

MADERA COUNTY MASTER CONTRACT NO. 012
(Resource Management Agency - Master Improvement Agreement)

RECITALS

A. As a condition of the developer's Project, which is identified on the Master Improvement Agreement Cover Sheet and incorporated herein in its entirety, the County of Madera requires the construction of public improvements.

B. SUBDIVIDER wishes to defer construction of those improvements listed on the Master Improvement Agreement Cover Sheet.

C. SUBDIVIDER has requested an agreement to permit the completion of the improvements for the time stated on the Master Improvement Agreement Cover Sheet.

D. COUNTY is willing to enter into the Agreement as requested by SUBDIVIDER subject to the following conditions:

AGREEMENT

1. **IMPROVEMENTS.**

1.01 **Improvements to be Constructed.** In accordance with the requirements of COUNTY, SUBDIVIDER shall construct at its own cost and expense, those improvements itemized on the Master Improvement Agreement Cover Sheet.

1.02 **Manner of Construction.** The improvements shall be designed, engineered, installed, erected and constructed pursuant to the applicable procedures and standards contained in the Subdivision Map Act and the Madera County Code, and the plans, specifications and profiles approved by the County Engineer, Road Commissioner or Environmental Health Director.

1.03 **Inspection and Approval of Work.** The improvements shall be subject to inspection and approval by the appropriate County official exercising regulatory oversight for the improvement as stated in the Master Improvement Agreement Cover Sheet.

1.03.1 Inspection of improvements shall be performed within a reasonable time after SUBDIVIDER provides notice to the County.

1.03.2 If approved the County official shall issue a certificate which shall state the following information:

- a. the nature of the improvement(s);
- b. the date of the inspection;
- c. the name of the inspector; and

- d. a statement that the improvement(s) have been satisfactorily completed and are thereby approved.

If COUNTY's Board of Supervisors finds that the certificates filed by the County official are true and correct, then it shall make an order accepting the improvement(s).

1.04 **Date of Completion.** The improvements shall be satisfactorily completed by SUBDIVIDER and shall be accepted by COUNTY's Board of Supervisors, if at all within the time established in the Master Improvement Agreement Cover Sheet.

1.04.1 SUBDIVIDER acknowledges that acceptance of the improvements COUNTY's Board of Supervisors is conditional upon SUBDIVIDER's satisfactory completion of all improvements.

1.04.2 To allow a reasonable time for the performance of the prerequisites to acceptance of the improvements by COUNTY's Board of Supervisors, SUBDIVIDER shall mail all written notifications of completion required by Section 1.03 at least thirty (30) days prior to the date of completion of this Agreement.

2. **GUARANTEE AGAINST DEFECTS.**

2.01 **Inspection for Defects.** COUNTY expressly reserves the right to inspect the improvements set forth in the Master Improvement Agreement Cover Sheet for defective workmanship or materials for a period of one (1) year after acceptance of the improvements by COUNTY's Board of Supervisors. SUBDIVIDER agrees that it will not hinder, obstruct or prevent such inspections by COUNTY.

This subsection shall not be construed as inhibiting, preventing or limiting any inspections otherwise required by law to be made by COUNTY or any other public entity, public agency, public utility, or employees thereof, subsequent to the expiration of the one (1) year period stated herein.

2.02 **Guarantee Against Defects.** For a period of one (1) year after acceptance of the improvements by COUNTY's Board of Supervisors, SUBDIVIDER guarantees all improvements set forth in the Master Improvement Agreement Cover Sheet against defective workmanship or materials furnished in the performance of this Agreement. SUBDIVIDER agrees to correct, repair or

replace promptly upon demand by COUNTY all such defective work or materials as may be discovered by COUNTY inspectors within such one (1) year period and reported to COUNTY's Board of Supervisors.

3. FAILURE TO COMPLETE IMPROVEMENTS.

3.01 Failure to Complete Improvements. If COUNTY's Board of Supervisors determines that:

3.01.1 SUBDIVIDER has failed to properly and fully complete all improvements in compliance with this Agreement and within the time provided herein, or in any extension hereof; or

3.01.2 SUBDIVIDER has failed or neglected to commence construction of the improvements within a time which will reasonably allow their completion within the time provided for in this Agreement; or

3.01.3 SUBDIVIDER has filed a petition for bankruptcy or has been declared bankrupt by a United States District Court, COUNTY shall give SUBDIVIDER and its surety, if any, fourteen (14) days written notice to proceed with the construction of the uncompleted improvements without prejudicing COUNTY's right to seek and obtain any other available remedy in law or equity.

3.02 Completion of Improvements by Surety. If the security furnished by SUBDIVIDER in connection with the performance of this Agreement is a bond or bonds by one (1) or more duly authorized corporate sureties, then the corporate surety may proceed with the completion of the improvements. The corporate surety shall be subject to all of the provisions of this Agreement.

