 CY or more, test at least one sample per job.	ASTM C143, AASHTO T119	This test determines the slump of the freshly-mixed concrete.
Freshly-Mixed Concrete (Testing)	Approx. 150 lb. (or 1 CF) near mixer discharge.	On projects with 500 CY or more, test at least one sample per job.	ASTM C360, CT 533	This test determines the ball penetration of the freshly-mixed concrete.
Freshly-Mixed Concrete (Testing)	Approx. 150 lb. (or 1 CF) near mixer discharge.	On projects with 500 CY or more and concrete exposed to freeze-thaw cycles, test at least one sample per job.	ASTM C231, CT 504, AASHTO T152	This test determines the air content of freshly-mixed concrete (pressure method).
Freshly-Mixed Concrete (Testing)	Approx. 150 lb. (or 1 CF) near mixer discharge.	On projects with 500 CY or more, test at least one sample per job.	ASTM C138, CT 518, AASHTO T121	This test determines the unit weight of freshly-mixed concrete.
Freshly-Mixed Concrete (Testing)	Approx. 150 lb. (or 1 CF) near mixer discharge.	Fabricate at least two concrete cylinders per project. Test for compressive strength at least once for each 500 to 1,000 CY of concrete.	ASTM C39, CT 521, AASHTO T22	This test is used to fabricate 6" x 12" concrete cylinders. Compressive strengths are determined, when needed.
Freshly-Mixed Concrete (Testing)	Approx. 210 lb. of concrete are needed to fabricate three concrete beams.	On sample set for each 500 to 1,000 CY of concrete.	ASTM C78, CT 31, AASHTO T97, T23	This test is used to determine the flexural strength of simple concrete beams in third-point loading.

**Soils and Aggregates**

Materials to be Samples or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Aggregate (Sampling)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM D75, CT 125, AASHTO T2	This test describes the procedures to sample aggregate from the belt or hopper (random basis).
Fine Aggregates (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM C128, CT 208, AASHTO T84	This test determines the apparent specific gravity of fine aggregates for bituminous mixes, cement treated bases, and aggregate bases.
Fine Aggregates (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM C128, CT 207, AASHTO T84	This test determines the bulk specific gravity (SSD) and the absorption of material passing the No. 4 sieve.
Course Aggregates (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	CT 206	This test determines the cleanness of coarse aggregate.
Course Aggregates (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM C127, CT 277, AASHTO T85	This test determines the specific gravity and absorption of coarse aggregate (material retained on the No. 4 sieve).
Soils and Aggregates (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM C136, CT 202, AASHTO T27	This test determines the gradation of soils and aggregates by sieve analysis.
Soils and Aggregates (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM D2419, CT 217, AASHTO T176	This test determines the Sand Equivalent of soils and aggregates.
Soils and Aggregates (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM C117, AASHTO T11	This test determines the gradation of materials finer than the No. 200 sieve (by washing method)



**Soils and Aggregates**

Materials to be Samples or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Soils and Aggregates (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM D3744, CT 229, AASHTO T210	This test determines the Durability Index of soils and aggregates.
Soils and Aggregates (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM D2844, CT 301, AASHTO T190	This test determines the Resistance Value (R-) and expansion pressure of compacted materials.
Soils and Aggregates (Testing)	One random location for every 2,500 SF.	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM D2922, CT 231, AASHTO T238	This test determines field densities using the nuclear gage.
Soils and Aggregates (Testing)	One random location for every 2,500 SF.	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM D3017, CT 231, AASHTO T239	This test determines the water content using the nuclear gage.
Asphalt Binder (Sampling)	One 0.5-gal. sample placed in a clean, sealed can.	Sample once per job at the asphalt concrete plant.	CT 125, ASTM D979, AASHTO T168, T48	This procedure describes the proper method to sample the asphalt binder.
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Sample once per job at the asphalt concrete plant.	ASTM D92, D117, AASHTO T48	This test determines the flash point of the asphalt binder (by Cleveland open cup).
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D2872, D92, CT 346, AASHTO T240, T48	This test determines the rolling thin-film oven test (RTFO).
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D2042, AASHTO T44	This test determines the solubility of asphalt material in trichloroethylene.
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D2171, AASHTO T202	This test determines the dynamic viscosity, (absolute viscosity of asphalt @ 140 degrees F by the Vacuum Capillary Viscometer Poises).
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D5, AASHTO T49	This test determines the penetration of bituminous material @ 77 degrees F and percentage of original penetration from the residue.
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D113, AASHTO T51	This test determines the ductility of asphalt @ 77 degrees F.
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D2170, AASHTO T201	This test determines the kinematic viscosity of asphalt @ 275 degrees F (Centistoke).
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D2171, AASHTO T202	This test determines the dynamic viscosity (absolute viscosity of asphalt @ 140 degrees F by the Vacuum Capillary Viscometer Poises).
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D36, AASHTO T 53	This test determines the softening point of asphalt.

**Asphalt Emulsified**

Materials to be Samples or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Emulsified Asphalt (Sampling)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D140, D979, CT 125, AASHTO T40, T168	This test describes the procedure to sample the emulsified asphalt.
Emulsified Asphalt (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D244, AASHTO T59	This test determines the sieve retention of emulsified asphalt.
Emulsified Asphalt (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D244, AASHTO T59	This test determines the weight per gallon of emulsified asphalt.
Emulsified Asphalt (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D244, AASHTO T59	This test determines the penetration of the emulsified asphalt.
Emulsified Asphalt (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D244, CT 330, AASHTO T59	This test determines the residue @325 degrees F evaporation of emulsified asphalt.
Emulsified Asphalt (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D402, AASHTO T201	This test determines the Brookfield viscosity.

**Asphalt Emulsified**

Materials to be Samples or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Emulsified Asphalt (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D88, AASHTO T72	This test determines the Saybolt-Furol viscosity of emulsified asphalt @ 77 degrees F. (seconds).

**Hot Mix Asphalt (Asphalt Concrete) - Concrete**

Materials to be Samples or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Asphalt Concrete (Sampling)	Obtain one 30-lb. sample each day of production.	Obtain one sample at the asphalt concrete plant for each 5,000 tons of asphalt concrete placed.	ASTM D75, D140, D979, CT 125, AASHTO T40, T168	This test describes the procedure to sample the asphalt concrete.
Asphalt Concrete (Testing)	4" x 8" cores	Take one 4" x 8" core for every 500 feet of paved roadway.	ASTM D1188, D1560, D1561, D5361, CT 304, AASHTO T246, T247	This test determines the field density of street samples.
Asphalt Concrete (Testing)	Obtain one 30-lb. sample for each day of production.	Obtain one sample for every five cores taken.	ASTM D1188, D1560, D1561, D5361, CT 304, AASHTO T246, T247	This test determines the laboratory density and relative compaction of asphalt concrete.
Asphalt Concrete (Testing)	4" x 8" cores	Obtain one sample for every five cores taken.	ASTM D2726, D1188, D5361	This test determines the specific gravity of compacted bituminous mixture dense-graded or non-absorptive.
Asphalt Concrete (Testing)	One 30-lb. sample.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete.	ASTM D1559, AASHTO T245	This test determines the resistance to plastic flow of prepared mixes as determined by the Marshall Method.
Asphalt Concrete (Testing)	One 30-lb. sample.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete.	ASTM C117, D2172 (use Method B), AASHTO T164	This test determines the screen analysis of aggregates recovered from asphalt materials.
Asphalt Concrete (Testing)	Sample any test location (random basis).	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete.	ASTM D2950, CT 375	This test determines the nuclear field density of in-place asphalt concrete.
Asphalt Concrete (Testing)	One 10-lb. sample.	Obtain one sample during every day of production.	ASTM D1560, D1561, CT 366, AASHTO T246, T247	This test determines the stability value of asphalt concrete.
Slurry Seals (Sample)	One 0.5-gal. sample in a clean, dry plastic container.	Obtain one sample per truck.	ASTM D979, CT 125, AASHTO T40, T168	This test describes the procedure for sampling the slurry seal.
Aggregate for Slurry Seals (Testing)	One 30-lb. sample.	Obtain at least one sample per project from the belt of hopper or stockpile and test for Sand Equivalent.	ASTM D2419, CT 217, AASHTO T176	This test determines the Sand Equivalent of aggregates.
Aggregate for Slurry Seals (Testing)	One 30-lb. sample.	Obtain at least one sample per project from the belt of hopper or stockpile and test for sieve analysis of fine sand.	ASTM C117, AASHTO T11	This test determines the sieve analysis of fine sand (gradation of materials finer than No. 220 sieve by wash grading).
Slurry Seals (Testing)	One 0.5-gal. sample in a clean, dry plastic container.	Test one sample per project and test for Abrasion.	ASTM D5910	This test determines the Wet Track Abrasion Test (2) (WTAT).

**Steel**

Materials to be Samples or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Steel Strand (Testing)	Sample stand at various sizes.	This item may be accepted using a Certificate of Compliance. Sample and test at least two steel strands per job when a Certificate of Compliance is not used.	ASTM A370, A416, E328, AASHTO T244	This test determines the tensile strength of uncoated seven-wire stress-relieved strand for pre-stressed concrete.
Steel Rebar (Testing)	Sample rebar at various sizes.	This item may be accepted using a Certificate of Compliance. Sample and test at least two steel rebar per job when a Certificate of Compliance is not used.	ASTM A615, A370, AASHTO T244	This test determines the steel reinforcement bar tensile strength and bend capability.

# PROJECT PLANS





OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

**MEETING DATE** October 9, 2012

**DEPARTMENT** Public Works - Engineering  
Division

**ADDITIONAL  
DEPARTMENTS**

**TIME  
REQUIRED** 15 minutes

**PERSONS  
APPEARING  
BEFORE THE  
BOARD** Garrett Higerd

**SUBJECT** Tract Map 37-59A&B, Rock  
Creek Canyon Final Map

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### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Tentative Tract Map No. 37-59A&B was conditionally approved by the Mono County Board of Supervisors at a public hearing held on December 21, 2010. The Final Map will divide APN 026-330-003, totaling 29 acres, into fourteen lots: twelve market-rate single family residential lots, and two parcels devoted to complementary uses including a trailhead parking lot and a 5.59 acre open space parcel.

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### RECOMMENDED ACTION:

1. Approve the Final Map for Tract No. 37-59A&B, Rock Creek Canyon – Phases 1 & 2, finding that all conditions of approval have been met, and authorize the Board Clerk's signature on said map certifying approval of such; 2. Reject on behalf of the public the offer of dedication for Lot A, as shown on said map. 3. Reject on behalf of the public the offer of dedication for the Public Access Trail Easement, as shown on said map. 4. Reject on behalf of the public the offer of dedication for the Conservation Easement for rock wall and historic ditch, as shown on said map. 5. Direct the Public Works Director to file for recordation a notarized copy of a Notice of Development Conditions on Property for the project in the office of the County Recorder.

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### FISCAL IMPACT:

None. All subdivision improvements benefiting Tract No. 37-59A&B have been installed by the Developer as a condition of map approval and at no expense to the County.

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**CONTACT NAME:** Garrett Higerd

**PHONE/EMAIL:** 760.932.5457 / ghigerd@mono.ca.gov

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SUBMIT THE ORIGINAL DOCUMENT WITH  
ATTACHMENTS TO THE OFFICE OF

**SEND COPIES TO:**



THE COUNTY ADMINISTRATOR  
**PRIOR TO 5:00 P.M. ON THE FRIDAY**  
**32 DAYS PRECEDING THE BOARD MEETING**

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**MINUTE ORDER REQUESTED:**

☒ YES ☐ NO

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**ATTACHMENTS:**

Click to download

-  [Staff Report](#)
  -  [Exhibit 1 - Reduced Map](#)
  -  [Exhibit 2 - Status of Conditions of Approval](#)
  -  [Exhibit 3 - Notice of Development Conditions](#)
  -  [Exhibit 4 - CC&Rs](#)
- 

**History**

Time	Who	Approval
9/17/2012 8:31 AM	County Administrative Office	Yes
9/26/2012 1:32 PM	County Counsel	Yes
9/17/2012 7:47 AM	Finance	Yes



# MONO COUNTY

## DEPARTMENT OF PUBLIC WORKS

POST OFFICE BOX 457 • 74 NORTH SCHOOL STREET • BRIDGEPORT, CALIFORNIA 93517  
760.932.5440 • Fax 760.932.5441 • [monopw@mono.ca.gov](mailto:monopw@mono.ca.gov) • [www.monocounty.ca.gov](http://www.monocounty.ca.gov)

**Date:** October 2, 2012  
**To:** Honorable Chair and Members of the Board of Supervisors  
**From:** Garrett Higerd, Senior Engineer  
**Re:** Tract Map 37-59A&B, Rock Creek Canyon Final Map

### Recommended Action:

1. Approve the Final Map for Tract No. 37-59A&B, Rock Creek Canyon – Phases 1 & 2, finding that all conditions of approval have been met, and authorize the Board Clerk's signature on said map certifying approval of such;
2. Reject on behalf of the public the offer of dedication for Lot A, as shown on said map.
3. Reject on behalf of the public the offer of dedication for the Public Access Trail Easement, as shown on said map.
4. Reject on behalf of the public the offer of dedication for the Conservation Easement for rock wall and historic ditch, as shown on said map.
5. Direct the Public Works Director to file for recordation a notarized copy of a Notice of Development Conditions on Property for the project in the office of the County Recorder.

### Fiscal Impact:

None. All subdivision improvements benefiting Tract No. 37-59A&B have been installed by the Developer as a condition of map approval and at no expense to the County.

### Background:

Tentative Tract Map No. 37-59A&B was conditionally-approved by the Mono County Board of Supervisors at a public hearing held on December 21, 2010. The Final Map will divide APN 026-330-003, totaling 29-acres, into fourteen lots: twelve market-rate single family residential lots, and two parcels devoted to complementary uses including a trailhead parking lot and a 5.59 acre open space parcel. The project is located at 7997 Lower Rock Creek Road (aka former Paradise Resort). A reduced copy of the eight-sheet Final Map is attached to this staff report as Exhibit 1.

The Final Map is in compliance with the Subdivision Map Act and local ordinances and is consistent with the conditionally-approved tentative map. Further, the developer has complied with all map conditions required relative to Final Map approval, including payment of a mitigation fee for the Paradise Transfer Station, building of a trailhead parking lot (Lot A), and the moving of the historical cabins to Parchers Resort. A narrative of the map conditions, attached as Exhibit 2, presents a summary of each condition of approval and its method of compliance.

Consistent with applicable provisions of the Subdivision Map Act, the Board of Supervisors must take action to accept or reject any dedications provided on the map by the Subdivider. For this map, this includes dedication of Lot A, a Public Access Trail Easement, and a Conservation Easement for rock wall and historic ditch.

Please contact me at 760.932.5457 or by email at [ghigerd@mono.ca.gov](mailto:ghigerd@mono.ca.gov) if you have any questions regarding this matter.

Respectfully submitted,



Garrett Higerd, PE  
Senior Engineer

Attachment:   Exhibit 1:   Reduced Copy of Tract 37-59A&B Final Map  
                  Exhibit 2:   Status of Conditions of Approval  
                  Exhibit 3:   Draft Notice of Development Conditions on Property  
                  Exhibit 4:   Draft CC&Rs



OWNERSHIP STATEMENT

I, the undersigned, being all parties having any record title interest in the real property being subdivided, do hereby consent to the preparation and recordation of this Tract Map. I hereby offer to the public, Lot A, as designated on this map. I also hereby offer to the public the Public Access Trail easement as designated on this map. I also hereby offer to the public the Conservation Easement for rock wall and historical ditch as designated on this map. I also hereby reserve hereon those easements located on and across Lots A, 1 thru 12 and the Open Space Lot for roads, water, sewer, conservation and utilities as designated on this map.

As Owner:  
JOHN W. HOOPER, A MARRIED MAN

As Beneficiary:  
Wells Fargo Bank, N.A., under Deed of Trust recorded April 14, 2009 as Instrument No. 2009001671 of Official Records of Mono County.

State of California )  
County of INYO ) ss.  
On AUGUST 29, 2012, JERRY M. COPE, NOTARY PUBLIC, before me, who personally appeared JOHN W. HOOPER, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person, acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Notary Public (sign and print name) JERRY M. COPE  
Commission No. 1848910 expires JUNE 9, 2013  
County of my principal place of business: INYO

State of )  
County of ) ss.  
on ) before me, who personally appeared ) a notary public, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons, acted, executed the instrument.  
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Notary Public (sign and print name)  
Commission No. expires  
County of my principal place of business:

CLERK TO THE BOARD'S STATEMENT

I hereby state that the Mono County Board of Supervisors, at a regular meeting thereof, held on the day of 2012, by an order duly passed and entered, did approve the Final Map for Tract No. 37-59, and did also on behalf to the public, Lot A, as shown on this map, and did also on behalf of the public the Public Access Trail easement as shown on this map, and did also on behalf of the public the Conservation Easement for rock wall and historic ditch as shown on this map.

Date  
Lynda Roberts  
Clerk to the Board of Supervisors

TAX COLLECTOR'S CERTIFICATE

I hereby certify that, according to the records on file in this office, there are no liens against this subdivision, or any part thereof, for unpaid state, county, municipal, or local taxes or special assessments collected as taxes, except taxes or special assessments not yet payable. Taxes or special assessments collected as taxes which are a lien but not yet payable are estimated to be in the amount of \$21,816.51 for which receipt of good and sufficient security conditioned upon payment of these taxes is hereby acknowledged.

Mono County Tax Collector  
Rosemary Glazier  
Assistant Director of Finance  
Tax Collector

HEALTH DEPARTMENT'S CERTIFICATE

I hereby certify that this subdivision is approved by the Mono County Health Officer.

9/20/12  
Date  
Louis Molina  
Department of Environmental Health

PLANNING COMMISSION CERTIFICATE

This Tract Map has been reviewed by the undersigned and found to be in substantial conformance with the conditionally-approved tentative map. Therefore, in accordance with the provisions of Mono County Code Section 17.20.170, this map is hereby approved, said approval having been ratified by the Mono County Planning Commission on SEPTEMBER 13, 2012.

9/13/12  
Date  
Steve Shipley, Chair  
Mono County Planning Commission

Date  
Scott Burns, Director  
Mono County Community Development Dept.

SIGNATURE OMISSIONS

The signatures of the following companies, their successors and assigns, owners of easements as disclosed by the following deeds recorded in the Official Records of Mono County, have been omitted under the provisions of Section 664.36(a)(3)(A)(i) of the Subdivision Map Act:

Lower Rock Creek Mutual Water Company	Book 107, Page 16 O.R.	Water pipe lines, reservoir' pumping plant systems
	Book 199, Page 325 O.R.	Water pipe lines, reservoir' pumping plant systems
	Book 266, Page 466 O.R.	Maintenance
	Book 706, Page 127 O.R.	Construction, operation and maintenance of waterline, well and equipment
Southern California Edison Company	Book 101, Page 172 O.R.	Aerial and underground electric lines and communication
	Book 278, Page 26 O.R.	Underground electrical supply system and communication system
Wilkes' Paradise Inc.	Book 199, Page 372 O.R.	Ingress and egress and pipeline

RECORDER'S CERTIFICATE

Filed this day of 2012 at M., in Book of Tract Maps at Pages , at the request of John W. Hooper.

Instrument No. Fee:

Lynda Roberts  
Mono County Recorder

Deputy Mono County Recorder

SURVEYOR'S STATEMENT

This map was prepared by me or under my direction and is based upon a field survey in conformance with the requirements of the Subdivision Map Act and local ordinance at the request of John Hooper in March 2012. I hereby state that all the monuments are of the character and occupy the positions indicated or that they will be set in those positions before 09-01-2012, and that the monuments are, or will be, sufficient to enable the survey to be retraced, and that this final map substantially conforms to the conditionally approved tentative map.

08/27/12  
Date  
Andrew K. Holmes  
Andrew K. Holmes L.S. NO. 4428  
Professional Land Surveyor  
Brett K. Jefferson P.L.S. 6267

COUNTY SURVEYOR'S STATEMENT

This map has been examined by me and the subdivision as shown is substantially the same as it appeared on the tentative map and any approved alterations thereof. All provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map have been complied with. I am satisfied that this map is technically correct.

Mono County Surveyor

09-01-2012  
Date

SOILS NOTE

A soils report was prepared on August 10, 2006 by Sierra Geotechnical Services, Inc., under the signature of Thomas A. Platz, R.C.E. 41039. A copy of said report is on file with the Mono County Department of Public Works.

C.C.& R.'s NOTE

The Declarations of Covenants, Conditions, Restrictions and Reservations are recorded as Instrument No. in the Office of the Mono County Recorder.

NOTE, CONDITIONS OF APPROVAL

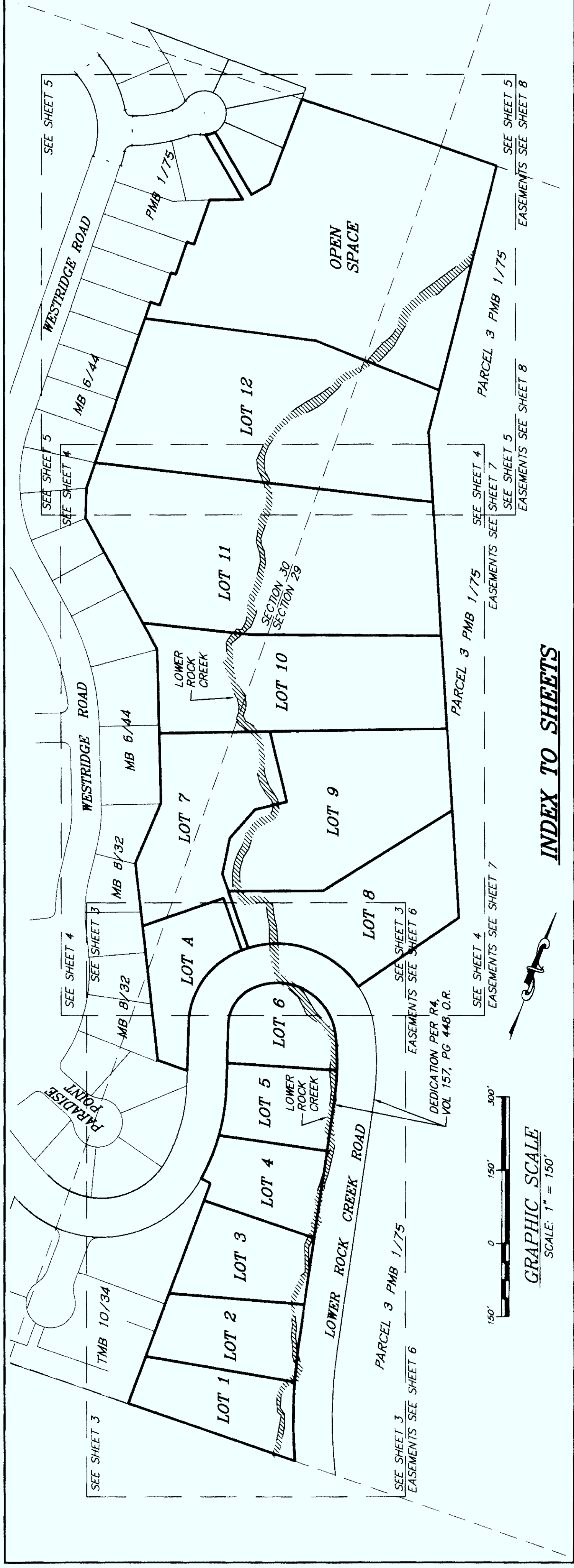
Present and future owners of the lots created by this map are to comply with requirements of the Mono County General Plan and Development Standards and Mitigation Measures specific to this map, including, but not limited to, Conditions of Map Approval No. which address visual impact, building character, lighting, wood burning devices, construction conditions, erosion control measures, vegetation removal and revegetation, landscaping, nuisance control, animal management, water supply and sewage disposal.

Conditions of Approval governing the lots created by this map were recorded as Document No. of Official Records, County of Mono, on 20. If any inconsistencies exist between the requirements set forth in these documents, the more restrictive shall apply.

TRACT MAP NO. 37-59A&B  
PHASES 1 AND 2

IN THE UNINCORPORATED TERRITORY OF MONO COUNTY  
BEING LOCATED IN SECTIONS 29 & 30, T. 5 S., R. 31 E.,  
MOUNT DIABLO BASE AND MERIDIAN, AND ALSO BEING A  
SUBDIVISION OF THE REMAINDER PARCEL OF TRACT MAP NO.  
37-41, SIERRA PARADISE UNIT NO. 4, IN THE COUNTY OF  
MONO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN  
BOOK 10, PAGE 34 OF MAPS, IN THE OFFICE OF THE COUNTY  
RECORDER OF SAID COUNTY.





**RECORD INFORMATION**

*R1 – MAP BOOK 2, PAGE 20 (1959)*  
*R2 – MAP BOOK 6, PAGE 44, (JULY 1969)*  
*R3 – MAP BOOK 8, PAGE 32, (JUNE 1973)*  
*R4 – VOL. 157, PAGE 44B, O.R., (AUGUST 1973)*  
*R5 – RSMB 1, PAGE 20, (1975)*  
*R6 – PARCEL MAP BOOK 1, PAGE 75, (1976)*  
*R7 – TMB 9, PAGE 14, (FEB 1980)*  
*R8 – TMB 10, PAGE 34, (JULY 1994)*  
*R9 – CORNER RECORD 55 31–29–1 (2006)*  
*R10– RSMB 4, PAGE 97, (2011)*

TRACT MAP NO. 37-59A&B

## PHASES 1 AND 2

IN THE UNINCORPORATED TERRITORY OF MONO COUNTY BEING LOCATED IN SECTIONS 29 & 30, T. 5 S., R. 31 E., MOUNT DIABLO BASE AND MERIDIAN, AND ALSO BEING A SUBDIVISION OF THE REMAINDER PARCEL OF TRACT MAP NO. 37-41, SIERRA PARADISE UNIT NO. 4, IN THE COUNTY OF MONO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 10, PAGE 34 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

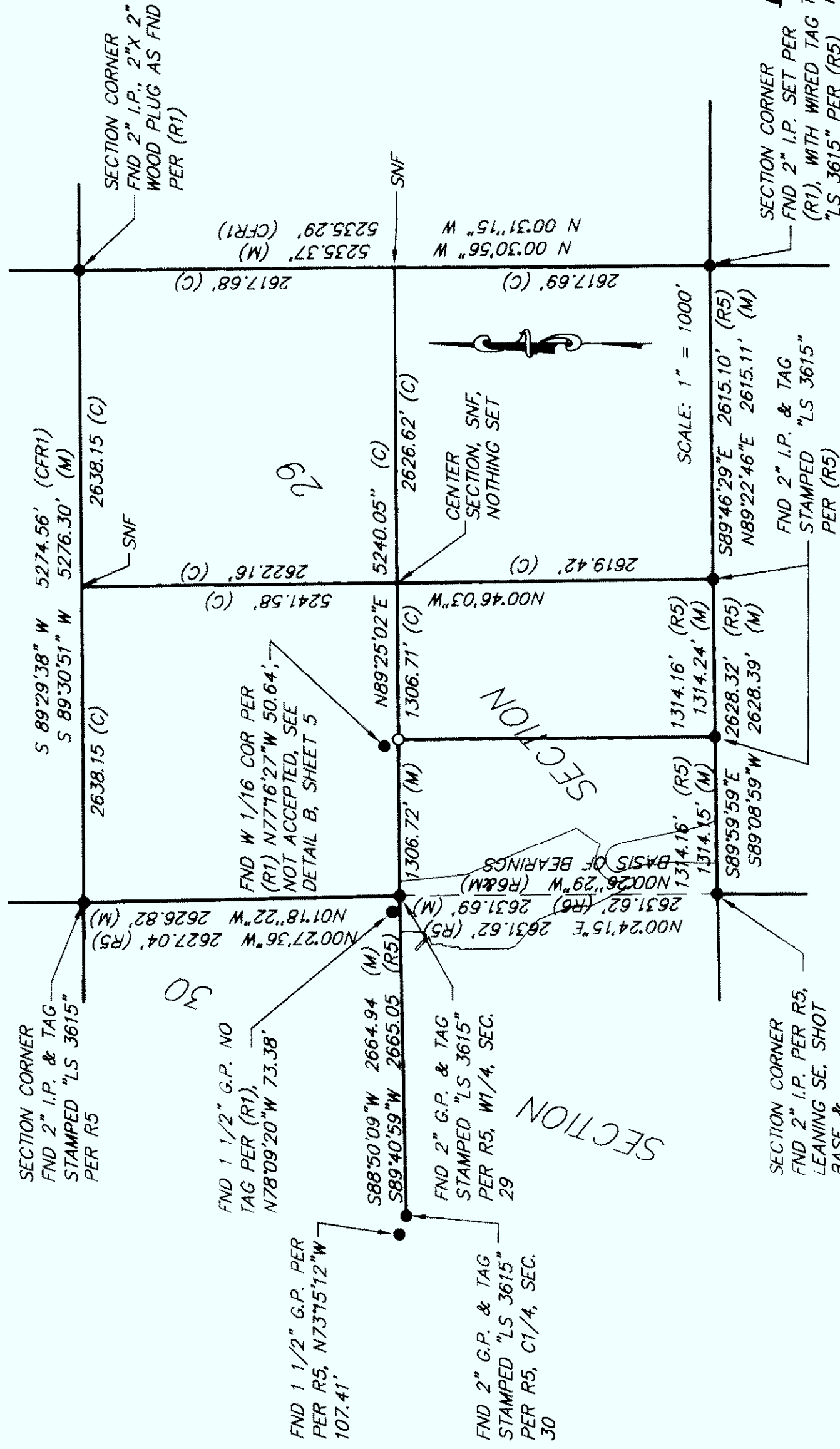
# ITAYUC TENOTITZT

triad/holmes associates JN 2748

K: \\01 Mammoth\\2748\\CAD\\Tract Map\\2748 Final Map.dwg Sep 04,2012 - 9:07am, jpfeller

**BASIS OF BEARINGS:**

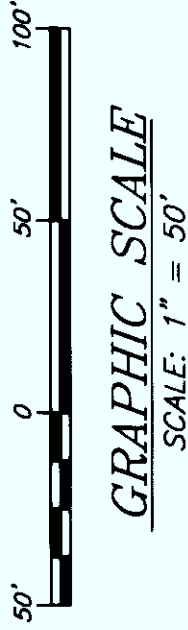
THE WEST LINE OF THE SW 1/4 OF SECTION 29, T5S,  
R31E, BETWEEN FOUND MONUMENTS SHOWN HEREON  
AS N 00°26'29" W PER PARCEL MAP, RECORDED IN  
BOOK 1 OF PARCEL MAPS AT PAGE 75 IN THE OFFICE  
OF THE MONO COUNTY RECORDER, WAS USED AS THE  
BASIS OF BEARINGS SHOWN ON THIS MAP.





TRACT MAP NO. 37-59A&B  
PHASES 1 AND 2

IN THE UNINCORPORATED TERRITORY OF MONO COUNTY  
BEING LOCATED IN SECTIONS 29 & 30, T. 5 S., R. 31 E.,  
MOUNT DIABLO BASE AND MERIDIAN, AND ALSO BEING A  
SUBDIVISION OF THE REMAINDER PARCEL OF TRACT MAP NO.  
37-41, SIERRA PARADISE UNIT NO. 4, IN THE COUNTY OF  
MONO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN  
BOOK 10, PAGE 34 OF MAPS, IN THE OFFICE OF THE COUNTY  
RECORDER OF SAID COUNTY.

