

# BOARD OF SUPERVISORS

## AMENDED AGENDA

Meetings are located at:  
Yuba County Government Center  
Board Chambers, 915 Eighth Street  
Marysville, California



Agenda materials are available at the Yuba County Government Center, 915 8<sup>th</sup> Street, Marysville and [www.co.yuba.ca.us](http://www.co.yuba.ca.us). Any disclosable public record related to an open session item and distributed to all or a majority of the Board less than 72 hours prior to the meeting is available for public inspection at Suite 109 of the Government Center during normal business hours.

**DECEMBER 17, 2013**

### **9:00 A.M. YUBA COUNTY IN HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY**

- A. **ROLL CALL** - Directors Abe, Griego, Nicoletti, Stocker, Vasquez
- B. **CLOSED SESSION**: Personnel pursuant to Government Code §54957(a) - Labor Negotiations - SEIU/Authority
- C. **ADJOURN**

### **ADDENDUM TO CONSENT AGENDA – G. 5. Health and Human Services**

### **9:30 A.M. YUBA COUNTY BOARD OF SUPERVISORS - Welcome to the Yuba County Board of Supervisors meeting. As a courtesy to others, please turn off cell phones, pagers, or other electronic devices, which might disrupt the meeting. Thank you.**

- I. **PLEDGE OF ALLEGIANCE** - Led by Supervisor Griego
- II. **ROLL CALL** - Supervisors Vasquez, Nicoletti, Griego, Abe, Stocker
- III. **CONSENT AGENDA**: All matters listed under the Consent Agenda are considered to be routine and can be enacted in one motion.
  - A. Administrative Services
    - 1. Adopt resolution authorizing application for construction of new Tri-County Juvenile Hall Youth Offender Rehabilitation Facility using Senate Bill 81 and other funding. (488-13)
    - 2. Approve airport lease agreement with Thomas Bowles for corporate hangar lease site eleven, ground site four, and authorize Chair to execute. (489-13)
  - B. Auditor-Controller
    - 1. Receive independent accountant's report on Clerk/Recorder Social Security Number Truncation Program. (490-13)
  - C. Board of Supervisors
    - 1. Approve 2014 Board of Supervisors meeting schedule and cancelling certain meetings.(491-13)
    - 2. Approve Certification Statement regarding composition of Local Child Care Planning Council membership and authorize Chair to execute same. (492-13)
  - D. Clerk of the Board of Supervisors
    - 1. Appoint Terry Oakes to the Yuba County Fish and Game Advisory Commission as an at-large representative for a term to end October 5, 2014. (493-13)
    - 2. Adopt list of ongoing boards, commissions, and committees appointed by the Board of Supervisors. (494-13)

E. Community Development and Services

1. Award contract to Hanna Group for Timbuctoo Road over Deep Ravine No. 1 bridge replacement project and authorize Chair to execute same. (495-13)
2. Adopt resolution authorizing to apply and establish eligible participation in the Federal Surplus Property Program and authorize designated staff to execute all documents needed for the purchase of surplus property from the program. (496-13)
3. Accept Montrose Unit 3 Improvements as complete and release performance bond, Tract Map 2007-0009. (497-13)

F. County Administrator

1. Authorize Auto Service Fund reimbursements in the total amount of \$500,000 and authorize the Auditor-Controller to transfer funds to various departments. (Finance and Administration Committee recommends approval) (498-13)

G. Health and Human Services

1. Adopt resolution authorizing agreement with California Department of Public Health for immunization project subvention funds through June 30, 2017 and execution of all necessary documents. (Human Services Committee recommends approval) (499-13)
2. Adopt resolution authorizing application to Public Health Maternal Child and Adolescent Health grant funds and Chair to execute necessary documents. (Human Services Committee recommends approval) (500-13)
3. Adopt resolution authorizing Director to enter into agreement with Sierra Forever Families for adoption services. (Human Services Committee recommends approval) (501-13)
4. Adopt resolution authorizing Director or designee to execute CalWorks program subsidized employment program agreements with work site contractors. (Human Services Committee recommends approval) (503-13)
5. Adopt resolution authorizing Health and Human Services Department to implement a Virtual Desktop Infrastructure (VDI) solution for the continuing customer service and the Covered California Call Centers; authorize the Chair to execute documents as necessary; and authorize Budget Transfer in the total amount of \$125,380 for various lines items for equipment and services. (504-13). (504-13)

H. Library

1. Adopt resolution authorizing First 5 Yuba grant application for children programs and authorizing Director to execute documents as required by grant and acceptance and transfer of funds. (505-13)

IV. **PUBLIC COMMUNICATIONS:** Any person may speak about any subject of concern provided it is within the jurisdiction of the Board of Supervisors and is not already on today's agenda. The total amount of time allotted for receiving such public communication shall be limited to a total of 15 minutes and each individual or group will be limited to no more than 5 minutes. Prior to this time speakers are requested to fill out a "Request to Speak" card and submit it to the Clerk of the Board of Supervisors. Please note: No Board action can be taken on comments made under this heading.

V. **COUNTY DEPARTMENTS**

A. Administrative Services

1. Approve contract with Cascade Software for management system to support Human Resources and authorize Chair to execute same. (Fifteen minute estimate) (506-13)

B. Community Development and Services

1. Receive information and update on County's Capital Facilities Impact Fees and provide staff direction as appropriate. (Fifteen minute estimate) (507-13)

C. County Administrator

1. Receive report regarding CFD 2005-1 Acquisition Agreements for John Moyer Construction, Woodside Homes, and Dunmore Homes and adopt resolutions that extend the agreements for one year and authorizing the County Administrator to execute documents. (Fifteen minute estimate) (508-13)
2. Approve Yuba County Economic Development Advisory Committee by-laws and receive special presentation on annual activities. (Fifteen minute estimate) (509-13)

D. Health and Human Services

1. Approve agreement with Yuba County Office of Education to administer occupational aptitude assessments and provide assistance with job search activities and authorize Chair to execute. (Human Services Committee recommends approval) (Ten minute estimate) (502-13)

VI. **CORRESPONDENCE**

- A. Independent audit and financial records for District 10 Hallwood Community Services District for year ending June 30, 2012. (510-13 A)
- B. Notice from State of California Fish and Game Commission regarding regulatory action relating to commercial take of market squid. (510-13 B)

VII. **BOARD AND STAFF MEMBERS' REPORTS: This time is provided to allow Board and staff members to report on activities or to raise issues for placement on future agendas.**

VIII. **CLOSED SESSION: Any person desiring to comment on any matter scheduled for this closed session may address the Board at this time.**

- A. Pending litigation pursuant to Government Code §54956.9(d)(2) - Calvert vs. Yuba County et al
- B. Pending litigation pursuant to Government Code §54956.9(d)(2) - Soares vs. Yuba County et al
- C. Pending litigation pursuant to Government Code §54956.9(d)(2) - Viveros-Jimenez vs. County of Yuba et al
- D. Personnel pursuant to Government Code §54957 - Public Employee Appointment - Health and Human Services Director

IX. **ADJOURN**

In compliance with the Americans with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available. If you have a disability and need disability-related modifications or accommodations to participate in this meeting, please contact the Clerk of the Board's office at (530) 749-7510 or (530) 749-7353 (fax). Requests must be made two full business days before the start of the meeting. To place an item on the agenda, contact the office of the Clerk of the Board of Supervisors at (530) 749-7510.

**PUBLIC INFORMATION**

**AGENDA ITEMS:** The opportunity of the public to be heard on an item shall be provided during the consideration of that item. In the interest of time, the Board has limited the length of such comment or input on each item to 15 minutes total, with a limit of no more than 5 minutes per person or group. The period for public comments on a particular item may be extended upon a majority vote of the Board. These time limits do not apply to applicants appearing before the Board on behalf of their applications.

**ACTION ITEMS:** All items on the Agenda under the headings "Consent," "County Departments," Ordinances and Public Hearings," "Items of Public Interest," and "Closed Session," or any of them, are items on which the Board may take any action at this meetings.

**PUBLIC HEARINGS:** All members of the public shall be allowed to address the Board as to any item which is noticed on the Board's agenda as a public hearing. The Board has limited each person or group input to no more than 3 minutes. Any person or group may provide the Board with a written statement in lieu of or in supplement to any oral statement made during a public hearing. Written statements shall be submitted to the Clerk of the Board.

**ORDINANCES:** Ordinances shall not be passed within five days of their introductions, nor at other than a regular meeting or at an adjourned regular meeting. The Board of Supervisors will address ordinances at first readings. The public is urged to address ordinances at first readings. Passage of ordinances will be held at second readings, after reading the title, further reading is waived and adoption of the ordinance is made by majority vote. An urgency ordinance may be passed immediately upon introduction. The Board reserves the right to amend any proposed ordinances and to hold a first reading in lieu of a second reading.

**INFORMATIONAL CORRESPONDENCE:** The Board may direct any item of informational correspondence to a department head for appropriate action.

**SCHEDULED LUNCH BREAK:** Between the hours of 12:00 noon and 1:00 p.m. and at the discretion of Chair, the Board will recess one hour for lunch.

**SPECIAL MEETINGS:** No public comment shall be allowed during special meetings of the Board of Supervisors, except for items duly noticed on the agenda.

**End**




*CONSENT*

*AGENDA*

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## Administrative Services Memorandum

**To:** Board of Supervisors  
**CC:** Robert Bendorf, County Administrator   
**From:** Doug McCoy, Director, Administrative Services  
Jim Arnold, Chief Probation Officer  
**Date:** December 17, 2013  
**Re:** Tri-County Juvenile Hall

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### Recommendation

Approve the attached resolution authorizing the application for construction of a new Tri-County Juvenile Hall Youth Offender Rehabilitation Facility using SB 81 and other funding sources.

### Background

Colusa, Sutter and Yuba Counties are working on creating a tri-county juvenile hall to replace the current ailing bi-county facility. Colusa initially received an SB81 grant to fund their own facility but then the three counties determined it made sense to create a combined facility for the mutual benefit of all three. SB365 allowed the grant to be redirected to Yuba County as the new lead agency on the project, and the Board of State and Community Corrections (BSCC) approved the redirection on November 14 of this year.

### Discussion

The next steps in the process are to finalize our proposal and application process to the BSCC, the California Department of Corrections and Rehabilitation, and related entities to define our role, the participants, the scope of the project, etc. This resolution is a key component of the proposal.

### Fiscal Impact

The project will largely be funded through this redirected grant, although each of the three counties will have a share of matching funds to contribute. The 25% total match will be split among the three participating counties at a percentage defined in the Joint Powers Agreement.

A significant portion of Yuba County's match will be the contribution of the land across from the current facility.

**BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF YUBA**

**RESOLUTION**

**A RESOLUTION AUTHORIZING THE )  
APPLICATION FOR CONSTRUCTION )  
OF A NEW TRI-COUNTY JUVENILE HALL )  
YOUTH OFFENDER REHABILITATION )  
FACILITY USING SB 81 AND OTHER )  
FUNDING )**

**RESOLUTION NO. \_\_\_\_\_**

**WHEREAS**, major components of the current Yuba Sutter Juvenile Hall are antiquated and require significant investment to achieve code compliance; and

**WHEREAS**, upcoming regulatory changes require a different configuration of dormitory areas than are feasible in the current configuration of the Hall; and

**WHEREAS**, Colusa County had been conditionally awarded a grant to build a new Juvenile facility; and

**WHEREAS**, the three Counties of Colusa, Sutter and Yuba County have determined that a new 48 bed tri-county Juvenile facility built across the street from the existing Yuba Sutter facility will best meet their cumulative juvenile rehabilitative needs; and

**WHEREAS**, Senate Bill 365 to reassign the Colusa grant to Yuba County as the lead agency to construct a new juvenile hall has been passed by the Legislature and signed by the Governor, and

**WHEREAS**; on November 14, 2013 the Board of State and Community Corrections approved the redirection of the Colusa County Senate Bill 81 Local Youth Offender Rehabilitative Facilities Constructing Financing Program financing award to Yuba County as allowed by Senate Bill 365, and

**WHEREAS**; with the conditional redirection of the grant from Colusa to Yuba County, Yuba County must submit a new application and proposal to complete the application process,

**NOW, THEREFORE, BE IT RESOLVED,** The Yuba County Board of Supervisors hereby:

1. Appoints Jim Arnold, Chief Probation Officer, as the person authorized to sign the grant application; appoints Doug McCoy, Director of Administrative Services as the construction administrator and project contact person; and Andrea Armstrong Purchasing and Contracts Administrator as the project financial administrator.
2. Authorizes the Chief Probation Officer to sign the grant application and submit the application and related proposal paperwork for the purposes of submitting the final application to the Board of State and Community Corrections, California Department of Corrections and Rehabilitation, and related entities for the purposes of constructing a 48 bed Juvenile Rehabilitation facility and associated support and program spaces with an estimated construction cost of \$6,733,564. The current grant is valued at \$5,655,740. Yuba and Sutter Counties will provide a cash match as required by the Board of State and Community Corrections (BSCC) to cover the total project cost once finalized.
3. Assures that the County will adhere to state requirements and the terms of the agreement between Yuba County, the California Department of Corrections and Rehabilitation (CDCR), the Board of State and Community Corrections (BSCC), and the State Public Works Board (SPWB) in the expenditure of state funds and county matching funds.
4. Assures that the County has appropriated or will appropriate after conditional project award but before state/county funding agreements, the amount of match identified by the County on the funding proposal form submitted to the Board of State and Community Corrections; identifies the source of cash match from all three participating Counties, and assures that state and cash matching funds do not supplant funds otherwise dedicated or appropriated for construction activities.
5. Assures that the County will fully and safely staff and operate the 48 bed juvenile detention and rehabilitation facility that is being constructed (consistent with Title 15, California Code of Regulations and the Tri-County Joint Powers Agreement) within 90 days after project completion.
6. Assures that the County has project site control through fee simple ownership of the site and right of access to the project sufficient to assure undisturbed use and possession of the site, and will not dispose of, modify the use of, or change the terms of real property title, or other interest in the site of the facility subject to construction, or lease the facility for operation to other entities, without permission and instructions from the Board of State and Community Corrections.

7. Attests a fair market appraisal will be completed on the proposed site to determine fair market value which will be considered part of Yuba County's share of matching funds.

**PASSED AND ADOPTED** at a regular meeting of the Board of Supervisors of the County of Yuba, State of California on the \_\_\_\_\_ day of \_\_\_\_\_, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Chairman

ATTEST: DONNA STOTTLEMEYER  
CLERK OF THE BOARD OF SUPERVISORS

\_\_\_\_\_

ANGIL P. MORRIS-JONES  
YUBA COUNTY COUNSEL  
APPROVED AS TO FORM:

  
\_\_\_\_\_

# The County of Yuba

## Department of Administrative Services

Doug McCoy, Director



489-13

AIRPORT	
BUILDING & GROUNDS	
FACILITIES MANAGEMENT	749-7880
INFORMATION SERVICES	749-7891
PRINT SHOP	749-7880
PURCHASING	749-7880
TELECOMMUNICATIONS	749-7880

(530) 749-7880  
FAX (530) 749-7936

December 17, 2013

TO: YUBA COUNTY BOARD OF SUPERVISORS

FROM: DOUG MCCOY, Administrative Services Director

SUBJECT: AUTHORIZE THE CHAIRMAN TO EXECUTE AIRPORT LEASE AGREEMENT  
FOR CORPORATE HANGAR LEASE SITE NO. 11, GROUND SITE NO. 5

### Recommendation:

It is recommended that the Board authorize the Chairman of the Board of Supervisors to execute the subject airport lease agreement.

### Background:

The attached is a new ground lease with Thomas Bowles. Mr. Bowles recently purchased the aircraft facility located on the ground site from the prior owner. The lease rate of \$.04 cents per square foot is consistent with similar leases and will generate \$845 annually in airport revenue.

### Discussion:

The location of the hangar ground lease site is shown on the attached layout as Exhibit A to the lease. Each ground lease site accommodates a privately-owned 1,760 sf aircraft hangar.

### Committee Action:

This item was not presented to the committee as it is a standard ground lease that has been before the board a number of times for other new tenants and considered routine. The agreement was reviewed and approved by County Counsel.

### Fiscal Impact:

There are no costs associated with this agenda item that would impact the General Fund.

### Attachments

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## AIRPORT LEASE AGREEMENT

**THIS LEASE** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the COUNTY OF YUBA, a political subdivision of the State of California, hereinafter designated "Lessor," and THOMAS BOWLES, hereinafter called "Lessee."

### WITNESSETH

**WHEREAS**, Lessor owns and operates the public airport facilities situated in the County of Yuba, California, hereinafter referred to as "Airport"; and

**WHEREAS**, said real property is devoted to and held for airport development, and

**WHEREAS**, pursuant to the provisions of Section 50478, Government Code, Lessor is authorized to lease all or any portion of said property for the construction and maintenance of hangars, service shops, structures, and other conveniences for airport purposes; and

**WHEREAS**, Lessor hereby finds that the terms and conditions as set forth herein below are beneficial and necessary, to promote the welfare and convenience of the public using the Airport.

### NOW, THEREFORE, IT IS HEREBY AGREED:

1. **LEASED PREMISES:** Lessor hereby sets over, leases, and demises to Lessee, and Lessee hereby hires from Lessor, all that certain real property situated in the County of Yuba, State of California, and more particularly described as follows:

Yuba County Airport Terminal Area  
Master Lease Map  
Site Number 11 Hangar #4  
(1,760 square feet)

Attached to this Lease and marked "Exhibit A" is the subject map showing the specific location of the property herein demised, which for this purpose is incorporated herein and by this reference made a part hereof.

2. TERM: The term of this Lease shall be five (5) years commencing on the 1st day of October, 2013. Lessee shall have the first right to negotiate to obtain a new lease for the premises upon expiration of the five-year term. The terms of any new lease, or extension of this lease, and the rent to be paid thereunder, are subject to negotiation between the Lessor and Lessee.

3. CONSIDERATION:

A. Lessee hereby agrees to pay as rent for said premises the sum of \$.04 cents per square foot of building area per month or Seventy Dollars and 40/100 (\$70.40), payable without deduction, setoff, prior notice, or demand, on or before the first day of each calendar month during the term hereof. Said rental shall be paid in lawful money of the United States of America and shall be paid to Lessor at the address set forth herein for notices, or to such other person or persons, or at such other places, as Lessor may designate in writing. Rent for any period less than a calendar month shall be a pro rata portion of the monthly installment. The Lessee, however, shall have the right to pay one annual payment of all the monthly rents prior to the first day of the following year and by so doing receive a one month's reduction of said rents.

B. Concurrently with Lessee's execution of this Lease, Lessee shall pay to Lessor the sum of the rent for the first and last month of the term of this Lease or One Hundred Forty and 80/100 Dollars (\$140.80).

4. **OTHER CHARGES AND FEES:**

Lessee shall meet all expenses and payments in connection with the use of the premises and the rights and privileges herein granted, including taxes, permit fees, license fees, and assessments lawfully levied or assessed upon the premises or property at any time situated therein and thereon. Lessee may, however, at their sole expense and cost, contest any tax, fee, or assessment.

5. **PENALTIES:** Payments not made by the 10<sup>th</sup> of the month are subject to a late fee as established by the Board of Supervisors. In the event Lessee is in arrears for thirty (30) days or more after any of the amounts agreed upon with this Lease are due, Lessor shall assess interest at the rate of eighteen percent (18%) annual percentage rate of the payment due for each month unpaid or any portion of a monthly payment which is left unpaid.

6. **LEASEHOLD IMPROVEMENTS:**

A. Lessee, at its own cost, shall completely build, erect and equip, in accordance with plans and specifications to be approved by Lessor prior to the start of construction, a pre-engineered hangar building approximately 44 ft x 40 ft; building to be painted a color approved by Lessor. The exterior of said building to be compatible with the existing structures.

B. The demised premises and the building constructed thereon shall be used exclusively for the storage of aircraft owned, leased or hired by Lessee and for no other purpose.

C. In the event that Lessee shall fail or refuse to construct said hangar or complete said hangar in a timely manner, the Lessor shall have the right to demand a final date of completion. The Lessee shall make every attempt to construct the hangar within the first year of the lease.

D. Lessee shall submit to Lessor for approval all detailed plans and specifications for all leasehold improvements. Lessor agrees that it shall either approve the plans and specifications as submitted, or transmit proposed revisions to Lessee, within thirty (30) calendar days of receipt of the plans and specifications from Lessee.

E. In the event that Lessor requires revisions of the original plans and specifications, Lessee shall have thirty (30) calendar days from the date of receipt of the proposed revisions to resubmit the plans and specifications for Lessor's approval. Lessor's approval of plans and specifications shall not be withheld unreasonably.

F. Upon receiving final Lessor approval of the plans and specifications, Lessee shall engage one or more qualified contractors to construct said improvements. Construction shall commence within sixty (60) calendar days of Lessee's receipt of Lessor's final approval of the plans and specifications and shall be scheduled for completion not later than one hundred eighty (180) calendar days after commencement of construction.

G. Lessee, at its own expense, shall procure all necessary permits for any construction of facilities, and all work and installations shall be made in accordance with all applicable laws, ordinances, and rules and regulations of any governmental body having jurisdiction of such matters. Lessee shall save Lessor harmless from any loss or damage by reason of any mechanics lien or encumbrance of any kind or nature.

H. This Lease shall be subject to the Federal Aviation Administration's approval of any proposed construction as provided for on Federal Aviation Administration Form 7460-1.

I. At the end of the term of this Lease, Lessee shall have the right of removal. If Lessee fails to exercise said right of removal, Lessor may at its option remove and dispose of all structures then located on the premises, or may declare said structures abandoned; if so abandoned, title to said structures shall pass to Lessor. In the event of default in the payment of

rent, Lessor may re-enter the premises and use same and all structures thereon for its own purposes. In such event, and in the event default remains uncured for thirty (30) days thereafter, title to the structures shall thereupon pass to Lessor.

7. OTHER ALTERATIONS, ADDITIONS, IMPROVEMENTS:

A. Except for Lessee's work, Lessee shall make no alterations, additions, or improvements in or to the leased premises without Lessor's prior written consent.

B. All of the Lessee's work shall, upon construction or installation, become a part of the leased premises, subject to the use and occupancy of Lessee, and upon expiration or termination of this Lease does not become the property of Lessor. Lessee shall have the right at the termination of the Lease and within a reasonable amount of time after such expiration to remove Lessee's buildings, cement floors, personal property, and trade fixtures, provided any damage to Lessor's property resulting from such removal shall be repaired or restored at Lessee's expense. Any of Lessee's buildings, personal property, or trade fixtures that are not removed after a reasonable amount of time after the date of any termination of this Lease shall thereafter belong to Lessor without payment of any consideration therefor.

8. OPERATIONS: Lessee's approved operation at Airport is pursuant to the provisions of Part 91 of Title 14 of the Code of Federal Regulations, Federal Aviation Administration. The hangar is not to be used as a commercial repair/maintenance shop. No maintenance on the aircraft shall be performed in the hangar without the prior written approval of airport except such minor maintenance as would normally be performed by an aircraft owner without the benefit of an aircraft mechanic. Painting is strictly prohibited. Lessee shall at all times and at its own cost and expense have all its owned or operated aircraft maintained in good operating order and free from known mechanical defects. The method and arrangement for operating on the Airport, including but not limited to the parking of aircraft, shall be subject to the review and approval of the County Airport Manager. The Airport Manager shall at all times have

final authority to designate the aprons, ramps, taxiways, runways, roadways, terminal, and common use areas at Airport to be utilized by Lessee in connection with its aircraft.

All of Lessee's activities conducted on Airport must be in accordance with appropriate federal and state statutory and decisional laws, Yuba County ordinances, rules and regulations, and the requirements of any other duly authorized government agency; however, in the event any such law, rules, regulations or requirement is changed subsequent to the execution of this lease and Lessee's activities are affected thereby, Lessee shall be allowed a reasonable time within which to comply with such change. Lessee shall conform and comply with all noise abatement rules and regulations applicable to Airport. Lessee agrees to conduct all flights, activities authorized herein, and ground operations on, at, or near the Airport in accordance with proper rules and regulations of all authorities having jurisdiction over such operations and activities.

9. USE OF COMMON AREAS:

A. Lessee shall be entitled, in common with others so authorized, to the use of all facilities and improvements of a public nature which are or may hereafter be connected with or appurtenant to the Airport, including the use of landing areas, runways, taxiways, navigational aids, terminal facilities, and aircraft parking designated by Lessor.

B. Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected, any building or other structure on or adjacent to the Airport which, in the opinion of Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft.

10. USE OF PREMISES: Except as otherwise specifically limited herein, the leased premises shall be used by Lessee only for the purpose of conducting therein and thereon Lessee's registered aircraft operations and maintenance of the same aircraft and for no other purpose. Except for Lessor's obligations specifically set forth in this Lease and Use Permit, Lessee shall

promptly comply with all laws, ordinances, orders, and regulations affecting the leased premises and its cleanliness, safety, occupation, and use. Lessee shall not do or permit anything to be done in or about the leased premises, or bring or keep anything on the leased premises, that (i) will increase the premiums (unless Lessee pays such increase) or cause cancellation of any insurance on the building, (ii) is prohibited by any insurance on the building, (iii) would invalidate or be in conflict with the insurance coverage on the building, (iv) would invalidate any liability insurance of Lessor, or (v) may be a nuisance or menace to other tenants or users of the Airport provided. If Lessee is prohibited from using the leased premises for the permitted uses and purposes set forth in this paragraph 10 in order to comply with the covenants of this paragraph (other than payment of increased premiums), Lessee may terminate this Lease and Use Permit upon written notice thereof given to Lessor within thirty (30) days of such prohibited use. Lessee agrees to pay for any additional premiums on Lessor's fire and liability insurance policies charged by reason of Lessee's use of or operations on the leased premises. No spray painting using inflammable paints or liquids will be done within the building without proper fire prevention and suppression equipment approved by Lessor.

11. **SIGNS:** During the term of this Lease, Lessee shall have the right, at Lessee's expense, to place in or on the premises a sign or signs identifying Lessee. Said sign or signs shall be of a size, shape, and design, and at a location or locations, approved by the Airport Manager and in conformance with any overall directional graphics or sign program established by Lessor. Notwithstanding any other provision of this Lease, said signs(s) shall remain the property of Lessee. Lessee shall remove, at its expense, all lettering, signs, and placards so erected on the premises at the expiration of the term of this Lease.

12. **INSURANCE:** Lessee shall throughout the existence of this Lease, at its own cost and expense, procure and maintain in full force and effect comprehensive general liability

insurance in the minimum amounts of ONE MILLION DOLLARS (\$1,000,000.00) combined single limit as follows:

A. The terms of the attached Exhibit C, "Insurance Provisions," are made a part of this Lease and are incorporated herein by reference.

B. Full Worker's Compensation and Employers' Liability Insurance covering all employees of Lessee as required by law in the State of California.

C. Additional Insureds: The insurance required shall include the County of Yuba, its officers and employees, as additional insureds except with regard to occurrences that are the result of their sole negligence.

D. Cancellation Notice: The insurance required shall provide that no cancellation or material change in any policy shall become effective except upon thirty (30) days' prior written notice to the County of Yuba.

E. Proof of Insurance: Lessee shall furnish proof of coverage satisfactory to the Yuba County Risk Manager as evidence that the insurance required above is being maintained.

13. INDEMNITY: Lessee shall indemnify and defend the County and its officers, agents, and employees against and hold it harmless from any and all loss, damage, and liability for damages, including attorneys' fees and other costs of defense incurred by County, whether for damage to or loss of property, or injury to or death of person, including properties of County and injury to or death of County's officers, agents, and employees, which shall in any way arise out of or be connected with Lessee's operations hereunder, unless such damage, loss, injury or death shall be caused solely by the negligence of County.

14. MAINTENANCE AND REPAIR:

Lessee shall be responsible for the maintenance and repair of the premises and shall keep and maintain the premises in good condition, order, and repair, and shall surrender the

same upon the expiration of this Lease in the condition in which they are required to be kept, reasonable wear, tear, and damage by the elements not caused by Lessee's negligence excepted.

15. TAXES: Under this Lease, a possessory interest subject to property taxation may be created. Notice is hereby given pursuant to California Revenue and Taxation Code Section 107.6 that such property interest may be subject to property taxation created, and that the party to whom the possessory interest is vested may be subject to the payment of property taxes levied on such interest. Lessee shall pay all taxes of whatever character that may be levied or charged upon Lessee's operations hereunder and upon Lessee's right to use Airport.

16. UTILITIES: Lessee shall have sole and exclusive responsibility for obtaining all electricity, gas, water, telephone, sewer, or other utility services and for the payment of all rates or charges levied, assessed, or charged against said premises in the operation thereof for such services. Lessee will furnish its own heat, light, and power for the operation of said premises, including but not limited to any service charges, connection or installation fees, related thereto.

17. ASSIGNMENT OR SUBLEASE:

A. Lessee shall not assign or transfer in whole or in part by operation of law or otherwise this Lease or any of the Lessee's rights, duties, or obligations hereunder nor sublet any portion or all of the premises leased hereunder or the hangar constructed upon said premises without Lessor's consent to assignment of this Lease, and the Lessor shall not unreasonably withhold his consent to assignment. Lessor retains the right at time of proposed assignment to terminate Lease and renegotiate a new Lease with proposed assignees at Lessor's option.

B. Lessee shall have the right to sublease up to 100 percent of his leasehold with the approval of the Airport Manager, but sublessees will be required to pay appropriate use and fees or charges as established from time-to-time by the County. Any sublease of this Lease shall also contain the above provision prohibiting further subleasing by sublessees.

C. If Lessee, without securing prior written approval of Lessor, attempts to effect such a transfer, assignment, sublease, or if a transfer occurs by operation of law, Lessor may terminate this Lease upon thirty (30) days' notice to Lessee without further liability to Lessee and such assignment, transfer, or sublease shall be void.

18. **DEFAULT:** In the event Lessee is in default in the payment on any amount due under the terms of this Lease or defaults in the performance of any of the covenants or conditions on Lessee's part to be performed, then Lessor, at its option, may terminate this Lease and re-enter upon the premises. Lessor shall have the right to retain all rents and any other sums owing and unpaid to the date of termination hereunder.

19. **BANKRUPTCY:** In the event of bankruptcy, either voluntary or involuntary, or any assignment for the benefit of creditors made by Lessee, Lessee's interest hereunder shall automatically terminate.

20. **FIRE DAMAGE:** It is mutually understood and agreed between the parties hereto that in the event any portion of the demised premises be destroyed by fire and the same cannot be repaired within ninety (90) days, then Lessee may elect to terminate this Lease. In the event such restoration can be made within ninety (90) days, Lessor agrees to restore said premises provided further that during the period of non-occupancy by Lessee, the rent for said premises shall be waived during the period of non-occupancy and non-use.

21. **BREACH OR NONCOMPLIANCE:** The waiver of any breach or noncompliance with any terms, covenants, conditions, or provisions of this Lease or any rules, regulations, or decisions adopted pursuant thereto shall not constitute the waiver of any subsequent breach thereof whether such breach or noncompliance be the same or of a different kind or character.

22. **ATTORNEY'S FEES:** In case Lessor, without fault on its part, be made a party to any litigation commenced by or against Lessee, Lessee shall pay all costs, reasonable

attorney's fees, and expenses which may be incurred or imposed on Lessor by or in connection with such litigation.

23. COMPLIANCE WITH SPONSOR'S FEDERAL GRANT ASSURANCES:

To the extent applicable, Lessee shall comply with all Federal Aviation Administration (FAA) assurances as shown on Exhibit B, attached hereto and made a part hereof.

24. NOTICES: Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party pursuant to this Lease shall be in writing and either served personally or sent by prepaid, first-class mail. Such matters shall be addressed to the other party at the following address:

To County At:

Airport Manager  
YUBA COUNTY AIRPORT  
1364 Sky Harbor Drive  
Olivehurst, CA 95961

To Lessee at:

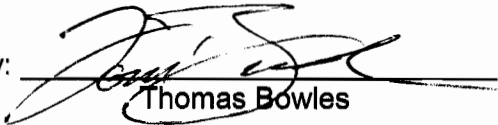
1168 Blue Grass Street  
Plumas Lake, CA 95961

Copy to:

Yuba County  
County Counsel  
915 8<sup>th</sup> Street, Suite 111  
Marysville, CA 95901

**IN WITNESS WHEREOF**, the parties have signed this Lease the day and year first above written.

**LESSEE**

By:   
Thomas Bowles

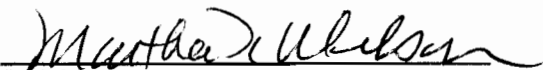
**COUNTY OF YUBA**

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

**ATTEST: DONNA STOTTLEMEYER**  
Clerk of the Board  
Of Supervisors

\_\_\_\_\_

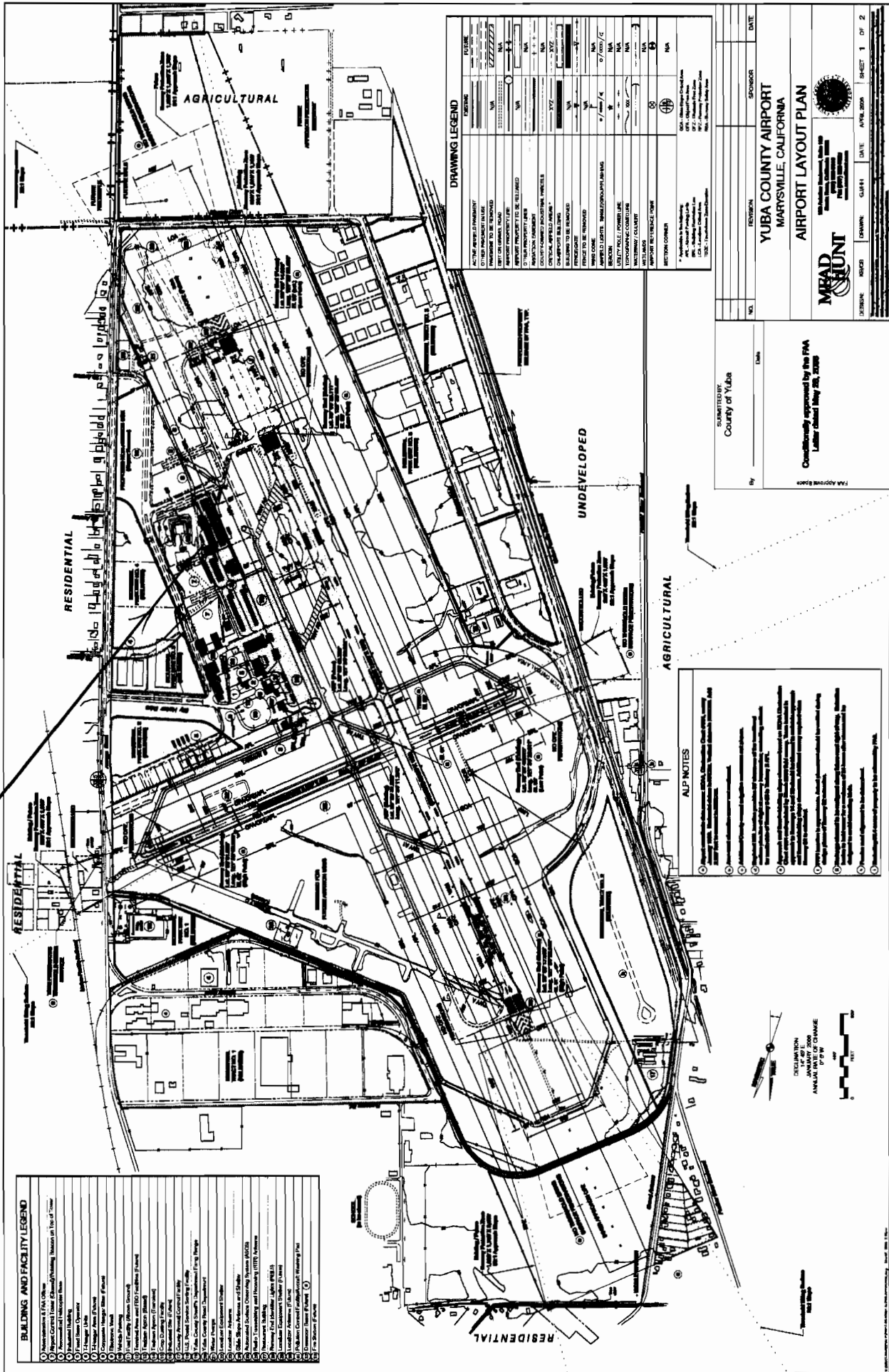
**REVIEW OF INSURANCE:**

  
Risk Manager

**APPROVED AS TO FORM:**

  
County Counsel, Deputy

Lot #11 - Hangar #4



BUILDING AND FACILITY LEGEND	
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DRAWING LEGEND	
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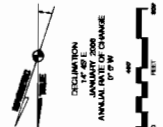
YUBA COUNTY AIRPORT  
MARYSVILLE, CALIFORNIA  
AIRPORT LAYOUT PLAN

MBAD & ASSOCIATES  
1000 N. 1st Street  
Marysville, CA 95901  
(916) 336-1111

DATE: 04/14/00  
DRAWN: G. H. H. H.  
CHECKED: G. H. H. H.  
APPROVED: G. H. H. H.  
SCALE: 1" = 100'

SUBMITTED BY: County of Yuba  
DATE: 04/14/00  
FMA APPROVED: G. H. H. H.  
CONDITIONALLY APPROVED BY THE FMA  
LATER THAN MAY 28, 2000

DATE: 04/14/00  
PAGE: 1 OF 2



## **EXHIBIT B**

### **FEDERAL AVIATION ADMINISTRATION ASSURANCES**

**A. COMPLIANCE WITH SPONSOR'S FEDERAL GRANT ASSURANCES:** To the extent applicable, Lessee shall comply with all Federal Aviation Administration (FAA) assurances below:

1. The Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenants and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, COT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

2. The Lessee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (in the case of leases add "as a covenant running with the land") that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the (Lessee, licensee, Lessee, etc. shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

3. That in the event of breach of any of the above nondiscrimination covenants, the County of Yuba shall have the right to terminate the permit and to reenter and repossess said land and the facilities thereon, and hold the same as if said permit had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.

4. Lessee shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

5. Non-compliance with Provision 4 above shall constitute a material breach thereof and in the event of such non-compliance the County of Yuba shall have the right to terminate this permit and the estate hereby created without liability therefore or at the election of the County of Yuba or the United States either or both said Governments shall have the right to judicially enforce Provisions.

6. Lessee agrees that it shall insert the above five provisions in any permit by which said Lessee grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the premises herein permitted.

7. The Lessee assures that it will undertake an affirmative action program as required by 14 CFR Par 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Lessee assures that it will require that its covered suborganizations provide assurances to the Lessee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR 152, Subpart E, to the same effort.

8. The County of Yuba reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Lessee and without interference or hindrance.

9. The County of Yuba reserves the right, but shall not be obligated to the Lessee to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport together with the right to direct and control all activities of the Lessee in this regard.

10. This lease shall be subordinate to the provisions and requirements of any existing or future agreement between the County of Yuba and the United States, relative to the development, operation or maintenance of the airport.

11. There is hereby reserved to the County of Yuba, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein permitted. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Yuba County Airport.

12. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the permitted premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the permitted premises.

13. The Lessee by accepting this expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object, nor permit the growth of any tree on the land leased hereunder above the mean sea level elevation of 65 feet. In the event the aforesaid covenants are breached, the owner reserves the right to enter upon

the land permitted hereunder and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Lessee.

14. The Lessee by accepting this permit agrees for itself, its successors and assigns that it will not make use of the permitted premises in any manner which might interfere with the landing and taking off of aircraft from the Yuba County Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the owner reserves the right to enter upon the premises hereby permitted and cause the abatement of such interference at the expense of the Lessee.

15. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

16. This permit and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said airport or the exclusive or non-exclusive use of the airport by the United States during the time of war or national emergency.

## **Attachment C – Insurance Provisions**

LESEE shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the LESEE, its agents, representatives, or employees.

### **MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONSULTANT has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

*(Not required if LESEE provides written verification it has no employees)*

4. **Professional Liability (Errors and Omissions)** Insurance as appropriate to LESEE's profession, with limits no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

5. **Pollution Legal Liability** with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If the LESEE maintains higher limits than the minimums shown above, COUNTY requires and shall be entitled to coverage for the higher limits maintained by LESEE.

### **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

***Additional Insured Status***

**COUNTY, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of LESEE; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of LESEE including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the LESEE's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

***Primary Coverage***

For any claims related to this contract, **LESEE's insurance coverage shall be primary** insurance as respects COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, or volunteers shall be excess of LESEE's insurance and shall not contribute with it.

***Notice of Cancellation***

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the COUNTY.**

***Waiver of Subrogation***

LESEE hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said LESEE may acquire against COUNTY by virtue of the payment of any loss under such insurance. LESEE agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not COUNTY has received a waiver of subrogation endorsement from the insurer.

***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by COUNTY. COUNTY may require LESEE to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the COUNTY.

***Claims Made Policies***

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, LESEE must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

***Verification of Coverage***

LESEE shall furnish COUNTY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive LESEE's obligation to provide them. COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

***Subcontractors***

LESEE shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

***Special Risks or Circumstances***

COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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**AUDITOR - CONTROLLER**

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**C. RICHARD EBERLE, CPA**

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915 8<sup>th</sup> Street, Suite 105  
Marysville, CA 95901-5273  
(530) 749-7810

**To:** Board of Supervisors  
**From:** C. Richard Eberle, CPA, Auditor-Controller  
**Date:** December 17, 2013  
**Re:** Social Security Number Truncation Program

## **Recommendation**

Accept Independent Accountant's report from Tenney & Company, CPAs, on applying Agreed Upon Procedures for the Social Security Number Truncation Program.

## **Background**

California Government Code §27301 directs county recorders to establish a program to truncate social security numbers from recorded documents so a copy can be made available to the public. The legislature authorized the collection of funds to implement such a program through Government Code §27361. The Board of Supervisors adopted a resolution on May 13, 2008 approving a fee to fund the program. Government Code §27361 (d) (4) directs a county board authorizing such a fee to require two reviews of the program; the first review due prior to December 31, 2013, and the second due prior to December 31, 2017.

## **Discussion**

The county contracted with Tenney & Company, CPAs, to perform the agreed upon procedures in order to verify compliance with Government Code §27301. The auditors determined the funds collected were used exclusively to fund the truncation program, in compliance with the law. Tenney & Company further determined the Office of the Clerk/Recorder has completed all phases of the SSN Truncation Program as required by code. They further estimated the ongoing costs of the program for the fiscal years 2013/14 through 2016/17 to be \$38,800.

## **Committee Action**

None necessary

## **Financial Impact**

As identified in the report the costs of the program for the current year are projected to be \$23,100 and \$15,700 for the next 3 fiscal years. It is expected these costs will be covered by current and future collections through the current fee structure.

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**INDEPENDENT ACCOUNTANT'S REPORT  
ON APPLYING AGREED-UPON PROCEDURES  
FOR THE YUBA COUNTY AUDITOR CONTROLLER AND CLERK RECORDER  
SOCIAL SECURITY NUMBER TRUNCATION PROGRAM  
FIRST REQUIRED REVIEW - DECEMBER 2013**

## **TABLE OF CONTENTS**

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Introduction	1
Background	1
Objective	2
Procedures	2
Conclusion	3-4
Findings & Recommendations	5-6



# Tenney and Company

CERTIFIED PUBLIC ACCOUNTANTS

## *Independent Accountant's Report on Applying Agreed-Upon Procedures*

### **INTRODUCTION**

We have performed the procedures enumerated below, which were agreed to by Yuba County Auditor Controller and the Clerk Recorders offices, solely to assist the specified parties in evaluating Yuba County Auditor Controller and the Clerk Recorder office's compliance with the program to truncate social security numbers during the period beginning January 1, 1980 through the date of June 30, 2012. Yuba County Auditor Controller and the Clerk Recorders offices management are responsible for the Clerk Recorder's compliance with those requirements.

We agreed to apply procedures to the County of Yuba office of the Auditor-Controller and the office of the Clerk-Recorder in relation to the program to truncate social security numbers to:

1. Determine that funds collected under CA GC 27361 (d) (1) are being used solely to truncate social security numbers in accordance with CA GC 27300-27307.
2. Determine the progress of the Office of the Clerk-Recorder in completing the social security number truncation process in accordance with CA GC 27301(a) and (b) through the date of June 30, 2012.
3. Estimate any ongoing costs to the Office of the Clerk-Recorder to comply with CA GC 27301 (a) and (b).

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

### **BACKGROUND**

California Assembly Bill 1168, Chapter 627 of the Statutes of 2007 required the implementation of a social security truncation program to protect citizens against the risk of identity theft. AB1168 added the following government codes: California Government Code § 27301 directed the county recorder of each county to establish a social security number truncation program in order to create a public record version of each official record. The program required the recorder to create an electronic version of each official record recorded between January 1, 1980 and December 31, 2008 and truncate all social security numbers contained in those records. For each official record recorded after January 1, 2009, the recorder shall create a copy of that record in electronic format and truncate any social security number contained in the record.

Per California Government Code § 27304 no later than June 1, 2008, the recorder shall petition their county board of supervisors for the authority to levy a fee to fund the truncation program.

Per California Government Code § 27361(d)(4) the county board of supervisors shall require the county auditor to conduct two reviews to verify the funds generated by the fee are used for the purposes of the program. The first review must be completed no earlier than June 1, 2012 and no later than December 31, 2013. The second review must be completed no earlier than June 1, 2017 and no later than December 31, 2017.

On May 13 2008, pursuant to section 27361 (d)(l) of the Government Code, the Board of Supervisors of the County of Yuba adopted resolution #2008-51 to approve the \$1 fee to fund the truncation program for implementation effective 60 days from adoption. All program fees collected are deposited into fund 383-000-371-9899. The fee collection will cease on December 31, 2017 unless reauthorized by the Board.

The Recorder began collecting truncation fees on June 9, 2008. Total fees collected from June 9, 2008 through June 30, 2012 are \$62,132 and total expenditures for the same period are \$22,518.

On July 8, 2008, the Board of Supervisors of the County of Yuba adopted resolution 2008-74 authorizing the Clerk-Recorder to execute agreement with BMI Imaging Systems for modernization of official public records and truncation of Social Security numbers. The BMI proposal included 4 projects including: Project 1 and 2 which included scanning, indexing and redaction of Official Records 1980 to 1989 resulting in 2 sets of data – a public copy with SSN's truncated and an Office copy with a red box outlining the SSN. Project III included scanning, indexing and reaction of official records 1990 to 2004 (to be loaded into the Fidlar System).

In 2003 the Board of Supervisors approved the first phase of a digital retrieval system in the Clerk/Recorder's office. With the implementation of the first phase in January 2004, the Recorder's documents from January 14, 2004, became available to the public in real time with the real time index also available on the county website (index only, not document view). An OCR system was put into place in the Fidlar Tech system December 3, 2007. In this system, documents are recorded as they go through an OCR system that looks for social security numbers and truncates them, (Staff also view documents that typically include social security numbers to confirm that the numbers were truncated). This Fidlar Tech system is supported by annual maintenance contracts for annual software and support of truncation of social security number of the Recorder's electronic records, the current contract term is from July 1, 2013 to June 30, 2014

### **OBJECTIVE**

We performed procedures to: (1) to determine if the funds generated by the program are used only for the purpose of the program; (2) to determine the progress of the county recorder in truncating recorded documents pursuant to California Government Code Section 27301; and (3) to estimate any ongoing costs to the county recorder in complying with the requirements of California Government Code Section 27301 subdivisions (a) and (b).

### **PROCEDURES**

We have performed the procedures enumerated below with respect to the Yuba County Clerk Recorder's SSN Truncation Program. These procedures, which were agreed to by the Yuba County Auditor Controller and the Clerk Recorders offices, were performed to assist the County in meeting the requirements of CA Government Code Section 27361. This agreed-upon procedures engagement was

conducted in accordance with Generally Accepted Governmental Auditing Standards. The sufficiency of these procedures is solely the responsibility of the parties specified in the report. Consequently, we make no representation regarding the sufficiency of the procedures described either for the purpose for which this report has been requested or for any other purpose.

1. We obtained the County Board of Supervisors approval of the fee to fund the SSN Truncation Program and determined its compliance with CA Government Code Sections 27301(c), 27304(b), and 27361(d).
2. We obtained adequate documentation and traced program revenue obtained through the collection and deposit of approved fees to the special revenue fund established for the accounting of truncation program fiscal activity.
3. We obtained adequate documentation and traced program expenditures to the special revenue fund established for the accounting of the truncation program fiscal activity.
4. We obtained program status reports required pursuant to CA Government Code Section 27305 and reviewed a sample of truncated documents to determine the current status of the truncation program.
5. We obtained support contracts and budgets information and invoices from the Clerk Recorder's Office and performed analysis for the estimation of ongoing costs of the truncation program.

## **CONCLUSION**

### **FISCAL ANALYSIS:**

Redaction Fees were collected beginning in FY 2008-09. The total amount collected through 6-30-2013 was \$79,844. The fees have been used solely to fund the social security number truncation program. The following is the amount of fees received per fiscal year:

FY 2008/09:	\$ 15,625
FY 2009/10:	\$ 16,067
FY 2010/11:	\$ 15,258
FY 2011/12:	\$ 15,182
FY 2012/13:	\$ 17,712

Expenditures to implement the program through June 30, 2013 have totaled \$25,398.56. \$14,141.56 of the total was for scanning and then redacting the social security numbers from 1990 through 2003. \$300 was for re-import of record images. \$10,957 of the total was for annual software and support of truncation of social security number of the Recorder's electronic records February 1, 2010 to February 1, 2014.

We reviewed the relevant system documents and determined the Clerk Recorder has used funds generated by the SSN truncation program solely for purposes of the program.

### **PROGRAM PROGRESS:**

We inquired with Yuba County Auditor Controller and the Clerk Recorders staff and reviewed reports and a sample of truncated documents and determined the Clerk Recorder has completed all phases of the SSN truncation program. All official records recorded from January 1, 1980 to present have a copy of the record in electronic format and social security numbers contained in the record are truncated as required

by Government Code Section 27301. Creation of the truncated electronic copy of all records was completed as of May 2011.

ESTIMATE OF ONGOING COSTS:

We inquired of the Clerk Recorder's office and reviewed contract agreements and performed analysis of cost data and determined the estimated ongoing cost of the program is the following:

- The current contract with Fidar calls for annual software support of \$2,880 through February 1, 2014.
- On September 10, 2013, the Board of Supervisors of the County of Yuba adopted resolution 2013-87 authorizing the Clerk-Recorder to execute agreement with Tyler Tech for a comprehensive integrated Clerk-Recorder's document capture, reporting, storage maintenance and cashing system including conversion migration services/management and ongoing maintenance and support. Conversion services of image upload from Fidar Tech to Tyler Tech is \$5,000. Image upload include truncated images. Tyler Tech Auto Redaction implementation is \$6,000.
- Annual maintenance fee for auto redaction with Tyler Tech is \$1,200 and is subject to change after 2 years. The maintenance agreement is effective on the earlier of (i) 90 days after use of a Tyler Software product in live production, or (ii) 180 days from the date Tyler made the Tyler Software Products available to Client or downloading. A 15% increase estimate for the 2 years ending in June 2017 would be approximately \$1,400 per year.
- In addition, the cost in FYE June 2013 for the Truncation review is \$7,000.
- Estimated annual cost of Clerk Recorder staff time for review of routine truncation of incoming documents is estimated at \$3,900.

Fiscal Year	Estimated Expenditure Amount
FY 2013/2014	\$23,100
FY 2014/2015	\$ 5,100
FY 2015/2016	\$ 5,300
FY 2016/2017	\$ 5,300

We were not engaged and did not conduct an audit, the objective of which would be the expression of an opinion. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Yuba County Board of Supervisors and the management of the Yuba County Auditor Controller and the Clerk Recorders offices and is not intended to be and should not be used by anyone other than these specified parties

*Jerney and Company*

December 3, 2013

## FINDINGS & RECOMMENDATIONS

### 1. Truncation of documents in public records

**Condition:** Our procedures included an examination of a sample including the following documents: Affidavit of Death, Abstract of Judgment, Reconveyance, Service discharge, UCC Statements including Assignment, Continuation, Subordination and Termination, Lien Notice, Certification of Trust, Substitution of Trustee, Order Avoiding Lien, Spousal Property Order, Assignment of Rents, Memorandum of Lease, Petition in Bankruptcy, Power of Attorney, Federal Tax Lien, State Tax Lien, Release of Federal Tax Lien, Release of State Tax Lien, Abstract of Support Judgment.

22 documents from our sample between the years 1990 and 2012 were identified with social security numbers without truncation in the public records. Of the 22 documents observed, 16 of the documents or 72.7% were Franchise Tax Board documents. In these Franchise Tax Board documents the FTB Account number is the social security number and was untruncated. The other documents with untruncated social security numbers included 2 Abstract of Judgment documents, Construction Deed of Trust, Partial Release, Subordination, Tax Lien,

2 documents from our sample between 1980 and 1989 were identified with untruncated social security numbers – a Deed of Trust Assignment of Rents and a Certificate of Military Service.

**Criteria:** Per GC 27301(a) and (b) -- The county recorder of each county shall establish a social security number truncation program in order to create a public record version of each official record. The program shall include both of the following components, which the recorder shall implement concurrently:

(a) For each official record recorded between January 1, 1980, and December 31, 2008, the recorder shall create in an electronic format an exact copy of the record except that any social security number contained in the copied record shall be truncated. In order to create a public record copy, the recorder shall first truncate the social security numbers in all records that already exist in an electronic format and then create an electronic version of all other records and truncate social security numbers contained in those records. Each group of records shall be handled in descending chronological order.

(b) For each official record recorded on or after January 1, 2009, the recorder shall create a copy of that record in an electronic format and truncate any social security number contained in that record.

27302. (a) A county recorder shall be deemed to be in compliance with the requirements of Section 27301 and shall not be liable for failure to truncate a social security number if he or she uses due diligence to locate social security numbers in official records and truncate social security numbers in the public record version of those official records. The use of an automated program with a high rate of accuracy shall be deemed to be due diligence. (b) In the event that a county recorder fails to truncate a social security number contained in a public record, any person may request that the county recorder truncate the social security number contained in that record. Notwithstanding that a county recorder may be deemed to be in compliance with Section 27301 pursuant to subdivision (a), a county recorder that receives a request that identifies the exact location of an untruncated social security number within a specifically identified public record, shall truncate that number within 10 business days of receiving the request. The public record with the truncated social security number shall replace the record with the untruncated number.

**Cause:** In the Franchise Tax Board documents we observed that the FTB Account number is the social security number and may include the first 4 characters of the Taxpayers last name. On the Notice of State Tax Lien the Social Security Number is below the FTB Account Number. The BMI truncation program was written to truncate social security numbers not FTB Account numbers.

**Effect:** An automated program was used to truncate the social security numbers in the electronic records. This may result in records that are not truncated by the program although the use of an automated program with a high rate of accuracy is deemed to be due diligence.

**Recommendation:**

- A. Upon receipt of the list of untruncated documents, the County Recorder shall locate and truncate the untruncated number in the public record within 10 business days of notification.
- B. Section 15705 of the Government Code requires the Franchise Tax Board (FTB) to truncate social security numbers on lien abstracts and any other records created by TB that are disclosable under the public records act. Tenney and Company recommends that Franchise Tax Board documents truncated prior to January 1, 2007 be reviewed by a staff person for truncation.

**Management Response:**

- A. The Clerk/Recorder was advised of 6 nontruncated documents on November 15, 2013. Those documents were properly truncated by the end of the day on November 15, 2013. On November 21, 2013 an additional two documents were brought to the Clerk/Recorder attention and were properly truncated on that same day.
- B. The Yuba County Clerk/Recorder is in compliance with Government Code 27302(a) as it relates to notification of nontruncated social security numbers.

# The County of Yuba



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## Office of the Board of Supervisors

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Donna Stottlemeyer, Clerk of the Board of Supervisors  
915 Eighth Street Suite 109  
Marysville, CA 95901  
Telephone: (530) 749-7510  
Fax: (530) 749-7353

Andy Vasquez - Supervisorial District One  
John Nicoletti - Supervisorial District Two  
Mary Jane Griego - Supervisorial District Three  
Roger Abe - Supervisorial District Four  
Hal Stocker - Supervisorial District Five

December 17, 2013

**TO:** Board of Supervisors

**FROM:** Chairman Vasquez and Vice-Chairman Nicoletti

**SUBJECT:** Meeting Schedule for 2013 and Cancellation of Certain Board Meetings

*Recommendation:*

Approve Board of Supervisors meeting schedule for 2014 and cancelling certain meetings.

*Background and Discussion:*

The proposed meeting calendar consists of 31 regular Board meetings and one workshop. A total of eleven meetings are proposed to be cancelled. Certain meetings are recommended cancelled for department heads to prepare budgets and presentations for Fiscal Year 2014/15. Pursuant to Ordinance Section 2.25.010 five meetings will not be held due to holiday or election days.

During 2013, the Board held 34 regular meetings, one special meeting, and five workshops which included two on the budget.

*Committee Action:*

This matter brought directly to the Board for consideration.

*Fiscal Impact:*

None.

Attachment

2014 Meeting Schedule  
Board of Supervisors

Jan. 07 6:00 p.m. *Cancelled*

Jan. 14 9:30 a.m.

Jan. 21 9:30 a.m.

Jan. 28 9:30 a.m.

Feb. 04 6:00 p.m.

Feb. 11 9:30 a.m.

*Feb. 18 Cancelled*

Feb. 25 9:30 a.m.

*Mar. 04 6:00 p.m. Cancelled*

Mar. 11 9:30 a.m.

Mar. 18 9:30 a.m.

Mar. 25 9:30 a.m.

Apr. 01 6:00 p.m.

*Apr. 08 Cancelled*

Apr. 15 9:30 a.m.

Apr. 22 9:30 a.m.

*Apr. 29 No Meeting-5th Tuesday*

May 06 6:00 p.m.

May 13 9:30 a.m.

May 20 9:30 a.m.

*May 27 Cancelled*

*Jun. 03 No Meeting Election*

Jun. 10 9:30 a.m.

*Jun. 17 9:30 a.m. Cancelled*

Jun. 24 9:30 a.m./Prpsd Bgt Apprvl

Jul. 01 6:00 p.m.

Jul. 08 9:30 a.m.

*Jul. 15 Cancelled*

Jul. 22 9:30 a.m.

*July 29 No Meeting-5th Tuesday*

*Aug. 05 Cancelled - National Nite*

Aug. 12 9:30 a.m. & 1:00 p.m./Bgt

Aug. 19 8:30 a.m. Budget Wrkshps

*Aug. 19 9:30 a.m. Cancelled*

Aug. 26 9:30 a.m.

*Sept. 02 Cancelled*

Sept. 09 9:30 a.m.

Sept. 16 9:30 am/Final Bgt 1:30 p.m.

Sept. 23 9:30 a.m.

*Sept. 30 No Meeting 5th Tuesday*

Oct. 07 6:00 p.m.

*Oct. 14 Cancelled*

Oct. 21 9:30 a.m.

Oct. 28 9:30 a.m.

*Nov. 04 No meeting Election*

*Nov. 11 No Meeting Holiday*

Nov. 18 9:30 a.m. - CSAC Conf.

*Nov 25 No Meeting Holiday*

*Dec. 02 Cancelled ACWA Conf*

Dec. 09 9:30 a.m.

Dec. 16 9:30 a.m.

*Dec. 23 No Meeting - Holiday*

*Dec. 30 No Meeting - 5th Tuesday*

*\*Pursuant to Ordinance Code 2.25.010 "any regular meeting...that falls upon a holiday or Election day is cancelled.*

*There shall be no regular meeting in any work week having 2 County holidays. Section 2.25.020 provides no regular meeting shall be held on the 5th Tuesday in any calendar month.*

*2014 Holidays - Jan 1 & 20; Feb 17; May 26 July 4; Sept 1; Nov 11, 27, & 28; Dec 24 & 25*



1104 E Street  
Marysville, CA 95901  
Phone: (530) 749-4040  
Fax: (530) 749-3279

# M e m o r a n d u m

**Date:** December 17, 2013

**To:** Yuba County Board of Supervisors

**From:** Tonya K. Byers, Coordinator  
Child Care Planning Council of Yuba & Sutter Counties

**RE:** Membership Self-Certification for Child Care Planning Council

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**RECOMMENDATION:** Board of Supervisors to approve the Certification Statement Regarding Composition of Local Planning Council (LPC) Membership and authorize the Chairman of the Board to sign.

**BACKGROUND:** In 1997, under AB 1542, the Council membership composition was established and legislative mandates were assigned to the Councils. The Certification Statement Regarding Composition of LPC Membership certifies that the membership criteria as established under the Education Code, Section 8499.3, are met.

**DISCUSSION:** The Board of Supervisors and the Superintendent of Schools make the appointments of the Council Members to the Child Care Planning Council. The submission of the Certification Statement Regarding Composition of the LPC is required annually by the State Department of Education, Child Development Division.