3.03 Completion of Improvements by County. If SUBDIVIDER or its corporate surety, if applicable, fails or neglects to proceed with the timely construction of the uncompleted improvements upon receipt of the notice set forth in Section 3.01 of this Agreement, then COUNTY may, in its sole discretion, provide the necessary supervision, equipment, materials and labor as it may determine necessary to complete the improvements in the manner required by this Agreement.

3.03.1 All work, including materials, undertaken and completed by COUNTY pursuant to this section shall be for the account and at the expense of SUBDIVIDER.

3.03.2 SUBDIVIDER and its corporate surety, if applicable, shall be liable to the COUNTY and shall pay COUNTY on demand all expenses incurred by COUNTY.

3.03.3 No actions taken by COUNTY pursuant to this section or its subsections shall prejudice its right to seek and obtain any other available remedy in law or equity.

4. **SECURITY FOR THE PERFORMANCE OF AGREEMENT.**

4.01 **Purpose and Approval of Security.** SUBDIVIDER shall secure its performance of this Agreement by providing COUNTY with sufficient security. The security furnished by SUBDIVIDER shall secure the faithful performance of this Agreement by SUBDIVIDER and shall secure payment to the contractor, his or her subcontractors, and to persons furnishing labor, materials or equipment to them. The security shall be one authorized by section 66499 of the Government Code and shall be subject to approval by COUNTY.

4.02 **Security.** SUBDIVIDER shall forthwith deposit with the Clerk to the Board of Supervisors security as follows:

4.02.1 **Performance Security.** SUBDIVIDER shall post security with COUNTY in the amount of One Hundred (100%) percent of the estimate of the cost of making all improvements as shown on the Master Improvement Agreement Cover Sheet.

4.02.2 **Labor and Material Security.** SUBDIVIDER shall post security with COUNTY in the amount of Fifty (50%) percent of the estimate contained in the Master Improvement Agreement Cover Sheet for the cost of labor and materials for the project.

4.03 **Determination of Amount of Security.** The security required by this Agreement is based upon the estimated cost of improvements to be completed as provided in the Master Improvement Agreement Cover Sheet.

- 4.04 **Reduction or Release of Security Given for Faithful Performance.** Upon its acceptance of any improvement required to be completed under this Agreement, COUNTY's Board of Supervisors may reduce the security furnished by SUBDIVIDER to secure its faithful performance of this Agreement in an amount equal to the estimated cost of that improvement.
- 4.05 **Reduction or Release of Security Securing Payment.** Security securing the payment to the contractor, his or her subcontractors, and to persons furnishing labor, materials or equipment to them shall, after passage of the time within which a stop notice is required to be filed and after acceptance of the improvement by COUNTY's Board of Supervisors, shall be reduced to an amount equal to the total claimed by all stop notice claimants for whom claims have been filed and notice thereof given in writing to COUNTY. If no such claims have been filed, that portion of the security securing payment shall be released in full. Reduction or release of security may be authorized only upon the expiration of the periods for filing a stop notice.
- 4.06 **Substitute Securities.** The SUBDIVIDER may, at its own request and expense, substitute securities equivalent to the amount of retention to be deposited with COUNTY or with a state or federally chartered bank in California as the escrow agent. Upon satisfactory completion of the contract, the securities shall be returned to SUBDIVIDER.

Alternatively, SUBDIVIDER may request and COUNTY shall make payment of retentions earned directly to the escrow agent at the expense of SUBDIVIDER. At SUBDIVIDER's own expense, SUBDIVIDER may direct the investment of the payments into securities and SUBDIVIDER shall receive the interest earned on the investments upon the same terms provided for securities deposited by SUBDIVIDER. Upon satisfactory completion of the contract, SUBDIVIDER shall receive from the escrow agent all securities, interest and payments received by the escrow agent from COUNTY pursuant to the terms of the instructions. SUBDIVIDER shall pay to each subcontractor not later than twenty (20) days of receipt of the payment, the respective amounts of interest earned, net of costs attributed to

retention withheld from each subcontractor on the amount of retention withheld to insure the performance of SUBDIVIDER.

Securities eligible for investments herein shall include those listed in section 16430 of the Government Code, bank or savings and loans certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by SUBDIVIDER and COUNTY.

SUBDIVIDER shall be the beneficial owner of any security substituted for monies withheld and shall receive any interest thereon.

The escrow agreement shall be substantially similar in form to the exemplar agreement contained in Public Contracts Code section 22300.