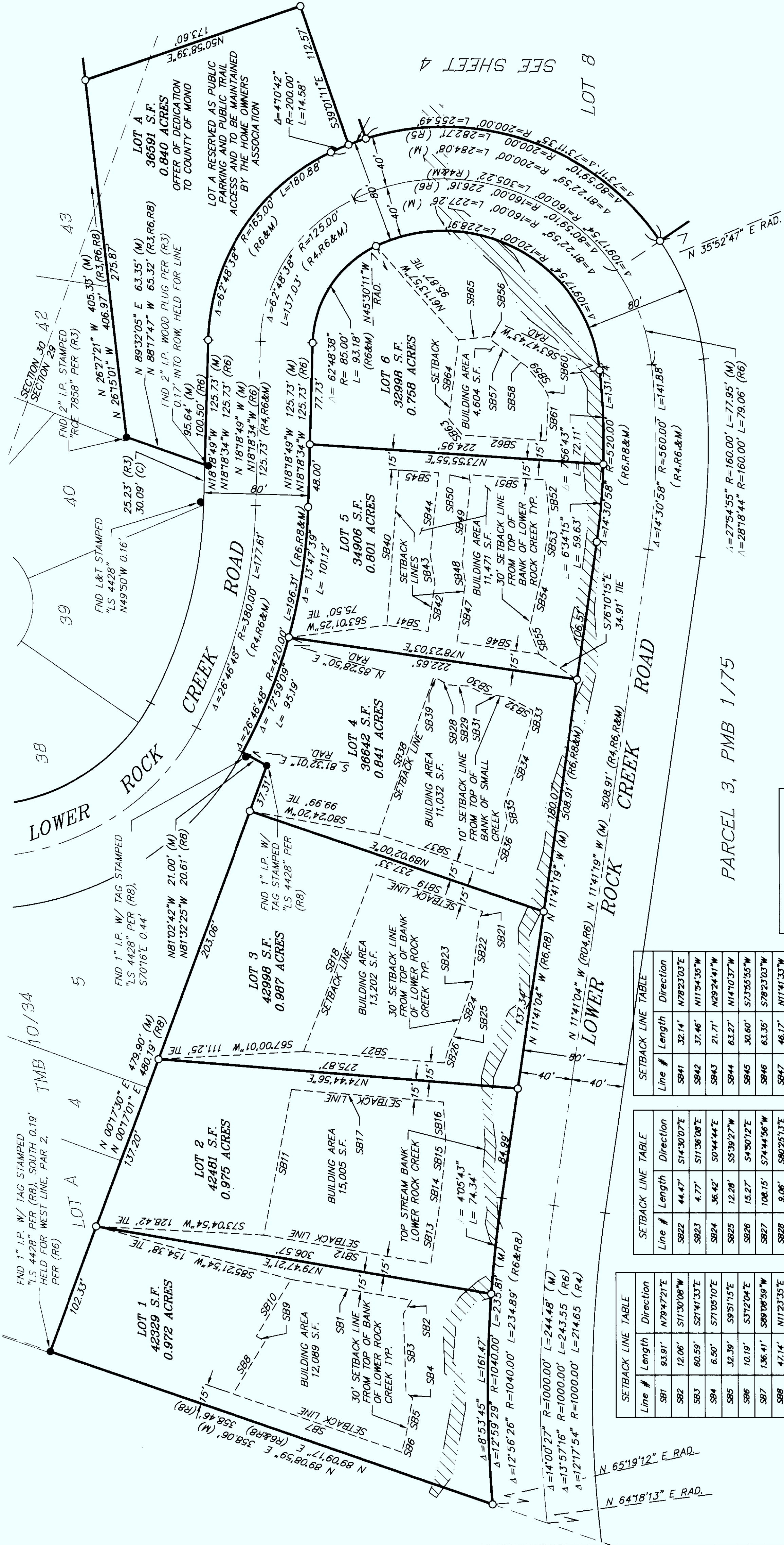


SETBACK LINE TABLE		
Line #	Length	Direction
SB60	7.01'	S45°17'50"E
SB61	34.18'	S73°56'19"W
SB62	64.21'	S17°28'15"E
SB63	15.98'	N59°40'40"W
SB64	60.95'	N12°54'29"W
SB65	24.03'	N63°32'27"E

SETBACK LINE TABLE		
Line #	Length	Direction
SB41	32.14'	N78°23'03"E
SB42	37.46'	N1°54'35"W
SB43	21.71'	N29°24'41"W
SB44	63.27'	N14°10'37"W
SB45	30.60'	S73°55'55"W
SB46	63.35'	S78°23'03"W
SB47	46.17'	N1°41'33"W
SB48	15.64'	N29°24'41"W
SB49	60.50'	N1°57'04"W
SB50	6.87'	N26°34'11"W
SB51	58.22'	N73°55'55"E
SB52	29.95'	S25°23'32"E
SB53	37.14'	S12°42'36"E
SB54	48.45'	S72°11'13"E
SB55	20.78'	S40°50'13"E
SB56	3.47'	S47°00'14"E
SB57	21.85'	S72°34'35"E
SB58	11.43'	S73°51'54"E
SB59	20.98'	S59°02'05"E

SETBACK LINE TABLE		
Line #	Length	Direction
SB22	44.47'	S14°30'07"E
SB23	4.77'	S11°36'08"E
SB24	36.42'	S04°44'4"E
SB25	12.28'	S5°39'27"W
SB26	15.27'	S4°50'12"E
SB27	108.15'	S74°44'56"W
SB28	9.06'	S80°25'13"E
SB29	15.66'	N73°25'10"E
SB30	13.06'	S83°13'55"E
SB31	18.30'	N78°07'43"E
SB32	21.35'	S81°46'01"E
SB33	13.66'	S9°14'43"E
SB34	62.18'	S1°43'28"E
SB35	13.40'	S30°40'44"E
SB36	41.39'	S40°50'13"E
SB37	92.57'	S89°02'00"W
SB38	127.10'	N03°32'59"W
SB39	3.75'	N78°23'03"E
SB40	119.23'	S15°28'31"E

SETBACK LINE TABLE		
Line #	Length	Direction
SB1	93.91'	N79°47'21"E
SB2	12.06'	S11°36'08"W
SB3	60.59'	S21°41'33"E
SB4	6.50'	S71°05'10"E
SB5	32.30'	S9°51'15"E
SB6	10.19'	S31°20'4"E
SB7	136.41'	S89°08'59"W
SB8	47.14'	N11°23'35"E
SB9	7.81'	N78°36'25"W
SB10	50.94'	N11°23'35"E
SB11	114.05'	S92°12'27"E
SB12	129.74'	N79°47'21"E
SB13	42.87'	N11°36'08"W
SB14	27.16'	N13°33'31"W
SB15	23.11'	N14°56'57"W
SB16	32.11'	N23°15'28"W
SB17	116.70'	S74°44'56"W
SB18	146.39'	N14°51'E
SB19	89.06'	N89°02'00"E
SB21	7.85'	S3°56'52"W



SEE SHEET 4

LOT 8

PARCEL 3, PMB 1/75



TRACT MAP NO. 37-59A&B

PHASES 1 AND 2

IN THE UNINCORPORATED TERRITORY OF MONO COUNTY  
BEING LOCATED IN SECTIONS 29 & 30, T. 5 S., R. 31 E.,  
MOUNT DIABLO BASE AND MERIDIAN, AND ALSO BEING A  
SUBDIVISION OF THE REMAINDER PARCEL OF TRACT MAP NO.  
37-41, SIERRA PARADISE UNIT NO. 4, IN THE COUNTY OF  
MONO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN  
BOOK 10, PAGE 34 OF MAPS, IN THE OFFICE OF THE COUNTY  
RECORDER OF SAID COUNTY.

BUILDING SITE LINE TABLE		
Line #	Length	Direction
L41	34.54'	N167°03'00"W
L42	41.12'	N59°41'45"W
L43	47.68'	S02°32'21"W
L44	15.54'	S43°06'51"E
L45	30.27'	S23°10'01"E
L46	53.72'	S17°16'31"E
L47	35.90'	S25°04'49"W
L48	34.21'	S40°13'47"E

BUILDING SITE LINE TABLE		
Line #	Length	Direction
L21	16.65'	N77°15'00"E
L22	12.48'	N06°12'50"W
L23	8.71'	N77°16'19"E
L24	23.08'	N6°34'53"W
L25	8.84'	N23°39'46"W
L26	23.48'	N36°19'54"W
L27	16.07'	N27°17'27"W
L28	26.00'	S08°36'48"W
L29	41.59'	S70°35'55"E
L30	82.31'	S1°52'02"E
L31	49.12'	S16°08'37"E
L32	42.63'	N72°47'26"E
L33	11.29'	N79°34'50"E
L34	10.29'	N17°09'25"W
L35	11.21'	S78°40'14"W
L36	35.53'	N15°36'22"W
L37	24.66'	N51°18'14"E
L38	58.50'	N70°23'20"E
L39	86.50'	N29°20'44"W
L40	56.42'	N22°29'22"W

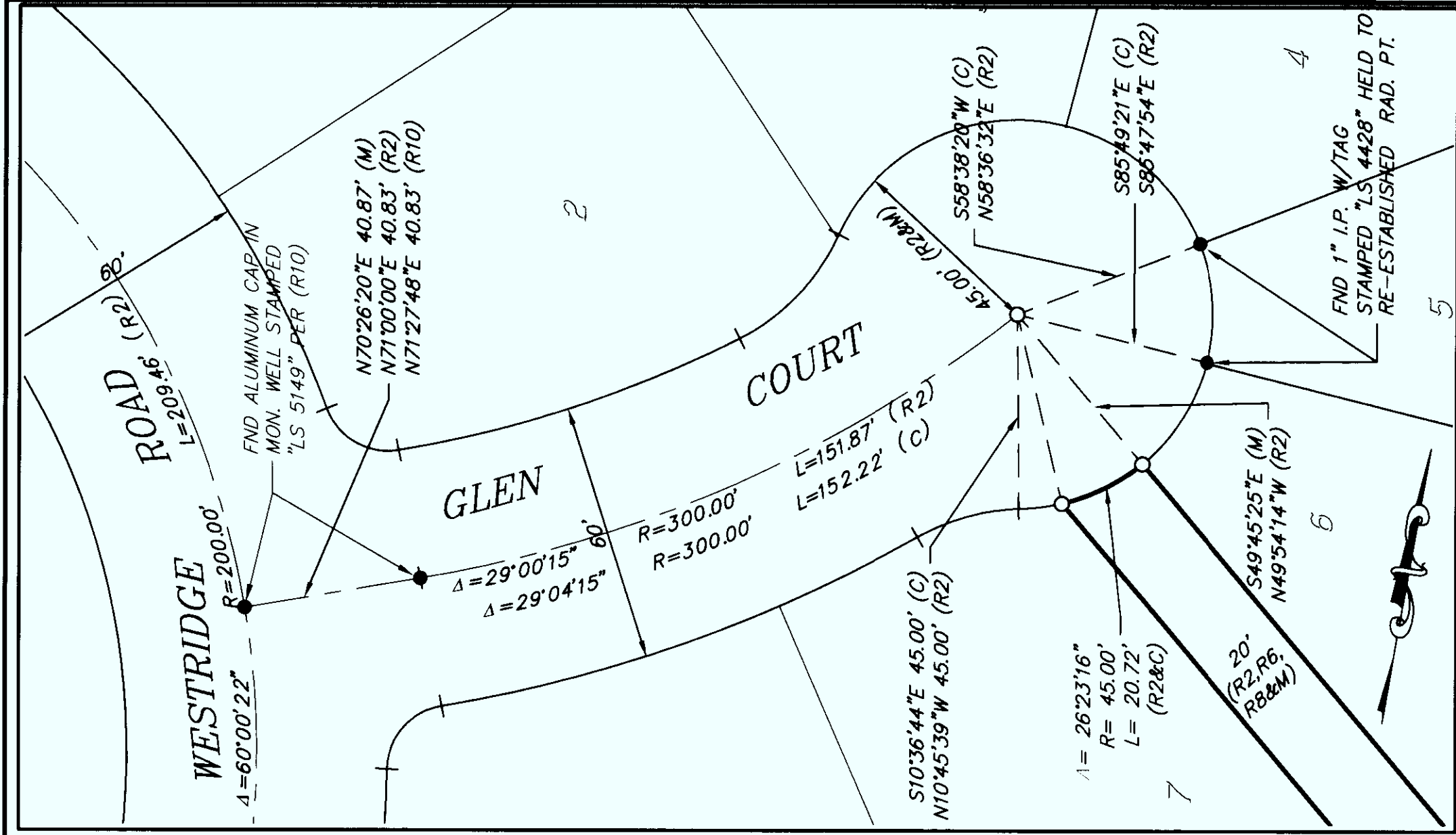
BUILDING SITE LINE TABLE		
Line #	Length	Direction
L1	10.00'	N68°30'53"E
L2	24.77'	N21°29'07"W
L3	44.17'	N69°06'43"E
L4	33.25'	S32°38'41"E
L5	25.56'	S70°05'35"E
L6	42.67'	S27°07'08"E
L7	59.62'	S68°54'14"W
L8	75.13'	N20°33'40"W
L9	48.45'	S21°58'49"E
L10	89.91'	N69°06'43"E
L11	135.54'	N21°59'49"W
L12	110.57'	S70°23'20"W
L13	21.18'	S15°14'58"E
L14	33.79'	S27°45'15"E
L15	4.77'	S55°59'42"E
L16	2.43'	S65°02'42"W
L17	13.64'	S22°47'12"E
L18	10.72'	N61°12'16"E
L19	20.73'	S46°34'44"E
L20	8.47'	S84°53'33"E



GRAPHIC SCALE  
SCALE: 1" = 50'

trac/holmes associates

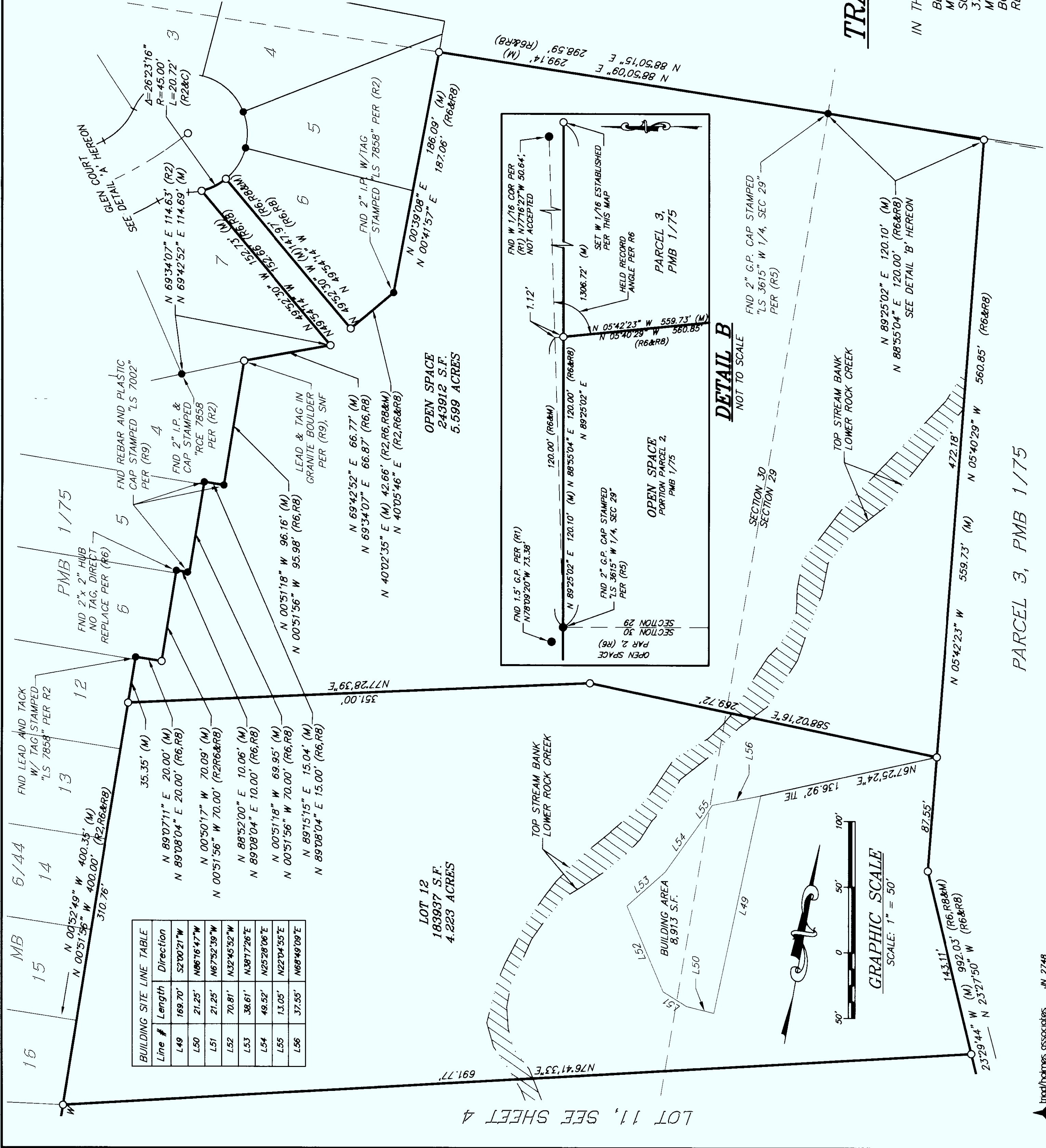




DETAIL A  
SCALE: 1" = 30'

TRACT MAP NO. 37-59A&B  
PHASES 1 AND 2

IN THE UNINCORPORATED TERRITORY OF MONO COUNTY  
BEING LOCATED IN SECTIONS 29 & 30, T. 5 S., R. 31 E.,  
MOUNT DIABLO BASE AND MERIDIAN, AND ALSO BEING A  
SUBDIVISION OF THE REMAINDER PARCEL OF TRACT MAP NO.  
37-41, SIERRA PARADISE UNIT NO. 4, IN THE COUNTY OF  
MONO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN  
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RECORDER OF SAID COUNTY.

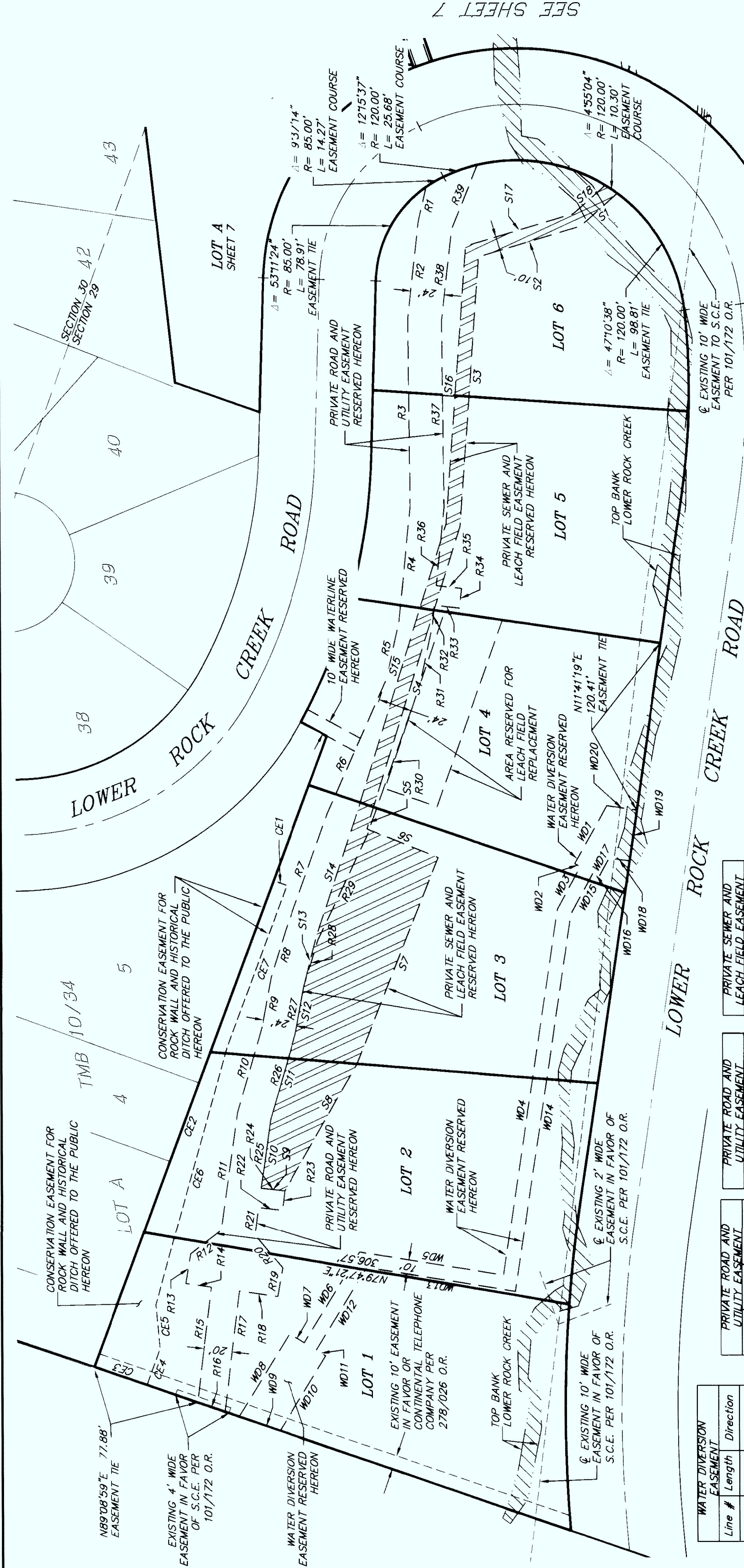


Line #	Length	Direction
L49	169.70'	S2°00'21"W
L50	21.25'	N86°16'47"W
L51	21.25'	N67°52'39"W
L52	70.81'	N32°45'52"W
L53	38.61'	N38°17'26"E
L54	49.52'	N25°28'06"E
L55	13.05'	N22°04'55"E
L56	37.55'	N68°49'08"E

GRAPHIC SCALE  
SCALE: 1" = 50'

PARCEL 3, PMB 1/75





EASEMENTS

TRACT MAP NO. 37-59A&B  
PHASES 1 AND 2

IN THE UNINCORPORATED TERRITORY OF MONO COUNTY  
BEING LOCATED IN SECTIONS 29 & 30, T. 5 S., R. 31 E.,  
MOUNT DIABLO BASE AND MERIDIAN, AND ALSO BEING A  
SUBDIVISION OF THE REMAINDER PARCEL OF TRACT MAP NO.  
37-41, SIERRA PARADISE UNIT NO. 4, IN THE COUNTY OF  
MONO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN  
BOOK 10, PAGE 34 OF MAPS, IN THE OFFICE OF THE COUNTY  
RECORDER OF SAID COUNTY.

CONSERVATION EASEMENT	
Line #	Direction
CE1	10.00' N89°42'59"W
CE2	369.87' S017°30'W
CE3	39.61' N89°08'59"E
CE4	27.53' N017°01'E
CE5	31.47' N25°22'33"W
CE6	190.73' N4°30'35"W
CE7	123.13' N017°30'E

EXISTING EASEMENT NOTES

AN EXISTING EASEMENT PER 107/16 O.R. IN FAVOR OF LOWER ROCK CREEK  
MUTUAL WATER COMPANY, RECORDED DECEMBER 1, 1969, EXISTS OVER THE  
ENTIRE PROPERTY FOR WATER PIPE LINES, RESERVOIR, PUMPING PLANT  
SYSTEM, OVER AND ACROSS THE WEST HALF OF SECTION 29 AND THE EAST  
HALF OF SECTION 30, T. 5 S., R. 31 E. AS THEY THEN EXISTED.

AN EXISTING EASEMENT PER 199/372 O.R. IN FAVOR OF WILKES PARADISE  
INC., RECORDED APRIL 7, 1976, EXISTS OVER THE ENTIRE PROPERTY FOR  
INGRESS AND EGRESS, PIPELINE AND INCIDENTAL PURPOSES OVER THE  
EXISTING ROAD PARALLEL TO LOWER ROCK CREEK, AS IT EXISTED AS OF  
APRIL 1, 1976.

AN EXISTING EASEMENT PER 286/466 O.R. IN FAVOR OF LOWER ROCK CREEK  
MUTUAL WATER COMPANY, RECORDED MARCH 26, 1979, EXISTS OVER THE  
ENTIRE PROPERTY FOR MAINTENANCE OF WATER INTAKE SYSTEM AS THEY  
THEN EXISTED IN ADDITION TO RIGHT OF INGRESS AND EGRESS.

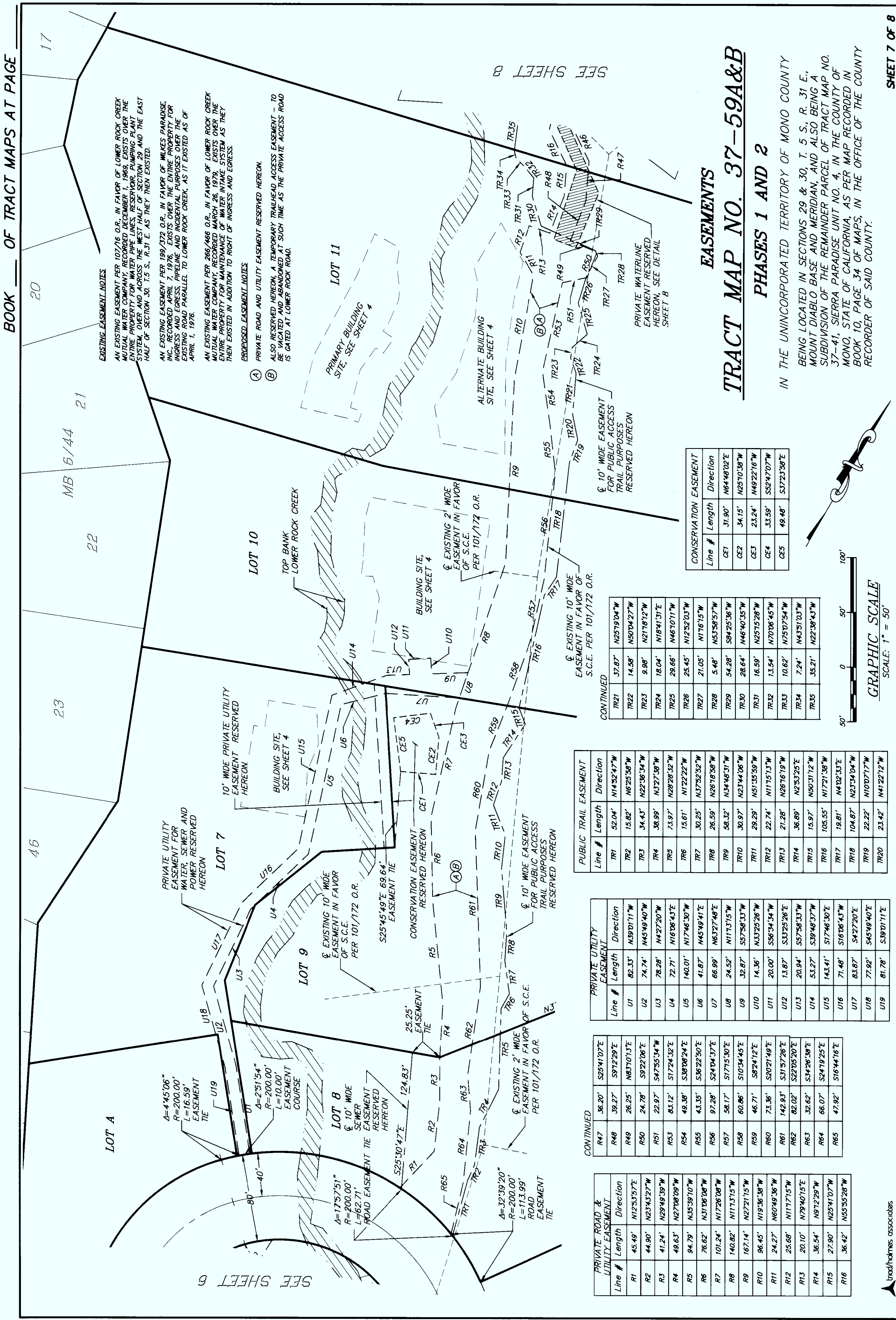
PRIVATE SEWER AND LEACH FIELD EASEMENT	
Line #	Direction
S1	35.05' S27°56'19"W
S2	75.44' S53°13'07"W
S3	192.25' S15°48'56"E
S4	216.01' S2°40'54"E
S5	9.61' S3°25'21"E
S6	54.63' S88°00'11"E
S7	158.16' S1°32'40"W
S8	104.19' S9°38'56"W
S9	16.87' S76°51'14"W
S10	49.17' N120°744"W
S11	63.64' N3°53'23"W
S12	35.08' N9°41'21"W
S13	36.22' N5°38'30"W
S14	93.48' N7°46'23"W
S15	214.92' N2°40'54"W
S16	197.98' N15°48'56"W
S17	80.07' N53°13'07"E
S18	30.35' N27°56'19"E

PRIVATE ROAD AND UTILITY EASEMENT	
Line #	Direction
R21	19.80' N120°744"W
R22	17.11' N76°51'14"E
R23	14.00' N13°08'46"W
R24	16.87' S76°51'14"W
R25	49.17' N120°744"W
R26	63.64' N3°53'23"W
R27	35.08' N9°41'21"W
R28	34.32' N2°39'44"W
R29	81.12' N5°13'31"E
R30	113.26' N02°41'19"W
R31	44.47' N7°35'25"W
R32	15.04' N14°17'30"W
R33	17.74' N76°51'14"E
R34	14.00' N13°08'46"W
R35	18.02' S76°51'14"W
R36	55.88' N14°17'30"W
R37	132.91' N20°33'38"W
R38	64.93' N13°38'28"W
R39	50.06' N1°50'04"E

PRIVATE ROAD AND UTILITY EASEMENT	
Line #	Direction
R1	25.50' S7°15'18"E
R2	69.64' S13°38'28"E
R3	133.05' S20°33'38"E
R4	82.20' S14°17'30"E
R5	41.56' S7°35'25"E
R6	106.72' S3°49'05"W
R7	85.34' S01°8'26"E
R8	37.45' S2°39'44"E
R9	35.34' S9°41'21"E
R10	64.15' S3°53'23"E
R11	84.70' S12°07'44"E
R12	27.26' S32°11'09"W
R13	21.66' S10°24'53"E
R14	18.20' N7°09'19"E
R15	82.76' S13°10'39"E
R16	20.47' N89°08'59"E
R17	86.66' N13°10'39"W
R18	27.53' N78°09'19"E
R19	20.65' N9°48'47"W
R20	30.95' N59°46'04"W

WATER DIVERSION EASEMENT	
Line #	Direction
WD1	47.17' S84°7'30"W
WD2	4.49' S81°12'30"E
WD3	34.71' S81°7'48"W
WD4	264.05' S11°36'08"E
WD5	103.84' S79°21'26"W
WD6	75.80' S17°23'35"W
WD7	12.19' N78°36'25"W
WD8	69.00' S17°23'35"W
WD9	30.70' N89°08'59"E
WD10	62.49' N17°23'35"E
WD11	7.81' N78°36'25"W
WD12	69.06' N17°23'35"E
WD13	107.26' N79°21'26"E
WD14	272.46' N17°36'08"W
WD15	32.87' N81°7'48"E
WD16	5.00' S81°12'30"E
WD17	15.06' N81°7'48"E
WD18	14.78' N77°53'59"E
WD19	36.74' N17°41'19"W
WD20	21.68' S78°19'15"W







PRIVATE ROAD & UTILITY EASEMENT			PUBLIC TRAIL EASEMENT		
Line #	Length	Direction	Line #	Length	Direction
R16	36.42'	N55°55'28"W	TR34	7.24'	N43°51'03"W
R17	103.95'	N1°58'17"W	TR35	35.21'	N22°38'43"W
R18	49.07'	N40°14'26"W	TR36	59.24'	N1°27'18"W
R19	128.62'	N3°31'03"E	TR37	27.26'	N14°45'44"E
R20	100.93'	N9°12'00"E	TR38	16.03'	N25°57'44"E
R21	27.56'	N14°49'51"E	TR39	10.46'	N71°50'59"W
R22	39.58'	N18°24'41"E	TR40	35.79'	N38°17'03"W
R23	112.21'	N2°47'46"E	TR41	24.22'	N3°16'45"E
R24	135.75'	N39°56'09"E	TR42	26.14'	N31°51'44"E
R25	66.07'	N46°22'50"E	TR43	78.91'	N5°48'56"W
R26	12.68'	S5°40'29"E	TR44	10.20'	N19°03'17"W
R27	57.71'	S46°22'50"W			
R28	134.13'	S39°56'09"W			
R29	110.33'	S27°47'46"W			

WATERLINE EASEMENT		
Line #	Length	Direction
WL1	66.54'	N53°55'27"W
WL2	92.97'	N14°21'15"W
WL3	25.50'	N48°32'46"W
WL4	29.23'	N41°45'00"W
WL5	27.90'	N9°14'03"W
WL6	20.00'	N80°45'57"E
WL7	40.00'	N9°14'03"W
WL8	30.00'	S80°45'57"W
WL9	70.82'	S9°14'03"E
WL10	32.74'	S41°45'00"E
WL11	23.01'	S48°32'46"E
WL12	93.49'	S14°21'15"E
WL13	42.87'	S53°55'27"E
WL14	66.58'	S12°07'50"E
WL15	21.57'	N80°41'36"E
WL16	54.13'	N7°48'24"W

PRIVATE ROAD & UTILITY EASEMENT		
Line #	Length	Direction
R16	36.42'	N55°55'28"W
R17	103.95'	N1°58'17"W
R18	49.07'	N40°14'26"W
R19	128.62'	N3°31'03"E
R20	100.93'	N9°12'00"E
R21	27.56'	N14°49'51"E
R22	39.58'	N18°24'41"E
R23	112.21'	N2°47'46"E
R24	135.75'	N39°56'09"E
R25	66.07'	N46°22'50"E
R26	12.68'	S5°40'29"E
R27	57.71'	S46°22'50"W
R28	134.13'	S39°56'09"W
R29	110.33'	S27°47'46"W
R30	38.44'	S18°24'41"W
R31	26.75'	S14°49'51"W
R32	98.42'	S3°27'26"W
R33	121.13'	S3°31'03"W
R34	40.21'	S40°14'26"E
R35	74.58'	N14°35'02"W
R36	39.27'	N39°52'34"E
R37	56.55'	N26°34'13"E
R38	113.95'	N18°32'54"E
R39	18.21'	S14°45'37"E
R40	99.43'	S18°32'54"W
R41	58.42'	S26°34'13"W
R42	32.83'	S39°52'34"W
R43	87.31'	S14°35'02"E
R44	33.20'	S0°38'03"W
R45	57.11'	S15°58'17"E
R46	34.55'	S55°55'28"E
R47	36.20'	S25°41'07"E