**COMMITTEE ACTION:** No committee has reviewed the request because it is annually reviewed and recertified.

**FISCAL IMPACT:** None

Attachments

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**CERTIFICATION STATEMENT**  
**REGARDING COMPOSITION OF LPC MEMBERSHIP**

**Return to:**

California Department of Education  
 Child Development Division  
 Local Planning Council Consultant  
 1430 N. Street, Suite 3410  
 Sacramento, CA 95814


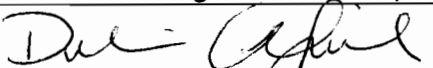
**Due Date:**

**Annually on January 20**

Please complete all information requested below:

County Name:  Yuba County	County Coordinator Name and Telephone Number:  Tonya K. Byers ~ (530) 749-4041
<b>Membership Categories</b>	
<b>20% Consumers (Defined as a parent or person who receives, or who has received within the past 36 months, child care services.)</b>	
Name of Representative	Address/Telephone Number
Appointment Date and Duration	
Vacant	October 1, 2012 – September 30, 2015
Vacant	October 1, 2013 – September 30, 2016
<b>20% Child Care providers (Defined as a person who provides child care services or represents persons who provide child care services.)</b>	
Name of Representative	Address/Telephone Number
Appointment Date and Duration	
Vacant	October 1, 2012 – September 30, 2015
Kathy Woods	1919 B Street Marysville, CA 95901 530-749-6162
October 1, 2013 – September 30, 2016	
<b>20% Public Agency Representative (Defined as a person who represents a city, county, or local education agency.)</b>	
Name of Representative	Address/Telephone Number
Appointment Date and Duration	
Leslie Cena	935 14 <sup>th</sup> Street Marysville, CA 95901 530-749-4871
October 1, 2012 – September 30, 2015	
Cynthia Sodari	1114 Yuba Street Marysville, CA 95901 530-749-4876
October 1, 2012 – September 30, 2015	

Membership Categories		
20% Community Representative (Defined as a person who represents an agency or business that provides private funding for child care services, or who advocates for child care services through participation in civic or community-based organizations but is not a child care provider or CDE funded agency representative.)		
Name of Representative	Address/Telephone Number	Appointment Date and Duration
Denice Burbach	2088 North Beale Road Marysville, CA 95901 530-741-6926	October 1, 2013 – September 30, 2016
Donna Greist	6249 C Street Beale AFB, CA 95903 530-634-4984	October 1, 2013 – September 30, 2016
20% Discretionary Appointees (Appointed from any of the above categories or outside of these categories at the discretion of the appointing agencies.)		
Name of Representative	Address/Telephone Number	Appointment Date and Duration
Lena Westman	900 Olive Street Wheatland, CA 95692 530-633-9369	October 1, 2013 – September 30, 2016
Vinny Johl	1275 Tharp Road Yuba City, CA 95993 530-635-5704	October 1, 2013 – September 30, 2016

<b>Authorized Signatures</b>		
<p>We hereby verify as the authorized representatives of the county board of supervisors (CBS), the county superintendent of schools (CSS), and the Local Child Care and Development Planning Council (LPC) chairperson that as of <u>December 3, 2012</u> the above identified individuals meet the council representation categories as mandated in AB 1542 (Chapter 270, Statutes 1997; California <i>Education Code</i> Section 8499.3). Further, the CBS, CSS, and LPC chairperson verify that a good faith effort has been made by the appointing agencies to ensure that the ethnic, racial, and geographic composition of the LPC is reflective of the population of the county.</p>		
Authorized Representative - County Board of Supervisors	Telephone Number	Date
	530-749-7510	
Authorized Representative - County Superintendent of Schools	Telephone Number	Date
	530-749-4845	12/5/2013
Local Child Care Planning Council Chairperson	Telephone Number	Date
	530-674-1885, ext. 109	12/4/13

# The County of Yuba


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**Office of Clerk of the Board of Supervisors**

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**To:** Board of Supervisors

**From:** Donna Stottlemeyer, Clerk of the Board 

**Subject:** Fish and Game Advisory Commission – At-Large Representative

**Date:** December 17, 2013

## **Recommendation**

Appoint Terry Oakes to the Yuba County Fish and Game Advisory Commission as an at-large representative for a term to end October 5, 2014.

## **Background and Discussion**

The Local Appointment List of all Boards/Commissions/Committees is continually posted indicating vacancies, appointees, terms of office, qualifications and meeting information. This is an unscheduled vacancy as of October 2013. One application has been received by Mr. Oakes and is attached for your review and approval. In light of the expressed interest, it would be appropriate to appoint one individual at this time.

## **Fiscal Impact**

None

## **Committee Action**

None

attachments

# The County of Yuba

RECEIVED

DEC 2 2013

Application for Board/Commission/Committee  
Appointed by the Board of Supervisors

Clerk/Board of Supervisors



RETURN APPLICATION WITH ORIGINAL SIGNATURE TO:

CLERK OF THE BOARD OF SUPERVISORS  
YUBA COUNTY GOVERNMENT CENTER  
915 EIGHTH STREET, SUITE 109  
MARYSVILLE, CA 95901  
(530) 749-7510

BOARD/COMMISSION/COMMITTEE

ON WHICH YOU WOULD LIKE TO SERVE: Yuba Co Fish & Game Comm.

APPLICANT NAME:

TERRY OAKES

MAILING ADDRESS -  
(Street/P.O. Box, City, Zip):

[REDACTED] Marysville 95901

PHYSICAL ADDRESS  
(Street, City, Zip):

SAME

TELEPHONE:

HOME: [REDACTED]

EMAIL ADDRESS:

[REDACTED]

OCCUPATION/PROFESSION:

RETIRED MPD OFFICER

SUPERVISOR/ DISTRICT  
NUMBER:

D2 JOHN NICOLLETTI

REASONS YOU WISH TO

SERVE ON THIS BODY:

SERVED ON BOARD BEFORE. LEFT  
FOR OUT OF STATE WORK.

QUALIFICATIONS:

SERVED ON BOARD BEFORE, AVID HUNTER

SPORTSMAN,

Hunter Ed Instructor -

LIST PAST AND CURRENT

Yuba Co. Fish Commission

PUBLIC POSITIONS HELD:

DO YOU HAVE ANY CRIMINAL CONVICTION THAT MAY BE CONSIDERED A CONFLICT OF INTEREST WITH THE COMMITTEE YOU WISH TO SERVE UPON? ☐ YES ☒ NO

IF YES, PLEASE EXPLAIN. NOTE: THAT A FELONY CONVICTION SHALL PRECLUDE YOU FROM SERVICE.

I UNDERSTAND THAT IF APPOINTED TO A BOARD/COMMISSION/COMMITTEE AND WHAT MAY BE CONSIDERED A CONFLICT OF INTEREST ARISES, THAT I HAVE A DUTY TO GIVE WRITTEN NOTICE OF SUCH TO THE COUNTY.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNATURE

Terry Oakes

DATE

DEC 2, 2013

THIS SECTION FOR OFFICE USE ONLY

☐ NO VACANCY CURRENTLY EXISTS ON ABOVE-MENTIONED BODY. APPLICANT NOTIFIED.

☐ APPLICANT APPOINTED: \_\_\_\_\_

☐ OTHER: \_\_\_\_\_

**THE COUNTY OF YUBA****Clerk of the Board of Supervisors**915 8<sup>th</sup> Street, Suite 109

Marysville, CA 95901

(530) 749-7510

(530) 749-7353 Fax

**To:** Board of Supervisors**From:** Donna Stottlemeyer, Clerk of the Board

A handwritten signature in dark ink, appearing to read "D. Stottlemeyer", is written over the "From:" line.

**Subject:** Local Appointment List**Date:** December 17, 2013**Recommendation**

Adopt list of ongoing boards, commissions, and committees appointed by the Board of Supervisors.

**Background and Discussion**

The Maddy Appointive List Act of 1975 requires that on or before December 31 of each year, each legislative body shall prepare an appointments list of all regular and ongoing boards, commissions, and committees which are appointed by the legislative body of the local agency.

A current list is attached for your review and adoption. The list is continually posted at the Government Center, in the office of the Clerk of the Board of Supervisors, the Library, and on the County website, and is updated as vacancies and appointments occur.

**Fiscal Impact**

None

**Committee Action**

None required.

ds  
attachment

**YUBA COUNTY LOCAL APPOINTMENT LIST  
BOARD APPOINTED COMMITTEES/COMMISSIONS/BOARDS**

**December 5, 2013**

**VACANT POSITIONS ARE HIGHLIGHTED**

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**AREA 4 AGENCY ON AGING ADVISORY COUNCIL**

**[www.a4aa.com](http://www.a4aa.com)**

Tai Love  
2260 Park Towne Circle, Suite 100  
Sacramento, CA 95825-0416  
(916) 486-1876

Appointees: 2, Three-year term ending June 30

Qualifications: Resident of Yuba County; low income, older minority persons, or actual consumer of services under the Area Plan (El Dorado, Nevada, Placer, Sacramento, Sierra, Sutter, Yolo, & Yuba).

Meets: Third Thursday of each month, 1:00 p.m. at different locations within the counties represented

Compensation: Mileage at the IRS rate for out of county meetings

Elden Fowler, 10/15/2013 – 06/30/2016

**1 VACANCY – Unscheduled TERM ENDS 6-30-2014**

**AREA 4 AGENCY ON AGING/GOVERNING BOARD**

**[www.a4aa.com](http://www.a4aa.com)**

2260 Park Towne Circle Suite 100  
Sacramento, CA 95825-0416  
(916) 486-1876

Appointees: 1 At-large appointee Two-year term, and 1 Supervisor/Designee – One-year term. Terms end December 31

Qualifications: Resident of Yuba County

Meets: Second Friday of each month at 10 a.m. at different locations within the 7 counties represented (El Dorado, Nevada, Placer, Sacramento, Sierra, Sutter, Yolo, & Yuba).

Compensation: Mileage at the IRS rate for out of county meetings excluding Board of Supervisors members

Supervisor Andy Vasquez/Alternate Supervisor Hal Stocker  
John Hollis, At-Large Representative – 12/18/2012 - 12/31/2015

**ASSESSMENT APPEALS BOARD NO. 2**

**<http://www.co.yuba.ca.us/departments/bos/Assessment%20Appeals%20Board.aspx>**

Clerk of the Board of Supervisors  
915 – 8<sup>th</sup> Street, Suite 109  
Marysville, CA 95901  
(530) 749-7510

Appointees: 3/2 Alternates, Three-year term ending first Monday in September

Qualifications: Five years professional experience in California as one of the following: CPA/Public Accountant, licensed real estate broker, attorney, property appraiser accredited by a nationally recognized professional organization, or person which the Board of Supervisors believes possesses competent knowledge of property appraisal and taxation.

Meets: 9:00 a.m. on Monday one to two times monthly January through May and at varied times as needed throughout the year.

Compensation: \$75 per hour with \$150 minimum per meeting

Robert Storm, 10/23/2007 – 09/05/2016  
Mimi Mathews, 08/26/2008 - 09/01/2014  
Pete Hammontre, 08/15/2006 - 09/07/2015

Kuldip S. Atwal, 4/24/12 – 9/07/2015  
Norbert Kominsky, 8/13/2013 – 9/5/2016

**BI-COUNTY SOLID WASTE INDEPENDENT HEARING PANEL**

<http://www.co.yuba.ca.us/Departments/Community%20Development/EH/solid%20waste/solidwaste.aspx>

Environmental Health  
915 – 8<sup>th</sup> Street, Suite 123  
Marysville, CA 95901  
(530) 749-5450

Appointees: 3, Four-year term (May serve more than one term but not more than two consecutive terms)

Qualifications: One member shall be a technical expert with knowledge of solid waste management methods and technology; one member of the local governing body (Yuba County Board of Supervisors); and at least one member shall be a representative of the public at large residing in Yuba or Sutter County.

Meets: As needed

Supervisor John Nicoletti, 11/13/2012 – 12/31/2016  
Jerry Uhland, 05/11/2010 – 05/11/2014

Dennis Green, 06/14/2011 – 1/19/2014

**BROWNS VALLEY CEMETERY DISTRICT**

Ruth Mikkelsen, Chair  
P.O. Box 102  
Brownsville, CA 95918

Appointees: 3, Four-year term

Qualifications: Elector within the District

Ruth Mikkelsen, 10/27/09 – 08/22/2016  
Roland D'Arcy, 09/10/2013 – 09/10/2017

Susan Lee, 08/09/2011 – 04/27/2014

**BROWNSVILLE CEMETERY DISTRICT**

Norma Escherman, Secretary  
P.O. Box 333  
Brownsville, CA 95919  
(530) 675-2115

Appointees: 3, Four-year term

Qualifications: Elector within the District

Jim Bamford, 07/06/2010 – 07/06/2014  
Alvin Bell, 06/26/2012 – 06/07/2015

George Maasen, 02-26-2013 – 02-26-2017

**BUILDING CONSTRUCTION APPEALS BOARD**

c/o Community Development  
915 – 8<sup>th</sup> Street, Suite 123  
Marysville, CA 95901  
(530) 749-5430

Appointees: 5, Serve at the pleasure of the Board of Supervisors.

Qualifications: Need not be Yuba County resident. Must be sufficiently experienced in building and construction matters to pass upon matters coming before the Board, such as materials to be used in construction and technical rules relating to building permits.

Meets: As needed

Gerald Sparks, 02/18/1992  
Bart E. Johnson, 12/03/1985

Lloyd Appleby, 09/19/1995  
Garry E. Laughlin, 02/07/1984

John Stevens, 10/12/1999

## **CHILD CARE PLANNING COUNCIL OF YUBA & SUTTER COUNTIES**

[www.childcareyubasutter.org](http://www.childcareyubasutter.org)

Executive Director Tonya K. Byers

1104 E Street

Marysville, CA 95901

(530) 749-4040

**Appointees:** 5, 3 year term of office ending 9/30

**Qualifications:** Consumer – Parent or person who receives, or has received child care services;

Child Care Provider – a person who provides child care services or represents persons who provide child care services;

Public Agency – a person who represents a city, county, city and county, or local education agency;

Community – a person who represents an agency or business that provides private funding or advocates for child care services through participation in civic or community-based organizations and is not a child care provider and does not represent an agency that contracts with the California Department of Education to provide child care and development services; or

Discretionary – a person from any of the above categories or outside of these categories at the discretion of the appointing agencies

**Meets:** Fourth Tuesday of month at 1:00 p.m. at Yuba County Office of Education, Center for Education, 1104 E Street, Marysville.

Kathy Woods, Child Care Provider Rep., 10/15/2013 – 09/30/2016

Donna Greist, Community Representative, 10/15/2013 – 09/30/2016

Vinny Johl, Discretionary Representative, 10/15/2013 – 9/30/2016

Cynthia Sodari, Public Agency Rep., 11/12/2013 9/30/2015

**1 UNSCHEDULED VACANCY Consumer Rep., term ends 09/30/2013**

## **COMMISSION ON AGING**

Chairman Sue Cejner-Moyers

915 8<sup>th</sup> Street, Suite 109

Marysville, CA 95901

(530) 743-7554

**Appointees:** 7, Three-year term for At-Large and District reps run concurrent with Supervisorial District

**Qualifications:** Each Supervisor shall appoint one member who shall be a resident of his/her Supervisorial District. Two At-large members shall be appointed who shall be a County resident.

**Meets:** Second Wednesday at 10:00 a.m. at the Yuba County Senior Center, 4979 Olivehurst Avenue, Olivehurst

**Compensation:** None

Gertrude Hinojosa, District One Rep., 01/09/2007 – 12/31/2014

Angie Gates, District Two Rep. 3/19/2013 - 12/31/2016

Daisy Shelton, District Three Rep., 02/20/2007 – 12/31/2016

Debbie Panteloglou, 08/13/2013 – 12/31/2016

Sue Cejner-Moyers, District Five Rep., 12/14/2010 - 12/31/2014

Gayle Diemond, At-Large, 12-14-2010 – 5-08-2015

Gary Arlington, At-Large, 2-26-2013 – 4-13-2016

### **COMMUNITY SERVICES COMMISSION**

[http://www.co.yuba.ca.us/Departments/Community%20Development/Community%20Services/communityservicescommission\\_NEW.aspx](http://www.co.yuba.ca.us/Departments/Community%20Development/Community%20Services/communityservicescommission_NEW.aspx)

Kimberley Grimes, Community Services  
915 – 8<sup>th</sup> Street, Suite 123  
Marysville, CA 95901  
(530) 749-5460

Appointees: 5, Term runs concurrent with District Supervisor

Qualifications: Resident of Supervisorial District.

The Board of Supervisors has the option of designating themselves individually as members or appointing a representative.

Meets: First Thursday of each month at 6:00 p.m.

William Ransom – District One 02-18-2012 – 12/31/2014  
Supervisor John Nicoletti, District Two, 01/03/2009 – 12/31/2016  
Vera Correa, District Three, 01/15/2013 – 12/30/2016  
Roy Crabtree, District Four, 06/14/2011 – 12/31/2016  
Brenda Wright, District Five, Term expires – 09/17/2013 - 12/31/2014

### **DEVELOPMENTAL DISABILITIES AREA BOARD III**

[www.areaboard3.org/AB3](http://www.areaboard3.org/AB3)

Michael Rosenberg Executive Director  
2033 Howe Avenue, Suite 160  
Sacramento, CA 95825  
(916) 263-3085

Appointees: 1, Four-year term

Qualifications: Resident of Yuba County; A person with developmental disabilities, or family member or the parent, guardian, or conservator of such person is preferred or a person interested in serving the needs of those with developmental disabilities.

Meets: Once a month

Compensation: Mileage reimbursement

**1 VACANCY – FOUR YEAR TERM**

### **ECONOMIC DEVELOPMENT ADVISORY COMMITTEE**

John Fleming  
915 8<sup>th</sup> Street, Suite 115  
Marysville, CA 95901  
(530) 749-7575

Appointees: Up to 16, Serves at the pleasure of the Board

Qualifications: Business owners and professionals within the County

Meets: Monthly at noon at various areas within the County

Compensation: None. Voluntary

Purpose: Provides recommendations and strategies on implementing programs in the areas of business marketing, business attraction, business retention, business development, and tourism to further the economic strength and vitality of the County.

Nate Pomeroy, 4-13-2010  
Randy Fletcher, 4-13-2010  
Wayne Bishop, 4-13-2010  
Rich Gabel, 3-22-2011  
David McConnell, 1-15-2013  
Sean Andersen, 3-19-2013

Rick Brown, 4-13-2010  
Sheila Kern, 4-13-2010  
Cary Wilson, 4-13-2010  
Theresa Hamilton, 1-15-2013  
Terry Bently, 02-26-2013

Sarbdeep Atwal, 2-14-2012  
Todd Hambrook, 2-1-2011  
Tib Belza, 4-13-2010  
Rosemary Daoust, 01-15-13  
Steven Dambeck, 2-26-2013

## **ENVIRONMENTAL HEALTH APPEALS BOARD**

Environmental Health  
915 – 8<sup>th</sup> Street, Suite 123  
Marysville, CA 95901  
(530) 749-5450

Appointees: 5, Serve at pleasure of Board of Supervisors

Qualifications: One contractor licensed to install private sewage disposal systems in California; one registered environmental health specialist; one medical doctor; one registered or professional civil engineer; and one member of the public.

Meets: As needed

Fred H. Kawashima, Public At-Large Rep., 10/12/1999      Bob Nicholson, General Contractor Rep., 09/19/1995  
Archibald H. Beard, Medical Doctor Rep., 03/12/1996      Wes Faubel, Civil Engineer Rep., 10/12/1999  
Susan Chalpin, Environmental Health Specialist Rep., 09/19/1995

## **FIRST 5 YUBA COMMISSION**

[www.first5yuba.org](http://www.first5yuba.org)

Cynthia Sodari, Executive Director  
1114 Yuba Street, Suite 147  
Marysville, CA 95901-6132  
(530) 749-4877

Appointees: 7, Three-year term of office ending the last Monday of April

Qualifications: 1. One Board of Supervisor; 2. Two members from among the County Health Officer and persons responsible for management of the following County functions: children's services, public health services, behavioral health services, social services, and tobacco and other substance abuse prevention and treatment services; and 3. Four members who represent any of the persons described in section 2. above and from the following categories: (a) recipients of project services in the County Strategic plan; (b) educators specializing in early childhood development; (c) representatives of a local child care resource or referral agency or a local child care coordinating group; (d) representatives of a local organization for prevention or early intervention for families at risk; (e) representatives of community-based organizations that have the goal of promoting nurturing and early childhood development; (f) representatives of local school districts; and (g) representatives of local medical, pediatric, or obstetric associations or societies.

Meets: Fourth Thursday of every other month at 3:30 p.m. beginning January (except Nov. and Dec) at the Yuba County Government Center, Marysville Conference Room

Compensation: Voluntary.

Supervisor Andy Vasquez/Alternate Supervisor John Nicoletti 07/01/2013 – 01/28/2014

Suzanne Nobles, Health and Human Services Director

Joginder J. Sekhon, 04/17/2012 - 04/27/2015

Melinda Staples, 09/13/2011 – 04/25/2016

Jim Arnold Chief Probation Officer

Scotia Holmes Sanchez 7/23/2013 - 04/25/2016

Sally Sokoloski, 08/13/2013 – 04/26/2014

## **FISH AND GAME ADVISORY COMMISSION**

<http://www.co.yuba.ca.us/Departments/Ag/fishandgame.aspx>

Agriculture Commissioner - Todd Quist

915 – 8<sup>th</sup> Street, Suite 123

Marysville, CA 95901

(530) 749-5400

**Appointees:** 16 Total. 7 specific district members, runs concurrent with the elected nominating officers; 8 at-large and 1 youth; youth member one year; all other terms shall be four years.

**Qualifications:** Resident of Yuba County, and other than the youth member who should be between the ages of 15 and 17, shall have attained the age of 18 years by date of appointment.

**Meets:** First Thursday of the month at 5:30 p.m. at the Yuba County Government Center, Wheatland Conference Room

Robert Gaschke, YCWA North Area, 01/15/2013 – 12/31/2016

Robert W. Gass South Area, 5-17-2011 – 12-31-2014

Frank Hall, District One, 01/11/2011 – 12/31/2014

Larry Flynn, District Three, 02/03/2009 – 12/31/2016

Robert Winchester, District Five, 03-18-2003 – 12/31/2014

Bill M. Van Ooyen 12-18-2012 5-17-2015

Montie Lunkley 06-12-2012 – 07/23/2017

**AT –LARGE VACANCY - 10/05/2014**

Gregory T. Soliz 2-17-09 – 2-26-2017

Christian Hogan, District Two, 01-20-2009 – 12/31/2016

Mike Boom, District Four, 12/18/2012 – 12/31/2016

Mark Harrison 01/22/2013 – 01-22-2017

Grady Windham 11-16-2010 – 01/25/2015

Carl Dinwiddie 5-14-2013 – 07/24/2015

James M. Dousman 11/16/2010 – 11/16/2014

**VACANCY – YOUTH REPRESENTATIVE**

## **HOUSING ADVISORY AND APPEALS BOARD**

Community Development/Building

915 – 8<sup>th</sup> Street, Suite 123

Marysville, CA 95901

(530) 749-5430

**Appointees:** 5, Serve at the pleasure of Board

**Qualifications:** Resident of Yuba County, and experience and training to pass upon matters pertaining to building and construction

**Meets:** As needed

**Compensation:** \$25 per day/meeting

John Guanzon, 12/16/2003

Scott Slayton, 12/16/2003

Thomas C. Stoller, 12/16/2003

Christina Pierce, 03/23/2004

Sarbdeep Atwal, 2/28/2012

## **IN-HOME SUPPORTIVE SERVICES (IHSS) ADVISORY COMMITTEE**

Shirley Baker, Adult Services Program Manager

5730 Packard Avenue

Marysville, CA 95901

(530) 749-6371

**Appointees:** Up to 11, Two-year term

**Qualifications:** Resident of Yuba County and interest in serving persons with disabilities.

At least 50% of members must be current or past consumers of in-home personal assistance services, and two must be past or present IHSS care providers.

**Meets:** Quarterly

Ron Russell, 04/07/2009 – 09/10/015

Lucille Bryant, 09/13/2003 – 09/10/015

Claudia Hollis, 04/03/2012 – 04/03/2014

**5 VACANCIES – Two year term**

Opal Richardson, 08/11/2009 – 09/10/015

David Hantusch, 07/06/2010 – 09/11/2014

Xia Lia Yang, 08/13/2013 – 08/13/2015

### **KEYSTONE CEMETERY DISTRICT**

Robert Roberts, Chairman  
P.O. Box 8  
Dobbins, CA 95935  
(530) 692-2408

Appointees: 3, Four-year term

Qualifications: Elector within Cemetery District

Meets: As needed

Dan Lucero, 12/06/2011 – 12/06/2015  
Morris Moody, 2/6/2007 – 05/08/2015

Robert W. Roberts, 03/17/2010 – 3/16/2014

### **LAW LIBRARY BOARD OF TRUSTEES**

County Counsel  
915 – 8<sup>th</sup> Street, Suite 111  
Marysville, CA 95901  
(530) 749-7565

Appointees: 2(Board Chair or his designee and 1 At-Large Representative) One year terms ending the last meeting in January

Qualifications: Member of the California state bar

Meets: Second Tuesday of the month at noon at Department 7, Yuba County Courthouse, 215 5<sup>th</sup> Street

John Whidden, Designee Rep. 1/12/2012

**1 SCHEDULED VACANCY**

### **LIBRARY ADVISORY COMMISSION**

**<http://www.co.yuba.ca.us/Departments/Library/LibAdvisComm.aspx>**

Sandeep Sidhu, Administration Supervisor  
Yuba County Library  
303 Second Street  
Marysville, CA 95901  
(530) 741-7380

Appointees: 7/5 members Concurrent with District Supervisor/1 Board of Supervisor (1 year term)/1 City of Marysville Council Member appointed by the City Council (1 year term)

Qualifications: Resident of Supervisorial District representing

Meets: 1<sup>st</sup> Thursday of every other month beginning in February

Supervisor Andy Vasquez, 1/22/2012 – 1/22/2014

**1 UNSCHEDULED VACANCY, District One, Term Ending 12/31/2014**

Michael Paine, District Two, 01/20/2009 – 12/31/2016

Charissa McClain, District Three, 01/11/2011 - 12/31/2016

Pat Camarena – District Four, 06-15-2010 - 12/31/2016

Sue Cejner-Moyers – District Five 01/09/2007 – 12/31/2014

## **PEORIA CEMETERY DISTRICT**

Delores McGuire, Secretary  
P.O. Box 23  
Browns Valley, CA 95918  
(530) 749-8473  
(530) 742-8674 – fax

Appointees: 3, Four-year term

Qualifications: Elector within the Cemetery District

Meets: As needed

Raymond G. Bradley, Jr., 09/09/2008 – 10/23/2016  
Robert Sutton Jr., 04/07/2009 – 08/13/2017

Nancy Houser, 08/22/2004 – 09/10/2017

## **PLANNING COMMISSION**

**<http://www.co.yuba.ca.us/Departments/Community%20Development/Planning/Default%20Pages/planningcommission.aspx>**

Community Development  
915 – 8<sup>th</sup> Street, Suite 123  
Marysville, CA 95901  
(530) 749-5470

Appointees: 5/4 year term concurrent with Supervisor expiring on the 2<sup>nd</sup> Tuesday following the first Monday in January

Qualifications: Each Supervisor shall appoint one member who shall be a resident of his/her supervisorial district.

Meets: 3rd and 4th Wednesday each month, 6:00 p.m., Board of Supervisors Chambers.

Compensation: \$75 per meeting pursuant to YCOC 11.05.110

Alyssa Lindman, District One, 01/11/2011 – 01/13/2015  
Vera Correa, District Three 05-14-2013 – 01/10/2017  
Randy Rasmussen, District Four, 10/01/2013 – 01/10/2017  
Meldine Rodda, District Five 10/6/2009 – 01/13/2015

Michele Barker, District Two, 02/03/2009 – 01/10/2017

## **PLUMAS LAKE SPECIFIC PLAN DESIGN REVIEW COMMITTEE**

**<http://www.co.yuba.ca.us/departments/Community%20Development/Planning/Default%20Pages/plumaslakedesignreview.aspx>**

Community Development  
915 – 8<sup>th</sup> Street, Suite 123  
Marysville, CA 95901  
(530) 749-5430

Appointees: 5, One Year

Qualifications: Three members shall demonstrate combination of technical knowledge, training or experience architectural, urban planning, landscape, civil engineering and or art or architectural history. Two members shall be residents of the Plumas Lake Specific Plan area.

Meets: As needed on 1<sup>st</sup> Thursday of the month at 5:30 p.m. in Board of Supervisors Chambers

## **3 VACANCIES**

David Villanueva, Resident Representative, 01/10/2012 – 02/26/2014  
Donald Rae, Resident Representative, 01/08/2008 – 08/13/2014

## **RESOURCE CONSERVATION DISTRICT**

<http://www.co.yuba.ca.us/ycrcd/>

Larry Lloyd

1511 Butte House Road, Ste. B

Yuba City, CA 95993

(530) 674-1461 x 3

Appointees: 5, Four-year term of office ending November 30 of even numbered years

Qualifications: Landowner in Reclamation District (Entire County except for cities of Wheatland and Marysville) and endorsement from 10 Yuba County registered voters

Meets: Normally on the 3<sup>rd</sup> Tuesday of the month at 2:00 p.m. at Yuba County Government Center Agriculture Commissioner Conference Room.

Robert Mathews, 03/22/2011 – 11/30/2014

John L. Waskiewicz, 03/22/2011 – 11/30/2014

Gerald Norene, 03/22/2011 – 11/30/2014

**2 SCHEDULED VACANCIES – TERM EXPIRES 11/30/2016**

## **RESOURCE/DEVELOPMENT CODE ADVISORY COMMITTEE**

<http://www.yubazoningupdate.org/AdvisoryCommittee.aspx>

Wendy Hartman

915 8<sup>th</sup> Street, Suite 123

Marysville, CA 95901

(530) 749-5470

Appointees: 7 – 1 from each Supervisorial District and 2 Planning Commissioners. Term Ends upon approval of Updated Code

Qualifications: Resident of District and consideration given to applicants with personal or professional experience in the fields of planning, land use, building, environmental sciences

Meets: As needed

Richard Reiss, District 1, 12/6/2011

Victor Cuate District 3, 12/13/2011

Charlie Sexton, District 5, 12/6/2011

Vera Correa, Planning Commission Alternate

G. Michael Paine, District 2, 12/6/2011

Keith Brown, District 4, 12/6/2011

Alyssa Lindman, Planning Commission

## **SMARTSVILLE CEMETERY DISTRICT**

P.O. Box 198

Smartville, CA 95977

(530) 713-5947

Appointees: 3, Four-year term

Qualifications: Elector within Cemetery District

Meets: As needed

Leanna Beam, 06/12/2001 – 08/27/2017

Walter Shackelford, 10-13-2009 - 10/13/2013

Rita Ann Goss, 6/19/2012 – 06/19/2016

## **STRAWBERRY VALLEY CEMETERY DISTRICT**

Mary L. Lauck, Secretary  
P.O. Box 395  
Strawberry Valley, Ca 95981  
(530) 675-2340

Appointees: 3, Four-year term  
Qualifications: Elector within Cemetery District  
Meets: As needed

Benjamin N. Borsoff, 6/15/2010 – 06/15/2014  
James Parnell, 03/23/2010 – 03/23/2014  
Cynara (Lea) Barthelmes, 05/02/2006 – 08/03/2014

## **SUBSTANCE ABUSE ADVISORY BOARD (Bi-County)**

[http://www.co.sutter.ca.us/doc/government/depts/hs/mh/sa/hs\\_substance\\_abuse](http://www.co.sutter.ca.us/doc/government/depts/hs/mh/sa/hs_substance_abuse)

Leah Konvalin, Mental Health Secretary  
P.O. Box 1520  
Yuba City, CA 95992  
(530) 822-7200 ext. 2275

Appointees: 5, Four-year term, Plus 1 Supervisor – One-year term  
Qualifications: Resident of Yuba County and have an interest in substance abuse programs  
Meets: Third Tuesday at 3:00 p.m. at 1965 Live Oak Blvd. Conference Room, Yuba City (except August and December)

Supervisor Andy Vasquez/Alternate Supervisor Mary Jane Griego  
Roberta D'Arcy, 09/20/2011 – 09/20/2015  
Michael Valdez, 05/08/2012 – 05-08-2016

Mancy Howard Jr., 5/7/2013 – 5/7/2017

**1 UNSCHEDULED VACANCY – Term Ends 09/20/2015  
05/22/2016**

**1 UNSCHEDULED VACANCY – Term Ends**

## **SUTTER-YUBA MENTAL HEALTH ADVISORY BOARD**

[http://www.co.sutter.ca.us/agenda/mh\\_agendas](http://www.co.sutter.ca.us/agenda/mh_agendas)

Sue Hopper, Executive Secretary  
P.O. Box 1520  
Yuba City, CA 95992  
(530) 822-7200 ext. 2275  
[shopper@co.sutter.ca.us](mailto:shopper@co.sutter.ca.us)

Appointees: 5, Three-year term, Plus 1 Supervisor – One-year  
Qualifications: Resident of Yuba County.  
At least one family representative and two consumer representatives shall be appointed.  
Meets: First Thursday of month at 5:30 p.m. at 1965 Live Oak Blvd. Conference Room, Yuba City (Except for August and December)

Supervisor Andy Vasquez/Alternate Supervisor John Nicoletti  
Dennis Ayres, At-Large, 07/26/2011 – 07/26/2014  
Alma Amaya, At-large Rep., 05/05/2008 – 05/05/2015  
Chienyen Yang, Family Rep., 08/13/2013 – 08/13/2016  
Tamaira Ramsey, Consumer Rep., 05/07/2013 – 11/12/2016  
**1 VACANCY Consumer Rep – THREE YEAR TERM**

### **SUTTER-YUBA MOSQUITO & VECTOR CONTROL DISTRICT**

[http://sutter-yubamvcd.org/Board\\_of\\_Trustees.asp](http://sutter-yubamvcd.org/Board_of_Trustees.asp)

Ronald McBride, Manager

P.O. Box 726

Yuba City, CA 95992

(530) 674-5456

Appointee: 1, Two-year or Four-year term at the discretion of the Board of Supervisors

Qualifications: Elector and resident of portion of County which is within District

Meets: Second Thursday of each month at 4:30 p.m. at District office

Compensation: \$100 per meeting in lieu of expenses

Erica O. Jeffrey, 01/15/2013 – 12/31/2016

### **WHEATLAND CEMETERY DISTRICT**

Robert Bradshaw, Chairman

PO Box 281 // 3659 Bradshaw Road

Wheatland, CA 95692

Appointees: 5, Four-year term

Qualifications: Elector within Cemetery District

Meets: As needed

Patricia Agles, 5/15/2012 - 4/13/2014

Robert Bradshaw, 11/13/2012 – 11/18/2016

Roy Crabtree, 8/13/2013 – 8/13/2016

David C. Creps, 12/06/2011 – 12/06/2015

Debra J. Coker, 07-09-2013 – 07-09-2017

### **YOUTH COMMISSION**

Clerk of the Board of Supervisors

915 8<sup>th</sup> St. Ste. 109

Marysville, CA 95901

(530) 749-7510

Appointees: 11 one year terms beginning July 1 and ending June 30. Each Board member appoints two District representatives, **initially one each to a one year and two year term.** Board Liaison appoints one at large member.

Qualifications: Yuba County Resident and/or Supervisorial District; at least 12 years of age entering the eighth (8<sup>th</sup>) through twelfth (12<sup>th</sup>) grade of school at the time of appointment; have an interest in the needs of young people in Yuba County.

Meets: Second and Fourth Monday of every month at 5:30 p.m. in Board Chambers at the Yuba County Government Center. The Youth Commission shall meet at least once a month except during the months of June through August.

John Nicoletti, Board Liaison

**2 Vacancies -District Two**

**2 Vacancies -District Five**

**2 Vacancies -District Three**

**1 At-Large Representative**

**2 Vacancies -District Four**

# The County of Yuba

## Community Development & Services Agency

**Kevin Mallen, Director**

Phone - (530) 749-5430 • Fax - (530) 749-5434  
 915 8<sup>th</sup> Street, Suite 123  
 Marysville, California 95901  
[www.co.yuba.ca.us](http://www.co.yuba.ca.us)



749-5440 • Fax 749-5616

**CODE ENFORCEMENT**  
 749-5455 • Fax 749-5464

**ENVIRONMENTAL HEALTH • CUPA**  
 749-5450 • Fax 749-5454

**HOUSING AND COMMUNITY SERVICES**  
 749-5460 • Fax 749-5464

**PLANNING**  
 749-5470 • Fax 749-5434

**PUBLIC WORKS • SURVEYOR**  
 749-5420 • Fax 749-5424

**FINANCE AND ADMINISTRATION**  
 749-5430 • Fax 749-5434

December 17, 2013

TO: YUBA COUNTY BOARD OF SUPERVISORS

FROM: MICHAEL G. LEE, DIRECTOR OF PUBLIC WORKS

SUBJECT: AUTHORIZATION TO AWARD AND EXECUTE AGREEMENT WITH THE HANNA GROUP TO PROVIDE CONSTRUCTION MANAGEMENT SERVICES FOR THE TIMBUCTOO ROAD OVER DEEP RAVINE NO.1 BRIDGE REPLACEMENT PROJECT

### RECOMMENDATION:

The Public Works Department recommends that the Board of Supervisors approve, and authorize its chairman to execute, the agreement with The Hanna Group (THG) to provide professional construction management services for the Timbuctoo Road Over Deep Ravine No.1 Bridge Replacement Project

### BACKGROUND:

In 2003, the existing bridge along Timbuctoo Road was closed due to a bridge failure at the west abutment. The County has been working with SACOG and Caltrans to authorize funds for the design and construction of a replacement bridge. Funds for construction work were recently authorized and a request for proposals for professional construction management services was circulated. County staff reviewed the proposals submitted and ranked them resulting in a decision to recommend award of the work to The Hanna Group in the amount of \$54,912. Construction of the bridge is tentatively scheduled for 2013-2014.

### DISCUSSION:

The work in general will consist of providing technical review and oversight during construction of the bridge replacement project. The County will perform daily inspection, resident engineer and project management duties, while the Consultant will serve as the Structures Representative. The purpose of the construction project is to replace a structurally deficient bridge that has failed and is currently closed. The project will provide two points of access for residents in the area and an additional point of access for fire suppression.

COMMITTEE ACTION:

The Land Use & Public Works Committee was bypassed as this project is included in the FY 13/14 Public Works Budget.

FISCAL IMPACT:

The Consultant shall provide review of technical submittals and structure design oversight for a cost not to exceed \$54,912. The construction and construction engineering for this project will be funded with Federal Highway Bridge Program (HBP) funds at 100%.

## AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

THIS AGREEMENT for professional engineering Construction Phase services for the Timbuctoo Road over Deep Ravine No.1 Bridge Replacement Project ("Agreement") is made as of the Agreement Date set forth below, by and between the County of Yuba, a political subdivision of the State of California ("the COUNTY"), and

The Hanna Group  
"CONSULTANT"

In consideration of the Services to be rendered, the sums to be paid, and each and every covenant and condition contained herein, the parties hereto agree as follows:

### OPERATIVE PROVISIONS

#### 1. SERVICES.

The CONSULTANT shall provide those services described in Attachment "A", Provision A-1. CONSULTANT shall provide said services at the time, place and in the manner specified in Attachment "A", Provisions A-2 through A-3.

#### 2. TERM.

Commencement Date:           October 30, 2013

Termination Date:           October 29, 2015

The term of this Agreement shall become effective on October 30, 2013 and shall continue in force and effect until the Termination Date stated above, unless sooner terminated in accordance with the terms of this Agreement.

Notwithstanding the term set forth above, and unless this Agreement is terminated by either party prior to its termination date, the term of the Agreement may be automatically extended up to ninety (90) days. Any Notice of Termination during this automatic extension period shall be effective upon a ten (10) day written notice to the other party. The purpose of this automatic extension is to allow for continuation of services, and to allow County time in which to complete a renewal agreement for CONSULTANT AND COUNTY approval.

CONSULTANT understands and agrees that there is no representation, implication, or understanding that the services provided by CONSULTANT pursuant to this Agreement will be purchased by COUNTY under a new agreement following expiration or termination of this Agreement, and CONSULTANT waives all rights or claims to notice or hearing respecting any failure to continue purchase of all or any such services from CONSULTANT.

### **3. PAYMENT.**

COUNTY shall pay CONSULTANT for services rendered pursuant to this Agreement at the time and in the amount set forth in Attachment "B". The payment specified in Attachment "B" shall be the only payment made to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for said services to COUNTY in the manner specified in Attachment "B".

### **4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF COUNTY.**

CONSULTANT shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement, unless an exception to this requirement is provided in Attachment "A", Provision A-4.

### **5. ADDITIONAL PROVISIONS.**

Those additional provisions unique to this Agreement are set forth in Attachment "C".

### **6. GENERAL PROVISIONS.**

The general provisions set forth in Attachment "D" are part of this Agreement. Any inconsistency between said general provisions and any other terms or conditions of this Agreement shall be controlled by the other term or condition insofar as it is inconsistent with the general provisions.

### **7. DESIGNATED REPRESENTATIVES.**

Director of Public Works is the representative of the COUNTY and will administer this Agreement for the COUNTY. Mehrdad Varzandeh is the authorized representative for CONSULTANT. Changes in designated representatives shall occur only by advance written notice to the other party.

### **8. ATTACHMENTS.**

All attachments referred to herein are attached hereto and by this reference incorporated herein. Attachments include:

- Attachment A – Scope of Work
- Attachment B – Payment
- Attachment C – Additional Provisions
- Attachment D – General Provisions
- Attachment E – Insurance Provisions
- Exhibit 1 – Scope of Services

9. **TERMINATION.** COUNTY and CONSULTANT shall each have the right to terminate this Agreement upon ten (10) days written notice to the other party.

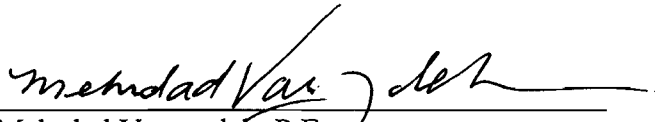
IN WITNESS WHEREOF, the parties hereto have executed this

Agreement on \_\_\_\_\_, 2013.


"COUNTY"  
COUNTY OF YUBA

"CONSULTANT"


\_\_\_\_\_

  
\_\_\_\_\_  
Mehrdad Varzandeh, P.E.

INSURANCE PROVISIONS APPROVED

  
\_\_\_\_\_  
Martha K. Wilson,  
Risk Manager

APPROVED AS TO FORM:  
COUNTY COUNSEL

  
\_\_\_\_\_  
for Angil Morris-Jones,  
County Counsel

**COUNTY OF YUBA**

The Hanna Group – Bridge Replacement and Realignment of Timbuctoo Road over Deep Ravine No.1 (16C0010) Project

**ATTACHMENT A**

**SCOPE OF WORK**

**A.1 SCOPE OF SERVICES AND DUTIES.**

The services to be provided by the CONSULTANT and the scope of the CONSULTANT'S duties are described in the attached Exhibit 1 – Scope of Services which is made part of this agreement.

**A.2. TIME SERVICES RENDERED.** The services will be provided on such dates and at such times as specified by the COUNTY. Specific date(s) to be mutually agreed upon by the COUNTY and CONSULTANT.

**A.3. MANNER SERVICES ARE TO BE PERFORMED.** As an independent Contractor, CONSULTANT shall be responsible for providing services and fulfilling obligations hereunder in a professional manner. COUNTY shall not control the manner of performance.

**A.4. FACILITIES FURNISHED BY COUNTY.** CONSULTANT shall, at his/her sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement.

**COUNTY OF YUBA**

The Hanna Group – Bridge Replacement and Realignment of Timbuctoo Road over Deep Ravine No.1 (16C0010) Project

**ATTACHMENT B**

**PAYMENT**

COUNTY shall pay CONSULTANT as follows:

**B.1 BASE CONTRACT FEE.** COUNTY shall pay CONSULTANT a contract fee not to exceed **FIFTY FOUR THOUSAND NINE HUNDRED TWELVE DOLLARS (\$54,912)**; CONSULTANT shall submit requests for payment after completion of services or no later than the tenth (10th) day of the month following provision of services. In no event shall total compensation paid to CONSULTANT under this Provision B.1 exceed **SIXTY THOUSAND FOUR HUNDRED THREE DOLLARS (\$60,403)** without a formal written amendment to this Agreement approved by the COUNTY.

**B.2 TRAVEL COSTS.** COUNTY shall not pay CONSULTANT for meals, lodging or other travel costs not included in this Agreement unless said costs are approved in advance by the COUNTY representative (Operative Provision 7) and then COUNTY shall pay CONSULTANT per diem rates in effect on the date of invoice upon presentation of invoices.

**B.3 AUTHORIZATION REQUIRED.** Services performed by CONSULTANT and not authorized in this Agreement shall not be paid for by COUNTY. Payment for additional services shall be made to CONSULTANT by COUNTY if, and only if, this Agreement is amended by formal written agreement signed by both parties in advance of performing additional services.

## **COUNTY OF YUBA**

The Hanna Group – Bridge Replacement and Realignment of Timbuctoo Road over Deep Ravine No.1 (16C0010) Project

### **ATTACHMENT C**

#### **ADDITIONAL PROVISIONS**

**C.1 FUNDING.** CONSULTANT and COUNTY agree that this Agreement will be null, void and not enforceable if all or part of the funds secured by COUNTY for the purposes of this Agreement are not made available to COUNTY. If this provision is invoked, COUNTY shall be liable for work already completed by CONSULTANT at contracted rates.

**C.2 FORCE MAJEURE.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

**C.3 LAW, POLICY AND PROCEDURES, LICENSES, AND CERTIFICATES.** CONSULTANT agrees to administer this Agreement in accordance with all applicable local, county, state, and federal laws, rules, and regulations applicable to their operations. CONSULTANT shall further comply with all laws including, but not limited to, those relevant to wages and hours or employment, occupational safety, fire safety, health, sanitation standards and directives, guidelines, and manuals related to this Agreement. All issues shall be resolved using reasonable administrative practices and judgment. CONSULTANT shall keep in effect all licenses, permits, notices, and certificates required by law and by this Agreement.

**C.4 RECORDS AND REPORTING.** CONSULTANT agrees to maintain and preserve, and to be subject to examination and audit for a period of three (3) years after termination of agreement to the COUNTY's Auditor and/or to any duly authorized fiscal agent of the COUNTY, any books, documents, papers, and records of CONSULTANT which are relevant to this Agreement for the purpose of making an audit, or an examination, or for taking excerpts and transcriptions. In conjunction with records retention and access, CONSULTANT will provide any reporting information necessary to meet federal reporting requirements.

**C.5 ACCEPTANCE.** All work performed and completed under the Agreement is subject to the acceptance of the COUNTY or its authorized representatives. Payment shall be made after inspection and approval by COUNTY. Failure by the CONSULTANT to take corrective action within 24 hours after personal or telephonic notice by the COUNTY's representative on items affecting essential use of the facility, safety or the preservation of property, and within ten days following written notice on other deficiencies, will result in the COUNTY taking whatever corrective action it deems necessary. All costs resulting from such action by the COUNTY will be claimed against CONSULTANT.

**C.6 CONFIDENTIALITY.** CONSULTANT must maintain compliance with confidentiality regulations. At no time shall CONSULTANT'S employees, agents, or representatives in any manner, either directly or indirectly, use for personal benefit or divulge, disclose, or communicate in any manner, any information that is confidential to the COUNTY. CONSULTANT and its employees, agents, and representatives shall protect such information and treat it as strictly confidential.

**C.7 INTELLECTUAL PROPERTY.** COUNTY shall have and retain all right, title, and interest in Intellectual Property in all plans specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, documents developed or modified under this Agreement.

**C.8 COPYRIGHTS, PATENT AND TRADEMARKS.** CONSULTANT guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork incorporated into the provided product are owned by the CONSULTANT, provided and owned by the COUNTY or the CONSULTANT has permissions from the rightful owner to use each of these elements. The CONSULTANT will hold harmless, protect, and defend the COUNTY from any claim or suit arising from the use of such elements furnished by the CONSULTANT.

**C.9 DEBARMENT.** COUNTY has verified that the CONSULTANT does not hold any debarment or suspension filings as verified at [www.epls.gov](http://www.epls.gov). If a new debarment action arises during the term of this agreement, COUNTY reserves the right to suspend or terminate this contract without penalty.

**C.10 FEDERAL FUNDING.** This project is a federal funded project and must meet the provisions for contracts awarded with federal funds. These provisions include that all contracts, CONSULTANTS and consultants must adhere to the provisions of the Copeland "Anti-kickback Act" and the Contract Work Hours and Safety Standards Act (CWHSSA). More information regarding these provisions can be found at the following web addresses: [www.dol.gov/compliance/guide/cwhssa.htm](http://www.dol.gov/compliance/guide/cwhssa.htm) and [www.dol.gov/compliance/guide/kickback.htm](http://www.dol.gov/compliance/guide/kickback.htm). Additionally, further provisions must be adhered to as outlined in the Code for Federal Regulations (CFR) 44, Part 13, Sub C, Section 13.36 (i).

**C.11 COST PRINCIPLES.** The CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the allowability of cost individual items. The CONSULTANT also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONSULTANT to the LOCAL AGENCY.

**C.12 CONTINGENT FEES.** The CONSULTANT warrants, by execution of this contract that no person or selling agency has been employed, or retained, to solicit or secure this contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee,

excepting bona fide employees, or bona fide established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, the LOCAL AGENCY has the right to annul this contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

**C.13 EQUIPMENT PURCHASE.** Prior authorization in writing, by the LOCAL AGENCY's Contract Manager shall be required before the CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. The CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs. For purchase of any item, service or consulting work not covered in the CONSULTANT's Cost Proposal and exceeding \$5,000 prior authorization by the LOCAL AGENCY's Contract Manager; three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified. Any equipment purchased as a result of this contract is subject to the following: "The CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the LOCAL AGENCY shall receive a proper refund or credit at the conclusion of the contract, or if the contract is terminated, the CONSULTANT may either keep the equipment and credit the LOCAL AGENCY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established LOCAL AGENCY procedures; and credit the LOCAL AGENCY in an amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair market value shall be determined at the CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the LOCAL AGENCY and the CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the LOCAL AGENCY." 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5000.00 is credited to the project. All subcontracts in excess \$25,000 shall contain the above provisions.

**C.14 CONFLICT OF INTEREST.** The CONSULTANT shall disclose any financial, business, or other relationship with LOCAL AGENCY that may have an impact upon the outcome of this contract, or any ensuing LOCAL AGENCY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this contract, or any ensuing LOCAL AGENCY construction project, which will follow. The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this agreement. Any subcontract in excess of \$25,000 entered into as a result of this contract, shall contain all of the provisions of this Article. The CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with the CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise. Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in

connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

**C.15 SECURITY CLEARANCE AND BACKGROUND CHECK.** CONSULTANT shall comply with all COUNTY facility security requirements in effect during the contract period and any extension. CONSULTANT personnel assigned to perform services pursuant to this agreement, are required to pass a background check and security clearance. Such background and security check shall be conducted at the CONSULTANT's expense and shall be coordinated by the CONSULTANT with the Yuba COUNTY Probation Department, 215 5<sup>th</sup> St. Marysville, CA 95901. CONSULTANT personnel shall provide the following information to the COUNTY Probation Department for security and background check: date of birth, Social Security number, driver's license number, and current address. This requirement shall apply to any new personnel due to employee turnover.

CONSULTANT will provide names of all persons who are scheduled to perform services pursuant to this agreement, to the COUNTY's authorized representative named in this Agreement along with results of background and security check prior to start of work. The COUNTY reserves the right to review the personal background information and to conduct further security clearances on the CONSULTANT's assigned personnel. CONSULTANT personnel must be cleared by the COUNTY prior to start of work. Any person or persons not acceptable to the COUNTY shall be prohibited from working on COUNTY facilities. Infractions in the background investigation may be grounds for disqualification. It will be the responsibility of the CONSULTANT to meet with the COUNTY's authorized representative to discuss these matters. The Agreement may be terminated if the CONSULTANT is unable to perform the work with persons acceptable to the COUNTY.

## **COUNTY OF YUBA**

The Hanna Group – Bridge Replacement and Realignment of Timbuctoo Road over Deep Ravine No.1 (16C0010) Project

### **ATTACHMENT D**

#### **GENERAL PROVISIONS**

**D.1 INDEPENDENT CONTRACTOR STATUS.** At all times during the term of this Agreement, the following apply:

**D.1.1** All acts of CONSULTANT shall be performed as an independent Contractor and not as an agent, officer or employee of COUNTY. It is understood by both CONSULTANT and COUNTY that this Agreement is by and between two independent parties and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.

**D.1.2** CONSULTANT shall have no claim against COUNTY for employee rights or benefits, including, but not limited to, seniority, vacation time, vacation pay, sick leave, personal time off, overtime, medical, dental or hospital benefits, civil service protection, disability retirement benefits, paid holidays or other paid leaves of absence.

**D.1.3** CONSULTANT is solely obligated to pay all applicable taxes, deductions and other obligations, including, but not limited to, federal and state income taxes, withholding and Social Security taxes, unemployment and disability insurance and Workers' Compensation and Medi-Care payments.

**D.1.4** As an independent Contractor, CONSULTANT is not subject to the direction and control of COUNTY except as to the final result contracted for under this Agreement. COUNTY may not require CONSULTANT to change its manner of doing business, but may require it to redirect its efforts to accomplish what it has agreed to do.

**D.1.5** CONSULTANT may provide services to others during the same period service is provided to COUNTY under this Agreement.

**D.1.6** If in the performance of this Agreement any third persons are employed by CONSULTANT, such persons shall be entirely and exclusively under the direction, supervision and control of CONSULTANT. All terms of employment

including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the CONSULTANT.

**D.1.7** As an independent Contractor, CONSULTANT hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based on any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

**D.2 LICENSES, PERMITS, ETC.** CONSULTANT represents and warrants to COUNTY that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice its profession. CONSULTANT represents and warrants to COUNTY that CONSULTANT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice its profession at the time the services are performed. Failure of the CONSULTANT to comply with this provision shall authorize the COUNTY to immediately terminate this agreement notwithstanding any other provision in this agreement to the contrary.

**D.3 TIME.** CONSULTANT shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of CONSULTANT's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

**D.4 INDEMNITY.** CONSULTANT shall defend, indemnify, and hold harmless COUNTY, its elected and appointed councils, boards, commissions, officers, agents, and employees from any liability for damage or claims for damage for personal injury, including death, as well as for property damage that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, which may arise from the intentional or negligent acts or omissions of CONSULTANT in the performance of services rendered under this Agreement by CONSULTANT, or any of CONSULTANT's officers, agents, employees, contractors, or sub-contractors.

**D.5 CONSULTANT NOT AGENT.** Except as COUNTY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of COUNTY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement to bind COUNTY to any obligation whatsoever.

**D.6 ASSIGNMENT PROHIBITED.** CONSULTANT may not assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no legal effect.

**D.7 PERSONNEL.** CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that COUNTY, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove

any such person immediately upon receiving written notice from COUNTY of its desire for removal of such person or persons.

**D.8 STANDARD OF PERFORMANCE.** CONSULTANT shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged. All products of whatsoever nature which CONSULTANT delivers to COUNTY pursuant to this Agreement shall be prepared in a first class and workmanlike manner and shall conform to the standards or quality normally observed by a person practicing in CONSULTANT's profession.

**D.9 POSSESSORY INTEREST.** The parties to this Agreement recognize that certain rights to property may create a "possessory interest", as those words are used in the California Revenue and Taxation Code, §107. For all purposes of compliance by COUNTY with Section 107.6 of the California Revenue and Taxation Code, this recital shall be deemed full compliance by the COUNTY. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of the County Assessor and the contracting parties hereto. A taxable possessory interest may be created by this contract; and if created, the party in whom such an interest is vested will be subject to the payment of property taxes levied on such an interest.

**D.10 TAXES.** CONSULTANT hereby grants to the COUNTY the authority to deduct from any payments to CONSULTANT any COUNTY imposed taxes, fines, penalties and related charges which are delinquent at the time such payments under this Agreement are due to CONSULTANT.

**D.11 TERMINATION.** Upon termination of this Agreement as otherwise provided herein, CONSULTANT shall immediately cease rendering service upon the termination date and the following shall apply:

**D.11.1** CONSULTANT shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing and form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

**D.11.2** COUNTY shall have full ownership and control of all such writings or other communications delivered by CONSULTANT pursuant to this Agreement.

**D.11.3** COUNTY shall pay CONSULTANT the reasonable value of services rendered by CONSULTANT to the date of termination pursuant to this Agreement not to exceed the amount documented by CONSULTANT and approved by COUNTY as work accomplished to date; provided, however, COUNTY shall not in any manner be liable for lost profits which might have been made by CONSULTANT had CONSULTANT completed the services required by this Agreement. In this regard, CONSULTANT shall furnish to COUNTY such financial information as in the judgment of the COUNTY is necessary to determine the reasonable value of the services rendered by CONSULTANT.

In the event of a dispute as to the reasonable value of the services rendered by CONSULTANT, the decision of the COUNTY shall be final. The foregoing is cumulative and does not affect any right or remedy which COUNTY may have in law or equity.

CONSULTANT may terminate its services under this Agreement upon thirty (30) days written notice to the COUNTY, without liability for damages, if CONSULTANT is not compensated according to the provisions of the Agreement or upon any other material breach of the Agreement by COUNTY.

**D.12 NON-DISCRIMINATION.** Throughout the duration of this Agreement, CONSULTANT shall not unlawfully discriminate against any employee of the CONSULTANT or of the COUNTY or applicant for employment or for services or any member of the public because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age, sex or sexual orientation. CONSULTANT shall ensure that in the provision of services under this Agreement, its employees and applicants for employment and any member of the public are free from such discrimination. CONSULTANT shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900, et seq.). The applicable regulations of the Fair Employment Housing Commission implementing Government Code Section 12900, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONSULTANT shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act. CONSULTANT shall give written notice of its obligations under this clause to any labor agreement. CONSULTANT shall include the non-discrimination and compliance provision of this paragraph in all subcontracts to perform work under this Agreement.

**D.13 REHABILITATION ACT OF 1973/AMERICANS WITH DISABILITIES ACT OF 1990.** In addition to application of the non-discrimination provision of this Agreement, above, CONSULTANT agrees to comply with all provisions of section 504 et seq. of the Rehabilitation Act of 1973, and with all provisions of the Americans with Disabilities Act of 1990, and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts, pertaining to the prohibition of discrimination against qualified handicapped and disabled persons, in all programs or activities, as to employees or recipients of services.

**D.14 OWNERSHIP OF INFORMATION.** All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become the property of COUNTY, and CONSULTANT agrees to deliver reproducible copies of such documents to COUNTY on completion of the services hereunder. The COUNTY agrees to indemnify and hold CONSULTANT harmless from any claim arising out of reuse of the information for other than this project.

**D.15 WAIVER.** A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

**D.16 COMPLETENESS OF INSTRUMENT.** This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

**D.17 SUPERSEDES PRIOR AGREEMENTS.** It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

**D.18 CAPTIONS.** The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**D.19 DEFINITIONS.** Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

**D.19.1 NUMBER AND GENDER.** In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

**D.19.2 MANDATORY AND PERMISSIVE.** "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

**D.20 TERM INCLUDES EXTENSIONS.** All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

**D.21 SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**D.22 MODIFICATION.** No modification or waiver of any provision of this Agreement or its

attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

**D.23 COUNTERPARTS.** This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

**D.24 OTHER DOCUMENTS.** The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

**D.25 PARTIAL INVALIDITY.** If any term, covenant, condition or provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**D.26 JURISDICTION.** It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a Court of competent jurisdiction in the County of Yuba, State of California.

**D.27 CONTROLLING LAW.** The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

**D.28 TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement and each covenant and term a condition herein.

**D.29 AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

**D.30 CONFLICT OF INTEREST.** Neither a COUNTY employee whose position in COUNTY enables such employee to influence the award of this Agreement or any competing Agreement, nor a spouse or economic dependent of such employee, shall be employed in any capacity by CONSULTANT herein, or have any other direct or indirect financial interest in this Agreement.

CONSULTANT may be subject to the disclosure requirements of the COUNTY conflict of interest code if in a position to make decisions or influence decisions that could have an effect on the CONSULTANT's financial interest. The County Administrator shall determine in writing if CONSULTANT has been hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in the Yuba County Conflict of Interest Code.

**D.31 NOTICES.** All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

If to "COUNTY":

County of Yuba  
Attn: Director of Public Works  
915 8<sup>th</sup> Street  
Suite 125  
Marysville, CA 95901

With a copy to:

County Counsel  
County of Yuba  
915 8<sup>th</sup> Street  
Suite 111  
Marysville, CA 95901

If to "CONSULTANT":

The Hanna Group  
Attn: Mehrdad Varzandeh, P.E.  
3101 Zinfandel Drive., Suite 320  
Rancho Cordova, CA 95670

## COUNTY OF YUBA

The Hanna Group – Bridge Replacement and Realignment of Timbuctoo Road over Deep Ravine No.1 (16C0010) Project

### Attachment E – Insurance Provisions

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

#### MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONSULTANT has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

3. **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

*(Not required if CONSULTANT provides written verification it has no employees)*

4. **Professional Liability** (Errors and Omissions) Insurance as appropriate to CONSULTANT’s profession, with limits no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the CONSULTANT maintains higher limits than the minimums shown above, COUNTY requires and shall be entitled to coverage for the higher limits maintained by CONSULTANT.

#### **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

##### ***Additional Insured Status***

**COUNTY, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of CONSULTANT; and on the CGL policy with respect to

liability arising out of work or operations performed by or on behalf of CONSULTANT including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONSULTANT's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

#### ***Primary Coverage***

For any claims related to this contract that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, which may arise from and to the extent caused by the intentional or negligent acts or omissions of CONSULTANT in the performance of services rendered under this agreement by CONSULTANT, or any of CONSULTANT's officers, agents, employees, contractors or sub-contractors, **CONSULTANT's insurance coverage shall be primary** insurance as respects COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, or volunteers shall be excess of CONSULTANT's insurance and shall not contribute with it.

#### ***Notice of Cancellation***

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the COUNTY.**

#### ***Waiver of Subrogation***

CONSULTANT hereby grants to COUNTY a waiver of any right to subrogation for workers compensation against COUNTY by virtue of the payment of any loss under such insurance. CONSULTANT agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not COUNTY has received a waiver of subrogation endorsement from the insurer.

#### ***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by COUNTY. COUNTY may require CONSULTANT to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

#### ***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the COUNTY.

#### ***Claims Made Policies***

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, CONSULTANT must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.

***Verification of Coverage***

CONSULTANT shall furnish COUNTY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive CONSULTANT’s obligation to provide them. COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

***Subcontractors***

CONSULTANT shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

***Special Risks or Circumstances***

COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.



## ***Bridge Replacement along Timbuctoo Road over Deep Ravine No.1 (Bridge # 16C0010) Construction Phase Services***

The Hanna Group will be providing a Structure Representative to support County staff on an “on-call” basis. The Hanna Group shall provide construction phase services including but not limited to providing technical support, evaluations, inspections and recommendations of certain aspects of the bridge design that may be affected by changes encountered during the construction of the bridge.

