

RECITALS

A. APPLICANT has filed with COUNTY an application for the development of the PROJECT as defined on the Master Contract Cover Sheet.

B. COUNTY has determined that the Project could have a significant impact on the environment and that an Environmental Impact Report (hereinafter "EIR") must be prepared prior to consideration of the Project.

C. COUNTY has determined that it must engage the services of a qualified planning consultant, at APPLICANT's expense, to perform the necessary work in the preparation of such an EIR for the Project.

D. It is understood by APPLICANT that the Project is subject to review and decision after completion of the EIR, as prescribed by existing regulations and statutes; that staff's recommendations are independent of the conclusions reached in the EIR; that the nature of the factors to be considered by staff in its review is such that recommendations to the decision-makers cannot be formalized until just prior to the point of decision-making and may in fact be different from the conclusions reached in the EIR; and that the final decision on the Project will be made by the entity charged with such decision making authority.

AGREEMENT

1. **CONSULTANT.** COUNTY shall engage a consultant as identified on the Master Contract Cover Sheet to prepare an Environmental Impact Report for the Project.

2. **EFFECTIVE DATE.** This Agreement shall become effective upon its execution by the parties hereto and shall terminate following final payments pursuant to the COUNTY Consultant Agreement which is referenced on the Master Contract Cover Sheet.

3. **SCOPE OF WORK.** It is understood that preparation of the EIR shall conform to the approved Scope of Work in the COUNTY Consultant Agreement referenced in the Master Contract Cover Sheet.

4. **INHIBITING FACTORS.** It is understood that, pursuant to the COUNTY Consultant Agreement, CONSULTANT shall be required to determine, at the earliest feasible time, those factors which could severely inhibit or prohibit the approval of the

proposed Project. Based upon such advice and information, COUNTY shall advise APPLICANT of CONSULTANT's conclusions for the purpose of determining the feasibility of continuing with preparation of the EIR according to CONSULTANT's work program under the COUNTY Consultant Agreement. In the event the preparation of the EIR is terminated, APPLICANT shall pay an amount based on the number of hours expended by workers at the billing rates listed in the COUNTY Consultant Agreement.

5. **PAYMENTS TO COUNTY FOR CONSULTANT' SERVICES**. Payments to the Consultant shall be as set forth in the Master Contract Cover Sheet. Prior to any work on the consultant contract, the applicant shall deposit an amount equal to the consultant's total compensation as specified in the Master Contract Cover Sheet. No increase in the contract amount will be allowed except by a written modification to this agreement, signed by APPLICANT and COUNTY.

6. **PAYMENTS TO COUNTY FOR COUNTY'S SERVICES**. In addition to APPLICANT's payments to COUNTY for CONSULTANT's services, APPLICANT shall pay to COUNTY the actual costs and expenses incurred by COUNTY in processing, reviewing, preparing comments for preparation of the EIR, or performing any other work in connection therewith. Within seven (7) working days after the date of execution of this Agreement by the parties hereto, APPLICANT shall advance an amount equal to twenty percent (20%) of the compensation to be paid to the Consultant as set forth in the Master Contract Cover Sheet. APPLICANT agrees that if at any time the actual cost thereof incurred by COUNTY exceeds the amount of that deposit or other payments made by APPLICANT to COUNTY pursuant to this Agreement, APPLICANT shall, after receipt of a COUNTY invoice, promptly remit to COUNTY such additional amount or amounts. It is understood and agreed between the parties hereto that there shall not be any limit on the amount of costs for which COUNTY may seek reimbursement from APPLICANT under this paragraph of this Agreement; nor shall there be a limit on the number of requests COUNTY may make to APPLICANT in order to recover such costs. If upon completion or termination of this Agreement the actual cost incurred by COUNTY under this paragraph is less than the total amount of the payments made by APPLICANT to COUNTY pursuant to this paragraph, COUNTY will promptly refund such surplus funds to APPLICANT.

7. **INDEPENDENT CONTRACTOR.** It is understood that CONSULTANT shall be an independent contractor of COUNTY. APPLICANT agrees to permit CONSULTANT to enter upon its property and to perform all work thereon as CONSULTANT deem necessary to complete the EIR. It is agreed that APPLICANT at no time will interfere with CONSULTANT in the performance of such work or attempt to influence CONSULTANT during the course of its work. APPLICANT acknowledges and agrees that the determination of the adequacy of the performance of CONSULTANT and the extent of payment to CONSULTANT are within the sole discretion of COUNTY. APPLICANT acknowledges and agrees that the final responsibility and final authority as to the quality and the contents of the EIR lies in the sole discretion of COUNTY.

8. **HOLD HARMLESS.** APPLICANT hereby agrees to indemnify, defend, and hold COUNTY, its officers, agents, employees and volunteers harmless from any and all claims, demands, losses, costs, expenses (including attorneys' fees), damages, recoveries, deficiencies or liabilities that may arise, result from, or be attributable to, or in any way be connected with the Project.

9. **GOVERNING LAW.** Any controversy or claim arising out of or relating to this Agreement which cannot be amicably settled without court action shall be litigated in a state court for Madera County, California. The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

10. **NON-ASSIGNMENT.** Neither party shall assign, transfer or sub-contract this Agreement nor their rights or duties under this Agreement without the prior written consent of the other party.

11. **AMENDMENTS.** Any changes to this Agreement requested either by COUNTY or APPLICANT may only be effected if mutually agreed upon in writing by duly authorized representatives of the parties hereto. This Agreement shall not be modified or amended or any rights of a party to it waived except by such writing.

12. **BINDING UPON SUCCESSORS.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors in interest, assigns, legal representatives, and heirs.

13. **NO THIRD-PARTY BENEFICIARY RIGHTS**. The parties agree that no provision of the COUNTY Consultant Agreement shall in any way inure to the benefit of any third-person (including APPLICANT) so as to constitute any such person as a third-party beneficiary of said Agreements or of any one or more of the terms thereof, or otherwise give rise to any cause of action in any person not a party thereto.

14. **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 APPLICANT 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.

15. **TERMINATION OF AGREEMENT**. APPLICANT may terminate this Agreement at any time by giving written notice thereof to COUNTY and withdrawing its application for the Project. If APPLICANT so terminates this Agreement, then COUNTY shall immediately terminate the COUNTY Consultant Agreement in accordance with that Agreement. If either party breaches a material provision of this Agreement, then the other party may, at its option, immediately terminate this Agreement by giving written notice to the breaching party of such termination and specifying the reasons therefore. If this Agreement is terminated for any reason, APPLICANT shall continue to be liable to COUNTY for the cost of work of CONSULTANT satisfactorily performed to the date of termination and for any additional work of CONSULTANT expressly requested by COUNTY's Planning Director as necessary to wind up the work performed up to the date of termination.

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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

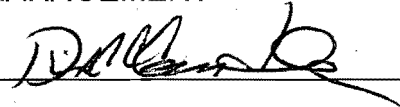
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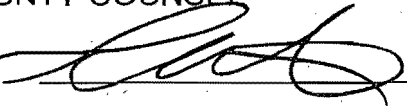
ATTEST:


Clerk, Board of Supervisors

Approved as to Form:
RISK MANAGEMENT

By: 

Approved as to Legal Form:
COUNTY COUNSEL

By: 

ACCOUNT NUMBER(S)