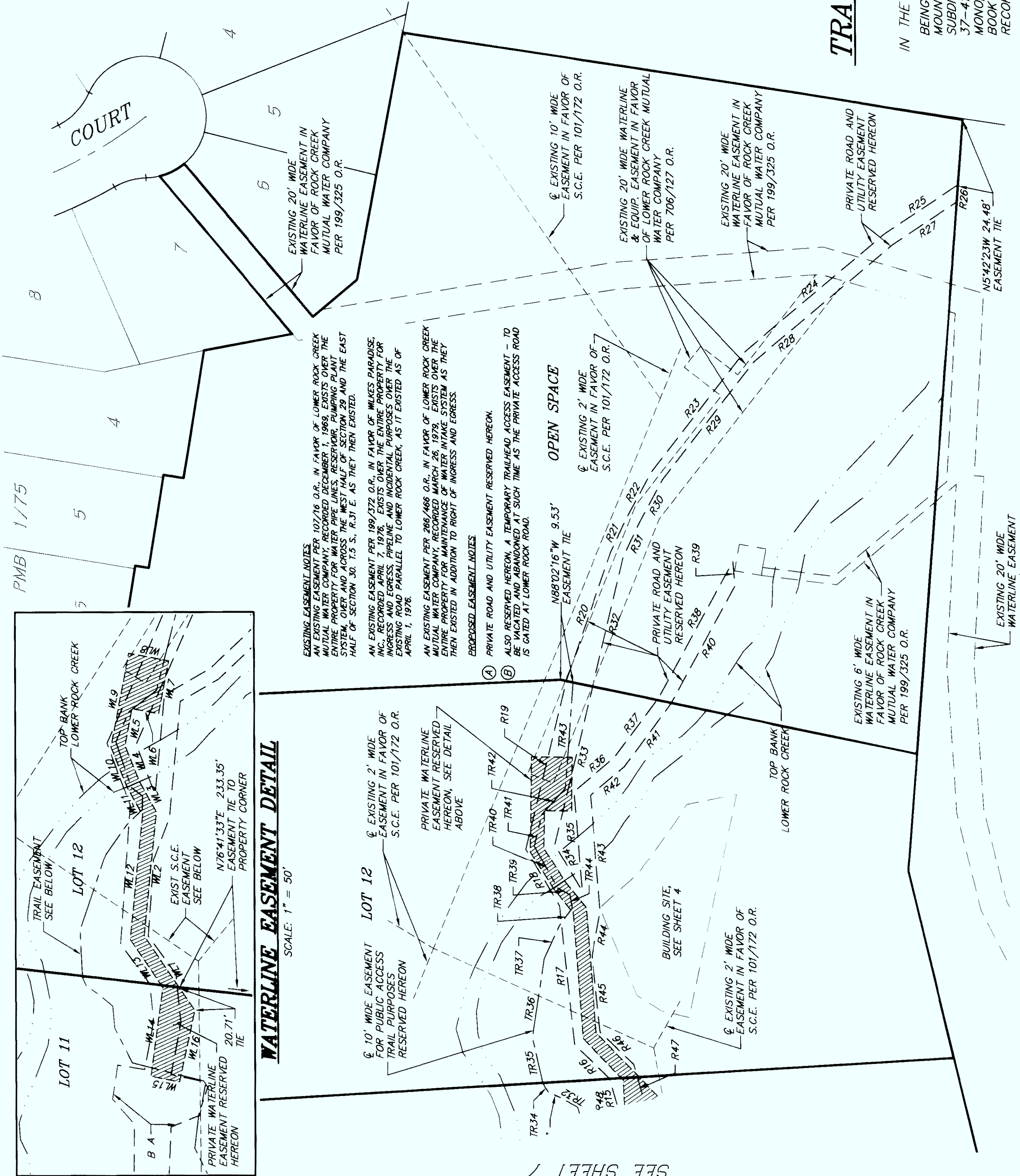
GRAPHIC SCALE  
SCALE: 1" = 50'

EASEMENTS

TRACT MAP NO. 37-59A&B

PHASES 1 AND 2

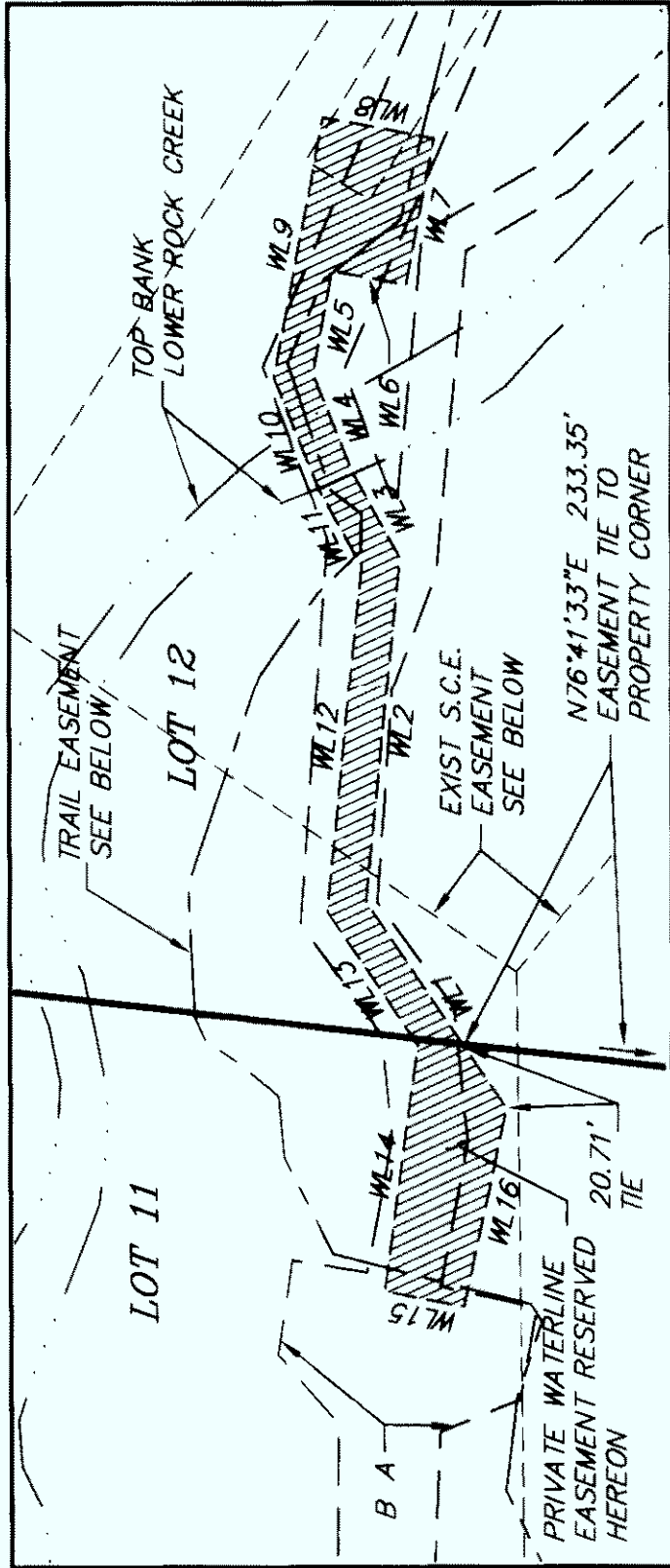
IN THE UNINCORPORATED TERRITORY OF MONO COUNTY  
BEING LOCATED IN SECTIONS 29 & 30, T. 5 S., R. 31 E.,  
MOUNT DIABLO BASE AND MERIDIAN, AND ALSO BEING A  
SUBDIVISION OF THE REMAINDER PARCEL OF TRACT MAP NO.  
37-41, SIERRA PARADISE UNIT NO. 4, IN THE COUNTY OF  
MONO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN  
BOOK 10, PAGE 34 OF MAPS, IN THE OFFICE OF THE COUNTY  
RECORDER OF SAID COUNTY.



WATERLINE EASEMENT DETAIL

SCALE: 1" = 50'

EXISTING EASEMENT NOTES  
AN EXISTING EASEMENT PER 107/16 O.R., IN FAVOR OF LOWER ROCK CREEK  
MUTUAL WATER COMPANY, RECORDED DECEMBER 1, 1968, EXISTS OVER THE  
ENTIRE PROPERTY FOR WATER PIPE LINES, RESERVOIR, PUMPING PLANT  
SYSTEM, OVER AND ACROSS THE WEST HALF OF SECTION 29 AND THE EAST  
HALF OF SECTION 30, T. 5 S., R. 31 E., AS THEY THEN EXISTED.  
AN EXISTING EASEMENT PER 199/372 O.R., IN FAVOR OF WILKES PARADISE,  
INC., RECORDED APRIL 1, 1976, EXISTS OVER THE ENTIRE PROPERTY FOR  
INGRESS AND EGRESS, PIPELINE AND INCIDENTAL PURPOSES OVER THE  
EXISTING ROAD PARALLEL TO LOWER ROCK CREEK, AS IT EXISTED AS OF  
APRIL 1, 1976.  
AN EXISTING EASEMENT PER 266/468 O.R., IN FAVOR OF LOWER ROCK CREEK  
MUTUAL WATER COMPANY, RECORDED MARCH 26, 1979, EXISTS OVER THE  
ENTIRE PROPERTY FOR MAINTENANCE OF WATER INTAKE SYSTEM AS THEY  
THEN EXISTED IN ADDITION TO RIGHT OF INGRESS AND EGRESS.  
PROPOSED EASEMENT NOTES  
(A) PRIVATE ROAD AND UTILITY EASEMENT RESERVED HEREON.  
(B) ALSO RESERVED HEREON, A TEMPORARY TRAILHEAD ACCESS EASEMENT - TO  
BE VACATED AND ABANDONED AT SUCH TIME AS THE PRIVATE ACCESS ROAD  
IS GATED AT LOWER ROCK CREEK.



**STATUS OF CONDITIONS OF APPROVAL  
& MITIGATION MONITORING PROGRAM  
TRACT MAP 37-59 / ROCK CREEK CANYON**

<b>Condition</b>	<b>Status</b>
<b>DEVELOPMENT STANDARDS AND POLICIES</b>	
1. Future residential development shall meet requirements of the Mono County General Plan, Mono County Code and the Rock Creek Canyon Specific Plan, including all mitigation measures (EIR, Section 10, Mitigation Monitoring and Reporting Program)	<p><b>Associated with future development; not required prior to final map approval.</b></p> <p><b>Condition is referenced on the Final Map and will be recorded concurrently by separate instrument.</b></p>
2. All wood-burning devices installed in the project shall be Phase II EPA-certified, in conformance with the Mono County General Plan (Conservation/Open Space Element, Public Health and Safety policies, Objective A, Action 6.1).	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(i)</b></p>
3. Subdivision improvements and future residential development shall comply with Fire Safe Regulations (Mono County General Plan, Land Use Element, Section VI, Land Development Regulations, Chapter 22), including emergency access, emergency water supplies, signing and building numbering, and vegetation modification.	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(b)</b></p>
4. The applicant and/or his contractor shall stop work and notify the Planning Division of the Mono County Community Development Department and local Native American tribal contacts if archaeological evidence and/or human remains or unmarked cemeteries are encountered during ground-disturbing activities. No disturbance of such a site shall be permitted until the applicant has hired a certified archaeologist and an archaeological survey that identifies acceptable site mitigation measures is filed with the Planning Division. Native American monitors shall be on site during the archaeological survey to ensure the proper identification and care of cultural resources. The disposition of any recovered artifacts shall be made in consultation with local tribal contacts. In the event of the accidental discovery of human remains, Health and Safety Code §7050.5, Public Resources Code §5097.98, and CEQA Guidelines §15064.5(d) shall be consulted for the proper procedure to follow.	<p><b>Same as status for Condition #1, above.</b></p>
5. Construction shall be limited to daylight hours (or per Mono County Code 13.08.290, whichever is more restrictive) in accordance with Mono County Code Chapter 10.16 (Noise Regulation) in order to minimize impacts to nocturnal resident wildlife species.	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(c)</b></p>

Condition	Status
<p>6. Noise levels during construction shall be kept to a minimum by equipping all on-site equipment with noise-attenuation devices and by compliance with all requirements of Mono County Code Chapter 10.16 (Noise Regulation).</p>	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(d)</b></p>
<p>7. Exterior/outdoor lighting on individual lots shall be designed and maintained to minimize the effects of lighting on the surrounding environment in compliance with Chapter 23 of the Mono County General Plan, Land Use Element. Exterior lighting shall be limited to that necessary for health and safety purposes.</p>	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(f)</b></p>
<p>8. Contractor bid specifications shall require that individuals involved in construction activities be prohibited from bringing their dogs to the project site during construction phases and require that construction workers limit music generated by portable music sources to 60 dB. Waste disposal bins used to collect construction workers' wastes during project construction shall be provided with a gated and bear-proof enclosure if construction workers' waste may include any food remnants.</p>	<p><b>Same as status for Condition #1, above.</b></p>
<p>9. For all phases of subdivision and parcel development, storm water erosion control measures shall be applied to disturbed areas and shall include the use of Best Management Practices such as placement of fiber blankets, fiber rolls, or similar materials or equivalent methods. Removed topsoil shall be stockpiled and replaced over disturbed areas at, or prior to, the completion of construction. Revegetation of disturbed areas shall occur as soon as practical following construction and the use of stabilization material or landscaping shall be required to reduce impacts related to erosion. Use of native seed and/or native plants grown from seeds or seedlings obtained from local native stock is encouraged. Project shall comply with the Landscaping provisions of the SP/EIR.</p>	<p><b>Same as status for Condition #1, above.</b></p>
<p>10. Drainage and erosion-control plans shall be required for residential construction involving more than 5,000 square feet of pad area disturbed, including secondary or accessory structures on any one parcel, at any one time. Drainage and erosion control plans shall also be required for construction on any one parcel that cumulatively exceeds 10,000 square feet. If plans are required they shall be developed by the individual project applicant with review and approval by the Department of Public Works, Community Development Department / Building Division, and applicable federal and/or state agencies.</p>	<p><b>Same as status for Condition #1, above.</b></p>



Condition	Status
<p>11. For all phases of subdivision and parcel development, controls shall be instituted to prevent wind erosion and public nuisance created by dust. Such controls are to include daily watering and mulching of disturbed areas and implementation of at least two of the best available dust control measures specified in mitigation measure AQ 5.12-1. Clearing of native vegetation shall be limited to areas necessary for impending or same-year construction.</p>	<p><b>Same as status for Condition #1, above.</b></p>
<p>12. For all phases of subdivision and parcel development, construction material (rock, debris, etc.) that is not utilized as fill material in the construction of improvements shall be removed to a permitted disposal site or other site approved by the Department of Public Works. All material proposed for fill under structures shall be approved by a geotechnical engineer prior to placement in the project.</p>	<p><b>Same as status for Condition #1, above.</b></p>
<p>13. For all phases of subdivision and parcel development, grading permits shall be required as specified in Mono County Code Section 13.08.030, <i>et seq.</i> Activities requiring a grading permit include, but are not limited to, land clearing and grading activities that clear more than 10,000 square feet, result in cuts greater than 4 feet or fill greater than 3 feet, involve more than 200 cubic yards of cut or fill, or the alteration of a drainage course.</p> <p>As part of the Grading Permit application, the applicant shall prepare a Soil Conservation Plan for protection and future use of natural soils suitable as a plant growth medium. At a minimum, the plan shall require that (a) native soils be stockpiled during construction and used for subsequent revegetation, and (b) stockpiled soils be protected from degradation during the construction and maintained in a condition suitable for reuse.</p>	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Subdivision improvements/ road grading covered under Grading Permit IP37-59 on file with Public Works.</b></p>
<p>14. Construction contracts shall be required to detailed construction traffic management plan (CTMP). The draft CTMP shall be submitted to the County Road Department, the County Sheriff's Department and the Paradise Fire Protection District for review and comment prior to initiation of project improvements. The CTMP shall specifically focus on methods to optimize public safety and minimize traffic disruption along Lower Rock Creek Road in the vicinity of the project construction area. Following completion of construction, contractors shall repair damage to any trails and roadways in accordance with all applicable standards of the County, BLM or other agency with jurisdiction.</p>	<p><b>Same as status for Condition #1, above.</b></p>
<p>15. The Road Department, Sheriff's Department and Fire Department shall be given at least 72 hours advance notice before construction activities are undertaken within any public right of way or public easement. Roadway closures shall not be permitted on Lower Rock Creek Road unless written approval is first obtained from the Public Works Department, Sheriff's Department and Fire Department.</p>	<p><b>Same as status for Condition #1, above.</b></p>

Condition	Status
16. The developer shall extend all applicable utilities (electricity, propane, communications conduit, etc.) to the property line of each parcel (MCGP Land Use Element III. A.2). All new on-site utility extensions shall be installed underground.	<b>Condition satisfied. Improvements documented in approved plans.</b>
17. Individual propane tanks may be installed on each parcel. When used, Liquefied Petroleum Gas (LPG) shall be installed according to all applicable codes and Mono County Code 15.04.130 and 15.04.131.	<b>Same as status for Condition #1, above.</b>
18. Applicant shall obtain a “will serve” letter from Lower Rock Creek Mutual Water Company.	<b>Condition satisfied by will serve letter dated Feb. 7, 2007, on file with Public Works.</b>
19. Domestic animals shall be restrained at all times, either through the use of leashes or private fenced areas. No animals shall be allowed to be free roaming.	<b>Same as status for Condition #1, above. Condition also satisfied by CC&amp;Rs Section 5.9(g)</b>

Project Specific Conditions	Status
<p>20. All phases of subdivision and parcel development shall comply with Mono County Flood Plain Regulations (Mono County General Plan, Land Use Element, Section VI Land Development Regulations, Chapter 21) and with the recommendations contained in the Base Flood Elevation Study prepared for the project, including.</p> <ul style="list-style-type: none"> <li>A. Homes shall be constructed such that finished floor elevations are above the base flood elevations indicated in the Base Flood Elevation Study for the project.</li> <li>B. Lot grading shall be kept to a minimum (i.e., that necessary for driveways and building pads) so as not to significantly obstruct the flow of storm waters.</li> <li>C. Building foundations and bridge abutments constructed in the floodplain shall be evaluated for scour by a professional engineer and designed and constructed to protect against erosion during a one percent annual chance storm (100-yr flood).</li> </ul>	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(u)</b></p>
21. The project shall provide a calculated fire flow of five hundred gallons per minute (500gpm) for a duration of two hours. Placement of fire hydrants installed at no less than 400-feet apart throughout the project. The developer shall provide the Department of Public Works with a “will serve” letter from the Paradise Fire Protection District indicating approval of the project and that the district will provide service to the proposed parcels. The developer shall also furnish documentation from the district indicating that subdivision improvements related to fire protection meet district requirements.	<b>Condition satisfied by will serve email dated August 24, 2012, on file with Public Works.</b>

<p>22. The developer shall provide all necessary easements for existing and proposed utility service, trailhead parking area (Lot A), conservation easement for historical ditch, and public access along Upper Canyon Road. If Upper Canyon Road is ever gated, a separate recreational user's entrance shall be provided (i.e., a bike / pedestrian gate). Developer shall provide necessary easements and construct a trail from Glenn Court through the project into the adjoining Rock Creek Ranch SP/TTM. All existing and proposed easements shall be shown on the map.</p> <p>As an alternative to providing public access along Upper Canyon Road, the developer may provide necessary easements and constructing a single track/multi use trail adjacent to the existing power line easement east of Upper Canyon Road in order to provide recreational public access to and from the Rock Creek trailhead and Open Space parcel.</p>	<p><b>Condition satisfied by existing and new easements shown on map.</b></p> <p><b>Public Access Trail easement along east side of Upper Canyon Road shown on map.</b></p>
<p>23. The developer shall submit an acceptable plan to Mono County Public Works &amp; Environmental Health to review the condition of the 10,000-gallon septic tank and the operation of the septic system including force mains and stub outs. The plot plan shall be prepared by a California-licensed civil engineer. The plot plan shall identify both the current sewage disposal area and an area for future sewage disposal, described as a replacement area of the primary sewage disposal area should the primary system fail. The siting of the common sewage disposal systems shall comply with the Lahontan Regional Water Quality Control Board's (LRWQCB) criteria contained in the Water Quality Control Plan for the Lahontan region. Leach fields and septic tanks shall be sited a minimum of 100 feet from any domestic well, a minimum of 50 feet from any drainage course, and a minimum of 50 feet from any property line or necessary easement are provided for the common leach field across lots 2, 3 &amp; 4. Each septic/holding tank, on applicable lots, shall be the obligation of the buyer.</p>	<p><b>Condition satisfied by sewage disposal plan, and by Environmental Health Dept. system acceptance email dated Aug. 15, 2012, on file with Public Works.</b></p>
<p>24. The developer shall furnish a drainage report prepared by a California-licensed civil engineer to present the hydrologic analyses and hydraulic design of irrigation, road, and drainage facilities to be constructed for the subdivision. Any needed retention basins determined from this study shall be constructed accordingly (basins may be needed on Lot A, along Upper Canyon Road and Lower Canyon Road).</p>	<p><b>Condition satisfied by Drainage Study prepared by Triad-Holmes and Assoc. dated October 30, 2009, on file with Public Works.</b></p>
<p>25. The developer shall furnish a Storm Water Pollution Prevention Plan (SWPPP) and submit a Notice of Intent to comply with provisions of the State Water Resources Control Board's NPDES Permit for Construction Activities. A letter of clearance and/or waste discharge requirements from the Lahontan Regional Water Quality Control Board is required prior to commencing any grading activities or other site disturbance.</p>	<p><b>Condition satisfied by approved grading plans, on file with Public Works.</b></p>
<p>26. The developer shall obtain a Permit to Construct and/or any other applicable air quality permit from the Great Basin Unified Air Pollution Control District for construction of subdivision improvements.</p>	<p><b>Same as status for Condition #25, above.</b></p>



Condition	Status
<p>27. To minimize impacts on deer, a wildlife biologist acceptable to the County shall approve any heavy construction work (including parcel grading operations, structural foundation work, framing work and similar heavy construction activities) that is conducted from the period from October 1 through May 15.</p>	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(e) and (v)</b></p>
<p>28. If construction is proposed to take place during the bird nesting and breeding season (March 15 through September 15), the responsible party (project proponent, lot owner or HOA) shall arrange for a qualified biologist to assess all potential bird nesting habitat within three days prior to project activities. If an active nest is located, construction within 300 feet of the nest (within 500 feet of raptor nests) shall be postponed until the young have fledged or the nest otherwise becomes inactive. If threatened or endangered species are observed in the area, no work shall occur during the nesting and breeding season to avoid take of listed species.</p>	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(w)</b></p>
<p>29. A housing mitigation agreement shall be provided pursuant to Chapter 15.40 Mono County Code that shall consist of: (1) one workforce housing lot (lot 9A) and unit will be provided for sale to an eligible buyer, (2) deed-restricted secondary units on two lots (8 &amp; 9 – note 2<sup>nd</sup> unit already exists on lot 9) and (3) payment of a fee of \$59,082. Lot 9A and any necessary access must be created as a part of phase 1 and the unit shall be constructed and offered for sale prior to completion of phase 1 or as may be allowed under Chapter 15.40 of the County Code.</p>	<p><b>Condition removed through Board of Supervisors actions; requirements eliminated for Lot 9A, and all housing mitigation requirements suspended until July 15, 2013.</b></p>
<p>30. The subdivider shall construct improved roads within the subdivision in accordance with California Fire Safe Standards. Engineered plans for road grading and earthwork improvements shall be submitted to the Department of Public Works for review and approval. All costs for road improvements, testing, inspections, and any related reports, plans and specifications shall be the responsibility of the subdivider. Roads constructed in the subdivision may be privately owned and maintained. The subdivider shall create an easement for the roads wide enough to allow for all drainage and snow storage requirements. Construction of the trailhead parking area on Lot A shall be deemed as an acceptable contribution to the County parks system and the future construction of public rest rooms is strongly encouraged.</p>	<p><b>Condition satisfied. Road improvements documented in approved grading plans and Public Works letter of improvement acceptance dated Aug. 9, 2012.</b></p>

Condition	Status
<p>31. The subdivider shall construct traffic signage improvements as required for mitigation of impacts as identified in the environmental document. Includes the existing W1-3 ('curve ahead') sign and W13-1 (20 MPH advisory speed) sign will be replaced with a new W13-1 (15 MPH) sign for both traffic directions on Lower Rock Creek Road to slow traffic approaching the roadway curves. The existing faded W11-2 (pedestrian crossing) sign will be replaced with new high-intensity W11-2 signs in each travel direction. A minimum of three new W1-8 (curve warning) signs shall be installed in each travel direction, evenly spaced, approaching the "S" curve. R-1-1 STOP signs shall installed at each of the 3 project access points (including the north lots, the south lots, and Lot A). W2-1 (CROSS ROAD) signs shall be installed approximately 100 feet in advance of the project access entrances, for both traffic directions on Lower Rock Creek Road to indicate the presence of an intersection or access entrance and the possibility of turning or entering traffic. The "CROSS ROAD" warning signs shall be supplemented with solar energized yellow flashers to further alert motorists to the potential of traffic turning in and out of the project access entrances. All reflective sign sheeting materials shall be a 3M Company DG-3 High Intensity Grade and covered with anti-graffiti overlay film.</p>	<p><b>Condition satisfied through substantial compliance.</b></p> <p><b>Modification to signage plan documented in letter dated Oct. 3, 2011, from Transportation Engineer, C. Hui Lai, P.E., on file with Public Works.</b></p>
<p>32. An encroachment permit shall be obtained from Mono County for the access from Lot A, Upper Canyon Road, and Lower Canyon Road onto Lower Rock Creek Road.</p>	<p><b>Condition satisfied by Encroachment permit No. 2692, on file with Public Works.</b></p>
<p>33. A street light (dark sky compliant) shall be installed on the parking lot adjoining the lodge to improve nighttime visibility.</p>	<p><b>Condition not required by Traffic Engineer. Same status as Condition #31 above.</b></p>
<p>34. Consistent with objectives identified in the Mono County General Plan, the developer shall contribute improvements at and/or in-lieu fees for the Paradise Transfer Station that are approximately proportional to subdivision impacts on disposal and recycling capacity at the facility. The "fair share" cost for improvements and/or in-lieu fees shall be \$3,700. Improvements to the disposal and/or recycling capacity shall be the developer's proportional share of the purchase and installation of a waste compactor, feed hopper, power, compaction container, and/or expansion of the site's fenced area, and/or purchase of recycling container(s). Improvements at the Paradise Transfer Station shall require review and approval by the Department of Public Works and shall be completed concurrent with subdivision improvements.</p> <p>Improvements partially funded by the developer for the Paradise Transfer Station shall be initiated by the County within five years from the date of final map recordation. Should the County fail to encumber in-lieu fees posted by the developer within that period, or should the proportional share of the actual improvements be less than \$3,700, the County shall refund the remaining amount to the developer.</p>	<p><b>Condition satisfied by fees paid. An Official Receipt No.76312, dated July 9, 2012 is on file with Public Works.</b></p>

Condition	Status
35. Building envelopes shall be shown on final map consistent with TTM 37-59A & B	<b>Condition satisfied by building envelopes shown on map.</b>
36. The correct phasing shall be shown on sheet 2 of the Map. The approved secondary units shall be shown and identified on the Map.	<b>Map condition not applicable due to Developer not using phasing option.</b>  <b>Secondary unit status same as status for Condition #29, above.</b>
37. Subdivision CC&Rs shall be prepared and shall include an engineering study identifying ongoing HOA facility maintenance. The CC&Rs shall create a funding mechanism (indexed for inflation) to maintain said facilities. The engineering study shall also include fees to replace and/or rehabilitate required infrastructure at the end of its useful life. These include but are not limited to maintenance of the sewer system, roadways and trails, snow removal, drainage facilities/retention basins, brush clearing, encroachments onto Lower Rock Creek Road, parking facilities (Lot A), etc.	<b>Condition satisfied by CC&amp;Rs Section 5.9(h)</b>  <b>Engineering Study of facility maintenance listed as CC&amp;Rs exhibit.</b>
38. Disturbance to CNPS List 4 Muilla coronata will be limited to a maximum 50% of the area occupied by this species within the project area as mapped in 2008. The retention will be achieved through adherence to the disturbance areas defined on the Tentative Map, which will enforce total avoidance of one half the area occupied by the population, based upon results of the survey and mapping conducted by the project botanist. The spatial limits placed upon disturbance of the Muilla coronata population shall be incorporated into the project CC&Rs.	<b>Condition satisfied by CC&amp;Rs Section 5.9(i) and Horticultural Exhibit</b>
39. A qualified engineer shall be retained to develop site specifications for all foundation work on the site, as recommended in the Geotechnical Analysis (see Draft EIR Appendix D) and to ensure compliance with all specifications set forth in the initial geotechnical review. The specifications shall address site issues including variables impacting high groundwater levels, potential for liquefaction, potential for rockfall, and other geotechnical considerations.	<b>Condition satisfied by Geotechnical Report prepared by Sierra Geotechnical Services Inc., dated August 16, 2006, on file with Public Works.</b>

Condition	Status
<p>40. During initial construction and subsequent maintenance and occupancy over the life the project, there shall be no encroachment of ground-disturbing equipment or activities beyond the top of the creek bank nor shall any spillback be permitted beyond the top of the creek bank. Utilities to serve all lots shall be constructed in locations that do not require an at-grade stream crossing to extend service. If a stream crossing is required in order to extend service to any lot, these new extensions shall be attached to a bridge that complies fully with the requirements above, or shall be extended with the use of a trenchless construction technology that meets local code standards and also complies fully with the requirements of above. Under all conditions and for all activities, disturbance of riparian vegetation shall be avoided to the maximum feasible extent. Tree canopies may be trimmed but under no circumstances will bank-stabilizing vegetation be removed. To avoid impacts associated with the provision of access and utilities to the alternative building envelope on Lot 11 (which is separated from the access road by Rock Creek), any constructed access (bridge) abutments and footings shall be designed so that they are emplaced entirely outside the bank tops on either side of Rock Creek; utilities shall be contained entirely within the constructed access. The requirements pertaining to access and utility extensions to serve Lot 11 (if the alternative building envelope is chosen as the building site) shall be incorporated into the project CC&amp;Rs and further enforced through implementation of this Mitigation Measure BOT 5.3-1c.</p>	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(j)</b></p>
<p>41. An exotic tree control program shall be maintained and funded through the Rock Creek Canyon Homeowners' Association. The program shall contain the following ongoing elements: (a) removal of all Siberian elm trees wherever they occur within the property; (b) removal of all existing black locust trees with a trunk diameter under 4 inches, and (c) ongoing future removal of all black locus sprouts throughout the property.</p>	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(k)</b></p>
<p>42. A vinca control program shall be maintained and funded through the Rock Creek Homeowners' Association. The program shall include ongoing maintenance of the existing <i>Vinca major</i> plants within fixed boundary horticultural beds, and ongoing removal of all <i>Vinca major</i> plants located outside of the existing defined horticultural beds. An exhibit shall be prepared that shows the boundaries of the horticultural beds, and this exhibit shall be incorporated into the project CC&amp;Rs.</p>	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(L)</b></p>
<p>43. The project CC&amp;Rs shall specify that all landscaping in the Landscape Plan required in §3.6.5.1(a) of the Specific Plan shall consist of plant materials that are native to the Mono County region and have value to native wildlife, and nonnative species that are compatible with native plant materials, have low propagation characteristics and are not invasive.</p>	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(m)</b></p>

Condition	Status
44. The HOA shall ensure that tree branches and vegetation on each side of the project access points are trimmed or removed to optimize line-of-sight visibility for traffic approaching the roadway curves. Trimming and clearance activities shall be suspended during the bird nesting season each year (March 15 to September 15). This requirement has been incorporated into the Specific Plan (§3.6.5.1(e)).	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(n) and (x)</b></p>
45. Natural vegetation shall be retained except where it must be removed for project development. To minimize degradation of deer habitat, project CC&Rs shall incorporate the following requirement which mandates use of native vegetation and native compatible and prohibits use of invasive plant species: <i>“Areas disturbed during infrastructure and home construction shall be revegetated with native species in order to establish deer habitat as soon as possible following construction. Revegetation of disturbed areas shall require use of native seeds or native plants grown from seeds or seedlings obtained from local native stock. Revegetated areas shall be monitored for 5 years to ensure success of the plantings, with replanting as necessary.”</i> Property owners shall refrain from clearing native vegetation except as necessary for construction or fire safety.	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(o)</b></p>
46. Duplicate of Map Condition #45	<b>N/A</b>
47. CC&Rs shall contain the following provisions to minimize impacts on critical wildlife habitat: (a) leash laws as detailed in mitigation measure WILD 5.4-3b, (b) provide homeowners with informational handouts about habitat protection; and (c) restrict use of recreational OHV (off-highway vehicle use) in open space areas.	<p><b>Condition also satisfied by CC&amp;Rs Section 5.9(g) and (p)</b></p>
48. Rock Creek Canyon CC&Rs shall prohibit the discharge of any material other than domestic wastewater to the septic tank system. CC&Rs shall also specify that any other type of discharge shall first be reviewed with the Homeowners Association Board and with the firm providing contractual maintenance, operation and monitoring services. If the discharge is judged meritorious, the Homeowners’ Association shall be responsible for preparing and filing with the LRWQCB a Report of Waste Discharge prior to undertaking the discharge of non-wastewater materials.	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(r) and (y)</b></p>
49. For project area buildings, structures, associated uses, and asphalt or concrete-paved surfaces that are slated for demolition, an investigation shall be conducted for the presence of hazardous chemicals, lead-based paints or products, mercury and asbestos-containing materials (ACMs). If hazardous chemicals, lead-based paints or products, mercury or ACMs are identified, remediation shall be undertaken in compliance with California environmental regulations and policies.	<p><b>Same as status for Condition #1, above.</b></p>
50. If soil and/or groundwater contamination is suspected during the construction in the vicinity of the old service station, all construction and/or renovation activity in that area shall cease, and appropriate health & safety procedures shall be implemented.	<p><b>Same as status for Condition #1, above.</b></p>