Services shall be provided on a time and materials basis and at the request of the County in a mutually agreeable timeframe. These services may include, but not be limited to the following:

1. Review of Contract Change Orders
2. Review of Contractor Submittals
3. Review of Shop Plans and Drawings as requested including but not limited to any required shoring, column guying, joint seal or bridge rail submittals
4. Review, and provide comment, of submitted Falsework Plans and Calculations
5. Review of Prestress Drawings and Calculations
6. Provide on-site technical support during Prestressing Cast in Place Concrete
7. Provide on-site technical support during foundation construction and critical concrete pours during superstructure construction

1. **Review of Contract Change Orders:** Based on the County’s needs/desires, the Hanna Group will evaluate all proposed change orders to determine entitlement, merit, and project impact. THG will provide cost estimates and schedule impacts, and a rationale for approval or denial THG can assist in negotiating change orders with contractor and prepare change order documentation for approval and signature by the County. Our team has a vast knowledge of initiating, reviewing, estimating, and writing complicated contract change orders, including Cost Reduction Incentive Proposals. Duties may include:

- *Prepare change orders related to construction issues based on drawings, specifications, and other design information from design engineer and County Project Manager.*
- *Prepare recommendations to accompany change order documents and forward to County Project Manager for review and approval.*
- *Perform change order administration, including obtaining County approval of change order requests, issuing proposed change orders to Contractor, maintaining logs of proposed change orders, receiving change order quotations from Contractor, negotiating change order costs and time extension, processing final negotiated change orders, and incorporating approved change orders into progress payment breakdown.*
- *Perform quantity and cost analysis as required for negotiation of change orders.*
- *Analyze additional compensation claims that are submitted during the construction period and prepare responses.*

2. **Review of Contractor Submittals:** Our goal in submittal management is to achieve timely responses from all associated parties. If the contractor requires interpretations of the meaning and intent of the drawings or the specifications, we will assist with the resolution of questions. Our approach to



properly managing the submittal process (including shop drawings) is to start early and stay ahead of the contractor. We will request that the Contractor provide a list of required submittals for our review, and will check these against our own expected submittal list developed in our constructability analysis. We will also require submittals, and the appropriate review times, be shown on the Contractor's Baseline Schedule and Schedule Updates. Working with the County, our CM team will develop a distribution list to identify responsible parties for review and acceptance of submittals. In order to ensure that all submittals are tracked at every stage of the process, we will use a submittal log in our electronic document control system and will review the status of all submittals during the weekly progress meeting. We will monitor the log to verify that submittal responses are submitted in a timely manner.

**3. Review of Shop Plans and Drawings as requested including but not limited to any required shoring, column guying, joint seal or bridge rail submittals:**

Based on the County's needs/desires, THG will provide independent calculations for all temporary works submittals including but not limited to shoring, column guying, Falsework, etc. All Engineered temporary works shall be designed and constructed in compliance with the contract specifications, and shall be signed and stamped by a California registered engineer. Our CM staff has the ability to internally check the temporary work submittals by the Contractor and streamline the review/approval process. Our staff will perform all the review and approval of the temporary works with strict adherence to the appropriate CT Manual. Safety and structure stability is the primary objective when reviewing and working with Temporary works.

The review of the working drawings for the permanent features of the project (Joint seal, Bridge Rail Submittals, etc), is shared by the Designer and the Structure Representative. For the joint seal work, THG can assist the County in:

- a) Determining the proper groove width or installation dimensions for the seals and completing the Joint Movements Calculations form.
- b) Work with the design project engineer in verification and approval of joint seal shop plans.

**4. Review, and provide comment, of submitted Falsework Plans and Calculations: see Item #3 above**

**5. Review of Prestress Drawings and Calculations:** THG's procedure for review and approval of working drawings for prestressed concrete is a coordinated effort between Design and Construction personnel. Primary responsibility for approval of the working drawings rests with the Designer. The responsibility for checking working drawings is shared by the Designer and the Structure Representative. Working drawings shall not be returned to the Contractor until the Designer has discussed and resolved the details with the Structure Representative. The comments returned to the Contractor must be acceptable to both the Designer and the Structure Representative. Memo to Designers 11-1 "Review of Working Drawings, Prestressed Concrete" covers the procedures required for review and approval of working drawings, including responsibilities of Structure Representatives on construction projects. This memo can be found at the following link:

<http://www.dot.ca.gov/hq/esc/techpubs/manual/bridgemanuals/bridge-memo-to-designer/bmd.htm-sec11>

Specifically, THG can assist with review of:

- Blockout dimensions



- Girder flares
  - Abutment and hinge diaphragm thickness
  - Bearing pad slope
6. **Provide on-site technical support during Prestressing Cast in Place Concrete:** THG Structure Representative will provide on-site inspection and technical support of Contractor's construction work during Prestressing Cast in Place Concrete. We will monitor the Contractor's performance from the perspective of quality, cost, and schedule, and shall enforce the requirements of applicable Specifications. Inspection Reports and diaries of Contractor's construction activities will be completed and be available to the County on the next day. THG will document special situations by photograph or video as well as documenting any defective work until it is repaired to the County's satisfaction and quality of work is in accordance with the contract documents.
7. **Provide on-site technical support during foundation construction and critical concrete pours during superstructure construction:** THG Structure Representative will provide on-site inspection and technical support of Contractor's construction work during foundation construction and critical concrete pours during superstructure construction. We will monitor the Contractor's performance from the perspective of quality, cost, and schedule, and shall enforce the requirements of applicable Specifications. Inspection Reports and diaries of Contractor's construction activities will be completed and be available to the County on the next day. THG will document special situations by photograph or video as well as documenting any defective work until it is repaired to the County's satisfaction and quality of work is in accordance with the contract documents. Inspection Diaries for on-site Inspection services will be written with the intent to create a satisfactory record of the activities at the project site in accordance with standard inspection practice. As a minimum they will include:
- Contractor's activities, contractor employees on site and hours worked by each
  - Equipment on site and hours of use
  - Weather conditions
  - Discussions with the Contractor
  - Problems and issues dealt with,
  - Approved changes, and any other information necessary

The Construction Phase Services will be performed in accordance with Caltrans Construction Manuals as follows:

- Caltrans Bridge Construction Records and Procedures
- Caltrans Bridge Memo to Designers
- Caltrans Bridge Details
- Caltrans Bridge Design Aids
- Caltrans Bridge Design Practice
- Caltrans Falsework Manual
- Caltrans Trenching and Shoring Manual
- Caltrans Construction Manual
- Caltrans Foundation Manual
- Caltrans Prestress Manual
- Caltrans Bridge Deck Construction Manual

Construction Phase Services shall include appropriate written recommendations and/or project documentation.

**Construction Management Services for Bridge Replacement along Timbuctoo Road over Deep Ravine- No.1 (Bridge # 16C0010)**

**September 26, 2013**

	PM	SRUCT REP	Hours/ Task Subtotals
<b>TASK</b>	\$ 220	\$ 132	
Task 1.01			
Review of Contract Change Orders		8	8
Subtotal	\$0.00	\$1,056.00	\$1,056.00
Task 1.02			
Review of Contractor Submittals (FW/SHORING/GUYING)	0	200	200
Subtotal	\$0.00	\$26,400.00	\$26,400.00
Task 1.03			
Review of Prestress Drawings and Calculations		8	8
Subtotal	\$0.00	\$1,056.00	\$1,056.00
Task 1.04			
Provide on-site technical support (Foundation Work)*		40	40
Subtotal	\$0.00	\$5,280.00	\$5,280.00
Task 1.05			
Provide on-site technical support (Superstructure)*	0	80	80
Subtotal	\$0.00	\$10,560.00	\$10,560.00
Task 1.07			
Meeting (s)-*	0	80	80
Subtotal	\$0.00	\$10,560.00	\$10,560.00
<b>Total Hours</b>	0	416	416
<b>Total Cost</b>	\$0.00	\$54,912.00	\$54,912.00
<b>Total Other Direct Costs (ODC)</b>			\$0.00
<b>GRAND TOTAL</b>			<b>\$54,912.00</b>

\* Minimum 4 hours will be charged for site visits

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# The County of Yuba

## Community Development & Services Agency

**Kevin Mallen, Director**

Phone – (530) 749-5430 • Fax – (530) 749-5424  
915 8<sup>th</sup> Street, Suite 123  
Marysville, California 95901  
www.co.yuba.ca.us



749- 496-13 316

**CODE ENFORCEMENT**  
749-5455 • Fax 749-5424

**ENVIRONMENTAL HEALTH • CUPA**  
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**HOUSING & COMMUNITY SERVICES**  
749-5460 • Fax 749-5464

**PLANNING**  
749-5470 • Fax 749-5434

**PUBLIC WORKS • SURVEYOR**  
749-5420 • Fax 749-5424

**To:** Yuba County Board of Supervisors

**From:** Kevin Mallen, CDSA Director 

**Date:** December 17, 2013

**Subject:** Adopt Resolution authorizing CDSA to apply for and establish eligible participation in the Federal Surplus Property Program

### **Recommendation:**

Adopt the attached resolution which authorizes Yuba County Community Development and Services Agency (CDSA) to apply for and establish eligible participation and ongoing renewal in the Federal Surplus Property Program and authorizes designated staff to execute all documents needed for the purchase of surplus property from the program.

### **Background/Discussion:**

It has been the practice of the Department of Public Works to purchase State surplus equipment if certain equipment becomes available in order to defray the cost of purchasing new equipment.

The California Department of General Services (DGS) now requires that several forms be completed and submitted to establish County of Yuba and CDSA's eligibility in the surplus program.

DGS form number SASP 202 requires the Board of Supervisors adopt by resolution the official(s) and/or employee(s) whose name(s), title(s), and signature(s) are listed on form SASP 202 and are authorized as the representatives to acquire surplus property through the auspices of the California State Agency for Surplus Property and accept responsibility for payment of incidental fees by the surplus property agency under the terms and conditions accompanying the form.

Along with the resolution and additional forms, DGS requires the Board Chair to sign Office of Surplus Property (OSP) form number No. 203 (3-82) assuring compliance with GSA regulations under Title VI of the Civil Rights Act of 1964, Section 606 of Title VI of the Federal Property and Administrative Services Act of 1949, as Amended, Section 504 of the Rehabilitation Act of 1973, as Amended, Title IX of the Education Amendments of 1972, as Amended and Section 303 of the Age Discrimination Act of 1975.

All purchases made under this program will adhere to County's current adopted budget and Capital Asset Policy at the time of purchase.

**Committee Action:**

Committee has been bypassed as no committee action is required. All purchases were approved as part of the Public Works budget.

**Fiscal Impact:**

No impact to the General Fund.

**BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF YUBA**

**RESOLUTION AUTHORIZING YUBA COUNTY )  
COMMUNITY DEVELOPMENT AND SERVICES )  
AGENCY TO APPLY FOR AND ESTABLISH )  
ELIGIBLE PARTICIPATION IN THE FEDERAL )  
SURPLUS PROPERTY PROGRAM AND )  
AUTHORIZE DESIGNATED STAFF TO EXECUTE )  
ALL DOCUMENTS NEEDED FOR THE PURCHASE )  
OF SURPLUS PROPERTY FROM THE PROGRAM )**

**RESOLUTION NO. \_\_\_\_\_**

**WHEREAS**, the County of Yuba and Community Development and Services Agency (CDSA) wish to establish eligible participation in the Federal Surplus Property Program to purchase surplus equipment at lower costs than purchasing new equipment; and

**WHEREAS**, the California Department of General Services (DGS) requires that several forms be completed and submitted to establish County of Yuba and CDSA's eligibility in the surplus program; and

**WHEREAS**, the Board authorizes CDSA staff to complete all necessary forms to establish eligibility, including ongoing renewal; and

**WHEREAS**, DGS form number SASP 202 requires the Board of Supervisors adopt by resolution the official(s) and/or employee(s) whose name(s), title(s), and signature(s) are listed on form SASP 202 and are authorized as the representatives to acquire surplus property through the auspices of the California State Agency for Surplus Property and accept responsibility for payment of incidental fees by the surplus property agency under the terms and conditions accompanying the form; and

**WHEREAS**, the Board authorizes the following CDSA staff and their successors to acquire surplus property under DGS program and be added to section A. of form SASP 202:

Community Development Services Agency Director, Kevin Mallen  
Director of Finance and Administration, Sean Powers  
Public Works Director, Michael Lee

**WHEREAS**, surplus property purchases made by CDSA under the Federal Surplus Property Program will adhere to County's current adopted budget and Capital Asset Policy at the time of purchase.

**WHEREAS**, DGS requires the Board Chair to sign Office of Surplus Property (OSP) form number No. 203 (3-82) assuring compliance with GSA regulations under Title VI of the Civil Rights Act of 1964, Section 606 of Title VI of the Federal Property and Administrative Services Act of 1949, as Amended, Section 504 of the Rehabilitation Act of 1973, as Amended, Title IX of the Education Amendments of 1972, as Amended and Section 303 of the Age Discrimination Act of 1975.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Supervisors authorizes the Yuba County Community Development and Services Agency to apply for and establish eligible participation and ongoing renewal in the Federal Surplus Property Program and authorize designated staff and their successors to execute all documents needed for purchase of surplus property from the program.

**PASSED AND ADOPTED** at a regular meeting of the Board of Supervisors of the County of Yuba, State of California on the \_\_\_\_\_ day of \_\_\_\_\_, 2013 by the following vote:

AYES:

NOES:

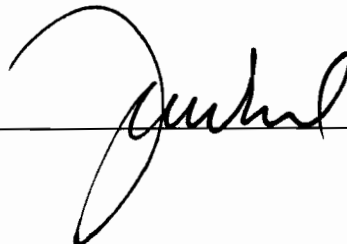
ABSENT:

ABSTAIN:

\_\_\_\_\_  
CHAIR

ATTEST: DONNA STOTTLEMEYER  
CLERK OF THE BOARD OF SUPERVISORS

ANGIL P. MORRIS-JONES  
YUBA COUNTY COUNSEL  
APPROVED AS TO FORM:

\_\_\_\_\_  


# The County of Yuba

## Community Development & Services Agency

**Kevin Mallen, Director**

Phone - (530) 749-5430 • Fax - (530) 749-5434  
915 8<sup>th</sup> Street, Suite 123  
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**497-13**

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**PUBLIC WORKS • SURVEYOR**  
749-5420 • Fax 749-5424

**FINANCE AND ADMINISTRATION**  
749-5430 • Fax 749-5434

December 17, 2013

TO: YUBA COUNTY BOARD OF SUPERVISORS

FROM: MICHAEL LEE, PUBLIC WORKS DIRECTOR

SUBJ: ACCEPT MONTROSE UNIT 3 IMPROVEMENTS AS COMPLETE AND RELEASE THE PERFORMANCE BOND (#PB00535000029), TM 2007-0009

### RECOMMENDATION:

Approve Montrose Unit 3 Improvements as complete and release the Performance Bond (#PB00535000029) for the project.

### BACKGROUND:

Woodside 05N was the developer that entered into the Subdivision Improvement Agreement for the Montrose Unit 3 Project. The project consisted of constructing street improvements such as paved roadways, curb, gutter, sidewalk and street lights for tract homes on the west side of Griffith Avenue between Erle Road and Linda Avenue.

### DISCUSSION:

The developer has completed the improvements and has placed a Maintenance Bond for the one year warranty period. Per County Ordinance, the Board of Supervisors has the authority to release the bonds. Once the Board takes action to release the bonds, the Public Works Department will return the Performance Bond (#PB00535000029) to the surety company and file a Notice of Completion.

### COMMITTEE ACTION:

The Land Use & Public Works Committee was bypassed due to the routine nature of this request.

### FISCAL IMPACT:

None.

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# The County of Yuba

## Office of the County Administrator

Robert Bendorf, County Administrator  
 John Fleming, Economic Development Coordinator  
 Russ Brown, Communications & Legislative Affairs Coordinator  
 Grace M Mull, Management Analyst  
 Teena L. Carlquist, Executive Assistant to the County Administrator  
 Yuba County Government Center  
 915 8<sup>th</sup> Street, Suite 115  
 Marysville, CA 95901

Phone: (530) 749-7575  
 Fax: (530) 749-7312  
 Email: rbendorf@co.yuba.ca.us  
 jfleming@co.yuba.ca.us  
 rbrown@co.yuba.ca.us  
 gmull@co.yuba.ca.us  
 tcarlquist@co.yuba.ca.us

**Date:** December 17, 2013  
**To:** Board of Supervisors  
**From:** Robert Bendorf, County Administrator  
**By:** Grace Mull, Management Analyst  
**Re:** Auto Service Fund Reconciliation

*RB/SM*

### Recommendation

It is recommended the Board of Supervisors approve Auto Service Fund reimbursements and authorize Auditor-Controller to transfer funds.

### Background

Staff has been working with Administrative Services over the last few years to determine an adequate reserve level for the Auto Service Fund to support current and future fleet operations. Administrative Services performed an analysis of the fund, including current and projected operating costs, down payments required for future replacement vehicles, offsets from sales proceeds for the sale of older vehicles, and potential extraordinary vehicle repairs.

### Discussion

The Auto Service Fund has maintained a fund balance in excess of \$800,000 over the last few years, primarily due to the transition from a county owned pool to a lease pool and the income generated from vehicle sales when the change occurred. Administrative Services recommends disbursement of \$500,000, while maintaining a conservative reserve level for unanticipated vehicle repairs and replacement.

Based on the number of vehicles currently within the Auto Service Fund for FY 13/14, a ratio was developed and applied to the \$500,000. There are currently 70 vehicles assigned to County departments. 28 or 40% of the vehicles are within the General Fund and 42 or 60% are within Non-General Fund departments.

In order to reconcile and credit Non-General Fund departments, it is recommended to charge their monthly Auto Service Fund charges against their credit amount until the credits have been eliminated.

Staff is recommending that the General Fund portion of \$200,000 be transferred from the Auto Service Fund to the Capital Outlay Account. This is consistent with Board policy to use the revenue for one- time expenses.

**Committee**

The Finance & Administration Committee reviewed this item on December 10, 2013 and recommended approval.

**Fiscal Impact**

There will be a positive impact to the General Fund as funds transferred into the Capital Outlay Account will be reserved for future one-time needs.

# ASF Credit Disbursement Summary

\$500,000

Dept	BU	Qty	Monthly Rate	Annual Rate	Ratio by # Veh	Credit
Ag Commissioner	101-3400	7	\$3,720	\$44,640	0.100000	\$50,000
Assessor	101-0600	1	\$520	\$6,240	0.014286	\$7,143
Custodial	101-0950	1	\$820	\$9,840	0.014286	\$7,143
Bldgs & Grounds	101-0900	4	\$2,480	\$29,760	0.057143	\$28,572
Code Enforcement	101-3600	2	\$1,250	\$15,000	0.028571	\$14,286
District Attorney	108-2500	2	\$1,090	\$13,080	0.028571	\$14,286
Juvenile Hall	108-3000	2	\$1,340	\$16,080	0.028571	\$14,286
OES	101-4200	1	\$520	\$6,240	0.014286	\$7,143
Probation	101-3100	7	\$4,230	\$50,760	0.100000	\$50,000
Public Guardian	101-4100	1	\$545	\$6,540	0.014286	\$7,143

## Total General Fund

28 16515 198180 0.400000 \$200,000

Transfer from ASF 150 to  
County Capital Outlay  
Account 200

Dept	BU	Qty	Monthly Rate	Annual Rate	Ratio by # Veh	Credit
Airport	130-9500	1	\$490	\$5,880	0.014286	\$7,143
Bldg Inspection	101-3500	4	\$3,080	\$36,960	0.057143	\$28,571
Child Support	107-2600	2	Per Use	Per Use	0.028571	\$14,286
Env Health	101-4800	5	\$4,095	\$49,140	0.071429	\$35,715
Health Services	106-4700	4	\$1,975	\$23,700	0.057143	\$28,571
Human Services	100-5200	21	\$10,760	\$129,120	0.300000	\$150,000
Housing	101-6700	1	\$570	\$6,840	0.014286	\$7,143
TRLIA	805-3350	1	\$495	\$5,940	0.014286	\$7,143
Victim Witness	101-3110	3	\$1,695	\$20,340	0.042857	\$21,429

## Total Non-General Fund

42 23160 277920 0.600000 \$300,000

Charge against departmental credit  
until credit eliminated

## Grand Total

70 \$39,675 \$476,100 1.000000 \$500,000

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# *The County of Yuba*

499-13

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## HEALTH & HUMAN SERVICES DEPARTMENT

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**Suzanne Nobles, Director**

5730 Packard Ave., Suite 100, P.O. Box 2320, Marysville, California 95901  
Phone: (530) 749-6311 FAX: (530) 749-6281



**Michael Kinnison, M.D.,  
Interim Health Officer**  
Phone: (530) 749-6366

**TO:** Board of Supervisors  
Yuba County

**FROM:** Suzanne Nobles, Director  
Health & Human Services Department

**DATE:** December 17, 2013

**SUBJECT:** Resolution of the Board of Supervisors to Enter into Agreement with the California Department of Public Health for Immunization Project Subvention Funds and authorization for Chairman to execute documents required by this agreement.

**RECOMMENDATION:** Board of Supervisors' approval of the Resolution authorizing the Health and Human Services Department to enter into the Agreement with the California Department of Public Health (CDPH) for Immunization Project Subvention Funds and authorization for the Chairman to execute documents as required by this Agreement; and, approval of the Agreement with CDPH for Immunization Project Subvention Funds for the term of July 1, 2013, through June 30, 2017, is recommended.

**BACKGROUND:** The Health and Human Services Department is applying for continuing funding through CDPH in the amount of \$25,000.00 per fiscal year to increase the immunization levels of infants and toddlers and to establish an adult vaccination program. Sections 120325-120380 of the Health and Safety Code, Chapter 435, require immunizations against childhood diseases prior to school admittance. County Health Officers are required to organize and maintain a program to make required immunizations available. This Agreement will assist the County in defraying costs of the mandated immunization program.

**DISCUSSION:** The Agreement with CDPH will assist Yuba County in expanding immunization services, promote best practices and improve coverage rates among children, adolescents and adults through the development of partnerships and collaboration. This Agreement will aid in providing education and training opportunities, materials, and information to health care providers, schools and child care centers, community organizations, and the general public to promote best practices for immunization and raise awareness about the importance of immunizations in the prevention of serious illnesses.

**COMMITTEE:** The Human Services Committee recommended approval on December 10, 2013.

**FISCAL IMPACT:** Approval of the resolution and subsequent Agreement will not impact County General Funds. There is no County match requirement.

BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF YUBA

IN RE:

**AUTHORIZE THE YUBA COUNTY HEALTH  
AND HUMAN SERVICES DEPARTMENT TO  
ENTER INTO AGREEMENT WITH THE STATE  
OF CALIFORNIA, DEPARTMENT OF PUBLIC  
HEALTH, FOR IMMUNIZATION PROJECT  
SUBVENTION FUNDS FOR THE PERIOD OF  
JULY 1, 2013-JUNE 30, 2017; AND AUTHORIZE  
CHAIRMAN TO EXECUTE DOCUMENTS AS  
REQUIRED BY THE AGREEMENT AND ANY  
PERTINENT DOCUMENTS RELATED TO THIS  
PROGRAM, AND TO AUTHORIZE  
ACCEPTANCE OF FUNDS**

Resolution No. \_\_\_\_\_

WHEREAS, the State of California has made funds available to local health departments to expand their immunization services and increase the immunization levels of infants, toddlers and adults; and

WHEREAS, it is in the best interest of the residents of the County of Yuba to increase the availability of immunization services to children and adults within the community through the Health and Human Services Department, Health Division immunization programs and to establish an adult vaccination program.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Yuba as follows: That the submission of the Standard Agreement to the California Department of Public Health for Immunization Project Subvention Funds is hereby authorized.

BE IT FURTHER RESOLVED by the Board of Supervisors of the County of Yuba as follows: That the Chairman is hereby authorized to accept \$25,000.00 per year for the four-year period from July 1, 2013 through June 30, 2017 and any subsequent funds awarded for the stated period; to execute, upon review and approval of the County Counsel, documents as required by the grant contract for the stated four-year period; to authorize and execute the allocation of funds for the stated four-year period.

AND BE IT FURTHER RESOLVED the Chairman is granted permission to amend contracts for additional or lesser funding, and execute amendments or memorandums of understanding developed under this grant if the allocation, or a portion thereof, is awarded. A copy of the said contract or any amendment thereto shall be filed in the office of the Clerk of the Board, County of Yuba.

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AND BE IT FURTHER RESOLVED the Chairman is granted permission to amend contracts for additional or lesser funding, and execute amendments or memorandums of understanding developed under this grant if the allocation, or a portion thereof, is awarded. A copy of the said contract or any amendment thereto shall be filed in the office of the Clerk of the Board, County of Yuba.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Yuba, State of California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

AYES:

NOES:

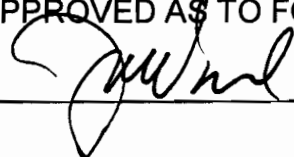
ABSENT:

ABSTAIN:

\_\_\_\_\_, Chair of the Board

ATTEST: Donna Stottlemeyer  
Clerk of the Board of Supervisors

\_\_\_\_\_  
ANGIL P. MORRIS-JONES  
YUBA COUNTY COUNSEL  
APPROVED AS TO FORM:

  
\_\_\_\_\_

# The County of Yuba

500-13

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## HEALTH & HUMAN SERVICES DEPARTMENT

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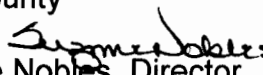
**Suzanne Nobles, Director**

5730 Packard Ave., Suite 100, P.O. Box 2320, Marysville, California 95901  
Phone: (530) 749-6311 FAX: (530) 749-6281



**Michael Kinnison, M.D.,  
Interim Health Officer**  
Phone: (530) 749-6366

**TO:** Board of Supervisors  
Yuba County

**FROM:**   
Suzanne Nobles, Director  
Health & Human Services Department

**DATE:** December 17, 2013

**SUBJECT:** Resolution of the Board of Supervisors Authorizing the Health and Human Services Department to apply for the Maternal, Child and Adolescent Health (MCAH) Grant

**RECOMMENDATION:** It is recommended that the Board of Supervisors approve the attached Resolution of the Board authorizing the Health and Human Services Department (HHSD) to apply for the California Department of Public Health (CDPH) Maternal Child and Adolescent Health (MCAH) Grant for the period of July 1, 2013 through June 30, 2014; and further authorizing the Chair of the Board to accept funds and to execute documents as required by this application and any pertinent document related to this program and the acceptance of funds.

**BACKGROUND:** Since 2007, Yuba County, through its Health and Human Services Department, has received MCAH program funds to develop policies and standards, and conduct activities aimed at improving the health and well-being of the women, children and families of Yuba County.

**DISCUSSION:** Yuba County's allocation for the new funding period of July 1, 2013, through June 30, 2014, is \$144,433. The approval of this Board Resolution will authorize HHSD to apply for the funds and will authorize the Chair to execute the annual Agreement Funding Application (AFA)/Update form.

**COMMITTEE:** The Human Services Committee recommended approval on December 10, 2013.

**FISCAL IMPACT:** Approval of this Resolution will not impact County General Funds. The County portion for the MCAH Grant (\$29,245) is funded by Public Health Realignment.

**BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF YUBA**

**RESOLUTION AUTHORIZING THE HEALTH  
AND HUMAN SERVICES DEPARTMENT TO  
APPLY TO THE CALIFORNIA DEPARTMENT  
OF PUBLIC HEALTH FOR MATERNAL,  
CHILD AND ADOLESCENT HEALTH (MCAH)  
GRANT FUNDS FOR THE PERIOD OF JULY  
1, 2013 THROUGH JUNE 30, 2014, AND  
FURTHER, AUTHORIZE THE CHAIR OF THE  
BOARD TO EXECUTE DOCUMENTS AS  
REQUIRED BY THE APPLICATION AND ANY  
PERTINENT DOCUMENTS RELATED TO  
THIS PROGRAM AND THE ACCEPTANCE  
OF FUNDS**

**Resolution No. \_\_\_\_\_**

**WHEREAS**, the State of California has made grant funds available for the purpose of improving the health and well being of women, children, adolescents, and families; and

**WHEREAS**, it is in the best interest of its residents for the County of Yuba to apply for and utilize the grant funds for the improvement of the health and well being of its resident women, children, adolescents, and families, particularly those who are low income.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of the County of Yuba as follows: That the submission of an application to the California

Department of Public Health for Maternal, Child and Adolescent Health (MCAH) grant funds is hereby authorized; and

**BE IT FURTHER RESOLVED** by the Board of Supervisors of the County of Yuba, as follows: that the Chair of the Board is hereby authorized to accept One Hundred Forty-Four Thousand Four Hundred and Thirty-Three Dollars (\$144,433) for the period July 1, 2013, through June 30, 2014; to execute, upon review and approval of County Counsel, documents as required by the application and the resultant contract for the stated period; to allocate and transfer funds for the stated period; to amend contracts for additional or lesser funding, and to execute amend-

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ments or memorandums of understanding developed under this grant if the allocation, or a portion thereof, is awarded. A copy of said contract or any amendment thereto shall be filed in the office of the Clerk of the Board, County of Yuba.

**PASSED AND ADOPTED** at a regular meeting of the Board of Supervisors of the County of Yuba, State of California, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

County of Yuba


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

Chair, Board of Supervisors

ATTEST: DONNA STOTTLEMEYER  
Clerk of the Board of Supervisors

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

APPROVED AS TO FORM

  
Angil P. Morris-Jones,  
Yuba County Counsel

**CALIFORNIA DEPARTMENT OF PUBLIC HEALTH  
MATERNAL, CHILD AND ADOLESCENT HEALTH (MCAH) DIVISION**

**FUNDING AGREEMENT PERIOD  
FY 2013-14 (LHJs)/2012-13 to 2014-15 (CBOs)**

**AGREEMENT FUNDING APPLICATION (AFA)/UPDATE FORM \***

At the beginning of each fiscal year Agencies are required to submit this AFA Form along with their AFA Package, which requires certification signatures (original signatures, no stamps allowed). This form should also be used when submitting updates that occur during the fiscal year. Update submissions do not require certification signatures.

The Agency Identification Information section must be completed each time this form is submitted.

\* Note: Agreement refers to Allocations for LHJs or Grants for CBOs.


**AGENCY IDENTIFICATION INFORMATION**

Any program related information being sent from the CDPH MCAH Division  
will be directed to the MCAH and/or AFLP Director.

Please check the applicable "Program" boxes below: changes being submitted:

☒ MCAH      ☐ AFLP      ☐ BIH      ☐ FIMR      ☐ CHVP

**Fiscal Year: 2013-14**      Update Effective: \_\_\_\_\_ (only required when submitting updates)

Agreement Number:	<b>201358</b>	APPROVED FOR FUNDING FORM
Federal Employer ID#:	94-6000549	ANGIL P. MORRIS-JONES COUNTY COUNSEL
Complete Official Agency Name:	YUBA COUNTY HEALTH & HUMAN SERVICES DEPARTMENT PUBLIC HEALTH DIVISION BY: 	
Business Office Address:	5730 Packard Avenue, Suite 100, Marysville, CA 95901	
Agency Phone:	(530) 749-6311	Agency Fax: (530) 749-6281
Agency Website Address:	<a href="http://www.co.yuba.co.us/departments/hhsd/publichealth">http://www.co.yuba.co.us/departments/hhsd/publichealth</a>	

**1 AGENCY DIRECTOR**

Name:	Suzanne Nobles				
Title:	Director, Health and Human Services Department				
Mailing Address:	5730 Packard Avenue, Suite 100				
City:	Marysville			Zip:	95901
Phone:	(530) 749-6271	Ext.		FAX:	(530) 749-6281
E-Mail Address:	snobles@co.yuba.ca.us				

**2 BOARD INFORMATION**

Clerk of the Board <input checked="" type="checkbox"/>		Chair Board of Supervisors <input type="checkbox"/>	
Title:	Donna Stottlemeyer		
Mailing Address:	915 8 <sup>th</sup> Street, Suite 109		
City:	Marysville	Zip:	95901
Phone:	(530) 749-7511	Ext.	
FAX:	(530) 749-7353		
E-Mail Address:	dstottlemeyer@co.yuba.ca.us		

**3 OFFICIAL AUTHORIZED TO COMMIT AGENCY**

Name:	Andy Vasquez, Jr.		
Title:	Chairman of the Board		
Mailing Address:	915 8 <sup>th</sup> Street, Suite 109		
City:	Marysville	Zip:	95901
Phone:	(530) 749-7510	Ext.	
FAX:	(530) 749-7353		
E-Mail Address:	hstocker@co.yuba.ca.us		

**4 FISCAL OFFICER**

Name:	Radell Sharrock		
Title:	Fiscal Manager		
Mailing Address:	5730 Packard Avenue, Suite 100		
City:	Marysville	Zip:	95901
Phone:	(530) 749-6834	Ext.	
FAX:	(530) 749-6281		
E-Mail Address:	rsharrock@co.yuba.ca.us		

**5 MCAH DIRECTOR (Please check box if MCAH and AFLP Director are the same) ☐**

Name:	Alexandra Hadley		
Title:	PHN III		
Mailing Address:	5730 Packard Avenue, Suite 100		
City:	Marysville	Zip:	95901
Phone:	(530) 749-6773	Ext.	
FAX:	(530) 749-6397		
E-Mail Address:	ahadley@co.yuba.ca.us		

**6 MCAH COORDINATOR (Only complete if different from #5)**

Name:	Ann Soliday				
Title:	PHN I				
Mailing Address:	5730 Packard Avenue, Suite 100				
City:	Marysville			Zip:	95901
Phone:	(530) 749-6785	Ext.		FAX:	(530) 749-6397
E-Mail Address:	asoliday@co.yuba.ca.us				

**7 MCAH BUDGET CONTACT**

Name:	Donna Paterno				
Title:	Accounting Technician				
Mailing Address:	5730 Packard Avenue, Suite 100				
City:	Marysville			Zip:	95901
Phone:	(530) 749-6749	Ext.		FAX:	(530) 749-6281
E-Mail Address:	dpaterno@co.yuba.ca.us				

**8 MCAH INVOICE CONTACT (Only complete if different from #7)**

Name:					
Title:					
Mailing Address:					
City:				Zip:	
Phone:		Ext.		FAX:	
E-Mail Address:					

**9 PERINATAL SERVICES COORDINATOR (PSC)**

Name:	Alexandra Hadley				
Title:	PHN III				
Mailing Address:	5730 Packard Avenue, Suite 100				
City:	Marysville			Zip:	95901
Phone:	(530) 749-6773	Ext.		FAX:	(530) 749-6397
E-Mail Address:	ahadley@co.yuba.ca.us				

**10 AFLP DIRECTOR (Only complete if different from MCAH Director)**

Name:					
Title:					
Mailing Address:					
City:				Zip:	
Phone:		Ext.		FAX:	
E-Mail Address:					

**11 AFLP COORDINATOR (Only complete if different from #10)**

Name:					
Title:					
Mailing Address:					
City:				Zip:	
Phone:		Ext.		FAX:	
E-Mail Address:					

**12 AFLP BUDGET CONTACT**

Name:					
Title:					
Mailing Address:					
City:				Zip:	
Phone:		Ext.		FAX:	
E-Mail Address:					

**13 AFLP INVOICE CONTACT (Only complete if different from #12)**

Name:					
Title:					
Mailing Address:					
City:				Zip:	
Phone:		Ext.		FAX:	
E-Mail Address:					

**14 BLACK INFANT HEALTH (BIH) COORDINATOR**

Name:					
Title:					
Mailing Address:					
City:				Zip:	
Phone:		Ext.		FAX:	
E-Mail Address:					

**15 BIH BUDGET CONTACT**

Name:					
Title:					
Mailing Address:					
City:				Zip:	
Phone:		Ext.		FAX:	
E-Mail Address:					

**16 BIH INVOICE CONTACT (Only complete if different from #15)**

Name:					
Title:					
Mailing Address:					
City:				Zip:	
Phone:		Ext.		FAX:	
E-Mail Address:					

**17 FETAL INFANT MORTALITY REVIEW (FIMR) COORDINATOR**

Name:					
Title:					
Mailing Address:					
City:				Zip:	
Phone:		Ext.		FAX:	
E-Mail Address:					

**18 SUDDEN INFANT DEATH SYNDROME (SIDS) COORDINATOR / CONTACT**

Name:					
Title:					
Mailing Address:					
City:				Zip:	
Phone:		Ext.		FAX:	
E-Mail Address:					

**19 CALIFORNIA HOME VISITING PROGRAM (CHVP) COORDINATOR/  
NURSING SUPERVISOR**

Name:					
Title:					
Mailing Address:					
City:				Zip:	
Phone:		Ext.		FAX:	
E-Mail Address:					

**20 OTHER**

Name:	Delellis York				
Title:	Supervising PHN				
Mailing Address:	5730 Packard Avenue, Suite 10				
City:	Marysville			Zip:	95901
Phone:	530-749-6742	Ext.		FAX:	530-749-6397
E-Mail Address:	dyork@co.yuba.ca.us				

**AGREEMENT FUNDING APPLICATION  
POLICY COMPLIANCE AND CERTIFICATION**

The undersigned hereby affirms that the statements contained in the Agreement Funding Application (AFA) are true and complete to the best of the applicant's knowledge.

I certify that this Maternal, Child and Adolescent Health (MCAH) related program will comply with all applicable provisions of Article 1, Chapter 1, Part 2, Division 106 of the Health and Safety code (commencing with section 123225), Chapters 7 and 8 of the Welfare and Institutions Code (commencing with Sections 14000 and 142), and any applicable rules or regulations promulgated by CDPH pursuant to this article and these Chapters. I further certify that this MCAH related program will comply with the MCAH Policies and Procedures Manual, including but not limited to, Administration, Federal Financial Participation (FFP) Section. I further certify that this MCAH related program will comply with all federal laws and regulations governing and regulating recipients of funds granted to states for medical assistance pursuant to Title XIX of the Social Security Act (42 U.S.C. section 1396 et seq.) and recipients of funds allotted to states for the Maternal and Child Health Service Block Grant pursuant to Title V of the Social Security Act (42 U.S.C. section 701 et seq.). I further agree that this MCAH related program may be subject to all sanctions or other remedies applicable if this MCAH related program violates any of the above laws, regulations and policies with which it has certified it will comply.

\_\_\_\_\_  
Original Signature of Official authorized to  
commit the Agency to an MCAH Agreement

\_\_\_\_\_  
Chairman of the Board of Supervisors  
Title

\_\_\_\_\_  
Andy Vasquez, Jr.  
Name (Type or Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
*Alexandra Hadley*  
Original Signature of MCAH/AFLP Director

\_\_\_\_\_  
Public Health Nurse III  
Title

\_\_\_\_\_  
Alexandra Hadley  
Name (Type or Print)

\_\_\_\_\_  
11-21-13  
Date

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# The County of Yuba

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## HEALTH & HUMAN SERVICES DEPARTMENT

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**Suzanne Nobles, Director**

5730 Packard Ave., Suite 100, P.O. Box 2320, Marysville, California 95901  
Phone: (530) 749-6311 FAX: (530) 749-6281



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**Michael Kinnison, M.D.,**  
Interim Health Officer  
Phone: (530) 749-6366

**TO:** Board of Supervisors  
Yuba County

**FROM:** *Suzanne Nobles*  
Suzanne Nobles, Director  
Health & Human Services Department

**DATE:** December 17, 2013

**SUBJECT:** Resolution of the Board authorizing the Director of Health and Human Services to Execute the Agreement for Professional Services, and any amendments or pertinent documents, with Sierra Forever Families for Adoption Services

**RECOMMENDATION:** It is recommended that the Board of Supervisors approve the attached Resolution of the Board authorizing the Director of the Yuba County Health and Human Services Department (YCHHSD) to enter into a standard agreement with Sierra Forever Families (SFF) for the provision of adoption services for a three year period of January 1, 2014, through December 31, 2016.

**BACKGROUND:** Adoption services play a vital role in the permanent placement of Yuba County's children who have been relinquished for adoption. The California Department of Social Services was the adoption agency for Yuba County until July 1, 2013, at which time YCHHSD became the authorized adoption agency for Yuba County. Pursuant to Welfare and Institutions Code Sections 16100-16106, a county adoption agency may contract for services with a licensed private adoption agency to facilitate adoptive placement.

**DISCUSSION:** YCHHSD would like to enter into agreement with SFF to provide assistance with adoption services to expedite the permanent placement of children who are in out-of-home care. SFF is a California Non-Profit Public Benefit Corporation licensed by the State of California to provide adoption services. SFF receives reimbursement for services from the State Private Adoption Agency Reimbursement Program (PAARP).

**COMMITTEE:** The Human Services Committee recommended approval on December 10, 2013.

**FISCAL IMPACT:** Approval of the Resolution to enter into Agreement with SFF will not impact County General Funds as reimbursement for services will be provided by PAARP.

**BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF YUBA**

<b>RESOLUTION AUTHORIZING THE</b>	)	
<b>YUBA COUNTY HEALTH AND HUMAN</b>	)	
<b>SERVICES DEPARTMENT TO ENTER</b>	)	
<b>INTO AND EXECUTE, ON BEHALF OF</b>	)	
<b>THE COUNTY OF YUBA, AN</b>	)	
<b>AGREEMENT WITH SIERRA FOREVER</b>	)	
<b>FAMILIES FOR THE PROVISION OF</b>	)	<b>RESOLUTION NO. _____</b>
<b>ADOPTION SERVICES FOR THE</b>	)	
<b>PERIOD OF JANUARY 1, 2014</b>	)	
<b>THROUGH DECEMBER 31, 2017, AND</b>	)	
<b>FURTHER AUTHORIZING THE</b>	)	
<b>DIRECTOR TO EXECUTE DOCUMENTS</b>	)	
<b>AS REQUIRED BY THIS AGREEMENT</b>	)	

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**WHEREAS**, during the period of July 1, 2012, through June 30, 2013, the Yuba County Health and Human Services Department, (YCHHSD) coordinated with the California Department of Social Services to transition adoption services from the state to the county; and

**WHEREAS**, effective July 1, 2013, YCHHSD became the authorized county adoption agency for the County of Yuba to perform the home-finding and placement functions, to investigate, examine, make reports upon petitions for adoption, and to perform such other functions in connection with the adoption as the department deems necessary; and

**WHEREAS**, pursuant to Welfare and Institutions Code Sections 16100-16106, a county adoption agency may contract for services with a licensed private adoption agency to facilitate adoptive placement; and

**WHEREAS**, YCHHSD would like to enter into agreement with Sierra Forever Families (SFF) for the term of January 1, 2014, through December 31, 2017, for the provision of assistance with adoption services to expedite the permanent placement of Child Welfare Services' children who are in out-of-home care. SFF is a California Non-Profit Public Benefit Corporation licensed by the State of California to provide adoption services; and

**WHEREAS**, YCHHSD will not provide compensation to SFF for the provision of adoption services. SFF will be responsible for seeking reimbursement for services from the California Department of Social Services Private Adoption Agency Reimbursement Program.

**NOW, THEREFORE, BE IT RESOLVED** by the Yuba County Board of Supervisors that the Director of YCHHSD is hereby authorized, upon review and approval of County Counsel, to enter into and execute a standard Professional Services Agreement with SFF and the Director is granted permission to execute any amendments to the agreement and documents as may be required by the agreement.

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A copy of said Agreement and any amendments thereto shall be filed in the office of the Clerk of the Board, County of Yuba.

**PASSED AND ADOPTED** at a regular meeting of the Board of Supervisors of the County of Yuba, State of California, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

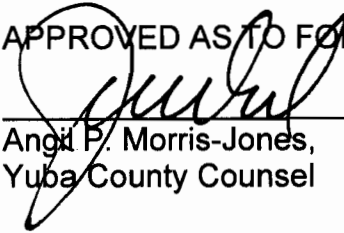
County of Yuba

By: \_\_\_\_\_  
Chair, Board of Supervisors

ATTEST: DONNA STOTTLEMEYER  
Clerk of the Board of Supervisors

\_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Angil P. Morris-Jones,  
Yuba County Counsel

# The County of Yuba

503 -13

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## HEALTH & HUMAN SERVICES DEPARTMENT

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**Suzanne Nobles, Director**


5730 Packard Ave., Suite 100, P.O. Box 2320, Marysville, California 95901  
Phone: (530) 749-6311 FAX: (530) 749-6281



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**Michael Kinnison, M.D.,  
Interim Health Officer**  
Phone: (530) 749-6366

**TO:** Board of Supervisors  
Yuba County

**FROM:**   
Suzanne Nobles, Director  
Health & Human Services Department

**DATE:** December 17, 2013

**SUBJECT:** Resolution authorizing the Director or his/her designee to execute California Work Opportunity and Responsibility to Kids (CalWORKs) Subsidized Employment Work Site Agreements

**RECOMMENDATION:** It is recommended that the Board of Supervisors approve the resolution authorizing the Director of the Health and Human Services Department or his/her designee to execute CalWORKs program subsidized employment worksite agreements with contractors is recommended.

**BACKGROUND:** The Health and Human Services Department, through its Employment Services, is responsible for administering a subsidized employment program for CalWORKs participants. The subsidized employment program is a Welfare-to-Work activity which provides participants an opportunity to gain valuable vocational training in partnership with local Employers. As participants develop necessary skills and valuable job experience, employers are partially reimbursed for wages paid to the participants. The goal is for participants to transition from unemployment to self-sufficiency. Additionally, this activity provides another option to meet federal work participation requirements.

**DISCUSSION:** The Subsidized Work Experience Agreement requires Employment Services to enter into a contract with employers willing to provide onsite training to CalWORKs participants. The contract outlines expectations for the contractor and guidelines for wage reimbursement in accordance with regulatory requirements. The services provided under this agreement will assist participants in achieving self-sufficiency by preparing them for unsubsidized employment, as well as creating job opportunities.

**COMMITTEE:** Due to the routine nature of this request, the Health and Human Services Committee was bypassed.

**FISCAL IMPACT:** Approval of this Resolution will have no fiscal impact to the County General Fund.

**BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF YUBA**

**IN REFERENCE TO:**

**RESOLUTION AUTHORIZING THE )  
DIRECTOR OR HIS/HER DESIGNEE OF THE )  
HEALTH AND HUMAN SERVICES )  
DEPARTMENT TO EXECUTE CALWORKS )  
PROGRAM SUBSIDIZED EMPLOYMENT )  
PROGRAM AGREEMENTS WITH WORK )  
SITE CONTRACTORS )**

**RESOLUTION NO. \_\_\_\_\_**

---

**WHEREAS**, pursuant to the CalWORKs Program, codified in Division 9, Part 3, Chapter 2, commencing with Section 11320, of the California Welfare and Institutions Code, the County of Yuba is required to provide employment and training programs to qualified participants in the CalWORKs Program; and

**WHEREAS**, the Health and Human Services Department of the County, through its Employment Services, is assigned the responsibility of administering the CalWORKs Program on behalf of the County; and

**WHEREAS**, it is necessary for the County to enter into multiple contracts with various public and private entities to provide training and work sites for the CalWORKs participants, and

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of Supervisors of the County of Yuba hereby authorize the Director of the Health & Human Services Department, or his/her designee, to execute, on behalf of the County of Yuba,

Subsidized Employment Program Agreements in the form attached hereto and incorporated therein by this reference. This Resolution shall remain in effect until repealed or until the work experience component of the CalWORKs Program is repealed, whichever is the first to occur.

**PASSED AND ADOPTED** at a regular meeting of the Yuba County Board of Supervisors of this \_\_\_\_\_, day of \_\_\_\_\_ 2013, by the following vote:

**AYES:**

**NOES:**

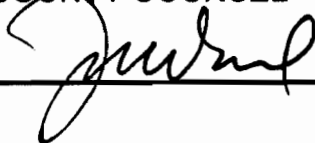
**ABSENT:**

**ABSTAIN:**

\_\_\_\_\_  
**Chairman**

\_\_\_\_\_  
**ATTEST: DONNA STOTTLEYMEYER**  
Clerk of the Board of Supervisors

APPROVED AS TO FORM  
ANGIL P. MORRIS-JONES  
COUNTY COUNSEL

  
\_\_\_\_\_

**California Work Opportunity  
And  
Responsibility to Kids Program  
(CalWORKs)**

**Subsidized Employment**

**Work Site Agreement**

This agreement is entered into between the County of Yuba ("COUNTY"), a political subdivision of the State of California, on behalf of its Health and Human Services Department, and \_\_\_\_\_ (hereinafter "CONTRACTOR"), a  
[        ] public entity    [        ] private non-profit entity    [        ] private for profit entity on the  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

WHEREAS, pursuant to the CalWORKs Program, codified in Division 9, Part 3, Chapter 2 commencing with Section 11320, of the California Welfare and Institutions Code, COUNTY is required to provide employment and training activities to qualified participants in the CalWORKs program; and

WHEREAS, the Yuba County Health and Human Services Department, through its Employment Services, is assigned the responsibility of administering the CalWORKs Program on behalf of the COUNTY; and

WHEREAS, CONTRACTOR has available a work site and is willing to make that work site available so that participants in the CalWORKs Program can obtain new job skills or enhance existing job skills that will lead to unsubsidized employment.

NOW, THEREFORE, in consideration of their mutual covenants and conditions, the parties, hereto agree as follows:

**1. SERVICES**

**I. CONTRACTOR agrees:**

- a. The CalWORKs participant is hired as a member of the CONTRACTOR'S workforce and CONTRACTOR is obligated to compensate the CalWORKs participant for work performed as follows:
  - i. To add CalWORKs participant to payroll and be subject to all tax withholdings, social security withholdings, Employer Federal Insurance Contributions Act (FICA), California Unemployment Insurance, State Disability Insurance and Worker's Compensation as required by law. Other employee benefits such as medical or dental insurance are optional and shall not be reimbursed by COUNTY.

- ii. To pay CalWORKs participant an hourly wages which is no less than the minimum wage established for the State of California and no more than ten dollars an hour.
- b. To provide supervised work as a training element for subsidized employment participants referred to the CONTRACTOR by COUNTY.
- c. To report the CalWORKs participant's attendance and information relating to performance as may be required by COUNTY in a timely manner. CONTRACTOR understands that the CalWORKs participant may not participate in the work activity more than the number of hours per week authorized by the COUNTY. The duration of the assignment shall not exceed 12 months.
- d. To inform and to consider the CalWORKs participant for any job opening occurring at the work site and to provide the participant with the opportunity to participate in classified service examinations equivalent to the position the participant occupies.
- e. To utilize the CalWORKs participant to perform duties at the training level.
- f. To provide each participant:
  - i. Orientation to the work site (i.e. conditions of work, employer expectations, etc.)
  - ii. Reasonable and proper supervision and instructions regarding duties and work activity.
  - iii. Safety instructions and equipment necessary for protection against injury and damage in accordance with OSHA Guidelines.
  - iv. The same working conditions as CONTRACTOR'S current employees and as required by law. (i.e. conditions of work, employer expectations, etc.)
- g. To furnish comprehensive general liability insurance protection and comprehensive automobile liability insurance coverage if CalWORKs participant operates any motor vehicle or heavy equipment as part of the work assignment. CONTRACTOR agrees to provide evidence of insurance coverage to COUNTY upon request.

**II. CONTRACTOR assures that:**

- a. Participants will be used in positions to supplement its workforce. CONTRACTOR understands that under no circumstances shall a CalWORKs participant supplant regular employees of CONTRACTOR, pursuant to Welfare and Institutions Code Section 11324.6, which states a subsidized employment position may not be created as a result of, and may not result in any of the following:
  - i. Displacement or partial displacement of CONTRACTOR'S current employees, including, but not limited to, a reduction in hours on non-overtime and overtime work, wages or employment benefits.
  - ii. The filling of positions which would otherwise be promotional opportunities for CONTRACTOR'S current employees, except when positions are to be filled

through an open process in which CalWORKs participants are provided equal opportunity to compete.

- iii. The filling of a position, prior to compliance with applicable personnel procedures or provisions of collective bargaining agreements.
- iv. The filling of established unfilled public agency positions, unless the positions are unfunded in a public agency budget.
- v. The filling of a position created by termination in work force, caused by the CONTRACTOR'S intent to fill the position pursuant to the CalWORKs Program.
- vi. A strike, lockout, or other bona fide labor dispute, or violation of any existing collective bargaining agreement between CONTRACTOR and CONTRACTOR'S employees.
- vii. The filling of a work assignment customarily performed by a worker in a job classification with a recognized collective bargaining unit in that specific work site, or the filling of a work assignment in any bargaining unit in which funded positions are vacant or in which regular employees are on layoff.
- viii. The termination of contract services, prior to its expiration date, that results in the displacement or partial displacement of workers performing contracted services, caused by the CONTRACTOR'S intent to fill the position with a subsidized position pursuant to the CalWORKs Program.
- ix. The denial to a CalWORKs participant of protections afforded other workers on the work site by the state and federal laws governing workplace health, safety, and representation.

### **III. CONTRACTOR shall:**

- a. Notify the appropriate labor union of the use of a CalWORKs participant by the CONTRACTOR; and
- b. Notify non-union employees of the use of a CalWORKs participant by the CONTRACTOR and the availability of the grievance process by the display of the Notice to Employee (Exhibit A) at CONTRACTOR'S work site, provided no CalWORKs participant is identified in said display.
  - i. All displacement complaints shall be in written form and shall include the full name, address (if any) and the telephone number (if any) of the alleged displaced employee, the full name of the employer against whom the complaint is filed, a clear and concise statement of the facts concerning the alleged displacement, including pertinent dates, and a statement that the complaint has been signed under penalty of perjury. The grievance

procedure required by the Manual of Policies and Procedures is attached hereto and incorporated herein by this reference as Exhibit B.

**IV. COUNTY shall:**

- a. Provide an orientation to each CONTRACTOR's worksite supervisor. The orientation will include, but is not limited to, a review of Subsidized Employment Program policies and procedures.
- b. Respond to CONTRACTOR as requested involving personnel issues.
- c. Have the right to observe and monitor all conditions and activities involved in the performance of this agreement.
- d. Have the right to control CONTRACTOR only insofar as the results of CONTRACTOR's services rendered pursuant to this Agreement. COUNTY shall not have the right to control the means by which CONTRACTOR accomplishes services rendered pursuant to this Agreement.

**2. PAYMENT**

- a. COUNTY shall reimburse CONTRACTOR seventy five percent (75%) of gross earnings paid to CalWORKs participant throughout the first six months of employment, fifty percent (50%) of gross earnings paid to CalWORKs participant throughout the subsequent three months of employment and twenty five percent (25%) of gross earnings paid to CalWORKs participant throughout the remaining three months of employment.
- b. COUNTY shall reimburse CONTRACTOR a fee not to exceed Thirty Thousand Dollars (\$30,000.00) for the duration of the agreement.
- c. CONTRACTOR agrees to provide a complete monthly invoice attached hereto and incorporated herein by this reference as Exhibit D no later than the 10<sup>th</sup> of the following month. The invoice must include payroll record and/or time card as verification of hours and wages paid during the billing period.
- d. COUNTY shall not reimburse any claims submitted beyond thirty days following the termination of this agreement.
- e. COUNTY shall not reimburse wages without the required invoice and supporting documentation.
- f. CONTRACTOR understands fraudulent invoices or supporting documentation are subject to criminal penalties.

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### **3. GENERAL PROVISIONS**

- a. Both parties understand that CONTRACTOR is not an agent of the COUNTY. Except as COUNTY may specify in writing, CONTRACTOR shall have no authority, expressed or implied, to act on behalf of COUNTY in any capacity whatsoever as an agent. CONTRACTOR shall have no authority, expressed or implied to bind COUNTY to any obligation whatsoever.
- b. CONTRACTOR may not assign or subcontract any right or obligation pursuant to the Agreement. Any attempt or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no legal effect.
- c. No modifications of the terms of this Agreement shall be valid or binding unless made in writing and signed by the parties hereto. There are no oral understandings or agreements between the parties that have not been incorporated herein.
- d. CONTRACTOR shall not unlawfully discriminate against any employee of the CONTRACTOR, including CalWORKs participants, or applicants for employment or for services or against any member of the public because of race, religion, color, natural origin, ancestry, physical handicap, medical condition, marital status, age, or sex. CONTRACTOR shall comply with the provision of the Fair Employment and Housing Act (Government Code Section 12900, et seq.). The applicable regulations of the Fair Employment Housing Commission implementing Government Code Section 12900, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations and incorporated into this agreement by the reference and made part hereof as if set forth in full. CONTRACTOR shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulations issued to said Act.
- e. In addition to application of the non-discrimination provision of this Agreement, above, CONTRACTOR agrees to comply with all provisions of Section 405, et seq. of the Rehabilitation Act of 1973, and with all provisions of the Americans with Disabilities Act of 1990, and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts, pertaining to the prohibition of discrimination against qualified handicapped and disabled persons, in all programs or activities, as to employees or recipients of services.
- f. CONTRACTOR understands that the California Department of Social Services Manual of Policies and Procedures (MPP) Section 42-720.4 provides that a specific grievance process shall be used to resolve the complaints of regular employees or their representatives who believe the assignment of a CalWORKs participant to subsidized employment violates any of the displacement provisions set forth in Section 1 Services, Part III.
- g. CONTRACTOR understands that Workers' Compensation Insurance coverage shall be provided by the State of California pursuant to the All County Letter 13-56, dated June 28, 2013, attached hereto and incorporated herein by this reference as Exhibit C.

- h. CONTRACTOR warrants that it is knowledgeable of the provisions of Government Code section 8350 et seq. in matters relating to providing a drug-free work place. CONTRACTOR agrees that CONTRACTOR will execute appropriate certifications relating to Drug Free Workplace.
- i. COUNTY has verified that the CONSULTANT does not hold any debarment or suspension filings as verified at CONTRACTOR [www.SAM.gov](http://www.SAM.gov). If a new debarment action arises during the term of this agreement, COUNTY reserves the right to suspend or terminate this contract without penalty.

#### **4. TERMINATION**

- a. Either party may terminate this Agreement upon 30 calendar days prior written notice to the other party.
- b. The COUNTY may immediately terminate this Agreement upon violation of the Agreement by CONTRACTOR, a reduction or elimination of program funding or upon termination of the CalWORKs participant.

#### **5. HOLD HARMLESS**

- a. CONTRACTOR, shall defend, and hold harmless, COUNTY, its elected and appointed councils, boards, commissions, officers, agents and employees from any liability for damage or claims for damage for personal injury, including death as well as for property damage, which may arise from intentional negligent acts or omissions of CONTRACTOR in the performance of services rendered under this Agreement by CONTRACTOR, or any of CONTRACTOR's officers, agents, employees, contractors, or subcontractors, including CalWORKs participants.
- b. COUNTY shall defend, indemnify, and hold harmless CONTRACTOR, its officers, agents, and employees from liability for damage or claims for damage for personal injury, including death as well as for property damage, which may arise from the intentional or negligent acts or omissions of the COUNTY in the performance of services under this Agreement by COUNTY, or any COUNTY's elected and appointed councils, board, commissions, officers, agents, or employees; however, it is expressly understood that CalWORKs participants are not agents, officers or employees of the COUNTY.

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IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written

COUNTY OF YUBA

CONTRACTOR

\_\_\_\_\_  
(Signature) (Date)

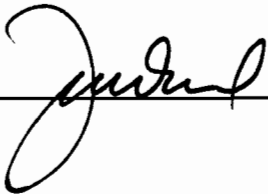
\_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
(Printed Name) (Title)

\_\_\_\_\_  
(Printed Name) (Title)

Executed pursuant to Resolution \_\_\_\_\_

APPROVED AS TO FORM  
ANGIL P. MORRIS-JONES, COUNTY COUNSEL

  
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VENDOR ASSURANCE OF COMPLIANCE WITH  
THE YUBA COUNTY  
WELFARE DEPARTMENT  
NONDISCRIMINATION IN STATE  
AND FEDERALLY ASSISTED PROGRAMS

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NAME OF VENDOR/RECIPIENT \_\_\_\_\_

HEREBY AGREES THAT it will comply with Title VI and VII of the Civil Rights Act of 1964 as amended; Section 504 of the Rehabilitation Act of 1973 as amended; the Age Discrimination Act of 1975 as amended; the Food Stamp Act of 1977, as amended and in particular section 272.6; Title II of the Americans with Disabilities Act of 1990; California Civil Code Section 51 et seq., as amended; California Government Code section 11135-11139.5, as amended; California Government Code section 12940 (c), (h) (1), (i), and (j); California Government Code section 4450; Title 22, California Code of Regulations section 98000 – 98413; Title 24 of the California Code of Regulations, Section 3105A(e); the Dymally-Alatorre Bilingual Services Act (California Government Code Section 7290-7299.8); Section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996; and other applicable federal and state laws, as well as their implementing regulations [including 45 Code of Federal Regulations (CFR) Parts 80, 84, and 91, 7 CFR Part 15, and 28 CFR Part 42], by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory, to the effect that no person shall because of ethnic group identification, age, sex, color, disability, medical condition, national origin, race, ancestry, marital status, religion, religious creed or political belief be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving federal or state financial assistance; and HEREBY GIVE ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and THE VENDOR/RECIPIENT HEREBY GIVES ASSURANCE THAT administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, will be prohibited.

BY ACCEPTING THIS ASSURANCE, the vendor/recipient agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of the aforementioned laws, rules and regulations and permit authorized CDSS and/or federal government personnel, during normal working hours, to review such records, books and accounts as needed to ascertain compliance. If there are any violations of this assurance, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code section 10605, or Government Code section 11135-11139.5, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

THIS ASSURANCE is binding on the vendor/recipient directly or through contract, license, or other provider services, as long as it receives federal or state assistance.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Director's Signature

\_\_\_\_\_  
Address of vendor/recipient

(08/13/01)

**CR50-Vendor Assurance of Compliance**

## **NOTICE TO EMPLOYEES**

Your employer has included CalWORKs subsidized employment program participants in the work force at this location. State law prohibits employers from using CalWORKs participants in a way that will cause other employees to lose their jobs, be laid off, or to have work hours reduced, including overtime hours currently being worked. An employer cannot place CalWORKs participants into jobs which would otherwise be promotional opportunities for existing employees, or into vacant positions which are not newly created jobs. Finally an employer must not violate any personnel rules when including a CalWORKs participant in his or her work force.