4.07 **Duration of Security.** SUBDIVIDER warrants that the security furnished pursuant to this section will be valid and will not expire throughout the term of this Agreement, and any extension thereof, and for one (1) year following acceptance of the entirety of the improvements by COUNTY's Board of Supervisors.

5. **INSURANCE.**

5.01 **Workers' Compensation Insurance.** At all times during the term of this Agreement, and any extensions thereof, SUBDIVIDER shall secure and maintain, and shall cause its architects, engineers and contractors to secure and maintain, workers' compensation insurance as required by the laws of the State of California.

5.02 **Comprehensive Liability Insurance.** At all times during the term of this Agreement, any extension thereof, and for one (1) year after acceptance of the entirety of the improvements, SUBDIVIDER shall secure and maintain a policy of comprehensive liability insurance in a form and with an insurance company satisfactory to COUNTY. Such insurance policy shall include COUNTY, its Board of Supervisors, officers, and employees as additional named insureds.

5.03 **Policy Limits.** The minimum policy limits of the comprehensive liability insurance shall be in the amount specified in the Master Improvement Agreement Cover Sheet.

5.04 **Certificate of Insurance**. Prior to commencing any work pursuant to this Agreement, SUBDIVIDER shall file with the Clerk of the Board of Supervisors certificate(s) of insurance stating the policy coverage amounts and the named insureds.

6. **RELATIONSHIP OF THE PARTIES.**

6.01 **Independent Contractors**. The parties to this Agreement are independent contractors and are not agents, employees, officers, or servants of the other. It is intended by this Agreement only that COUNTY will permit SUBDIVIDER to complete the improvements set forth in the Master Improvement Agreement Cover Sheet after recordation of the final subdivision map.

6.02 **Hold Harmless and Indemnifications.**

SUBDIVIDER agrees to hold harmless, defend and indemnify COUNTY, its Board of Supervisors, officers, and employees from every claim, demand, suit, loss and damage arising from:

6.02.1 Any act, omission, neglect or fault of SUBDIVIDER, its engineers, contractors or agents, or the employees of the same.

6.02.2 Any act, omission, neglect or fault, except for the sole negligence or willful conduct of COUNTY, its Board of Supervisors, officers or employees.

6.02.3 Any injury to, or death of, any person or damage to any property sustained while on the real property immediately adjacent to such property, or upon any street or highway running through such property or immediately adjacent property.

6.02.4 Any injury to, or death of any person, or damage to, the property of SUBDIVIDER, or its agents, engineers or contractors, or their employees.

6.02.5 Any damage to or taking of any property arising from said plans, specifications or profiles, or arising from the construction of the improvements provided for in this Agreement.

7. **ASSIGNMENT.** This Agreement shall not be assignable by SUBDIVIDER without the prior written consent of COUNTY's Board of Supervisors. Any assignee shall take this Agreement subject to the covenants and conditions set forth herein.

8. **REMEDIES.**

8.01 **Non-exclusivity of Remedies.** Any remedies set forth in this Agreement shall not be exclusive. COUNTY reserves the right to any legal, equitable or summary remedy to which it may be entitled to enforce the provisions of this Agreement.

8.02 **Attorney's Fees.** If any action be brought by COUNTY for the recovery of any sum due COUNTY under this Agreement, for any damages for any breach of this Agreement, or to compel the performance of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees.

9. **MISCELLANEOUS.**

9.01 **Time of Essence.** Time is of the essence of this Agreement.

9.02 **Interpretation.** Unless otherwise indicated, the ordinary and plain meaning of the words and phrases of this Agreement shall be given effect. Any word or phrase requiring interpretation shall be interpreted in a manner consistent with the spirit and intent of the Subdivision Map Act and the Subdivision Ordinance of the County of Madera.

10. **ENTIRE AGREEMENT.** These Standard Contractual Clauses and Master Contract Cover Sheet, and any exhibits specified in the Master Contract Cover Sheet and attached thereto and incorporated by reference, shall constitute the entire agreement between SUBDIVIDER and COUNTY with respect to the subject matter hereof and supersedes in its entirety all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement. No other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto.


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

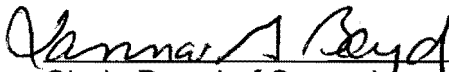
COUNTY OF MADERA


Chairman, Board of Supervisors

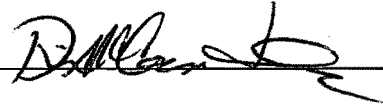
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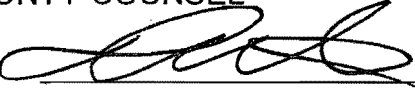
ATTEST:


Clerk, Board of Supervisors

Approved as to Form:
RISK MANAGEMENT

By: 

Approved as to Legal Form:
COUNTY COUNSEL

By: 

ACCOUNT NUMBER(S)