Condition	Status
<p>51. A Best Management Practices Program (BMPP) shall be implemented during all construction stages, including pre-construction and post-construction practices for the prevention of erosion, sedimentation, and contamination resulting from implementation of all project elements. BMPP measures shall at a minimum require: (1) disposal of all construction wastes in designated areas outside the path of storm water flows; (2) minimizing the footprint of construction zones and prompt installation of erosion controls; (3) stabilizing disturbed soils with landscaping, paving or reseeding to reduce or eliminate the risk of further erosion; (4) perimeter drainage controls to direct runoff around disturbed construction areas; (5) internal erosion controls to allow direct percolation of sediment-laden waters on the construction site; and (6) regular inspection and maintenance of all equipment used during construction. The project shall also comply with the requirement to obtain a General Construction Stormwater Permit, and prepare a Stormwater Pollution Prevention Plan.</p>	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(u)</b></p>
<p>52. All new project foundations shall be designed by a qualified Professional Engineer in accordance with the most current versions of the International Building Code as adopted by Mono County.</p>	<p><b>Same as status for Condition #1, above.</b></p>
<p>53. Private roadways and driveways shall meet County road standards.</p>	<p><b>Same as status for Condition #1, above.</b></p>
<p>54. All finished floors, and potentially affected foundations, shall be designed to be above the calculated water surface elevation of a 100-year storm. Construction components below the water surface elevation shall be designed with water resistant materials. The design of all facilities shall be finalized during final review in accordance with Mono County requirements in place at that time.</p>	<p><b>Same as status for Condition #1, above.</b></p>
<p>55. Storm drainage facilities shall be operated and maintained in a manner that will assure continued function as per original design standards. Maintenance elements shall include (but are not limited to) the removal of foreign materials from storm drainage pipes and ditches, maintenance as necessary to outlet facilities, desiltation of retention basins, and repairs as necessary to damaged facilities.</p>	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(s) and (u)</b></p>

<p>56. Mitigation Measure BOT 5.3-1d requires that disturbance to any area on the site that is occupied by <i>Muilla coronata</i> will be subject to seedbank (in this case bulblet) relocation to sandy near-riparian soil outside the proposed building envelopes in lots 1-6. To ensure the success of this measure, a test program will be undertaken by the project proponent with a monitoring period of at least two years. The test program will be prepared as part of a larger revegetation plan that will be submitted to DFG for approval prior to initiation of the relocation test program or other revegetation of the site. In the event that the test site proves unsuitable for the relocation effort, a new test site will be selected on the project property and the test program will be repeated until a suitable location is identified and permanent relocation is completed. The relocation test site and the permanent relocation site will be protected through a conservation easement and appropriate signage.</p>	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Relocation test site acceptability documented in an email by Dr. James Paulus, dated July 10, 2012</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(o) and (u)</b></p>
<p>57. Potential impacts to the 3.5 acres of state sensitive water birch riparian scrub community that occurs on the property have been reduced through levels of avoidance. The avoidance will be achieved through creation of a permanent 30-foot setback of all structures other than approved nonconforming uses from the bank of Lower Rock Creek, and through retention of the water birch community in the vicinity of the Jeffrey pines. The Jeffrey pines will also be retained in their present location and condition to the maximum extent feasible, with full retention of all Jeffrey pines with a trunk diameter greater than 12 inches.</p>	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(o) and (u)</b></p>
<p>58. Property owners shall refrain from clearing native vegetation except as necessary for construction, fire safety or traffic safety (also refer to Mitigation Measure TFFC 5.11-3e).</p>	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(o) and (u)</b></p>
<p>59. Property owners who wish to permit their dogs unleashed access to their yard shall be required to construct, maintain and use a dog enclosure capable of preventing the dog from straying onto public land or other adjacent properties. Such enclosure shall be within the confines of the fenced area allowed pursuant to the Rock Creek Canyon Specific Plan, and shall be constructed in accordance with the Specific Plan. Dogs shall not be permitted in areas outside of the dog enclosure. These requirements shall be contained in the project CC&amp;Rs.</p>	<p><b>Same as status for Condition #1, above.</b></p> <p><b>Condition also satisfied by CC&amp;Rs Section 5.9(g)</b></p>
<p>60. At least 3 of the cabins located south of Lower Rock Creek Road shall be relocated to an appropriate setting and placed in a manner that replicates the original feeling and design of the Paradise Camp cabin layout. The new location shall be comparable with the original character and use of the cabins, and shall retain historic features and compatibility in orientation and use of the cabins and general environment. One cabin should be open to the public with interior exhibits; the remaining cabins could be adapted for other uses.</p>	<p><b>Condition satisfied by Parchers Resort letter documenting cabin relocation (South Lake, Inyo County), on file with Public Works.</b></p>

Condition	Status
61. An interpretive exhibit shall be installed at the Rock Creek Canyon site, possibly on the lot that will be dedicated for use as a trailhead parking lot. The interpretive exhibit shall include historic photographs and describe and illustrate the history of Paradise Camp, and its relationship to twentieth-century American history and culture. It should also let visitors know where they can see the original cabins removed from the site.	<b>Same as status for Condition #60, above.</b>
62. Each lot shall be evaluated on a <i>case by case basis</i> prior to issuance of a building permit. If warranted, one or more of the following measures will be employed: (a) setback from toe of slope dependent on degree of hazard; (b) use of reinforced concrete no less than 16" thick by 36" tall on the slope side of the lower portions of the impacted building; (c) installation of engineered rockfall protection along the lower slope flank.	<b>Same as status for Condition #1, above.</b>
63. Best Management Practices shall be maintained at all times during demolition, relocation, renovation and construction of project elements. At a minimum, the BMP program shall consist of protection of Lower Rock Creek through the entire project site, sediment controls and sediment tracking controls (street sweeping or tire baths before exiting the site), designated storage of all construction materials outside the path of storm flows, disposal of construction wastes in appropriately-rated landfills, standby BMPs that can be implemented within 24-hours of a predicted storm event, minimizing the footprint of construction zones and prompt installation of erosion controls; stabilizing disturbed soils and slopes with landscaping, paving or reseeding to reduce or eliminate erosion; perimeter damage controls to direct runoff around disturbed construction areas; detention/infiltration ponds for direct percolation of sediment-laden waters on the construction site; and bid specifications that require regular inspection and maintenance of all equipment used during construction.	<b>Same as status for Condition #1, above.</b>  <b>Condition also satisfied by CC&amp;Rs Section 5.9(t) and (u)</b>
64. The CC&Rs shall contain a list of BMPs for residential land uses. At a minimum, the BMP program shall (a) require all spent fluids used in cleaning and repair activities to be collected in containers and disposed at a household hazardous waste collection site (Paradise Transfer Station accepts these wastes); (b) require all household hazardous materials to be stored in their containers under cover & used in accordance with label instructions; (c) prohibit use of herbicides, insecticides, rodenticides or fungicides within 30-feet of Lower Rock Creek and require all such products to be stored under cover and disposed at a hazardous waste collection site; (d) prohibit sweeping of clippings, leaves or trash into Lower Rock Creek or the open drainage swale and require that such materials instead be collected and recycled or disposed at the Transfer Station; (e) prohibit the discharge of washwater to land within 30-feet of Lower Rock Creek or to the open swale or to any paved surface and require that such washwater instead be directed to vegetated areas or gravel beds or detention/percolation ponds.	<b>Same as status for Condition #1, above.</b>  <b>Condition also satisfied by CC&amp;Rs Section 5.9(t) and (u)</b>



Condition	Status
65. The developer shall provide a soils report and site development geotechnical recommendations to the Public Works Department. Any such report shall comply with the provisions of Mono County Code Section 17.36.090 and shall be acceptable to the Director of Public Works.	<b>Condition satisfied by Geotechnical Report prepared by Sierra Geotechnical Services Inc., dated August 16, 2006, on file with Public Works.</b>
66. The distinctive exterior characteristics of the restaurant shall be retained during its conversion to a private residence. These distinctive characteristics include its low profile, horizontal siding, natural wood and stone materials, and horizontally-oriented windows of similar size and form. Although the 'Paradise' rooftop sign may not be compatible with the reuse of the structure as a residence, it is recommended that some new use be found for it either on site, nearby, or as part of the relocated cabin exhibit.	<b>Same as status for Condition #60, above.</b>  <b>Sign in fragile condition, not installed.</b>
67. To minimize direct mortality impacts to deer from vehicle collisions, signs shall be posted along roads within the project area warning drivers the presence of deer. A maximum 15-mile per hour speed limit shall be enforced on residential streets inside the proposed project boundaries and on Lower Rock Creek Road in the vicinity of the project site.	<b>Condition satisfied by Signage Plan with field verification of sign installation on file with Public Works.</b>
68. The Map and Specific Plan shall incorporate a conservation easement along the full length of the Ditch 4 alignment within the project area.	<b>Condition satisfied by conservation easement shown on map.</b>
69. Noise levels during construction shall be kept to a minimum by equipping all on-site equipment with noise attenuation devices and by compliance with the requirements of Mono County Code chapter 10.16 (Noise Regulation).	<b>Same as status for Condition #1, above.</b>
70. Conditions of Approval 1-69, or as otherwise required by the County, shall be cross-referenced to map conditions recorded by the County by notation on the map. Project CC&Rs, all uniformly-applied development standards and policies and conditions of approval associated with future development shall be reiterated therein.	<b>Condition is referenced on the Final Map and will be recorded concurrently by separate instrument.</b>

RECORDING REQUESTED BY,  
AND WHEN RECORDED, RETURN TO:

Mono County Department of Public Works  
Post Office Box 457  
Bridgeport, California 93517

No recording fee pursuant to Government Code §6103

Space above for Recorder's use only

## NOTICE OF DEVELOPMENT CONDITIONS ON PROPERTY – TRACT MAP 37-59A&B, ROCK CREEK CANYON –

This notice is recorded to advise future property owners that on December 10<sup>th</sup>, 2010, the Mono County Planning Commission approved the tract map described herein and related documents. As a result, the parcels created by that map are burdened and benefited by development standards, conditions, and mitigation measures which run with the land, meaning that all future development on the property described herein is subject to certain conditions, requirements, and restrictions. A copy of applicable conditions of map approval that burden and benefit the parcels is attached hereto.

### Project Information

Map No.: Tract Map 37-59A&B (Rock Creek Canyon)  
County: Mono  
Community: Sierra Paradise  
Location: Portions of Sections 29 and 30, Township 5 South, Range 31 East, M.D.B. & M.  
Description: Remainder Parcel of Tract Map No. 37-41 in the County of Mono, State of California, per map recorded on \_\_\_\_\_, 2012 in the office of the County Recorder of said County in Book \_\_\_\_ of Tract Maps at Pages \_\_\_\_\_.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Garrett Higerd, Senior Engineer  
Mono County Department of Public Works

STATE OF CALIFORNIA    )  
  ) ss.  
COUNTY OF MONO        )

On \_\_\_\_\_, before me, SHANNON KENDALL, a NOTARY PUBLIC, personally appeared GARRETT HIGERD, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires on: \_\_\_\_\_

## **TRACT MAP 37-59A&B, ROCK CREEK CANYON CONDITIONS OF MAP APPROVAL & MITIGATION MONITORING PROGRAM**

NOTE: The following represent the Conditions of Approval, Development Standards, and Mitigation Monitoring Program approved and adopted for Tentative Tract Map 37-59A&B by the Mono County Planning Commission following a public hearing held on December 10, 2010. However, the conditions have been modified to remove references to the developer, since those obligations were satisfied at the time of final approval of the map, and retain present and future tense as they relate to responsibilities of future property owners. In addition, conditions 18, 21 through 26, 29 through 37, 46 through 48, 50, 60, 61, 64 through 68, and 70 have been deleted for brevity since they were satisfied prior to final approval of Tract Map 37-59. Please contact the Mono County Community Development Department for a copy of the full Conditions of Approval adopted for Tract Map 37-59A&B.

### **FORMAT:**

CONDITION OF APPROVAL.....

- a. SCHEDULE OF COMPLIANCE.....
- b. RESPONSIBLE MONITORING AGENCY or DEPARTMENT.....
- c. IMPLEMENTING PARTY
- d. TYPE OF MEASURE: DESIGN, ONGOING, CUMULATIVE

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### **UNIFORMLY APPLIED DEVELOPMENT STANDARDS AND POLICIES – PHASES 1 & 2**

1. Future residential development shall meet requirements of the Mono County General Plan, Mono County Code and the Rock Creek Canyon Specific Plan, including all mitigation measures (EIR, Section 10, Mitigation Monitoring and Reporting Program)
  - a. Requires monitoring over a period of time; usually linked to future development associated with approved residential construction. Must be satisfied prior to issuance of a building permit or certificate of occupancy.
  - b. Community Development Department and Code Compliance
  - c. Property Owner
  - d. Design / Ongoing / Cumulative
2. All wood-burning devices installed in the project shall be Phase II EPA-certified, in conformance with the Mono County General Plan (Conservation/Open Space Element, Public Health and Safety policies, Objective A, Action 6.1).
  - a. Requires monitoring over a period of time; usually linked to future development associated with approved residential construction. Must be satisfied prior to issuance of a building permit or certificate of occupancy.
  - b. Community Development Department / Building Division
  - c. Property Owner
  - d. Design / Ongoing
3. Subdivision improvements and future residential development shall comply with Fire Safe Regulations (Mono County General Plan, Land Use Element, Section VI, Land Development Regulations, Chapter 22), including emergency access, emergency water supplies, signing and building numbering, and vegetation modification.
  - a. Requirements must be incorporated into construction plans for subdivision improvements, which must be satisfied prior to final approval of the map. Future lot construction requires monitoring over a period of time, usually associated with approved residential construction.
  - b. Community Development Department

- c. Property Owner
  - d. Design / Ongoing
4. The Property Owner and/or his contractor shall stop work and notify the Planning Division of the Mono County Community Development Department and local Native American tribal contacts if archaeological evidence and/or human remains or unmarked cemeteries are encountered during ground-disturbing activities. No disturbance of such a site shall be permitted until the applicant has hired a certified archaeologist and an archaeological survey that identifies acceptable site mitigation measures is filed with the Planning Division. Native American monitors shall be on site during the archaeological survey to ensure the proper identification and care of cultural resources. The disposition of any recovered artifacts shall be made in consultation with local tribal contacts. In the event of the accidental discovery of human remains, Health and Safety Code §7050.5, Public Resources Code §5097.98, and CEQA Guidelines §15064.5(d) shall be consulted for the proper procedure to follow.
    - a. Requirements must be incorporated into construction plans for subdivision improvements, which must be satisfied prior to final approval of the map. Future lot construction requires monitoring over a period of time, usually associated with approved residential construction.
    - b. Community Development Department
    - c. Property Owner
    - d. Design / Ongoing
  5. Construction shall be limited to daylight hours (or per Mono County Code 13.08.290, whichever is more restrictive) in accordance with Mono County Code Chapter 10.16 (Noise Regulation) in order to minimize impacts to nocturnal resident wildlife species.
    - a. Requirements must be incorporated into construction plans for subdivision improvements, which must be satisfied prior to final approval of the map. Future lot construction requires monitoring over a period of time, usually associated with approved residential construction.
    - b. Community Development Department
    - c. Property Owner
    - d. Design / Ongoing
  6. Noise levels during construction shall be kept to a minimum by equipping all on-site equipment with noise-attenuation devices and by compliance with all requirements of Mono County Code Chapter 10.16 (Noise Regulation).
    - a. Requirements must be incorporated into construction plans for subdivision improvements, which must be satisfied prior to final approval of the map. Future lot construction requires monitoring over a period of time, usually associated with approved residential construction.
    - b. Community Development Department
    - c. Property Owner
    - d. Design / Ongoing
  7. Exterior/outdoor lighting on individual lots shall be designed and maintained to minimize the effects of lighting on the surrounding environment in compliance with Chapter 23 of the Mono County General Plan, Land Use Element. Exterior lighting shall be limited to that necessary for health and safety purposes.
    - a. Generally associated with future development. Requires monitoring over a period of time. Must be satisfied prior to issuance of a building permit and/or certificate of occupancy.
    - b. Community Development Department
    - c. Property Owner
    - d. Design
  8. Contractor bid specifications shall require that individuals involved in construction activities be prohibited from bringing their dogs to the project site during construction phases and require that construction workers limit music generated by portable music sources to 60 dB. Waste disposal bins used to collect construction

workers' wastes during project construction shall be provided with a gated and bear-proof enclosure if construction workers' waste may include any food remnants.

- a. Requirements must be incorporated into construction plans for subdivision improvements, which must be satisfied prior to final approval of the map. Future lot construction requires monitoring over a period of time, usually associated with approved residential construction.
  - b. Community Development Department
  - c. Property Owner
  - d. Design / Ongoing
9. For all phases of parcel development, storm water erosion control measures shall be applied to disturbed areas and shall include the use of Best Management Practices such as placement of fiber blankets, fiber rolls, or similar materials or equivalent methods. Removed topsoil shall be stockpiled and replaced over disturbed areas at, or prior to, the completion of construction. Revegetation of disturbed areas shall occur as soon as practical following construction and the use of stabilization material or landscaping shall be required to reduce impacts related to erosion. Use of native seed and/or native plants grown from seeds or seedlings obtained from local native stock is encouraged. Project shall comply with the Landscaping provisions of the SP/EIR.
  - a. Requirements must be incorporated into construction plans for subdivision improvements, which must be satisfied prior to final approval of the map. Future lot construction requires monitoring over a period of time, usually associated with approved residential construction.
  - b. Public Works Department /Community Development Department
  - c. Property Owner
  - d. Design / Ongoing
10. Drainage and erosion-control plans shall be required for residential construction involving more than 5,000 square feet of pad area disturbed, including secondary or accessory structures on any one parcel, at any one time. Drainage and erosion control plans shall also be required for construction on any one parcel that cumulatively exceeds 10,000 square feet. If plans are required they shall be developed by the individual project applicant with review and approval by the Department of Public Works, Community Development Department / Building Division, and applicable federal and/or state agencies.
  - a. Requirements must be incorporated into construction plans for subdivision improvements, which must be satisfied prior to final approval of the map. Future lot construction requires monitoring over a period of time, usually associated with approved residential construction.
  - b. Public Works Department /Community Development Department
  - c. Property Owner
  - d. Design / Ongoing
11. For all phases of subdivision and parcel development, controls shall be instituted to prevent wind erosion and public nuisance created by dust. Such controls are to include daily watering and mulching of disturbed areas and implementation of at least two of the best available dust control measures specified in mitigation measure AQ 5.12-1. Clearing of native vegetation shall be limited to areas necessary for impending or same-year construction.
  - a. Future lot construction requires monitoring over a period of time, usually associated with approved residential lot construction.
  - b. Public Works Department /Community Development Department
  - c. Property Owner
  - d. Design / Ongoing
12. For all phases of parcel development, construction material (rock, debris, etc.) that is not utilized as fill material in the construction of improvements shall be removed to a permitted disposal site or other site approved by the Department of Public Works. All material proposed for fill under structures shall be approved by a geotechnical engineer prior to placement in the project.

- a. Requirements must be incorporated into construction plans for subdivision improvements, which must be satisfied prior to final approval of the map. Future lot construction requires monitoring over a period of time, usually associated with approved residential lot construction.
  - b. Public Works Department /Community Development Department
  - c. Property Owner
  - d. Design / Ongoing
  
- 13. Grading permits shall be required as specified in Mono County Code Section 13.08.030, *et seq.* Activities requiring a grading permit include, but are not limited to, land clearing and grading activities that clear more than 10,000 square feet, result in cuts greater than 4 feet or fill greater than 3 feet, involve more than 200 cubic yards of cut or fill, or the alteration of a drainage course.
  - a. As part of the Grading Permit application, the applicant shall prepare a Soil Conservation Plan for protection and future use of natural soils suitable as a plant growth medium. At a minimum, the plan shall require that (a) native soils be stockpiled during construction and used for subsequent revegetation, and (b) stockpiled soils be protected from degradation during the construction and maintained in a condition suitable for reuse.
  - b. Future construction requires monitoring over a period of time, usually associated with approved residential lot construction.
  - c. Public Works Department
  - d. Property Owner
  - e. Design / Ongoing
  
- 14. Construction contracts shall be required to [include a] detailed construction traffic management plan (CTMP). The draft CTMP shall be submitted to the County Road Department, the County Sheriff's Department and the Paradise Fire Protection District for review and comment prior to initiation of project improvements. The CTMP shall specifically focus on methods to optimize public safety and minimize traffic disruption along Lower Rock Creek Road in the vicinity of the project construction area. Following completion of construction, contractors shall repair damage to any trails and roadways in accordance with all applicable standards of the County, BLM or other agency with jurisdiction.
  - a. Future lot construction requires monitoring over a period of time, usually associated with approved residential lot construction.
  - b. Public Works Department /Community Development Department /PFP District/Sheriff's Department
  - c. Property Owner
  - d. Design / Ongoing
  
- 15. The Road Department, Sheriff's Department and Fire Department shall be given at least 72 hours advance notice before construction activities are undertaken within any public right of way or public easement. Roadway closures shall not be permitted on Lower Rock Creek Road unless written approval is first obtained from the Public Works Department, Sheriff's Department and Fire Department
  - a. Future lot construction requires monitoring over a period of time, usually associated with approved residential lot construction.
  - b. Public Works Department /Community Development Department /Paradise Fire Protection District/Sheriff's Department
  - c. Property Owner
  - d. Design / Ongoing
  
- 16. All new on-site utility extensions shall be installed underground.
  - a. Requires monitoring over a period of time, usually associated with approved residential construction, which must be satisfied prior to issuance of a building permit or certificate of occupancy.
  - b. Public Works Department /Community Development Department
  - c. Property Owner

d. Design / Ongoing

17. Individual propane tanks may be installed on each parcel. When used, Liquefied Petroleum Gas (LPG) shall be installed according to all applicable codes and Mono County Code 15.04.130 and 15.04.131.

- a. Requires monitoring over a period of time; usually linked to future development associated with approved residential construction. Must be satisfied prior to issuance of a building permit or certificate of occupancy.
- b. Community Development Department
- c. Property Owner
- d. Design / Ongoing

19. Domestic animals shall be restrained at all times, either through the use of leashes or private fenced areas. No animals shall be allowed to be free roaming.

- a. Requires monitoring over a period of time; usually linked to future development associated with approved residential construction.
- b. Community Development Department
- c. Property Owner
- d. Ongoing

**Project Specific Conditions TTM 37-59A (Phase 1 Lots 1-6, Lot A, & Open Space) and TTM 37-59B (Phase 2 Lots 7, 8, 9, 10, 11, 12)**

20. All phases of parcel development shall comply with Mono County Flood Plain Regulations (Mono County General Plan, Land Use Element, Section VI Land Development Regulations, Chapter 21) and with the recommendations contained in the Base Flood Elevation Study prepared for the project, including:

- A. Homes shall be constructed such that finished floor elevations are above the base flood elevations indicated in the Base Flood Elevation Study for the project.
- B. Lot grading shall be kept to a minimum (i.e., that necessary for driveways and building pads) so as not to significantly obstruct the flow of storm waters.
- C. Building foundations and bridge abutments constructed in the floodplain shall be evaluated for scour by a professional engineer and designed and constructed to protect against erosion during a one percent annual chance storm (100-yr flood).
  - a. Requires monitoring over a period of time; usually associated with approved residential construction. Must be satisfied prior to issuance of a building permit or certificate of occupancy.
  - b. Department of Public Works and Community Development Department / Building Division
  - c. Property Owner
  - d. Design / Ongoing

27. To minimize impacts on deer, a wildlife biologist acceptable to the County shall approve any heavy construction work (including parcel grading operations, structural foundation work, framing work and similar heavy construction activities) that is conducted from the period from October 1 through May 15.

- a. Requires monitoring over a period of time, usually linked to future development associated with approval of residential construction.
- b. Community Development Department
- c. Property Owner
- d. Design/Ongoing

28. If construction is proposed to take place during the bird nesting and breeding season (March 15 through September 15), the responsible party (lot owner or HOA) shall arrange for a qualified biologist to assess all potential bird nesting habitat within three days prior to project activities. If an active nest is located, construction within 300 feet of the nest (within 500 feet of raptor nests) shall be postponed until the young

have fledged or the nest otherwise becomes inactive. If threatened or endangered species are observed in the area, no work shall occur during the nesting and breeding season to avoid take of listed species.

- a. Requires monitoring over a period of time, linked to future development and construction.
- b. Community Development Department
- c. Property Owner
- d. Design/Ongoing

38. Disturbance to CNPS List 4 Muilla Coronata will be limited to a maximum 50% of the area occupied by this species within the project area as mapped in 2008. The retention will be achieved through adherence to the disturbance areas defined on the Tentative Map, which will enforce total avoidance of one half the area occupied by the population, based upon results of the survey and mapping conducted by the project botanist. The spatial limits placed upon disturbance of the Muilla Coronata population [have been] incorporated into the project CC&Rs.

- a. Requires monitoring over a period of time.
- b. Public Works Department and Community Development Department
- c. Property Owner
- d. Design

39. A qualified engineer shall be retained to develop site specifications for all foundation work on the site, as recommended in the Geotechnical Analysis (see Draft EIR Appendix D) and to ensure compliance with all specifications set forth in the initial geotechnical review. The specifications shall address site issues including variables impacting high groundwater levels, potential for liquefaction, potential for rockfall, and other geotechnical considerations.

- a. Requires monitoring over a period of time.
- b. Public Works Department and Community Development Department
- c. Property Owner
- d. Design

40. During initial construction and subsequent maintenance and occupancy over the life the project, there shall be no encroachment of ground-disturbing equipment or activities beyond the top of the creek bank nor shall any spillback be permitted beyond the top of the creek bank. Utilities to serve all lots shall be constructed in locations that do not require an at-grade stream crossing to extend service. If a stream crossing is required in order to extend service to any lot, these new extensions shall be attached to a bridge that complies fully with the requirements above, or shall be extended with the use of a trenchless construction technology that meets local code standards and also complies fully with the requirements of above. Under all conditions and for all activities, disturbance of riparian vegetation shall be avoided to the maximum feasible extent. Tree canopies may be trimmed but under no circumstances will bank-stabilizing vegetation be removed. To avoid impacts associated with the provision of access and utilities to the alternative building envelope on Lot 11 (which is separated from the access road by Rock Creek), any constructed access (bridge) abutments and footings shall be designed so that they are emplaced entirely outside the bank tops on either side of Rock Creek; utilities shall be contained entirely within the constructed access. The requirements pertaining to access and utility extensions to serve Lot 11 (if the alternative building envelope is chosen as the building site) shall be incorporated into the project CC&Rs and further enforced through implementation of this Mitigation Measure BOT 5.3-1c.

- a. Requires monitoring over a period of time, linked to future development and construction.
- b. Community Development Department
- c. Property Owner
- d. Design/Ongoing

41. An exotic tree control program shall be maintained and funded through the Rock Creek Canyon Homeowners' Association. The program shall contain the following ongoing elements: (a) removal of all Siberian elm trees wherever they occur within the property; (b) removal of all existing black locust trees with



a trunk diameter under 4 inches, and (c) ongoing future removal of all black locus sprouts throughout the property.

- a. Requires monitoring over a period of time, linked to future development and construction.
- b. Community Development Department
- c. Property Owner
- d. Design/Ongoing

42. A Vinca control program shall be maintained and funded through the Rock Creek Homeowners' Association. The program shall include ongoing maintenance of the existing *Vinca major* plants within fixed boundary horticultural beds, and ongoing removal of all *Vinca major* plants located outside of the existing defined horticultural beds. An exhibit that shows the boundaries of the horticultural beds [has been] incorporated into the project CC&Rs.

- a. Requires monitoring over a period of time.
- b. Public Works Department
- c. Property Owner
- d. Design

43. All landscaping in the Landscape Plan required in §3.6.5.1(a) of the Specific Plan shall consist of plant materials that are native to the Mono County region and have value to native wildlife, and nonnative species that are compatible with native plant materials, have low propagation characteristics and are not invasive.

- a. Requires monitoring over a period of time.
- b. Public Works Department
- c. Property Owner
- d. Design

44. The HOA shall ensure that tree branches and vegetation on each side of the project access points are trimmed or removed to optimize line-of-sight visibility for traffic approaching the roadway curves. Trimming and clearance activities shall be suspended during the bird nesting season each year (March 15 to September 15). This requirement has been incorporated into the Specific Plan (§3.6.5.1(e)).

- a. Requires monitoring over a period of time, linked to future development and construction.
- b. Community Development Department
- c. Home Owner's Association
- d. Design/Ongoing – phase 1 & 2

45. Natural vegetation shall be retained except where it must be removed for project development. To minimize degradation of deer habitat, project CC&Rs [have incorporated] the following requirement which mandates use of native vegetation and native compatible and prohibits use of invasive plant species: *"Areas disturbed during infrastructure and home construction shall be revegetated with native species in order to establish deer habitat as soon as possible following construction. Revegetation of disturbed areas shall require use of native seeds or native plants grown from seeds or seedlings obtained from local native stock. Revegetated areas shall be monitored for 5 years to ensure success of the plantings, with replanting as necessary."* Property owners shall refrain from clearing native vegetation except as necessary for construction or fire safety.

- a. Requires monitoring over a period of time.
- b. Public Works Department
- c. Property Owner
- d. Design

49. For project area buildings, structures, associated uses, and asphalt or concrete-paved surfaces that are slated for demolition, an investigation shall be conducted for the presence of hazardous chemicals, lead-based paints or products, mercury and asbestos-containing materials (ACMs). If hazardous chemicals, lead-based paints or products, mercury or ACMs are identified, remediation shall be undertaken in compliance with California environmental regulations and policies.

- a. Requires monitoring over a period of time. Must be satisfied prior to issuance of a building permit and/or certificate of occupancy.
  - b. Public Works Department
  - c. Property Owner
  - d. Design
51. A Best Management Practices Program (BMPP) shall be implemented during all construction stages, including pre-construction and post-construction practices for the prevention of erosion, sedimentation, and contamination resulting from implementation of all project elements. BMPP measures shall at a minimum require: (1) disposal of all construction wastes in designated areas outside the path of storm water flows; (2) minimizing the footprint of construction zones and prompt installation of erosion controls; (3) stabilizing disturbed soils with landscaping, paving or reseeded to reduce or eliminate the risk of further erosion; (4) perimeter drainage controls to direct runoff around disturbed construction areas; (5) internal erosion controls to allow direct percolation of sediment-laden waters on the construction site; and (6) regular inspection and maintenance of all equipment used during construction.
- a. Requires monitoring over a period of time, linked to future development and construction.
  - b. Community Development Department
  - c. Property Owner
  - d. Design/Ongoing
52. All new project foundations shall be designed by a qualified Professional Engineer in accordance with the most current versions of the International Building Code as adopted by Mono County.
- a. Requires monitoring over a period of time, linked to future development and construction.
  - b. Community Development Department
  - c. Property Owner
  - d. Design/Ongoing
53. Private roadways and driveways shall meet County road standards.
- a. Requires monitoring over a period of time with future development and construction.
  - b. Public Works Department/Fire Protection District
  - c. Property Owner (driveways) & Home Owner's Association (private roadways)
  - d. Design
54. All finished floors, and potentially affected foundations, shall be designed to be above the calculated water surface elevation of a 100-year storm. Construction components below the water surface elevation shall be designed with water resistant materials. The design of all facilities shall be finalized during final review in accordance with Mono County requirements in place at that time.
- a. Requires monitoring over a period of time, linked to future development and construction.
  - b. Community Development Department/Public Works Department
  - c. Property Owner
  - d. Design/Ongoing
55. Storm drainage facilities shall be operated and maintained in a manner that will assure continued function as per original design standards. Maintenance elements shall include (but are not limited to) the removal of foreign materials from storm drainage pipes and ditches, maintenance as necessary to outlet facilities, desiltation of retention basins, and repairs as necessary to damaged facilities.
- a. Requires monitoring over a period of time, linked to future development and construction.
  - b. Public Works Department
  - c. Home Owner's Association
  - d. Design/Ongoing
56. Mitigation Measure BOT 5.3-1d requires that disturbance to any area on the site that is occupied by *Muilla coronata* will be subject to seedbank (in this case bulblet) relocation to sandy near-riparian soil outside the

proposed building envelopes in lots 1-6. To ensure the success of this measure, a test program will be undertaken by the project proponent with a monitoring period of at least two years. The test program will be prepared as part of a larger revegetation plan that will be submitted to DFG for approval prior to initiation of the relocation test program or other revegetation of the site. In the event that the test site proves unsuitable for the relocation effort, a new test site will be selected on the project property and the test program will be repeated until a suitable location is identified and permanent relocation is completed. The relocation test site and the permanent relocation site will be protected through a conservation easement and appropriate signage.

- a. Requires monitoring over a period of time, linked to future development and construction.
- b. Community Development Department
- c. Property Owner
- d. Design/Ongoing

57. Potential impacts to the 3.5 acres of state sensitive water birch riparian scrub community that occurs on the property have been reduced through levels of avoidance. The avoidance will be achieved through creation of a permanent 30-foot setback of all structures other than approved nonconforming uses from the bank of Lower Rock Creek, and through retention of the water birch community in the vicinity of the Jeffrey pines. The Jeffrey pines will also be retained in their present location and condition to the maximum extent feasible, with full retention of all Jeffrey pines with a trunk diameter greater than 12 inches.

- a. Requires monitoring over a period of time, linked to future development and construction.
- b. Community Development Department
- c. Property Owner
- d. Design/Ongoing

58. Property owners shall refrain from clearing native vegetation except as necessary for construction, fire safety or traffic safety (also refer to Mitigation Measure TFFC 5.11-3e).