If you believe your employer has violated any rules disclosed above and this has led to a problem with your job, you may file a complaint with the county. The county will work with your employer to try to resolve the problem. If the problem cannot be worked out, you may request a hearing with the state.

A complaint against your employer must be in writing and contain the following information:

- Your full name and address (if you have one), and your telephone number (if you have one);
- The full name and address of your employer;
- A clear and brief statement of the facts, including important dates, which have led you to file this complaint;
- A statement that this complaint has been filed under penalty of perjury.

Send your complaints to this address:

**YUBA COUNTY HEALTH & HUMAN SERVICES DEPARTMENT  
EMPLOYMENT SERVICES  
CalWORKs WORKSITE COORDINATOR  
P.O. BOX 2320  
MARYSVILLE, CA 95901**

## **EMPLOYEE DISPLACEMENT GRIEVANCE PROCESS**

The following grievance process shall be used to resolve the complaints of regular employees or their representatives who believe the assignment of a CalWORKs participant for subsidized employment violates any of the displacement provisions set forth in Section 2.

### **1. INFORMAL RESOLUTION**

- A. Upon receipt of a written complaint by the employee or employee's representative, COUNTY shall contact both the complainant and the employer and attempt to informally resolve the complaint. This period of informal resolution shall commence on the date the complaint is received by COUNTY and shall not exceed ten calendar days. However, nothing shall prohibit an informal resolution of the complaint during this grievance process.
- B. Following its efforts to informally resolve the complaint, COUNTY shall send a letter informing the complainant of the following:
  - The employer's response to the complaint, including any actions the employer is willing to take toward informal resolution;
  - The right to request a formal hearing if the complainant is dissatisfied with the employer's informal response;
  - The procedures for filing a formal hearing, including the address to which a request for hearing should be sent; and
  - The time limit for filing a request for formal hearing.

### **2. FORMAL HEARING**

If the complaint cannot be informally resolved, the complainant may request a formal hearing by filing a written request no later than ten calendar days following the employee's receipt of the letter from COUNTY. The date postmarked on this request shall be considered the date of its filing. Formal hearings shall be conducted by the California Department of Social Services (CDSS), State Hearings Division in accordance with the CDSS MPP, Division 22. The following is an overview of the formal hearing process.

- A. CDSS shall inform all parties in writing of the date, time and location of the hearing.
  - 1) Upon the request of any party to the complaint, a hearing may be postponed for good cause prior to or at the hearing. CDSS shall have the authority to request verification to support the request for postponement. The criteria for good cause includes, but is not limited to, the following:
    - Death in the family
    - Personal illness or injury

- Sudden and unexpected emergencies which prevent the complainant or the employer (or their respective authorized representatives) from appearing
  - A conflicting court appearance which can not be postponed
- B. Attendance at the hearing is ordinarily limited to complainant, COUNTY representative, employer, legal counsel authorized, authorized interpreter, authorized representatives and witnesses relevant to the issue. Other persons may attend if the complainant agrees to or requests their presence and the Administrative Law Judge (ALJ) determines that their presence will not be adverse to the hearing.
- 1) An authorized representative is an individual or organization that has been authorized by the complainant or affected employer to act on their behalf in any and all aspects of the formal hearing. An authorized representative may include legal counsel, a relative, friend or other spokesperson.
- C. The hearing shall be conducted in an impartial manner and recorded. The issues at the hearing shall be limited to those issues which are reasonably related to the request for hearing.
- D. The rights of each party to the complaint shall include the right to:
- Examine witnesses and conduct cross-examination
  - Introduce exhibits
  - Bring witnesses
  - Examine all documents
  - Make oral or written argument
- All testimony given at the formal hearing shall be submitted under oath, affirmation, or penalty of perjury. Any party who wishes to submit a document into evidence shall provide a copy of the document to the other party free of charge.
- E. A written hearing decision shall be issued within 90 calendar days of the date the complaint was received by CDSS. Copies of the written decision shall be sent to all affected parties. When the hearing decision upholds the displacement complaint, the decision shall:
- Require termination of the assignment which brought the complaint and any other assignments which have caused the displacement of regular employees.
  - Identify those actions which shall be taken to remedy the displacement.



**CDSS**  
WILL LIGHTBOURNE  
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**  
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



EDMUND G. BROWN JR.  
GOVERNOR

June 28, 2013

ALL COUNTY LETTER NO. 13-55

**REASON FOR THIS  
TRANSMITTAL**

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☐ Court Order
- ☐ Clarification Requested by One or More Counties
- ☒ Initiated by CDSS

**TO:** ALL COUNTY WELFARE DIRECTORS  
ALL WELFARE-TO-WORK COORDINATORS  
ALL CALFRESH PROGRAM COORDINATORS  
ALL CALWORKS PROGRAM COORDINATORS

**SUBJECT:** NEW THIRD PARTY WORKERS' COMPENSATION CLAIMS  
ADMINISTRATOR AND CLAIMS REPORTING PROCEDURES FOR  
CALIFORNIA WORK OPPORTUNITY AND RESPONSIBILITY TO  
KIDS (CalWORKs) AND CALFRESH EMPLOYMENT AND TRAINING  
PROGRAM PARTICIPANTS

**REFERENCE:** All County Letters (ACL) 95-89, 96-09, 00-14, AND 11-17,  
All County Information Notice (ACIN) 1-10-98; and Manual Policies and  
Procedures (MPP) Sections 42-716.31(a)(b)(c)(d)(1);  
63.407.841(b); and Welfare and Institution Code (W&IC)  
Section 10850

The purpose of this letter is to provide County Welfare Departments (CWDs) with updated information regarding the transition of services from State Compensation Insurance Fund (SCIF) to York Risk Services Group, Inc., (York) for workers' compensation coverage for California Work Opportunity and Responsibility To Kids (CalWORKs) and CalFresh Employment and Training (E&T) Program participants.

Effective July 1, 2013, York will be the new administrator of workers' compensation benefits for those injured while participating in CalWORKs Welfare-to-Work (WtW) and CalFresh E&T Program activities described below. The California Department of General Services, Office of Risk and Insurance Management (DGS-ORIM), will continue to manage the workers' compensation program for CDSS and is participating in the implementation of the services under the new agreement with York.

**CalWORKs Welfare-to-Work Program**

Workers' compensation is covered by the State of California through CDSS, for individuals injured while participating in CalWORKs WTW activities including, but not limited to, the following:

- Unpaid Work Experience
- Unpaid Community Service
- Subsidized Employment

**Note:** CDSS' workers' compensation contract only covers subsidized employment when a CWD is the employer of record. If any other entity, including other government agencies (e.g., workforce investment board), is the employer of record, that employer must provide the workers' compensation coverage. More information regarding the employer of record is outlined in (ACL) 12-15.

**CalFresh Employment and Training Program**

The CalFresh E&T Program is California's employment and training program for Supplemental Nutrition Assistance Program (SNAP) recipients. CalFresh E&T Program participants receive CalFresh benefits each month, but do not receive a monthly cash grant unlike applicants or recipients under the CalWORKs program. Workers' compensation is covered by the State of California through CDSS, when a CalFresh recipient is participating in one of the following CalFresh E&T activities:

- Workfare
- On-the-Job Training
- Work Experience

**County Contact Representative Information**

The CalWORKs WTW and CalFresh E&T Programs must receive contact information from each CWD in order to implement and coordinate the services under the new agreement with York. CDSS respectfully requests each CWD to promptly identify a primary contact person for workers compensation claims reported on/or after July 1, 2013 for CalWORKs WTW and CalFresh E&T program participants.

For counties participating in the CalFresh E&T program, please send your county contact representative's name, title, phone number, and e-mail information to Shanee Clark, at [shanee.clark@dss.ca.gov](mailto:shanee.clark@dss.ca.gov).

For counties participating in CalWORKs WTW activities, please send your county contact representative's name, title, phone number and e-mail information to Ted Manas, at [ted.manas@dss.ca.gov](mailto:ted.manas@dss.ca.gov).

Upon receipt of the name(s) of the county contact representatives for each CWD, CDSS shall forward contact name(s) to York for proper handling of participant(s) filed claim(s).

**York Reporting Requirements for the CalWORKs and CalFresh E&T Programs**

When the employer/worksite supervisor/county contact representative receives notification, from any source, that a CalWORKs or CalFresh E&T participant incurred an injury while participating in the program, the following procedures must be followed within one (1) working day:

1. Employer/worksite supervisor/county contact representative completes lines 9-17 of the DWC-1 form (Employee's Workers' Compensation Claim Form) and gives the DWC-1 form to the employee.
2. Employer/worksite supervisor/county contact representative must have the employee sign and date the Acknowledge of Receipt of the Employee Workers' Compensation Claim form.
3. If the employee completes the DWC-1, he/she should be given a copy of the DWC-1 and the employer/worksite supervisor/county contact representative should retain remaining copies.
4. The appropriate supervisor should complete the Supervisor's Report of Injury. The employer/worksite supervisor/county contact representative must complete the Employer's Report of Occupational Injury or Illness, Form 5020, to access this form online click on the following York link at [www.yorkrsq.com](http://www.yorkrsq.com); usernames and passwords will be provided upon confirmation of the employer/worksite supervisor/county contact representative's information by CDSS. All information requested on the Form 5020 is essential for the proper handling of the potential claim. The information provided on the Form 5020 must be complete, accurate, and contain the worksite supervisor's signature and title. Please understand that the worksite supervisor's signature is not an admission of liability. Form 5020 can be filed with York via online, fax, and mail.

5. The employer/worksites supervisor/county contact representative must send all of the above to York along with any medical reports and bills, verification of employment assignment, (e.g.,) employment contract, and information regarding the client's grant/benefit amounts. The employer/worksites supervisor/county contact representative should retain a copy for their records.
6. York will provide new loss reporting packets to all locations.

If there are, questions related to reporting requirements, completion of claims reporting forms or worker's compensation in general, please contact:

York Risk Services Group  
P.O. Box 619058  
Roseville, CA 95861  
Ph. No.: (855) 446-9675  
Fax No.: (866) 548-2637

**Required Notices and Pamphlets**

All California employers are required to post a "Notice to Employees-Injuries Caused by Work". The County must post this notice, in a conspicuous location frequented by participants. The poster can be found on the Department of Industrial Relations website, [www.dir.ca.gov](http://www.dir.ca.gov). York will provide an electronic version of the notice.

Employers must also distribute a "Time of Hire Pamphlet Compensation Benefits" pamphlet, which notifies new participants about California workers' compensation rights and benefits at the time of hire. Counties are responsible for distributing the pamphlet to all new participants and existing participants upon request. The pamphlet can be found on the Department of Industrial Relations website, [www.dir.ca.gov](http://www.dir.ca.gov). York will provide an electronic version of the pamphlet.

**Reporting a Serious Injury, Illness, or Death of a CalWORKs/CalFresh E&T Participant**

Generally, a serious injury or illness is defined as any injury or illness occurring in a place of employment which requires inpatient hospitalization of an employee for a period in excess of 24 hours (for other than medical observation); results in a loss of any member of the body; or any serious degree of permanent disfigurement. If a fatality or serious injury or illness occurs to a participant of the CalWORKs WTW and CalFresh

E&T Program while participating in the activities described above, the following procedures must be followed:

1. Report the incident immediately by telephone to the nearest office of the California Division of Occupational Safety and Health (DOSH). A list of DOSH offices can be found at the following link:  
<http://www.dir.ca.gov/dosh/DistrictOffices.htm>

"Immediately" means as soon as practically possible but no later than eight (8) hours of when the employer knows or with diligent inquiry would have known of the death or a serious illness or injury. (Cal. Code Regs., tit. 8, § 342.) Immediate reporting also applies to injuries or illnesses initially determined to be non-serious, but later fall within the definition of a serious injury or illness. Upon learning of a serious injury or illness, an employer must immediately report it to DOSH. Failure to make an immediate report is subject to a minimum \$5,000 fine.

2. The employer/worksites supervisor/county contact representative at the worksite must immediately contact York at 1(866) 391-9675.
3. If worksite is other than the county office, the worksite supervisor must contact the CWD immediately to report the incident.

**Contact by York Claims Examiners and Adjusters**

The York examiner dedicated to the CalWORKs and CalFresh E&T programs will be contacting the CWD workers' compensation coordinators/county contact representatives for further information on individual cases. It is the responsibility of the coordinators/county contact representatives to provide all necessary information to the York claims examiners or adjusters. Cooperating with the adjuster and providing requested information is not considered a violation of confidentiality since York is under contract with CDSS to administer these benefits of the workers compensation program and is acting on behalf of CDSS.

York adjusters may ask questions in the following areas:

- Return to work dates
- Length of assignments
- Availability of alternative/modified work
- Background information

All County Letter No. 13-56  
Page Six

- Medical information
- Grant/Benefit information

If there are, questions that are non-claims related or regarding the administration of benefits by York please contact:

Jessica Townsend, Assistant Risk Analyst  
Office of Risk and Insurance Management  
Department of General Services  
Phone (916) 376-5298  
Fax (916) 376-5275  
E-mail [InsuranceServices@dgs.ca.gov](mailto:InsuranceServices@dgs.ca.gov)

If you have any questions regarding the information in this letter or are unsure who is covered, you may contact your CalWORKs Employment Bureau County Consultant at (916) 654-2137 or CalFresh County Consultant, at (916) 654-1898.

Sincerely,

***Original Document Signed By:***

TODD R. BLAND  
Deputy Director  
Welfare to Work Division

## CalWORKs Subsidized Employment Invoice

\*Submit Invoice by 10th of Following Month\*

Contractor's Name and Address		Contact Name and Phone Number		
Employee ID	Invoice Date	Invoice Number		
	Date	Hours	Rate	Amount
SUBTOTAL				
% OF COUNTY SHARE				
AMOUNT TO REIMBURSE				

☐ Copy of Time Sheet

☐ Back-Up Documentation

### Certification:

I certify that this invoice is in all respects are true and correct; that all material, supplies, or services claimed have been received or performed, and were used or performed exclusively in connection with the Agreement; that payment has not been previously received for the amount invoiced herein; and that the original invoices, payrolls, or other documentation are on file.

\_\_\_\_\_  
Authorized Signer

\_\_\_\_\_  
Date

Mail original and back-up documentation to:  
Yuba County Health and Human Services Department  
Attention: Administration/Finance  
P.O. Box 2320  
Marysville, CA 95901

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# The County of Yuba

## HEALTH & HUMAN SERVICES DEPARTMENT

**Suzanne Nobles, Director**

5730 Packard Ave., Suite 100, P.O. Box 2320, Marysville, California 95901  
Phone: (530) 749-6311 FAX: (530) 749-6281



**Michael Kinnison, M.D.,  
Interim Health Officer**  
Phone: (530) 749-6366

**TO:** Board of Supervisors  
Yuba County

**FROM:** Suzanne Nobles, Director  
Health & Human Services Department

**DATE:** December 17, 2013

**SUBJECT:** Resolution of the Board Supervisors Authorizing the Health and Human Services Department to Implement a Virtual Desktop Infrastructure; Increase Revenue Line Item and Appropriations for the Health and Human Services Department

**RECOMMENDATION:** It is recommended that the Board of Supervisors approve the attached Resolution of the Board authorizing the Health and Human Services Department (HHSD) to implement a Virtual Desktop Infrastructure (VDI) solution for the Continuing Customer Service and the Covered California Call Centers; and authorize the Chair of the Board to execute documents required for the VDI solution; and increase revenue and appropriations for the VDI implementation.

It is also recommended that the Board of Supervisors approve an increase in revenue line item 100-0000-361.45-00 (State/Social Services Administration) in the total amount of \$125,380.00 and increase appropriations for a VDI in the amount of \$1,343.00 to 100-5200-451.17-00 (Maintenance-Equipment) for maintenance; \$42,104.00 to 100-5200-451.22-00 (Office Expense) for software and licenses; \$41,520.00 to 100-5200-451.23-00 (Professional and Specialized Services) for the planning and labor services; and \$40,413.00 to 100-5200-451.63-30 (Capital Asset – IT Hardware) for the hardware equipment.

**BACKGROUND:** HHSD requests an increase to appropriations to cover the cost of a VDI solution. The VDI solution will allow HHSD to host a desktop operating system within a virtual machine that runs on a centralized server. HHSD will be able to manage and customize desktops to fit users' needs and eliminate the need for two computers and excess wiring and clutter at each workstation. The VDI solution was not available at the time the customer service call centers were originally installed.

**DISCUSSION:** The increase in the revenue line item is necessary to cover the estimated cost of a VDI solution including shipping/handling fees and taxes. Implementation of the VDI solution will help maximize the customer service call centers' productivity while providing better ergonomic working conditions for the end users.

**COMMITTEE:** Due to the need to place the order as soon as possible, the Health and Human Services Committee was bypassed.

**FISCAL IMPACT:** Approval of the increase to the revenue line item and increase to appropriations will have no fiscal impact to county general funds. State and Federal funds are available for these purchases.

BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF YUBA

IN RE:

**AUTHORIZE THE YUBA COUNTY  
HEALTH AND HUMAN SERVICES  
DEPARTMENT (HHSD) TO IMPLEMENT A  
VIRTUAL DESKTOP INFRASTRUCTURE  
(VDI) SOLUTION FOR THE CONTINUING  
CUSTOMER SERVICE AND THE  
COVERED CALIFORNIA CALL CENTERS;  
TO AUTHORIZE THE CHAIR OF THE  
BOARD OF SUPERVISORS TO EXECUTE  
ANY DOCUMENTS REQUIRED FOR THE  
VDI SOLUTION AND TO INCREASE  
REVENUE AND APPROPRIATIONS FOR  
THE VDI IMPLEMENTATION**

**Resolution No. \_\_\_\_\_**

**WHEREAS**, the current information technology infrastructure for the Continuing Customer Service Call Center and the Covered California Call Center is not conducive to productivity nor ergonomically appropriate for the Health and Human Services (HHSD) end users; and

**WHEREAS**, the Yuba County Information Technology Department recommended a Virtual Desktop Infrastructure (VDI) solution to the existing call centers' infrastructure. Implementation of the VDI solution will help maximize the customer service call centers' productivity while providing better ergonomic working conditions for the end users; and

**WHEREAS**, the Board of Supervisors approved a Local Area Network (LAN) Equipment upgrade per Resolution number 2013-31. Yuba County Administrative Services consulted and contracted with Presidio Networked Solutions, Inc. (Presidio), to perform the network assessment for the LAN upgrade.

**WHEREAS**, it is in the best interest of the County of Yuba to consult and/or contract with Presidio for the Customer Service Call Centers' VDI solution because of the ongoing LAN upgrade and familiarity with the County's network infrastructure.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of the County of Yuba that the Chair of the Board is hereby authorized to:

- (1) Execute, upon review and approval of County Counsel, any documents required to accomplish the VDI upgrade solution project;
- (2) To execute and authorize the transfer and allocation of funds for the project; and

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- (3) To enter into agreements, memorandums of understanding or any amendments thereto, upon review and approval of County Counsel, as necessary to accomplish the project.

A copy of the said documents or any amendments thereto shall be filed in the office of the Clerk of the Board, County of Yuba.

**PASSED AND ADOPTED** at a regular meeting of the Board of Supervisors of the County of Yuba, State of California, on the \_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

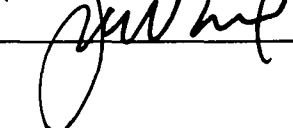
County of Yuba

BY: \_\_\_\_\_  
Chair

ATTEST: Donna Stottlemeyer  
Clerk of the Board of Supervisors

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

APPROVED AS TO FORM:  
ANGIL P. MORRIS-JONES  
COUNTY COUNSEL

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

# The County of Yuba

504-13

## HEALTH & HUMAN SERVICES DEPARTMENT

**Suzanne Nobles, Director**

5730 Packard Ave., Suite 100, P.O. Box 2320, Marysville, California 95901  
Phone: (530) 749-6311 Fax: (530) 749-6281

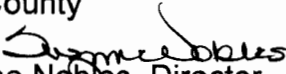


**Michael Kinnison, M.D.**

**Interim Health Officer**

Phone: (530) 749-6366

**TO:** Board of Supervisors  
Yuba County

**FROM:**   
Suzanne Nobles, Director  
Health & Human Services Department

**DATE:** December 17, 2013

**SUBJECT:** Approve Increase to Revenue Line Item and Appropriations for the Health and Human Services Department

**RECOMMENDATION:** It is recommended that the Board of Supervisors approve an increase in revenue line item 100-0000-361.45-00 (State/Social Services Administration) in the total amount of \$125,380.00 and increase appropriations for a Virtual Desktop Infrastructure in the amount of \$1,343.00 to 100-5200-451.17-00 (Maintenance – Equipment) for maintenance; \$42,104.00 to 100-5200-451.22-00 (Office Expense) for software and licenses; \$41,520.00 to 100-5200-451.23-00 (Professional and Specialized Services) for the planning and labor services; and \$40,413.00 to 100-5200-451.63-30 (Capital Asset – IT Hardware) for the hardware equipment.

**BACKGROUND:** The Health and Human Services Department (HHSD) requests an increase to appropriations to cover the cost of a Virtual Desktop Infrastructure (VDI) solution for the Continuing Customer Service and the Covered California Call Centers located at the Yuba County Health and Human Services Department. The VDI solution will allow HHSD to host a desktop operating system within a virtual machine that runs on a centralized server. HHSD will be able to manage and customize desktops to fit user's needs and eliminate the need for computers and excess wiring and clutter at each workstation. This solution was not available at the time the customer service call centers were originally installed.

**DISCUSSION:** The actions are necessary to cover the estimated cost of a VDI solution including shipping/handling fees and taxes. Implementation of the VDI solution will help maximize the customer service call center's productivity while providing better ergonomic working conditions for the end users.

**COMMITTEE:** Due to the need to place the order as soon as possible, the Health and Human Services Committee was bypassed.

**FISCAL IMPACT:** Approval of the increase to the revenue line item and increase to appropriations will have no fiscal impact to county general funds. State and Federal funds are available for these purchases.

WHITE - AUDITOR  
YELLOW - COUNTY ADMINISTRATOR  
PINK - DEPARTMENT

COUNTY OF YUBA

AUDITOR-CONTROLLER

DATE November 26, 2013

REQUEST FOR TRANSFER OR

TRANSFER #

REVISION OF APPROPRIATION, ESTIMATED REVENUE OR FUNDS

DEPARTMENT Health & Human Services - Human Services Division - 100

REQUEST APPROVAL OF THE FOLLOWING TRANSFER FISCAL YEAR ENDING JUNE 30, 2013

BUDGET OR ESTIMATED REVENUE

☒ ESTIMATED REVENUE INCREASE

☐ ESTIMATED REVENUE DECREASE

☐ APPROPRIATION DECREASED

☒ APPROPRIATION INCREASED

ACCOUNT NO.	NAME	AMOUNT
100-0000-361.45-00	State/Social Svcs Admin	\$125,380

ACCOUNT NO.	NAME	AMOUNT
100-5200-451.17-00	Maint/Equipment	\$1,343
100-5200-451.22-00	Office Expense	\$42,104
100-5200-451.23-00	Professional Services	\$41,520
100-5200-451.63-30	Capital Asset - IT Hardware	\$40,413

FUND TRANSFERS

OPERATING TRANSFERS OUT

ACCOUNT NO.	NAME	AMOUNT

OPERATING TRANSFERS IN

ACCOUNT NO.	NAME	AMOUNT

GENERAL LEDGER (AUDITOR - CONTROLLER USE ONLY)

		AMOUNT				AMOUNT	
FUND	ACCOUNT	DEBIT	CREDIT	FUND	ACCOUNT	DEBIT	CREDIT

REASON FOR TRANSFER:

HHSD requests an increase to appropriations to cover the cost of a Virtual Desktop Infrastructure (VDI) solution for the Continuing Customer Service Call Center. The VDI solution will allow HHSD to host a desktop operating system within a virtual machine (VM) that runs on a centralized server. State and Federal funds will be used for these purchases.


APPROVED:

☒ AUDITOR-CONTROLLER


  
Signature

12/5/13  
Date

Signature

 12/4/13  
DEPARTMENT HEAD OR AUTHORIZED OFFICIAL

☒ COUNTY ADMINISTRATOR

 12/5/13  
Signature Date

Director

TITLE

Approved as to Availability of Budget Amounts and Balances  
in the Auditor/Controllers Office.

AUDITOR - CONTROLLER

Auditor/Controller, Dean E. Sellers

Approved:

BOARD OF SUPERVISORS

Clerk of the Board

Date

# The County of Yuba

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505-13

## Yuba County Library

Phone: (530) 749-7380  
Fax: (530) 741-3098  
303 Second Street  
Marysville, California 95901



---

Email: [library@co.yuba.ca.us](mailto:library@co.yuba.ca.us)  
Website: <http://library.yuba.org>

To: Yuba County Board of Supervisors

From: Kevin Mallen, CDSA Director

A handwritten signature in black ink, appearing to read "KM", is placed over the name "Kevin Mallen".

Date: December 17, 2013

Subject: First 5 Yuba Grants

### **Recommendation:**

Approve attached resolution authorizing the Yuba County Library to pursue grant application, and administration upon award, from First 5 Yuba grants.

### **Background:**

Ongoing improvements since 2011 have resulted in the Children's area being renovated from replacing the carpet, reorganizing the layout and shelving, weeding through the current collection and replacing with more current and relevant materials, and introducing a more interactive environment.

### **Discussion:**

While the physical environment at the Library has improved, funding for staffing needed to support programs has decreased over the past years due to decreased general fund availability. In order to try and provide programs to children, the Library actively pursues grants as well as volunteer help. First 5 Yuba makes grants available on an ongoing basis that the Library would like to pursue for various children related programs and materials at the Library. Most recent is a mini-grant that the Library has been selected for in the amount of \$5,000 that if accepted would be utilized for children's literacy programs over the next 6 months.

### **Committee Action:**

These improvements were previously discussed with the Board to continue improvements at the Library and therefore are being presented directly to the Board.

### **Fiscal Impact:**

None.

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**BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF YUBA**

**RESOLUTION AUTHORIZING THE YUBA  
COUNTY LIBRARY TO ENTER INTO GRANT  
AGREEMENTS WITH FIRST 5 YUBA FOR  
FUNDING CHILDREN'S PROGRAMS AT THE  
LIBRARY AND, AUTHORIZING THE CDSA  
DIRECTOR TO EXECUTE DOCUMENTS AS  
REQUIRED BY THE GRANTS, AND AUTHORIZE  
ACCEPTANCE AND TRANSFER OF FUNDS**

Resolution No.

**WHEREAS**, Yuba County Library wants to promote children's literacy and overall enjoyment of utilizing libraries, and

**WHEREAS**, First 5 Yuba makes grants available for children 0-5 and their families that align with the Library's goals of promoting children's literacy and overall enrichment of their lives.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of the County of Yuba hereby finds as follows:

1. That the CDSA Director is hereby authorized to apply for grants from First 5 Yuba related to the yuba County Library.
2. That the CDSA Director is hereby authorized to accept and transfer funds from First 5 Yuba grants and to execute, upon review and approval of County Counsel, documents as required by the application, acceptance and allocation of funds for grant award.

**PASSED AND ADOPTED** at a regular meeting of the Board of Supervisors of the County of Yuba, State of California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

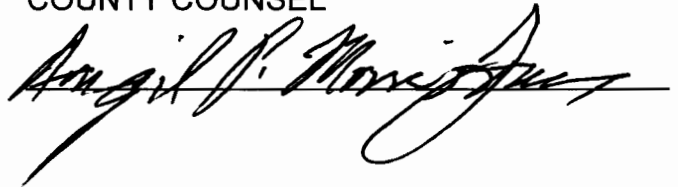
**ABSTAIN:**

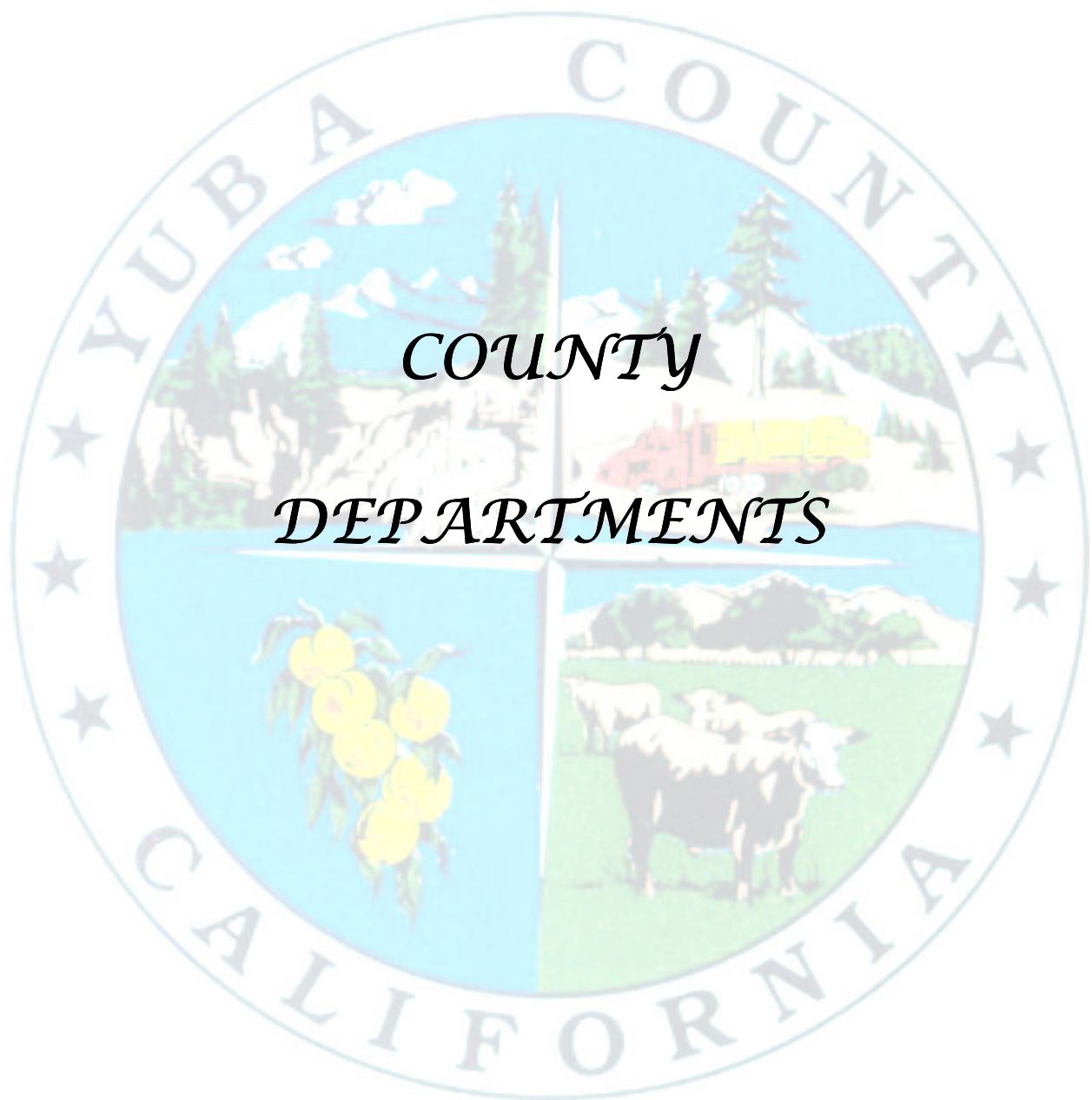
By: \_\_\_\_\_  
Andy Vasquez, Chair  
Yuba County Board of Supervisors

ATTEST: DONNA STOTTLEMEYER  
Clerk of the Board of Supervisors

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

APPROVED AS TO FORM  
ANGIL MORRIS-JONES  
COUNTY COUNSEL

A handwritten signature in black ink, reading "Angil P. Morris-Jones", written over a horizontal line.



*COUNTY*  
*DEPARTMENTS*

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# The County of Yuba

506-13

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## DEPARTMENT OF ADMINISTRATIVE SERVICES

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DOUG McCOY - Director

TARA REPKA FLORES - Assistant Director



---

(530) 749-7880  
FAX (530) 749-7884

---

To: Board of Supervisors  
CC: Robert Bendorf, County Administrator  
From: Martha Wilson, Director, Human Resources/Risk  
Doug McCoy, Director, Administrative Services  
Date: December 17, 2013  
Re: Human Capital Management System

---

### Recommendation

Approve the attached contract with Cascade Software for a system to support Human Resource data needs.

### Background

The current system by which Human Resources tracks employee data, benefits, training and related information is antiquated and needs to be updated. This system was originally purchased and used by the Health and Human Services Department. HR and HHSD have shared the system for over 10 years. Both HR and HHSD have been experiencing system errors which are unacceptable and require an extensive amount of staff time to research and correct. A committee comprised of members from Human Resources, Auditor, Payroll, Purchasing and IT has been working for over a year to evaluate options for a replacement human resource data system. Additionally, the issue has been brought to the Technology Review Committee.

### Discussion

Traditional Human Resource Information Systems (HRIS) tend to be very complex and expensive. After a great deal of research, the team identified a solution that balances the needs of the County with a cost effective solution; to expand our use of the Cost Accounting Management System (CAMS) from Cascade Software.

A major benefit of this option is that CAMS is a system the County is very familiar with as several County departments already use CAMS and thus expanded implementation of CAMS will be expedited due to the County's familiarity with the system. In fact, Yuba County was their first public customer and we have been using this system since 1988. The proprietor has a long, successful partnership with Yuba County adapting and growing the system to meet our needs.

CAMS includes sufficient functionality to meet the immediate needs of Human Resources and to meet the needs of the rest of the County, as well. It fulfills the most critical employee data needs of the entire organization up to and including employee records, position control, benefits tracking and management, budget forecasting, leave management, applicant tracking, tracking of training certifications, and performance evaluations. It will allow us to track employee time and manage complex scheduling issues in our large 24/7 departments. Additionally, the system is capable of payroll salary administration, control of benefits data, and can help with conducting

scenario planning for budgetary purposes, as well as, provide a user-friendly interface. Lastly, this is a system that will cost the County significantly less than a traditional HRIS system.

Implementation is anticipated to be completed in two phases, with the initial phase focused on loading employee and financial data, position control, budget forecasting, benefits administration and leave management. This phase is critical given the unstable platform currently available to Human Resources. It will allow accurate budgetary forecasting for the County Administrator and the Auditor, and will track changes the County must implement as required by the Pension Reform Act and the Affordable Care Act. The second phase will focus on time entry, scheduling, performance evaluations, applicant tracking, training, employee relations, risk management, and payroll. Each phase will take four to six months, and the project will span two fiscal years.

#### **Committee Action**

Due to the time sensitivity of getting the system in place in time to meet HR's needs, we have brought the item directly to the Board.

#### **Fiscal Impact**

The total anticipated cost of the system is \$495,000 and will be spread across two fiscal years. The first year's cost of \$261,000 will be split between the CSAC EIA Risk Management Subsidy fund (\$130,000), Health & Human Services (\$81,000), and the 200 Capital Improvement Fund (\$50,000). The second year's costs will be split similarly between the Subsidy Fund (\$130,000), HHS (\$81,000) and the 200 CIF (\$23,000). The Subsidy Fund is available to the Risk Manager to pay for items which will reduce the County's liability/risk of loss and is provided only upon approval of the fund manager. It is a limited amount provided by CSAC EIA to its members. We have been preapproval to expend the requested amounts in both fiscal years. Any future maintenance costs moving forward for the County-wide application will be per capita through the budget process similar to other IT project implementation.

AGREEMENT  
FOR  
FINAL DESIGN, DEVELOPMENT AND IMPLEMENTATION  
HUMAN RESOURCES MANAGEMENT SYSTEM

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**EXHIBIT A - CONTRACT LINE ITEMS (CLINS) SCHEDULE & COSTS**

**EXHIBIT B - STATEMENT OF WORK**

**EXHIBIT C - ACCEPTANCE PROCEDURE**

AGREEMENT  
FOR  
FINAL DESIGN, DEVELOPMENT AND IMPLEMENTATION  
HUMAN RESOURCES MANAGEMENT SYSTEM

**1. INTRODUCTION**

THIS AGREEMENT, dated this \_\_\_\_\_ day of \_\_\_\_\_, 2013, is between **COUNTY of Yuba**, a political subdivision of the State of California, referred to as "COUNTY", having its principal office at Marysville, California, and Cascade Software Systems, Inc., an Oregon corporation, hereinafter referred to as "CONTRACTOR", having its principal place of business at 911 Country Club Road, Suite 320, Eugene, Oregon.

**2. WITNESSETH**

WHEREAS, the COUNTY desires a computerized Human Resources Management System, and desires to obtain professional services to perform the final design, development and implementation of said system; and

WHEREAS, the CONTRACTOR has demonstrated expertise in the area of computerized Human Resources Management systems for county governments; and

WHEREAS, the CONTRACTOR has expertise in project direction and control, project management, information systems design and development; and

WHEREAS, the CONTRACTOR has demonstrated its ability to provide such services, having provided the COUNTY with a preliminary requirements analysis of said system; and

WHEREAS, when such software is implemented it will enhance the ability of Yuba County Human Resources and Organizational Services to manage projects and provide detailed Human Resources Management information consistent with Federal, State and COUNTY audit requirements; and

NOW, THEREFORE, in consideration of the mutual understandings herein contained, COUNTY and CONTRACTOR agree as follows:

**3. MUTUAL ASSENT**

Pursuant to all applicable areas of the Laws of the State of California, COUNTY hereby engages CONTRACTOR and CONTRACTOR hereby promises to provide certain final design, program development and training and system implementation as specified herein and according to the terms and conditions contained herein.

### **3.1. Effective Date and Content**

Regardless of any other date that may appear elsewhere, the effective date of this contract is the date specified in Section 1, Introduction, above. This Agreement consists of the terms and conditions herein and Exhibits A through C, which are herewith incorporated and made part of this agreement as though set out at length herein:

<u>Exhibit</u>	<u>Document Description</u>
A	Contract Line Items (CLINs), Cost & Schedule
B	Statement of Work
C	Acceptance Procedure

### **3.2. Cost**

The total contract price shall not exceed \$ 495,000.00.

### **3.3. Term**

The term of this Agreement will expire upon the latest date specified in Exhibit A or amendments thereto.

### **3.4. Order of Precedence**

In the event of any conflict, the controlling document shall be determined by the following order of precedence:

- 0 The body of this Agreement and its amendments, if any.
- 0 The Exhibits and their amendments, if any.

### **3.5. Performance Effort**

CONTRACTOR agrees to perform the effort described in each CLIN in Exhibit A to meet the Requirements in Exhibit B and the Acceptance criteria in Exhibit C. All work performed by CONTRACTOR shall be of high professional quality. CONTRACTOR warrants and represents that all personnel provided shall be highly qualified for the work for which they are assigned.

### **3.6. Schedule**

The CONTRACTOR agrees to complete each CLIN according to the performance period and delivery date specified in Exhibit A.

### **3.7. Deliverables**

The CONTRACTOR is to provide appropriately skilled personnel and other resources necessary to perform the work described in Exhibit B in accordance with professional standards and to meet the requirements of the acceptance procedure Exhibit C.

## **4. COMPENSATION**

The CONTRACTOR shall be compensated for each CLIN separately, the lowest level of severability being a CLIN. All CLINs will be compensated as Fixed Price, provided COUNTY determines that CLIN satisfactorily meets its needs.

### **4.1. Compensation - Fixed Price**

For each CLIN identified in Exhibit A, COUNTY shall pay CONTRACTOR at the rate equal to the total CLIN cost specified in Exhibit A.

### **4.2. Invoices and Prompt Payment Due**

Payment will be made to CONTRACTOR within thirty (30) days after COUNTY receipt of a valid invoice in a format approved by the COUNTY covering the CLINs in Exhibit A. CONTRACTOR shall submit invoices for Fixed Price CLINs no more frequently than once a month.

### **4.3. Lack of Funding**

In the event that COUNTY's Board of Supervisors does not appropriate funds needed to make payments under this agreement beyond COUNTY's then current fiscal period, COUNTY shall not be required to make such payments and this Agreement shall be terminated as of the end of the last fiscal period for which funds were appropriated.

## **5. CHANGES**

### **Routine Changes**

With respect to a given CLIN, COUNTY may at any time request routine changes to this CLIN and the CONTRACTOR will diligently proceed with the work as modified. COUNTY will **NOT** incur additional

costs for routine changes. Routine changes are program modifications that do not functionally change the general scope of this CLIN.

### **Major Change Authorizations**

With respect to a given CLIN, COUNTY may at any time requests major changes to the general scope of this CLIN and the CONTRACTOR will submit a written response with cost estimates and a project schedule impact statement. The CONTRACTOR will accept a major change only if CONTRACTOR receives COUNTY's written change authorization. The CONTRACTOR shall not accept verbal major change authorizations. COUNTY will **NOT** be obligated to reimburse, pay or compensate CONTRACTOR for (i) labor or costs incurred in excess of the Fixed Price funding limit specified in Exhibit A for each CLIN or for (ii) labor or materials expenses incurred if major change work is performed under verbal authorization.

## **6. REPORTING**

### **6.1. Periodic Status Reports and Format**

CONTRACTOR will submit to COUNTY status reports representing the progress toward completion.

1. The original contract costs.
2. Current period and cumulative cost for each CLIN.
3. Forecast of cost required to complete.
4. Statement of problems and corrective actions taken.
5. Statement of concerns perceived by CONTRACTOR to be threats to timely completion.

## **7. FACILITIES**

### **7.1. Primary Work Locations and Information**

Necessary access to appropriate COUNTY personnel, production computers and information, workspace will be provided by COUNTY at COUNTY expense.

### **7.2. Offset For Other COUNTY Supplied Resources**

If CONTRACTOR requests the use of other COUNTY facilities, such costs are subject to appropriate offset against any invoice submitted by CONTRACTOR. If an offset is not claimed by COUNTY upon payment of the monthly invoice it is waived.

## **8. INDEPENDENT CONTRACTOR**

For all times under this Agreement, the CONTRACTOR's relationship to COUNTY is that of an independent contractor. For purposes of this Agreement, personnel retained by CONTRACTOR shall, at all times and under all circumstances, be considered either an employee or an agent of CONTRACTOR. Under no circumstances shall CONTRACTOR's personnel be considered borrowed employees without prior written authorization of COUNTY.

## **9. ACCEPTANCE**

COUNTY shall have sixty (60) working days after delivery of a CLIN in which to consider acceptance and notify CONTRACTOR of any deficiency in the CLIN. COUNTY will accomplish acceptance by using applicable procedures in Exhibit C to insure that all deliverables in the CLIN conform to the requirements of Exhibit B. COUNTY will promptly notify CONTRACTOR of any deficiency allowing reasonable time to cure same. At no time shall such cure period exceed the time specified in the Termination of Agreement Section of this Agreement, Section 21. COUNTY is not obligated to accept a CLIN until all deficiencies identified in the thirty day acceptance period have been cured. If COUNTY has not notified CONTRACTOR of deficiency, COUNTY shall be deemed to have accepted the CLIN on the sixty-first (61st) working day from the date of delivery.

The delivery date is defined as the day CONTRACTOR has provided to COUNTY all of the deliverable items for the CLIN as described in Exhibit B.

## **10. CONFIDENTIAL INFORMATION**

### **10.1. Non-disclosure and Limited Use**

CONTRACTOR acknowledges that it will gain access to confidential data and information by reason of this Agreement, and CONTRACTOR further acknowledges that irreparable harm to COUNTY can be occasioned by disclosure of that data and information. CONTRACTOR warrants that it shall treat all data, information, sensitive forms, records and documents which come into its possession, or to which it gains access, under this Agreement, as strictly confidential and proprietary to COUNTY. CONTRACTOR shall exercise a standard of care to protect said data, information, sensitive forms, records and documents that is at least as high as that used by CONTRACTOR to protect its own confidential and proprietary data. CONTRACTOR shall not use said data, information or other information except for COUNTY business.

### **10.2. Confidentiality Extends Beyond Performance**

Upon completion of this Agreement, the provisions of this section 10 shall continue to survive.

### **10.3. Security Compliance**

CONTRACTOR agrees that it and its personnel shall at all times comply with all security standards, practices, and procedures which COUNTY may from time to time establish with respect to information and materials which come into CONTRACTOR's possession, or to which CONTRACTOR gains access, under this Agreement. CONTRACTOR further agrees that it and its personnel shall at all times comply with all Federal, State and local laws and regulations respecting confidentiality of the records and data which come into CONTRACTOR's possession, or to which CONTRACTOR gains access, under this Agreement. CONTRACTOR shall take all necessary and appropriate measures to assure that its personnel comply with the requirements of this Section. COUNTY may ask CONTRACTOR to require its employees to sign binding agreements acknowledging such compliance.

## **11. PROPRIETARY RIGHTS IN WORK PRODUCT**

### **11.1. Existing Program**

CONTRACTOR and COUNTY shall retain title to respective proprietary computer programs owned at the commencement of this Agreement, including program modifications and enhancements to such programs; and each party shall be without rights, title, or interest in or to such programs owned by the other party, except as is expressly set forth in this Agreement or by separate written agreement between the parties.

### **11.2. New Program**

CONTRACTOR shall retain title to newly developed proprietary computer programs including program modifications and enhancements to such programs.

### **11.3. CONTRACTOR's Right to Develop Similar Programs**

This agreement shall not preclude CONTRACTOR from developing and marketing systems, programs, data or materials developed at CONTRACTOR's sole expense similar to those systems, programs, data or material originated for COUNTY under this Agreement.

### **11.4. Rights of Termination**

Upon termination or expiration of this Agreement, CONTRACTOR shall immediately deliver to COUNTY all COUNTY-owned programs and related documentation. In addition, CONTRACTOR grants to COUNTY a perpetual, royalty-free, non-exclusive, irrevocable, and non-transferable license to use, solely for COUNTY purposes any CONTRACTOR-owned programs, including system software, utilized by CONTRACTOR in performance of this Agreement.

### **11.5. Rights Extend Beyond Performance**

Upon completion of this Agreement, the provisions of this section 11 shall continue to survive.

## **12. PROSELYTIZING**

### **12.1. CONTRACTOR Not to Hire COUNTY Employee**

CONTRACTOR agrees that during the term of this Agreement and for one (1) calendar year thereafter, without COUNTY's written consent, it shall not induce or persuade an employee of the COUNTY to join the CONTRACTOR.

### **12.2. CONTRACTOR's Right to Assign Personnel**

COUNTY must approve the CONTRACTOR's personnel assignments and may request changes in said assignments with reasonable cause. CONTRACTOR will promptly honor such requests.

## **13. FORCE MAJEURE**

CONTRACTOR shall not be held responsible for delays in performing services as a result of acts beyond its control and without its fault or negligence, including, but not limited to acts of God or public enemies, acts of state or local governments or public agencies, utility or telecommunication delays or failures, accidents not resulting from CONTRACTOR's negligence, fire, flood, storms, epidemics, strikes, lockouts, industrial disturbances, war, rebellion or civil strife, or failure of COUNTY to provide requested data reasonably required to perform CONTRACTOR's assigned task(s) where such failure was not caused in whole or in part by CONTRACTOR. In the event of a delay attributable to the foregoing, the time for performance of work hereunder shall be extended for a period of time equal to the delay.

## **14. ASSIGNMENT**

This Agreement and the rights and obligations hereunder are not assignable or delegable by either party without prior written consent of the other party. Any such assignment or delegation is **VOID**.

## **15. CONTROLLING LAW**

### **15.1. Laws of California Control**

The terms and conditions of this Agreement and all its Exhibits and rights and duties hereunder shall be governed by and construed in accordance with the laws of the State of **California**.

## **15.2. Rules of Interpretation**

No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties.

## **16. ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement and understanding between COUNTY and CONTRACTOR, and there are no other agreements, representations, warranties or understandings between COUNTY and CONTRACTOR with respect to the work hereunder.

## **17. CAPTIONS AND PARAGRAPH HEADINGS**

Captions and paragraph headings used herein are for convenience only and are not a part of the Agreement and shall not be used in construing same.

## **18. WAIVER**

No waiver of a breach of any provision of this Agreement shall constitute a waiver of any other breach, or of such provision. Failure of COUNTY to enforce at any time, or from time-to-time, any provision of this Agreement shall not be construed as a waiver thereof. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

## **19. VALIDITY**

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

## **20. COMPLIANCE WITH LAWS**

### **20.1. CONTRACTOR to Comply With All Laws**

The Contractor agrees to comply with all applicable Federal, State, and local Laws, Rules, Regulations, or Ordinances; and all provisions required thereby to be included herein, are hereby incorporated by reference.

### **20.2. Indemnification - General**

CONTRACTOR shall indemnify, defend and hold harmless the COUNTY, its officers, agents and employees, from any and all claims or losses accruing or resulting to any and all contractors, vendors, suppliers, employees, or any other persons, firms, corporations, or entities for the furnishing or supplying of work, services, equipment, software, materials and supplies in connection with the indemnitor's performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, corporation, or other entity, for personal injuries or property damage resulting or arising from, or as a consequence of, the acts or omissions to act of the indemnitor, or its officers, agents or employees, in connection with the indemnitor's performance of this Agreement. CONTRACTOR shall act in an independent capacity and not as officer, employee or agent of COUNTY.

COUNTY shall indemnify, defend and hold CONTRACTOR, its partners, employees, agents, shareholders, representatives and affiliates harmless from any claim, loss, cost, damage, demand, expense and liability, including reasonable attorney's fees, to the extent resulting from any intentional or negligent act of omission of the County of Yuba, its officers, agents or employees relating to this Agreement.

### **20.3. Indemnification - Intellectual Property**

CONTRACTOR shall indemnify and hold COUNTY, its agents and employees harmless from any loss, damage or liability for infringement of any United States patent right, copyright, trade secret or any other proprietary right with respect to the use of the items delivered hereunder, provided CONTRACTOR is promptly notified in writing of any suit or claim against COUNTY and provided further that COUNTY permits CONTRACTOR to defend, compromise or settle the same and gives CONTRACTOR all available information, assistance and authority to enable CONTRACTOR to do so. CONTRACTOR's indemnity as to use shall not apply to any infringement arising out of use in combination with other items where such infringement would not have occurred in normal use.

## **21. TERMINATION OF AGREEMENT**

This Agreement may be terminated by either party hereto by written notice in the event the other party fails to perform its obligations under this Agreement, and such default is not cured within thirty (30) days after receipt of such written notice.

## **22. TERMINATION OF A CLIN**

Any CLIN identified in Exhibit A may be terminated in whole or in part, by COUNTY upon written notice to CONTRACTOR, whenever, for any reason, COUNTY shall determine that such termination is in its best interest. Such notice to be effective must be in writing and rendered to CONTRACTOR at least two (2) weeks prior to the date of termination, during which period CONTRACTOR will endeavor to reduce appropriate costs prior to termination.

Upon receipt of such written notice of termination, CONTRACTOR shall, within thirty (30) days after the

date of termination, file a claim with COUNTY which shall include an invoice for all work performed and all charges incurred under the CLIN to date of termination.

Upon receipt of payment of COUNTY's final invoice and termination claim, payable within thirty (30) days, CONTRACTOR shall turn over to COUNTY all completed programs, reports, data, diagrams, and other materials generated during the performance of the terminated CLIN.

## **23. INSURANCE**

### **23.1. Worker's Compensation Compliance**

The CONTRACTOR shall maintain Worker's Compensation Insurance providing full statutory coverage. The Worker's Compensation Policy shall contain the following endorsement:

Provide that the insurance may not be cancelled or reduced without thirty (30) days prior written notice to COUNTY.

### **23.2. General Liability Insurance**

The CONTRACTOR shall maintain General Liability Insurance covering bodily injury and property damage liability in an amount of not less than One Million Dollars (\$1,000,000.00). The insurance shall cover claims and action for bodily injury, accidental death and property damage and may be in the form of a combined single limits policy. The General Liability Insurance Policy shall contain the following endorsements:

Name the COUNTY and COUNTY's employees and agents as additional insured;

Provide that the insurance may not be cancelled or reduced without thirty (30) days prior written notice to COUNTY.

### **23.3. Certificate of Insurance**

Prior to CONTRACTOR's performance pursuant to this Agreement, CONTRACTOR shall file with COUNTY, certificates which will confirm that the above described insurance is in effect.

### **23.4. Term**

The Worker's Compensation Insurance and General Liability Insurance and Endorsements shall be maintained by the CONTRACTOR for the period from execution of this Agreement until completion or termination of this Agreement.

## **24. INSPECTIONS**

All work under this Agreement shall be subject to inspection by COUNTY to the extent practicable at any reasonable time and place, including the period of design or processing. Any inspection by COUNTY shall be performed in such a manner as not to unduly delay the work.

## **25. RISK OF LOSS**

All work, including data, while in the possession of the CONTRACTOR is the responsibility of the CONTRACTOR to protect from loss, damage or destruction. After delivery of any work and/or data to COUNTY, it shall become the responsibility of COUNTY to protect same from loss, damage or destruction.

## **26. REMEDIES NOT EXCLUSIVE**

The remedies for breach set forth in this Agreement are cumulative as to one another and as to any others provided by law, rather than exclusive; and the expression of certain remedies in this Agreement does not preclude resort by either party to any other remedies provide by law.

## **27. NEWS AND INFORMATION RELEASE**

CONTRACTOR agrees that it will not issue any news release in connection with either the award of this Agreement, or any subsequent amendment of or effort under this Agreement, without first obtaining review and approval of said news release from COUNTY through the Contract Administrator identified below. COUNTY will not unreasonably withhold this approval.

## **28. NOTICES**

Any notice required to be given pursuant to the terms and provisions of this contract shall be in writing and shall be sent first-class to the following addresses: Additional Notices in Exhibit D.

CONTRACTOR:	Mr. Aad F. Alkemade, President Cascade Software Systems, Inc. Post Office Box 10723 Eugene, OR 97440
COUNTY:	County of Yuba Human Resources and Organizational Services Ms. Martha K. Wilson Director 915 8 <sup>th</sup> Street, Suite 113 Marysville, CA 95901

**29. SIGNATURES**

IN WITNESS WHEREOF, COUNTY and CONTRACTOR have executed this Agreement on the day and year set forth above.

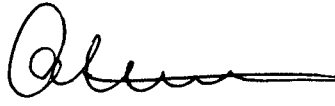
COUNTY OF YUBA

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

By: \_\_\_\_\_  
Chairman, Board of Supervisors

CASCADE SOFTWARE SYSTEMS, INC.

Date: 10/26/13

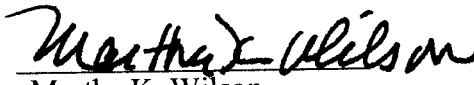
By:   
Aad F. Alkemade, President

APPROVED AS TO FORM:  
COUNTY COUNSEL

By:   
Deputy County Counsel

Date: 11/26/13

INSURANCE PROVISIONS APPROVED

  
Martha K. Wilson,  
Risk Manager

**CONTRACT LINE ITEMS (CLINS) SCHEDULE & COSTS**

	START DAYS*	END DAYS*	COST
<u>FIXED PRICE – WIN-CAMS</u>			
CLIN1: Human Resources Management System – Phase I	30	600	\$ 261,000
– Phase II	30	600	<u>\$ 234,000</u>
CONTRACT FIXED PRICE			\$ 495,000

\* Number of days after the contract is signed. This schedule is intended to represent the maximum number of days anticipated for each activity. Contractor may at his discretion provide deliverables in less than the number of days allowed.

Payment Schedule

40% of WIN-CAMS Phase I amount due thirty (30) days after the effective date of this contract as defined and described by Section 1.

25% of WIN-CAMS Phase I amount due thirty (30) days upon 100% implementation of all Phase I online program deliverables as defined and described by the Statement of Work in Exhibit B.

25% of WIN-CAMS Phase I amount due thirty (30) days upon 100% implementation of all Phase I report / batch program deliverables as defined and described by the Statement of Work in Exhibit B.

40% of WIN-CAMS Phase II amount due thirty (30) days after Phase II start-up date: projected as July 1, 2014.

25% of WIN-CAMS Phase II amount due thirty (30) days upon 100% implementation of all Phase II online program deliverables as defined and described by the Statement of Work in Exhibit B.

25% of WIN-CAMS Phase II amount due thirty (30) days upon 100% implementation of all Phase II report / batch program deliverables as defined and described by the Statement of Work in Exhibit B.

10% of WIN-CAMS Contract (Phase I & II) amount due thirty (30) days upon successful completion of the Acceptance Procedure as defined and described by Exhibit C.

- Reporting

#### Performance Evaluations

Phase II

- General Requirements
- Performance Evaluations
- Performance Improvement Plans

#### Employee Relations

Phase II

- General Requirements
- Grievances
- Disciplinary Actions
- Work Improvement Plan

#### Risk Management

Phase II

- General Requirements
- Case Management
- Restricted Duty

#### Applicant Tracking

Phase II

- General Requirements
- Job Announcements
- Job Applications
- Recruitment Plan
- Applicant Self Service
- Applicant Tracking
- Eligibility Lists
- Testing
- EEO

#### Training / Skills and Certifications

Phase II

- General Requirements
- Testing
- Tracking of Required Training
- Course Management
- Course Enrollment / Registration
- Event Tracking

WIN-CAMS is a suite of client-server, Windows application modules, provides Online Help, includes screen / hardcopy report print options, supports keyboard equivalents for all mouse clicks, features user-defined report sort orders and user-selected report selection parameters.

**Project Schedule - Yuba County Human Resources and Organizational Services**  
**Human Resources Management System (WIN-CAMS)**

Phase I	Start Date	12/01/13
	100% Online Deliverables	03/31/14
	100% Batch Deliverables	06/30/14
Phase II	Start Date	07/01/14
	100% Online Deliverables	09/30/14
	100% Batch Deliverables	12/31/14
User Evaluation, Implementation and Acceptance is extended to		06/30/15

**Cost Proposal - Yuba County Human Resources and Organizational Services**

<b><u>Resources Management System (WIN-CAMS)</u></b>	<b><u>Costs</u></b>
<b><u>Human Resources Management System (WIN-CAMS)</u></b>	<b><u>Costs</u></b>
WIN-CAMS License Fees	\$ 125,000.00
100% Discount	CR \$ 125,000.00
Net WIN-CAMS License Fees	\$ 0.00
System-Wide	\$ 40,000.00
Human Resources / Employee Records	\$ 50,000.00
Position Control	\$ 20,000.00
Budget & Forecasting	\$ 40,000.00
Benefits Administration	\$ 50,000.00
Leave Management	\$ 20,000.00
Time Entry	\$ 50,000.00
Payroll	\$ 50,000.00
Performance Evaluations	\$ 16,000.00
Employee Relations	\$ 16,000.00
Risk Management	\$ 16,000.00
Applicant Tracking	\$ 32,000.00
Training, Skills & Certifications	\$ 16,000.00
Subtotal	\$ 416,000.00
Conversions	\$ 7,000.00
System Configuration & Installation	\$ 6,000.00
Onsite Time (50 days)	\$ 50,000.00
Expenses	\$ 16,000.00
Total	\$ 495,000.00

**WIN-CAMS Annual Maintenance**

Annual Maintenance is \$ 39,620.00.

**Projected Maintenance Costs:**

FY 13-14: None

FY 14-15: 7/1/14 – 12/31/14: 6 Months * 50% Fees:	\$ 9,905.00
1/1/15 – 06/30/15: 6 Months * 100% Fees:	\$ 19,810.00
Total	\$ 29,715.00

Effective FY 15 - 16 a 10% Upgrade Fee is added to the annual Maintenance Fees as compensation for the annual Upgrade performed.

### **ACCEPTANCE PROCEDURE**

The CLINs identified in Exhibit A will be subject to the following acceptance procedure. The procedure is intended to ensure that the deliverables for each CLIN are complete, conform to the statement of work (Exhibit B) and conform to professional standards.

Upon completion of a CLIN, Contractor will deliver to the Human Resources and Organizational Services' Contract Administrator all relevant materials to support the deliverables for that CLIN. The Contract Administrator will distribute this documentation to the interested parties and schedule an internal critical review.

County will make written requests to correct errors and omissions discovered in a critical review. Such request must be completed by Contractor and accepted by the County Contract Administrator prior to acceptance of the CLIN. Depending on the number or complexity of the request, the COUNTY may schedule a subsequent critical review.

When COUNTY has accepted a CLIN, the County Contract Administrator will notify CONTRACTOR.

**ADDITIONAL NOTICES FOR COUNTY**

Department of Administrative Services  
County of Yuba  
Attn: Purchasing Agent  
915 8<sup>th</sup> Street, Suite 119  
Marysville, CA 95901

AND

County Counsel  
County of Yuba  
915 8<sup>th</sup> Street, Suite 111  
Marysville, CA 95901

## **HIPAA BUSINESS ASSOCIATE AGREEMENT**

This Attachment shall constitute the Business Associate Agreement (the "Agreement") between Cascade Software Systems, Inc. (the "Business Associate") and the County of Yuba (the "Covered Entity"), and applies to the functions Business Associate will perform on behalf of Covered Entity (collectively, "Services"), that are identified in the Master Agreement (as defined below).

1. **Purpose.** This Agreement is intended to ensure that the Business Associate will establish and implement appropriate privacy and security safeguards with respect to "Protected Health Information" (as defined below) that the Business Associate may create, receive, use, or disclose in connection with the Services to be provided by the Business Associate to the Covered Entity, and that such safeguards will be consistent with the standards set forth in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") as amended by the Health Information Technology for Economic and Clinical Health Act as set forth in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("HITECH Act").
2. **Regulatory References.** All references to regulatory Sections, Parts and Subparts in this Agreement are to Title 45 of the Code of Federal Regulations as in effect or as amended, and for which compliance is required, unless otherwise specified.
3. **Definitions.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms are defined in Sections 160.103, 164.304 and 164.501.
  - (a) Business Associate. "Business Associate" shall mean the party identified above as the "Business Associate".
  - (b) Breach. "Breach" shall have the same meaning as the term "breach" in Section 164.402.
  - (c) Covered Entity. "Covered Entity" shall mean the County of Yuba and its designated covered components, which are subject to the Standards for Privacy and Security of Individually Identifiable Health Information set forth in Parts 160 and 164.
  - (d) Designated Record Set. "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
  - (e) Electronic Protected Health Information. "Electronic Protected Health Information" ("EPHI") is a subset of Protected Health Information and means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
  - (f) Individual. "Individual" shall have the same meaning as the term "Individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
  - (g) Master Agreement. "Master Agreement" shall mean the contract or other agreement to which this Attachment is attached and made a part of.