- a. Requires monitoring over a period of time, linked to future development and construction.
- b. Community Development Department
- c. Property Owner
- d. Design/Ongoing

59. Property owners who wish to permit their dogs unleashed access to their yard shall be required to construct, maintain and use a dog enclosure capable of preventing the dog from straying onto public land or other adjacent properties. Such enclosure shall be within the confines of the fenced area allowed pursuant to the Rock Creek Canyon Specific Plan, and shall be constructed in accordance with the Specific Plan. Dogs shall not be permitted in areas outside of the dog enclosure.

- a. Requires monitoring over a period of time, linked to future development and construction.
- b. Community development Department
- c. Property Owner
- d. Design

62. Each lot shall be evaluated on a *case by case basis* prior to issuance of a building permit. If warranted, one or more of the following measures will be employed: (a) setback from toe of slope dependent on degree of hazard; (b) use of reinforced concrete no less than 16" thick by 36" tall on the slope side of the lower portions of the impacted building; (c) installation of engineered rockfall protection along the lower slope flank.

- a. Requires monitoring over a period of time, linked to future development and construction.
- b. Community Development Department
- c. Property Owner
- d. Design/Ongoing

63. Best Management Practices shall be maintained at all times during demolition, relocation, renovation and construction of project elements. At a minimum, the BMP program shall consist of protection of Lower Rock Creek through the entire project site, sediment controls and sediment tracking controls (street sweeping or tire baths before exiting the site), designated storage of all construction materials outside the path of storm

flows, disposal of construction wastes in appropriately-rated landfills, standby BMPs that can be implemented within 24-hours of a predicted storm event, minimizing the footprint of construction zones and prompt installation of erosion controls; stabilizing disturbed soils and slopes with landscaping, paving or reseeding to reduce or eliminate erosion; perimeter damage controls to direct runoff around disturbed construction areas; detention/infiltration ponds for direct percolation of sediment-laden waters on the construction site; and bid specifications that require regular inspection and maintenance of all equipment used during construction.

- a. Requires monitoring over a period of time, linked to future development and construction.
- b. Community Development Department
- c. Property Owner
- d. Design/Ongoing

69. Noise levels during construction shall be kept to a minimum by equipping all on-site equipment with noise attenuation devices and by compliance with the requirements of Mono County Code chapter 10.16 (Noise Regulation).

- a. Requires monitoring over a period of time, linked to future development and construction.
- b. Community Development Department
- c. Property Owner
- d. Design/Ongoing – phase 1 & 2

**RECORDING REQUESTED BY, AND  
WHEN RECORDED, MAIL TO:**

**INMAN LAW GROUP, LLP**  
Bruce R. Inman, Esq.  
1528 Eureka Road, Suite 101  
Roseville, California 95661

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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
ROCK CREEK CANYON**

**If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.**

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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
ROCK CREEK CANYON**

This Declaration of Covenants, Conditions and Restrictions for Rock Creek Canyon (the "Declaration") is made by John W. Hooper (the "Declarant").

**RECITALS**

A. Declarant is the owner of certain real property located in the unincorporated community of Sierra Paradise, Mono County, California, which is more particularly described as follows (the "Development"):

Lots 1 through 12, inclusive, and Open Space, as shown on the Subdivision Map of "Tract Map No. 37-59A&B", filed for Record on \_\_\_\_\_, 201\_, in Book \_\_\_ of Maps, at Pages \_ through \_, of the Official Records of Mono County.

B. Declarant hereby declares that all of the Development shall be held, sold and conveyed subject to the following easements, restrictions, associations, reservations, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development. These covenants, easements, restrictions, conditions, associations and reservations: (i) create a general plan and scheme for the subdivision development, sale and use of the Development as a "planned development" as that term is defined in California Civil Code Section 1351(k); (ii) are for the benefit and protection of the Development and for the protection and enhancement of the desirability, value and attractiveness of all Lots and Common Area located therein; (iii) run with the Development and bind all parties having or acquiring any right, title or interest in the Development or any part thereof; and (iv) inure to the benefit of the successors and assigns of each Owner of any property within the Development.

C. All of the real property comprising the Development is held and owned and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the Development and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the real property comprising the Development and any part thereof.

D. All of the covenants, conditions, and restrictions set forth in this Declaration shall constitute enforceable equitable servitudes as provided in California Civil Code Section 1354, shall constitute covenants that shall run with the real property comprising the Development, and shall be binding upon and inure to the benefit of each Owner of any portion of such real property or of any interest therein and their heirs, successors, and assigns.

E. The Development consists of 12 Lots intended for Residences to be constructed thereon and a Common Area parcel. The Owners of each Lot is a Member of the Rock Creek Canyon Homeowners Association, and the Association will maintain, including, but not limited to, the open space, the Association

## EXHIBIT 4

Maintenance Area private roadway and storm drainage facilities within the Development for the benefit of the Owners and Residents, as well as the trailhead parking lot on lot A, as shown on the Subdivision Map.

### **ARTICLE 1                      DEFINITIONS**

---

1.1     Definitions, Generally. When the words and phrases described in this Article are used in the Declaration, they will have the meanings set forth in this Article. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires. The use of the term "may" in this Declaration indicates discretion or choice, and the use of the term "shall" in this Declaration means imperative, mandatory or imposing an absolute duty. Except as otherwise provided herein, all capitalized terms used in this Declaration shall have the same meanings as set forth in this Article 1.

1.2     Absolute Majority. "Absolute Majority" shall mean a majority of the Total Voting Power of the Association.

1.3     Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures, including without limitation, interest, late charges, attorneys' fees, Recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments, fines, and/or penalties.

1.4     Architectural Review Committee. "Architectural Review Committee" shall mean the committee created pursuant to Article 8 of this Declaration.

1.5     Architectural Rules. "Architectural Rules" shall mean the rules and regulations adopted by the Board of Directors pursuant to Section 8.5 of this Declaration.

1.6     Assessment. "Assessment" shall mean a charge levied by the Association against an Owner and his or her Lot as provided in Article 6 of this Declaration. "Assessment" shall include any or all of the following:

(a)     Regular Assessments. Regular Assessments, which shall have the meaning set forth in Section 6.5 of this Declaration.

(b)     Enforcement Assessments. Enforcement Assessments, which shall have the meaning set forth in Section 6.8 of this Declaration.

(c)     Reimbursement Assessments. Reimbursement Assessments, which shall have the meaning set forth in Section 6.7 of this Declaration.

(d)     Special Assessments. Special Assessments, which shall have the meaning set forth in Section 6.6 of this Declaration.

1.7     Association. "Association" shall mean the Rock Creek Canyon Homeowners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

1.8     Association Maintenance Area. "Association Maintenance Area" shall mean the Private Roadway, known as Lower Canyon Road and Upper Canyon Road, including all storm drainage facilities, which shall provide access to and from the Lots and the public roadway, the shared wastewater treatment system and leach field, and the trailhead parking lot on lot A, as shown on the Subdivision Map.

## EXHIBIT 4

1.9 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.

1.10 Bylaws. "Bylaws" shall mean the Bylaws of the Association as they shall be adopted by the Members and any duly-adopted amendments thereof.

1.11 Common Area. "Common Area" shall mean all real property owned or maintained by the Association for the common use and enjoyment of the Owners and Residents of the Development. The Common Area within the Development shall consist of the open space, as shown on the Subdivision Map.

1.12 Conditions of Approval. "Conditions of Approval" shall mean that certain document entitled "Conditions of Project Approval" dated December 21, 2010, as required by Mono County.

1.13 County. "County" shall mean Mono County, California, and its various departments, divisions, employees and representatives.

1.14 Declarant. "Declarant" shall mean John W. Hooper. The term "Declarant" shall also mean any successor or assign of Declarant, provided a certificate, signed by Declarant and Declarant's successor or assign, is Recorded against the portion of the Development which the successor or assign assumes the rights and duties of Declarant.

1.15 Declaration. "Declaration" shall mean this instrument, as it may be amended from time to time. If any Supplemental Declarations or Declarations of Annexation are approved and Recorded in accordance with Article 14, below, then following such Recordation any reference to this Declaration shall mean this Declaration as amended and supplemented by the Supplemental Declaration(s) and any Declarations of Annexation.

1.16 Declaration of Annexation. "Declaration of Annexation" shall mean a declaration annexing real property to the Development and subjecting the real property described therein to this Declaration, all as more particularly described in Article 14, below.

1.17 Development. "Development" shall mean the real property described in Recital A, together with all Improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto.

1.18 Director. "Director" shall mean a member of the Board of Directors of the Association.

1.19 Governing Documents. "Governing Documents" shall mean the articles of incorporation, Bylaws, Declaration, Rules (including the Architectural Rules), relevant provisions of the Conditions of Approval, and the policies and resolutions duly adopted by the Board.

1.20 Improvement. "Improvement" shall mean all structures and improvements including without limitation buildings, landscaping, paving, fences, and signs.

1.21 Lot. "Lot" shall mean any plot of land shown upon the Subdivision Map, with the exception of the Common Area open space lot and lot A as shown on the Subdivision Map.

1.22 Member. "Member" shall mean an Owner, and refers to membership in the Association.

1.23 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all dues, Assessments, fines, penalties, and other charges

## EXHIBIT 4

imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents, as may be more particularly set forth in the Bylaws.

1.24 Mortgage. "Mortgage" shall mean a deed of trust as well as a mortgage in the conventional sense. "First Mortgage" shall mean any Recorded Mortgage on a Lot with first priority over other Mortgages on such Lot. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

1.25 Owner. "Owner" shall mean any person, firm, corporation or other entity in which fee title to a Lot is vested as shown by the Official Records of the office of the County Recorder, including the purchaser under an installment land contract, but excluding those having such interest merely as security for the performance of an obligation. If a Lot is transferred or conveyed to a trust, the Owner is the trustee or the co-trustees of such trust. A person or entity is not an Owner due to (a) community property or other equitable rights not shown of Record; or (b) rights of adverse possession not shown of Record. Where the context requires, the term "Owner" shall include the members of the Owner's household and the Owner's guests, tenants/lessees and invitees; provided, however, that such persons are not "Owners" for purposes of exercising voting rights in the Association.

1.26 Private Roadway. "Private Roadway" shall mean those portions of Lots 1 through 6, inclusive, Lots 8 through 12, inclusive, and open space lot, commonly known as "Lower Canyon Road" and "Upper Canyon Road", and more particularly described on the Subdivision Map.

1.27 Record; Recordation; Filed. "Record," "Recordation", and "Filed" shall mean, with respect to any document, the recordation or filing of such document in the Official Records of the County Recorder's office.

1.28 Residence. "Residence" shall mean a residential structure located upon a Lot which is designed for human residential use and occupancy.

1.29 Resident. "Resident" shall mean any person who resides in a Residence on a Lot within the Development whether or not such person is an Owner.

1.30 Rules. "Rules" shall mean the rules and regulations governing the Development adopted by the Board of Directors, including the Architectural Rules.

1.31 Simple Majority. "Simple Majority" shall mean a majority of the votes of the Members (i) represented and voting at a meeting at which a quorum is present, or (ii) cast by written ballot (in conformity with California Corporations Code Section 7513) in which the number of ballots received equals or exceeds the number required to establish a quorum.

1.32 Subdivision Map. "Subdivision Map" shall mean the final subdivision map Filed with the County Recorder for any portion of the Development.

1.33 Supplemental Declaration. "Supplemental Declaration" shall mean any declaration (as defined in California Civil Code Section 1351(h)), Recorded pursuant to Section 14.4, below, which supplements this Declaration and which may affect only a portion of the Development. A Supplemental Declaration may be entitled as an amendment to the Declaration in order to satisfy County Recording requirements.

1.34 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, excluding any Lots as to which an Owner is not then a Member in Good Standing.

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**ARTICLE 2                      HOMEOWNERS ASSOCIATION**

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2.1 Management and Operation. The Association, through the Board of Directors, shall manage and operate the Development in accordance with the applicable provisions of the Governing Documents and the applicable provisions of California law. The Association shall have all of the powers set forth in the Governing Documents together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

2.2 Membership. Every Owner of a Lot shall be a Member of the Association and shall remain a Member thereof until such time as his or her Lot ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Lot and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Lot to which it is appurtenant.

2.3 Voting.

(a) Commencement of Voting Rights. Voting rights attributable to the ownership of Lots shall vest upon the commencement by the Association of Regular Assessments against those Lots.

(b) Classes of Membership. The Association shall have the following two (2) classes of voting membership:

(i) Class A Members. Class A Members shall initially be all Owners except Declarant and shall have one (1) membership for each Lot owned.

(ii) Class B Members. Declarant shall be the only Class B Member.

(c) Membership Voting Rights. Only Members in Good Standing shall be entitled to vote. The voting rights and other privileges of each class of membership and the conversion of Declarant's Class B membership into Class A memberships shall be as set forth in Article 3 of the Bylaws.

(d) Suspension of Voting Rights. A Member's voting rights may be temporarily suspended under those circumstances described in subsection 10.5(c), below.

(e) Limitations on Declarant Voting Rights. With the exception of any membership vote pursuant to Section 3.8, below (relating to the enforcement of bonded obligations), no provision of any Governing Document requiring approval of a prescribed majority of the voting power of the Association other than Declarant is intended to preclude Declarant from casting votes attributable to any Lots owned by Declarant. Instead, approval by the Association's Members requires the approval of a bare majority of the Class B voting power as well as the approval of the prescribed majority of the Class A voting power. Once the Class B membership has been converted to Class A membership, the intent is to require the approval of a bare majority of the Total Voting Power of the Association as well as the approval of the prescribed majority of the Total Voting Power of the Association other than Declarant.



## EXHIBIT 4

2.4 Board of Directors. The affairs of the Association shall be managed by or under the direction of a Board of Directors. The number and qualifications of Directors shall be as established in the Bylaws, and the members of the Board shall be elected as provided in the Bylaws. The Board of Directors shall have all of the powers and duties set forth in any provision of the Governing Documents, including without limitation such powers and duties as may be expressly set forth in this Declaration.

2.5 Association Rules. The Board of Directors shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such rules and regulations, which shall be known as "Rules", as the Board deems necessary for the management and operation of the Development and the conduct of business and affairs of the Association. The Rules may concern, but need not be limited to, matters pertaining to use of the Common Area, signs, collection and disposal of refuse, minimum standards for maintenance of property, parking and traffic regulations, rental or leasing of Lots, the keeping of pets on Lots, and any other subject matter within the jurisdiction of the Association as provided in the Governing Documents or by law.

2.6 Manager and Other Personnel. The Board of Directors shall have the power and authority to employ a manager and such other persons or entities as the Board shall deem appropriate to assist it in managing the Development and conducting the business and affairs of the Association, as more particularly set forth in the Bylaws.

2.7 Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of capital improvements upon the Common Area, provided that in any fiscal year expenditures for capital improvements shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year except upon the approval of at least a majority of each class of Members. This limitation shall not apply to the expenditure of any funds accumulated in a reserve fund for capital improvements so long as the expenditure is for the purpose for which the fund was established nor shall it apply to any reconstruction governed by Article 12 of this Declaration. For purposes of this Section "capital improvements" is defined as any (i) substantial discretionary addition to the Common Area, (ii) voluntary significant upgrade to Common Area materials, or (iii) discretionary material alterations to the appearance of the Development.

2.8 Sale or Transfer of Association Property. The Board of Directors shall have the power to sell the Association's property provided that the Board shall not, in any fiscal year, sell property owned by the Association having a value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without approval of at least a majority of each class of Members.

2.9 Transfer or Dedication of Common Area to Public Agency or Utility. The Board of Directors shall have the power to dedicate or transfer all or any part of the Common Area to a public agency, authority or utility or other person or entity for such purposes and subject to such conditions as may be agreed to by the Board, and upon the approval of at least a majority of each class of Members.

2.10 Borrow Money. The Board of Directors shall have the power to borrow money in the name of the Association.

2.11 Mortgage of Association Property. The Board of Directors shall have the power and authority to mortgage, pledge, encumber, or otherwise hypothecate the real and personal property of the Association for money borrowed or debts incurred by the Association.

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2.12 Mergers and Consolidations. The Association may (i) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes as the Association, or (ii) annex additional property to the Development, in accordance with Section 14.2, below.

2.13 Dissolution. So long as there is any lot, parcel or area for which the Association is obligated to provide management, maintenance, preservation or control, the prior written consent of the County and the consent of all Members must be obtained for the Association to (i) transfer all or substantially all of its assets, or (ii) file a certificate of dissolution.

2.14 Limitation of Liability. Neither the Association or its Directors, officers, employees, agents or committee members (collectively and individually referred to as the "Released Party") shall be personally liable for damages or in equity to any of the Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or pursuant to the Bylaws, even if such Released Party is negligent, provided that such Released Party has not acted in bad faith. This standard of care and limitation of liability shall extend, without limitation, to matters such as (i) the establishment of the Association's annual financial budget, (ii) the funding of Association reserve accounts, (iii) the discharge of the Association's maintenance, repair and replacement obligations, (iv) the enforcement of the Governing Documents, and (v) to any other fiduciary duties or responsibilities imposed by law or the Governing Documents.

2.15 Agreements with Lenders. The Association may enter into such agreements as may be necessary in order to facilitate the financing of Lots within the Development as may be required by prospective lenders, and holders, insurers or guarantors.

### **ARTICLE 3                      COMMON AREA AND ASSOCIATION MAINTENANCE AREA**

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3.1 Purpose of Common Area and Association Maintenance Area. Subject to the provisions of the Declaration, the Common Area and Association Maintenance Area shall be held, maintained, and used to meet the common interests of the Owners, the members of the Owners' households, and the Owners' tenants and guests as provided in the Governing Documents.

3.2 Conveyance of Common Area. Declarant shall convey fee simple title to the Common Area parcels within the Development to the Association, free of all encumbrances and liens, with the exception of current real property taxes (which shall be prorated as of the date of such conveyance) and any easements, conditions and reservations then of Record, including those set forth in this Declaration. Such conveyance shall be made prior to, or concurrently with, the first transfer or conveyance by Declarant of a Lot to a purchaser. The Association shall be deemed to have accepted the Common Area conveyed to it when (i) a grant deed conveying title to the Common Area has been Recorded in the Official Records of the County and (ii) assessments have commenced.

3.3 Owners Non-Exclusive Easements of Enjoyment. Every Owner and the Association shall have a non-exclusive easement for ingress, egress, use of, and enjoyment in, to, and throughout the Common Area and Association Maintenance Area. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

(a) Adoption of Rules. The right of the Board of Directors to establish and enforce reasonable Rules governing the use of the Common Area and Association Maintenance Area including, without limitation, Rules (i) limiting the number of guests of Members permitted to use the Common Area at any one time, and (ii) limiting the times of the year and hours of use of the Common Area, (iii) regulating the types of use of the Common Area, and (iv) regulating the parking

## EXHIBIT 4

upon and use of the Association Maintenance Area roadway, provided no Owners shall be denied ingress and egress over the Association Maintenance Area roadway to such Owner's Lot;

(b) Suspension of Use. The right of the Board, as more particularly addressed in the Bylaws, to suspend an Owner's right to use the Common Area for (i) any period during which any Assessment against such Owner's Lot remains unpaid, and/or (ii) for violations of the Governing Documents by an Owner or any person for whom an Owner is responsible, provided that no Owners shall be denied ingress and egress over Common Area roadways to such Owner's Lot;

(c) Granting of Easements. The right of the Board to grant easements and rights of way in, on, over, or under the Common Area and the Association Maintenance Area;

(d) Transfer to Public Agency. The right of the Board to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility;

(e) Encumber. The right of the Board to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association;

(f) Exclusive Maintenance Agreements. The right of the Board, as set forth in Section 3.6 of this Declaration, to enter into exclusive use and maintenance agreements with Owners for portions of the Association Maintenance Area, provided that no Owners shall be denied ingress and egress over the Association Maintenance Area roadway to such Owner's Lot;

(g) Perform Obligations. The right of the Association or its authorized agents to perform its obligations under this Declaration, including, without limitation, obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area and Association Maintenance Area;

(h) Establish Signage. The right of the Association to establish, construct, maintain, repair and replace entrance signs, privacy gates, street signs, lights, maps, directories and other similar improvements upon the Common Area and Association Maintenance Area;

(i) Association Use Areas. The right of the Association to establish, construct, maintain, repair and replace facilities upon the Common Area and Association Maintenance Area including without limitation storage facilities and workshops, which may be necessary or convenient in the discharge of the Association's duties and the exercise of its rights under the Governing Documents;

(j) Public Access Easements. The rights of the general public to non-exclusive easements for the purpose of vehicular and pedestrian ingress and egress over and across a portion of the Development depicted as "Public Access Easement for Adjoining BLM Land to the North" and "Public Access Easement to Glen Court", as shown and depicted on the Subdivision Map, and the rights of the public to any open space as shown and depicted on the Subdivision Map; and

(k) Development, Sales and Inspections. The right of Declarant and its employees, sales agents, prospective purchasers, customers and representatives, to enter upon and to use the Common Area and Association Maintenance Area for development and sales activities in accordance with Article 15, below. Such use shall not unreasonably interfere with the rights of use and enjoyment of the other Owners as provided herein. Declarant shall also have the right to inspect the Development in accordance with Article 15, below.

3.4 Assignment of Rights of Use. Upon occupancy of a Lot by a tenant, the Owner shall be deemed to have assigned all Common Area and Association Maintenance Area rights exclusively to the tenants of such Lot except that such Owner shall continue to have an easement for ingress and egress to such Owner's Lot to the extent necessary to discharge the Owner's obligations and rights as a landlord. Any Common Area and Association Maintenance Area rights of enjoyment assigned pursuant to this Section are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents. It is the express purpose and intent of the provisions of this Section to limit the right of use and enjoyment of the Common Area Association Maintenance Area to Residents and their guests.

3.5 Common Area and Association Maintenance Area Construction. Following the conveyance of a Common Area lot or parcel to the Association, no person or entity other than the Association or its duly-authorized agents (i) shall construct, reconstruct, refinish, alter, or maintain any Improvement upon the Common Area or the Association Maintenance Area, (ii) shall make or create any excavation or fill upon the Common Area or Association Maintenance Area, (iii) shall change the natural or existing drainage of the Common Area or Association Maintenance Area, or (iv) shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area or Association Maintenance Area.

3.6 Agreements Affecting Association Maintenance Area. The Board shall have the authority to execute and Record a maintenance agreement designating portions of the Association Maintenance Area as an exclusive use and maintenance area, for the benefit of an appurtenant Lot, for the purpose of promoting an efficient division of the use and maintenance responsibilities between the Owners and the Association.

3.7 Mechanic's Liens. In the event there shall be Recorded against the Common Area a notice of mechanic's lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner or his or her Lot, such Owner shall immediately cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be granted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

### 3.8 Enforcement of Bonded Obligations.

(a) Board Consideration of Enforcement. If any of the Common Area Improvements within the Development have not been completed when the California Real Estate Commissioner issues a final subdivision public report for the Development, and if the Association is the obligee under a bond or other arrangement ("bond") to secure performance of a commitment of Declarant to complete such Common Area Improvements, then the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any Improvements for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the "planned construction statement" appended to the bond. However, if the Association has given an extension in writing for the completion of any Common Area Improvement, the Board shall consider and vote on the action to enforce the

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obligations under the bond only if a notice of completion has not been filed within thirty (30) days after the expiration of the extension.

(b) Member's Rights to Call Meeting Regarding Enforcement of Bonds. If the Board fails to consider and vote on the action to enforce the obligations under the bond or decides not to initiate action to enforce the obligations under the bond, then on the petition in writing to the Board signed by Members representing not less than five percent (5%) of the Total Voting Power of the Association other than Declarant, the Board shall call a special membership meeting for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the bond. The meeting shall be called by the Board by fixing a date not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of said petition. Notice of the meeting shall be given to all Owners entitled to vote in the manner provided in the Bylaws for notices of special membership meetings. At the meeting, the vote in person or by proxy of a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the bond shall be deemed to be the decision of the Association and the Board shall then implement the Owners' decision by initiating and pursuing appropriate action in the name of the Association.

### **ARTICLE 4                      USE RESTRICTIONS**

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4.1 Offensive Conduct, Nuisances, Noise. No noxious, harmful or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Development, or which shall in any way interfere with their use of the Common Area and facilities thereon or the use and enjoyment of their Lots or Residences. Without limiting any of the foregoing, no Resident shall permit noise, including without limitation the barking of dogs or excessively loud music, to emanate from the Resident's Lot, vehicles, or the vehicles of guests and invitees, which would unreasonably disturb another Resident's enjoyment of his or her Lot or of the Common Area. Nothing in this Section shall be construed to limit the Association's ability to discharge its duties in accordance with the Governing Documents or otherwise manage the Development.

4.2 Residential Use. Except as specifically provided in Sections 4.3, 4.22 and 4.23, below, no Lot, or any portion thereof, shall be occupied or used for other than residential purposes.

4.3 Restriction on Businesses. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except:

(a) Professional and Administrative. Those professional and administrative occupations as may be permitted by, and which are conducted in conformance with, all applicable governmental ordinances provided that there is no external evidence thereof, and further provided that the Board may, in its complete discretion, prohibit the conduct of any such activities which the Board determines to be incompatible with the nature and character of the Development or which, in the Board's opinion, may or does otherwise negatively impact the quality of life and property values within the Development.

(b) Development and Sales of Residences. As more particularly provided in Article 15, below, Declarant shall be entitled to use Residences as models, sales or rental offices or construction headquarters for the purpose of constructing Residences and marketing of Residences within the Development or for development projects located outside of the Development.

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(c) Permitted by Law. Those other businesses which by law must be permitted to be conducted within the Development, including, but not limited to the businesses described in Sections 4.22 and 4.23, below.

4.4 Use of the Common Area and Association Maintenance Area. All use of the Common Area and Association Maintenance Area is subject to the Governing Documents. No alterations or additions to the Common Area or Association Maintenance Area shall be made except as authorized by the Board pursuant to the Governing Documents. Nothing shall be placed, kept, stored, or parked on the Common Area or Association Maintenance Area without the prior written consent of the Board, except by the Association. Without limiting the foregoing, no Owner shall place rubbish, debris, or other unsightly or unsanitary materials on the Common Area or Association Maintenance Area. Each Owner shall avoid causing damage to the Common Area and the Association Maintenance Area.

4.5 Requirement of Architectural Approval. As addressed in greater detail in Article 8, construction, installation, modification, or alteration of buildings, outdoor structures, fences, awnings, outdoor lighting and all other exterior Improvements are subject to approval of the Architectural Review Committee.

4.6 Sports Apparatus. Unless otherwise permitted by Rules adopted by the Board, no sports apparatus, whether portable or fixed, including without limitation basketball standards or skateboard ramps shall be permitted within the Development. As used in this Section, the term "sports apparatus" does not include bicycles, roller skates, roller blades or any other similar unpowered wheeled equipment, provided that the Board of Directors shall have the discretion to adopt Rules governing the use of such unpowered wheeled equipment.

4.7 Window Coverings. Drapes, window shades, or shutters shall be installed in the windows of all Residences and garages and shall comply with any Rules adopted by the Board of Directors. In no event shall windows be painted, nor shall aluminum foil, newspaper, bed sheets, cardboard or similar materials be placed in windows. All window coverings shall be maintained in good repair and condition at all times.

4.8 Signs. To the extent permitted by law, the Board may adopt limitations on signs including, without limitation, restrictions on the size of the signs, the duration of their posting, and their location.

4.9 Antennas. Outside television antennas, aerials, satellite dishes and similar device for the transmission or reception of television, radio, satellite, or other signals are permitted within the Development as provided in this Section. Antennas or satellite dishes with a diameter or diagonal measurement not greater than one (1) meter which are designed to receive direct broadcast satellite services, video programming services via multi-point distribution services, or television broadcast signals (collectively "Permitted Dishes") may be erected, placed or installed on a Lot. The Board shall have the power to adopt rules governing such devices subject to the limitation of this Section.

4.10 Trash Disposal. Trash, garbage, accumulated waste plant material and all other waste and refuse shall be deposited only in covered sanitary containers or recycling containers in accordance with the following provisions:

(a) Screened Containers. No trash, garbage, rubbish, or other waste material shall be allowed to accumulate on any Lot unless stored in an appropriate sanitary, covered disposal container that is located within a gated bear-proof enclosed area adjacent to the Owner's Residence and screened from the view from the Common Area, the streets or any other Residences.

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(b) Trash Pickup. The containers may be placed for pickup at a reasonable time prior to trash collection and shall be promptly stored as specified in subsection 4.10(a) after collection. All containers shall be placed away from parked vehicles and other obstructions. The Board shall adopt Rules regulating the placement of containers for trash collection, including specific limitations on the period of time during which containers may be placed for collection.

(c) Trash Storage. No Owner or Resident shall permit or cause any garbage, trash or other waste or refuse to be kept upon any portion of any Lot outside of the Residence or elsewhere in the Development, except in sanitary, covered disposal containers.

### 4.11 Vehicles and Parking.

(a) Board Powers. The Board shall have the power to adopt, modify and repeal Rules regulating vehicles and parking within the Development, including rules for the towing of unauthorized vehicles.

(b) Lot A Trailhead Parking. Except for Residents who participate in ride-share programs, Residents shall not park vehicles within the lot A trailhead parking spaces.

(c) Parking Fines. The power and authority to fix and impose fines for violations of this Section in accordance with California Civil Code Section 1363.

4.12 Garages. No garage shall be remodeled or used as a workshop, storage space, hobby facility or for any other use or facility which would interfere with the ability of the Owner of the Lot to accommodate the number of vehicles the garage was originally designed to contain. In no event shall any garage be converted to or used as a living area.

4.13 Compliance with Laws. Nothing shall be done or kept anywhere within the Development which violates any local, state or Federal law, ordinance, statute, rule or regulation.

### 4.14 Animals.

(a) Household Pets. Except as provided in subsection 4.14(d), below, no animals, reptiles, rodents, birds, fish, livestock, or poultry shall be raised, bred or kept on any Lot or other portion of the Development except that a reasonable number, as determined by the Board, of domesticated birds, cats, dogs or aquatic animals kept within an aquarium, may be kept, provided that they are not kept, bred, or maintained for any commercial purposes and they are maintained under reasonable control at all times, all in conformance with any County ordinances. Each dog must be restrained on a leash held by a responsible person capable of controlling it whenever it is outside of its owner's Lot.

(b) Owner's Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Development by such pet. The Board shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to pets, including without limitation fines for failure to remove and dispose of pet waste as required by this subsection. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Development by such person or by members of his or her household, tenants, guests, or invitees. Each Owner and Resident shall indemnify the Association and its officers, Directors, and agents against any and all claims, damages, losses, demands,

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liabilities, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner or Resident, members of his or her household, guests, tenants, or invitees. Dog barking audible from within an adjacent Lot's Residence for more than ten (10) minutes within an hour shall constitute a nuisance pursuant to this Declaration.

(c) Pet Rules. The Board may adopt and enforce pet Rules in addition to the provisions of this Section. Such Rules may include, without limitation, regulations regarding the presence of pets on the Common Area and Association Maintenance Area and requirements that pets be registered with the Association. The Association shall have the right to prohibit the keeping of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance or danger to any other person.

(d) Equestrian Facilities. Equestrian facilities, horses and horseback riding are permitted on Lots 1 through 6, inclusive, subject to Mono County General Plan Table 04.030 Animal Standards. Equestrian facilities, horses and horseback riding are prohibited in the remainder of the Development.

4.15 Rental of Lots. An Owner shall have the right to rent his or her Lot subject to the provisions of the Governing Documents, including without limitation the following specific requirements:

(a) Owner Responsibility. Each Owner renting a Lot shall be strictly responsible and liable to the Association for the actions of such Owner's tenant in or about all Lots and Common Area and for each tenant's compliance with the provisions of all Governing Documents. An Owner renting a Lot shall provide the tenant with copies of the Governing Documents and all subsequent amendments. Owners renting a Lot shall provide the Board with a forwarding address so that the Owner may be contacted.

(b) Indemnification of Association. Every Owner of a Lot that is occupied by persons other than the Owner pursuant to a rental agreement or otherwise, agrees to and shall indemnify and defend the Association, its officers, Directors, managers, and agents and shall hold them harmless from any cost, loss, claim, or damages of any kind, including but not limited to attorneys' fees arising out of the conduct or presence of the occupants of the Lot upon the Development, including any such cost, loss, claim or damages arising or alleged to have arisen out of the enforcement or nonenforcement by the Association of the Governing Documents against such occupants. Without limiting the generality of the foregoing, all costs, including attorneys' fees incurred by the Association to enforce the Governing Documents against such occupants, shall be reimbursed to the Association by the Owner and may be assessed by the Association as a Reimbursement Assessment.

(c) Requirements of Written Rental Agreement. Any rental of any Lot shall be only by written rental agreement which shall expressly provide (i) that it is subject to all of the provisions of the Governing Documents, (ii) that the tenants of such Lot shall comply with all provisions of the Governing Documents, and (iii) that any violation of any provisions of the Governing Documents shall constitute a breach and default of the terms of such rental agreement. The rental agreement shall not attempt to, nor shall any such agreement be effective to, transfer membership in the Association to the lessee. Any lease or rental agreement entered into between an Owner and a lessee or renter shall be for a minimum term of thirty (30) days.

(d) Requirement of Inclusive Rental Agreement. No Owner may rent or hire any garage, accessory building, or similar improvement to anyone who does not have the right of possession of the entirety of the Residence on the Lot.



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4.16 Clotheslines and Sideyard Storage. No exterior clotheslines or other outside clothes drying or airing facility shall be erected or maintained upon any Lot, except below the fence-line. No personal property shall be stored along the side yard area immediately adjacent to a Residence's garage, except below the fence-line and not visible from the Common Area, the streets or any other Residences.

4.17 Equipment. No power equipment, hobby shop, or carpenter shop shall be maintained on the Development, except within the confines of a garage or upon the prior approval of the Board.

4.18 Exploration for Minerals. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in the Development or any portion thereof, nor shall oil wells, tanks, tunnels, or mineral excavations or shafts be permitted upon the surface of any portion of the Development.

4.19 Burning. There shall be no exterior fires whatsoever on Lots or in the Development, except barbecue fires and outdoor fireplaces located only upon Lots and contained with receptacles and/or enclosures designed for such purpose. No Owner or Resident shall permit any condition to exist on his or her Lot, including, without limitation, trash piles, or weeds, which create a fire hazard or is in violation of local fire regulations.

4.20 Activities Affecting Insurance. Nothing shall be done or kept within the Development which will increase the rate of insurance maintained by the Association without the prior written consent of the Association. No Owner shall permit anything to be done or kept within the Development which would result in cancellation of any insurance policy maintained by the Association or any other Owner.

4.21 No Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any Owner or any person acquiring any interest in the Development or any part thereof seek any judicial partition thereof. Notwithstanding the preceding, if any Lot is owned by two (2) or more co-tenants as tenants in common or as joint tenants, this Section shall not be deemed to prevent a judicial partition by sale as between such co-tenants.

4.22 Family Day Care Centers. No family day care center shall be permitted within the Development except as specifically mandated by California Health and Safety Code Section 1597.40 and other applicable statutes. The owner/operator of any permitted day care facility shall provide the Association with prior written notice as to the facility's operation, and shall comply with all local and state laws regarding the licensing and operation of a day care center and, in addition, shall:

(a) Association Additional Insured. Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center, in accordance with Health & Safety Code Section 1597.531. This subsection 4.22(a) is intended to be and shall be conclusively deemed to be the written notice to the operator and owner from the Association as specified in Health & Safety Code Section 1597.231;

(b) Indemnify. Defend, indemnify and hold the Association harmless from any claim, demand, loss, liability action or cause of action arising out of the existence and operation of the day care center;

(c) Association Rules. Abide by and comply with the Association's Rules;

(d) Responsibility. Supervise and be completely responsible at all times all persons for whom day care services are provided while such persons are within the Development; and

(e) Proof of Insurance. Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these provisions, or other reasonable requests.

4.23 Community Care Facilities. Except for residential facilities defined as community care facilities under Health & Safety Code Section 1502, no health care facilities operating as a business or charity shall be permitted in the Development. The owner/operator of any permitted community care facility shall provide the Association with prior written notice as to the facility's operation, and shall comply with all local and state laws regarding the licensing and operation of a community care facility and, in addition, shall:

(a) Association Additional Insured. Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the community care facility;

(b) Indemnify. Defend, indemnify and hold the Association harmless from any claim, demand, loss, liability action or cause of action arising out of the existence and operation of the community care facility;

(c) Association Rules. Abide by and comply with the Association's Rules;

(d) Responsibility. Supervise and be completely responsible at all times all persons for whom community care services are provided while such persons are within the Development; and

(e) Proof of Insurance. Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the community care facility to these provisions, or other reasonable requests.

4.24 Variances. The Board shall be authorized to grant reasonable variances from the provisions of Article 4 of this Declaration upon written application from any Owner provided that the Board determines, in its sole discretion, that the specific application of the restriction to such Owner will (i) cause substantial undue hardship to the Owner, or (ii) fail to further or accomplish the common plan for the Development as contemplated by this Declaration. The Board shall have the power to limit any variance granted in scope or duration or otherwise impose such specific requirements as the Board may, in its complete discretion, see fit to require. The Board shall follow the following procedures in acting on any request for a variance:

(a) Initial Board Determination. The Board, in its sole discretion, shall make an initial determination whether or not the variance on its face meets the requirements set forth in this Section. If the Board determines that it does not, the variance request shall be denied and the Board shall so notify the applicant within thirty (30) days of the Board's decision. If the Board determines that the variance does, the procedures set forth in the remainder of this Section shall be followed.

(b) Board Hearing. The Board shall conduct a hearing on the variance within forty-five (45) days of the receipt of the written request for a variance. Notice shall be given to all Members not less than fifteen (15) days prior to the date of the hearing. Members may submit comments in writing prior to the hearing and/or appear at the hearing. The Board shall establish a reasonable time limit for Member comments during the hearing. No decision regarding the request for variance shall be made until the conclusion of the hearing.

(c) Board Decision. After the conclusion of the hearing, the Board shall, in its sole discretion, either grant or deny the request for variance in accordance with the standards set forth

in this Section. As more fully discussed above, if the Board grants the variance request, the Board may impose such conditions as the Board deems appropriate and shall so notify the applicant within thirty (30) days of the Board's decision.

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**ARTICLE 5                      IMPROVEMENTS TO LOTS/RESIDENCES; DISCLOSURES**

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5.1     Approval by Architectural Review Committee. Except for Improvements constructed or installed by Declarant, no building, fence, wall, pool or spa equipment, or other structure or Improvement shall be erected, altered or placed on any Lot until building plans, specifications and a plot plan showing the location of structures on the Lots have been submitted to the Architectural Review Committee for review and approval as described in Article 8, below.

5.2     Solar Systems. Subject to limitations imposed by California law, the Board of Directors shall be entitled to adopt, as part of the Architectural Guidelines, reasonable regulations regarding the installation of solar systems. These rules may include limitations on placement and design of such systems to the extent necessary to avoid an unsightly appearance from neighboring Lots or Common Area.

5.3     Drainage. No Owner shall do any work, construct any Improvement, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Owner's or any adjacent Lots or parcels or Common Area as established in connection with the approval of the final subdivision and parcel maps applicable to the Development, except to the extent such alteration in drainage pattern is approved in writing by the Architectural Review Committee, and all other public authorities having jurisdiction.

5.4     Mechanical Devices. No poles, wires, machines, equipment, air conditioning units or similar objects shall be allowed on the exterior or roofs of any Residence, or any part thereof, except such as are installed as part of the initial construction of the Development by the Declarant, or replacements to the initial construction, or such as are approved in writing by the Architectural Review Committee.

5.5     Exterior Lighting and Fixtures. All lights installed on the exterior of a Residence or on a Lot shall be adequately and properly shielded from other Residences and the Common Area, such that direct rays from the light source are directed downward. The Board of Directors may establish Architectural Guidelines regarding the placement of holiday lighting and decorations, including, but not limited to, the duration of display prior to and following the celebrated holiday.

5.6     Accessory Structures. No accessory structures shall be constructed, placed or maintained upon any Lot prior to the completion of the construction of the Residence thereon, except by the prior written approval or permission of the Architectural Review Committee; provided, however, that this restriction shall not apply to temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of structures upon any Lot.

5.7     Individual Propane Tanks. The location of propane tanks ("Tanks") and related pipes, pipelines and equipment on a Lot shall be approved by the Architectural Review Committee prior to installation, in accordance with all applicable County codes, ordinances and regulations. The Tanks shall be enclosed within a separate six foot (6') fenced area, that will screen the Tank from view of adjoining Lots with rear or side yards at the same elevation as the Lot on which the Tank is situated. All fences enclosing or screening Tanks must be approved by the Architectural Review Committee prior to installation. Alternatively, Owners of Lots are encouraged, but not required, to bury all Tanks and related pipes, pipelines and equipment.

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5.8 Uniform Fences. The Architectural Review Committee may establish uniform standards and a uniform style for all individual Lot fences within the Development, including, but not limited to, the maximum and minimum height and the materials to be utilized in connection with the construction thereof. The Architectural Review Committee must approve, in writing, the location of all fences within the Development and supervise the construction thereof to insure that the same will be in strict compliance with the uniform standards.

5.9 Provisions Required by Conditions of Approval. State and local development standards and policies, including the Mono county General Plan and the relevant Conditions of Approval, shall apply with respect to all aspects of construction and use of the Lots and Residences, including, without limitation, the following:

(a) Wood-Burning Devices. All wood-burning devices installed in the Development shall be Phase II EPA-certified in conformance with Mono County General Plan (Conservation/Open Space Element, Public Health & Safety Policies, Objective A, Action 6.1).

(b) Fire Safe Regulations. Subdivision Improvements and future residential development shall comply with Fire Safe Regulations (Mono County General Plan, Land Use Element, Section VI, Land Development Regulations, Chapter 22), including emergency access, emergency water supplies, signing and building numbering, and vegetation modification.

(c) Authorized Construction Activity Hours. Construction activities are limited to daylight hours (or per Mono County Code 13.08.290, whichever is more restrictive) in accordance with Mono County Code Chapter 10.16 (Noise Regulation) in order to minimize impacts to nocturnal resident wildlife species.

(d) Noise Levels. Noise levels during construction shall be kept to a minimum by equipping all on-site equipment with noise-attenuation devices and by compliance with all requirements of Mono County Code Chapter 10.16 (Noise Regulation).

(e) Limits on Construction Timing. To minimize disturbance to migrating and wintering deer, a wildlife biologist acceptable to the County shall approve any heavy construction work (including parcel grading operations, structural foundation work, framing work and similar heavy construction activities) that is conducted during the period from October 1 to May 15. The cost of monitoring shall be borne by the applicant for earthwork permits.

(f) Exterior/Outdoor Lighting. Exterior/outdoor lighting on individual Lots shall be designed and maintained to minimize the effects of lighting on the surrounding environment in compliance with Chapter 23 of the Mono County General Plan, Land Use Element. Exterior lighting shall be limited to that necessary for health and safety purposes.

(g) Domestic Animals. Domestic animals shall be restrained at all times, either through the use of leashes or private fenced areas. No animals shall be allowed to be free roaming. Owners who wish to permit their dogs unleashed access to their yard shall construct, maintain and use a dog enclosure capable of preventing the dog from straying onto public land or other adjacent properties. Such enclosure shall be within the confines of the fenced area allowed pursuant to the Rock Creek Canyon Specific Plan, and shall be constructed in accordance with the Specific Plan. Unleashed dogs shall not be permitted in areas outside of the dog enclosure.

(h) Engineering Study for Association Facility Maintenance. Activities within the Development shall comply with relevant provisions of the engineering study prepared by Declarant

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that identifies the Association's facility maintenance responsibilities, including maintenance of the sewer system, roadways and trails, snow removal, drainage facilities/retention basins, brush clearing, encroachments onto Lower Rock Creek Road, and parking facilities on lot A. A budget summary taken from the engineering study is attached as Exhibit "A".

(i) Retention of Big Sagebrush Scrub. Disturbance to CNPS List 4 *Muilla coronata* is limited to a maximum of fifty percent (50%) of the area occupied by this species within the project area as mapped in 2008. Retention shall be achieved through adherence to the disturbance areas defined on the Tentative Map, which will enforce total avoidance of one half the area occupied by the population, based upon results of the survey and mapping conducted by the project botanist. The fenced *muilla coronata* revegetation area is shown in attached Exhibit "B".

(j) Avoidance of Stream Encroachment. During initial construction and subsequent maintenance and occupancy over the life of the Development, there shall be no encroachment of ground-disturbing equipment or activities beyond the top of the creek bank nor shall any spillback be permitted beyond the top of the creek bank. Utilities to serve all Lots shall be constructed in locations that do not require an at-grade stream crossing to extend service. If a stream crossing is required in order to extend service to any lot, these new extensions shall be attached to a bridge that complies fully with the requirements above, or shall be extended with the use of trenchless construction technology that meets local code standards and also complies fully with the requirements of above. Under all conditions and for all activities, disturbance of riparian vegetation shall be avoided to the maximum feasible extent. Tree canopies may be trimmed but under no circumstances will bank-stabilizing vegetation be removed. If alternative building envelope is chosen as the building site to avoid impacts associated with the provision of access and utilities to the alternative building envelope of Lot 11 (which is separated from the access road by Rock Creek), any constructed access (bridge) abutments and footings shall be designed so that they are emplaced entirely outside the bank tops on either side of Rock Creek; utilities shall be contained entirely within the constructed access.

(k) Exotic Tree Control Program. The Association shall maintain an exotic tree control program, which shall contain the following: (i) removal of existing black locust and Siberian elm trees with a trunk diameter under four inches (4"); and (ii) removal of black locus sprouts throughout the Development.

(l) Vinca Control Program. A vinca control program shall be maintained and funded through the Association. The program shall include ongoing maintenance of the existing Vinca major plants within fixed boundary horticultural beds, and ongoing removal of all Vinca major plants located outside of the existing defined horticultural beds. The boundaries of the horticultural beds are shown in attached Exhibit "C".

(m) Landscaping Controls. Landscaping shall consist of plant materials that are native to the Mono County region and have value to native wildlife, and nonnative species that are compatible with native plant materials, have low propagation characteristics and are not invasive.

(n) Vegetation Clearance. The Association shall ensure that tree branches and vegetation on each side of the Development access points are trimmed or removed to optimize line-of-sight visibility for traffic approaching the roadway curves. Trimming and clearance activities shall be suspended during the bird nesting season each year (March 15 to September 15).

(o) Retention of Natural Vegetation. Natural vegetation shall be retained except where it must be removed for project development. Outside of the designated disturbance areas, plant

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materials that are disturbed during infrastructure and home construction shall be revegetated with native and native compatible species in order to establish deer habitat as soon as possible following construction. Revegetation of disturbed areas shall require use of native and native compatible seeds or native and native compatible plants grown from seeds or seedlings obtained from local native and native compatible stock. Revegetated areas shall be monitored for five (5) years to ensure success of the plantings, with replanting as necessary. Lot Owners shall refrain from clearing native vegetation outside of designated disturbance areas, except as necessary for construction or fire safety.

(p) Habitat Protection Handouts. The Association shall provide Owners with informational handouts about habitat protection.

(q) Open Space Restriction. The use of recreational OHV (off-highway vehicle use) in open space areas is prohibited.

(r) Non-Permitted Discharges. No Owner shall discharge any material other than domestic wastewater to the septic system. Any other type of discharge shall first be reviewed with the Board of Directors and with the firm providing contractual maintenance, operation and monitoring services. If the discharge is judged meritorious, the Association shall be responsible for preparing and filing with the LRWQCB a Report of Waste Discharge prior to undertaking the discharge of non-wastewater materials.

(s) Maintenance of Storm Drainage Facilities. The Association shall operate and maintain the storm drainage facilities in a manner that will assure continued function as per original design standards. Maintenance elements shall include, but are not limited to, the removal of foreign materials from storm drainage pipes and ditches, maintenance as necessary to outlet facilities, desiltation of retention basins, and repairs as necessary to damaged facilities.

(t) Residential BMPs. Best management practices ("BMPs") for residential land uses shall be implemented by Owners including, but limited to, the following: (i) all spent fluids used in cleaning and repair activities shall be collected in containers and disposed at a household hazardous waste collection site (Paradise Transfer Station accepts these wastes); (ii) all household hazardous materials shall be stored in their containers under cover and used in accordance with label instructions; (iii) no use of herbicides, insecticides, rodenticides or fungicides within thirty feet (30') of Lower Rock Creek and all such products shall be stored under cover and disposed at a hazardous collection site; (iv) no sweeping of clippings, leaves or trash into Lower Rock Creek or the open drainage swale, but such materials shall instead be collected and recycled or disposed at the transfer station; and (v) there shall be no discharge of washwater to land within thirty feet (30') of Lower Rock Creek or to the open swale or to any paved surface, but such washwater instead shall be directed to vegetated areas or gravel beds or detention/percolation ponds.

(u) Construction on Lots. In addition to other requirements of this Declaration and relevant provisions of the Conditions of Approval, construction on a Lot shall comply (a) with Mono County Flood Plain Regulations (Mono County General Plan, Land Use Element, Section VI Land Development Regulations, Chapter 21), (b) with the recommendations contained in the Base Flood Elevation Study prepared for the Rock Creek Canyon project (see condition 20 of the Conditions of Approval), and with the following Conditions of Approval relevant to the proposed construction as determined by the County: conditions 51, 53, 54, 56, 57, and 61.

(v) Deer. A wildlife biologist acceptable to the County shall approve the means of conducting heavy construction work (including parcel gradin operations, structural foundation work,

framing work and similar construction activities) that is conducted during the period October 1 through May 15.

(w) Bird Protection. A qualified biologist acceptable to the County shall assess potential bird habitat for construction proposed to take place during the period March 15 through September 15. If an active bird nest is located, construction within 300 feet of the nest (within 500 feet of raptor nests) shall be postponed until the young have fledged or the nest becomes inactive. If threatened or endangered species are observed within the foregoing areas, no construction work shall occur during the foregoing period.

(x) Landscaping Related to Traffic. The Association shall ensure that tree branches and vegetation on each side of the project access points are trimmed or removed to optimize line-of-sight visibility for traffic approaching public roadway curves adjacent to the project. Such activities shall be suspended during the period March 15 through September 15.

(y) Discharges. No material other than domestic dishwater shall be discharged to the septic tank system. Other types of discharges proposed by Owners shall be reviewed by the Board and with any firm providing septic services. If the Board is disposed to permit the discharge, it shall prepare and file with the regional state water board a Report of Waste Discharge prior to permitting the discharge.

5.10 Project Rules. The Board shall adopt Rules consistent with this Declaration and relevant Conditions of Approval that (a) summarize the applicable leash laws, (b) provide informational handouts about the importance of habitat protection, and (c) prohibit the use of off-highway recreational vehicles in open space areas of the Development.

5.11 Best Management Practices. The Board shall adopt Rules that contain a list of Best Management Practices (BMP) that govern uses by Owners of their properties. The BMP's shall contain the following requirements and restrictions among others adopted by the Board: (a) that spent fluids used in cleaning and repair activities be collected in containers; (b) that household hazardous materials be stored in containers under cover and used in accordance with label instructions; (c) that herbicides, insecticides, rodenticides and fungicides shall not be applied within 30-feet of Lower Rock Creek; (d) that any and all of the foregoing be stored under cover and disposed of at a hazardous waste collection site; (e) that the sweeping of clippings, leaves or trash into Lower Rock Creek and the open drainage swale is prohibited and such material shall be disposed of at the Transfer Station; (f) that discharge of washwater to land within 30-feet of Lower Rock Creek or to the open swale or to any paved surface is prohibited, and shall be directed to vegetated areas, gravel beds or detention/percolation ponds.

## ARTICLE 6 ASSESSMENTS AND LIENS

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### 6.1 Covenant of Owner.

(a) Owner's Assessment Obligation. Each Owner of a Lot within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association: (i) Regular Assessments, (ii) Special Assessments, (iii) Reimbursement Assessments, and (iv) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens as hereinafter provided.

(b) Owner's Personal Obligation. Each Assessment levied by the Association under this Article, together with all Additional Charges, shall be a separate, distinct, and personal debt and obligation of the Owner against whom it is assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns. Such obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of Record of any Lot shall, in turn, become liable to pay all such Assessments and Additional Charges assessed during the time he or she is Record Owner of such Lot. After an Owner transfers of Record any Lot he or she owns, he or she shall not be liable for any Assessments levied thereafter with respect to such Lot. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. The seller of any Lot under an installment land contract shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Lot is Recorded.

6.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and shall be secured by a lien upon the property against which such Assessment is levied, notwithstanding the transfer of Record title to such Lot, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been Recorded as provided in this Declaration and by law. The priority of all such liens on each Lot shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Lot, any sale of such Lot pursuant to foreclosure of the lien will be made subject to all liens securing the respective monthly Assessments and Additional Charges on such Lot for succeeding months.

6.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively for (i) managing and operating the Development, (ii) conducting the business and affairs of the Association, (iii) maintaining and promoting the property values of the Owners and Residents of the Development, (iv) improving and maintaining the Common Area and, to the extent provided for in the Governing Documents or by law, the Lots situated within the Development, (v) enforcing the Governing Documents, and/or (vi) otherwise benefitting the Owners.

6.4 Authority of the Board. The Board shall have the power and the duty to levy Regular Assessments and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.

6.5 Regular Assessment.

(a) Calculation of Estimated Requirement. Not less than thirty (30) days nor more than ninety (90) days prior to the beginning of each fiscal year, or as otherwise provided by law, the Board shall complete and distribute to all Owners an estimate of the net funds required by the Association for such fiscal year (including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis) to manage, administer, operate, and maintain the Development; to conduct the affairs of the Association; and to perform all of the Association's duties in accordance with this Declaration. The funds required by the Association pursuant to this subsection shall be assessed among the Owners of Lots as "Regular Assessments" as further provided in this Section 6.5.

(b) Allocation of Regular Assessment. Regular Assessments shall be allocated and assessed equally among the Lots within the Development by dividing the amount by the number of Lots, so that each Lot bears an equal share of the Regular Assessment.



(c) Payment of Regular Assessments. Unless the Board shall designate otherwise, Regular Assessments shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.

(d) Increases in Regular Assessment. Pursuant to California Civil Code Section 1366(b), except as otherwise provided by law, the Board shall not increase the Regular Assessment for any fiscal year above the amount of the Regular Assessment for the preceding fiscal year by more than the maximum amount permitted by law, except upon the affirmative vote or written consent of a majority of Owners voting on any such increase in the Regular Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Owners of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws. Any meeting or election of the Association for purposes of complying with California Civil Code Section 1366 shall be conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

(e) Commencement of Regular Assessment. Regular Assessments shall commence as to each Lot within the Development on the first day of the first month following the month in which the first conveyance occurs for the sale of a Lot to a person other than Declarant. Each Lot within the Development shall thereafter be subject to its share of the then established annual Regular Assessment. The first annual Regular Assessment shall be pro rated, if necessary, according to the number of months remaining in the fiscal year established in the Association's Bylaws.

(f) Partial Assessment Exemption for Vacant Residential Lots. Any Lot within the Development without a Residence shall be exempt from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the Association's maintenance of wastewater treatment system and common leach field pursuant to subsection 7.1(b), below. The exemption from the payment of Assessments attributed to the Association's maintenance of the wastewater treatment system and common leach field shall be in effect only until the earliest of the following events: a notice of completion of the construction of the Lot's Residence has been Recorded; occupation or use of the Lot's Residence; or completion of all elements of the Lot which the Association is obligated to maintain.

(g) Partial Assessment Exemption for Uncompleted Common Area. In addition to the foregoing Regular Assessment exemption attributable to uncompleted Residences, all Owners, including Declarant, shall be exempt from the payment of that portion of any Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of any Common Area Improvement that is not completed at the time Assessments commence. The Assessment exemption provided by this subsection shall be in effect only until the earliest of the following events: (A) a notice of completion of the Common Area has been Recorded; or (B) the Common Area has been placed in use.

### 6.6 Special Assessments.

(a) Purpose of Special Assessments. If at any time during any fiscal year the Regular Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of Improvements located in the Development, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost.

(b) Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Lots within the Development in the same manner as Regular Assessments.

(c) Approval of Special Assessments. Except in the case of an emergency situation as defined in California Civil Code Section 1366, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote or written consent of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws. Any meeting or election of the Association for purposes of complying with California Civil Code Section 1366 shall be conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

6.7 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and his or her Lot (i) if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such Owner or his Lot into compliance, or (ii) in the event that the Association has expended funds performing repairs as authorized by Section 7.4 of this Declaration or for any other reasons specifically authorized by the provisions of this Declaration. A Reimbursement Assessment shall include any costs, including attorneys' fees, incurred by the Association, including costs of collecting from an Owner any amount which the Owner is obligated to pay to the Association. A Reimbursement Assessment shall be due and payable to the Association when levied.

6.8 Enforcement Assessments. The Board may levy an Enforcement Assessment (and any fine imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Association when levied.

6.9 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Regular Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Regular Assessment fixed for the preceding fiscal year shall be the amount of the Regular Assessment for the ensuing fiscal year until a new Regular Assessment is levied.

6.10 Offsets. Except as permitted by subsections 6.5(f) and (g), above, all Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.

6.11 Delinquent Assessments. Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to late charges not to exceed the maximum rate permitted by law. In addition, interest on all sums imposed in accordance with this Article, including the delinquent Assessments, reasonable fees and costs of collection, and reasonable attorneys' fees, at an annual interest rate not to exceed twelve percent (12%), shall commence thirty (30) days after the

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Assessment becomes due. The Association may Record a lien against an Owner's Lot for delinquent Assessments and all Additional Charges as provided in Section 6.12, below, and in accordance with the Davis-Stirling Common Interest Development Act, California Civil Code Section 1350 et seq.

### 6.12 Assessment Liens.

(a) Notice of Collection and Lien Enforcement Procedure. At least thirty (30) days prior to Recording a lien upon an Owner's Lot to collect an Assessment debt that is past due under this Article 6, the Association shall notify the Owner in writing by certified mail of the following:

(i) A general description of the Association's collection and lien enforcement procedures and the method of calculation of the amount, a statement that the Owner has the right to inspect the Association records, pursuant to California Corporations Code Section 8333, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed:

**"IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."**

(ii) An itemized statement of the Assessments and Additional Charges owed by the Owner, including items on the statement which indicate the amount of any delinquent Assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any.

(iii) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the Assessment was paid on time to the Association.

(iv) The right to request a meeting with the Board by submitting a written request to meet with the Board to discuss a payment plan for the Assessment and Additional Charges debt noticed pursuant to subsection 6.12(a)(ii).

(v) The right of the Owner to dispute the Assessment and Additional Charges debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program.

(vi) The right of the Owner to request alternative dispute resolution with a neutral third party before the Association may initiate foreclosure against the Owner's Lot, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(vii) A statement that an Owner may, but is not obligated to, pay under protest any disputed charge or sum levied by the Association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and by so doing, specifically reserve the right to contest the disputed charge or sum in court or otherwise.

(b) Payments Made by Owner. Any payments made by the Owner toward the debt set forth shall first be applied to the Assessments owed, and, only after the Assessments owed are paid in full shall the payments be applied to the Additional Charges. When an Owner makes a payment,

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the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it. The Association shall provide a mailing address for overnight payment of Assessments.

(c) Owner's Authority to Bring Small Claims Action. If a dispute exists between the Owner of a Lot and the Association regarding any disputed charge or sum levied by the Association, including, but not limited to, an assessment, fine, penalty, late fee, collection cost, or monetary penalty imposed as a disciplinary measure, and the amount in dispute does not exceed the jurisdictional limits stated in California Code of Civil Procedure Sections 116.220 and 116.221, the Owner of the Lot may, in addition to pursuing dispute resolution pursuant to California Civil Code Section 1363.810 et seq., pay under protest the disputed amount and all other amounts levied, including any fees and reasonable costs of collection, reasonable attorneys' fees, late charges, and interest, if any, pursuant to California Civil Code Section 1366(e), and commence an action in small claims court pursuant to California Code of Civil Procedure Section 116.110 et seq. Nothing in this subsection shall impede the Association's ability to collect delinquent assessments as provided in California Civil Code Sections 1367.1 and 1367.4.

(d) Meet and Confer Program. Prior to Recording a lien for delinquent Assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program or alternative dispute resolution with a neutral third party. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(e) Decision to Record a Lien. The decision to Record a lien for delinquent Assessments, which is otherwise permitted by this Section 6.12, shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an open meeting. The Board shall record the vote in the minutes of that meeting.

(f) Payment Plan. An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed. The Association shall provide the Owners the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the notice, unless there is no regularly scheduled Board Meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner. Payment plans may incorporate any Assessments that accrue during the payment plan period. Payment plans shall not impede an Association's ability to Record a lien on the Owner's Lot to secure payment of delinquent Assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent Assessments from the time prior to entering into the payment plan.

(g) Recordation of the Notice of Delinquent Assessment. The amount of the Assessment, plus any Additional Charges shall be a lien on the Owner's Lot from and after the time the Association causes to be Recorded, a Notice of Delinquent Assessment, which shall state the amount of the Assessment and Additional Charges imposed, a legal description of the Lot against which the Assessment and Additional Charges are levied, and the name of the Record Owner of the Lot against which the lien is imposed. The itemized statement of the charges owed by the Owner shall be Recorded together with the Notice of Delinquent Assessment.

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(i) The Notice of Delinquent Assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale.

(ii) The Notice of Delinquent Assessment shall be signed by the President of the Association.

(iii) A copy of the Recorded Notice of Delinquent Assessment shall be mailed by certified mail to every person whose name is shown as an Owner of the Lot in the Association's records, and the notice shall be mailed no later than ten (10) calendar days after Recordation.

(iv) Within twenty-one (21) days of the payment of the sums specified in the Notice of Delinquent Assessment, the Association shall Record or cause to be Recorded a lien release or notice of rescission and provide the Owner of the Lot a copy of the lien release or notice that the delinquent Assessment has been satisfied.

(h) Assessment Liens for Repair of Common Areas. Unless otherwise permitted by law, a Reimbursement Assessment imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Areas and facilities for which the Member or the Member's guests or tenants were responsible may not be characterized nor treated as an Assessment that may become a lien against the Member's Lot enforceable by the sale of the interest pursuant to Section 6.13, below.

(i) Enforcement Assessments and Penalties. An Enforcement Assessment or monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents, except for late payments of Assessments, may not be characterized nor treated as an Assessment that may become a lien against the Member's Lot enforceable by the sale of the interest pursuant to Section 6.13, below.

(j) Assignment of the Association's Lien Right. The Association may not voluntarily assign or pledge the Association's right to collect payments or Assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under Federal or State law, when acting within the scope of that charter or license, as security for a loan obtained by the Association; however, the foregoing provision may not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection. After the expiration of thirty (30) days following the Recording of a lien, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to California Civil Code Section 2934a. Any sale by the trustee shall be conducted in accordance with California Civil Code Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust. The fees of a trustee may not exceed the amounts prescribed in California Civil Code Sections 2924c and 2924d, plus the cost of service for either of the following:

(i) The notice of default pursuant to California Civil Code Section 1367.1(j).

(ii) The decision of the Board to foreclose upon an Owner's Lot as described in California Civil Code Section 1367.4(c)(3).

(k) Actions Against Owners. Nothing in this Section or in California Code of Civil Procedure Section 726(a) prohibits actions against the Owner of a Lot to recover sums for which a

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lien is created pursuant to this Section or prohibits the Association from taking a deed in lieu of foreclosure.

(l) Lien Recorded in Error. If it is determined that a lien previously Recorded against a Lot was Recorded in error, the Association shall, within twenty-one (21) calendar days, Record or cause to be Recorded a lien release or notice of rescission and provide the Owner of the Lot with a declaration that the lien filing or Recording was in error and a copy of the lien release or notice of rescission.

(m) Notice of Default. A notice of default shall be served by the Association on the Owner's legal representative, in accordance with the manner of service of summons pursuant to California Code of Civil Procedure Section 415.10 et seq. The Owner's legal representative shall be the person whose name is shown as the Owner of a Lot in the Association's records, unless the Owner in writing, delivered to the Association in a manner that indicates that the Association receives it, designates another person as his or her legal representative.

(n) Secondary Address. Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this Section to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, at the time the Association issues the pro forma operating budget pursuant to California Civil Code Section 1365. The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may identify or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

(o) Failure to Comply with Procedures. If the Association fails to comply with the procedures set forth in this Section, the Association shall, prior to Recording a lien, recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Owner of the Lot.

(p) Collection of Delinquent Assessments. If the Association seeks to collect delinquent Regular Assessments or Special Assessments of an amount less than One Thousand Eight Hundred Dollars (\$1,800), not including any accelerated assessments, and Additional Charges, the Association shall not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(i) By a civil action in small claims court.

(ii) By Recording a lien on the Owner's Lot which the Association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, and Additional Charges, equals or exceeds One Thousand Eight Hundred Dollars (\$1,800) or the Assessments secured by the lien are more than twelve (12) months delinquent. If the Board of Directors elects to Record a lien under these provisions, prior to Recording the lien, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in California Civil Code Section 1363.810.

(iii) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

### 6.13 Foreclosure of Association Assessment Liens.

(a) Conditions Permitting Foreclosure. Except for Assessments owed to the Association by Declarant, if the Association seeks to collect delinquent Regular Assessments or Special Assessments of an amount of One Thousand Eight Hundred Dollars (\$1,800) or more, not including any accelerated assessments, or Additional Charges, or any Assessments secured by the lien that are more than twelve (12) months delinquent, the Association may use judicial or non-judicial foreclosure subject to the following conditions:

(i) Meet and Confer Program. Prior to initiating a foreclosure on an Owner's Lot, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(ii) Decision to Foreclose. The decision to initiate foreclosure of a lien for delinquent Assessments that has been validly Recorded shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all Members. The Board shall maintain the confidentiality of the Owner or Owners of the Lot by identifying the matter in the minutes by the Owner's Lot number as shown on the Subdivision Map, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least thirty (30) days prior to any public sale.

(iii) Notice. The Board shall provide notice by personal service in accordance with the manner of service of summons pursuant to California Code of Civil Procedure Section 415.10 et seq., to an Owner of a Lot who is a Resident of the Lot or to the Owner's legal representative, if the Board votes to foreclose upon the Lot. The Board shall provide written notice to an Owner of a Lot who is not a Resident of the Lot by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Lot may be treated as the Owner's mailing address.

(iv) Right of Redemption. A nonjudicial foreclosure by the Association to collect upon a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period within which the Lot may be redeemed from a foreclosure sale under this subsection ends ninety (90) days after the sale. In addition to the requirements of California Civil Code Section 2924f, a notice of sale in connection with the Association's foreclosure of a Lot shall include a statement that the Lot is being sold subject to the right of redemption created by California Civil Code Section 1367.4(c)(4).