(h) Minimum Necessary. "Minimum Necessary" shall mean the minimum amount of Protected Health Information necessary for the intended purpose, as set forth at Section 164.514(d): *Standard: Minimum Necessary*.

(i) Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at Part 160 and Part 164, Subparts A and E.

(j) Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(k) Required By Law. "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.

(l) Secretary. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services ("DHHS") or his/her designee.

(m) Security Incident. "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a daily basis, such as scans, "pings", or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate.

(n) Security Rule. "Security Rule" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

(o) Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the same meaning as the term "unsecured protected health information" in Section 164.402, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

#### **4. Compliance with the HIPAA Privacy and Security Rules.**

(a) Business Associate acknowledges that it is required by Sections 13401 and 13404 of the HITECH Act to comply with the HIPAA Security Rule, Sections 164.308 through 164.316, and the use and disclosure provisions of the HIPAA Privacy Rule, Sections 164.502 and 164.504.

(b) Business Associate agrees not to use or further disclose Protected Health Information other than as permitted or required by this Agreement, or as required by law.

#### **5. Permitted Uses and Disclosures.**

(a) Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity for the purposes of the attached agreement and referenced in Exhibit 1, which if completed and attached hereto is incorporated by reference, or as otherwise specified in the Master Agreement, subject to limiting use and disclosure to applicable minimum necessary rules, regulations and statutes and provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

(b) Except as otherwise limited in this Agreement, Business Associate may use

Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(c) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(d) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by Section 164.504(e)(2)(i)(B).

(e) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities consistent with Section 164.502(j).

## **6. Appropriate Safeguards.**

(a) Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information that is created, received, maintained or transmitted on behalf of the Covered Entity and limiting use and disclosure to applicable minimum necessary rules, regulations and statutes.

(b) To the extent practicable, Business Associate will secure all Protected Health Information by technological means that render such information unusable, unreadable, or indecipherable to unauthorized individuals and in accordance with any applicable standards or guidance issued by the Department of Health and Human Services under Section 13402 of the HITECH Act.

## **7. Reporting Unauthorized Uses and Disclosures.**

(a) Business Associate agrees to notify Covered Entity of any breach, or security incident involving Unsecured Protected Health Information of which it becomes aware, including any access to, or use or disclosure of Protected Health Information not permitted by this Agreement. Such notification will be made within five (5) business days after discovery and will include, to the extent possible, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed, a description of the Protected Health Information involved, the nature of the unauthorized access, use or disclosure, the date of occurrence, and a description of any remedial action taken or proposed to be taken by Business Associate. Business Associate will also provide to Covered Entity any other available information that the Covered Entity is required to include in its notification to the Individual under Section 164.404(c) at the time of the initial report or promptly thereafter as the information becomes available.

(b) In the event of a request by law enforcement under Section 164.412,

Business Associate may delay notifying Covered Entity for the applicable timeframe.

(c) A breach or unauthorized access, use, or disclosure shall be treated as discovered by the Business Associate on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the Business Associate or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent or other representative of the Business Associate.

(d) In meeting its obligations under this section, it is understood that Business Associate is not acting as the Covered Entity's agent. In performance of the work, duties, and obligations and in the exercise of the rights granted under this Agreement, it is understood and agreed that Business Associate is at all times acting as an independent contractor in providing services pursuant to this Agreement and the Master Agreement.

#### **8. Mitigating the Effect of a Breach, Security Incident, or Unauthorized Access, Use or Disclosure of Unsecured Protected Health Information.**

(a) Business Associate agrees to mitigate, to the greatest extent possible, any harm that results from the breach, security incident, or unauthorized access, use or disclosure of Unsecured Protected Health Information by Business Associate or its employees, officers, subcontractors, agents, or other representatives.

(b) Following a breach, security incident, or any unauthorized access, use or disclosure of Unsecured Protected Health Information, Business Associate agrees to take any and all corrective action necessary to prevent recurrence, to document any such action, and to make said documentation available to Covered Entity.

(c) Except as required by law, Business Associate agrees that it will not inform any third party of a breach or unauthorized access, use or disclosure of Unsecured Protected Health Information without obtaining the Covered Entity's prior written consent. Covered Entity hereby reserves the sole right to determine whether and how such notice is to be provided to any Individuals, regulatory agencies, or others as may be required by law, regulation or contract terms, as well as the contents of such notice.

#### **9. Indemnification.**

(a) Business Associate agrees to hold harmless, defend at its own expense, and indemnify Covered Entity for the costs of any mitigation undertaken by Business Associate pursuant to Section 8, above.

(b) Business Associate agrees to assume responsibility for any and all costs associated with the Covered Entity's notification of Individuals affected by a breach or unauthorized access, use or disclosure by Business Associate or its employees, officers, subcontractors, agents or other representatives when such notification is required by any state or federal law or regulation, or under any applicable contract to which Covered Entity is a party.

(c) Business Associate agrees to hold harmless, defend at its own expense and indemnify Covered Entity and its respective employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Agreement or from any acts or omissions related to

this Agreement by Business Associate or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Business Associate's acts or omissions hereunder. Business Associate's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.

**10. Individuals' Rights.**

(a) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by the Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under Section 164.524.

(b) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to make pursuant to Section 164.526, at the request of Covered Entity or an Individual, and in the time and manner designated by the Covered Entity.

(c) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

(d) Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section 10(c) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

(e) Business Associate agrees to comply with any restriction to the use or disclosure of Protected Health Information that Covered Entity agrees to in accordance with Section 164.522.

**11. Obligations of Covered Entity.**

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

**12. Agents and Subcontractors of Business Associate.**

(a) Business Associate agrees to ensure that any agent, subcontractor, or other representative to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions, conditions and requirements that apply through this Agreement to Business Associate with respect to such information, including the requirement to promptly notify the Business Associate of any instances of unauthorized access to or use or disclosure of Protected Health Information of which it becomes aware. Upon request, Business Associate shall provide copies of such agreements to Covered Entity.

(b) Business Associate shall implement and maintain sanctions against any agent, subcontractor or other representative that violates such restrictions, conditions or requirements and shall mitigate the effects of any such violation.

**13. Audit, Inspection, and Enforcement.**

(a) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, available to any state or federal agency, including the Secretary, for the purposes of determining compliance with HIPAA and any related regulations or official guidance.

(b) With reasonable notice, Covered Entity and its authorized agents or contractors may audit and/or examine Business Associate's facilities, systems, policies, procedures, and documentation relating to the security and privacy of Protected Health Information to determine compliance with the terms of this Agreement. Business Associate shall promptly correct any violation of this Agreement found by Covered Entity and shall certify in writing that the correction has been made. Covered Entity's failure to detect any unsatisfactory practice does not constitute acceptance of the practice or a waiver of Covered Entity's enforcement rights under this Agreement.

**14. Permissible Requests by Covered Entity.** Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

**15. Term and Termination.**

(a) The terms of this Agreement shall remain in effect for the duration of all services provided by Business Associate under the Master Agreement and for so long as Business Associate remains in possession of any Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity unless Covered Entity has agreed in accordance with this section that it is not feasible to return or destroy all Protected Health Information.

(b) Upon termination of the Master Agreement, Business Associate shall recover any Protected Health Information relating to the Master Agreement and this Agreement in its possession and in the possession of its subcontractors, agents or representatives. Business Associate shall return to Covered Entity, or destroy with the consent of Covered Entity, all such Protected Health Information, in any form, in its possession and shall retain no copies. If Business Associate believes it is not feasible to return or destroy the Protected Health Information, Business Associate shall so notify Covered

Entity in writing. The notification shall include: (1) a statement that the Business Associate has determined that it is not feasible to return or destroy the Protected Health Information in its possession, and (2) the specific reasons for such determination. If Covered Entity agrees in its sole discretion that Business Associate cannot feasibly return or destroy the Protected Health Information, Business Associate shall ensure that any and all protections, requirements and restrictions contained in the Master Agreement and this Agreement shall be extended to any Protected Health Information for so long as Business Associate maintains such Protected Health Information, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the Protected Health Information infeasible.

(c) Covered entity may immediately terminate the Master Agreement if it determines that Business Associate has violated a material term of this Agreement.

16. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the HIPAA Privacy and Security Rules and the HITECH Act.

17. **Entire Agreement.** This Attachment constitutes the entire HIPAA Business Associate Agreement between the parties, and supersedes any and all prior HIPAA Business Associate Agreements between them.

18. **Notices.**

(a) All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

(b) Any mailed notice, demand, request, consent, approval or communication that Covered Entity desires to give to Business Associate shall be addressed to Business Associate at the mailing address set forth in the Master Agreement.

(c) Any mailed notice, demand, request, consent, approval or communication that Business Associate desires to give to Covered Entity shall be addressed to Covered Entity at the following address:

Yuba County Privacy Officer  
5730 Packard Avenue, Suite 100  
Marysville, CA 95901

(d) For purposes of subparagraphs (b) and (c) above, either party may change its address by notifying the other party of the change of address.

19. **Lost Revenues; Penalties/Fines.**

(a) **Lost Revenues.** Business Associate shall make Covered Entity whole for any revenues lost arising from an act or omission in billing practices by Business Associate.

(b) **Penalties/Fines for Failure to Comply with HIPAA.** Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with the obligations imposed by HIPAA.

(c) Penalties/Fines (other). Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT as set forth below:

COUNTY

Yuba County Health and Human Services Department

By: \_\_\_\_\_ On: \_\_\_\_\_  
Suzanne Nobles, Director (Date)

CONTRACTOR

By: \_\_\_\_\_ On: \_\_\_\_\_  
Aad Alkemade, President (Date)

Authorized pursuant to Yuba County Resolution No. 2004-11

## **HIPAA BUSINESS ASSOCIATE PROVISIONS**

### **EXHIBIT 1**

As provided in Paragraph 5 of this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity for the purposes specified below, or as otherwise specified in the Master Agreement authorizing functions, activities, or services for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

Authorized Purposes:

Human Resources Management System Design, Development and Implementation with Cascade Software Systems, Inc.

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# The County of Yuba

## Community Development & Services Agency

**Kevin Mallen, Director**

Phone – (530) 749-5430 • Fax – (530) 749-5424  
915 8<sup>th</sup> Street, Suite 123  
Marysville, California 95901  
www.co.yuba.ca.us



### BUILDING

749-5440 • Fax 749-5616

### CODE ENFORCEMENT

749-5455 • Fax 749-5424

### ENVIRONMENTAL HEALTH • CUPA

749-5450 • Fax 749-5454

### HOUSING & COMMUNITY SERVICES

749-5460 • Fax 749-5464

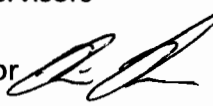
### PLANNING

749-5470 • Fax 749-5434

### PUBLIC WORKS • SURVEYOR

749-5420 • Fax 749-5424

**To:** Yuba County Board of Supervisors

**From:** Kevin Mallen, CDSA Director 

**Date:** December 17, 2013

**Subject:** Countywide Capital Facilities Impact Fee Update

### Recommendation:

Receive information on updating the County's Capital Facilities Impact Fees and provide staff direction as appropriate.

### Background:

Capital Facilities Impact Fees are collected from new development to cover the costs of expanding facilities to maintain acceptable levels of service for County roads and facilities. The County's current impact fees are based on a nexus study dated February 16, 2004. The 2004 study was an update to the County's first ever impact fee study that was prepared in 1992. Based on the facility and road needs identified in 2004, Impact Fees were derived in several categories which included General Government, Criminal Justice, Health and Social Services, Library, Sheriff, Parks, Roads, and Drainage. The full amount of the fees recommended in the 2004 study is being collected on residential development, however for non-residential development the fees collected have only been at 10% of the recommended rate.

### Discussion:

Due to the fact that it has been nearly 10 years since the basis for the impact fees has been analyzed, and over the past 10 years significant changes have occurred, such as the construction of numerous roads and facilities coupled with a comprehensive update of the County's General Plan, a complete update of the impact fees is in order. Staff solicited proposals from consultants that specialize in impact fee nexus studies and David Taussig & Associates (DTA) was selected to prepare the update.

DTA has been working with staff over the past few months gathering information such as current countywide demographics, projected population and employee growth, and current and projected facilities, roadways and their associated costs. With this information, DTA has developed preliminary estimates of both future costs to expand the facilities and roadways to meet future demands as well as how these costs would be covered through fees charged on new development. As part of this process, staff wanted to provide this preliminary information

to your Board and solicit feedback prior to having DTA prepare the formal draft nexus study for Board consideration.

A power point presentation with specifics such as “\$X/square foot for new residential development” based on the preliminary information and how the fees compare to current fees in Yuba and surrounding jurisdictions will be presented at the Board meeting. Subsequent to the Board check-in, staff will discuss the preliminary information with interested stakeholder groups such as the Economic Development Advisory Committee. We anticipate returning to your Board in February 2014 with a complete draft nexus study for consideration.

**Committee Action:**

Proceeding with the update was previously discussed as part of the FY 2013-14 budget hearings and approved as part of the FY 2013-14 budget.

**Fiscal Impact:**

None.



# *The County of Yuba*

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**Office of the County Administrator**

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Robert Bendorf, County Administrator

**TO:** Yuba County Board of Supervisors  
**FROM:** Robert Bendorf, County Administrator *RB*  
**RE:** Recommendations for Community Facilities District 2005-1  
Acquisition Agreement Amendments  
**DATE:** December 17, 2013

## **RECOMMENDATION**

It is recommended that the Board of Supervisors:

1. Receive a report regarding the soon to expire CFD 2005-1 Acquisition Agreements for John Moyer Construction (JMC), Woodside Homes, and Dunmore Homes.
2. Consider approving separate resolutions that extend the JMC and Woodside Acquisition Agreements for one year, beginning December 31, 2013 and ending December 31, 2014 and authorize the County Administrator to execute the documents if approved.

## **BACKGROUND**

In September 2005, three property owners, Dunmore, JMC and Woodside petitioned the County to undertake proceedings to form a Community Facilities District (CFD 2005-1) that could levy special taxes and be authorized to issue bonds, from which the proceeds would be used to reimburse the builders for infrastructure needed for development to occur. JMC and Woodside built and sold homes during the recession and completed their required infrastructure. Dunmore declared bankruptcy, did not construct required infrastructure and did not sell any homes. It should be noted that Woodside also declared bankruptcy; however it was subsequent to the completion of the infrastructure improvements. JMC and Woodside have requested the County consider levying the special tax and subsequently issue CFD bonds to fully or partially reimburse them for the completed infrastructure.

The location of the CFD is within the community of Linda, one mile east of state Highway 70, north of Erle Road, west of Griffith Avenue and south of Linda Avenue.

The original request to the County to consider forming a CFD was dated May 9, 2005.

On October 5, 2005 the Board of Supervisors adopted a Resolution of Intention to establish a CFD and authorize the levy of a special tax. Following provision of a Public Hearing Notice and that Public Hearing being held, a landowner election and other required legal proceedings, the CFD was formed. On November 5, 2005 the Board of Supervisors approved the Resolution of Formation authorizing the levy of a special tax and essentially formally establishing the CFD. Bond authorization for the CFD was established at an amount not to exceed \$25,000,000. The maximum Special Tax per residential unit was established @ \$1,550 annually.

Construction of infrastructure within the CFD was initiated in late 2006 to early 2007. JMC and Woodside infrastructure improvements have been completed and accepted by the County. Documentation has been provided to the County that the required infrastructure is complete and accepted by the County and Linda County Water District or in the case of one improvement a revision of the original agreement was provided.

Home closings within CFD 2005-1 started approximately September 2007 but due to the economic disruption of recession, the special tax has never been levied. Therefore, some property owners have resided in their homes for over six years without being assessed the special tax. Homeowners, however, were advised of and signed acknowledgements of the special tax in their purchase disclosure documents.

## **DISCUSSION**

The Acquisition Agreements govern the conditions the County would acquire completed infrastructure from the three home builders / property owners at that time. It specifies bidding procedures, procedures for acquisition and payment, insurance requirements, conditions of termination and other requirements to be met for the County to acquire the infrastructure and reimburse the property owners. Additionally the Acquisition Agreements specify if the County does not issue bonds for the CFD by December 31, 2013 the Agreement terminates. The original acquisition agreements are attached to this staff report.

The County has consulted with its financial advisor, Tom Johnsen of Fieldman Rolapp to begin an analysis of the feasibility to issue the bonds. That analysis is underway, however it will not be reviewed and completed by the County, JMC and Woodside prior to the current expiration of the acquisition agreements.

### **Statutory and Policy Issues**

As required by State law prior to initiating proceedings to form a CFD, the County, on April 20, 2004, adopted a resolution approving policies for land secured financings. Those policies provide guidance on matters such as public facilities eligible for CFD financing, priorities for acquiring those facilities, value to lien ratios if bonds are issued, limitations on annual amount of any assessment or special tax and other conditions and terms for bond issuance. These policies need to be considered when evaluating the status of CFD 2005-1 as they could impact both the amount of a potential levy of the

The most critical County policy as it related to CFD No. 2005-1 is the limitation on the annual amount of special tax. The policy states in part; "the maximum annual special tax submitted to the qualified electors of the CFD ....does not exceed eight-tenths of one percent (0.8%). Furthermore the total direct and overlapping debt in aggregate should not exceed one and eight-tenths percent (1.8%) of the ...value of the property."

Should the Board levy the special tax and issue bonds, the special tax is paid by existing and future homeowners in the CFD 2005-1.

### Board Options

Option 1: Approve the amendments as written and/or condition them further. Should the Board approve the one-year amendments to the agreements, the analysis of financial impact will be completed shortly thereafter. The Board could also determine at a later time to issue bonds. If so, based on current bond market credit expectations, the status of construction and housing absorption within the JMC and Woodside parcels and other factors, it is possible that bonds could be marketed and proceeds made available to partially or fully reimburse JMC and Woodside. The proceeds could be limited and be far less than the amount of infrastructure constructed by both developers.

Option 2: The Board may elect to not approve the amendments, thus allowing the agreements to expire. No special tax would be levied nor bonds issued, and the builders would not be reimbursed.

### Summary

Due to the recession experienced over the last five years and collapse of the housing market, the issue presented before the Board of Supervisors is fairly unique. The agreements did not contemplate a collapse in the housing market, thus significantly delaying implementation of the Acquisition Agreement. The levy of the tax and potential bond issuance was also delayed.

Presented to the Board of Supervisors for consideration today is the extension of the acquisition agreements for JMC and Woodside for one year each. As the attached resolutions state, the same terms and conditions apply and the only element of the agreements modified is the time (by one year) so that a proper analysis can be performed and the Board of Supervisors has adequate time to consider whether or not to proceed with a bond issuance and subsequent levy of the special tax.

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**BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF YUBA**

**In Re:**

**RESOLUTION AUTHORIZING THE EXECUTION        )  
AND DELIVERY OF A SUPPLEMENTAL NO. 1 TO        )  
ACQUISITION AGREEMENT WITH WOODSIDE        )  
MONTROSE INC. FOR IMPROVEMENT AREA C OF        ) Resolution No. \_\_\_\_  
THE COUNTY OF YUBA COMMUNITY FACILITIES        )  
DISTRICT NO. 2005-1 (ORCHARD/MONTROSE        )  
PUBLIC IMPROVEMENTS)                                )**

**WHEREAS**, the County, for and on behalf of the Improvement Area C of the County of Yuba Community Facilities District No. 2005-1 (Orchard/Montrose Public Improvements) (the "CFD"), has entered into an Acquisition Agreement, dated as of April 1, 2008 (the "Original Agreement"), with Woodside Montrose Inc. (the "Developer") pursuant to which the County agreed to use proceeds of bonds issued by the County for the CFD (the "Bonds"), when and if the Bonds are issued, to finance the acquisition of various public improvements constructed by the Developer and related to the development of property in the CFD, as described in exhibits to the Original Agreement; and

**WHEREAS**, in Section 9.01 of the Original Agreement, the County and the Developer agreed that if the County did not issue any Bonds for the CFD by December 31, 2013, the Original Agreement would terminate and be null and void; and

**WHEREAS**, the Developer has advised the County that, due to unforeseen adverse economic developments since the date the Original Agreement was executed, including the recent nationwide recession, the Developer has been delayed in its plans for the development of the land within the CFD, and the Developer now desires to extend the December 31, 2013 deadline in Section 9.01 the Original Agreement by one year; and

**WHEREAS**, there has been presented to the Board of Supervisors a Supplement No. 1 to Acquisition Agreement ("Supplement No. 1"), which sets forth an amendment to Section 9.01 of the Original Agreement to extend the December 31, 2013 deadline by one year to December 31, 2014; and

**WHEREAS**, the Board of Supervisors has duly considered Supplement No. 1 and now desires to approve Supplement No. 1 and to authorize its execution and delivery.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of the County of Yuba as follows:

**Section 1.** Supplement No. 1, in the form presented to the Board of Supervisors at this meeting, is hereby approved. The County Administrator is hereby authorized and directed for and on behalf of the County to execute and deliver Supplement No. 1 in said form.

**Section 2.** All actions heretofore taken by the officers and agents of the County with respect to the CFD, the Original Agreement and Supplement No. 1 are hereby approved, confirmed and ratified, and the proper officers of the County are hereby authorized and directed to do any and all things and take any and all actions and execute any and all certificates, agreements and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the transactions contemplated by the Original Agreement, as amended by Supplement No. 1.

**Section 3.** This Resolution shall take effect upon its adoption.

\*\*\*\*\*

**PASSED AND ADOPTED** this \_\_\_\_\_ day of December, 2013, by the Board of Supervisors of the County of Yuba, by the following vote.

AYES:

NOES:

ABSENT:

ABSTAINED:

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Chairman

ATTEST: DONNA STOTTLEMEYER  
CLERK OF THE BOARD OF SUPERVISORS

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APPROVED AS TO FORM: COUNTY COUNSEL  
ANGIL MORRIS-JONES



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**SUPPLEMENT NO. 1 TO ACQUISITION AGREEMENT**

**by and between the**

**COUNTY OF YUBA**

**and**

**WOODSIDE MONTROSE INC.**

**Dated as of December 30, 2013**

**relating to:  
Improvement Area C of the  
County of Yuba  
Community Facilities District No. 2005-1  
(Orchard/Montrose Public Improvements)**

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THIS SUPPLEMENT NO. 1 TO ACQUISITION AGREEMENT, dated as of December 30, 2013 ("Supplement No. 1"), is by and between the County of Yuba, a public body, corporate and politic, organized and existing under the laws of the State of California (the "County"), for and on behalf of Improvement Area C of the County of Yuba Community Facilities District No. 2005-1 (Orchard/Montrose Public Improvements) (the "CFD"), and Woodside Montrose Inc. (the "Developer"), and amends that certain Acquisition Agreement, dated as of April 1, 2008 (the "Original Agreement"), by and between the County for the CFD, and the Developer. Capitalized terms used in this Supplement No. 1 have the meanings given such terms in Section 1.01 of the Original Agreement.

RECITALS:

A. Financings. In order to finance the Facilities as described in Exhibit A to the Original Agreement, the Developer and the Authority have entered into the Original Agreement for the acquisition of Facilities by the County on behalf of the CFD with proceeds of the Bonds, when and if the Bonds are issued.

B. Changed Circumstances. Due to unforeseen adverse economic developments since the date the Original Agreement was executed, including the recent nationwide recession, the plans of the Developer for the development of the land within CFD have changed, and the Developer now desires to amend Section 9.01 to the Original Agreement to allow more time for the Bonds to be issued and the Purchase Price of the Facilities to be funded with proceeds of the Bonds.

AGREEMENT:

In consideration of the mutual promises and covenants set forth herein, and for other consideration the receipt and sufficiency of which are hereby acknowledged, the County, for and on behalf of the CFD, and the Developer agree that the foregoing recitals, as applicable to each, are true and correct and further make the agreements set forth below:

Section 1. Amendment to Section 9.01 of the Original Agreement. Section 9.01 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

"Section 9.01. No Bonds. If for any reason, the County does not issue any of the Bonds for the CFD by December 31, 2014, this Acquisition Agreement shall terminate and be null and void and of no further effect. Notwithstanding any other provision of this Acquisition Agreement, no Bonds shall be issued after December 31, 2014; except, at the sole and absolute discretion of the County, Bonds issued to refund all or a portion of any Bonds issued prior to such date."

Section 2. Affirmation of Section 3.01. Nothing in this Supplement No. 1 shall in any way require the County to issue any Bonds, or otherwise alter the provision of Section 3.01 of the Original Agreement to the effect that nothing in the Original Agreement shall be construed as requiring the County to issue the Bonds or any portion thereof.

Section 3. Ratification. Except as amended by Section 1 above, and as clarified by Section 2 above, the provisions of the Original Agreement are hereby ratified and confirmed.

Section 4. Counterparts. This Supplement No. 1 may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have executed this Supplement No. 1 as of the day and year first-above written.

COUNTY OF YUBA, for itself and on behalf of  
IMPROVEMENT AREA C OF THE COUNTY  
OF YUBA COMMUNITY FACILITIES  
DISTRICT NO. 2005-1  
(ORCHARD/MONTROSE PUBLIC  
IMPROVEMENTS)

By: \_\_\_\_\_  
County Administrator

WOODSIDE MONTROSE INC.

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

**BEFORE THE BOARD OF SUPERVISORS  
OF THE COUNTY OF YUBA**

**In Re:**

**RESOLUTION AUTHORIZING THE EXECUTION )  
AND DELIVERY OF A SUPPLEMENTAL NO. 1 TO )  
ACQUISITION AGREEMENT WITH JOHN )  
MOURIER CONSTRUCTION INC. FOR )  
IMPROVEMENT AREA A OF THE COUNTY OF ) Resolution No. \_\_\_\_  
YUBA COMMUNITY FACILITIES DISTRICT NO. )  
2005-1 (ORCHARD/MONTROSE PUBLIC )  
IMPROVEMENTS) )**

**WHEREAS**, the County, for and on behalf of the Improvement Area A of the County of Yuba Community Facilities District No. 2005-1 (Orchard/Montrose Public Improvements) (the "CFD"), has entered into an Acquisition Agreement, dated as of April 1, 2008 (the "Original Agreement"), with John Mourier Construction Inc. (the "Developer") pursuant to which the County agreed to use proceeds of bonds issued by the County for the CFD (the "Bonds"), when and if the Bonds are issued, to finance the acquisition of various public improvements constructed by the Developer and related to the development of property in the CFD, as described in exhibits to the Original Agreement; and

**WHEREAS**, in Section 9.01 of the Original Agreement, the County and the Developer agreed that if the County did not issue any Bonds for the CFD by December 31, 2013, the Original Agreement would terminate and be null and void; and

**WHEREAS**, the Developer has advised the County that, due to unforeseen adverse economic developments since the date the Original Agreement was executed, including the recent nationwide recession, the Developer has been delayed in its plans for the development of the land within the CFD, and the Developer now desires to extend the December 31, 2013 deadline in Section 9.01 the Original Agreement by one year; and

**WHEREAS**, there has been presented to the Board of Supervisors a Supplement No. 1 to Acquisition Agreement ("Supplement No. 1"), which sets forth an amendment to Section 9.01 of the Original Agreement to extend the December 31, 2013 deadline by one year to December 31, 2014; and

**WHEREAS**, the Board of Supervisors has duly considered Supplement No. 1 and now desires to approve Supplement No. 1 and to authorize its execution and delivery.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of the County of Yuba as follows:

**Section 1.** Supplement No. 1, in the form presented to the Board of Supervisors at this meeting, is hereby approved. The County Administrator is hereby authorized and directed for and on behalf of the County to execute and deliver Supplement No. 1 in said form.

**Section 2.** All actions heretofore taken by the officers and agents of the County with respect to the CFD, the Original Agreement and Supplement No. 1 are hereby approved, confirmed and ratified, and the proper officers of the County are hereby authorized and directed to do any and all things and take any and all actions and execute any and all certificates, agreements and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the transactions contemplated by the Original Agreement, as amended by Supplement No. 1.

**Section 3.** This Resolution shall take effect upon its adoption.

\*\*\*\*\*

**PASSED AND ADOPTED** this \_\_\_\_\_ day of December, 2013, by the Board of Supervisors of the County of Yuba, by the following vote.

AYES:

NOES:

ABSENT:

ABSTAINED:

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Chairman

ATTEST: DONNA STOTTLEMEYER  
CLERK OF THE BOARD OF SUPERVISORS

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APPROVED AS TO FORM: COUNTY COUNSEL  
ANGIL MORRIS-JONES



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**SUPPLEMENT NO. 1 TO ACQUISITION AGREEMENT**

**by and between the**

**COUNTY OF YUBA**

**and**

**JOHN MOURIER CONSTRUCTION INC.**

**Dated as of December 30, 2013**

**relating to:  
Improvement Area A of the  
County of Yuba  
Community Facilities District No. 2005-1  
(Orchard/Montrose Public Improvements)**

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THIS SUPPLEMENT NO. 1 TO ACQUISITION AGREEMENT, dated as of December 30, 2013 ("Supplement No. 1"), is by and between the County of Yuba, a public body, corporate and politic, organized and existing under the laws of the State of California (the "County"), for and on behalf of Improvement Area A of the County of Yuba Community Facilities District No. 2005-1 (Orchard/Montrose Public Improvements) (the "CFD"), and John Mourier Construction Inc. (the "Developer"), and amends that certain Acquisition Agreement, dated as of April 1, 2008 (the "Original Agreement"), by and between the County for the CFD, and the Developer. Capitalized terms used in this Supplement No. 1 have the meanings given such terms in Section 1.01 of the Original Agreement.

RECITALS:

A. Financings. In order to finance the Facilities as described in Exhibit A to the Original Agreement, the Developer and the Authority have entered into the Original Agreement for the acquisition of Facilities by the County on behalf of the CFD with proceeds of the Bonds, when and if the Bonds are issued.

B. Changed Circumstances. Due to unforeseen adverse economic developments since the date the Original Agreement was executed, including the recent nationwide recession, the plans of the Developer for the development of the land within CFD have changed, and the Developer now desires to amend Section 9.01 to the Original Agreement to allow more time for the Bonds to be issued and the Purchase Price of the Facilities to be funded with proceeds of the Bonds.

AGREEMENT:

In consideration of the mutual promises and covenants set forth herein, and for other consideration the receipt and sufficiency of which are hereby acknowledged, the County, for and on behalf of the CFD, and the Developer agree that the foregoing recitals, as applicable to each, are true and correct and further make the agreements set forth below:

Section 1. Amendment to Section 9.01 of the Original Agreement. Section 9.01 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

"Section 9.01. No Bonds. If for any reason, the County does not issue any of the Bonds for the CFD by December 31, 2014, this Acquisition Agreement shall terminate and be null and void and of no further effect. Notwithstanding any other provision of this Acquisition Agreement, no Bonds shall be issued after December 31, 2014; except, at the sole and absolute discretion of the County, Bonds issued to refund all or a portion of any Bonds issued prior to such date."

Section 2. Affirmation of Section 3.01. Nothing in this Supplement No. 1 shall in any way require the County to issue any Bonds, or otherwise alter the provision of Section 3.01 of the Original Agreement to the effect that nothing in the Original Agreement shall be construed as requiring the County to issue the Bonds or any portion thereof.

Section 3. Ratification. Except as amended by Section 1 above, and as clarified by Section 2 above, the provisions of the Original Agreement are hereby ratified and confirmed.

Section 4. Counterparts. This Supplement No. 1 may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties hereto have executed this Supplement No. 1 as of the day and year first-above written.

COUNTY OF YUBA, for itself and on behalf of  
IMPROVEMENT AREA A OF THE COUNTY  
OF YUBA COMMUNITY FACILITIES  
DISTRICT NO. 2005-1  
(ORCHARD/MONTROSE PUBLIC  
IMPROVEMENTS)

By: \_\_\_\_\_  
County Administrator

JOHN MOURIER CONSTRUCTION INC.

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

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**ACQUISITION AGREEMENT**

**by and between the**

**COUNTY OF YUBA**

**and**

**JOHN MOURIER CONSTRUCTION INC.**

**Dated as of April 1, 2008**

**Relating to:  
Improvement Area A of the  
County of Yuba  
Community Facilities District No. 2005-1  
(Orchard/Montrose Public Improvements)**

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THIS ACQUISITION AGREEMENT (the "Acquisition Agreement"), dated as of April 1, 2008, is by and between the County of Yuba, a public body, corporate and politic, organized and existing under the laws of the State of California (the "County"), for and on behalf of Improvement Area A of the County of Yuba Community Facilities District No. 2005-1 (Orchard/Montrose Public Improvements) (the "CFD"), and John Mourier Construction Inc. (the "Developer").

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** The following terms shall have the meanings ascribed to them in this Section 1.01 for purposes of this Acquisition Agreement. Unless otherwise indicated, any other terms, capitalized or not, when used herein shall have the meanings ascribed to them in the Fiscal Agent Agreement (as hereinafter defined).

"Acceptable Title" means title to land or interest therein, in form acceptable to the Director of Public Works, which title or interest is free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether or not recorded, but subject to any exceptions determined by the Director of Public Works as not interfering with the actual or intended use of the land or interest therein. Notwithstanding the foregoing, an irrevocable offer of dedication may constitute land with an "Acceptable Title" if: (i) such offer is necessary to satisfy a condition to a tentative or final parcel map, (ii) such offer is in a form acceptable to the Director of Public Works, (iii) the Director of Public Works has no reason to believe that such offer of dedication will not be accepted by the applicable public agency, and (iv) the Developer commits in writing not to allow any liens to be imposed on such property prior to its formal acceptance by the applicable public agency.

"Acceptance Date" means the date the Board of Supervisors of the County (or other public entity which is to own a Facility) takes final action to accept dedication to it of, or transfer to it of title to, a Facility.

"Acquisition Agreement" means this Acquisition Agreement, together with any Supplement hereto.

"Act" means the Mello-Roos Community Facilities Act of 1982, Sections 53311 et seq. of the California Government Code, as amended.

"Actual Cost" means the substantiated cost of a Facility or a Discrete Component, which costs may include: (i) the costs (evidenced by payments to parties unrelated to the Developer) incurred by the Developer for the construction of such Facility or Discrete Component, (ii) the reasonable costs incurred by the Developer in preparing the Plans for such Facility or Discrete Component and the related costs of design, engineering and environmental evaluations of the Facility or Discrete Component, (iii) the fees paid to governmental agencies for obtaining permits, licenses or other governmental approvals for such Facility or Discrete Component, (iv) professional costs incurred by the Developer associated with such Facility or Discrete Component, such as engineering, legal, accounting, inspection, construction staking, materials testing and similar professional services; and (v) costs directly related to the construction and/or acquisition of a Facility or Discrete Component, such as costs of payment, performance and/or maintenance bonds, and insurance costs (including costs of any title insurance required hereunder). Actual Cost may include an amount not in excess of five percent (5%) of the cost described in

clause (i) of the preceding paragraph in respect of any construction, project management or other similar fee payable to the Developer or any party related to the Developer. Actual Cost shall not include (i) any payment for land or the acquisition of right of way dedicated to the County as a condition to the approval of the maps for the Orchard/Montrose development, or (ii) any financing fees, costs or charges, or any interest, cost of carry or other similar charges.

"Affiliate" means any entity with respect to which fifty percent (50%) or more of the ownership or voting power is held individually or collectively by the Developer and any other entity owned, controlled or under common ownership or control by or with, as applicable, the Developer, and includes the managing member of any entity that is a limited liability company, and includes all general partners of any entity which is a partnership. Control shall mean ownership of fifty percent (50%) or more of the voting power of or ownership interest in the respective entity.

"Bonds" means any bonds issued or other debt incurred by the County payable from special taxes levied by the CFD.

"Budgeted Cost" means the estimated cost of a Facility or Discrete Component as shown on Exhibit B hereto under the heading "Discrete Budget."

"CFD" means Improvement Area A of the County of Yuba Community Facilities District No. 2005-1 (Orchard/Montrose Public Improvements), created by the Board of Supervisors of the County under the Act.

"Conditions of Approval" means the conditions of approvals and mitigation measures imposed in connection with the granting of the land use entitlements for the development of land in the CFD, and any subdivision improvement, development or other agreement with the County relating to the development of the land in the CFD or the installation of the Facilities.

"County " means the County of Yuba, California.

"Developer" means John Mourier Construction Inc., and its successors and assigns to the extent permitted under Section 10.07 hereof.

"Director of Public Works" means the Director of Public Works of the County, or his written designee acting as such under this Acquisition Agreement.

"Discrete Component" means a functional segment or component of a Facility that the Director of Public Works has agreed can be separately identified, inspected and completed consistent with the provisions of Section 53313.51 of the Act, and be the subject of a Payment Request hereunder. The Discrete Components are shown on Exhibit B hereto.

"Facilities" means the public facilities described in Exhibit A hereto which are eligible to be financed by the CFD.

"Fiscal Agent" means the entity acting as fiscal agent under the Fiscal Agent Agreement.

"Fiscal Agent Agreement" means an agreement by that name to be entered into by the County for the CFD and the Fiscal Agent, that will provide for, among other matters, the issuance of the Bonds and the establishment of the Improvement Fund, as it may be amended or supplemented from time to time.

"Improvement Fund" means the acquisition account within the fund by that name to be established by the Fiscal Agent Agreement.

"Payment Request" means a document, substantially in the form of Exhibit C hereto, to be used by the Developer in requesting payment of a Purchase Price.

"Plans" means the plans, specifications, schedules and related construction contracts for the Facilities and/or any Discrete Components thereof approved pursuant to the applicable standards of the County or other entity that will own, operate or maintain the Facilities when completed and acquired. As of the date of this Acquisition Agreement, the County standards for construction incorporate those set forth in the Green Book, Standard Specifications for Public Works Construction (SSPWC), by Public Works Standards, Inc., as modified by applicable County Special Provisions.

"Purchase Price" means the amount paid by the County for a Facility and/or any Discrete Components thereof determined in accordance with Article V hereof, being an amount equal to the Actual Cost of such Facility or Discrete Component, but subject to the limitations and reductions provided for in Article V.

"Risk Manager" shall mean the person acting in the capacity of Risk Manager for the County.

"State" means the State of California.

"Supplement" means a written document amending, supplementing or otherwise modifying this Acquisition Agreement and any exhibit hereto, including any amendments to the list of Discrete Components in Exhibit B, and/or the addition to Exhibit B of additional Facilities (and Discrete Components) to be financed with the proceeds of the Bonds deposited in the Improvement Fund.

## ARTICLE II

### RECITALS

**Section 2.01. The CFD.** The Board of Supervisors of the County has established the CFD under the Act for the financing of, among other things, the acquisition, construction and installation of public facilities identified in the proceedings to form the CFD, which include the Facilities listed in Exhibit A hereto.

**Section 2.02. The Development.** The Developer is developing land located within the CFD.

**Section 2.03. The Facilities.** The Facilities are within or in the vicinity of the CFD, and the County and the Developer will benefit from a coordinated plan of design, engineering and construction of the Facilities and the development of the land owned by the Developer that is located within the CFD. The Developer acknowledges that the inclusion of Facilities in Exhibit A hereto in no way, in itself, obligates the County to issue any Bonds to finance the Facilities or implies that the County has in any way engaged the Developer to construct the Facilities, except as specifically provided in this Acquisition Agreement. The Facilities which are the subject of acquisition from the Developer under this Acquisition Agreement are only the Facilities listed in Exhibit A hereto, as such Exhibit may be amended and/or supplemented by any Supplement.

It is hereby acknowledged that some of the Facilities will be financed, in part, by Improvement Areas B and C of the County of Yuba Community Facilities District No. 2005-1 (Orchard/Montrose Public Improvements) (the "District"), pursuant to acquisition agreements between the County and the developers of the land in those improvement areas. In that regard, the County and the Developer acknowledge that the Budgeted Costs for any such Facilities shown in Exhibit B hereto represent the portion of the costs thereof allocable to the CFD (being Improvement Area A of the District).

**Section 2.04. The Financing.** The Developer and the County wish to finance the acquisition of the Facilities by the County and the payment therefor by entering into this Acquisition Agreement for the acquisition of the Facilities and payment for Discrete Components thereof as shown in Exhibit B hereto (as it may be amended and supplemented) with a portion of the proceeds of the Bonds on deposit in the Improvement Fund.

**Section 2.05. The Bonds.** The County expects that, at some time in the future when market conditions permit the issuance of the Bonds in compliance with the County's adopted Local Goals and Policies for Community Facilities Districts and it is otherwise considered by the County to be prudent in the circumstances, the County will proceed with the authorization and issuance of the Bonds under the Act and the Fiscal Agent Agreement, the proceeds of which Bonds shall be used, in part, to finance the acquisition of all or a portion of the Facilities. The execution by the County of this Acquisition Agreement in no way obligates the County to issue any Bonds, or the County to acquire any Facilities financed with proceeds of any Bonds issued, except the Facilities listed in Exhibit A hereto which are to be acquired subject to the terms and conditions set forth in this Agreement.

**Section 2.06. No Advantage to County Construction.** The County, by its approval of this Acquisition Agreement, has determined that it will obtain no advantage from undertaking the construction by the County directly of the Facilities, and that the provisions of this Acquisition Agreement require that the Facilities be constructed by the

Developer as if they had been constructed under the direction and supervision of the County. The Developer hereby represents that it has experience in the supervision of the construction of public facilities of the character of the Facilities.

**Section 2.07. Agreements.** In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the County and the Developer agree that the foregoing recitals, as applicable to each, are true and correct and further make the agreements set forth herein.

## ARTICLE III

### FUNDING

**Section 3.01. County Proceedings.** The County shall conduct all necessary proceedings under the Act for the issuance, sale and delivery of the Bonds; provided, however, that nothing herein shall be construed as requiring the County to issue the Bonds or any portion thereof. Upon the written request of the Developer, the Developer and the County staff shall meet regarding the amount, timing and other material aspects of the Bonds, but the legal proceedings and the principal amount, interest rates, terms and conditions and timing of the sale of the Bonds shall be in all respects subject to the approval of the Board of Supervisors of the County. The authorized aggregate principal amount of the Bonds is \$6,000,000.

**Section 3.02. Bonds.** As described in Section 2.05, the County expects that at some time in the future it will proceed with the issuance and delivery of the Bonds for the CFD. The County shall not be obligated to pay the Purchase Price of the Facilities or any Discrete Components thereof except from amounts on deposit in the Improvement Fund on or after the closing date of the Bonds. The County makes no warranty, express or implied, that the proceeds of the Bonds deposited and held in the Improvement Fund, and any investment earnings thereon deposited to the Improvement Fund, will be sufficient for payment of the Purchase Price of all of the Facilities.

The Developer agrees to assist the County in the preparation of any disclosure document or continuing disclosure agreement deemed necessary by the County to issue the Bonds, including but not limited to the submission of information reasonably requested by the County's disclosure counsel, or any appraiser or any market absorption consultant engaged by the County in connection with the preparation of disclosure materials for the sale of the Bonds, and the provision of such continuing disclosure obligations, certifications and legal opinions as may be reasonably required by the underwriter of the Bonds.

**Section 3.03. Bond Proceeds.** The proceeds of the Bonds shall be deposited, held, invested, reinvested and disbursed as provided in the Fiscal Agent Agreement. A portion of the proceeds of the Bonds will be set aside under the Fiscal Agent Agreement in the Improvement Fund. Moneys in the Improvement Fund shall be withdrawn therefrom in accordance with the provisions of the Fiscal Agent Agreement and the applicable provisions hereof for payment of all or a portion of the costs of construction and/or acquisition of the Facilities (including payment of the Purchase Price of Discrete Components thereof), all as herein provided.

The Developer agrees that the County alone shall direct the investment of the funds on deposit in the funds and accounts established by or pursuant to the Fiscal Agent Agreement, including the Improvement Fund, and that the Developer has no right whatsoever to direct investments under the Fiscal Agent Agreement. Notwithstanding the foregoing, the County agrees that all investments of funds held under the Fiscal Agent Agreement will be solely in Permitted Investments, as defined therein, and the County will not direct any such investment in a negligent or fraudulent manner.

The County shall have no responsibility whatsoever to the Developer with respect to any investment of funds made by the Fiscal Agent under the Fiscal Agent Agreement, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment. Any such loss may diminish the amounts available in the Improvement

## ARTICLE IV

### CONSTRUCTION OF FACILITIES

**Section 4.01. Plans.** To the extent that it has not already done so, the Developer shall cause Plans to be prepared for the Facilities. The Developer shall obtain the written approval of the Plans in accordance with applicable ordinances and regulations of the County and/or the public entity that will own and operate the Facilities. Copies of all Plans shall be provided by the Developer to the Director of Public Works upon request therefor, and, in any event, as built drawings and a written assignment of the Plans for any Facility shall be provided to the County prior to its acceptance of the Facility.

**Section 4.02. Duty of Developer to Construct.** All Facilities to be acquired hereunder specified in Exhibit B hereto, as amended from time to time, shall be constructed by or at the direction of the Developer in accordance with the approved Plans. The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of Facilities in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their best efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Facilities to be acquired by the County from the Developer hereunder.

The Developer shall be obligated: (i) to construct and cause conveyance to the County (or other applicable governmental agency) all Facilities and Discrete Components thereof listed in Exhibit B hereto, and (ii) to use its own funds to pay all costs thereof in excess of the Purchase Prices thereof to be paid therefor hereunder, except as may be otherwise expressly provided in the Conditions of Approval.

The Developer shall not be relieved of its obligation to construct each Facility and Discrete Component thereof listed in Exhibit B hereto and convey each such Facility to the County in accordance with the terms hereof, even if, (i) because of the limitations imposed by Section 5.06 hereof, the Purchase Price for such Discrete Component or Facility is less than the Actual Cost, or cost to the Developer, of such Discrete Component or Facility, or (ii) there are insufficient funds in the Improvement Fund to pay the Purchase Prices thereof, and, in any event, this Acquisition Agreement shall not affect any obligation of any owner of land in the CFD under the Conditions of Approval, with respect to the public improvements required in connection with the development of the land within the CFD.

**Section 4.03. Relationship to Public Works; Bidding Requirements.** The following shall apply to all contracts applicable to the Facilities and any Discrete Components thereof:

A. General. This Acquisition Agreement is for the acquisition by the County of the Facilities and payment for Discrete Components thereof listed in Exhibit B hereto from moneys in the Improvement Fund and is not intended to be a public works contract. The County and the Developer agree that the Facilities are of local, and not state-wide concern, and that the provisions of the California Public Contract Code shall not apply to the construction of the Facilities. The County and the Developer agree that the Developer shall award all contracts for the construction

of the Facilities and the Discrete Components thereof listed in Exhibit B hereto and that this Acquisition Agreement is necessary to assure the timely and satisfactory completion of the Facilities and that compliance with the Public Contract Code with respect to the Facilities would work an incongruity and would not produce an advantage to the County or the CFD.

B. Bidding Procedures. Notwithstanding the foregoing, the Developer shall award or shall have awarded all contracts for construction of the Facilities and any Discrete Components thereof, and materials related thereto, by means of a bid process consistent with this Section 4.03 B. or otherwise acceptable to the Director of Public Works, in each case consistent with applicable County regulations. The Developer shall establish or shall have established a list of written criteria acceptable to the Director of Public Works (including experience, ability to perform on schedule and financial ability) to determine qualified contractors for any contract. Such general contractors shall comply with any applicable County regulations. Formal bids shall be requested or shall have been requested from those entities on the list of qualified contractors; and if no such list is established for any specific Facility or Discrete Component thereof, the Developer shall obtain or shall have obtained at least three bids for such Facility or Discrete Component thereof by means of an informal bidding process reasonably acceptable to the Director of Public Works.

The Developer shall prepare or shall have prepared bid packages, including engineering reports and estimates, for each of the Facilities (or any specific Discrete Components thereof to be separately bid), and shall submit or shall have submitted such packages to the Director of Public Works, reasonably in advance of the anticipated bid, for review. If the Developer would like the option to proceed under the provisions of Section 4.03 C. below, the bid documents shall expressly disclose or have disclosed the rights of the Developer to elect to perform or have its agent perform the work with a specific reference to Section 53329.5 of the Act. Upon agreement by the Director of Public Works and the Developer on the content of such bid packages and a schedule of bid prices, plus an acceptable margin of variance, the Developer may proceed to take or has taken bids on the applicable Facilities (or Discrete Components). Bid packages shall be provided or have been provided to at least three qualified bidders, unless the Developer and the Director of Public Works reasonably determine or have determined that three such bidders are not available. A list of qualified bidders shall be provided or has been provided to the Director of Public Works prior to the submission of bid packages to the qualified bidders. At the reasonable request of the Developer, the Director of Public Works shall also meet with the qualified general contractors to discuss the requirements of the particular contract to be bid.

If a bid is or was within the constraints of the approved bid package, the Developer shall, subject to the provisions of Section 4.03 C. below, award or has awarded the applicable contract to the lowest responsible bidder. An award to an only bidder is permissible, provided that the Developer provides or has provided the Director of Public Works with evidence satisfactory to the Director of Public Works, that a substantial effort was made to obtain more than one bid. If all bids are (or were) in excess of the bid parameters, the Developer shall obtain or has obtained the consent of the Director of Public Works prior to awarding the contract. Upon written request of the Director of Public Works, the Developer shall provide an analysis of bids for construction and materials for the Facilities or applicable Discrete Components, indicating how the winning bid was determined and how it was consistent with the applicable bid package. The Developer shall promptly

publish or had published notice of the award of any contract in such paper as the Director of Public Works shall specify.

C. Developer's Election to Perform Work. Notwithstanding the provisions of Section 4.03 B. above, and in accordance with Section 53329.5 of the Act, if at the time bids are received for any particular Facility or Discrete Component the Developer owns three-fourths of the area of lands in the CFD taxed or liable to be taxed for purposes of the CFD, the Developer or a designated agent thereof (who shall provide the Director of Public Works with a written declaration under penalty of perjury in form acceptable to the Director of Public Works to the effect that the Developer so owns such land and, if applicable, that such other entity is such an agent), the Developer or its designated agent may, within 10 days after the publication of the notice of the award of the contract, elect to perform the work and enter into a written contract to do the whole work at prices not exceeding the prices specified in the bid of the bidder to whom the contract was awarded, and all work done under the contract shall be subject to all provisions of this Acquisition Agreement other than the requirement that the contract work be awarded to and performed by the low bidder. The Developer shall advise the Director of Public Works of any election under the preceding sentence, and shall promptly provide written notice to the bidder to whom the contract was awarded of its election to perform the work, and that the services of such winning bidder will no longer be required. The Developer (and its agents) may only avail itself of the foregoing provisions of this Section 4.03 C. if the bid documents for the respective Facility or Discrete Component expressly disclosed its right to do so, as required by the second paragraph of Section 4.03 B. above.

If the Developer elects not to perform the work and not to enter into a written contract for that work within 10 days of publication of the notice of the award of the contract (as evidenced by its failure to provide the written notices described in the second preceding sentence within such 10 day period), or if the Developer (or its agent, as applicable) fails to commence the work within 15 days after the date of the written contract entered into by the Developer (or its agent) and the County and to continue that work with diligence to completion, as determined by the Board of Supervisors of the County, a contract may be entered into by the County, on behalf of the CFD with the original bidder to whom the contract was awarded at the prices specified in his or her bid.

D. Scheduling. The Developer shall develop or cause to be developed and shall maintain or cause to be maintained a schedule for the construction of the Facilities to be acquired hereunder, the construction of which has not been substantially completed as of the date of execution of this Acquisition Agreement. The Developer shall provide the Director of Public Works with complete copies of the schedule and each update to the schedule for the Director's review.

E. Periodic Meetings. From time to time, at the request of the Director of Public Works, representatives of the Developer shall meet and confer with County staff, consultants and contractors regarding matters arising hereunder with respect to the Facilities, Discrete Components and the progress in constructing and acquiring the same, and as to any other matter related to the Facilities or this Acquisition Agreement. The Developer shall advise the Director of Public Works in advance of any coordination and scheduling meetings to be held with contractors relating to the Facilities, in the ordinary course of performance of an individual contract. The Director of Public Works or the Director of Public Work's designated representative shall have the right to be present at such meetings, and to meet and confer with

individual contractors if deemed advisable by the Director of Public Works to resolve disputes and/or ensure the proper completion of the Facilities.

**Section 4.04. Independent Contractor.** In performing this Acquisition Agreement, the Developer is an independent contractor and is not the agent or employee of the County, the County or the CFD. None of the County, the County or the CFD shall be responsible for making any payments directly or otherwise to any contractor, subcontractor, agent, consultant, employee or supplier of the Developer.

**Section 4.05. Performance and Payment Bonds.** The Developer agrees to comply with all applicable performance and payment bonding requirements of the County (and other applicable public entities and/or public utilities) with respect to the construction of the Facilities. Performance and payment bonds shall not be required of the Developer to the extent moneys are available in the Improvement Fund to pay the Purchase Price of a Facility (and consistent with the Budgeted Costs therefore shown in Exhibit B and the limitations expressed in Section 5.06 hereof); provided that all contractors and/or subcontractors employed by the Developer in connection with the construction of Facilities shall provide a labor and materials and performance bonds which name the County as an additional insured.

**Section 4.06. Contracts and Change Orders.** The Developer shall be responsible for entering into all contracts and any supplemental agreements (commonly referred to as "change orders") required for the construction of the Facilities listed in Exhibit A hereto, as amended from time to time, and all such contracts and supplemental agreements shall be submitted to the Director of Public Works. Prior approval of supplemental agreements by the Director of Public Works shall only be required for such change orders which in any way materially alter the quality or character of the subject Facilities, or which involve an amount equal to the greater of ten percent (10%) of the aggregate amount of the contract involved. The County expects that such contracts and supplemental agreements needing prior approval by the Director of Public Works will be approved or denied (any such denial to be in writing, stating the reasons for denial and the actions, if any, that can be taken to obtain later approval) within ten (10) business days of receipt by the Director of Public Works thereof. Any approval by the Director of Public Works of a supplemental agreement shall in no way affect the Budgeted Costs listed in Exhibit B for any related Facility or Discrete Component, but to the extent that it increases the Actual Cost of a Facility or Discrete Component, such increased cost may be payable as part of the Purchase Price of the related Facility or Discrete Component as provided in Section 5.06A. hereof.

Notwithstanding the foregoing, if the Developer elects to approve a change order otherwise subject to the preceding paragraph prior to the approval of the Director of Public Works, the cost of the change order shall not be included in the Purchase Price of the applicable Facility if the change order is not subsequently approved by the Director of Public Works.

**Section 4.07. Time for Completion.** The Developer agrees that this Acquisition Agreement is for the benefit of the County and the Developer and, therefore, the Developer represents that it expects to complete the Facilities and to have requested payment for the Facilities under this Acquisition Agreement within thirty-six (36) calendar months from the date of the closing of the Bonds. Any failure to complete the Facilities within said time period shall not, however, in itself, constitute a breach by the Developer of the terms of this Acquisition Agreement.

## ARTICLE V

### ACQUISITION AND PAYMENT

**Section 5.01. Inspection.** No payment hereunder shall be made by the County to the Developer for a Facility or Discrete Component thereof until the Facility or Discrete Component thereof has been inspected and found to be completed in accordance with the approved Plans by the County or other applicable public entity or utility. The County shall make periodic site inspections of the Facilities to be acquired hereunder; provided that in no event shall the County incur any liability for any delay in the inspection of any Facilities or Discrete Components. For Facilities to be acquired by other public entities or utilities, the Developer shall be responsible for obtaining such inspections and providing written evidence thereof to the Director of Public Works. The Developer agrees to pay all inspection, permit and other similar fees of the County applicable to construction of the Facilities, subject to reimbursement therefor as an Actual Cost of the related Facility.

**Section 5.02. Agreement to Sell and Purchase Facilities.** The Developer hereby agrees to sell the Facilities listed in Exhibit B hereto to the County (or other applicable public agency that will own a Facility), and the County hereby agrees to use amounts in the Improvement Fund to pay the Purchase Prices thereof to the Developer, subject to the terms and conditions hereof. The County shall not be obligated to finance the purchase of any Facility until the Facility is completed and the Acceptance Date for such Facility has occurred; provided that the County has agreed hereunder to make payments to the Developer for certain Discrete Components of Facilities expressly shown in Exhibit B hereto, as it may be supplemented by any Supplement. The Developer acknowledges that the Discrete Components have been identified for payment purposes only, and that the County (or other applicable public agency that will own a Facility) shall not accept a Facility of which a Discrete Component is a part until the entire Facility has been completed. The County acknowledges that the Discrete Components do not have to be accepted by the County (or other applicable public agency that will own a Facility) as a condition precedent to the payment of the Purchase Price therefor, but any such payment shall not be made until the Discrete Component has been completed in accordance with the Plans therefor, as determined by the Director of Public Works. In any event, the County shall not be obligated to pay the Purchase Price for any Facility or Discrete Component except from the moneys in the Improvement Fund.

**Section 5.03. Payment Requests.** In order to receive the Purchase Price for a completed Facility or Discrete Component, inspection thereof under Section 5.01 shall have been made and the Developer shall deliver to the Director of Public Works: (i) a Payment Request in the form of Exhibit C hereto for such Facility or Discrete Component, together with all attachments and exhibits required by Exhibit C and this Section 5.03 to be included therewith (including, but not limited to Attachments 1 and 2 to Exhibit C), and (ii) if payment is requested for a completed Facility, (a) if the property on which the Facility is located is not owned by the County (or other applicable public agency that will own the Facility) at the time of the request, a copy of the recorded documents conveying to the County (or other applicable public agency that will own the Facility) Acceptable Title to the real property on, in or over which such Facility is located, as described in Section 6.01 hereof, (b) a copy of the recorded notice of completion of such Facility (if applicable), (c) to the extent paid for with the proceeds of the Bonds, an assignment to the CFD of any reimbursements that may be payable with respect to the Facility, such as public or private utility reimbursements or reimbursements by reason of oversizing of Facilities, and (d) an assignment of the warranties and guaranties for such Facility, as described in Section 6.05 hereof, in a form acceptable to the County.

**Section 5.04. Processing Payment Requests.** Upon receipt of a Payment Request (and all accompanying documentation), the Director of Public Works shall conduct a review in order to confirm that such request is complete, that such Discrete Component or Facility identified therein was constructed in accordance with the Plans therefor, and to verify and approve the Actual Cost of such Discrete Component or Facility specified in such Payment Request. The Director of Public Works shall also conduct such review as is required in his discretion to confirm the matters certified in the Payment Request. The Developer agrees to cooperate with the Director of Public Works in conducting each such review and to provide the Director of Public Works with such additional information and documentation as is reasonably necessary for the Director of Public Works to conclude each such review. For any Facilities to be acquired by another public entity or utility, the Developer shall provide evidence acceptable to the Director of Public Works that such Facilities are acceptable to such entity or utility. Within ten (10) business days of receipt of any Payment Request, the Director of Public Works expects to review the request for completeness and notify the Developer whether such Payment Request is complete, and, if not, what additional documentation must be provided. If such Payment Request is complete, the Director of Public Works expects to provide a written approval or denial (specifying the reason for any denial) of the request within 30 days of its submittal. If a Payment Request seeking reimbursement for more than one Facility or Discrete Component is denied, the Director of Public Works shall state whether the Payment Request is nevertheless approved and complete for any one or more Facilities or Discrete Components and any such Facilities or Discrete Components shall be processed for payment under Section 5.05 notwithstanding such partial denial.

**Section 5.05. Payment.** Upon approval of the Payment Request by the Director of Public Works, the Director of Public Works shall sign the Payment Request and forward the same to the County's Auditor-Controller. Upon receipt of the reviewed and fully signed Payment Request, and following the issuance of the Bonds, the County's Auditor-Controller shall, within the then current County financial accounting payment cycle but in any event within thirty (30) business days of the later of receipt of the approved Payment Request or the date of issuance of the Bonds, cause the same to be paid by the Fiscal Agent under the applicable provisions of the Fiscal Agent Agreement, to the extent of funds then on deposit in the Improvement Fund. Any approved Payment Request not paid due to an insufficiency of funds in the Improvement Fund, shall be paid promptly following the deposit into the Improvement Fund of proceeds of any investment earnings or other amounts transferred to the Improvement Fund under the terms of the Fiscal Agent Agreement.

The parties hereto acknowledge that (i) the Developer is constructing Facilities and Discrete Components prior to the issuance of the Bonds, (ii) the Developer may be submitting Payment Requests to the County in advance of such an issuance of the Bonds, with knowledge that there will be no funds available in the Improvement Fund for reimbursement until the Bonds are issued, (iii) the Facilities and Discrete Components that are the subject of the Payment Requests submitted when there are insufficient proceeds will be inspected and reviewed by the Director of Public Works as set forth in this Article V and that such Payment Requests will be reviewed by the Director of Public Works and, if appropriate, submitted in the manner set forth in Sections 5.03, 5.04 and 5.05, and (iv) the payment for any Payment Requests approved in the preceding manner will be deferred until the date, if any, on which there are Bond proceeds deposited to the Improvement Fund to make such payment, at which time the Director of Public Works will forward the approved Payment Requests to the County's Auditor-Controller, who will then arrange for payment from the Fiscal Agent in the manner set forth above.

The Purchase Price paid hereunder for any Facility or Discrete Component shall constitute payment in full for such Facility or Discrete Component, including, without limitation, payment for all labor, materials, equipment, tools and services used or incorporated in the work, supervision, administration, overhead, expenses and any and all other things required, furnished or incurred for completion of such Facility or Discrete Component, as specified in the Plans.

**Section 5.06. Restrictions on Payments.** Notwithstanding any other provisions of this Acquisition Agreement, the following restrictions shall apply to any payments made to the Developer under Sections 5.02 and 5.05 hereof:

A. Amounts of Payments. Subject to the following paragraphs of this Section 5.06, payments for each Discrete Component or Facility will be made only in the amount of the Purchase Price for the respective Discrete Component or Facility; however, if the Actual Cost exceeds the Budgeted Cost for a Discrete Component or a Facility, the excess shall be borne by the Developer until such time as a Budgeted Cost for another Discrete Component or Facility is greater than the Actual Cost therefore, in which event the savings shall be applied to reduce any excess of Actual Cost over Budgeted Cost previously paid for any Facility or Discrete Component by the Developer. Any savings attributable to the Actual Cost being less than Budgeted Cost which are not disbursed under the previous sentence to cover unreimbursed Actual Costs or as otherwise consented to by the Developer shall be carried forward to be credited against future cost overruns, or costs related to supplemental agreements (change orders), or if not needed for either of the foregoing purposes, to be disposed of as provided in the Fiscal Agent Agreement for excess monies in the Improvement Fund. Following the completion of the construction of all of the Facilities in Exhibit B hereto, any monies remaining in the Improvement Fund may be used to pay for any Actual Costs that were in excess of the related Budgeted Costs for such Facilities.

Nothing herein shall require the County in any event (i) to pay more than the Actual Cost of a Facility or Discrete Component, or (ii) to pay an amount which would cause the sum of all Purchase Prices paid for all acquired Facilities and Discrete Components to exceed the sum of all Budgeted Costs for such acquired items, or (iii) to make any payment beyond the available funds in the Improvement Fund. The parties hereto acknowledge and agree that all payments to the Developer for the Purchase Prices of Facilities or Discrete Components are intended to be reimbursements to the Developer for monies already expended or for immediate payment by the Developer (or directly by the County) to third parties in respect of such Facilities and/or Discrete Components.

B. Joint or Third Party Payments. The County may make any payment jointly to the Developer and any mortgagee or trust deed beneficiary, contractor or supplier of materials, as their interests may appear, or solely to any such third party, if the Developer so request the same in writing or as the County otherwise determines such joint or third party payment is necessary to obtain lien releases.

C. Withholding Payments. The County shall be entitled, but shall not be required, to withhold any payment hereunder for a Discrete Component or a Facility if the Developer or any Affiliate is delinquent in the payment of ad valorem real property taxes, special assessments or taxes, or Special Taxes levied in the CFD. In the event of any such delinquency, the County shall only make payments hereunder, should any be made at the County's sole discretion, directly to contractors or other third parties employed in connection with the construction of

the Facilities or to any assignee of the Developer's interests in this Acquisition Agreement (and not to the Developer or any Affiliate), until such time as the Developer provides the Director of Public Works with evidence that all such delinquent taxes and assessments have been paid.

The County shall be entitled to withhold payment for any Discrete Component or Facility constructed on land not previously dedicated or otherwise conveyed to the County, until Acceptable Title to such land is conveyed to the County or other public entity that will own the respective Facility, as described in Article VI hereof.

The County shall be entitled to withhold any payment hereunder for a Discrete Component or a Facility that is the subject of a Payment Request until it is satisfied that any and all claims for labor and materials have been paid by the Developer for the Discrete Component that is the subject of a Payment Request, or conditional lien releases have been provided by the Developer for such Discrete Component. The County, in its discretion, may waive this limitation upon the provision by the Developer of sureties, undertakings, securities and/or bonds of the Developer or appropriate contractors or subcontractors and deemed satisfactory by the Director of Public Works to assure payment of such claims.

The County shall be entitled to withhold payment for any Facility hereunder to be owned by the County (or the final Discrete Component of any such Facility) until: (i) the Director of Public Works determines that the Facility is ready for its intended use, (ii) the Acceptance Date for the Facility has occurred and the requirements of Section 6.01, if applicable to such Facility, have been satisfied, and (iii) a Notice of Completion executed by the Developer, in a form acceptable to the Director of Public Works, has been recorded for the Facility and general lien releases conditioned solely upon payment from the proceeds of the Bonds to be used to acquire such Facility (or final Discrete Component) have been submitted to the Director of Public Works for the Facility. The County hereby agrees that the Developer shall have the right to post or cause the appropriate contractor or subcontractor to post a bond with the County to indemnify it for any losses sustained by the County or the County because of any liens that may exist at the time of acceptance of such a Facility, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director of Public Works. The County shall be entitled to withhold payment for any Facility (or the final Discrete Component of any such Facility) to be owned by other governmental entities, until the Developer provides the Director of Public Works with evidence that the governmental entity has accepted dedication of and/or title to the Facility. If the Director of Public Works determines that a Facility is not ready for intended use under (i) above, the Director of Public Works shall so notify the Developer as soon as reasonably practicable in writing specifying the reason(s) therefor.

Nothing in this Acquisition Agreement shall be deemed to prohibit the Developer from contesting in good faith the validity or amount of any mechanics or materialman's lien nor limit the remedies available to the Developer with respect thereto so long as such delay in performance shall not subject the Facilities or any Discrete Component thereof to foreclosure, forfeiture or sale. In the event that any such lien is contested, the Developer shall only be required to post or cause the delivery of a bond in an amount equal to twice the amount in dispute with respect to any such contested lien, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director of Public Works.

The County shall be entitled to withhold any payment hereunder for a Discrete Component or Facility until the Developer has provided evidence of insurance required by Section 7.01 hereof.

D. Retention. The County shall withhold in the Improvement Fund an amount equal to ten percent (10%) of the Purchase Price of each Facility or Discrete Component to be paid hereunder. Any such retention will be released to the Developer upon final completion and acceptance of the related Facility and the expiration of a maintenance period consistent with applicable County policy and Section 6.06 hereof.

Notwithstanding the foregoing, the Developer shall be entitled to payment of any such retention upon the completion and acceptance of a Facility or Discrete Component, if a maintenance or warranty bond is posted in lieu thereof in accordance with Section 6.06 hereof. Payment of any retention shall also be contingent upon the availability of monies in the Improvement Fund therefor. No retention shall apply if the Developer proves to the Director of Public Works's satisfaction that the Developer's contracts for the Facilities (or Discrete Components) provide for the same retention as herein provided, so that the Purchase Price paid for the Facility or Discrete Component is at all times net of the required retention.

E. Frequency. Unless otherwise agreed to by the Director of Public Works, no more than one Payment Request shall be submitted by the Developer in any calendar month.

**Section 5.07. Defective or Nonconforming Work.** If any of the work done or materials furnished for a Facility or Discrete Component are found by the Director of Public Works to be defective or not in accordance with the applicable Plans: (i) and such finding is made prior to payment for the Purchase Price of such Facility or Discrete Component hereunder, the County may withhold payment therefor until such defect or nonconformance is corrected to the satisfaction of the Director of Public Works, or (ii) and such finding is made after payment of the Purchase Price of such Facility or Discrete Component, the County and the Developer shall act in accordance with the applicable County improvement standard.

**Section 5.08. Modification of Discrete Components.** Upon written request of the Developer, the Director of Public Works shall consider modification of the description of any Discrete Component. Any such modification shall be subject to the written approval of the Director of Public Works, and shall not diminish the overall Facilities to be provided by the Developer hereunder (in a material way such that the change invalidates any of the assumptions used in the appraisal conducted to sell the Bonds) or in any way increase the total Budgeted Costs identified in Exhibit B. It is expected that any such modification will be solely for purposes of dividing up the work included in any Discrete Component for purposes of acceptance and payment, for example: (i) separation of irrigation and landscaping from other components of a Discrete Component, (ii) modifications to allow for payment for roadway improvements prior to completion of the top course of paving, (iii) division of utility construction by utility work orders, or (iv) modifications to allow for payment for a Facility that is substantially complete and available for public use, except for designated items to be completed later and such completion does not substantially interfere with the use of the funded portion of the Facility. In most instances, the Director of Public Works will only approve modifications for payment purposes when there will be an unusual period of time between the completion and acceptance of such divided work or to better implement the phasing of the overall construction of the Facilities; but in no such

circumstances shall this Section in any way obligate the Director of Public Works to approve such modification.

## ARTICLE VI

### OWNERSHIP AND TRANSFER OF FACILITIES

**Section 6.01. Facilities to be Owned by the County – Conveyance of Land and Easements to County.** Acceptable Title to all property on, in or over which each Facility to be acquired by the County will be located, shall be deeded over to the County by way of grant deed, quitclaim, or dedication of such property, or easement thereon, if such conveyance of interest is approved by the County as being a sufficient interest therein to permit the County to properly own, operate and maintain such Facility located therein, thereon or thereover, and to permit the Developer to perform its obligations as set forth in this Acquisition Agreement. The Developer agrees to assist the County in obtaining such documents as are required to obtain Acceptable Title. Completion of the transfer of title to land shall be accomplished prior to the payment of the Purchase Price for a Facility (or the last Discrete Component thereof) and shall be evidenced by recordation of the acceptance thereof by the Board of Supervisors or the designee thereof.

**Section 6.02. Facilities to be Owned by the County – Title Evidence.** Upon the request of the County, the Developer shall furnish to the County a preliminary title report for land with respect to Facilities to be acquired by the County and not previously dedicated or otherwise conveyed to the County, for review and approval at least fifteen (15) calendar days prior to the transfer of Acceptable Title to a Facility to the County. The Director of Public Works shall approve the preliminary title report unless it reveals a matter which, in the judgment of the County, could materially affect the County's use and enjoyment of any part of the property or easement covered by the preliminary title report. In the event the County does not approve the preliminary title report, the County shall not be obligated to accept title to such Facility and the County shall not be obligated to pay the Purchase Price for such Facility (or the last Discrete Component thereof) until the Developer has cured such objections to title to the satisfaction of the County.

**Section 6.03. Facilities Constructed on Private Lands.** If any Facilities to be acquired are located on privately-owned land, the owner thereof shall retain title to the land and the completed Facilities until acquisition of the Facilities under Article V hereof. Pending the completion of such transfer, the Developer shall not be entitled to receive any payment for any such Facility or the last Discrete Component thereof. The Developer shall, however, be entitled to receive payment for Discrete Components (other than the last Discrete Component) upon making an irrevocable offer of dedication of such land in form and substance acceptable to the Director of Public Works. Notwithstanding the foregoing, upon written request of the Director of Public Works before payment for any Discrete Component of such a Facility, the Developer shall convey or cause to be conveyed Acceptable Title thereto in the manner described in Sections 6.01 and 6.02 hereof.

**Section 6.04. Facilities Constructed on County Land.** If the Facilities to be acquired are on land owned by the County, the County shall cause the County to grant to the Developer a license to enter upon such land for purposes related to the construction (and maintenance pending acquisition) of the Facilities. The provisions for inspection and acceptance of such Facilities otherwise provided herein shall apply.

**Section 6.05. Facilities to be Acquired by Other Public Agencies.** With respect to any Facility to be acquired by a public entity other than the County, the Developer shall comply with such entities rules and regulations regarding title and conveyance of property, and provide the Director of Public Works with evidence of such compliance, prior to the payment of the Purchase Price for any such Facility (or the last Discrete Component

thereof). It is hereby acknowledged that the County has entered into a Joint Community Facilities Agreement with the Linda County Water District, dated as of October 31, 2005, and that the portion of Facilities referenced therein will be subject to the provisions of the preceding sentence, the third sentence of Section 5.01 and the other provisions of this Agreement that apply to Facilities to be acquired by a public agency other than the County but the Purchase Prices of which are to be funded with amounts in the Improvement Fund.

**Section 6.06. Maintenance and Warranties.** The Developer shall maintain each Discrete Component in good and safe condition until the Acceptance Date of the Facility of which such Discrete Component is a part. Prior to the Acceptance Date, the Developer shall be responsible for performing any required maintenance on any completed Discrete Component or Facility. On or before the Acceptance Date of the Facility, the Developer shall assign to the County all of the Developer's rights in any warranties, guarantees, maintenance obligations, reimbursement obligations or other evidence of contingent obligations of third persons with respect to such Facility to be funded by available amounts in the Improvement Fund. The Developer shall maintain or cause to be maintained each Facility to be owned by the County (including the repair or replacement thereof) for a period of one year from the Acceptance Date thereof, or, alternatively, shall provide a bond reasonably acceptable in form and substance to the Director of Public Works for such period and for such purpose (specifically, a one-year maintenance period for landscaping improvements, and for the posting of a warranty bond to remain in effect for one year as to other Facilities), to insure that defects, which appear within said period will be repaired, replaced, or corrected by the Developer, at its own cost and expense, to the satisfaction of the Director of Public Works. The Developer shall commence to repair, replace or correct any such defects within thirty (30) days after written notice thereof by the County to the Developer, and shall complete such repairs, replacement or correction as soon as practicable. After such one-year period, the County (or other public entity that has accepted title to the Facility) shall be responsible for maintaining such Facility. Any warranties, guarantees or other evidences of contingent obligations of third persons with respect to the Facilities to be acquired by the County shall be delivered to the Director of Public Works as part of the transfer of title.

## ARTICLE VII

### INSURANCE; RESPONSIBILITY FOR DAMAGE

**Section 7.01. Liability Insurance Requirements.** The Developer shall provide to the Director of Public Works evidence of insurance and endorsements thereto on forms acceptable to the Risk Manager prior to any payment by the County of the Purchase Price of any Facility or Discrete Component, unless otherwise waived by the Director of Public Works, in whole or in part, in his sole and absolute discretion.

The Developer shall procure and maintain for the duration of this Acquisition Agreement the following minimum insurance coverage and limits against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work covered by this Acquisition Agreement by the Developer, its agents, representatives, employees or subcontractors:

- (a) Premises, operation and mobile equipment.
- (b) Products and completed operations.
- (c) Explosion, collapse and underground hazards.
- (d) Personal injury.
- (e) Contractual liability.
- (f) Errors and omissions for work performed by design professionals.

<u>COVERAGE PER OCCURRENCE</u>	<u>ISO FORM</u>	
Commercial General Liability (Primary)	CG 00 0111 85 or 88 Rev.	\$2,000,000
Business Auto	CA 00 01 06 92	\$1,000,000
Workers' Compensation/ Employers' Liability		Statutory
Errors and Omissions		\$1,000,000

Combined single limit per occurrence shall include coverage for bodily injury, personal injury, and property damage for each accident and a two million dollar (\$2,000,000) general aggregate. Insurance shall be placed with insurers that are admitted to the State of California with an AM Best's Rating of no less than A:VII.

The Developer shall furnish to the Risk Manager certificates of insurance and endorsements on forms specified by the Risk Manager, duly authenticated, giving evidence of the insurance coverage required in this contract and other evidence of coverage or copies of policies as may be reasonably required by the Risk Manager from time to time. Each required insurance policy coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after ten (10) days written notice by certified mail, return receipt requested, has been given to the Risk Manager.

Liability coverage shall not be limited to the vicarious liability or supervising role of any additional insured nor shall there be any limitation with the severability clause. Coverage shall contain no limitation endorsements and there shall be no endorsement or modification limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

All liability insurance shall be on an occurrence basis. Insurance on a claims made basis will be rejected. Any deductibles or self-insured retentions shall be declared to and shall be explicitly approved by the Risk Manager.

All subcontractors employed on the work referred to in this Acquisition Agreement shall meet the insurance requirements set forth in this Section 7.01 for the Developer, unless waived in whole or in part by the Director of Public Works in his sole and absolute discretion. The Developer shall furnish certificates of insurance and endorsements for each subcontractor, or the Developer shall furnish the Risk Manager an endorsement including all subcontractors as insureds under its policies.

The County shall not be liable for any accident, loss, or damage to the work prior to its completion and acceptance, and the Developer shall save, keep and hold harmless the County and its employees, consultants, Boardmembers, officers, officials, employees, agents and volunteers from all damages, costs or expenses in law or equity that may at any time arise or be claimed because of damages to property, or personal injury received by reason of or in the course of performing work, which may be caused by any negligent act or omission by the Developer or any of the Developer's employees, or any subcontractor.

The cost of insurance required by this subsection shall be born by the Developer and its subcontractors and no compensation for purchasing insurance or additional coverage needed to meet these requirements will be paid for by the County.

In the event that any required insurance is reduced in coverage, canceled for any reason, voided or suspended, the Developer agrees that the County may arrange for insurance coverage as specified, and the Developer further agrees that administrative and premium costs may be deducted from any deposits or bonds the County may have, or from the Improvement Fund. A reduction or cancellation will be grounds for termination of this Acquisition Agreement and will cause a halt to payment for any work on the Facilities until the insurance is reestablished.

Liability policies shall contain, or be endorsed to contain the following provisions:

(a) General Liability and Automobile Liability: The County and its employees, consultants, Boardmembers, officers, officials, employees and volunteers shall be covered as additional insureds using ISO form CG 00 01 11 85 or 88 as it respects: liability arising out of activities performed by or on behalf of the Developer; products and completed operations of the Developer's premises owned, occupied or used by the Developer; or automobiles owned, leased, hired or borrowed by the Developer. The coverage shall contain no special limitations on the scope or protection afforded to the County and its employees, consultants, Boardmembers, officers, officials, employees or volunteers.

The Developer's insurance coverage shall be primary insurance with respect to the County and its employees, consultants, Boardmembers, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County and its employees, consultants, Boardmembers, officers, officials, employees and volunteers shall be excess of the Developer's insurance and shall not contribute with it.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County and its employees, consultants, Boardmembers, officers, officials, employees, and volunteers.

The Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(b) **Workers' Compensation and Employer's Liability:** The Developer and all subcontractors shall have workers' compensation for all employees in conformance with the requirements in Section 3700 of the Labor Code.

(c) **Error and Omissions Liability:** The Developer and all subcontractors who are design professionals shall have and maintain errors and omissions insurance.

**Section 7.02. Responsibility for Damage.** The Developer shall take and assume all responsibility for the work performed as part of the Facilities constructed pursuant to this Acquisition Agreement. The Developer shall bear all losses and damages directly or indirectly resulting to it, to the County and its employees, consultants, Boardmembers, officers, employees and agents, or to others on account of the performance or character of the work, unforeseen difficulties, accidents of any other causes whatsoever.

The Developer shall assume the defense of and indemnify and save harmless the County and its employees, consultants, Boardmembers, officers, employees, and agents, from and against any and all claims, losses, damage, expenses and liability of every kind, nature, and description, directly or indirectly arising from the performance of the work, regardless of responsibility for negligence, and from any and all claims, losses, damage, expenses, and liability, howsoever the same may be caused, resulting directly, or indirectly from the nature of the work covered by this Acquisition Agreement, regardless of responsibility for negligence, to the fullest extent permitted by law. In accordance with Civil Code section 2782, nothing in this Section 7.02 shall require defense or indemnification for death, bodily injury, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the County and its employees, consultants, Boardmembers, agents, servants or independent contractors who are directly responsible to the County or the County, or for defects in design furnished by such persons. Moreover, nothing in this Section 7.02 shall apply to impose on the Developer, or to relieve the County from, liability for active negligence of the County or its employees or consultants as delineated in Civil Code Section 2782. Any relief for determining the County's sole or active negligence shall be determined by a court of law.

The County does not, and shall not, waive any rights against the Developer which it may have by reason of the aforesaid hold harmless agreements because of the acceptance by the County, or deposit with the County by the Developer, of any insurance policies described in Section 7.01. The aforesaid hold harmless agreement by the Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered by reasons of any of the aforesaid operations of the Developer, or any subcontractor, regardless of whether or not such insurance policies are determined to be applicable to any of such damages or claims for damages.

No act by the County or its representatives in processing or accepting any plans, in releasing any bond, in inspecting or accepting any work, or of any other nature, shall in any respect relieve the Developer or anyone else from any legal responsibility, obligation or liability it might otherwise have.

The Developer's obligations under this Section 7.02 with respect to any specific Facility shall terminate upon the expiration of the one-year warranty period for such Facility provided for in Section 6.06 above.

## ARTICLE VIII

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 8.01. Representations, Covenants and Warranties of the Developer.** The Developer represents and warrants for the benefit of the County as follows:

A. Organization. The Developer is in compliance with all applicable laws of the State, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

B. Authority. The Developer has the power and authority to enter into this Acquisition Agreement, and has taken all action necessary to cause this Acquisition Agreement to be executed and delivered, and this Acquisition Agreement has been duly and validly executed and delivered by the Developer.

C. Binding Obligation. This Acquisition Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to bankruptcy and other equitable principles.

D. Compliance with Laws. The Developer shall not with knowledge commit, suffer or permit any act to be done in, upon or to the lands of the Developer in the CFD or the Facilities in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the lands in the CFD or the Facilities.

E. Requests for Payment. The Developer represents and warrants that (i) it will not request payment from the County for the acquisition of any improvements that are not part of the Facilities, and (ii) it will diligently follow all procedures set forth in this Acquisition Agreement with respect to the Payment Requests.

F. Financial Records. Until the date which is one year following the date of the final acceptance of the Facilities, the Developer covenants to maintain proper books of record and account for the construction of the Facilities and all costs related thereto. Such accounting books shall be maintained in accordance with generally accepted accounting principles, and shall be available for inspection by the County or its agent at any reasonable time during regular business hours on reasonable notice.

G. Prevailing Wages. The Developer covenants that, with respect to any contracts or subcontracts for the construction of the Facilities to be acquired from the Developer hereunder, it will assure complete compliance with any applicable law or regulation for the payment of prevailing wages. Upon request of the Director of Public Works, the Developer shall submit certified payrolls or information reasonably requested by the County to evidence compliance with this Section 8.01G.

H. Plans. The Developer represent that it has obtained or will obtain approval of the Plans for the Facilities to be acquired from the Developer hereunder from all appropriate departments of the County and from any other public entity or public utility from which such approval must be obtained. The Developer further agrees that the Facilities to be acquired from the Developer hereunder have been or will be constructed in full compliance with such approved plans and specifications

and any supplemental agreements (change orders) thereto, as approved in the same manner.

I. Land Owners. The Developer agrees that in the event that it sells any land owned by it within the boundaries of the CFD other than to an individual prospective homeowner, the Developer will (i) notify the County within 30 days of the sale, in writing, identifying the legal name of and mailing address for the purchaser, the applicable County Assessor's parcel Number or Numbers for the land sold and the acreage of the land sold, (ii) notify the purchaser in writing prior to the closing of any such sale of the existence of this Acquisition Agreement and, in general, the Developer's rights and obligations hereunder with respect to the construction of and payment for the Facilities, and (iii) notify the purchaser (including for purposes of this clause (iii) any prospective homeowner buying property from the Developer) in writing of the existence of the CFD and the special tax lien in connection therewith, and otherwise comply with any applicable provision of Section 53341.5 of the Act.

J. Additional Information. The Developer agrees to cooperate with all reasonable written requests for nonproprietary information by the original purchasers of the Bonds or the County related to the status of construction of improvements within the CFD, the anticipated completion dates for future improvements, and any other matter material to the investment quality of the Bonds.

K. Continuing Disclosure. The Developer agrees to comply with all of its obligations under any continuing disclosure agreement executed by it in connection with the offering and sale of any of the Bonds.

L. Ownership By Affiliates. The Developer agrees to provide to the County's Treasurer on the date of issuance of the Bonds, on (or within five (5) business days of) July 1 of each year so long as the Bonds are outstanding, and on any other date upon three business days notice from the County's Treasurer, a written list of all Affiliates of the Developer which own or control the ownership of land located within the CFD, or which have options on land within the CFD, indicating the parcels of land by County Assessor's Parcel number of all such land so owned or optioned.

M. Allocation of Sales Taxes to County. The Developer shall use reasonable efforts, with respect to any construction contract for a contract price of \$5,000,000 or more and related to any construction by or under the supervision of the Developer within the geographical boundaries of the County, to have the installing contractor obtain a sub-permit from the California Board of Equalization under the Bradley-Burns Uniform Local Sales and Use Tax law for the job site on which the work is to be performed.

**Section 8.02. Indemnification and Hold Harmless.** The Developer shall assume the defense of, indemnify and save harmless the County and the CFD, members of the Board of Supervisors of the County, and the County's officers, officials, employees and agents, from and against all actions, damages, claims, losses or expense of every type and description to which they may be subjected or put, by reason of, or resulting from the breach of any provision of this Acquisition Agreement by the Developer, the Developer's or any other entity's negligent design, engineering and/or construction of any of the Facilities acquired from the Developer hereunder, the Developer's non-payment under contracts between the Developer and its consultants, engineer's, advisors, contractors, subcontractors and suppliers in the provision of the Facilities, or any claims of persons employed by the Developer or its agents to construct the Facilities. Notwithstanding the foregoing, no

indemnification is given hereunder for any action, damage, claim, loss or expense directly attributable to the intentional acts or negligence of the County, or its officers, Boardmembers, employees or agents hereunder.

No provision of this Acquisition Agreement shall in any way limit the Developer's responsibility for payment of damages resulting from the operations of the Developer, its agents, employees or its contractors. In the event of any conflict between the provisions of this Section 8.02 and the provisions of Section 7.02, the provisions of Section 7.02 shall prevail.

The Developer's obligations under this Section 8.02 with respect to a specific Facility shall terminate upon the expiration of the one-year warranty period provided in Section 6.06 above with respect to such Facility, and the Developer's obligations under this Section 8.02 generally shall terminate upon the expiration of the one-year warranty period with respect to the Facility with the latest Acceptance Date.

## ARTICLE IX

### TERMINATION

**Section 9.01. No Bonds.** If, for any reason, the County does not issue any of the Bonds for the CFD by December 31, 2013, this Acquisition Agreement shall terminate and be null and void and of no further effect. The County may, in its discretion, grant an extension to such date for termination if Bonds for the CFD are not issued by such date by reason of the occurrence of an event described in Section 9.04.

**Section 9.02. Mutual Consent.** This Acquisition Agreement may be terminated by the mutual, written consent of the County and the Developer, in which event the County may let contracts for any remaining work related to the Facilities not theretofore acquired from the Developer hereunder, and use all or any portion of the monies in the Improvement Fund to pay for same, and the Developer shall have no claim or right to any further payments for the Purchase Price of Facilities or Discrete Components hereunder, except as otherwise may be provided in such written consent.

**Section 9.03. County Election for Cause.** The following events shall constitute grounds for the County, at its option, to terminate this Acquisition Agreement, without the consent of the Developer:

(a) The Developer shall voluntarily file for reorganization or other relief under any Federal or State bankruptcy or insolvency law.

(b) The Developer shall have any involuntary bankruptcy or insolvency action filed against it, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of the assets of the Developer, or shall suffer an attachment or levy of execution to be made against the property it owns within the CFD unless, in any of such cases, such circumstance shall have been terminated or released within thirty (30) days thereafter.

(c) Following the issuance of any of the Bonds, the Developer shall abandon construction of the Facilities. Failure for a period of sixty (60) consecutive days to undertake substantial work related to the construction of the Facilities after Bonds have been issued, other than for a reason specified in Section 9.04 hereof, shall constitute a noninclusive example of such abandonment.

(d) The Developer shall breach any material covenant or default in the performance of any material obligation hereunder.

(e) The Developer shall transfer any of its rights or obligations under this Acquisition Agreement without the prior written consent of the County.

(f) The Developer shall have made any material misrepresentation or omission in any written materials furnished in connection with any preliminary official statement, official statement or bond purchase contract used in connection with the sale of the Bonds.

(g) The Developer or any of its Affiliates shall at any time challenge the validity of the CFD or any of the Bonds, or the levy of Special Taxes within the CFD, other than on the grounds that such levy was not made in accordance with the terms of the Rate and Method of Apportionment of the Special Taxes for the CFD.

(h) The Developer elects to perform or have its agent perform work under the provisions of Section 4.03 C., but fails to continue the work with diligence to completion, as described in the second paragraph of Section 4.03 C.

If any such event occurs, the County shall give written notice of its knowledge thereof to the Developer, and the Developer agrees to meet and confer with the Director of Public Works and other appropriate County staff and consultants within ten (10) days of receipt of such notice as to options available to assure timely completion of the Facilities. Such options may include, but not be limited to the termination of this Acquisition Agreement by the County. If the County elects to terminate this Acquisition Agreement, the County shall first notify the Developer (and any mortgagee or trust deed beneficiary specified in writing by the Developer to the County to receive such notice) of the grounds for such termination and allow the Developer a minimum of thirty (30) days to eliminate or mitigate to the satisfaction of the Director of Public Works the grounds for such termination. Such period may be extended, at the sole discretion of the County, if the Developer, to the satisfaction of the County, is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), as determined solely by the County, the Developer has not eliminated or completely mitigated such grounds, to the satisfaction of the County, the County may then terminate this Acquisition Agreement.

Notwithstanding the foregoing, so long as any event listed in any of clauses (a) through and including (g) above has occurred, notice of which has been given by the County to the Developer, and such event has not been cured or otherwise eliminated by the Developer, the County may in its discretion cease making payments for the Purchase Price of Facilities or Discrete Components under Article V hereof.

**Section 9.04. Force Majeure.** Whenever performance is required of a party hereunder, that party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, earthquakes or other acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, damage to work in progress by casualty, or by other cause beyond the reasonable control of the party (financial inability excepted), then the specified time for performance shall be extended by the amount of the delay actually so caused.

## ARTICLE X

### MISCELLANEOUS

**Section 10.01. Limited Liability of County.** The Developer agrees that any and all obligations of the County arising out of or related to this Acquisition Agreement are special and limited obligations of the County and the County's obligations to make any payments hereunder are restricted entirely to the moneys, if any, in the Improvement Fund and from no other source. No member of the County's Board of Supervisors, or County staff member, employee or agent shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

**Section 10.02. Excess Costs.** The Developer agrees to pay all costs of the Facilities that it is obligated to construct pursuant to Section 4.02 in excess of the moneys available therefor in the Improvement Fund.

**Section 10.03. Audit.** The Director of Public Works and/or the County's Auditor-Controller shall have the right, during normal business hours and upon the giving of two (2) business days prior written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer in to any of the Facilities, and any bids taken or received for the construction thereof or materials therefor.

**Section 10.04. Attorney's Fees.** In the event that any action or suit is instituted by a party hereto against the other party arising out of this Acquisition Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys' fees.

**Section 10.05. Notices.** Any notice, payment or instrument required or permitted by this Acquisition Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered, or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within twenty-four hours after such transmission), or seventy-two hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

County or CFD:

County of Yuba  
915 8<sup>th</sup> Street, Suite 123  
Marysville, California 95901  
Attention: Director of Public Works

Developer:

John Mourier Construction Inc.  
c/o JMC Homes  
1430 Blue Oaks Boulevard, Suite 190  
Roseville, California 95747  
Attention: Steve A. Schnable, Land  
Development Manager

with a copy to:

Hefner, Stark and Marois  
2150 River Plaza Drive, Suite 450  
Sacramento, California 95833  
Attention: Tim Taron, Esq.

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

**Section 10.06. Severability.** If any part of this Acquisition Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Acquisition Agreement shall be given effect to the fullest extent possible.

**Section 10.07. Successors and Assigns.** This Acquisition Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Acquisition Agreement shall not be assigned by the Developer, except in whole to an Affiliate, without the prior written consent of the County, which consent shall not be unreasonably withheld or delayed. In connection with any such consent of the County, the County may condition its consent upon the acceptability of the relevant experience and financial condition of the proposed assignee, the assignee's express assumption of all obligations of the Developer hereunder, and/or upon any other factor which the County deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and/or obligations assigned, and shall not be effective until approved in writing by the County. Any assignment consented to by the County shall release the Developer from its obligations and liabilities under this Acquisition Agreement to the extent so assigned.

**Section 10.08. Other Agreements.** The obligations of the Developer hereunder shall be those of a party hereto and not as an owner of property in the CFD. Nothing herein shall be construed as affecting the County's or the Developer's rights, or duties to perform their respective obligations, under other agreements, use regulations or subdivision requirements relating to the development of the lands in the CFD. This Acquisition Agreement shall not confer any additional rights, or waive any rights given, by either party hereto under any development or other agreement to which they are a party.

**Section 10.09. Waiver.** Failure by a party to insist upon the strict performance of any of the provisions of this Acquisition Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Acquisition Agreement thereafter.

**Section 10.10. Merger.** No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Acquisition Agreement shall be binding.

**Section 10.11. Parties in Interest.** Nothing in this Acquisition Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the County and the Developer any rights, remedies or claims under or by reason of this Acquisition Agreement or any covenants, conditions or stipulations hereof; and all covenants, conditions, promises, and agreements in this Acquisition Agreement contained by or on behalf of the County or the Developer shall be for the sole and exclusive benefit of the County and the Developer.

**Section 10.12. Amendment.** This Acquisition Agreement may be amended, from time to time, by written Supplement hereto and executed by both the County and the Developer.

**Section 10.13. Counterparts.** This Acquisition Agreement may be executed in counterparts, each of which shall be deemed an original.

**Section 10.14. Governing Law.** The provisions of this Acquisition Agreement shall be governed by the laws of the State of California applicable to contracts made and performed in such State.

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

COUNTY OF YUBA, for and on behalf of  
IMPROVEMENT AREA A OF THE  
COUNTY OF YUBA COMMUNITY  
FACILITIES DISTRICT NO. 2005-1  
(ORCHARD/MONTROSE PUBLIC  
IMPROVEMENTS)

By: 

County Administrator

JOHN MOURIER CONSTRUCTION INC., a  
California corporation

By: 

Rod Yamanaka,  
Chief Financial Officer

25002.03;J9797

## **ACQUISITION AGREEMENT**

### **EXHIBIT A**

#### **DESCRIPTION OF FACILITIES ELIGIBLE FOR ACQUISITION FROM THE DEVELOPER**

The CFD may finance all or a portion of the costs of the following:

1. Yuba County street improvements and storm drainage facilities within and in the vicinity of the CFD, including:
  - East Linda Boulevard
  - Linda Avenue
  - Autumn Lane
  - Riverbank Drive
  - Erle Road
  - Griffith Avenue
2. Linda County Water District sewer and water facilities within and in the vicinity of the CFD, or otherwise necessary to serve the area within the CFD, including:
  - sewer and water improvements adjacent to the streets listed in 1. above
  - a domestic water supply well
  - a sewer lift station
3. Other Yuba County public facilities, including:
  - a drainage channel within or in the vicinity of the CFD
  - a detention basin within or in the vicinity of the CFD
  - a regional storm drain necessary by reason of development in the CFD

The Facilities shall include the acquisition of right-of-way and other necessary land, the costs of design, engineering and planning, the costs of any environmental or other studies, surveys or reports, the cost of any required environmental mitigation and any required landscaping and irrigation, soils testing or engineering, permits, plan check and inspection fees, insurance, construction management, legal and related overhead costs, coordination and supervision and any other costs or appurtenances related to any of the foregoing.

# ACQUISITION AGREEMENT

## EXHIBIT B

### DISCRETE COMPONENTS OF FACILITIES AND RELATED BUDGETED COSTS

Facility Description	Discrete Components	Discrete Budget(1)	Total Budget
<b>Road to the North Improvements</b>	Goldfields Pkwy (North Boundary) Modified road section	\$270,266.33	\$270,266.33
<b>Street Improvements</b>	Goldfield (aka East Linda Blvd (Within the Orchard Limits))	\$686,634.31	
	Masonry	252,750.38	
	PGE Contract # 1	50,369.80	
	PGE Contract # 2	18,199.20	
	Autumn Lane (Eastern Section - Western Half)	105,163.22	
	Autumn Lane (Western Section - North Half)	15,011.82	
	Autumn Lane (Western Section - Front of Well Site)	17,030.12	
	Riverbank Drive (From W. Boundary to Goldfield)	363,009.74	
	Erle Road (West Border Orchard & Goldfield)	200,466.19	
	Masonry	33,486.99	
	Lowering Street	117,666.83	
	Pole Line Relocation	47,855.91	
	Erle Road (East of Goldfields)	67,400.14	
	Street Improvement Change Orders	<u>238,091.32</u>	
Total Street Improvements			\$2,213,135.97
<b>Storm Drain Improvements</b>	Goldfield (aka East Linda Blvd (Within the Orchard Limits))	\$45,628.62	
	Autumn Lane (Eastern Section - Western Half)	74,224.05	
	Autumn Lane (Western Section - North Half)	3,022.75	
	Autumn Lane (Western Section - Front of Well Site)	11,040.10	
	Riverbank Drive (From W. Boundary to Goldfield)	142,635.64	
	Erle Road (West Border Orchard & Goldfield)	130,402.46	
	Lowering Drainage	34,826.66	
	Erle Road (East of Goldfields)	369,664.58	
	Regional Storm Drain	669,886.40	
	Detention Basin & Channel	458,012.79	
	Storm Drain Change Orders	49,304.35	
	SWPPP, Erosion Control	<u>29,124.29</u>	
Total Storm Drain Improvements			\$2,017,772.69
<b>Sewer Improvements</b>	Goldfield (aka East Linda Blvd (Within the Orchard Limits))	\$219,218.67	
	Autumn Lane (Eastern Section - Western Half)	23,023.75	
	Autumn Lane (Western Section - North Half)	10,667.20	
	Riverbank Drive (From W. Boundary to Goldfield)	71,862.59	
	Erle Road (West Border Orchard & Goldfield)	<u>72,284.69</u>	
Total Sewer Improvements			\$397,056.90

<u>Facility Description</u>	<u>Discrete Components</u>	<u>Discrete Budget(1)</u>	<u>Total Budget</u>
Water Improvements	Goldfield (aka East Linda Blvd (Within the Orchard Limits))	\$176,040.82	
	Autumn Lane (Eastern Section - Western Half)	18,153.45	
	Autumn Lane (Western Section - Front of Well Site)	11,261.58	
	Riverbank Drive (From W. Boundary to Goldfield)	71,510.26	
	Erle Road (West Border Orchard & Goldfield)	45,946.33	
	Sewer and Water Improvement Change Orders	<u>130,393.24</u>	
Total Water Improvements			\$453,305.68

(1) Discrete Budgets include estimates for engineering, construction management, construction staking, permits and fees.

## ACQUISITION AGREEMENT

### EXHIBIT C

#### FORM OF PAYMENT REQUEST

PAYMENT REQUEST NO. \_\_\_\_\_

The undersigned, on behalf of John Mourier Construction Inc. (the "Developer"), hereby requests payment in the total amount of \$\_\_\_\_\_ for the Facilities (as defined in the Acquisition Agreement, dated as of April 1, 2008, between the County of Yuba (the "County"), for and on behalf of Improvement Area A of the County of Yuba Community Facilities District No. 2005-1 (Orchard/Montrose Public Improvements) and the Developer), or Discrete Components thereof (as described in Exhibit B to that Agreement), all as more fully described in Attachment 1 hereto. In connection with this Payment Request, the undersigned, on behalf of the Developer, hereby represents and warrants to the County as follows:

1. He(she) is a duly authorized officer of the Developer, qualified to execute this Payment Request for payment on behalf of the Developer and is knowledgeable as to the matters set forth herein.

2. To the extent that this payment request is with respect to a completed Facility, the Developer has submitted or submit herewith to the County as-built drawings or similar plans and specifications for the items to be paid for as listed in Attachment 1 hereto with respect to any such completed Facility, and such drawings or plans and specifications, as applicable, are true, correct and complete. To the extent that this payment request is for a Discrete Component, the Developer has in its construction office a marked set of drawings or similar plans and specifications for the Discrete Components to be acquired as listed in Attachment 1 hereto, which drawings or plans and specifications, as applicable, are current and show all changes or modifications which have been made to date.

3. All costs of the Facilities or Discrete Components thereof for which payment is requested hereby are Actual Costs (as defined in the Agreement referenced above) and have not been inflated in any respect. The items for which payment is requested have not been the subject of any prior payment request submitted to the County.

4. Supporting documentation (such as third party invoices) is attached with respect to each cost for which payment is requested.

5. There has been compliance with applicable laws relating to prevailing wages for the work to construct the Facilities or Discrete Components thereof for which payment is requested.

6. The Facilities or Discrete Components thereof for which payment is requested were constructed in accordance with all applicable County or other governmental standards, and in accordance with the as-built drawings or plans and specifications, as applicable, referenced in paragraph 2 above.

7. The Developer is in compliance with the terms and provisions of the Acquisition Agreement and no portion of the amount being requested to be paid was previously paid.

8. The Purchase Price for each Facility or Discrete Component (a detailed calculation of which is shown in an Attachment 2 hereto for each such Facility or Discrete Component), has been calculated in conformance with the terms of Section 5.06 of the Acquisition Agreement.

9. Neither the Developer nor any Affiliate (as defined in the Acquisition Agreement) is in default in the payment of ad valorem real property taxes or special taxes or special assessments levied in the CFD (as defined in the Acquisition Agreement), except as follows: \_\_\_\_\_.

I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

**DEVELOPER:**

John Mourier Construction Inc.

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

Its: \_\_\_\_\_

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

**AUTHORITY:**

Payment Request Approved for  
Submission to the Auditor-Controller of the  
County of Yuba

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

Director of Public Works

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

**ATTACHMENT 2  
EXHIBIT C**

**CALCULATION OF PURCHASE PRICE**

[Use a separate sheet for each Facility or Discrete Component  
for which payment is being requested]

1. Description (by reference to Exhibit B to the Acquisition Agreement) of the Facility or Discrete Component \_\_\_\_\_
2. Actual Cost (list here total of supporting invoices and/or other documentation supporting determination of Actual Cost): \$ \_\_\_\_\_
3. Budgeted Cost: \$ \_\_\_\_\_
4. Permitted Addition to Budgeted Cost (to the extent, and only to the extent, that Actual Cost exceeds Budgeted Cost), consisting of Savings (Actual Costs less than Budgeted Cost) carried forward from prior acquired Facilities/Discrete Components (see first paragraph of Section 5.06A) and not previously applied to cover cost overruns (Actual Costs greater than Budgeted Cost) on previously acquired Facilities: \$ \_\_\_\_\_
5. Subtractions from Purchase Price:
  - A. Holdback for Lien releases (see Section 5.06(C) of the Acquisition Agreement) \$ \_\_\_\_\_
  - B. Retention (see Section 5.06(D) of the Acquisition Agreement) \$ \_\_\_\_\_
6. Total disbursement requested (amount listed in 3, plus amount, if any, listed in 4 (total of amounts in 3 and 4 not to exceed amount listed in 2), less amounts, if any, listed in 5) \$ \_\_\_\_\_

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**ACQUISITION AGREEMENT**

**by and between the**

**COUNTY OF YUBA**

**and**

**WOODSIDE MONTROSE INC.**

**Dated as of April 1, 2008**

**Relating to:  
Improvement Area C of the  
County of Yuba  
Community Facilities District No. 2005-1  
(Orchard/Montrose Public Improvements)**

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THIS ACQUISITION AGREEMENT (the "Acquisition Agreement"), dated as of April 1, 2008, is by and between the County of Yuba, a public body, corporate and politic, organized and existing under the laws of the State of California (the "County"), for and on behalf of Improvement Area C of the County of Yuba Community Facilities District No. 2005-1 (Orchard/Montrose Public Improvements) (the "CFD"), and Woodside Montrose Inc. (the "Developer").

## ARTICLE I DEFINITIONS

**Section 1.01. Definitions.** The following terms shall have the meanings ascribed to them in this Section 1.01 for purposes of this Acquisition Agreement. Unless otherwise indicated, any other terms, capitalized or not, when used herein shall have the meanings ascribed to them in the Fiscal Agent Agreement (as hereinafter defined).

"Acceptable Title" means title to land or interest therein, in form acceptable to the Director of Public Works, which title or interest is free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether or not recorded, but subject to any exceptions determined by the Director of Public Works as not interfering with the actual or intended use of the land or interest therein. Notwithstanding the foregoing, an irrevocable offer of dedication may constitute land with an "Acceptable Title" if: (i) such offer is necessary to satisfy a condition to a tentative or final parcel map, (ii) such offer is in a form acceptable to the Director of Public Works, (iii) the Director of Public Works has no reason to believe that such offer of dedication will not be accepted by the applicable public agency, and (iv) the Developer commits in writing not to allow any liens to be imposed on such property prior to its formal acceptance by the applicable public agency.

"Acceptance Date" means the date the Board of Supervisors of the County (or other public entity which is to own a Facility) takes final action to accept dedication to it of, or transfer to it of title to, a Facility.

"Acquisition Agreement" means this Acquisition Agreement, together with any Supplement hereto.

"Act" means the Mello-Roos Community Facilities Act of 1982, Sections 53311 et seq. of the California Government Code, as amended.

"Actual Cost" means the substantiated cost of a Facility or a Discrete Component, which costs may include: (i) the costs (evidenced by payments to parties unrelated to the Developer) incurred by the Developer for the construction of such Facility or Discrete Component, (ii) the reasonable costs incurred by the Developer in preparing the Plans for such Facility or Discrete Component and the related costs of design, engineering and environmental evaluations of the Facility or Discrete Component, (iii) the fees paid to governmental agencies for obtaining permits, licenses or other governmental approvals for such Facility or Discrete Component, (iv) professional costs incurred by the Developer associated with such Facility or Discrete Component, such as engineering, legal, accounting, inspection, construction staking, materials testing and similar professional services; and (v) costs directly related to the construction and/or acquisition of a Facility or Discrete Component, such as costs of payment, performance and/or maintenance bonds, and insurance costs (including costs of any title insurance required hereunder). Actual Cost may include an amount not in excess of five percent (5%) of the cost described in

clause (i) of the preceding paragraph in respect of any construction, project management or other similar fee payable to the Developer or any party related to the Developer. Actual Cost shall not include (i) any payment for land or the acquisition of right of way dedicated to the County as a condition to the approval of the maps for the Orchard/Montrose development, or (ii) any financing fees, costs or charges, or any interest, cost of carry or other similar charges.

"Affiliate" means any entity with respect to which fifty percent (50%) or more of the ownership or voting power is held individually or collectively by the Developer and any other entity owned, controlled or under common ownership or control by or with, as applicable, the Developer, and includes the managing member of any entity that is a limited liability company, and includes all general partners of any entity which is a partnership. Control shall mean ownership of fifty percent (50%) or more of the voting power of or ownership interest in the respective entity.

"Bonds" means any bonds issued or other debt incurred by the County payable from special taxes levied by the CFD.

"Budgeted Cost" means the estimated cost of a Facility or Discrete Component as shown on Exhibit B hereto under the heading "Discrete Budget."

"CFD" means Improvement Area C of the County of Yuba Community Facilities District No. 2005-1 (Orchard/Montrose Public Improvements), created by the Board of Supervisors of the County under the Act.

"Conditions of Approval" means the conditions of approvals and mitigation measures imposed in connection with the granting of the land use entitlements for the development of land in the CFD, and any subdivision improvement, development or other agreement with the County relating to the development of the land in the CFD or the installation of the Facilities.

"County " means the County of Yuba, California.

"Developer" means Woodside Montrose Inc., and its successors and assigns to the extent permitted under Section 10.07 hereof.

"Director of Public Works" means the Director of Public Works of the County, or his written designee acting as such under this Acquisition Agreement.

"Discrete Component" means a functional segment or component of a Facility that the Director of Public Works has agreed can be separately identified, inspected and completed consistent with the provisions of Section 53313.51 of the Act, and be the subject of a Payment Request hereunder. The Discrete Components are shown on Exhibit B hereto.

"Facilities" means the public facilities described in Exhibit A hereto which are eligible to be financed by the CFD.

"Fiscal Agent" means the entity acting as fiscal agent under the Fiscal Agent Agreement.

"Fiscal Agent Agreement" means an agreement by that name to be entered into by the County for the CFD and the Fiscal Agent, that will provide for, among other matters, the issuance of the Bonds and the establishment of the Improvement Fund, as it may be amended or supplemented from time to time.

"Improvement Fund" means the acquisition account within the fund by that name to be established by the Fiscal Agent Agreement.

"Payment Request" means a document, substantially in the form of Exhibit C hereto, to be used by the Developer in requesting payment of a Purchase Price.

"Plans" means the plans, specifications, schedules and related construction contracts for the Facilities and/or any Discrete Components thereof approved pursuant to the applicable standards of the County or other entity that will own, operate or maintain the Facilities when completed and acquired. As of the date of this Acquisition Agreement, the County standards for construction incorporate those set forth in the Green Book, Standard Specifications for Public Works Construction (SSPWC), by Public Works Standards, Inc., as modified by applicable County Special Provisions.

"Purchase Price" means the amount paid by the County for a Facility and/or any Discrete Components thereof determined in accordance with Article V hereof, being an amount equal to the Actual Cost of such Facility or Discrete Component, but subject to the limitations and reductions provided for in Article V.

"Risk Manager" shall mean the person acting in the capacity of Risk Manager for the County.

"State" means the State of California.

"Supplement" means a written document amending, supplementing or otherwise modifying this Acquisition Agreement and any exhibit hereto, including any amendments to the list of Discrete Components in Exhibit B, and/or the addition to Exhibit B of additional Facilities (and Discrete Components) to be financed with the proceeds of the Bonds deposited in the Improvement Fund.

## ARTICLE II

### RECITALS

**Section 2.01. The CFD.** The Board of Supervisors of the County has established the CFD under the Act for the financing of, among other things, the acquisition, construction and installation of public facilities identified in the proceedings to form the CFD, which include the Facilities listed in Exhibit A hereto.

**Section 2.02. The Development.** The Developer is developing land located within the CFD.

**Section 2.03. The Facilities.** The Facilities are within or in the vicinity of the CFD, and the County and the Developer will benefit from a coordinated plan of design, engineering and construction of the Facilities and the development of the land owned by the Developer that is located within the CFD. The Developer acknowledges that the inclusion of Facilities in Exhibit A hereto in no way, in itself, obligates the County to issue any Bonds to finance the Facilities or implies that the County has in any way engaged the Developer to construct the Facilities, except as specifically provided in this Acquisition Agreement. The Facilities which are the subject of acquisition from the Developer under this Acquisition Agreement are only the Facilities listed in Exhibit A hereto, as such Exhibit may be amended and/or supplemented by any Supplement.

It is hereby acknowledged that some of the Facilities will be financed, in part, by Improvement Areas A and B of the County of Yuba Community Facilities District No. 2005-1 (Orchard/Montrose Public Improvements) (the "District"), pursuant to acquisition agreements between the County and the developers of the land in those improvement areas. In that regard, the County and the Developer acknowledge that the Budgeted Costs for any such Facilities shown in Exhibit B hereto represent the portion of the costs thereof allocable to the CFD (being Improvement Area C of the District).

**Section 2.04. The Financing.** The Developer and the County wish to finance the acquisition of the Facilities by the County and the payment therefor by entering into this Acquisition Agreement for the acquisition of the Facilities and payment for Discrete Components thereof as shown in Exhibit B hereto (as it may be amended and supplemented) with a portion of the proceeds of the Bonds on deposit in the Improvement Fund.

**Section 2.05. The Bonds.** The County expects that, at some time in the future when market conditions permit the issuance of the Bonds in compliance with the County's adopted Local Goals and Policies for Community Facilities Districts and it is otherwise considered by the County to be prudent in the circumstances, the County will proceed with the authorization and issuance of the Bonds under the Act and the Fiscal Agent Agreement, the proceeds of which Bonds shall be used, in part, to finance the acquisition of all or a portion of the Facilities. The execution by the County of this Acquisition Agreement in no way obligates the County to issue any Bonds, or the County to acquire any Facilities financed with proceeds of any Bonds issued, except the Facilities listed in Exhibit A hereto which are to be acquired subject to the terms and conditions set forth in this Agreement.

**Section 2.06. No Advantage to County Construction.** The County, by its approval of this Acquisition Agreement, has determined that it will obtain no advantage from undertaking the construction by the County directly of the Facilities, and that the provisions of this Acquisition Agreement require that the Facilities be constructed by the

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**ACQUISITION AGREEMENT**

**by and between the**

**COUNTY OF YUBA**

**and**

**WOODSIDE MONTROSE INC.**

**Dated as of April 1, 2008**

**Relating to:  
Improvement Area C of the  
County of Yuba  
Community Facilities District No. 2005-1  
(Orchard/Montrose Public Improvements)**

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Developer as if they had been constructed under the direction and supervision of the County. The Developer hereby represents that it has experience in the supervision of the construction of public facilities of the character of the Facilities.

**Section 2.07. Agreements.** In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the County and the Developer agree that the foregoing recitals, as applicable to each, are true and correct and further make the agreements set forth herein.

## ARTICLE III

### FUNDING

**Section 3.01. County Proceedings.** The County shall conduct all necessary proceedings under the Act for the issuance, sale and delivery of the Bonds; provided, however, that nothing herein shall be construed as requiring the County to issue the Bonds or any portion thereof. Upon the written request of the Developer, the Developer and the County staff shall meet regarding the amount, timing and other material aspects of the Bonds, but the legal proceedings and the principal amount, interest rates, terms and conditions and timing of the sale of the Bonds shall be in all respects subject to the approval of the Board of Supervisors of the County. The authorized aggregate principal amount of the Bonds is \$4,000,000.

**Section 3.02. Bonds.** As described in Section 2.05, the County expects that at some time in the future it will proceed with the issuance and delivery of the Bonds for the CFD. The County shall not be obligated to pay the Purchase Price of the Facilities or any Discrete Components thereof except from amounts on deposit in the Improvement Fund on or after the closing date of the Bonds. The County makes no warranty, express or implied, that the proceeds of the Bonds deposited and held in the Improvement Fund, and any investment earnings thereon deposited to the Improvement Fund, will be sufficient for payment of the Purchase Price of all of the Facilities.

The Developer agrees to assist the County in the preparation of any disclosure document or continuing disclosure agreement deemed necessary by the County to issue the Bonds, including but not limited to the submission of information reasonably requested by the County's disclosure counsel, or any appraiser or any market absorption consultant engaged by the County in connection with the preparation of disclosure materials for the sale of the Bonds, and the provision of such continuing disclosure obligations, certifications and legal opinions as may be reasonably required by the underwriter of the Bonds.

**Section 3.03. Bond Proceeds.** The proceeds of the Bonds shall be deposited, held, invested, reinvested and disbursed as provided in the Fiscal Agent Agreement. A portion of the proceeds of the Bonds will be set aside under the Fiscal Agent Agreement in the Improvement Fund. Moneys in the Improvement Fund shall be withdrawn therefrom in accordance with the provisions of the Fiscal Agent Agreement and the applicable provisions hereof for payment of all or a portion of the costs of construction and/or acquisition of the Facilities (including payment of the Purchase Price of Discrete Components thereof), all as herein provided.

The Developer agrees that the County alone shall direct the investment of the funds on deposit in the funds and accounts established by or pursuant to the Fiscal Agent Agreement, including the Improvement Fund, and that the Developer has no right whatsoever to direct investments under the Fiscal Agent Agreement. Notwithstanding the foregoing, the County agrees that all investments of funds held under the Fiscal Agent Agreement will be solely in Permitted Investments, as defined therein, and the County will not direct any such investment in a negligent or fraudulent manner.

The County shall have no responsibility whatsoever to the Developer with respect to any investment of funds made by the Fiscal Agent under the Fiscal Agent Agreement, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment. Any such loss may diminish the amounts available in the Improvement

Fund to pay the Purchase Price of Facilities and Discrete Components hereunder. The Developer further acknowledges that the obligation of any owner of real property in the CFD, including the Developer to the extent it owns any real property in the CFD, to pay special taxes levied in the CFD is not in any way dependent on: (i) the availability of amounts in the Improvement Fund to pay for all or any portion of the Facilities or Discrete Components thereof hereunder, or (ii) the alleged or actual misconduct of the County in the performance of its obligations under this Acquisition Agreement, the Fiscal Agent Agreement, any developer agreement or amendment thereto or any other agreement to which the Developer and the County or the County are signatories.

The Developer acknowledges that any lack of availability of amounts in the Improvement Fund to pay the Purchase Price of Facilities or any Discrete Components thereof shall in no way diminish any obligation of the Developer with respect to the construction of or contributions for public facilities required by this Acquisition Agreement or any development or other agreement to which the Developer is a party, or any governmental approval to which the Developer or any land within the CFD is subject.

## ARTICLE IV

### CONSTRUCTION OF FACILITIES

**Section 4.01. Plans.** To the extent that it has not already done so, the Developer shall cause Plans to be prepared for the Facilities. The Developer shall obtain the written approval of the Plans in accordance with applicable ordinances and regulations of the County and/or the public entity that will own and operate the Facilities. Copies of all Plans shall be provided by the Developer to the Director of Public Works upon request therefor, and, in any event, as built drawings and a written assignment of the Plans for any Facility shall be provided to the County prior to its acceptance of the Facility.

**Section 4.02. Duty of Developer to Construct.** All Facilities to be acquired hereunder specified in Exhibit B hereto, as amended from time to time, shall be constructed by or at the direction of the Developer in accordance with the approved Plans. The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of Facilities in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their best efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Facilities to be acquired by the County from the Developer hereunder.

The Developer shall be obligated: (i) to construct and cause conveyance to the County (or other applicable governmental agency) all Facilities and Discrete Components thereof listed in Exhibit B hereto, and (ii) to use its own funds to pay all costs thereof in excess of the Purchase Prices thereof to be paid therefor hereunder, except as may be otherwise expressly provided in the Conditions of Approval.

The Developer shall not be relieved of its obligation to construct each Facility and Discrete Component thereof listed in Exhibit B hereto and convey each such Facility to the County in accordance with the terms hereof, even if, (i) because of the limitations imposed by Section 5.06 hereof, the Purchase Price for such Discrete Component or Facility is less than the Actual Cost, or cost to the Developer, of such Discrete Component or Facility, or (ii) there are insufficient funds in the Improvement Fund to pay the Purchase Prices thereof, and, in any event, this Acquisition Agreement shall not affect any obligation of any owner of land in the CFD under the Conditions of Approval, with respect to the public improvements required in connection with the development of the land within the CFD.

**Section 4.03. Relationship to Public Works; Bidding Requirements.** The following shall apply to all contracts applicable to the Facilities and any Discrete Components thereof:

A. General. This Acquisition Agreement is for the acquisition by the County of the Facilities and payment for Discrete Components thereof listed in Exhibit B hereto from moneys in the Improvement Fund and is not intended to be a public works contract. The County and the Developer agree that the Facilities are of local, and not state-wide concern, and that the provisions of the California Public Contract Code shall not apply to the construction of the Facilities. The County and the Developer agree that the Developer shall award all contracts for the construction

of the Facilities and the Discrete Components thereof listed in Exhibit B hereto and that this Acquisition Agreement is necessary to assure the timely and satisfactory completion of the Facilities and that compliance with the Public Contract Code with respect to the Facilities would work an incongruity and would not produce an advantage to the County or the CFD.

B. Bidding Procedures. Notwithstanding the foregoing, the Developer shall award or shall have awarded all contracts for construction of the Facilities and any Discrete Components thereof, and materials related thereto, by means of a bid process consistent with this Section 4.03 B. or otherwise acceptable to the Director of Public Works, in each case consistent with applicable County regulations. The Developer shall establish or shall have established a list of written criteria acceptable to the Director of Public Works (including experience, ability to perform on schedule and financial ability) to determine qualified contractors for any contract. Such general contractors shall comply with any applicable County regulations. Formal bids shall be requested or shall have been requested from those entities on the list of qualified contractors; and if no such list is established for any specific Facility or Discrete Component thereof, the Developer shall obtain or shall have obtained at least three bids for such Facility or Discrete Component thereof by means of an informal bidding process reasonably acceptable to the Director of Public Works.

The Developer shall prepare or shall have prepared bid packages, including engineering reports and estimates, for each of the Facilities (or any specific Discrete Components thereof to be separately bid), and shall submit or shall have submitted such packages to the Director of Public Works, reasonably in advance of the anticipated bid, for review. If the Developer would like the option to proceed under the provisions of Section 4.03 C. below, the bid documents shall expressly disclose or have disclosed the rights of the Developer to elect to perform or have its agent perform the work with a specific reference to Section 53329.5 of the Act. Upon agreement by the Director of Public Works and the Developer on the content of such bid packages and a schedule of bid prices, plus an acceptable margin of variance, the Developer may proceed to take or has taken bids on the applicable Facilities (or Discrete Components). Bid packages shall be provided or have been provided to at least three qualified bidders, unless the Developer and the Director of Public Works reasonably determine or have determined that three such bidders are not available. A list of qualified bidders shall be provided or has been provided to the Director of Public Works prior to the submission of bid packages to the qualified bidders. At the reasonable request of the Developer, the Director of Public Works shall also meet with the qualified general contractors to discuss the requirements of the particular contract to be bid.

If a bid is or was within the constraints of the approved bid package, the Developer shall, subject to the provisions of Section 4.03 C. below, award or has awarded the applicable contract to the lowest responsible bidder. An award to an only bidder is permissible, provided that the Developer provides or has provided the Director of Public Works with evidence satisfactory to the Director of Public Works, that a substantial effort was made to obtain more than one bid. If all bids are (or were) in excess of the bid parameters, the Developer shall obtain or has obtained the consent of the Director of Public Works prior to awarding the contract. Upon written request of the Director of Public Works, the Developer shall provide an analysis of bids for construction and materials for the Facilities or applicable Discrete Components, indicating how the winning bid was determined and how it was consistent with the applicable bid package. The Developer shall promptly

publish or had published notice of the award of any contract in such paper as the Director of Public Works shall specify.

C. Developer's Election to Perform Work. Notwithstanding the provisions of Section 4.03 B. above, and in accordance with Section 53329.5 of the Act, if at the time bids are received for any particular Facility or Discrete Component the Developer owns three-fourths of the area of lands in the CFD taxed or liable to be taxed for purposes of the CFD, the Developer or a designated agent thereof (who shall provide the Director of Public Works with a written declaration under penalty of perjury in form acceptable to the Director of Public Works to the effect that the Developer so owns such land and, if applicable, that such other entity is such an agent), the Developer or its designated agent may, within 10 days after the publication of the notice of the award of the contract, elect to perform the work and enter into a written contract to do the whole work at prices not exceeding the prices specified in the bid of the bidder to whom the contract was awarded, and all work done under the contract shall be subject to all provisions of this Acquisition Agreement other than the requirement that the contract work be awarded to and performed by the low bidder. The Developer shall advise the Director of Public Works of any election under the preceding sentence, and shall promptly provide written notice to the bidder to whom the contract was awarded of its election to perform the work, and that the services of such winning bidder will no longer be required. The Developer (and its agents) may only avail itself of the foregoing provisions of this Section 4.03 C. if the bid documents for the respective Facility or Discrete Component expressly disclosed its right to do so, as required by the second paragraph of Section 4.03 B. above.

If the Developer elects not to perform the work and not to enter into a written contract for that work within 10 days of publication of the notice of the award of the contract (as evidenced by its failure to provide the written notices described in the second preceding sentence within such 10 day period), or if the Developer (or its agent, as applicable) fails to commence the work within 15 days after the date of the written contract entered into by the Developer (or its agent) and the County and to continue that work with diligence to completion, as determined by the Board of Supervisors of the County, a contract may be entered into by the County, on behalf of the CFD with the original bidder to whom the contract was awarded at the prices specified in his or her bid.