(b) Declarant Exception. The limitation on foreclosure of Assessment liens for amounts under the stated minimum in this Section does not apply to Assessments owed by Declarant.

(c) Recordation of Lien in Error. If it is determined through dispute resolution pursuant to the Association's "meet and confer" program or alternative dispute resolution with a neutral third party that the Association has Recorded a lien for a delinquent Assessment in error, the Association shall promptly reverse all Additional Charges, costs imposed for the notice, and costs of Recordation

and release of the lien and pay all costs related to the dispute resolution or alternative dispute resolution.

(d) Small Claims Court. The Association may appear and participate in a small claims action through an agent, a management company representative, or bookkeeper who appears on behalf of the Association.

6.14 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Article shall have priority as of the date of Recording of the original Declaration applicable to the Development over all other liens and encumbrances applicable to the Lots; provided, however, that such Assessment lien shall be subordinate to the lien of any First Mortgage Recorded against the Lot; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such First Mortgage, or pursuant to a power of sale contained in any such First Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

6.15 Association Funds. All Association accounts shall be maintained in one (1) or more banks or other depositories selected by the Board, which accounts shall be clearly designated as belonging to the Association. The Assessments collected by the Association shall be properly deposited into such accounts. The Assessments collected by the Association shall be used for the purposes set forth in Section 6.3, above.

6.16 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Article.

6.17 Trustee's Deed Upon Sale. The Association may Record a request that a Mortgagee, trustee, or other person authorized to Record a notice of default regarding any Lot mail to the Association a copy of any trustee's deed upon sale concerning the Lot. The request shall include the legal descriptions or the assessor's parcel numbers of the Lots, the name and address of the Association, and a statement that it is a homeowners' association. Subsequent requests of the Association shall supersede prior requests. The request shall be Recorded before the filing of a notice of default. The Mortgagee, trustee, or other authorized person shall mail the requested information to the Association within fifteen (15) business days following the date the trustee's deed is Recorded.

## **ARTICLE 7                      MAINTENANCE OF PROPERTY**

7.1 Association Responsibilities. The Association shall have the following maintenance responsibilities:

(a) Common Area. The Association shall maintain the Common Area, including, but not limited to, the open space, in good condition and repair.

(b) Association Maintenance Area. The Association shall be responsible for the maintenance, repair and replacement of the Association Maintenance Area, including, but not limited to, the shared wastewater treatment system and leach field, the Private Roadway and trails, snow removal, all storm drainage facilities/retention basins, and the parking facilities on lot A, as shown on the Subdivision Map. The maintenance of the storm drainage facilities shall be in accordance with subsection 5.9(u), above.



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(c) Utility Connections. Utility lines and connections, including without limitation, electrical, cable television, telephone, telecommunication, and gas lines, which are located on, under, or over the Association Maintenance Area, shall be maintained, repaired and replaced by the Association or by the utility company providing such service.

(d) Maintenance Manual. The Association shall comply with provisions of any Common Area or Association Maintenance Area maintenance manual, if one is provided by Declarant to the Association. The Board may, from time to time, make appropriate revisions to any maintenance manual based on the Board's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained.

(e) Association Inspections.

(i) Common Area and Association Maintenance Area Inspections. The Association shall regularly inspect, maintain and repair the Common Area and Association Maintenance Area Improvements in accordance with the requirements of this Declaration and all applicable laws. The Association shall employ the services of a professional landscape architect, maintenance contractor, reserve study analyst or other such professional person to assist the Association in performing such inspections. The inspector shall provide written reports of their inspections to the Association and, if requested by the Declarant, to the Declarant promptly following completion thereof. If requested by Declarant, Declarant shall be invited to attend any such inspections. The written reports shall identify any items of maintenance or repair which either require current action by the Association or will need further review and analysis. Such written reports shall specifically include a review of all irrigation and drainage systems within the Common Area. The Board shall report the contents of such written reports to Declarant (if not already provided by the inspector directly) if so requested by Declarant and to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the next regularly scheduled Board of Directors meeting. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors and shall keep a record of all such matters in the Board's minutes. In the absence of inspection frequency recommendations in any applicable maintenance manuals, the Board shall inspect all Common Area at least once every three (3) years, in conjunction with the inspection required for the reserve study conducted pursuant to the Bylaws.

(ii) Lot Access. As part of the inspection of Common Area and Association Maintenance Area, should an Association inspector require access over any Lot, there is hereby created a nonexclusive easement in favor of the Association, and its officers, agents, employees and independent contractors, in accordance with Sections 7.6 and 9.4, below, to conduct such inspections and to provide such maintenance, repair and replacement. Any damage to any structure, landscaping or other improvements caused by the Association, or any of its officers, agents, employees or independent contractors, while performing such maintenance, repair or replacement work shall be repaired by the Association at its sole cost and expense.

(f) Compliance with Warranties. The Association shall have the duty to execute all necessary documents to effectuate any warranties offered by Declarant as to the Common Area or any property maintained by the Association.

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(g) Other Association Property. The Association shall maintain, repair and replace all other real and personal property that may be acquired by the Association, keeping such property in good condition and repair.

7.2 Owners' Responsibilities. Each Owner shall be solely and exclusively responsible for the maintenance, repair and replacement of his or her Lot and all Improvements thereon, and shall keep the same in good and attractive condition and repair. Each Owner's obligations shall include, without limitation, the following:

(a) Residence and Other Improvements. Each Owner shall maintain, in good and attractive condition and repair, the Residence and other buildings and Improvements located on his or her Lot. The garage door for the garage of the Residence shall be maintained in good condition, appearance and repair.

(b) Landscaping. Each Owner shall maintain all landscaping on his or her Lot in a neat and attractive condition. Prior to commencing installation of landscaping, each Owner shall comply with the drainage restrictions described in Section 5.3, above, and shall obtain Architectural Review Committee approval of the proposed landscaping.

(c) Fences. Each Owner shall maintain, repair and replace all fences as shown and approved on the construction plan for his or her Lot.

(d) Utility Connections. Utility lines and connections, including without limitation, water, sewer, electrical, cable television, telephone and gas lines, which are located on, under, or over any Lot and which provide service to the Residence or other Improvements located upon such Lot, shall be maintained, repaired and replaced by the Owner of such Lot or by the utility company providing such service.

7.3 Compliance With Architectural Provisions. An Owner's right and responsibility for maintaining, repairing or replacing any portions of his or her Lot, including landscaping, shall be subject to any applicable provisions of the Governing Documents relating to landscaping and architectural control, including Article 8.

7.4 Owner Failure to Maintain. The Board shall have the absolute discretion to determine whether any maintenance, repair, or replacement which is the responsibility of an Owner is necessary to preserve the appearance and value of the property comprising the Development, or any portion thereof, and may notify an Owner of the work the Board deems necessary. Subject to the authority of the Board to authorize immediate emergency repairs as specified in Section 7.6, in the event an Owner fails to perform such work within ten (10) days after notification by the Board to the Owner, the Board may, after written notice to the Owner and the right of a hearing before the Board, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.

7.5 Owner Liability. In the event the need for any maintenance, repair, or replacement by the Association is caused by the willful or negligent act or omission of an Owner, members of any Owner's household, or an Owner's tenants, guests, invitees, or household pets, the cost of such maintenance, repair, or replacement, including the cost of materials, labor, supplies, and services shall be charged to, and paid by, such Owner in the form of a Reimbursement Assessment.

7.6 Authority for Entry of Lot. The Association or its agents may enter any Lot, whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance,

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repair, construction, or replacement for which the Association is responsible or which it is authorized to perform, including without limitation the authorization provided in Section 9.4. Although under no obligation to do so, the Board, in its complete and sole discretion, may enter or may authorize the Association's agents to enter any Lot to effect emergency repairs where such repairs are necessary for safety reasons or to prevent or discontinue damage to the entered Lot, any other Lot or the Common Area. The cost of performing any such emergency repairs shall be charged to the Owner as a Reimbursement Assessment. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

7.7 Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance and repair obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

7.8 Association Liability. The Association shall not be responsible or liable for any maintenance, repair, or replacement of a Lot or any Improvement thereon, except to the extent that the need for such maintenance, repair, or replacement results from the negligence or fault of the Association, its employees, contractors, or agents.

7.9 Board Discretion. Except as provided in subsections 7.1(d),(e), and (f), above, the Board shall have the discretion to determine the manner, method, extent and timing of the performance of any and all maintenance, repair and replacement obligations imposed upon the Association by this Article.

7.10 Inspection of Property Maintained by Association. For all property and Improvements required to be maintained by the Association pursuant to Section 7.1, above, the Board shall cause the inspection of the condition of such property and Improvements as provided in this Section. Inspections shall be conducted in accordance with any applicable maintenance manuals, and in the absence of inspection frequency recommendations in any applicable maintenance manuals, at least once every three (3) years, in conjunction with the inspection required for the reserve study conducted pursuant to Section 9.3 of the Bylaws.

## **ARTICLE 8                      ARCHITECTURAL CONTROL**

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### 8.1 Architectural Review Process.

(a) Purpose of Architectural Regulation Authority. It is intended that the Development be developed with various Improvements that are architecturally compatible and aesthetically pleasing, and that those initial Improvements be maintained in essentially the same condition and appearance as originally developed for the duration of the term of this Declaration. The architectural and use controls set forth herein are to facilitate those intentions and purposes and are to be construed consistent therewith. Subject to the criteria described in Section 8.8, below, the Architectural Review Committee shall review all proposed Improvements and changes to existing Improvements regarding (i) design, (ii) harmony of external design in relation to the nature and character of the Development and the Improvements thereon, and (iii) location in relation to surrounding structures, topography, finished grade elevation.

(b) Submission of Plans and Specifications. Except as provided in subsection 8.1(c), the construction, installation, placement or alteration of Improvements visible from the exterior of a Residence shall be subject to this Article 8.

(i) Residences and Structures. All Improvements including without limitation Residences, buildings, fences, walls, obstructions, balconies, screens, patio covers, awnings,

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or other structures of any kind, shall be commenced, located, erected, painted, or maintained within the Development, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Review Committee. Notwithstanding this subsection, and provided that the existing color and finish were approved by the Architectural Review Committee in the first instance, an Owner may repaint and refinish the exterior of the Improvements on his or her Lot in an identical color and finish without the approval of the Architectural Review Committee.

(ii) Enclosed Yard Area. If the Lot includes an enclosed yard area, all Improvement and proposed landscaping with such area which is or may become visible above the fence line or which alter the Lot's drainage, and all Improvements which generate noise, including but not limited to motorized equipment, shall be subject to the approval of the Architectural Review Committee in accordance with this Article.

(c) Exemption of Declarant from Committee Approval Requirements. Declarant shall not be subject to the provisions of this Article 8 and shall not be required to seek the approval of the Architectural Review Committee with respect to any of its activities within the Development.

### 8.2 Establishment of Architectural Review Committee.

(a) Composition of the Committee, Generally. The Architectural Review Committee shall consist of three (3) members. The composition of the Architectural Review Committee will evolve during the development of the Development, as follows:

(i) Initial Declarant Appointments. Declarant may appoint all of the members of the Architectural Review Committee and all replacements until the first anniversary of the issuance of the first California Department of Real Estate final public report for the Development.

(ii) Initial Board Appointment. Beginning with the first anniversary of the issuance of the first California Department of Real Estate final public report for the Development, Declarant may appoint a majority of the members of the Architectural Review Committee. The remaining member of the Architectural Review Committee shall be appointed by members of the Association Board other than Declarant or Declarant's representative.

(iii) Full Board Appointments. At the earlier to occur of: (A) the conveyance by Declarant of ninety percent (90%) of the Lots within the Development; or (B) the fifth (5<sup>th</sup>) anniversary date of the original issuance of the California Department of Real Estate final public report for the Development, the Architectural Review Committee shall become a committee of the Association and all members of the Committee shall be appointed by the Board of Directors.

(b) Board as Committee. If at any time there shall not be a duly-constituted Architectural Review Committee, the Board shall exercise the functions of the Architectural Review Committee in accordance with the terms of this Article.

8.3 Duties. It shall be the duty of the Architectural Review Committee to consider and act upon proposals or plans submitted to it, to perform other duties delegated to it by the Board, and to carry out all

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other duties imposed upon it by this Declaration. All decisions regarding proposed Improvements shall be made in good faith and shall not be unreasonable, arbitrary, or capricious.

8.4 Meetings. The Architectural Review Committee shall meet as necessary to properly perform its duties hereunder. Every act done or decision made by a majority of the members of the Architectural Review Committee shall be the act or decision of the Architectural Review Committee. The Architectural Review Committee shall keep and maintain a record of all actions taken by it at such meetings or otherwise. The Architectural Review Committee and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Architectural Review Committee function.

8.5 Architectural Rules. The Board of Directors may, from time to time, adopt, amend, and repeal rules and regulations to be known as Architectural Rules. The Architectural Rules shall interpret and implement the provisions of this Article by setting forth the standards and procedures for Architectural Review Committee review and guidelines for architectural design, placement of Residences and other structures, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Development; provided, however, that the Architectural Rules shall not be in derogation of the minimum standards required by this Declaration. The Architectural Rules may also impose limits on the days and hours of construction and impose any other restrictions and regulations which the Board deems appropriate to limit the impact of construction activities on the Residents.

8.6 Application. Any Owner proposing to perform any work of any kind whatever, which requires prior approval pursuant to this Article, shall apply for approval by notifying the Association, in writing, of the nature of the proposed work and furnishing such information and documentation as the Architectural Review Committee or Board may require, including without limitation samples of proposed paints in such sizes and formats as the Committee or the Board may deem appropriate. In accordance with subsection 10.5(c), and in addition to any other remedies the Association may have, the Board may impose a fine against any Owner who fails to submit an application, and obtain the required approval thereof, prior to proceeding with any Improvement for which approval is required pursuant to this Article. Except as provided in the last sentence of subsection 8.1(b)(i), any Owner who paints his or her Residence or any other Improvement without first submitting an application and obtaining the approval required by this Article may be required, in the Board's discretion, to repaint the Residence or Improvement.

8.7 Fees. The Architectural Review Committee may charge a reasonable fee or fees for its review of architectural or landscaping applications, drawings, plans, and specifications which may include the cost of retaining outside consultants including but not limited to architects, engineers, soils experts, or contractors. In addition to review fees, the Architectural Review Committee may require an Owner to post a deposit for major or even minor Improvements when submitting plans to the Committee to ensure compliance with the Architectural Rules and this Declaration. The Committee shall establish a schedule or formula for determining a different amount of the deposit, and may require a separate deposit for proposed landscaping improvements. Owners acknowledge that all or a portion of any deposit may be forfeited to the Association if the Owner fails to properly and timely complete works of Improvement in accordance with approved plans and specifications or if an Owner or an Owner's agents cause damage to the Common Area. Prior to any deposit forfeiture, the Architectural Review Committee shall provide the Owner with notice and an opportunity to be heard, in accordance with California Civil Code Section 1363(h).

8.8 Grant of Approval. The Architectural Review Committee shall grant the requested approval only if:

(a) Application. The Owner has complied with the application submission procedures established by this Declaration and any applicable Architectural Rules;

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(b) Plans and Specification. The Architectural Review Committee finds that the plans and specifications conform to both (i) this Declaration, and (ii) the Architectural Rules in effect at the time such plans were submitted to the Committee, unless a variance is granted from such Architectural Rules pursuant to Section 8.18;

(c) Aesthetics and Workmanship. The Architectural Review Committee determines that the proposed Improvements would be consistent with the standards of the Development and the purposes of this Declaration as to workmanship, design and materials, as to harmony of exterior design with the existing structures, and as to location with respect to topography and finished grade elevations; and

(d) Compliance With Law. The decision regarding the requested approval of the proposed Improvement does not violate any governing provision of law, including but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), or a building code or other applicable law governing land use or public safety, and is in conformance with California Civil Code Sections 1353.7 and 1353.8.

8.9 Form of Approval. All approvals and denials of requests for approval shall be in writing and no verbal approval of a request for approval is permitted by any member of the Architectural Review Committee or the Association. The Architectural Review Committee may approve a request for approval subject to the Owner's consent to any modifications made by the Architectural Review Committee. If the Owner does not consent to the modifications, the request for approval shall be deemed denied in its entirety.

8.10 Appeal of Denial to Board of Directors. In accordance with California Civil Code Section 1378(a)(5), unless the Architectural Review Committee is comprised of the members of the Board of Directors, who make their decision at a Board meeting, if an Owner's Improvement application is disapproved by the Architectural Review Committee, the applicant shall be entitled to request reconsideration by the Association's Board of Directors. The Board shall consider the reconsideration request at a meeting held in accordance with California Civil Code Section 1363.05.

8.11 Time for Architectural Review Committee Action. Any request for approval which has not been acted upon by the Architectural Review Committee within forty-five (45) days from the date of receipt thereof by the Architectural Review Committee shall be deemed approved. The Owner requesting approval shall have the burden of establishing the date of receipt of the request for approval by the Architectural Review Committee by evidence in the form of either a copy of such request for approval date-stamped by the Association or by a return receipt provided by the U. S. Postal service acknowledging that such request for approval was delivered to the Association.

8.12 Commencement. Upon receipt of approval pursuant to this Article, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all installation, construction, reconstruction, refinishing, alterations, and excavations pursuant to such approval, commencement to occur, in all cases, within ninety (90) days from the effective date of such approval or upon such later date as the Board may in its discretion designate. If the Owner shall fail to comply with this Section, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of the time for commencement, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

8.13 Completion. The Owner shall, in any event, complete the installation, construction, reconstruction, refinishing, or alteration of any Improvement, within one (1) year after commencing construction thereof, except and for as long as such completion is rendered impossible or would result in

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great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this Section, the Board shall proceed as though the failure to complete the Improvements was a non-compliance with approved plans.

8.14 Inspection. Inspection of work and correction of defects therein shall proceed as follows:

(a) Owner's Notice of Completion. Upon the completion of any installation, construction, reconstruction, alteration, or refinishing of the exterior of any Improvements, or upon the completion of any other work for which approved plans are required under this Article, the Owner shall give written notice thereof to the Architectural Review Committee.

(b) Committee Inspection. Within sixty (60) days after the receipt of such written notice, the Architectural Review Committee, or its duly authorized representative, may inspect such Improvement to determine whether it was installed, constructed, reconstructed, altered, or refinished to substantial compliance with the approved plans. If the Architectural Review Committee finds that such installation, construction, reconstruction, alteration, or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying particulars of non-compliance and shall require the Owner to remedy such non-compliance.

(c) Hearing Regarding Non-Compliance. If the Owner shall have failed to remedy such non-compliance upon the expiration of thirty (30) days from the date of such notification, the Architectural Review Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing date shall be not more than thirty (30) nor less than fifteen (15) days after notice of the non-compliance is given to the Board by the Architectural Review Committee. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner, to the Architectural Review Committee and, in the discretion of the Board, to any other interested party.

(d) Determination of Non-Compliance. At the hearing the Owner, the Architectural Review Committee and, in the Board's discretion, any other interested person, may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is a non-compliance, and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either, grant a variance for such non-compliant Improvement, remove the non-complying Improvement, or remedy the non-compliance and all expenses incurred in connection therewith shall be assessed against the Owner as a Reimbursement Assessment.

(e) Failure to Notify Owner of Non-Compliance. If, for any reason, the Architectural Review Committee fails to notify the Owner of any non-compliance within sixty (60) days after receipt of a notice of completion from the Owner, the Improvement shall be deemed to be in accordance with the approved plans. The Owner shall have the burden of establishing the date of receipt of the notice of completion by the Architectural Review Committee by evidence in the form of either a copy of such notice date-stamped by the Association's office or by a return receipt provided by the U. S. Postal service acknowledging that such notice was delivered to the Association.

8.15 Non-Waiver. The approval by the Architectural Review Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Review Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

8.16 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall provide an Owner with an estoppel certificate, certifying (with respect to any Lot of such Owner) that as of the date thereof, either: (i) all Improvements made and other work completed by such Owner comply with this Declaration, or (ii) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in a Lot through him, shall be entitled to rely on such certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.

8.17 Liability. Neither Declarant, Association, Board, the Architectural Review Committee nor any member or representative thereof shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development of any portion of the Development; or (iv) the execution and filing of an estoppel certificate pursuant to Section 8.16, whether or not the facts therein are correct; provided, however, that the Architectural Review Committee, the Board or any member or representative thereof has acted in good faith on the basis of such information as may be possessed by it or him. Without in any way limiting the generality of the foregoing, the Architectural Review Committee, the Board or any member or representative thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Review Committee. Every Owner, by acquiring title to a Lot or portion thereof agrees not to bring any action or suit against Declarant, Association, Board, the Architectural Review Committee, or their members or representatives seeking to recover any such damages.

#### 8.18 Variances.

(a) Reasonable Variances. The Architectural Review Committee, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article and those minimum construction standards in Article 5, excluding those required by the County, in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships.

(b) Criteria for Variances. The Architectural Review Committee must make a good faith written determination that the variance is consistent with one (1) or more of the following criteria: (i) the requested variance will not constitute a material deviation from any restriction contained herein or that the variance proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) that the variance relates to a requirement land use restriction or minimum construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances; or (iii) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect, to any other Lot or Common Area within the Development. At the request of the Architectural Review Committee the Association Board is authorized and empowered to execute and Record a notice of any variance granted pursuant to this Section in a form acceptable to the County Recorder's Office.



8.19 Compliance With Governmental Requirements. The application to the Architectural Review Committee, and the review and approval of any proposals, plans, or other submittals, shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which lies solely with the respective Owner, nor shall it constitute the assumption of any responsibility by or impose any liability on Declarant, Association, Board, the Architectural Review Committee, or their members as to the accuracy, efficacy, or sufficiency of such proposals, plans or other submittals.

## **ARTICLE 9                      EASEMENTS**

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9.1 Easements in General. In addition to all easements reserved and granted on the Subdivision Map and the easements specified in Article 3, there are hereby specifically acknowledged, reserved and granted for the benefit of the Lots and the Owners in common and for each Lot and Owner severally, and for the Association, as their respective interests shall exist, the easements and rights of way as particularly identified in this Article.

9.2 Utility Easements. Easements over and under the Development or any portion thereof for the installation, repair, maintenance, and replacement of (i) electric, telephone, telecommunications, water, gas, and sanitary sewer lines, meters, and facilities, (ii) cable lines and facilities, (iii) drainage facilities, (iv) walkways, and (v) landscaping, as shown on the Subdivision Map, and as may be hereafter required or convenient to service the Development, are reserved by and shall exist in favor of the Association, together with the right to grant and transfer the same. The Association shall maintain all utility installations located in the Common Area except for those installations maintained by utility companies, public, private, or municipal.

9.3 Easements Granted by Board.

(a) Non-Exclusive Easements. The Board shall have the power to grant and convey to any person or entity easements and rights of way, in, on, over, or under the Common Area and Association Maintenance Area for the purpose of (i) constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, telecommunications, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and (ii) for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association. Each Owner, in accepting a deed to a Lot, expressly consents to such easements and rights of way. No such easements may be granted if they would materially interfere with the use, occupancy, or enjoyment by an Owner or Resident of his or her Lot without the consent of the affected Owner of the Lot.

(b) Exclusive Use Common Area Easements. Subject to the restrictions imposed by California Civil Code Section 1363.07, the Board shall have the authority to execute and Record a maintenance agreement designating portions of the Common Area as "exclusive use common area," for the benefit of an appurtenant Lot, for the purpose of promoting an efficient division of the use and maintenance responsibilities between the Owners and the Association. A maintenance agreement may be made with any Owner of adjacent property, including Declarant.

9.4 General Association Easements for Maintenance, Repair and Replacement. The Association shall have a non-exclusive easement in, on, over or under every Lot as reasonably necessary to (i) maintain and repair the Common Area and Association Maintenance Area, (ii) perform maintenance upon a Lot which

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is not performed by its Owner as provided by Section 7.4 and Section 7.6, and (iii) otherwise perform its obligations under this Declaration.

9.5 Utility Maintenance and Repair Easements. Wherever sanitary sewer connections or water connections or electricity, gas or telephone, television lines or drainage facilities are installed within the Development, which connections, lines or facilities, or any portion thereof, lie in or upon Lots owned by other than the Owner of the Lot served by said connections, the Owners of any Lots served by said connections, lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter such Lots or to have utility companies enter therein, or any portion thereof, to repair, replace and generally maintain said connections as and when the same may be necessary. Wherever sanitary sewer house connections and/or water Residence connections or electricity, gas or telephone lines or drainage facilities are installed within the Development, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his Lot. All utility companies having easements on the property covered by this Declaration shall have easements for cleaning, repairing, replacing, and otherwise maintaining or causing to be maintained service in all underground utility lines, including, when reasonably necessary, the entry into an improvement constructed upon a Lot for uncovering any such lines. Any Owner or utility company exercising the rights granted in this Section shall be obligated to restore the Lot and the Residence entered to substantially its former condition.

9.6 Encroachment Easements. The Association Maintenance Area, Common Area and each Lot within the Development is hereby declared to have an easement over all adjoining Lots, Association Maintenance Area, and the Common Area for the purpose of accommodating any minor encroachment due to engineering errors, errors in original construction, settlement or shifting of structures, or any other similar cause. There shall be valid easements for the maintenance of such encroachments as long as they shall exist. Notwithstanding the preceding, in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if such encroachment occurred due to the wilful misconduct of such Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots, Association Maintenance Area or Common Area shall be permitted and that there shall be valid easements for the maintenance of such encroachments so long as they shall exist.

9.7 Private Roadway Easement. Declarant hereby reserves for the benefit of each Lot a non-exclusive easement for ingress, egress, by foot or vehicle over the Private Roadway, to and from each Lot and the public roadway.

9.8 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Lot.

## ARTICLE 10 ENFORCEMENT

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10.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance. In addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association, its officers, the Board or by any Owner. The Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole.

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10.2 Violation of Law. Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

10.3 Owners' Responsibility for Conduct and Damages. Each Owner shall be fully responsible for informing members of his or her household and his or her tenants, contractors and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or intentional conduct of any of them or any household pets. If a Lot is owned jointly by two (2) or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.

10.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Lot.

10.5 Rights and Remedies of the Association.

(a) Rights Cumulative. The Association, its Directors, officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive. The Board shall not be obligated to take action to enforce a provision of the Governing Documents if, in the exercise of discretion, the Board determines that acting to enforce the provision is not likely to foster or protect the interests of the Association and its Members as a whole.

(b) Member Not In Good Standing. Upon a determination by the Board of Directors, after prior notice to the affected Member and an opportunity for a hearing, that such Member has violated any provision of the Governing Documents including a failure to pay any Assessment when due, the Board shall give notice in writing to such Member that he or she is deemed not to be a Member in Good Standing. Such Member shall be deemed to remain in that status until such time as the Board shall determine in writing that the violation which resulted in the Board's determination has been cured or remedied or, on some other basis as in the judgment of the Board is just and proper, that such Member shall again be deemed to be a Member in Good Standing of the Association. Such Member shall be so notified in writing with a copy given to the Secretary.

(c) Imposition of Sanctions. In the event of a breach or infraction of any provision of the Governing Documents by an Owner, members of an Owner's household, or his or her tenants, contractors, guests, pets or invitees, the Board shall have the power to impose sanctions against the Owner. Such sanctions may include, without limitation, the imposition of fines and/or the suspension of an Owner's rights as a Member, including an Owner's voting rights or an Owner's right to use the Common Area. Except as provided in Section 10.7, below, imposition of sanctions shall be effective only after the Board has held a hearing as provided in California Civil Code Section 1363. The payment of any such fine may be enforced as an Enforcement Assessment as provided in Section 6.8 of this Declaration as well as in any manner permitted by law. Further, each Owner shall be obligated to pay Reimbursement Assessments levied by the Board for reimbursement of any costs incurred by the Association relating to violation of any provisions of the Governing Documents by such Owner, members of such Owner's household, or his or her tenants, contractors, guests, pets or invitees.

(d) Inadequacy of Legal Remedy. Except for the non-payment of any Assessment levied pursuant to the provisions of Article 6 of this Declaration, it is hereby declared that a remedy at law

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to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner or a member of the household of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association, its officers or Board of Directors, or by any Owner or by their respective successors in interest.

(e) Limitation on Disciplinary Rights. The Association shall not have the power and authority to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Lot as the result of the failure by such Owner, members of such Owner's household, or his or her tenants, guests, invitees or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Association pursuant to Article 6 of this Declaration. The provisions of this subsection shall not affect the Association's right to impose fines or monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.

10.6 Disciplinary Rules. The Board or a committee appointed by the Board for that purpose may adopt rules and regulations that further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Association for violation of provisions of the Governing Documents. Such rules, when approved and adopted by the Board, shall be deemed to be a part of the Association Rules provided for in, and constituting a part of, the Governing Documents.

10.7 Emergency Situations. The following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development, (ii) a traffic or fire hazard, or (iii) a threat of material damage to or destruction of the Development or any portion thereof. Notwithstanding any other provisions of the Governing Documents, under circumstances involving conduct that constitutes an emergency situation, the Association may undertake immediate corrective action. Hearings with respect to such corrective action shall be held following the corrective action in accordance with California Civil Code Section 1363, and no disciplinary action may be taken without compliance with California Civil Code Section 1363(h).

10.8 Alternative Dispute Resolution. California Civil Code Section 1363.810 et. seq. and Section 1369.520 et seq. shall be complied with respect to any dispute subject to such Sections.

10.9 Non-Waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.

10.10 Notices. Any notices required or given under this Article shall, at a minimum, set forth the date, time, and location of any hearing, a brief description of the act or omission constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision or provisions alleged to have been violated, and the sanction, disciplinary action, or other enforcement action being contemplated by the Board, if any. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice to the affected Member; provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid, sent to the most recent address for the affected Member as shown on the records of the Association.

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10.11 Costs and Attorneys' Fees. In the event any action is taken to enforce any of the provisions of the Governing Documents, the prevailing party shall be entitled to recover the full amount of all costs incurred, including attorneys' fees, in enforcing any Governing Document provision. The remedies of the Association to recover the amount of such costs and attorneys' fees shall include, without limitation, the imposition of a Reimbursement Assessment as provided in Section 6.7 of this Declaration.

10.12 Owner Indemnification. Each Owner, by acceptance of his or her deed, agrees for himself or herself and for the members of his or her household, his or her tenants, guests or invitees, to (i) indemnify each and every other Owner for, (ii) to hold each and every other Owner harmless from, and (iii) to defend each and every other Owner against, any claim of any person for personal injury or property damage occurring within the Lot of such Owner, except that such Owner's liability may be diminished to the extent that the injury or damage occurred by reason of the negligence of any other Owner or person temporarily visiting in such Lot or is fully covered by insurance.

10.13 No Obligation to Enforce. None of the provisions of this Declaration shall obligate or be construed to obligate Declarant, or its respective agents, representatives or employees, to undertake any affirmative action to enforce the provisions of this Declaration, or to undertake any remedial or corrective action with respect to any actual or asserted violation hereof or thereof.

### **ARTICLE 11                      INSURANCE**

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11.1 Types of Insurance Coverage. The Association shall, at the discretion of the Board of Directors, purchase, obtain and maintain the following types of insurance, if and to the extent they are available at a reasonable premium cost:

(a) Property Insurance. The Association shall obtain and maintain a master or blanket policy of property insurance, written on all risk, replacement cost basis, on all Common Area and Association Maintenance Area, and all Improvements within the Development for which the Association has an obligation to maintain or insure. The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall be redetermined on an annual basis. Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this Section shall contain an agreed amount endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction. The policies required hereunder shall name as insured the Association and all Mortgagees as their respective interests may appear. The policies may contain a loss payable endorsement in favor of the trustee described in Section 11.4 below.

(b) General Liability Insurance. To the extent such insurance is reasonably obtainable, a policy of comprehensive general liability insurance naming as parties insured the Association, each member of the Board of Directors, any manager, the Owners and occupants of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and Association Maintenance Area and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and

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any other liability or risk customarily covered with respect to common interest development projects similar in construction, location, facilities, and use.

(c) Director's and Officer's Liability Insurance. To the extent such insurance is reasonably obtainable the Association shall maintain individual liability insurance for its Directors and officers providing coverage for negligent acts or omissions in their official capacities. The minimum coverage of such insurance shall be at least One Million Dollars (\$1,000,000.00).

(d) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this subsection, demolition, flood, earthquake, and workers' compensation insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than three (3) months operating expenses and one hundred percent (100%) of the Association's reserves and shall contain an endorsement of any person who may serve without compensation.

(e) Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by Section 11.1 is for any reason unavailable, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage hereinabove described. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

11.2 Copies of Policies. Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

11.3 Individual Owner's Property Insurance. Each Owner shall purchase and at all times maintain a policy of property insurance insuring the Owner's Lot, Residence, any Improvements to the Owner's Lot, and personal property. An Owner's individual insurance coverage shall be at least equal to an "HO-3" homeowners' policy.

11.4 Trustee. All insurance proceeds payable under Section 11.1, above, and subject to the rights of Mortgagees under Article 13, below, may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank or financial institution in the County that agrees in writing to accept such trust.

11.5 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 11.1, above. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

## **ARTICLE 12                      DAMAGE OR DESTRUCTION; CONDEMNATION**

12.1 Damage to or Destruction of Association Maintained Improvements. In the event of damage to or destruction of any Improvement to the Common Area, the Association Maintenance Area, or to any other real property owned by the Association, the Board shall determine whether to repair or replace the damaged or destroyed Improvement. If the such damage or destruction was covered by insurance and the proceeds are insufficient to cover the costs of repair or replacement of the damaged or destroyed Improvement, and if the Board elects to repair or replace the Improvement, the Association may levy a Special Assessment as provided in this Declaration to cover costs not covered by the insurance proceeds. If

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the Board elects not to repair or replace the Improvement, the applicable insurance proceeds shall be used for the benefit of the Association as determined by the Board.