D. Scheduling. The Developer shall develop or cause to be developed and shall maintain or cause to be maintained a schedule for the construction of the Facilities to be acquired hereunder, the construction of which has not been substantially completed as of the date of execution of this Acquisition Agreement. The Developer shall provide the Director of Public Works with complete copies of the schedule and each update to the schedule for the Director's review.

E. Periodic Meetings. From time to time, at the request of the Director of Public Works, representatives of the Developer shall meet and confer with County staff, consultants and contractors regarding matters arising hereunder with respect to the Facilities, Discrete Components and the progress in constructing and acquiring the same, and as to any other matter related to the Facilities or this Acquisition Agreement. The Developer shall advise the Director of Public Works in advance of any coordination and scheduling meetings to be held with contractors relating to the Facilities, in the ordinary course of performance of an individual contract. The Director of Public Works or the Director of Public Work's designated representative shall have the right to be present at such meetings, and to meet and confer with

individual contractors if deemed advisable by the Director of Public Works to resolve disputes and/or ensure the proper completion of the Facilities.

**Section 4.04. Independent Contractor.** In performing this Acquisition Agreement, the Developer is an independent contractor and is not the agent or employee of the County, the County or the CFD. None of the County, the County or the CFD shall be responsible for making any payments directly or otherwise to any contractor, subcontractor, agent, consultant, employee or supplier of the Developer.

**Section 4.05. Performance and Payment Bonds.** The Developer agrees to comply with all applicable performance and payment bonding requirements of the County (and other applicable public entities and/or public utilities) with respect to the construction of the Facilities. Performance and payment bonds shall not be required of the Developer to the extent moneys are available in the Improvement Fund to pay the Purchase Price of a Facility (and consistent with the Budgeted Costs therefore shown in Exhibit B and the limitations expressed in Section 5.06 hereof); provided that all contractors and/or subcontractors employed by the Developer in connection with the construction of Facilities shall provide a labor and materials and performance bonds which name the County as an additional insured.

**Section 4.06. Contracts and Change Orders.** The Developer shall be responsible for entering into all contracts and any supplemental agreements (commonly referred to as "change orders") required for the construction of the Facilities listed in Exhibit A hereto, as amended from time to time, and all such contracts and supplemental agreements shall be submitted to the Director of Public Works. Prior approval of supplemental agreements by the Director of Public Works shall only be required for such change orders which in any way materially alter the quality or character of the subject Facilities, or which involve an amount equal to the greater of ten percent (10%) of the aggregate amount of the contract involved. The County expects that such contracts and supplemental agreements needing prior approval by the Director of Public Works will be approved or denied (any such denial to be in writing, stating the reasons for denial and the actions, if any, that can be taken to obtain later approval) within ten (10) business days of receipt by the Director of Public Works thereof. Any approval by the Director of Public Works of a supplemental agreement shall in no way affect the Budgeted Costs listed in Exhibit B for any related Facility or Discrete Component, but to the extent that it increases the Actual Cost of a Facility or Discrete Component, such increased cost may be payable as part of the Purchase Price of the related Facility or Discrete Component as provided in Section 5.06A. hereof.

Notwithstanding the foregoing, if the Developer elects to approve a change order otherwise subject to the preceding paragraph prior to the approval of the Director of Public Works, the cost of the change order shall not be included in the Purchase Price of the applicable Facility if the change order is not subsequently approved by the Director of Public Works.

**Section 4.07. Time for Completion.** The Developer agrees that this Acquisition Agreement is for the benefit of the County and the Developer and, therefore, the Developer represents that it expects to complete the Facilities and to have requested payment for the Facilities under this Acquisition Agreement within thirty-six (36) calendar months from the date of the closing of the Bonds. Any failure to complete the Facilities within said time period shall not, however, in itself, constitute a breach by the Developer of the terms of this Acquisition Agreement.

## ARTICLE V

### ACQUISITION AND PAYMENT

**Section 5.01. Inspection.** No payment hereunder shall be made by the County to the Developer for a Facility or Discrete Component thereof until the Facility or Discrete Component thereof has been inspected and found to be completed in accordance with the approved Plans by the County or other applicable public entity or utility. The County shall make periodic site inspections of the Facilities to be acquired hereunder; provided that in no event shall the County incur any liability for any delay in the inspection of any Facilities or Discrete Components. For Facilities to be acquired by other public entities or utilities, the Developer shall be responsible for obtaining such inspections and providing written evidence thereof to the Director of Public Works. The Developer agrees to pay all inspection, permit and other similar fees of the County applicable to construction of the Facilities, subject to reimbursement therefor as an Actual Cost of the related Facility.

**Section 5.02. Agreement to Sell and Purchase Facilities.** The Developer hereby agrees to sell the Facilities listed in Exhibit B hereto to the County (or other applicable public agency that will own a Facility), and the County hereby agrees to use amounts in the Improvement Fund to pay the Purchase Prices thereof to the Developer, subject to the terms and conditions hereof. The County shall not be obligated to finance the purchase of any Facility until the Facility is completed and the Acceptance Date for such Facility has occurred; provided that the County has agreed hereunder to make payments to the Developer for certain Discrete Components of Facilities expressly shown in Exhibit B hereto, as it may be supplemented by any Supplement. The Developer acknowledges that the Discrete Components have been identified for payment purposes only, and that the County (or other applicable public agency that will own a Facility) shall not accept a Facility of which a Discrete Component is a part until the entire Facility has been completed. The County acknowledges that the Discrete Components do not have to be accepted by the County (or other applicable public agency that will own a Facility) as a condition precedent to the payment of the Purchase Price therefor, but any such payment shall not be made until the Discrete Component has been completed in accordance with the Plans therefor, as determined by the Director of Public Works. In any event, the County shall not be obligated to pay the Purchase Price for any Facility or Discrete Component except from the moneys in the Improvement Fund.

**Section 5.03. Payment Requests.** In order to receive the Purchase Price for a completed Facility or Discrete Component, inspection thereof under Section 5.01 shall have been made and the Developer shall deliver to the Director of Public Works: (i) a Payment Request in the form of Exhibit C hereto for such Facility or Discrete Component, together with all attachments and exhibits required by Exhibit C and this Section 5.03 to be included therewith (including, but not limited to Attachments 1 and 2 to Exhibit C), and (ii) if payment is requested for a completed Facility, (a) if the property on which the Facility is located is not owned by the County (or other applicable public agency that will own the Facility) at the time of the request, a copy of the recorded documents conveying to the County (or other applicable public agency that will own the Facility) Acceptable Title to the real property on, in or over which such Facility is located, as described in Section 6.01 hereof, (b) a copy of the recorded notice of completion of such Facility (if applicable), (c) to the extent paid for with the proceeds of the Bonds, an assignment to the CFD of any reimbursements that may be payable with respect to the Facility, such as public or private utility reimbursements or reimbursements by reason of oversizing of Facilities, and (d) an assignment of the warranties and guaranties for such Facility, as described in Section 6.05 hereof, in a form acceptable to the County.

**Section 5.04. Processing Payment Requests.** Upon receipt of a Payment Request (and all accompanying documentation), the Director of Public Works shall conduct a review in order to confirm that such request is complete, that such Discrete Component or Facility identified therein was constructed in accordance with the Plans therefor, and to verify and approve the Actual Cost of such Discrete Component or Facility specified in such Payment Request. The Director of Public Works shall also conduct such review as is required in his discretion to confirm the matters certified in the Payment Request. The Developer agrees to cooperate with the Director of Public Works in conducting each such review and to provide the Director of Public Works with such additional information and documentation as is reasonably necessary for the Director of Public Works to conclude each such review. For any Facilities to be acquired by another public entity or utility, the Developer shall provide evidence acceptable to the Director of Public Works that such Facilities are acceptable to such entity or utility. Within ten (10) business days of receipt of any Payment Request, the Director of Public Works expects to review the request for completeness and notify the Developer whether such Payment Request is complete, and, if not, what additional documentation must be provided. If such Payment Request is complete, the Director of Public Works expects to provide a written approval or denial (specifying the reason for any denial) of the request within 30 days of its submittal. If a Payment Request seeking reimbursement for more than one Facility or Discrete Component is denied, the Director of Public Works shall state whether the Payment Request is nevertheless approved and complete for any one or more Facilities or Discrete Components and any such Facilities or Discrete Components shall be processed for payment under Section 5.05 notwithstanding such partial denial.

**Section 5.05. Payment.** Upon approval of the Payment Request by the Director of Public Works, the Director of Public Works shall sign the Payment Request and forward the same to the County's Auditor-Controller. Upon receipt of the reviewed and fully signed Payment Request, and following the issuance of the Bonds, the County's Auditor-Controller shall, within the then current County financial accounting payment cycle but in any event within thirty (30) business days of the later of receipt of the approved Payment Request or the date of issuance of the Bonds, cause the same to be paid by the Fiscal Agent under the applicable provisions of the Fiscal Agent Agreement, to the extent of funds then on deposit in the Improvement Fund. Any approved Payment Request not paid due to an insufficiency of funds in the Improvement Fund, shall be paid promptly following the deposit into the Improvement Fund of proceeds of any investment earnings or other amounts transferred to the Improvement Fund under the terms of the Fiscal Agent Agreement.

The parties hereto acknowledge that (i) the Developer is constructing Facilities and Discrete Components prior to the issuance of the Bonds, (ii) the Developer may be submitting Payment Requests to the County in advance of such an issuance of the Bonds, with knowledge that there will be no funds available in the Improvement Fund for reimbursement until the Bonds are issued, (iii) the Facilities and Discrete Components that are the subject of the Payment Requests submitted when there are insufficient proceeds will be inspected and reviewed by the Director of Public Works as set forth in this Article V and that such Payment Requests will be reviewed by the Director of Public Works and, if appropriate, submitted in the manner set forth in Sections 5.03, 5.04 and 5.05, and (iv) the payment for any Payment Requests approved in the preceding manner will be deferred until the date, if any, on which there are Bond proceeds deposited to the Improvement Fund to make such payment, at which time the Director of Public Works will forward the approved Payment Requests to the County's Auditor-Controller, who will then arrange for payment from the Fiscal Agent in the manner set forth above.

The Purchase Price paid hereunder for any Facility or Discrete Component shall constitute payment in full for such Facility or Discrete Component, including, without limitation, payment for all labor, materials, equipment, tools and services used or incorporated in the work, supervision, administration, overhead, expenses and any and all other things required, furnished or incurred for completion of such Facility or Discrete Component, as specified in the Plans.

**Section 5.06. Restrictions on Payments.** Notwithstanding any other provisions of this Acquisition Agreement, the following restrictions shall apply to any payments made to the Developer under Sections 5.02 and 5.05 hereof:

A. Amounts of Payments. Subject to the following paragraphs of this Section 5.06, payments for each Discrete Component or Facility will be made only in the amount of the Purchase Price for the respective Discrete Component or Facility; however, if the Actual Cost exceeds the Budgeted Cost for a Discrete Component or a Facility, the excess shall be borne by the Developer until such time as a Budgeted Cost for another Discrete Component or Facility is greater than the Actual Cost therefore, in which event the savings shall be applied to reduce any excess of Actual Cost over Budgeted Cost previously paid for any Facility or Discrete Component by the Developer. Any savings attributable to the Actual Cost being less than Budgeted Cost which are not disbursed under the previous sentence to cover unreimbursed Actual Costs or as otherwise consented to by the Developer shall be carried forward to be credited against future cost overruns, or costs related to supplemental agreements (change orders), or if not needed for either of the foregoing purposes, to be disposed of as provided in the Fiscal Agent Agreement for excess monies in the Improvement Fund. Following the completion of the construction of all of the Facilities in Exhibit B hereto, any monies remaining in the Improvement Fund may be used to pay for any Actual Costs that were in excess of the related Budgeted Costs for such Facilities.

Nothing herein shall require the County in any event (i) to pay more than the Actual Cost of a Facility or Discrete Component, or (ii) to pay an amount which would cause the sum of all Purchase Prices paid for all acquired Facilities and Discrete Components to exceed the sum of all Budgeted Costs for such acquired items, or (iii) to make any payment beyond the available funds in the Improvement Fund. The parties hereto acknowledge and agree that all payments to the Developer for the Purchase Prices of Facilities or Discrete Components are intended to be reimbursements to the Developer for monies already expended or for immediate payment by the Developer (or directly by the County) to third parties in respect of such Facilities and/or Discrete Components.

B. Joint or Third Party Payments. The County may make any payment jointly to the Developer and any mortgagee or trust deed beneficiary, contractor or supplier of materials, as their interests may appear, or solely to any such third party, if the Developer so request the same in writing or as the County otherwise determines such joint or third party payment is necessary to obtain lien releases.

C. Withholding Payments. The County shall be entitled, but shall not be required, to withhold any payment hereunder for a Discrete Component or a Facility if the Developer or any Affiliate is delinquent in the payment of ad valorem real property taxes, special assessments or taxes, or Special Taxes levied in the CFD. In the event of any such delinquency, the County shall only make payments hereunder, should any be made at the County's sole discretion, directly to contractors or other third parties employed in connection with the construction of

the Facilities or to any assignee of the Developer's interests in this Acquisition Agreement (and not to the Developer or any Affiliate), until such time as the Developer provides the Director of Public Works with evidence that all such delinquent taxes and assessments have been paid.

The County shall be entitled to withhold payment for any Discrete Component or Facility constructed on land not previously dedicated or otherwise conveyed to the County, until Acceptable Title to such land is conveyed to the County or other public entity that will own the respective Facility, as described in Article VI hereof.

The County shall be entitled to withhold any payment hereunder for a Discrete Component or a Facility that is the subject of a Payment Request until it is satisfied that any and all claims for labor and materials have been paid by the Developer for the Discrete Component that is the subject of a Payment Request, or conditional lien releases have been provided by the Developer for such Discrete Component. The County, in its discretion, may waive this limitation upon the provision by the Developer of sureties, undertakings, securities and/or bonds of the Developer or appropriate contractors or subcontractors and deemed satisfactory by the Director of Public Works to assure payment of such claims.

The County shall be entitled to withhold payment for any Facility hereunder to be owned by the County (or the final Discrete Component of any such Facility) until: (i) the Director of Public Works determines that the Facility is ready for its intended use, (ii) the Acceptance Date for the Facility has occurred and the requirements of Section 6.01, if applicable to such Facility, have been satisfied, and (iii) a Notice of Completion executed by the Developer, in a form acceptable to the Director of Public Works, has been recorded for the Facility and general lien releases conditioned solely upon payment from the proceeds of the Bonds to be used to acquire such Facility (or final Discrete Component) have been submitted to the Director of Public Works for the Facility. The County hereby agrees that the Developer shall have the right to post or cause the appropriate contractor or subcontractor to post a bond with the County to indemnify it for any losses sustained by the County or the County because of any liens that may exist at the time of acceptance of such a Facility, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director of Public Works. The County shall be entitled to withhold payment for any Facility (or the final Discrete Component of any such Facility) to be owned by other governmental entities, until the Developer provides the Director of Public Works with evidence that the governmental entity has accepted dedication of and/or title to the Facility. If the Director of Public Works determines that a Facility is not ready for intended use under (i) above, the Director of Public Works shall so notify the Developer as soon as reasonably practicable in writing specifying the reason(s) therefor.

Nothing in this Acquisition Agreement shall be deemed to prohibit the Developer from contesting in good faith the validity or amount of any mechanics or materialman's lien nor limit the remedies available to the Developer with respect thereto so long as such delay in performance shall not subject the Facilities or any Discrete Component thereof to foreclosure, forfeiture or sale. In the event that any such lien is contested, the Developer shall only be required to post or cause the delivery of a bond in an amount equal to twice the amount in dispute with respect to any such contested lien, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director of Public Works.

The County shall be entitled to withhold any payment hereunder for a Discrete Component or Facility until the Developer has provided evidence of insurance required by Section 7.01 hereof.

D. Retention. The County shall withhold in the Improvement Fund an amount equal to ten percent (10%) of the Purchase Price of each Facility or Discrete Component to be paid hereunder. Any such retention will be released to the Developer upon final completion and acceptance of the related Facility and the expiration of a maintenance period consistent with applicable County policy and Section 6.06 hereof.

Notwithstanding the foregoing, the Developer shall be entitled to payment of any such retention upon the completion and acceptance of a Facility or Discrete Component, if a maintenance or warranty bond is posted in lieu thereof in accordance with Section 6.06 hereof. Payment of any retention shall also be contingent upon the availability of monies in the Improvement Fund therefor. No retention shall apply if the Developer proves to the Director of Public Works satisfaction that the Developer's contracts for the Facilities (or Discrete Components) provide for the same retention as herein provided, so that the Purchase Price paid for the Facility or Discrete Component is at all times net of the required retention.

E. Frequency. Unless otherwise agreed to by the Director of Public Works, no more than one Payment Request shall be submitted by the Developer in any calendar month.

**Section 5.07. Defective or Nonconforming Work.** If any of the work done or materials furnished for a Facility or Discrete Component are found by the Director of Public Works to be defective or not in accordance with the applicable Plans: (i) and such finding is made prior to payment for the Purchase Price of such Facility or Discrete Component hereunder, the County may withhold payment therefor until such defect or nonconformance is corrected to the satisfaction of the Director of Public Works, or (ii) and such finding is made after payment of the Purchase Price of such Facility or Discrete Component, the County and the Developer shall act in accordance with the applicable County improvement standard.

**Section 5.08. Modification of Discrete Components.** Upon written request of the Developer, the Director of Public Works shall consider modification of the description of any Discrete Component. Any such modification shall be subject to the written approval of the Director of Public Works, and shall not diminish the overall Facilities to be provided by the Developer hereunder (in a material way such that the change invalidates any of the assumptions used in the appraisal conducted to sell the Bonds) or in any way increase the total Budgeted Costs identified in Exhibit B. It is expected that any such modification will be solely for purposes of dividing up the work included in any Discrete Component for purposes of acceptance and payment, for example: (i) separation of irrigation and landscaping from other components of a Discrete Component, (ii) modifications to allow for payment for roadway improvements prior to completion of the top course of paving, (iii) division of utility construction by utility work orders, or (iv) modifications to allow for payment for a Facility that is substantially complete and available for public use, except for designated items to be completed later and such completion does not substantially interfere with the use of the funded portion of the Facility. In most instances, the Director of Public Works will only approve modifications for payment purposes when there will be an unusual period of time between the completion and acceptance of such divided work or to better implement the phasing of the overall construction of the Facilities; but in no such

circumstances shall this Section in any way obligate the Director of Public Works to approve such modification.

## ARTICLE VI

### OWNERSHIP AND TRANSFER OF FACILITIES

**Section 6.01. Facilities to be Owned by the County – Conveyance of Land and Easements to County.** Acceptable Title to all property on, in or over which each Facility to be acquired by the County will be located, shall be deeded over to the County by way of grant deed, quitclaim, or dedication of such property, or easement thereon, if such conveyance of interest is approved by the County as being a sufficient interest therein to permit the County to properly own, operate and maintain such Facility located therein, thereon or thereover, and to permit the Developer to perform its obligations as set forth in this Acquisition Agreement. The Developer agrees to assist the County in obtaining such documents as are required to obtain Acceptable Title. Completion of the transfer of title to land shall be accomplished prior to the payment of the Purchase Price for a Facility (or the last Discrete Component thereof) and shall be evidenced by recordation of the acceptance thereof by the Board of Supervisors or the designee thereof.

**Section 6.02. Facilities to be Owned by the County – Title Evidence.** Upon the request of the County, the Developer shall furnish to the County a preliminary title report for land with respect to Facilities to be acquired by the County and not previously dedicated or otherwise conveyed to the County, for review and approval at least fifteen (15) calendar days prior to the transfer of Acceptable Title to a Facility to the County. The Director of Public Works shall approve the preliminary title report unless it reveals a matter which, in the judgment of the County, could materially affect the County's use and enjoyment of any part of the property or easement covered by the preliminary title report. In the event the County does not approve the preliminary title report, the County shall not be obligated to accept title to such Facility and the County shall not be obligated to pay the Purchase Price for such Facility (or the last Discrete Component thereof) until the Developer has cured such objections to title to the satisfaction of the County.

**Section 6.03. Facilities Constructed on Private Lands.** If any Facilities to be acquired are located on privately-owned land, the owner thereof shall retain title to the land and the completed Facilities until acquisition of the Facilities under Article V hereof. Pending the completion of such transfer, the Developer shall not be entitled to receive any payment for any such Facility or the last Discrete Component thereof. The Developer shall, however, be entitled to receive payment for Discrete Components (other than the last Discrete Component) upon making an irrevocable offer of dedication of such land in form and substance acceptable to the Director of Public Works. Notwithstanding the foregoing, upon written request of the Director of Public Works before payment for any Discrete Component of such a Facility, the Developer shall convey or cause to be conveyed Acceptable Title thereto in the manner described in Sections 6.01 and 6.02 hereof.

**Section 6.04. Facilities Constructed on County Land.** If the Facilities to be acquired are on land owned by the County, the County shall cause the County to grant to the Developer a license to enter upon such land for purposes related to the construction (and maintenance pending acquisition) of the Facilities. The provisions for inspection and acceptance of such Facilities otherwise provided herein shall apply.

**Section 6.05. Facilities to be Acquired by Other Public Agencies.** With respect to any Facility to be acquired by a public entity other than the County, the Developer shall comply with such entities rules and regulations regarding title and conveyance of property, and provide the Director of Public Works with evidence of such compliance, prior to the payment of the Purchase Price for any such Facility (or the last Discrete Component

thereof). It is hereby acknowledged that the County has entered into a Joint Community Facilities Agreement with the Linda County Water District, dated as of October 31, 2005, and that the portion of Facilities referenced therein will be subject to the provisions of the preceding sentence, the third sentence of Section 5.01 and the other provisions of this Agreement that apply to Facilities to be acquired by a public agency other than the County but the Purchase Prices of which are to be funded with amounts in the Improvement Fund.

**Section 6.06. Maintenance and Warranties.** The Developer shall maintain each Discrete Component in good and safe condition until the Acceptance Date of the Facility of which such Discrete Component is a part. Prior to the Acceptance Date, the Developer shall be responsible for performing any required maintenance on any completed Discrete Component or Facility. On or before the Acceptance Date of the Facility, the Developer shall assign to the County all of the Developer's rights in any warranties, guarantees, maintenance obligations, reimbursement obligations or other evidence of contingent obligations of third persons with respect to such Facility to be funded by available amounts in the Improvement Fund. The Developer shall maintain or cause to be maintained each Facility to be owned by the County (including the repair or replacement thereof) for a period of one year from the Acceptance Date thereof, or, alternatively, shall provide a bond reasonably acceptable in form and substance to the Director of Public Works for such period and for such purpose (specifically, a one-year maintenance period for landscaping improvements, and for the posting of a warranty bond to remain in effect for one year as to other Facilities), to insure that defects, which appear within said period will be repaired, replaced, or corrected by the Developer, at its own cost and expense, to the satisfaction of the Director of Public Works. The Developer shall commence to repair, replace or correct any such defects within thirty (30) days after written notice thereof by the County to the Developer, and shall complete such repairs, replacement or correction as soon as practicable. After such one-year period, the County (or other public entity that has accepted title to the Facility) shall be responsible for maintaining such Facility. Any warranties, guarantees or other evidences of contingent obligations of third persons with respect to the Facilities to be acquired by the County shall be delivered to the Director of Public Works as part of the transfer of title.

## ARTICLE VII

### INSURANCE; RESPONSIBILITY FOR DAMAGE

**Section 7.01. Liability Insurance Requirements.** The Developer shall provide to the Director of Public Works evidence of insurance and endorsements thereto on forms acceptable to the Risk Manager prior to any payment by the County of the Purchase Price of any Facility or Discrete Component, unless otherwise waived by the Director of Public Works, in whole or in part, in his sole and absolute discretion.

The Developer shall procure and maintain for the duration of this Acquisition Agreement the following minimum insurance coverage and limits against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work covered by this Acquisition Agreement by the Developer, its agents, representatives, employees or subcontractors:

- (a) Premises, operation and mobile equipment.
- (b) Products and completed operations.
- (c) Explosion, collapse and underground hazards.
- (d) Personal injury.
- (e) Contractual liability.
- (f) Errors and omissions for work performed by design professionals.

<u>COVERAGE PER OCCURRENCE</u>	<u>ISO FORM</u>	
Commercial General	CG 00 0111 85 or 88 Rev.	
Liability (Primary)		\$2,000,000
Business Auto	CA 00 01 06 92	\$1,000,000
Workers' Compensation/ Employers' Liability		Statutory \$1,000,000
Errors and Omissions		\$1,000,000

Combined single limit per occurrence shall include coverage for bodily injury, personal injury, and property damage for each accident and a two million dollar (\$2,000,000) general aggregate. Insurance shall be placed with insurers that are admitted to the State of California with an AM Best's Rating of no less than A:VII.

The Developer shall furnish to the Risk Manager certificates of insurance and endorsements on forms specified by the Risk Manager, duly authenticated, giving evidence of the insurance coverage required in this contract and other evidence of coverage or copies of policies as may be reasonably required by the Risk Manager from time to time. Each required insurance policy coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after ten (10) days written notice by certified mail, return receipt requested, has been given to the Risk Manager.

Liability coverage shall not be limited to the vicarious liability or supervising role of any additional insured nor shall there be any limitation with the severability clause. Coverage shall contain no limitation endorsements and there shall be no endorsement or modification limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

All liability insurance shall be on an occurrence basis. Insurance on a claims made basis will be rejected. Any deductibles or self-insured retentions shall be declared to and shall be explicitly approved by the Risk Manager.

All subcontractors employed on the work referred to in this Acquisition Agreement shall meet the insurance requirements set forth in this Section 7.01 for the Developer, unless waived in whole or in part by the Director of Public Works in his sole and absolute discretion. The Developer shall furnish certificates of insurance and endorsements for each subcontractor, or the Developer shall furnish the Risk Manager an endorsement including all subcontractors as insureds under its policies.

The County shall not be liable for any accident, loss, or damage to the work prior to its completion and acceptance, and the Developer shall save, keep and hold harmless the County and its employees, consultants, Boardmembers, officers, officials, employees, agents and volunteers from all damages, costs or expenses in law or equity that may at any time arise or be claimed because of damages to property, or personal injury received by reason of or in the course of performing work, which may be caused by any negligent act or omission by the Developer or any of the Developer's employees, or any subcontractor.

The cost of insurance required by this subsection shall be born by the Developer and its subcontractors and no compensation for purchasing insurance or additional coverage needed to meet these requirements will be paid for by the County.

In the event that any required insurance is reduced in coverage, canceled for any reason, voided or suspended, the Developer agrees that the County may arrange for insurance coverage as specified, and the Developer further agrees that administrative and premium costs may be deducted from any deposits or bonds the County may have, or from the Improvement Fund. A reduction or cancellation will be grounds for termination of this Acquisition Agreement and will cause a halt to payment for any work on the Facilities until the insurance is reestablished.

Liability policies shall contain, or be endorsed to contain the following provisions:

(a) General Liability and Automobile Liability: The County and its employees, consultants, Boardmembers, officers, officials, employees and volunteers shall be covered as additional insureds using ISO form CG 00 01 11 85 or 88 as it respects: liability arising out of activities performed by or on behalf of the Developer; products and completed operations of the Developer's premises owned, occupied or used by the Developer; or automobiles owned, leased, hired or borrowed by the Developer. The coverage shall contain no special limitations on the scope or protection afforded to the County and its employees, consultants, Boardmembers, officers, officials, employees or volunteers.

The Developer's insurance coverage shall be primary insurance with respect to the County and its employees, consultants, Boardmembers, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County and its employees, consultants, Boardmembers, officers, officials, employees and volunteers shall be excess of the Developer's insurance and shall not contribute with it.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County and its employees, consultants, Boardmembers, officers, officials, employees, and volunteers.

The Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(b) **Workers' Compensation and Employer's Liability:** The Developer and all subcontractors shall have workers' compensation for all employees in conformance with the requirements in Section 3700 of the Labor Code.

(c) **Error and Omissions Liability:** The Developer and all subcontractors who are design professionals shall have and maintain errors and omissions insurance.

**Section 7.02. Responsibility for Damage.** The Developer shall take and assume all responsibility for the work performed as part of the Facilities constructed pursuant to this Acquisition Agreement. The Developer shall bear all losses and damages directly or indirectly resulting to it, to the County and its employees, consultants, Boardmembers, officers, employees and agents, or to others on account of the performance or character of the work, unforeseen difficulties, accidents of any other causes whatsoever.

The Developer shall assume the defense of and indemnify and save harmless the County and its employees, consultants, Boardmembers, officers, employees, and agents, from and against any and all claims, losses, damage, expenses and liability of every kind, nature, and description, directly or indirectly arising from the performance of the work, regardless of responsibility for negligence, and from any and all claims, losses, damage, expenses, and liability, howsoever the same may be caused, resulting directly, or indirectly from the nature of the work covered by this Acquisition Agreement, regardless of responsibility for negligence, to the fullest extent permitted by law. In accordance with Civil Code section 2782, nothing in this Section 7.02 shall require defense or indemnification for death, bodily injury, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the County and its employees, consultants, Boardmembers, agents, servants or independent contractors who are directly responsible to the County or the County, or for defects in design furnished by such persons. Moreover, nothing in this Section 7.02 shall apply to impose on the Developer, or to relieve the County from, liability for active negligence of the County or its employees or consultants as delineated in Civil Code Section 2782. Any relief for determining the County's sole or active negligence shall be determined by a court of law.

The County does not, and shall not, waive any rights against the Developer which it may have by reason of the aforesaid hold harmless agreements because of the acceptance by the County, or deposit with the County by the Developer, of any insurance policies described in Section 7.01. The aforesaid hold harmless agreement by the Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered by reasons of any of the aforesaid operations of the Developer, or any subcontractor, regardless of whether or not such insurance policies are determined to be applicable to any of such damages or claims for damages.

No act by the County or its representatives in processing or accepting any plans, in releasing any bond, in inspecting or accepting any work, or of any other nature, shall in any respect relieve the Developer or anyone else from any legal responsibility, obligation or liability it might otherwise have.

The Developer's obligations under this Section 7.02 with respect to any specific Facility shall terminate upon the expiration of the one-year warranty period for such Facility provided for in Section 6.06 above.

## ARTICLE VIII

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 8.01. Representations, Covenants and Warranties of the Developer.** The Developer represents and warrants for the benefit of the County as follows:

A. Organization. The Developer is in compliance with all applicable laws of the State, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

B. Authority. The Developer has the power and authority to enter into this Acquisition Agreement, and has taken all action necessary to cause this Acquisition Agreement to be executed and delivered, and this Acquisition Agreement has been duly and validly executed and delivered by the Developer.

C. Binding Obligation. This Acquisition Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to bankruptcy and other equitable principles.

D. Compliance with Laws. The Developer shall not with knowledge commit, suffer or permit any act to be done in, upon or to the lands of the Developer in the CFD or the Facilities in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the lands in the CFD or the Facilities.

E. Requests for Payment. The Developer represents and warrants that (i) it will not request payment from the County for the acquisition of any improvements that are not part of the Facilities, and (ii) it will diligently follow all procedures set forth in this Acquisition Agreement with respect to the Payment Requests.

F. Financial Records. Until the date which is one year following the date of the final acceptance of the Facilities, the Developer covenants to maintain proper books of record and account for the construction of the Facilities and all costs related thereto. Such accounting books shall be maintained in accordance with generally accepted accounting principles, and shall be available for inspection by the County or its agent at any reasonable time during regular business hours on reasonable notice.

G. Prevailing Wages. The Developer covenants that, with respect to any contracts or subcontracts for the construction of the Facilities to be acquired from the Developer hereunder, it will assure complete compliance with any applicable law or regulation for the payment of prevailing wages. Upon request of the Director of Public Works, the Developer shall submit certified payrolls or information reasonably requested by the County to evidence compliance with this Section 8.01G.

H. Plans. The Developer represent that it has obtained or will obtain approval of the Plans for the Facilities to be acquired from the Developer hereunder from all appropriate departments of the County and from any other public entity or public utility from which such approval must be obtained. The Developer further agrees that the Facilities to be acquired from the Developer hereunder have been or will be constructed in full compliance with such approved plans and specifications

and any supplemental agreements (change orders) thereto, as approved in the same manner.

I. Land Owners. The Developer agrees that in the event that it sells any land owned by it within the boundaries of the CFD other than to an individual prospective homeowner, the Developer will (i) notify the County within 30 days of the sale, in writing, identifying the legal name of and mailing address for the purchaser, the applicable County Assessor's parcel Number or Numbers for the land sold and the acreage of the land sold, (ii) notify the purchaser in writing prior to the closing of any such sale of the existence of this Acquisition Agreement and, in general, the Developer's rights and obligations hereunder with respect to the construction of and payment for the Facilities, and (iii) notify the purchaser (including for purposes of this clause (iii) any prospective homeowner buying property from the Developer) in writing of the existence of the CFD and the special tax lien in connection therewith, and otherwise comply with any applicable provision of Section 53341.5 of the Act.

J. Additional Information. The Developer agrees to cooperate with all reasonable written requests for nonproprietary information by the original purchasers of the Bonds or the County related to the status of construction of improvements within the CFD, the anticipated completion dates for future improvements, and any other matter material to the investment quality of the Bonds.

K. Continuing Disclosure. The Developer agrees to comply with all of its obligations under any continuing disclosure agreement executed by it in connection with the offering and sale of any of the Bonds.

L. Ownership By Affiliates. The Developer agrees to provide to the County's Treasurer on the date of issuance of the Bonds, on (or within five (5) business days of) July 1 of each year so long as the Bonds are outstanding, and on any other date upon three business days notice from the County's Treasurer, a written list of all Affiliates of the Developer which own or control the ownership of land located within the CFD, or which have options on land within the CFD, indicating the parcels of land by County Assessor's Parcel number of all such land so owned or optioned.

M. Allocation of Sales Taxes to County. The Developer shall use reasonable efforts, with respect to any construction contract for a contract price of \$5,000,000 or more and related to any construction by or under the supervision of the Developer within the geographical boundaries of the County, to have the installing contractor obtain a sub-permit from the California Board of Equalization under the Bradley-Burns Uniform Local Sales and Use Tax law for the job site on which the work is to be performed.

**Section 8.02. Indemnification and Hold Harmless.** The Developer shall assume the defense of, indemnify and save harmless the County and the CFD, members of the Board of Supervisors of the County, and the County's officers, officials, employees and agents, from and against all actions, damages, claims, losses or expense of every type and description to which they may be subjected or put, by reason of, or resulting from the breach of any provision of this Acquisition Agreement by the Developer, the Developer's or any other entity's negligent design, engineering and/or construction of any of the Facilities acquired from the Developer hereunder, the Developer's non-payment under contracts between the Developer and its consultants, engineer's, advisors, contractors, subcontractors and suppliers in the provision of the Facilities, or any claims of persons employed by the Developer or its agents to construct the Facilities. Notwithstanding the foregoing, no

indemnification is given hereunder for any action, damage, claim, loss or expense directly attributable to the intentional acts or negligence of the County, or its officers, Boardmembers, employees or agents hereunder.

No provision of this Acquisition Agreement shall in any way limit the Developer's responsibility for payment of damages resulting from the operations of the Developer, its agents, employees or its contractors. In the event of any conflict between the provisions of this Section 8.02 and the provisions of Section 7.02, the provisions of Section 7.02 shall prevail.

The Developer's obligations under this Section 8.02 with respect to a specific Facility shall terminate upon the expiration of the one-year warranty period provided in Section 6.06 above with respect to such Facility, and the Developer's obligations under this Section 8.02 generally shall terminate upon the expiration of the one-year warranty period with respect to the Facility with the latest Acceptance Date.

## ARTICLE IX

### TERMINATION

**Section 9.01. No Bonds.** If, for any reason, the County does not issue any of the Bonds for the CFD by December 31, 2013, this Acquisition Agreement shall terminate and be null and void and of no further effect. The County may, in its discretion, grant an extension to such date for termination if Bonds for the CFD are not issued by such date by reason of the occurrence of an event described in Section 9.04.

**Section 9.02. Mutual Consent.** This Acquisition Agreement may be terminated by the mutual, written consent of the County and the Developer, in which event the County may let contracts for any remaining work related to the Facilities not theretofore acquired from the Developer hereunder, and use all or any portion of the monies in the Improvement Fund to pay for same, and the Developer shall have no claim or right to any further payments for the Purchase Price of Facilities or Discrete Components hereunder, except as otherwise may be provided in such written consent.

**Section 9.03. County Election for Cause.** The following events shall constitute grounds for the County, at its option, to terminate this Acquisition Agreement, without the consent of the Developer:

(a) The Developer shall voluntarily file for reorganization or other relief under any Federal or State bankruptcy or insolvency law.

(b) The Developer shall have any involuntary bankruptcy or insolvency action filed against it, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of the assets of the Developer, or shall suffer an attachment or levy of execution to be made against the property it owns within the CFD unless, in any of such cases, such circumstance shall have been terminated or released within thirty (30) days thereafter.

(c) Following the issuance of any of the Bonds, the Developer shall abandon construction of the Facilities. Failure for a period of sixty (60) consecutive days to undertake substantial work related to the construction of the Facilities after Bonds have been issued, other than for a reason specified in Section 9.04 hereof, shall constitute a noninclusive example of such abandonment.

(d) The Developer shall breach any material covenant or default in the performance of any material obligation hereunder.

(e) The Developer shall transfer any of its rights or obligations under this Acquisition Agreement without the prior written consent of the County.

(f) The Developer shall have made any material misrepresentation or omission in any written materials furnished in connection with any preliminary official statement, official statement or bond purchase contract used in connection with the sale of the Bonds.

(g) The Developer or any of its Affiliates shall at any time challenge the validity of the CFD or any of the Bonds, or the levy of Special Taxes within the CFD, other than on the grounds that such levy was not made in accordance with the terms of the Rate and Method of Apportionment of the Special Taxes for the CFD.

(h) The Developer elects to perform or have its agent perform work under the provisions of Section 4.03 C., but fails to continue the work with diligence to completion, as described in the second paragraph of Section 4.03 C.

If any such event occurs, the County shall give written notice of its knowledge thereof to the Developer, and the Developer agrees to meet and confer with the Director of Public Works and other appropriate County staff and consultants within ten (10) days of receipt of such notice as to options available to assure timely completion of the Facilities. Such options may include, but not be limited to the termination of this Acquisition Agreement by the County. If the County elects to terminate this Acquisition Agreement, the County shall first notify the Developer (and any mortgagee or trust deed beneficiary specified in writing by the Developer to the County to receive such notice) of the grounds for such termination and allow the Developer a minimum of thirty (30) days to eliminate or mitigate to the satisfaction of the Director of Public Works the grounds for such termination. Such period may be extended, at the sole discretion of the County, if the Developer, to the satisfaction of the County, is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), as determined solely by the County, the Developer has not eliminated or completely mitigated such grounds, to the satisfaction of the County, the County may then terminate this Acquisition Agreement.

Notwithstanding the foregoing, so long as any event listed in any of clauses (a) through and including (g) above has occurred, notice of which has been given by the County to the Developer, and such event has not been cured or otherwise eliminated by the Developer, the County may in its discretion cease making payments for the Purchase Price of Facilities or Discrete Components under Article V hereof.

**Section 9.04. Force Majeure.** Whenever performance is required of a party hereunder, that party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, earthquakes or other acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, damage to work in progress by casualty, or by other cause beyond the reasonable control of the party (financial inability excepted), then the specified time for performance shall be extended by the amount of the delay actually so caused.

## ARTICLE X

### MISCELLANEOUS

**Section 10.01. Limited Liability of County.** The Developer agrees that any and all obligations of the County arising out of or related to this Acquisition Agreement are special and limited obligations of the County and the County's obligations to make any payments hereunder are restricted entirely to the moneys, if any, in the Improvement Fund and from no other source. No member of the County's Board of Supervisors, or County staff member, employee or agent shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

**Section 10.02. Excess Costs.** The Developer agrees to pay all costs of the Facilities that it is obligated to construct pursuant to Section 4.02 in excess of the moneys available therefor in the Improvement Fund.

**Section 10.03. Audit.** The Director of Public Works and/or the County's Auditor-Controller shall have the right, during normal business hours and upon the giving of two (2) business days prior written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer in to any of the Facilities, and any bids taken or received for the construction thereof or materials therefor.

**Section 10.04. Attorney's Fees.** In the event that any action or suit is instituted by a party hereto against the other party arising out of this Acquisition Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys' fees.

**Section 10.05. Notices.** Any notice, payment or instrument required or permitted by this Acquisition Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered, or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within twenty-four hours after such transmission), or seventy-two hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

County or CFD:

County of Yuba  
9158<sup>th</sup> Street, Suite 123  
Marysville, California 95901  
Attention: Director of Public Works

Developer:

Woodside Montrose Inc.  
111 Woodmere Drive, Suite 100  
Folsom, California 95630  
Attention: Mike Kitchell, Vice President,  
Construction

with a copy to:

Hefner, Stark and Marois  
2150 River Plaza Drive, Suite 450  
Sacramento, California 95833  
Attention: Tim Taron, Esq.

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

**Section 10.06. Severability.** If any part of this Acquisition Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Acquisition Agreement shall be given effect to the fullest extent possible.

**Section 10.07. Successors and Assigns.** This Acquisition Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Acquisition Agreement shall not be assigned by the Developer, except in whole to an Affiliate, without the prior written consent of the County, which consent shall not be unreasonably withheld or delayed. In connection with any such consent of the County, the County may condition its consent upon the acceptability of the relevant experience and financial condition of the proposed assignee, the assignee's express assumption of all obligations of the Developer hereunder, and/or upon any other factor which the County deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and/or obligations assigned, and shall not be effective until approved in writing by the County. Any assignment consented to by the County shall release the Developer from its obligations and liabilities under this Acquisition Agreement to the extent so assigned.

**Section 10.08. Other Agreements.** The obligations of the Developer hereunder shall be those of a party hereto and not as an owner of property in the CFD. Nothing herein shall be construed as affecting the County's or the Developer's rights, or duties to perform their respective obligations, under other agreements, use regulations or subdivision requirements relating to the development of the lands in the CFD. This Acquisition Agreement shall not confer any additional rights, or waive any rights given, by either party hereto under any development or other agreement to which they are a party.

**Section 10.09. Waiver.** Failure by a party to insist upon the strict performance of any of the provisions of this Acquisition Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Acquisition Agreement thereafter.

**Section 10.10. Merger.** No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Acquisition Agreement shall be binding.

**Section 10.11. Parties in Interest.** Nothing in this Acquisition Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the County and the Developer any rights, remedies or claims under or by reason of this Acquisition Agreement or any covenants, conditions or stipulations hereof; and all covenants, conditions, promises, and agreements in this Acquisition Agreement contained by or on behalf of the County or the Developer shall be for the sole and exclusive benefit of the County and the Developer.

**Section 10.12. Amendment.** This Acquisition Agreement may be amended, from time to time, by written Supplement hereto and executed by both the County and the Developer.

**Section 10.13. Counterparts.** This Acquisition Agreement may be executed in counterparts, each of which shall be deemed an original.

**Section 10.14. Governing Law.** The provisions of this Acquisition Agreement shall be governed by the laws of the State of California applicable to contracts made and performed in such State.

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

COUNTY OF YUBA, for and on behalf of  
IMPROVEMENT AREA C OF THE  
COUNTY OF YUBA COMMUNITY  
FACILITIES DISTRICT NO. 2005-1  
(ORCHARD/MONTROSE PUBLIC  
IMPROVEMENTS)

By: 

County Administrator

WOODSIDE MONTROSE INC.

By: 

Mike Kitchell,  
Authorized Agent

25002.03:j9799

## ACQUISITION AGREEMENT

### EXHIBIT A

#### DESCRIPTION OF FACILITIES ELIGIBLE FOR ACQUISITION FROM THE DEVELOPER

The CFD may finance all or a portion of the costs of the following:

1. Yuba County street improvements and storm drainage facilities within and in the vicinity of the CFD, including:
  - East Linda Boulevard
  - Linda Avenue
  - Autumn Lane
  - Riverbank Drive
  - Erle Road
  - Griffith Avenue
2. Linda County Water District sewer and water facilities within and in the vicinity of the CFD, or otherwise necessary to serve the area within the CFD, including:
  - sewer and water improvements adjacent to the streets listed in 1. above
  - a domestic water supply well
  - a sewer lift station
3. Other Yuba County public facilities, including:
  - a drainage channel within or in the vicinity of the CFD
  - a detention basin within or in the vicinity of the CFD
  - a regional storm drain necessary by reason of development in the CFD

The Facilities shall include the acquisition of right-of-way and other necessary land, the costs of design, engineering and planning, the costs of any environmental or other studies, surveys or reports, the cost of any required environmental mitigation and any required landscaping and irrigation, soils testing or engineering, permits, plan check and inspection fees, insurance, construction management, legal and related overhead costs, coordination and supervision and any other costs or appurtenances related to any of the foregoing.

# ACQUISITION AGREEMENT

## EXHIBIT B

### DISCRETE COMPONENTS OF FACILITIES AND RELATED BUDGETED COSTS

<u>Facility Description</u>	<u>Discrete Components</u>	<u>Discrete Budget(1)</u>	<u>Total Budget</u>
<b>Street Improvements</b>	Pole Line Relocation (Erle Road, West Border Orchard & Goldfield )	\$4,896.96	
	Erle Road (East of Goldfield)	12,701.27	
	Pole Line Relocation (Erle Road, East of Goldfield)	93,741.50	
	Erle Road (Along Montrose Frontage)	672,500.40	
	Griffith Avenue (Along Montrose Frontage)	1,101,863.29	
	Linda Avenue (Along Montrose Frontage)	<u>345,157.82</u>	
Total Street Improvements			\$2,208,096.63
<b>Storm Drain Improvements</b>	Erle Road (West Border Orchard & Goldfield)	\$100,076.29	
	Lowering Drainage	26,727.44	
	Erle Road (East of Goldfields)	283,696.08	
	Erle Road (Along Montrose Frontage)	313,559.18	
	Griffith Avenue (Along Montrose Frontage)	371,167.71	
	Linda Avenue (Along Montrose Frontage)	342,869.12	
	Regional Storm Drain	514,098.86	
	Detention Basin & Channel	5,604.82	
	SWPPP, Erosion Control	<u>22,351.21</u>	
Total Storm Drain Improvements			\$1,957,267.55
<b>Sewer Improvements</b>	Sewer Lift Station	\$563,961.36	
	Erle Road (West Border Orchard & Goldfield)	55,474.29	
	Erle Road (East of Goldfield)	99,651.49	
	Erle Road (Along Montrose Frontage)	264,973.70	
	Griffith Avenue (Along Montrose Frontage)	194,360.00	
	Linda Avenue (Along Montrose Frontage)	<u>14,859.50</u>	
Total Sewer Improvements			1,193,280.34
<b>Water Improvements</b>	Erle Road (West Border Orchard & Goldfield)	\$35,261.13	
	Erle Road (East of Goldfield)	87,831.52	
	Sewer and Water Improvement Change Orders	114,123.67	
	Erle Road (Along Montrose Frontage)	149,549.85	
	Griffith Avenue (Along Montrose Frontage)	212,368.47	
	Linda Avenue (Along Montrose Frontage)	<u>106,088.92</u>	
Total Water Improvements			\$705,223.56

(1) Discrete Budgets include estimates for engineering, construction management, permits and fees.

## ACQUISITION AGREEMENT

### EXHIBIT C

#### FORM OF PAYMENT REQUEST

PAYMENT REQUEST NO. \_\_\_\_\_

The undersigned, on behalf of Woodside Montrose Inc. (the "Developer"), hereby requests payment in the total amount of \$\_\_\_\_\_ for the Facilities (as defined in the Acquisition Agreement, dated as of April 1, 2008, between the County of Yuba (the "County"), for and on behalf of Improvement Area C of the County of Yuba Community Facilities District No. 2005-1 (Orchard/Montrose Public Improvements) and the Developer), or Discrete Components thereof (as described in Exhibit B to that Agreement), all as more fully described in Attachment 1 hereto. In connection with this Payment Request, the undersigned, on behalf of the Developer, hereby represents and warrants to the County as follows:

1. He(she) is a duly authorized officer of the Developer, qualified to execute this Payment Request for payment on behalf of the Developer and is knowledgeable as to the matters set forth herein.

2. To the extent that this payment request is with respect to a completed Facility, the Developer has submitted or submit herewith to the County as-built drawings or similar plans and specifications for the items to be paid for as listed in Attachment 1 hereto with respect to any such completed Facility, and such drawings or plans and specifications, as applicable, are true, correct and complete. To the extent that this payment request is for a Discrete Component, the Developer has in its construction office a marked set of drawings or similar plans and specifications for the Discrete Components to be acquired as listed in Attachment 1 hereto, which drawings or plans and specifications, as applicable, are current and show all changes or modifications which have been made to date.

3. All costs of the Facilities or Discrete Components thereof for which payment is requested hereby are Actual Costs (as defined in the Agreement referenced above) and have not been inflated in any respect. The items for which payment is requested have not been the subject of any prior payment request submitted to the County.

4. Supporting documentation (such as third party invoices) is attached with respect to each cost for which payment is requested.

5. There has been compliance with applicable laws relating to prevailing wages for the work to construct the Facilities or Discrete Components thereof for which payment is requested.

6. The Facilities or Discrete Components thereof for which payment is requested were constructed in accordance with all applicable County or other governmental standards, and in accordance with the as-built drawings or plans and specifications, as applicable, referenced in paragraph 2 above.

7. The Developer is in compliance with the terms and provisions of the Acquisition Agreement and no portion of the amount being requested to be paid was previously paid.

8. The Purchase Price for each Facility or Discrete Component (a detailed calculation of which is shown in an Attachment 2 hereto for each such Facility or Discrete Component), has been calculated in conformance with the terms of Section 5.06 of the Acquisition Agreement.

9. Neither the Developer nor any Affiliate (as defined in the Acquisition Agreement) is in default in the payment of ad valorem real property taxes or special taxes or special assessments levied in the CFD (as defined in the Acquisition Agreement), except as follows: \_\_\_\_\_.

I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

**DEVELOPER:**

Woodside Montrose Inc.

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

Its: \_\_\_\_\_

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

**AUTHORITY:**

Payment Request Approved for  
Submission to the Auditor-Controller of the  
County of Yuba

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

Director of Public Works

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

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**ACQUISITION AGREEMENT**

**by and between the**

**COUNTY OF YUBA**

**and**

**DUNMORE ORCHARD LLC**

**Dated as of April 1, 2008**

**Relating to:  
Improvement Area B of the  
County of Yuba  
Community Facilities District No. 2005-1  
(Orchard/Montrose Public Improvements)**

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THIS ACQUISITION AGREEMENT (the "Acquisition Agreement"), dated as of April 1, 2008, is by and between the County of Yuba, a public body, corporate and politic, organized and existing under the laws of the State of California (the "County"), for and on behalf of Improvement Area B of the County of Yuba Community Facilities District No. 2005-1 (Orchard/Montrose Public Improvements) (the "CFD"), and Dunmore Orchard LLC (the "Developer").

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** The following terms shall have the meanings ascribed to them in this Section 1.01 for purposes of this Acquisition Agreement. Unless otherwise indicated, any other terms, capitalized or not, when used herein shall have the meanings ascribed to them in the Fiscal Agent Agreement (as hereinafter defined).

"Acceptable Title" means title to land or interest therein, in form acceptable to the Director of Public Works, which title or interest is free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether or not recorded, but subject to any exceptions determined by the Director of Public Works as not interfering with the actual or intended use of the land or interest therein. Notwithstanding the foregoing, an irrevocable offer of dedication may constitute land with an "Acceptable Title" if: (i) such offer is necessary to satisfy a condition to a tentative or final parcel map, (ii) such offer is in a form acceptable to the Director of Public Works, (iii) the Director of Public Works has no reason to believe that such offer of dedication will not be accepted by the applicable public agency, and (iv) the Developer commits in writing not to allow any liens to be imposed on such property prior to its formal acceptance by the applicable public agency.

"Acceptance Date" means the date the Board of Supervisors of the County (or other public entity which is to own a Facility) takes final action to accept dedication to it of, or transfer to it of title to, a Facility.

"Acquisition Agreement" means this Acquisition Agreement, together with any Supplement hereto.

"Act" means the Mello-Roos Community Facilities Act of 1982, Sections 53311 et seq. of the California Government Code, as amended.

"Actual Cost" means the substantiated cost of a Facility or a Discrete Component, which costs may include: (i) the costs (evidenced by payments to parties unrelated to the Developer) incurred by the Developer for the construction of such Facility or Discrete Component, (ii) the reasonable costs incurred by the Developer in preparing the Plans for such Facility or Discrete Component and the related costs of design, engineering and environmental evaluations of the Facility or Discrete Component, (iii) the fees paid to governmental agencies for obtaining permits, licenses or other governmental approvals for such Facility or Discrete Component, (iv) professional costs incurred by the Developer associated with such Facility or Discrete Component, such as engineering, legal, accounting, inspection, construction staking, materials testing and similar professional services; and (v) costs directly related to the construction and/or acquisition of a Facility or Discrete Component, such as costs of payment, performance and/or maintenance bonds, and insurance costs (including costs of any title insurance required hereunder). Actual Cost may include an amount not in excess of five percent (5%) of the cost described in

clause (i) of the preceding paragraph in respect of any construction, project management or other similar fee payable to the Developer or any party related to the Developer. Actual Cost shall not include (i) any payment for land or the acquisition of right of way dedicated to the County as a condition to the approval of the maps for the Orchard/Montrose development, or (ii) any financing fees, costs or charges, or any interest, cost of carry or other similar charges.

"Affiliate" means any entity with respect to which fifty percent (50%) or more of the ownership or voting power is held individually or collectively by the Developer and any other entity owned, controlled or under common ownership or control by or with, as applicable, the Developer, and includes the managing member of any entity that is a limited liability company, and includes all general partners of any entity which is a partnership. Control shall mean ownership of fifty percent (50%) or more of the voting power of or ownership interest in the respective entity.

"Bonds" means any bonds issued or other debt incurred by the County payable from special taxes levied by the CFD.

"Budgeted Cost" means the estimated cost of a Facility or Discrete Component as shown on Exhibit B hereto under the heading "Discrete Budget."

"CFD" means Improvement Area B of the County of Yuba Community Facilities District No. 2005-1 (Orchard/Montrose Public Improvements), created by the Board of Supervisors of the County under the Act.

"Conditions of Approval" means the conditions of approvals and mitigation measures imposed in connection with the granting of the land use entitlements for the development of land in the CFD, and any subdivision improvement, development or other agreement with the County relating to the development of the land in the CFD or the installation of the Facilities.

"County " means the County of Yuba, California.

"Developer" means Dunmore Orchard LLC, and its successors and assigns to the extent permitted under Section 10.07 hereof.

"Director of Public Works" means the Director of Public Works of the County, or his written designee acting as such under this Acquisition Agreement.

"Discrete Component" means a functional segment or component of a Facility that the Director of Public Works has agreed can be separately identified, inspected and completed consistent with the provisions of Section 53313.51 of the Act, and be the subject of a Payment Request hereunder. The Discrete Components are shown on Exhibit B hereto.

"Facilities" means the public facilities described in Exhibit A hereto which are eligible to be financed by the CFD.

"Fiscal Agent" means the entity acting as fiscal agent under the Fiscal Agent Agreement.

"Fiscal Agent Agreement" means an agreement by that name to be entered into by the County for the CFD and the Fiscal Agent, that will provide for, among other matters, the issuance of the Bonds and the establishment of the Improvement Fund, as it may be amended or supplemented from time to time.

"Improvement Fund" means the acquisition account within the fund by that name to be established by the Fiscal Agent Agreement.

"Payment Request" means a document, substantially in the form of Exhibit C hereto, to be used by the Developer in requesting payment of a Purchase Price.

"Plans" means the plans, specifications, schedules and related construction contracts for the Facilities and/or any Discrete Components thereof approved pursuant to the applicable standards of the County or other entity that will own, operate or maintain the Facilities when completed and acquired. As of the date of this Acquisition Agreement, the County standards for construction incorporate those set forth in the Green Book, Standard Specifications for Public Works Construction (SSPWC), by Public Works Standards, Inc., as modified by applicable County Special Provisions.

"Purchase Price" means the amount paid by the County for a Facility and/or any Discrete Components thereof determined in accordance with Article V hereof, being an amount equal to the Actual Cost of such Facility or Discrete Component, but subject to the limitations and reductions provided for in Article V.

"Risk Manager" shall mean the person acting in the capacity of Risk Manager for the County.

"State" means the State of California.

"Supplement" means a written document amending, supplementing or otherwise modifying this Acquisition Agreement and any exhibit hereto, including any amendments to the list of Discrete Components in Exhibit B, and/or the addition to Exhibit B of additional Facilities (and Discrete Components) to be financed with the proceeds of the Bonds deposited in the Improvement Fund.

## ARTICLE II

### RECITALS

**Section 2.01. The CFD.** The Board of Supervisors of the County has established the CFD under the Act for the financing of, among other things, the acquisition, construction and installation of public facilities identified in the proceedings to form the CFD, which include the Facilities listed in Exhibit A hereto.

**Section 2.02. The Development.** The Developer is developing land located within the CFD.

**Section 2.03. The Facilities.** The Facilities are within or in the vicinity of the CFD, and the County and the Developer will benefit from a coordinated plan of design, engineering and construction of the Facilities and the development of the land owned by the Developer that is located within the CFD. The Developer acknowledges that the inclusion of Facilities in Exhibit A hereto in no way, in itself, obligates the County to issue any Bonds to finance the Facilities or implies that the County has in any way engaged the Developer to construct the Facilities, except as specifically provided in this Acquisition Agreement. The Facilities which are the subject of acquisition from the Developer under this Acquisition Agreement are only the Facilities listed in Exhibit A hereto, as such Exhibit may be amended and/or supplemented by any Supplement.

**Section 2.04. The Financing.** The Developer and the County wish to finance the acquisition of the Facilities by the County and the payment therefor by entering into this Acquisition Agreement for the acquisition of the Facilities and payment for Discrete Components thereof as shown in Exhibit B hereto (as it may be amended and supplemented) with a portion of the proceeds of the Bonds on deposit in the Improvement Fund.

It is hereby acknowledged that some of the Facilities will be financed, in part, by Improvement Areas A and C of the County of Yuba Community Facilities District No. 2005-1 (Orchard/Montrose Public Improvements) (the "District"), pursuant to acquisition agreements between the County and the developers of the land in those improvement areas. In that regard, the County and the Developer acknowledge that the Budgeted Costs for any such Facilities shown in Exhibit B hereto represent the portion of the costs thereof allocable to the CFD (being Improvement Area B of the District).

**Section 2.05. The Bonds.** The County expects that, at some time in the future when market conditions permit the issuance of the Bonds in compliance with the County's adopted Local Goals and Policies for Community Facilities Districts and it is otherwise considered by the County to be prudent in the circumstances, the County will proceed with the authorization and issuance of the Bonds under the Act and the Fiscal Agent Agreement, the proceeds of which Bonds shall be used, in part, to finance the acquisition of all or a portion of the Facilities. The execution by the County of this Acquisition Agreement in no way obligates the County to issue any Bonds, or the County to acquire any Facilities financed with proceeds of any Bonds issued, except the Facilities listed in Exhibit A hereto which are to be acquired subject to the terms and conditions set forth in this Agreement.

**Section 2.06. No Advantage to County Construction.** The County, by its approval of this Acquisition Agreement, has determined that it will obtain no advantage from undertaking the construction by the County directly of the Facilities, and that the provisions of this Acquisition Agreement require that the Facilities be constructed by the

Developer as if they had been constructed under the direction and supervision of the County. The Developer hereby represents that it has experience in the supervision of the construction of public facilities of the character of the Facilities.

**Section 2.07. Agreements.** In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the County and the Developer agree that the foregoing recitals, as applicable to each, are true and correct and further make the agreements set forth herein.

## ARTICLE III

### FUNDING

**Section 3.01. County Proceedings.** The County shall conduct all necessary proceedings under the Act for the issuance, sale and delivery of the Bonds; provided, however, that nothing herein shall be construed as requiring the County to issue the Bonds or any portion thereof. Upon the written request of the Developer, the Developer and the County staff shall meet regarding the amount, timing and other material aspects of the Bonds, but the legal proceedings and the principal amount, interest rates, terms and conditions and timing of the sale of the Bonds shall be in all respects subject to the approval of the Board of Supervisors of the County. The authorized aggregate principal amount of the Bonds is \$5,000,000.

**Section 3.02. Bonds.** As described in Section 2.05, the County expects that at some time in the future it will proceed with the issuance and delivery of the Bonds for the CFD. The County shall not be obligated to pay the Purchase Price of the Facilities or any Discrete Components thereof except from amounts on deposit in the Improvement Fund on or after the closing date of the Bonds. The County makes no warranty, express or implied, that the proceeds of the Bonds deposited and held in the Improvement Fund, and any investment earnings thereon deposited to the Improvement Fund, will be sufficient for payment of the Purchase Price of all of the Facilities.

The Developer agrees to assist the County in the preparation of any disclosure document or continuing disclosure agreement deemed necessary by the County to issue the Bonds, including but not limited to the submission of information reasonably requested by the County's disclosure counsel, or any appraiser or any market absorption consultant engaged by the County in connection with the preparation of disclosure materials for the sale of the Bonds, and the provision of such continuing disclosure obligations, certifications and legal opinions as may be reasonably required by the underwriter of the Bonds.

**Section 3.03. Bond Proceeds.** The proceeds of the Bonds shall be deposited, held, invested, reinvested and disbursed as provided in the Fiscal Agent Agreement. A portion of the proceeds of the Bonds will be set aside under the Fiscal Agent Agreement in the Improvement Fund. Moneys in the Improvement Fund shall be withdrawn therefrom in accordance with the provisions of the Fiscal Agent Agreement and the applicable provisions hereof for payment of all or a portion of the costs of construction and/or acquisition of the Facilities (including payment of the Purchase Price of Discrete Components thereof), all as herein provided.