12.2 Damage to or Destruction of Owner Maintained Improvements. In the event of damage to or destruction to the Improvements on any Lot, the Owner of the Lot shall (i) repair or rebuild the Improvements to the state in which they existed prior to the damage or destruction, or in such other manner as may be approved by the Architectural Review Committee in accordance with Article 8 of this Declaration, or (ii) completely remove all remaining portions of the damaged or destroyed Improvements from the Lot. Repair, rebuilding, or removal shall be commenced within a reasonable time, which shall in no event exceed one (1) year after the occurrence of the damage or destruction and shall be completed within one (1) year after the date of commencement unless a longer period permitted by the Board.

12.3 Condemnation of Common Area or Association Maintenance Area. If at any time all or any portion of any Common Area, Association Maintenance Area, or any interest therein, is taken for a public or quasi-public use, under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the entire compensation or award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement among the condemning authority, the Association and each of the affected Owners, shall be paid to the Association. The Association shall represent the interests of all Owners in any proceedings relating to such matters.

12.4 Condemnation of Lots. If an entire Residence or Lot (or so much thereof as to render the remainder unfit for use as a Residence) is condemned or taken for a public or quasi-public use pursuant to any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, the that Lot Owner's membership in the Association shall terminate as of the last day of the month in which the condemnor obtains the right to possession, or upon Owner's vacating the Lot, whichever occurs last. If only a portion of the Lot is taken and the remainder is fit for use as a Residence, the Owner shall continue to be a Member of the Association. In any condemnation action involving a Lot, the Association shall have the right to seek compensation for any damages incurred by the Association.

12.5 Appraisals. Where the provisions of this Article require an independent appraisal of property, the appraisal shall be made by a licensed real estate appraiser selected by the Board.

## **ARTICLE 13                      PROTECTION OF MORTGAGEES**

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13.1 Amendments Affecting Mortgages. No amendment of this Declaration shall affect any of the rights of the holder of any Mortgage which is made in good faith and for value, if such Mortgage is Recorded prior to the Recording of such amendment.

13.2 Default by Owner; Mortgagee's Right to Vote. In the event of a default by any Owner under a Mortgage encumbering such Owner's Lot, the Mortgagee under such Mortgage shall, upon: (a) giving written notice to the defaulting Owner; (b) Recording a Notice of Default in accordance with California Civil Code Section 2924; and (c) delivering a copy of such Recorded Notice of Default to the Association, have the right to exercise the vote of the Owner at any regular or special meeting of the Association held only during such period as such default continues.

13.3 Breach; Obligation After Foreclosure. No breach of any provision of this Declaration by Declarant, the Association or any Owner shall impair or invalidate the lien of any Recorded Mortgage made in good faith and for value and encumbering any Lot. Declarant, Owners, and the Association and their successors and assigns, shall be obligated to abide by all of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes

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provided for in this Declaration with respect to any person who acquires title to or any beneficial interest in any Lot through foreclosure, trustee's sale or otherwise.

13.4 Right to Examine Books and Records of the Association. All Mortgagees, insurers and guarantors of any Mortgages on any Lot shall have the right, upon written request to the Association, to:

- (a) Association Records. Examine current copies of the Governing Documents and the Association's books, records and financial statements, during normal business hours;
- (b) Financial Statements. Require the Association to provide an audited statement for the preceding fiscal year; and
- (c) Notice of Meetings. Receive a written notice of all meetings of the Association and designate a representative to attend all such meetings.

13.5 Declaration to Conform With Mortgage Requirements. It is the intent of this Article that the Governing Documents and the development in general, shall now and in the future meet all requirements of any institutional Mortgagee intending to secure its Mortgage by a Lot or necessary to purchase, guarantee, insure or subsidize any Mortgage of a Lot by FREDDIE MAC, FANNIE MAE or the Veterans' Administration. The provisions of this Article may be amended solely by the vote of the Board of Directors in order to conform to any requirements of the secondary lender market.

### **ARTICLE 14                      ANNEXATIONS AND SUPPLEMENTAL DECLARATIONS**

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14.1 Annexation of Other Property. Real property which is not subject to this Declaration may annex to and become subject to this Declaration with the approval by vote or written consent of (1) the property owner, (2) Members entitled to exercise not less than two-thirds of the voting power of each class of membership of the Association, and (3) the Board of Directors. After the Class B membership has ceased, the approval of the Members required by this Section shall require the affirmative vote of at least two-thirds of the voting power of Members other than Declarant. Upon obtaining the requisite approval of the Members pursuant to this Section, the owner of the annexing property shall Record a Declaration of Annexation and, if appropriate, a Supplemental Declaration, as more particularly described in Section 14.3, below.

14.2 Declarations of Annexation. To effectuate an annexation, a Declaration of Annexation shall be Recorded covering the applicable portion of the annexing real property. The Declaration of Annexation shall identify the Lots and Common Area, if any, within the annexing property, and shall be signed by the owner of the annexing property and, in cases where membership and Board approval are required, shall include a certificate, signed by any two (2) officers of the Association attesting to the fact that the required Member and Board approval has been obtained. A Declaration of Annexation may include a Supplemental Declaration which adds or modifies restrictions and rights with respect to the annexing property.

14.3 Supplemental Declarations. A Supplemental Declaration may be Recorded against all or any portion of the Development or any annexing property, upon the written consent of the Owners. The Supplemental Declaration may include restrictions which are different from the restrictions contained in this Declaration. A Supplemental Declaration may not alter the general common plan or scheme created by this Declaration, revise any restriction imposed by a governmental entity as a condition of Subdivision Map approval (without the consent of that entity) or revoke the covenants, conditions and restrictions imposed by this Declaration with respect to portions of the Development already subject to this Declaration.



**ARTICLE 15                      DECLARANT'S DEVELOPMENT RIGHT**

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15.1     Declarant's Right to Develop the Development. The Association and Owners shall not do anything to interfere with the right of Declarant to subdivide, sell, or rent any portion of the Development, or the right of Declarant to complete excavation, grading, construction of Improvements or other development activities to and on any portion of Development or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Development so long as any Lot or any portion of the Development is owned by Declarant. Such right shall include, but shall not be limited to, all grading work as may be approved by the County or other agency having jurisdiction, and erecting, constructing and maintaining on or within the Development such structures, signs and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise. Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction or installation by Declarant may impair the view of such Owner, and hereby consents to such impairment.

15.2     Use of Common Area and Association Maintenance Area by Declarant. Declarant may enter upon the Common Area and Association Maintenance Area to complete the development, improvement and sale of Lots and the construction of any landscaping or other Improvement to be installed on the Common Area or Association Maintenance Area. Declarant shall also have the right of nonexclusive use of the Common Area and Association Maintenance Area without charge, for sales, display, access, ingress, egress, exhibition and occasional special events for promotional purposes, which right Declarant hereby reserves; provided, however, that such use rights shall terminate on the date on which Declarant no longer owns any Lots within the Development. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein and all direct costs and expenses associated with Declarant's sales and promotional activities (including, without limitation, any costs or expenses required to clean or repair any portion of the Common Area or Association Maintenance Area that are damaged or cluttered in connection with such activities) shall be borne solely by Declarant and any other sponsor of the activity or event. The rights reserved to Declarant by this Section shall extend to any employee, sales agents, prospective purchasers, customers and/or representatives of Declarant.

15.3     Amendment of Development Plans. Declarant may amend its plans for the Development and apply for changes in zoning, use and use permits, for any property within the Development.

15.4     Independent Design Review. For so long as Declarant has the right to appoint any members of the Architectural Review Committee, Declarant shall have the right to initiate action to correct or prevent any activity, condition or Improvement that is not in substantial compliance with approved plans and specifications to the same extent as the Association, after having a reasonable opportunity to do so, does not initiate enforcement action.

15.5     Disclaimer of Declarant's Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth in a Recorded instrument with the County Recorder, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Development may or will be carried out, or that any land now controlled or owned or hereafter controlled or acquired by Declarant is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

15.6     No Amendment or Repeal. So long as Declarant owns any portion of the Development, the provisions of this Article may not be amended or repealed without the consent of Declarant.

**ARTICLE 16                      AMENDMENT**

---

16.1 Amendment Before First Conveyance. Before the conveyance of the first Lot within the Development to a purchaser other than Declarant, and subject to the County approval requirements of subsection 16.2(c), below, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant of an instrument amending or revoking the Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be Recorded.

16.2 Amendment After First Conveyance. After the conveyance of the first Lot within the Development to a purchaser other than Declarant, this Declaration may be amended or revoked in any respect upon compliance with the following provisions:

(a) Member Approval Requirements. Except as provided in this Section, any amendment to this Declaration shall be approved by the vote or assent by written ballot of an Absolute Majority, including the holders of not less than a majority of the Total Voting Power of each class of Members. If a two-class voting structure is no longer in effect in the Association because of the conversion of Class B membership to Class A membership, as provided in the Association's Bylaws, any amendment thereof will require the vote or assent by written ballot of both: (i) an Absolute Majority of the Association; and (ii) the vote of a majority of the Total Voting Power held by Members other than Declarant. Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

(b) Additional Approvals of Declarant for Amendments to Particular Provisions. For so long as Declarant owns a Lot within the Development the provisions of Articles 15 and 16 may not be amended without the prior written consent of Declarant.

(c) Additional Approvals by County for Amendments to Particular Provisions. The provisions of Sections 5.9, 7.1(a), Article 6, this subsection 16.2(c), and 17.1, and any other provision of this Declaration which relates to a County Condition of Approval for the Subdivision Map, may not be amended without the prior written consent of the County.

(d) Right of Amendment if Requested by Governmental Mortgage Agency or Federally Chartered Lending Institutions. Anything in this Article to the contrary notwithstanding, Declarant and the Association reserve the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by Governmental Mortgage Agencies which require such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot. Any such amendment shall be effectuated by the Recordation, by Declarant or the Association, of a Certificate of Amendment duly signed by or on behalf of the authorized agents, or authorized officers of Declarant or the Board, as applicable, with their signatures acknowledged, specifying the Governmental Mortgage Agency, or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when Recorded, shall be binding upon all of the Lots and Common Area comprising the Development and all persons having any interest therein.

(e) Right of Amendment if Requested by County. Anything in this Article to the contrary notwithstanding, Declarant and the Association reserve the right to amend all or any part

## EXHIBIT 4

of this Declaration to such an extent and with such language as may be requested by the County to reflect a modification of the development permits which requires a conforming amendment to this Declaration. Any such amendment shall be effectuated by the Recordation of a Certificate of Amendment duly signed by or on behalf of the authorized agents, or authorized officers of Declarant, or the Association as applicable, with their signatures acknowledged, specifying the County requested the amendment and setting forth the amendatory language requested by the County. Recordation of such a Certificate shall be deemed conclusive proof of the County's request for such an amendment, and such Certificate, when Recorded, shall be binding upon all of the real property comprising the Development and all persons having an interest therein.

(f) Right of Amendment by Board. The Board of Directors may, without the approval of the Members, amend any part of this Declaration to the limited extent necessary to comply with a change in applicable federal, state or local legislation, and to correct typographical errors.

16.3 Restatements. This Section describes the methods for restating the Declaration after an amendment.

(a) General. The Board has the right, by resolution without the necessity of consent by the Members, to restate this Declaration when it has been properly amended pursuant to its requirements for amendment. Such restatement shall be effective upon execution of the restatement by any two (2) officers of the Association and its Recordation. Upon Recordation of the restatement, the restatement shall supersede the prior declaration and its amendments in their entirety, without, however, affecting the priority of the Declaration in the chain of title to all real property subject to the Declaration as established by the Declaration's initial date of Recordation.

(b) Form of Restatement. The restatement shall restate the entire text of the original document, with these exceptions: (i) changes incorporating all amendments approved by the Owners; (ii) changes made to rearrange or delete the text for consistency with the approved amendments; (iii) changes made to delete material no longer legally effective or legally required, such as the provisions described in Article 15 once Declarant no longer owns any portion of the Development; (iv) the addition of a statement that the Board has authorized the restatement pursuant to this Section; (v) changes made to delete any provision declared illegal by constitutional or statutory enactment, by regulation, or by controlling judicial opinion; and (vi) changes needed to distinguish the restatement from the original document, such as title, section, or subsection numbering changes.

16.4 Department of Real Estate. An amendment to this Declaration, Bylaws, or other governing instruments of the Association shall require immediate notification of the California Department of Real Estate in accordance with Section 2800 of the Commissioner's Regulations so long as the Development, or any portion thereof, is subject to an outstanding Final Subdivision Public Report.

16.5 Effective Date of Amendment. The amendment will be effective upon the Recording of a Certificate of Amendment, duly executed and certified by any two (2) officers of the Association setting forth in full the amendment so approved and that the approval requirements of this Article have been duly met. If the consent or approval of any governmental authority, Mortgagee, or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

16.6 Reliance on Amendment. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

**ARTICLE 17                      GENERAL PROVISIONS**

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17.1    Term. This Declaration continues in full force and effect unless an amendment terminating this Declaration is unanimously approved by the Owners and the County and Recorded in accordance with Article 16, above.

17.2    Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.

17.3    Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.

17.4    Statutory References. Any reference to a California or federal statute, code or regulation shall also incorporate and include and any successor statutes or laws.

*{The remainder of this page intentionally left blank}*

DATED: \_\_\_\_\_, 201\_.      **DECLARANT**

**JOHN W. HOOPER**

John W. Hooper

[illegible]

On \_\_\_\_\_, 201\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

# EXHIBIT 4

The undersigned, beneficiary under that certain deed of trust Recorded April 14, 2009, as Document No. 2009-001671, of the Official Records of Mono County, hereby consents to this Declaration of Covenants, Conditions and Restrictions for Rock Creek Canyon, and agrees that the lien of the deed of trust shall be junior and subordinate and subject to said Declaration.

DATED: \_\_\_\_\_, 201\_.

## BENEFICIARY

**WELLS FARGO BANK, N.A.**

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

[type or print name and title]

[illegible]

On \_\_\_\_\_, 201\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

**EXHIBIT "A"**

**BUDGET SUMMARY**

(see attached)

## BUDGET SUMMARY

PHASE NUMBER 1	DATE OF BUDGET August, 2012	DRE FILE NUMBER	
NUMBER OF LOTS/UNITS 12	TRACT NUMBER/NAME OF PROJECT Rock Creek Canyon		
	PER LOT/UNIT PER MONTH	TOTAL MONTHLY	TOTAL ANNUAL
100 FIXED COSTS			
101 Property Taxes			
102 Corporation Franchise Taxes	0.42	5.00	60
103 Insurance (attach proposal)*	16.39	196.67	2360
104 Local License & Inspection Fees			
105 Estimated Income Taxes			
100 - Sub Total	16.81	201.67	2420
200 OPERATING COSTS			
201 Electricity (attach work sheet)	2.55	30.59	367
Lighting: Leased			
202 Gas (attach work sheet)			0
203 Water (attach work sheet)			0
204 Sewer/Septic Tanks (include if not in 203)			
205 Cable TV/Master Antenna			
207 Custodial Area <i>Number of Restrooms:</i> Custodial Supplies			
208 Landscape Area (see page 15) Landscape Supplies	2.78	33.33	400
209 Refuse Disposal Vender Name: Telephone Number:			
210 Elevators Number:    Type:			
211 Private Streets, Driveways, Parking Areas Area:    39,600 sf	8.33	100.00	1200
212 Heating & Air Conditioning Maintenance Area:			
213 Swimming Pool <i>Number:        Size:        Mths. Heated:</i> <i>Spa        Number:        Size:</i> Swimming Pool/Spa Supplies			
214 Tennis Court <i>Number:</i>			
215 Access Control <i>Guard Hours per Day:</i> <i>No. of Motorized Gates:    Type:</i> <i>No. of Intercoms/Telephone Entry:</i>			0 0



	PER LOT/UNIT PER MONTH	TOTAL MONTHLY	TOTAL ANNUAL
216 Reserve Study *	5.56	66.67	800
217 Miscellaneous			
Minor Repairs	2.08	25.00	300
Drainage Maintenance	1.67	20.00	240
Septic Tank Pumped Every 5 Years	2.08	25.00	300
Snow Removal	5.00	60.00	720
218 Fire Sprinkler/Alarm Monitoring			0
Fire Sprinkler/Alarm Testing			0
Fire Extinguishers			0
<b>200 - Sub Total</b>	<b>30.05</b>	<b>360.59</b>	<b>4327</b>
<b>300 RESERVES</b>			
301-313 (attach reserve work sheet)	15.39	184.63	2216
<b>300 - Sub Total</b>	<b>15.39</b>	<b>184.63</b>	<b>2216</b>
<b>400 ADMINISTRATION</b>			
401 Management **	8.33	100.00	1200
402 Legal Services	10.42	125.00	1500
403 Accounting	8.33	100.00	1200
404 Education	4.17	50.00	600
405 Miscellaneous, office expense	4.00	48.00	576
<b>400 - Sub Total</b>	<b>35.25</b>	<b>423.00</b>	<b>5076</b>
<b>TOTAL (100-400)</b>	<b>97.49</b>	<b>1169.89</b>	<b>14039</b>
<b>500 CONTINGENCY</b>			
501 New Construction 3%	3.01	36.11	433
502 Conversions 5%			
503 Revenue Offsets (attach documentation)			
<b>TOTAL BUDGET</b>	<b>100.50</b>	<b>1206.00</b>	<b>14472</b>

The inventory and quantities used in the preparation of this budget are normally derived from plans completed prior to construction and may vary slightly from actual field conditions. The calculated budget is a good faith estimate of the projected costs and should be deemed reliable for no more than one year. The Board of Directors should conduct an annual review of the Association's actual costs and revise the budget accordingly.

DRE regulations allow the use of variable assessments against units only if one unit will derive as much as 10% more than another unit in the value of common goods and services supplied by the Association. After determining the percent of benefit derived from services provided (page 14) by the Association, an easy chart to follow would be:

Less than 10%.....equal assessments  
 from 10% to 20%.....variable or equal  
 Over 20%.....variable assessments

The budget and management documents indicate  
 (check appropriate box):

☒ equal assessments  
☐ variable assessments

\* Reserve Study to be conducted every three years for an estimated total cost of \$2400. The above figure represents 1/3 the total cost.

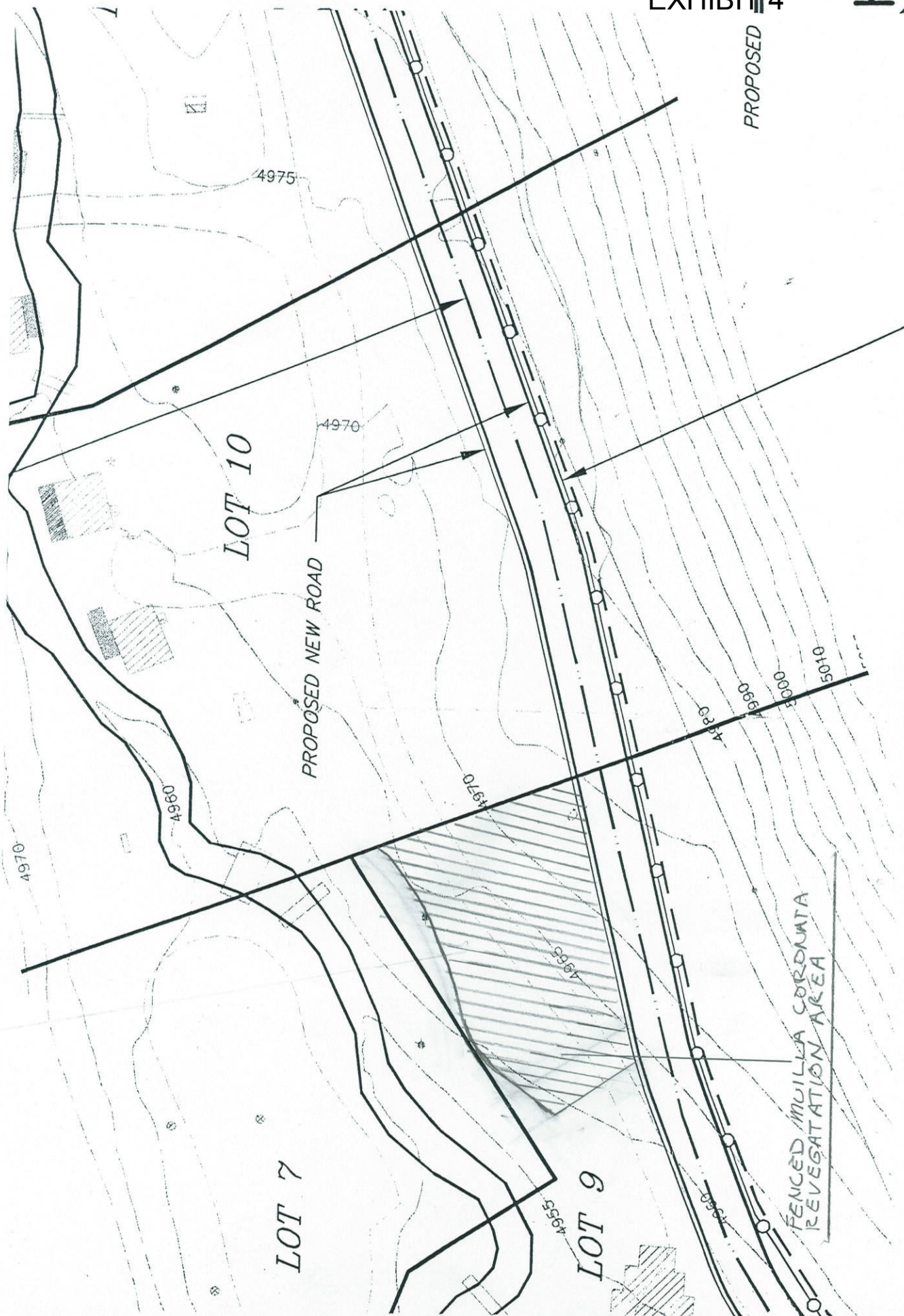
\*\* Depending upon the level of service selected by the Association, the amount shown may be insufficient to cover the cost and may be higher.

**EXHIBIT "B"**

**MULLA CORONADA RETENTION AREA**

(see attached)

PROPOSED



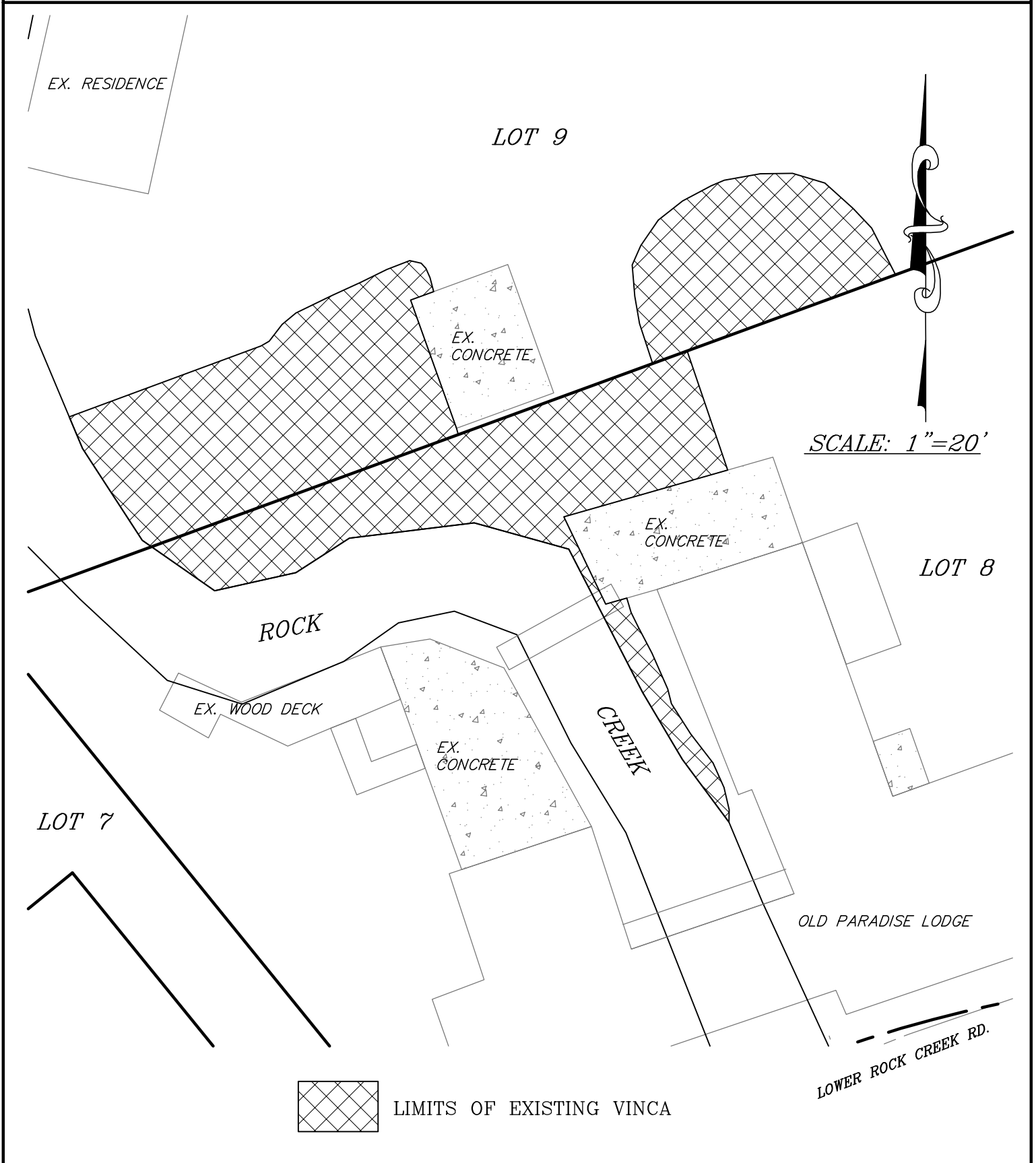
**EXHIBIT "C"**

**VINCA CONTROL BOUNDARIES**

(see attached)



ROCK CREEK CANYON  
HORTICULTURAL EXHIBIT





OFFICE OF THE CLERK  
OF THE BOARD OF SUPERVISORS

## REGULAR AGENDA REQUEST

Print

<b>MEETING DATE</b>	October 9, 2012	<b>DEPARTMENT</b>	Information Technology
<b>ADDITIONAL DEPARTMENTS</b>	County Counsel		
<b>TIME REQUIRED</b>	30 minutes	<b>PERSONS APPEARING BEFORE THE BOARD</b>	Nate Greenberg
<b>SUBJECT</b>	Digital 395 - LMPP: Revenue Generation and Incentive Concepts		

### AGENDA DESCRIPTION:

(A brief general description of what the Board will hear, discuss, consider, or act upon)

Review concepts and basis for generating revenue from Internet Service Providers, and/or incentivizing the development of certain projects through Franchise Fees and agreements.

### RECOMMENDED ACTION:

Receive feedback and direction to further develop applicable policies.

### FISCAL IMPACT:

None.

**CONTACT NAME:** Nate Greenberg

**PHONE/EMAIL:** (760) 924-1819 / [ngreenberg@mono.ca.gov](mailto:ngreenberg@mono.ca.gov)

SUBMIT THE ORIGINAL DOCUMENT WITH  
ATTACHMENTS TO THE OFFICE OF  
THE COUNTY ADMINISTRATOR  
**PRIOR TO 5:00 P.M. ON THE FRIDAY  
32 DAYS PRECEDING THE BOARD MEETING**

### SEND COPIES TO:

### MINUTE ORDER REQUESTED:

☐ YES ☒ NO

### ATTACHMENTS:

Click to download

 [Staff](#)

 [Concepts](#)

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**History**

Time	Who	Approval
9/24/2012 8:51 AM	County Administrative Office	Yes
10/2/2012 4:05 PM	County Counsel	Yes
10/3/2012 12:51 PM	Finance	Yes



**INFORMATION TECHNOLOGY  
COUNTY OF MONO**

P.O. Box 7657 - MAMMOTH LAKES, CALIFORNIA 93546  
(760) 924-1819 • FAX (760) 924-1801 • [ngreenberg@mono.ca.gov](mailto:ngreenberg@mono.ca.gov)

*Clay Neely*  
*Information Technology Director*

*Nate Greenberg*  
*GIS Coordinator*

To: Honorable Board of Supervisors

From: Nate Greenberg, GIS Coordinator & Digital 395 Project Manager

Date: October 1, 2012

**Subject**

Digital 395 – LMPP Workshop #4 : Revenue Generation and Incentive Concepts

**Recommendation**

Review concepts and basis for generating revenue from Internet Service Providers, and/or incentivizing the development of certain projects through Franchise Fees and agreements. Provide direction to staff for next steps.

**Discussion**

The purpose of this workshop is to present the Board with how the County may be able to utilize existing and future Franchise Agreements with service providers as a way to generate revenue and/or encourage the development of certain projects.

As part of the agreements, fees are paid to Mono County which are typically calculated based on a percentage of gross quarterly or annual receipts within a service area. The percentage amount can be determined (within reason) by the County, and the revenue generated from the fee used in the manner we see fit.

The purpose of this discussion is to review the differences between structuring these agreements in a way that focuses on revenue generation, versus incentivizing providers/projects, or striking a balance between them. In order to provide context for the discussion, some of the realities of project costs, and revenue generation will also be presented.

**Fiscal Impact**

None



# **Last Mile Provider Plan**

## **Revenue Generation & Incentive Concepts**

### **Workshop #4**



October 9, 2012



# WORKSHOP GOALS

1. Review current Franchise Agreements & revenue generation methods
2. Discuss differences between incentivizing and revenue generation
3. Receive further guidance on undergrounding intention and relate it to funding requirements
4. Receive feedback and direction from Board to begin shaping policies



# FRANCHISE AGREEMENTS

- Generate revenue for County via Franchise Fees in exchange for use of rights of way, etc.
- Includes Power and Cable TV/Internet providers
  - Independent agreements with power companies
    - SCE
    - Sierra Pacific Power
    - Valley Electric
  - DIVCA covers cable providers
    - Suddenlink
    - (Escape Broadband)



# FRANCHISE REVENUE

- Power companies
  - 2% of gross receipts arising from use, operation, or possession of franchise in County
- DIVCA
  - 2% in areas with 3,999 or less population
  - 3% in areas with 4,000 or more population
- Actual money raised

Power Companies	\$150,000/yr.
Cable/Internet Providers	\$5,000/yr.



# RAISING REVENUE vs. INCENTIVING

- Purpose of raising revenue
  - Use Franchise Fee as a way to secure funding to offset the cost of future projects, etc.
  - If raising revenue is a goal, impose a higher Franchise Fee
- Purpose of incentivizing
  - Use franchise fee as a way to encourage providers to carry out certain projects in certain manners
    - Hard to reach communities
    - Preferred technologies
    - Preferred distribution methods
  - Offer reduced Franchise Fees for providers/projects that fit the goals and objectives of the County



# INCENTIVE APPROACH

- Establish a blended % rate for Franchise Fee calculation based on the following:
  - **Community Tiering**
    - **Tier 1** : “Served” or high-value/high ROI communities
      - 5% Rate calculation
    - **Tier 2** : Other communities
      - 1% Rate calculation
  - **Distribution Method**
    - **Underground**: Fee waiver in community for certain # of years, or lower %
    - **Other**: Fee % based on community tier level
  - **Technology Choice**
    - Fee % based on relevance of technology in particular community



# REVENUE GENERATION APPROACH

- Increase and standardize DIVCA Franchise Fees to 5% for all providers in all communities
- Level the playing field for all providers, including those DIVCA exempt
  - Modify the business tax code section to call out all Internet Service Providers and hold them to same standard as DIVCA providers
- Enter into lease agreements with providers requesting use of County rights of way
- Look at additional ratepayer fees to help generate revenue faster (San Diego example)



# REVENUE GENERATION CONSIDERATIONS

- Where does revenue go once raised?
  - General Fund vs. Dedicated account
- What exactly are we going to do with the money and how much will it take to accomplish those objectives?
  - Need to establish a process to establish & review objectives
- Given the sources for revenue generation, how long will it take to generate the required amount?
- Providers and ratepayers feel over taxed, but want financial assistance for projects, better service, etc.





# POTENTIAL USES

- **Undergrounding efforts**
  - Purchase conduit and install in key areas when opportunities exist
  - Offer matching or cost offsetting funds for providers/projects
- **Community broadband/public access initiatives**
  - Establish low/no-cost open access networks in key communities/areas
  - Pay fees for Internet service at community centers, etc.
- **Senior/school programs**
  - Work with outside groups to educate senior and youth populations on use of Internet & technology



# UNDERGROUND - DIGGING DEEPER

Need a better understanding of undergrounding goals

## What?

- A. Put new power and telecom lines underground?
- B. Underground existing power and telecom?
- C. Both

## Where?

- What areas of the County do we target?
- How are projects prioritized?

## By When?

- How soon do we want to carry these projects out?



# UNDERGROUNDING COST REALITIES

- **Varies with type of project**
  - Conduit only
    - \$5-\$20/linear ft.
  - Telecom distribution lines
    - Varies by technology
  - Power lines
    - \$1-2k/ft.
    - \$10k/pole
    - \$1m-\$3m/mi.
  - Materials only vs. Design + build
    - Design of project will vary – assume an addition 10% of total project cost
- **Cannot get accurate numbers until understand desired direction**