The Developer agrees that the County alone shall direct the investment of the funds on deposit in the funds and accounts established by or pursuant to the Fiscal Agent Agreement, including the Improvement Fund, and that the Developer has no right whatsoever to direct investments under the Fiscal Agent Agreement. Notwithstanding the foregoing, the County agrees that all investments of funds held under the Fiscal Agent Agreement will be solely in Permitted Investments, as defined therein, and the County will not direct any such investment in a negligent or fraudulent manner.

The County shall have no responsibility whatsoever to the Developer with respect to any investment of funds made by the Fiscal Agent under the Fiscal Agent Agreement, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment. Any such loss may diminish the amounts available in the Improvement

Fund to pay the Purchase Price of Facilities and Discrete Components hereunder. The Developer further acknowledges that the obligation of any owner of real property in the CFD, including the Developer to the extent it owns any real property in the CFD, to pay special taxes levied in the CFD is not in any way dependent on: (i) the availability of amounts in the Improvement Fund to pay for all or any portion of the Facilities or Discrete Components thereof hereunder, or (ii) the alleged or actual misconduct of the County in the performance of its obligations under this Acquisition Agreement, the Fiscal Agent Agreement, any developer agreement or amendment thereto or any other agreement to which the Developer and the County or the County are signatories.

The Developer acknowledges that any lack of availability of amounts in the Improvement Fund to pay the Purchase Price of Facilities or any Discrete Components thereof shall in no way diminish any obligation of the Developer with respect to the construction of or contributions for public facilities required by this Acquisition Agreement or any development or other agreement to which the Developer is a party, or any governmental approval to which the Developer or any land within the CFD is subject.

## ARTICLE IV

### CONSTRUCTION OF FACILITIES

**Section 4.01. Plans.** To the extent that it has not already done so, the Developer shall cause Plans to be prepared for the Facilities. The Developer shall obtain the written approval of the Plans in accordance with applicable ordinances and regulations of the County and/or the public entity that will own and operate the Facilities. Copies of all Plans shall be provided by the Developer to the Director of Public Works upon request therefor, and, in any event, as built drawings and a written assignment of the Plans for any Facility shall be provided to the County prior to its acceptance of the Facility.

**Section 4.02. Duty of Developer to Construct.** All Facilities to be acquired hereunder specified in Exhibit B hereto, as amended from time to time, shall be constructed by or at the direction of the Developer in accordance with the approved Plans. The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of Facilities in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their best efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Facilities to be acquired by the County from the Developer hereunder.

The Developer shall be obligated: (i) to construct and cause conveyance to the County (or other applicable governmental agency) all Facilities and Discrete Components thereof listed in Exhibit B hereto, and (ii) to use its own funds to pay all costs thereof in excess of the Purchase Prices thereof to be paid therefor hereunder, except as may be otherwise expressly provided in the Conditions of Approval.

The Developer shall not be relieved of its obligation to construct each Facility and Discrete Component thereof listed in Exhibit B hereto and convey each such Facility to the County in accordance with the terms hereof, even if, (i) because of the limitations imposed by Section 5.06 hereof, the Purchase Price for such Discrete Component or Facility is less than the Actual Cost, or cost to the Developer, of such Discrete Component or Facility, or (ii) there are insufficient funds in the Improvement Fund to pay the Purchase Prices thereof, and, in any event, this Acquisition Agreement shall not affect any obligation of any owner of land in the CFD under the Conditions of Approval, with respect to the public improvements required in connection with the development of the land within the CFD.

**Section 4.03. Relationship to Public Works; Bidding Requirements.** The following shall apply to all contracts applicable to the Facilities and any Discrete Components thereof:

A. General. This Acquisition Agreement is for the acquisition by the County of the Facilities and payment for Discrete Components thereof listed in Exhibit B hereto from moneys in the Improvement Fund and is not intended to be a public works contract. The County and the Developer agree that the Facilities are of local, and not state-wide concern, and that the provisions of the California Public Contract Code shall not apply to the construction of the Facilities. The County and the Developer agree that the Developer shall award all contracts for the construction

of the Facilities and the Discrete Components thereof listed in Exhibit B hereto and that this Acquisition Agreement is necessary to assure the timely and satisfactory completion of the Facilities and that compliance with the Public Contract Code with respect to the Facilities would work an incongruity and would not produce an advantage to the County or the CFD.

B. Bidding Procedures. Notwithstanding the foregoing, the Developer shall award or shall have awarded all contracts for construction of the Facilities and any Discrete Components thereof, and materials related thereto, by means of a bid process consistent with this Section 4.03 B. or otherwise acceptable to the Director of Public Works, in each case consistent with applicable County regulations. The Developer shall establish or shall have established a list of written criteria acceptable to the Director of Public Works (including experience, ability to perform on schedule and financial ability) to determine qualified contractors for any contract. Such general contractors shall comply with any applicable County regulations. Formal bids shall be requested or shall have been requested from those entities on the list of qualified contractors; and if no such list is established for any specific Facility or Discrete Component thereof, the Developer shall obtain or shall have obtained at least three bids for such Facility or Discrete Component thereof by means of an informal bidding process reasonably acceptable to the Director of Public Works.

The Developer shall prepare or shall have prepared bid packages, including engineering reports and estimates, for each of the Facilities (or any specific Discrete Components thereof to be separately bid), and shall submit or shall have submitted such packages to the Director of Public Works, reasonably in advance of the anticipated bid, for review. If the Developer would like the option to proceed under the provisions of Section 4.03 C. below, the bid documents shall expressly disclose or have disclosed the rights of the Developer to elect to perform or have its agent perform the work with a specific reference to Section 53329.5 of the Act. Upon agreement by the Director of Public Works and the Developer on the content of such bid packages and a schedule of bid prices, plus an acceptable margin of variance, the Developer may proceed to take or has taken bids on the applicable Facilities (or Discrete Components). Bid packages shall be provided or have been provided to at least three qualified bidders, unless the Developer and the Director of Public Works reasonably determine or have determined that three such bidders are not available. A list of qualified bidders shall be provided or has been provided to the Director of Public Works prior to the submission of bid packages to the qualified bidders. At the reasonable request of the Developer, the Director of Public Works shall also meet with the qualified general contractors to discuss the requirements of the particular contract to be bid.

If a bid is or was within the constraints of the approved bid package, the Developer shall, subject to the provisions of Section 4.03 C. below, award or has awarded the applicable contract to the lowest responsible bidder. An award to an only bidder is permissible, provided that the Developer provides or has provided the Director of Public Works with evidence satisfactory to the Director of Public Works, that a substantial effort was made to obtain more than one bid. If all bids are (or were) in excess of the bid parameters, the Developer shall obtain or has obtained the consent of the Director of Public Works prior to awarding the contract. Upon written request of the Director of Public Works, the Developer shall provide an analysis of bids for construction and materials for the Facilities or applicable Discrete Components, indicating how the winning bid was determined and how it was consistent with the applicable bid package. The Developer shall promptly

publish or had published notice of the award of any contract in such paper as the Director of Public Works shall specify.

C. Developer's Election to Perform Work. Notwithstanding the provisions of Section 4.03 B. above, and in accordance with Section 53329.5 of the Act, if at the time bids are received for any particular Facility or Discrete Component the Developer owns three-fourths of the area of lands in the CFD taxed or liable to be taxed for purposes of the CFD, the Developer or a designated agent thereof (who shall provide the Director of Public Works with a written declaration under penalty of perjury in form acceptable to the Director of Public Works to the effect that the Developer so owns such land and, if applicable, that such other entity is such an agent), the Developer or its designated agent may, within 10 days after the publication of the notice of the award of the contract, elect to perform the work and enter into a written contract to do the whole work at prices not exceeding the prices specified in the bid of the bidder to whom the contract was awarded, and all work done under the contract shall be subject to all provisions of this Acquisition Agreement other than the requirement that the contract work be awarded to and performed by the low bidder. The Developer shall advise the Director of Public Works of any election under the preceding sentence, and shall promptly provide written notice to the bidder to whom the contract was awarded of its election to perform the work, and that the services of such winning bidder will no longer be required. The Developer (and its agents) may only avail itself of the foregoing provisions of this Section 4.03 C. if the bid documents for the respective Facility or Discrete Component expressly disclosed its right to do so, as required by the second paragraph of Section 4.03 B. above.

If the Developer elects not to perform the work and not to enter into a written contract for that work within 10 days of publication of the notice of the award of the contract (as evidenced by its failure to provide the written notices described in the second preceding sentence within such 10 day period), or if the Developer (or its agent, as applicable) fails to commence the work within 15 days after the date of the written contract entered into by the Developer (or its agent) and the County and to continue that work with diligence to completion, as determined by the Board of Supervisors of the County, a contract may be entered into by the County, on behalf of the CFD with the original bidder to whom the contract was awarded at the prices specified in his or her bid.

D. Scheduling. The Developer shall develop or cause to be developed and shall maintain or cause to be maintained a schedule for the construction of the Facilities to be acquired hereunder, the construction of which has not been substantially completed as of the date of execution of this Acquisition Agreement. The Developer shall provide the Director of Public Works with complete copies of the schedule and each update to the schedule for the Director's review.

E. Periodic Meetings. From time to time, at the request of the Director of Public Works, representatives of the Developer shall meet and confer with County staff, consultants and contractors regarding matters arising hereunder with respect to the Facilities, Discrete Components and the progress in constructing and acquiring the same, and as to any other matter related to the Facilities or this Acquisition Agreement. The Developer shall advise the Director of Public Works in advance of any coordination and scheduling meetings to be held with contractors relating to the Facilities, in the ordinary course of performance of an individual contract. The Director of Public Works or the Director of Public Work's designated representative shall have the right to be present at such meetings, and to meet and confer with

individual contractors if deemed advisable by the Director of Public Works to resolve disputes and/or ensure the proper completion of the Facilities.

**Section 4.04. Independent Contractor.** In performing this Acquisition Agreement, the Developer is an independent contractor and is not the agent or employee of the County, the County or the CFD. None of the County, the County or the CFD shall be responsible for making any payments directly or otherwise to any contractor, subcontractor, agent, consultant, employee or supplier of the Developer.

**Section 4.05. Performance and Payment Bonds.** The Developer agrees to comply with all applicable performance and payment bonding requirements of the County (and other applicable public entities and/or public utilities) with respect to the construction of the Facilities. Performance and payment bonds shall not be required of the Developer to the extent moneys are available in the Improvement Fund to pay the Purchase Price of a Facility (and consistent with the Budgeted Costs therefore shown in Exhibit B and the limitations expressed in Section 5.06 hereof); provided that all contractors and/or subcontractors employed by the Developer in connection with the construction of Facilities shall provide a labor and materials and performance bonds which name the County as an additional insured.

**Section 4.06. Contracts and Change Orders.** The Developer shall be responsible for entering into all contracts and any supplemental agreements (commonly referred to as "change orders") required for the construction of the Facilities listed in Exhibit A hereto, as amended from time to time, and all such contracts and supplemental agreements shall be submitted to the Director of Public Works. Prior approval of supplemental agreements by the Director of Public Works shall only be required for such change orders which in any way materially alter the quality or character of the subject Facilities, or which involve an amount equal to the greater of ten percent (10%) of the aggregate amount of the contract involved. The County expects that such contracts and supplemental agreements needing prior approval by the Director of Public Works will be approved or denied (any such denial to be in writing, stating the reasons for denial and the actions, if any, that can be taken to obtain later approval) within ten (10) business days of receipt by the Director of Public Works thereof. Any approval by the Director of Public Works of a supplemental agreement shall in no way affect the Budgeted Costs listed in Exhibit B for any related Facility or Discrete Component, but to the extent that it increases the Actual Cost of a Facility or Discrete Component, such increased cost may be payable as part of the Purchase Price of the related Facility or Discrete Component as provided in Section 5.06A. hereof.

Notwithstanding the foregoing, if the Developer elects to approve a change order otherwise subject to the preceding paragraph prior to the approval of the Director of Public Works, the cost of the change order shall not be included in the Purchase Price of the applicable Facility if the change order is not subsequently approved by the Director of Public Works.

**Section 4.07. Time for Completion.** The Developer agrees that this Acquisition Agreement is for the benefit of the County and the Developer and, therefore, the Developer represents that it expects to complete the Facilities and to have requested payment for the Facilities under this Acquisition Agreement within thirty-six (36) calendar months from the date of the closing of the Bonds. Any failure to complete the Facilities within said time period shall not, however, in itself, constitute a breach by the Developer of the terms of this Acquisition Agreement.

## ARTICLE V

### ACQUISITION AND PAYMENT

**Section 5.01. Inspection.** No payment hereunder shall be made by the County to the Developer for a Facility or Discrete Component thereof until the Facility or Discrete Component thereof has been inspected and found to be completed in accordance with the approved Plans by the County or other applicable public entity or utility. The County shall make periodic site inspections of the Facilities to be acquired hereunder; provided that in no event shall the County incur any liability for any delay in the inspection of any Facilities or Discrete Components. For Facilities to be acquired by other public entities or utilities, the Developer shall be responsible for obtaining such inspections and providing written evidence thereof to the Director of Public Works. The Developer agrees to pay all inspection, permit and other similar fees of the County applicable to construction of the Facilities, subject to reimbursement therefor as an Actual Cost of the related Facility.

**Section 5.02. Agreement to Sell and Purchase Facilities.** The Developer hereby agrees to sell the Facilities listed in Exhibit B hereto to the County (or other applicable public agency that will own a Facility), and the County hereby agrees to use amounts in the Improvement Fund to pay the Purchase Prices thereof to the Developer, subject to the terms and conditions hereof. The County shall not be obligated to finance the purchase of any Facility until the Facility is completed and the Acceptance Date for such Facility has occurred; provided that the County has agreed hereunder to make payments to the Developer for certain Discrete Components of Facilities expressly shown in Exhibit B hereto, as it may be supplemented by any Supplement. The Developer acknowledges that the Discrete Components have been identified for payment purposes only, and that the County (or other applicable public agency that will own a Facility) shall not accept a Facility of which a Discrete Component is a part until the entire Facility has been completed. The County acknowledges that the Discrete Components do not have to be accepted by the County (or other applicable public agency that will own a Facility) as a condition precedent to the payment of the Purchase Price therefor, but any such payment shall not be made until the Discrete Component has been completed in accordance with the Plans therefor, as determined by the Director of Public Works. In any event, the County shall not be obligated to pay the Purchase Price for any Facility or Discrete Component except from the moneys in the Improvement Fund.

**Section 5.03. Payment Requests.** In order to receive the Purchase Price for a completed Facility or Discrete Component, inspection thereof under Section 5.01 shall have been made and the Developer shall deliver to the Director of Public Works: (i) a Payment Request in the form of Exhibit C hereto for such Facility or Discrete Component, together with all attachments and exhibits required by Exhibit C and this Section 5.03 to be included therewith (including, but not limited to Attachments 1 and 2 to Exhibit C), and (ii) if payment is requested for a completed Facility, (a) if the property on which the Facility is located is not owned by the County (or other applicable public agency that will own the Facility) at the time of the request, a copy of the recorded documents conveying to the County (or other applicable public agency that will own the Facility) Acceptable Title to the real property on, in or over which such Facility is located, as described in Section 6.01 hereof, (b) a copy of the recorded notice of completion of such Facility (if applicable), (c) to the extent paid for with the proceeds of the Bonds, an assignment to the CFD of any reimbursements that may be payable with respect to the Facility, such as public or private utility reimbursements or reimbursements by reason of oversizing of Facilities, and (d) an assignment of the warranties and guaranties for such Facility, as described in Section 6.05 hereof, in a form acceptable to the County.

**Section 5.04. Processing Payment Requests.** Upon receipt of a Payment Request (and all accompanying documentation), the Director of Public Works shall conduct a review in order to confirm that such request is complete, that such Discrete Component or Facility identified therein was constructed in accordance with the Plans therefor, and to verify and approve the Actual Cost of such Discrete Component or Facility specified in such Payment Request. The Director of Public Works shall also conduct such review as is required in his discretion to confirm the matters certified in the Payment Request. The Developer agrees to cooperate with the Director of Public Works in conducting each such review and to provide the Director of Public Works with such additional information and documentation as is reasonably necessary for the Director of Public Works to conclude each such review. For any Facilities to be acquired by another public entity or utility, the Developer shall provide evidence acceptable to the Director of Public Works that such Facilities are acceptable to such entity or utility. Within ten (10) business days of receipt of any Payment Request, the Director of Public Works expects to review the request for completeness and notify the Developer whether such Payment Request is complete, and, if not, what additional documentation must be provided. If such Payment Request is complete, the Director of Public Works expects to provide a written approval or denial (specifying the reason for any denial) of the request within 30 days of its submittal. If a Payment Request seeking reimbursement for more than one Facility or Discrete Component is denied, the Director of Public Works shall state whether the Payment Request is nevertheless approved and complete for any one or more Facilities or Discrete Components and any such Facilities or Discrete Components shall be processed for payment under Section 5.05 notwithstanding such partial denial.

**Section 5.05. Payment.** Upon approval of the Payment Request by the Director of Public Works, the Director of Public Works shall sign the Payment Request and forward the same to the County's Auditor-Controller. Upon receipt of the reviewed and fully signed Payment Request, and following the issuance of the Bonds, the County's Auditor-Controller shall, within the then current County financial accounting payment cycle but in any event within thirty (30) business days of the later of receipt of the approved Payment Request or the date of issuance of the Bonds, cause the same to be paid by the Fiscal Agent under the applicable provisions of the Fiscal Agent Agreement, to the extent of funds then on deposit in the Improvement Fund. Any approved Payment Request not paid due to an insufficiency of funds in the Improvement Fund, shall be paid promptly following the deposit into the Improvement Fund of proceeds of any investment earnings or other amounts transferred to the Improvement Fund under the terms of the Fiscal Agent Agreement.

The parties hereto acknowledge that (i) the Developer is constructing Facilities and Discrete Components prior to the issuance of the Bonds, (ii) the Developer may be submitting Payment Requests to the County in advance of such an issuance of the Bonds, with knowledge that there will be no funds available in the Improvement Fund for reimbursement until the Bonds are issued, (iii) the Facilities and Discrete Components that are the subject of the Payment Requests submitted when there are insufficient proceeds will be inspected and reviewed by the Director of Public Works as set forth in this Article V and that such Payment Requests will be reviewed by the Director of Public Works and, if appropriate, submitted in the manner set forth in Sections 5.03, 5.04 and 5.05, and (iv) the payment for any Payment Requests approved in the preceding manner will be deferred until the date, if any, on which there are Bond proceeds deposited to the Improvement Fund to make such payment, at which time the Director of Public Works will forward the approved Payment Requests to the County's Auditor-Controller, who will then arrange for payment from the Fiscal Agent in the manner set forth above.

The Purchase Price paid hereunder for any Facility or Discrete Component shall constitute payment in full for such Facility or Discrete Component, including, without limitation, payment for all labor, materials, equipment, tools and services used or incorporated in the work, supervision, administration, overhead, expenses and any and all other things required, furnished or incurred for completion of such Facility or Discrete Component, as specified in the Plans.

**Section 5.06. Restrictions on Payments.** Notwithstanding any other provisions of this Acquisition Agreement, the following restrictions shall apply to any payments made to the Developer under Sections 5.02 and 5.05 hereof:

A. Amounts of Payments. Subject to the following paragraphs of this Section 5.06, payments for each Discrete Component or Facility will be made only in the amount of the Purchase Price for the respective Discrete Component or Facility; however, if the Actual Cost exceeds the Budgeted Cost for a Discrete Component or a Facility, the excess shall be borne by the Developer until such time as a Budgeted Cost for another Discrete Component or Facility is greater than the Actual Cost therefore, in which event the savings shall be applied to reduce any excess of Actual Cost over Budgeted Cost previously paid for any Facility or Discrete Component by the Developer. Any savings attributable to the Actual Cost being less than Budgeted Cost which are not disbursed under the previous sentence to cover unreimbursed Actual Costs or as otherwise consented to by the Developer shall be carried forward to be credited against future cost overruns, or costs related to supplemental agreements (change orders), or if not needed for either of the foregoing purposes, to be disposed of as provided in the Fiscal Agent Agreement for excess monies in the Improvement Fund. Following the completion of the construction of all of the Facilities in Exhibit B hereto, any monies remaining in the Improvement Fund may be used to pay for any Actual Costs that were in excess of the related Budgeted Costs for such Facilities.

Nothing herein shall require the County in any event (i) to pay more than the Actual Cost of a Facility or Discrete Component, or (ii) to pay an amount which would cause the sum of all Purchase Prices paid for all acquired Facilities and Discrete Components to exceed the sum of all Budgeted Costs for such acquired items, or (iii) to make any payment beyond the available funds in the Improvement Fund. The parties hereto acknowledge and agree that all payments to the Developer for the Purchase Prices of Facilities or Discrete Components are intended to be reimbursements to the Developer for monies already expended or for immediate payment by the Developer (or directly by the County) to third parties in respect of such Facilities and/or Discrete Components.

B. Joint or Third Party Payments. The County may make any payment jointly to the Developer and any mortgagee or trust deed beneficiary, contractor or supplier of materials, as their interests may appear, or solely to any such third party, if the Developer so request the same in writing or as the County otherwise determines such joint or third party payment is necessary to obtain lien releases.

C. Withholding Payments. The County shall be entitled, but shall not be required, to withhold any payment hereunder for a Discrete Component or a Facility if the Developer or any Affiliate is delinquent in the payment of ad valorem real property taxes, special assessments or taxes, or Special Taxes levied in the CFD. In the event of any such delinquency, the County shall only make payments hereunder, should any be made at the County's sole discretion, directly to contractors or other third parties employed in connection with the construction of

the Facilities or to any assignee of the Developer's interests in this Acquisition Agreement (and not to the Developer or any Affiliate), until such time as the Developer provides the Director of Public Works with evidence that all such delinquent taxes and assessments have been paid.

The County shall be entitled to withhold payment for any Discrete Component or Facility constructed on land not previously dedicated or otherwise conveyed to the County, until Acceptable Title to such land is conveyed to the County or other public entity that will own the respective Facility, as described in Article VI hereof.

The County shall be entitled to withhold any payment hereunder for a Discrete Component or a Facility that is the subject of a Payment Request until it is satisfied that any and all claims for labor and materials have been paid by the Developer for the Discrete Component that is the subject of a Payment Request, or conditional lien releases have been provided by the Developer for such Discrete Component. The County, in its discretion, may waive this limitation upon the provision by the Developer of sureties, undertakings, securities and/or bonds of the Developer or appropriate contractors or subcontractors and deemed satisfactory by the Director of Public Works to assure payment of such claims.

The County shall be entitled to withhold payment for any Facility hereunder to be owned by the County (or the final Discrete Component of any such Facility) until: (i) the Director of Public Works determines that the Facility is ready for its intended use, (ii) the Acceptance Date for the Facility has occurred and the requirements of Section 6.01, if applicable to such Facility, have been satisfied, and (iii) a Notice of Completion executed by the Developer, in a form acceptable to the Director of Public Works, has been recorded for the Facility and general lien releases conditioned solely upon payment from the proceeds of the Bonds to be used to acquire such Facility (or final Discrete Component) have been submitted to the Director of Public Works for the Facility. The County hereby agrees that the Developer shall have the right to post or cause the appropriate contractor or subcontractor to post a bond with the County to indemnify it for any losses sustained by the County or the County because of any liens that may exist at the time of acceptance of such a Facility, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director of Public Works. The County shall be entitled to withhold payment for any Facility (or the final Discrete Component of any such Facility) to be owned by other governmental entities, until the Developer provides the Director of Public Works with evidence that the governmental entity has accepted dedication of and/or title to the Facility. If the Director of Public Works determines that a Facility is not ready for intended use under (i) above, the Director of Public Works shall so notify the Developer as soon as reasonably practicable in writing specifying the reason(s) therefor.

Nothing in this Acquisition Agreement shall be deemed to prohibit the Developer from contesting in good faith the validity or amount of any mechanics or materialman's lien nor limit the remedies available to the Developer with respect thereto so long as such delay in performance shall not subject the Facilities or any Discrete Component thereof to foreclosure, forfeiture or sale. In the event that any such lien is contested, the Developer shall only be required to post or cause the delivery of a bond in an amount equal to twice the amount in dispute with respect to any such contested lien, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director of Public Works.

The County shall be entitled to withhold any payment hereunder for a Discrete Component or Facility until the Developer has provided evidence of insurance required by Section 7.01 hereof.

D. Retention. The County shall withhold in the Improvement Fund an amount equal to ten percent (10%) of the Purchase Price of each Facility or Discrete Component to be paid hereunder. Any such retention will be released to the Developer upon final completion and acceptance of the related Facility and the expiration of a maintenance period consistent with applicable County policy and Section 6.06 hereof.

Notwithstanding the foregoing, the Developer shall be entitled to payment of any such retention upon the completion and acceptance of a Facility or Discrete Component, if a maintenance or warranty bond is posted in lieu thereof in accordance with Section 6.06 hereof. Payment of any retention shall also be contingent upon the availability of monies in the Improvement Fund therefor. No retention shall apply if the Developer proves to the Director of Public Works satisfaction that the Developer's contracts for the Facilities (or Discrete Components) provide for the same retention as herein provided, so that the Purchase Price paid for the Facility or Discrete Component is at all times net of the required retention.

E. Frequency. Unless otherwise agreed to by the Director of Public Works, no more than one Payment Request shall be submitted by the Developer in any calendar month.

**Section 5.07. Defective or Nonconforming Work.** If any of the work done or materials furnished for a Facility or Discrete Component are found by the Director of Public Works to be defective or not in accordance with the applicable Plans: (i) and such finding is made prior to payment for the Purchase Price of such Facility or Discrete Component hereunder, the County may withhold payment therefor until such defect or nonconformance is corrected to the satisfaction of the Director of Public Works, or (ii) and such finding is made after payment of the Purchase Price of such Facility or Discrete Component, the County and the Developer shall act in accordance with the applicable County improvement standard.

**Section 5.08. Modification of Discrete Components.** Upon written request of the Developer, the Director of Public Works shall consider modification of the description of any Discrete Component. Any such modification shall be subject to the written approval of the Director of Public Works, and shall not diminish the overall Facilities to be provided by the Developer hereunder (in a material way such that the change invalidates any of the assumptions used in the appraisal conducted to sell the Bonds) or in any way increase the total Budgeted Costs identified in Exhibit B. It is expected that any such modification will be solely for purposes of dividing up the work included in any Discrete Component for purposes of acceptance and payment, for example: (i) separation of irrigation and landscaping from other components of a Discrete Component, (ii) modifications to allow for payment for roadway improvements prior to completion of the top course of paving, (iii) division of utility construction by utility work orders, or (iv) modifications to allow for payment for a Facility that is substantially complete and available for public use, except for designated items to be completed later and such completion does not substantially interfere with the use of the funded portion of the Facility. In most instances, the Director of Public Works will only approve modifications for payment purposes when there will be an unusual period of time between the completion and acceptance of such divided work or to better implement the phasing of the overall construction of the Facilities; but in no such

circumstances shall this Section in any way obligate the Director of Public Works to approve such modification.

## ARTICLE VI

### OWNERSHIP AND TRANSFER OF FACILITIES

**Section 6.01. Facilities to be Owned by the County – Conveyance of Land and Easements to County.** Acceptable Title to all property on, in or over which each Facility to be acquired by the County will be located, shall be deeded over to the County by way of grant deed, quitclaim, or dedication of such property, or easement thereon, if such conveyance of interest is approved by the County as being a sufficient interest therein to permit the County to properly own, operate and maintain such Facility located therein, thereon or thereover, and to permit the Developer to perform its obligations as set forth in this Acquisition Agreement. The Developer agrees to assist the County in obtaining such documents as are required to obtain Acceptable Title. Completion of the transfer of title to land shall be accomplished prior to the payment of the Purchase Price for a Facility (or the last Discrete Component thereof) and shall be evidenced by recordation of the acceptance thereof by the Board of Supervisors or the designee thereof.

**Section 6.02. Facilities to be Owned by the County – Title Evidence.** Upon the request of the County, the Developer shall furnish to the County a preliminary title report for land with respect to Facilities to be acquired by the County and not previously dedicated or otherwise conveyed to the County, for review and approval at least fifteen (15) calendar days prior to the transfer of Acceptable Title to a Facility to the County. The Director of Public Works shall approve the preliminary title report unless it reveals a matter which, in the judgment of the County, could materially affect the County's use and enjoyment of any part of the property or easement covered by the preliminary title report. In the event the County does not approve the preliminary title report, the County shall not be obligated to accept title to such Facility and the County shall not be obligated to pay the Purchase Price for such Facility (or the last Discrete Component thereof) until the Developer has cured such objections to title to the satisfaction of the County.

**Section 6.03. Facilities Constructed on Private Lands.** If any Facilities to be acquired are located on privately-owned land, the owner thereof shall retain title to the land and the completed Facilities until acquisition of the Facilities under Article V hereof. Pending the completion of such transfer, the Developer shall not be entitled to receive any payment for any such Facility or the last Discrete Component thereof. The Developer shall, however, be entitled to receive payment for Discrete Components (other than the last Discrete Component) upon making an irrevocable offer of dedication of such land in form and substance acceptable to the Director of Public Works. Notwithstanding the foregoing, upon written request of the Director of Public Works before payment for any Discrete Component of such a Facility, the Developer shall convey or cause to be conveyed Acceptable Title thereto in the manner described in Sections 6.01 and 6.02 hereof.

**Section 6.04. Facilities Constructed on County Land.** If the Facilities to be acquired are on land owned by the County, the County shall cause the County to grant to the Developer a license to enter upon such land for purposes related to the construction (and maintenance pending acquisition) of the Facilities. The provisions for inspection and acceptance of such Facilities otherwise provided herein shall apply.

**Section 6.05. Facilities to be Acquired by Other Public Agencies.** With respect to any Facility to be acquired by a public entity other than the County, the Developer shall comply with such entities rules and regulations regarding title and conveyance of property, and provide the Director of Public Works with evidence of such compliance, prior to the payment of the Purchase Price for any such Facility (or the last Discrete Component

thereof). It is hereby acknowledged that the County has entered into a Joint Community Facilities Agreement with the Linda County Water District, dated as of October 31, 2005, and that the portion of Facilities referenced therein will be subject to the provisions of the preceding sentence, the third sentence of Section 5.01 and the other provisions of this Agreement that apply to Facilities to be acquired by a public agency other than the County but the Purchase Prices of which are to be funded with amounts in the Improvement Fund.

**Section 6.06. Maintenance and Warranties.** The Developer shall maintain each Discrete Component in good and safe condition until the Acceptance Date of the Facility of which such Discrete Component is a part. Prior to the Acceptance Date, the Developer shall be responsible for performing any required maintenance on any completed Discrete Component or Facility. On or before the Acceptance Date of the Facility, the Developer shall assign to the County all of the Developer's rights in any warranties, guarantees, maintenance obligations, reimbursement obligations or other evidence of contingent obligations of third persons with respect to such Facility to be funded by available amounts in the Improvement Fund. The Developer shall maintain or cause to be maintained each Facility to be owned by the County (including the repair or replacement thereof) for a period of one year from the Acceptance Date thereof, or, alternatively, shall provide a bond reasonably acceptable in form and substance to the Director of Public Works for such period and for such purpose (specifically, a one-year maintenance period for landscaping improvements, and for the posting of a warranty bond to remain in effect for one year as to other Facilities), to insure that defects, which appear within said period will be repaired, replaced, or corrected by the Developer, at its own cost and expense, to the satisfaction of the Director of Public Works. The Developer shall commence to repair, replace or correct any such defects within thirty (30) days after written notice thereof by the County to the Developer, and shall complete such repairs, replacement or correction as soon as practicable. After such one-year period, the County (or other public entity that has accepted title to the Facility) shall be responsible for maintaining such Facility. Any warranties, guarantees or other evidences of contingent obligations of third persons with respect to the Facilities to be acquired by the County shall be delivered to the Director of Public Works as part of the transfer of title.

## ARTICLE VII

### INSURANCE; RESPONSIBILITY FOR DAMAGE

**Section 7.01. Liability Insurance Requirements.** The Developer shall provide to the Director of Public Works evidence of insurance and endorsements thereto on forms acceptable to the Risk Manager prior to any payment by the County of the Purchase Price of any Facility or Discrete Component, unless otherwise waived by the Director of Public Works, in whole or in part, in his sole and absolute discretion.

The Developer shall procure and maintain for the duration of this Acquisition Agreement the following minimum insurance coverage and limits against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work covered by this Acquisition Agreement by the Developer, its agents, representatives, employees or subcontractors:

- (a) Premises, operation and mobile equipment.
- (b) Products and completed operations.
- (c) Explosion, collapse and underground hazards.
- (d) Personal injury.
- (e) Contractual liability.
- (f) Errors and omissions for work performed by design professionals.

<u>COVERAGE PER OCCURRENCE</u>	<u>ISO FORM</u>	
Commercial General Liability (Primary)	CG 00 0111 85 or 88 Rev.	\$2,000,000
Business Auto	CA 00 01 06 92	\$1,000,000
Workers' Compensation/ Employers' Liability		Statutory \$1,000,000
Errors and Omissions		\$1,000,000

Combined single limit per occurrence shall include coverage for bodily injury, personal injury, and property damage for each accident and a two million dollar (\$2,000,000) general aggregate. Insurance shall be placed with insurers that are admitted to the State of California with an AM Best's Rating of no less than A:VII.

The Developer shall furnish to the Risk Manager certificates of insurance and endorsements on forms specified by the Risk Manager, duly authenticated, giving evidence of the insurance coverage required in this contract and other evidence of coverage or copies of policies as may be reasonably required by the Risk Manager from time to time. Each required insurance policy coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after ten (10) days written notice by certified mail, return receipt requested, has been given to the Risk Manager.

Liability coverage shall not be limited to the vicarious liability or supervising role of any additional insured nor shall there be any limitation with the severability clause. Coverage shall contain no limitation endorsements and there shall be no endorsement or modification limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

All liability insurance shall be on an occurrence basis. Insurance on a claims made basis will be rejected. Any deductibles or self-insured retentions shall be declared to and shall be explicitly approved by the Risk Manager.

All subcontractors employed on the work referred to in this Acquisition Agreement shall meet the insurance requirements set forth in this Section 7.01 for the Developer, unless waived in whole or in part by the Director of Public Works in his sole and absolute discretion. The Developer shall furnish certificates of insurance and endorsements for each subcontractor, or the Developer shall furnish the Risk Manager an endorsement including all subcontractors as insureds under its policies.

The County shall not be liable for any accident, loss, or damage to the work prior to its completion and acceptance, and the Developer shall save, keep and hold harmless the County and its employees, consultants, Boardmembers, officers, officials, employees, agents and volunteers from all damages, costs or expenses in law or equity that may at any time arise or be claimed because of damages to property, or personal injury received by reason of or in the course of performing work, which may be caused by any negligent act or omission by the Developer or any of the Developer's employees, or any subcontractor.

The cost of insurance required by this subsection shall be born by the Developer and its subcontractors and no compensation for purchasing insurance or additional coverage needed to meet these requirements will be paid for by the County.

In the event that any required insurance is reduced in coverage, canceled for any reason, voided or suspended, the Developer agrees that the County may arrange for insurance coverage as specified, and the Developer further agrees that administrative and premium costs may be deducted from any deposits or bonds the County may have, or from the Improvement Fund. A reduction or cancellation will be grounds for termination of this Acquisition Agreement and will cause a halt to payment for any work on the Facilities until the insurance is reestablished.

Liability policies shall contain, or be endorsed to contain the following provisions:

(a) General Liability and Automobile Liability: The County and its employees, consultants, Boardmembers, officers, officials, employees and volunteers shall be covered as additional insureds using ISO form CG 00 01 11 85 or 88 as it respects: liability arising out of activities performed by or on behalf of the Developer; products and completed operations of the Developer's premises owned, occupied or used by the Developer; or automobiles owned, leased, hired or borrowed by the Developer. The coverage shall contain no special limitations on the scope or protection afforded to the County and its employees, consultants, Boardmembers, officers, officials, employees or volunteers.

The Developer's insurance coverage shall be primary insurance with respect to the County and its employees, consultants, Boardmembers, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County and its employees, consultants, Boardmembers, officers, officials, employees and volunteers shall be excess of the Developer's insurance and shall not contribute with it.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County and its employees, consultants, Boardmembers, officers, officials, employees, and volunteers.

The Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(b) **Workers' Compensation and Employer's Liability:** The Developer and all subcontractors shall have workers' compensation for all employees in conformance with the requirements in Section 3700 of the Labor Code.

(c) **Error and Omissions Liability:** The Developer and all subcontractors who are design professionals shall have and maintain errors and omissions insurance.

**Section 7.02. Responsibility for Damage.** The Developer shall take and assume all responsibility for the work performed as part of the Facilities constructed pursuant to this Acquisition Agreement. The Developer shall bear all losses and damages directly or indirectly resulting to it, to the County and its employees, consultants, Boardmembers, officers, employees and agents, or to others on account of the performance or character of the work, unforeseen difficulties, accidents of any other causes whatsoever.

The Developer shall assume the defense of and indemnify and save harmless the County and its employees, consultants, Boardmembers, officers, employees, and agents, from and against any and all claims, losses, damage, expenses and liability of every kind, nature, and description, directly or indirectly arising from the performance of the work, regardless of responsibility for negligence, and from any and all claims, losses, damage, expenses, and liability, howsoever the same may be caused, resulting directly, or indirectly from the nature of the work covered by this Acquisition Agreement, regardless of responsibility for negligence, to the fullest extent permitted by law. In accordance with Civil Code section 2782, nothing in this Section 7.02 shall require defense or indemnification for death, bodily injury, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the County and its employees, consultants, Boardmembers, agents, servants or independent contractors who are directly responsible to the County or the County, or for defects in design furnished by such persons. Moreover, nothing in this Section 7.02 shall apply to impose on the Developer, or to relieve the County from, liability for active negligence of the County or its employees or consultants as delineated in Civil Code Section 2782. Any relief for determining the County's sole or active negligence shall be determined by a court of law.

The County does not, and shall not, waive any rights against the Developer which it may have by reason of the aforesaid hold harmless agreements because of the acceptance by the County, or deposit with the County by the Developer, of any insurance policies described in Section 7.01. The aforesaid hold harmless agreement by the Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered by reasons of any of the aforesaid operations of the Developer, or any subcontractor, regardless of whether or not such insurance policies are determined to be applicable to any of such damages or claims for damages.

No act by the County or its representatives in processing or accepting any plans, in releasing any bond, in inspecting or accepting any work, or of any other nature, shall in any respect relieve the Developer or anyone else from any legal responsibility, obligation or liability it might otherwise have.

The Developer's obligations under this Section 7.02 with respect to any specific Facility shall terminate upon the expiration of the one-year warranty period for such Facility provided for in Section 6.06 above.

## ARTICLE VIII

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 8.01. Representations, Covenants and Warranties of the Developer.** The Developer represents and warrants for the benefit of the County as follows:

A. Organization. The Developer is in compliance with all applicable laws of the State, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

B. Authority. The Developer has the power and authority to enter into this Acquisition Agreement, and has taken all action necessary to cause this Acquisition Agreement to be executed and delivered, and this Acquisition Agreement has been duly and validly executed and delivered by the Developer.

C. Binding Obligation. This Acquisition Agreement is a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to bankruptcy and other equitable principles.

D. Compliance with Laws. The Developer shall not with knowledge commit, suffer or permit any act to be done in, upon or to the lands of the Developer in the CFD or the Facilities in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the lands in the CFD or the Facilities.

E. Requests for Payment. The Developer represents and warrants that (i) it will not request payment from the County for the acquisition of any improvements that are not part of the Facilities, and (ii) it will diligently follow all procedures set forth in this Acquisition Agreement with respect to the Payment Requests.

F. Financial Records. Until the date which is one year following the date of the final acceptance of the Facilities, the Developer covenants to maintain proper books of record and account for the construction of the Facilities and all costs related thereto. Such accounting books shall be maintained in accordance with generally accepted accounting principles, and shall be available for inspection by the County or its agent at any reasonable time during regular business hours on reasonable notice.

G. Prevailing Wages. The Developer covenants that, with respect to any contracts or subcontracts for the construction of the Facilities to be acquired from the Developer hereunder, it will assure complete compliance with any applicable law or regulation for the payment of prevailing wages. Upon request of the Director of Public Works, the Developer shall submit certified payrolls or information reasonably requested by the County to evidence compliance with this Section 8.01G.

H. Plans. The Developer represent that it has obtained or will obtain approval of the Plans for the Facilities to be acquired from the Developer hereunder from all appropriate departments of the County and from any other public entity or public utility from which such approval must be obtained. The Developer further agrees that the Facilities to be acquired from the Developer hereunder have been or will be constructed in full compliance with such approved plans and specifications

and any supplemental agreements (change orders) thereto, as approved in the same manner.

I. Land Owners. The Developer agrees that in the event that it sells any land owned by it within the boundaries of the CFD other than to an individual prospective homeowner, the Developer will (i) notify the County within 30 days of the sale, in writing, identifying the legal name of and mailing address for the purchaser, the applicable County Assessor's parcel Number or Numbers for the land sold and the acreage of the land sold, (ii) notify the purchaser in writing prior to the closing of any such sale of the existence of this Acquisition Agreement and, in general, the Developer's rights and obligations hereunder with respect to the construction of and payment for the Facilities, and (iii) notify the purchaser (including for purposes of this clause (iii) any prospective homeowner buying property from the Developer) in writing of the existence of the CFD and the special tax lien in connection therewith, and otherwise comply with any applicable provision of Section 53341.5 of the Act.

J. Additional Information. The Developer agrees to cooperate with all reasonable written requests for nonproprietary information by the original purchasers of the Bonds or the County related to the status of construction of improvements within the CFD, the anticipated completion dates for future improvements, and any other matter material to the investment quality of the Bonds.

K. Continuing Disclosure. The Developer agrees to comply with all of its obligations under any continuing disclosure agreement executed by it in connection with the offering and sale of any of the Bonds.

L. Ownership By Affiliates. The Developer agrees to provide to the County's Treasurer on the date of issuance of the Bonds, on (or within five (5) business days of) July 1 of each year so long as the Bonds are outstanding, and on any other date upon three business days notice from the County's Treasurer, a written list of all Affiliates of the Developer which own or control the ownership of land located within the CFD, or which have options on land within the CFD, indicating the parcels of land by County Assessor's Parcel number of all such land so owned or optioned.

M. Allocation of Sales Taxes to County. The Developer shall use reasonable efforts, with respect to any construction contract for a contract price of \$5,000,000 or more and related to any construction by or under the supervision of the Developer within the geographical boundaries of the County, to have the installing contractor obtain a sub-permit from the California Board of Equalization under the Bradley-Burns Uniform Local Sales and Use Tax law for the job site on which the work is to be performed.

**Section 8.02. Indemnification and Hold Harmless.** The Developer shall assume the defense of, indemnify and save harmless the County and the CFD, members of the Board of Supervisors of the County, and the County's officers, officials, employees and agents, from and against all actions, damages, claims, losses or expense of every type and description to which they may be subjected or put, by reason of, or resulting from the breach of any provision of this Acquisition Agreement by the Developer, the Developer's or any other entity's negligent design, engineering and/or construction of any of the Facilities acquired from the Developer hereunder, the Developer's non-payment under contracts between the Developer and its consultants, engineer's, advisors, contractors, subcontractors and suppliers in the provision of the Facilities, or any claims of persons employed by the Developer or its agents to construct the Facilities. Notwithstanding the foregoing, no

indemnification is given hereunder for any action, damage, claim, loss or expense directly attributable to the intentional acts or negligence of the County, or its officers, Boardmembers, employees or agents hereunder.

No provision of this Acquisition Agreement shall in any way limit the Developer's responsibility for payment of damages resulting from the operations of the Developer, its agents, employees or its contractors. In the event of any conflict between the provisions of this Section 8.02 and the provisions of Section 7.02, the provisions of Section 7.02 shall prevail.

The Developer's obligations under this Section 8.02 with respect to a specific Facility shall terminate upon the expiration of the one-year warranty period provided in Section 6.06 above with respect to such Facility, and the Developer's obligations under this Section 8.02 generally shall terminate upon the expiration of the one-year warranty period with respect to the Facility with the latest Acceptance Date.

## ARTICLE IX

### TERMINATION

**Section 9.01. No Bonds.** If, for any reason, the County does not issue any of the Bonds for the CFD by December 31, 2013, this Acquisition Agreement shall terminate and be null and void and of no further effect. The County may, in its discretion, grant an extension to such date for termination if Bonds for the CFD are not issued by such date by reason of the occurrence of an event described in Section 9.04.

**Section 9.02. Mutual Consent.** This Acquisition Agreement may be terminated by the mutual, written consent of the County and the Developer, in which event the County may let contracts for any remaining work related to the Facilities not theretofore acquired from the Developer hereunder, and use all or any portion of the monies in the Improvement Fund to pay for same, and the Developer shall have no claim or right to any further payments for the Purchase Price of Facilities or Discrete Components hereunder, except as otherwise may be provided in such written consent.

**Section 9.03. County Election for Cause.** The following events shall constitute grounds for the County, at its option, to terminate this Acquisition Agreement, without the consent of the Developer:

(a) After the issuance of the Bonds, the Developer shall voluntarily file for reorganization or other relief under any Federal or State bankruptcy or insolvency law, or shall then be a debtor under the protection of Federal bankruptcy laws.

(b) After the issuance of the Bonds, the Developer shall have any involuntary bankruptcy or insolvency action filed against it, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of the assets of the Developer, or shall suffer an attachment or levy of execution to be made against the property it owns within the CFD unless, in any of such cases, such circumstance shall have been terminated or released within thirty (30) days thereafter.

(c) Following the issuance of any of the Bonds, the Developer shall abandon construction of the Facilities. Failure for a period of sixty (60) consecutive days to undertake substantial work related to the construction of the Facilities after Bonds have been issued, other than for a reason specified in Section 9.04 hereof, shall constitute a noninclusive example of such abandonment.

(d) The Developer shall breach any material covenant or default in the performance of any material obligation hereunder.

(e) The Developer shall transfer any of its rights or obligations under this Acquisition Agreement without the prior written consent of the County.

(f) The Developer shall have made any material misrepresentation or omission in any written materials furnished in connection with any preliminary official statement, official statement or bond purchase contract used in connection with the sale of the Bonds.

(g) The Developer or any of its Affiliates shall at any time challenge the validity of the CFD or any of the Bonds, or the levy of Special Taxes within the CFD,

other than on the grounds that such levy was not made in accordance with the terms of the Rate and Method of Apportionment of the Special Taxes for the CFD.

(h) The Developer elects to perform or have its agent perform work under the provisions of Section 4.03 C., but fails to continue the work with diligence to completion, as described in the second paragraph of Section 4.03 C.

If any such event occurs, the County shall give written notice of its knowledge thereof to the Developer, and the Developer agrees to meet and confer with the Director of Public Works and other appropriate County staff and consultants within ten (10) days of receipt of such notice as to options available to assure timely completion of the Facilities. Such options may include, but not be limited to the termination of this Acquisition Agreement by the County. If the County elects to terminate this Acquisition Agreement, the County shall first notify the Developer (and any mortgagee or trust deed beneficiary specified in writing by the Developer to the County to receive such notice) of the grounds for such termination and allow the Developer a minimum of thirty (30) days to eliminate or mitigate to the satisfaction of the Director of Public Works the grounds for such termination. Such period may be extended, at the sole discretion of the County, if the Developer, to the satisfaction of the County, is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), as determined solely by the County, the Developer has not eliminated or completely mitigated such grounds, to the satisfaction of the County, the County may then terminate this Acquisition Agreement.

Notwithstanding the foregoing, so long as any event listed in any of clauses (a) through and including (g) above has occurred, notice of which has been given by the County to the Developer, and such event has not been cured or otherwise eliminated by the Developer, the County may in its discretion cease making payments for the Purchase Price of Facilities or Discrete Components under Article V hereof.

**Section 9.04. Force Majeure.** Whenever performance is required of a party hereunder, that party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, earthquakes or other acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, damage to work in progress by casualty, or by other cause beyond the reasonable control of the party (financial inability excepted), then the specified time for performance shall be extended by the amount of the delay actually so caused.

## ARTICLE X

### MISCELLANEOUS

**Section 10.01. Limited Liability of County.** The Developer agrees that any and all obligations of the County arising out of or related to this Acquisition Agreement are special and limited obligations of the County and the County's obligations to make any payments hereunder are restricted entirely to the moneys, if any, in the Improvement Fund and from no other source. No member of the County's Board of Supervisors, or County staff member, employee or agent shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

**Section 10.02. Excess Costs.** The Developer agrees to pay all costs of the Facilities that it is obligated to construct pursuant to Section 4.02 in excess of the moneys available therefor in the Improvement Fund.

**Section 10.03. Audit.** The Director of Public Works and/or the County's Auditor-Controller shall have the right, during normal business hours and upon the giving of two (2) business days prior written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer in to any of the Facilities, and any bids taken or received for the construction thereof or materials therefor.

**Section 10.04. Attorney's Fees.** In the event that any action or suit is instituted by a party hereto against the other party arising out of this Acquisition Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys' fees.

**Section 10.05. Notices.** Any notice, payment or instrument required or permitted by this Acquisition Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered, or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within twenty-four hours after such transmission), or seventy-two hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

County or CFD:

County of Yuba  
915 8<sup>th</sup> Street, Suite 123  
Marysville, California 95901  
Attention: Director of Public Works

Developer:

Dunmore Orchard LLC  
c/o Dunmore Homes  
2200 Douglas Boulevard, Suite 200B  
Roseville, California 95661  
Attention: Michael J. Lutz, Division President

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

**Section 10.06. Severability.** If any part of this Acquisition Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Acquisition Agreement shall be given effect to the fullest extent possible.

**Section 10.07. Successors and Assigns.** This Acquisition Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Acquisition Agreement shall not be assigned by the Developer, except in whole to an Affiliate, without the prior written consent of the County, which consent shall not be unreasonably withheld or delayed. In connection with any such consent of the County, the County may condition its consent upon the acceptability of the relevant experience and financial condition of the proposed assignee, the assignee's express assumption of all obligations of the Developer hereunder, and/or upon any other factor which the County deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and/or obligations assigned, and shall not be effective until approved in writing by the County. Any assignment consented to by the County shall release the Developer from its obligations and liabilities under this Acquisition Agreement to the extent so assigned.

**Section 10.08. Other Agreements.** The obligations of the Developer hereunder shall be those of a party hereto and not as an owner of property in the CFD. Nothing herein shall be construed as affecting the County's or the Developer's rights, or duties to perform their respective obligations, under other agreements, use regulations or subdivision requirements relating to the development of the lands in the CFD. This Acquisition Agreement shall not confer any additional rights, or waive any rights given, by either party hereto under any development or other agreement to which they are a party.

**Section 10.09. Waiver.** Failure by a party to insist upon the strict performance of any of the provisions of this Acquisition Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Acquisition Agreement thereafter.

**Section 10.10. Merger.** No other agreement, statement or promise made by any party or any employee, officer or agent of any party with respect to any matters covered hereby that is not in writing and signed by all the parties to this Acquisition Agreement shall be binding.

**Section 10.11. Parties in Interest.** Nothing in this Acquisition Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the County and the Developer any rights, remedies or claims under or by reason of this Acquisition Agreement or any covenants, conditions or stipulations hereof; and all covenants, conditions, promises, and agreements in this Acquisition Agreement contained by or on behalf of the County or the Developer shall be for the sole and exclusive benefit of the County and the Developer.

**Section 10.12. Amendment.** This Acquisition Agreement may be amended, from time to time, by written Supplement hereto and executed by both the County and the Developer.

**Section 10.13. Counterparts.** This Acquisition Agreement may be executed in counterparts, each of which shall be deemed an original.

**Section 10.14. Governing Law.** The provisions of this Acquisition Agreement shall be governed by the laws of the State of California applicable to contracts made and performed in such State.

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

COUNTY OF YUBA, for and on behalf of  
IMPROVEMENT AREA B OF THE COUNTY  
OF YUBA COMMUNITY FACILITIES  
DISTRICT NO. 2005-1  
(ORCHARD/MONTROSE PUBLIC  
IMPROVEMENTS)

By: 

County Administrator

DUNMORE ORCHARD LLC

By: 

Its: Division President

25002.03:j9798

## **ACQUISITION AGREEMENT**

### **EXHIBIT A**

#### **DESCRIPTION OF FACILITIES ELIGIBLE FOR ACQUISITION FROM THE DEVELOPER**

The CFD may finance all or a portion of the costs of the following:

1. Yuba County street improvements and storm drainage facilities within and in the vicinity of the CFD, including:
  - East Linda Boulevard
  - Linda Avenue
  - Autumn Lane
  - Riverbank Drive
  - Erle Road
  - Griffith Avenue
2. Linda County Water District sewer and water facilities within and in the vicinity of the CFD, or otherwise necessary to serve the area within the CFD, including:
  - sewer and water improvements adjacent to the streets listed in 1. above
  - a domestic water supply well
  - a sewer lift station
3. Other Yuba County public facilities, including:
  - a drainage channel within or in the vicinity of the CFD
  - a detention basin within or in the vicinity of the CFD
  - a regional storm drain necessary by reason of development in the CFD

The Facilities shall include the acquisition of right-of-way and other necessary land, the costs of design, engineering and planning, the costs of any environmental or other studies, surveys or reports, the cost of any required environmental mitigation and any required landscaping and irrigation, soils testing or engineering, permits, plan check and inspection fees, insurance, construction management, legal and related overhead costs, coordination and supervision and any other costs or appurtenances related to any of the foregoing.

# ACQUISITION AGREEMENT

## EXHIBIT B

### DISCRETE COMPONENTS OF FACILITIES AND RELATED BUDGETED COSTS

Facility Description	Discrete Components	Discrete Budget(1)	Total Budget
<b>Road to the North Improvements</b>	Goldfields Pkwy (North Boundary) Modified road section	\$215,494.75	\$215,494.75
<b>Street Improvements</b>	Goldfield (aka East Linda Blvd (Within the Orchard Limits))	\$547,482.49	
	Masonry	177,052.08	
	PGE Contract # 1	27,073.49	
	PGE Contract # 2	14,10.99	
	Linda Avenue	52,263.18	
	Autumn Lane (Eastern Section - Eastern Half)	93,880.29	
	Erle Road (West Border Orchard & Goldfield)	159,840.15	
	Masonry	26,700.59	
	Lowering Street	93,820.74	
	Pole Line Relocation	42,263.10	
	Erle Road (East of Goldfields)	592,643.21	
	Masonry	31,236.38	
	Pole Line Relocation	84,039.42	
	Street Improvement Change Orders	187,945.44	
Total Street Improvements			\$2,130,751.55
<b>Storm Drain Improvements</b>	Goldfield (aka East Linda Blvd (Within the Orchard Limits))	\$36,381.64	
	Linda Avenue	7,198.10	
	Autumn Lane (Eastern Section - Eastern Half)	47,745.33	
	Erle Road (West Border Orchard & Goldfield)	103,975.37	
	Lowering Drainage	27,768.77	
	Erle Road (East of Goldfields)	294,749.17	
	Regional Storm Drain	534,128.67	
	Detention Basin & Channel	364,450.28	
	Storm Drain Change Orders	29,635.82	
	SWPPP, Erosion Control	23,222.03	
Total Storm Drain Improvements			\$1,469,255.18
<b>Sewer Improvements</b>	Goldfield (aka East Linda Blvd (Within the Orchard Limits))	\$174,792.03	
	Linda Avenue	23,214.72	
	Autumn Lane (Eastern Section - Eastern Half)	18,929.76	
	Erle Road (West Border Orchard & Goldfield)	57,635.63	
	Erle Road (East of Goldfields)	103,534.04	
Total Sewer Improvements			\$378,106.45

<u>Facility Description</u>	<u>Discrete Components</u>	<u>Discrete Budget(1)</u>	<u>Total Budget</u>
Water Improvements	Goldfield (aka East Linda Blvd (Within the Orchard Limits))	\$140,364.77	
	Linda Avenue	29,781.15	
	Autumn Lane (Eastern Section - Eastern Half)	21,454.18	
	Erle Road (West Border Orchard & Goldfield)	36,634.94	
	Erle Road (East of Goldfield)	91,253.55	
	Sewer and Water Improvement Change Orders	<u>114,904.51</u>	
Total Water Improvements			\$434,393.10

(1) Discrete Budgets include estimates for engineering, construction management, permits and fees.

## ACQUISITION AGREEMENT

### EXHIBIT C

#### FORM OF PAYMENT REQUEST

PAYMENT REQUEST NO. \_\_\_\_\_

The undersigned, on behalf of Dunmore Orchard LLC (the "Developer"), hereby requests payment in the total amount of \$\_\_\_\_\_ for the Facilities (as defined in the Acquisition Agreement, dated as of April 1, 2008, between the County of Yuba (the "County"), for and on behalf of Improvement Area B of the County of Yuba Community Facilities District No. 2005-1 (Orchard/Montrose Public Improvements) and the Developer), or Discrete Components thereof (as described in Exhibit B to that Agreement), all as more fully described in Attachment 1 hereto. In connection with this Payment Request, the undersigned, on behalf of the Developer, hereby represents and warrants to the County as follows:

1. He(she) is a duly authorized officer of the Developer, qualified to execute this Payment Request for payment on behalf of the Developer and is knowledgeable as to the matters set forth herein.

2. To the extent that this payment request is with respect to a completed Facility, the Developer has submitted or submit herewith to the County as-built drawings or similar plans and specifications for the items to be paid for as listed in Attachment 1 hereto with respect to any such completed Facility, and such drawings or plans and specifications, as applicable, are true, correct and complete. To the extent that this payment request is for a Discrete Component, the Developer has in its construction office a marked set of drawings or similar plans and specifications for the Discrete Components to be acquired as listed in Attachment 1 hereto, which drawings or plans and specifications, as applicable, are current and show all changes or modifications which have been made to date.

3. All costs of the Facilities or Discrete Components thereof for which payment is requested hereby are Actual Costs (as defined in the Agreement referenced above) and have not been inflated in any respect. The items for which payment is requested have not been the subject of any prior payment request submitted to the County.

4. Supporting documentation (such as third party invoices) is attached with respect to each cost for which payment is requested.

5. There has been compliance with applicable laws relating to prevailing wages for the work to construct the Facilities or Discrete Components thereof for which payment is requested.

6. The Facilities or Discrete Components thereof for which payment is requested were constructed in accordance with all applicable County or other governmental standards, and in accordance with the as-built drawings or plans and specifications, as applicable, referenced in paragraph 2 above.

7. The Developer is in compliance with the terms and provisions of the Acquisition Agreement and no portion of the amount being requested to be paid was previously paid.

8. The Purchase Price for each Facility or Discrete Component (a detailed calculation of which is shown in an Attachment 2 hereto for each such Facility or Discrete Component), has been calculated in conformance with the terms of Section 5.06 of the Acquisition Agreement.

9. Neither the Developer nor any Affiliate (as defined in the Acquisition Agreement) is in default in the payment of ad valorem real property taxes or special taxes or special assessments levied in the CFD (as defined in the Acquisition Agreement), except as follows: \_\_\_\_\_.

I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

**DEVELOPER:**

Dunmore Orchard LLC

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

Its: \_\_\_\_\_

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

**AUTHORITY:**

Payment Request Approved for  
Submission to the Auditor-Controller of the  
County of Yuba

By: \_\_\_\_\_  
Director of Public Works

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

**ATTACHMENT 2  
EXHIBIT C**

**CALCULATION OF PURCHASE PRICE**

[Use a separate sheet for each Facility or Discrete Component  
for which payment is being requested]

1. Description (by reference to Exhibit B to the Acquisition Agreement) of the Facility or Discrete Component \_\_\_\_\_
2. Actual Cost (list here total of supporting invoices and/or other documentation supporting determination of Actual Cost): \$ \_\_\_\_\_
3. Budgeted Cost: \$ \_\_\_\_\_
4. Permitted Addition to Budgeted Cost (to the extent, and only to the extent, that Actual Cost exceeds Budgeted Cost), consisting of Savings (Actual Costs less than Budgeted Cost) carried forward from prior acquired Facilities/Discrete Components (see first paragraph of Section 5.06A) and not previously applied to cover cost overruns (Actual Costs greater than Budgeted Cost) on previously acquired Facilities: \$ \_\_\_\_\_
5. Subtractions from Purchase Price:
  - A. Holdback for Lien releases (see Section 5.06(C) of the Acquisition Agreement) \$ \_\_\_\_\_
  - B. Retention (see Section 5.06(D) of the Acquisition Agreement) \$ \_\_\_\_\_
6. Total disbursement requested (amount listed in 3, plus amount, if any, listed in 4 (total of amounts in 3 and 4 not to exceed amount listed in 2), less amounts, if any, listed in 5) \$ \_\_\_\_\_

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# The County of Yuba

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## Office of the County Administrator

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**To:** Chairman and Board of Supervisors  
**From:** John Fleming, Economic Development Coordinator  
**Subject:** Approve By-Laws for Yuba County Economic Development Advisory Committee  
**Date:** December 17, 2013

### Recommendation:

Approve the attached committee by-laws for the Yuba County Economic Development Advisory Committee (Committee).

### Background:

In 2009 economic development staff created an advisory group to serve as a sounding board for economic development programs and initiatives. Committee members representing each of the five supervisorial districts met on a quarterly or more frequent basis beginning April 10, 2009.

### Discussion:

The attached by-laws define the mission, limitations, and duties and functions of the Committee. Committee officers, elected by the Committee annually at the end of each calendar year, include a Chair and Vice Chair; the by-laws provide the scope of responsibilities for each. The Committee shall contain up to 20 members representing businesses within Yuba County.

### Committee Accomplishments

In 2014 Nate Pomeroy and Sean Anderson were elected as Committee Chair and Vice Chair. The Committee met six times in 2013 including the Business Perspectives luncheon April 26.

In 2013 the Economic Development Advisory Committee worked on the following initiatives:

- Creation of Committee By-Laws
  - Numerous review sessions with Committee Chairman and Vice Chairman
- Energy Workshops and Board Recommendations,
  - Committee Energy Workshop, Fletcher's Insurance, March 6
  - Financing Energy Solutions, BOS Workshop, July 9
  - SunPower presentation, CAO Conference Room, August 23
  - SunPower presentation, Admin Services Conference Room, September 25
  - Yuba County/Marysville solar initiative, Marysville Conference Room, November 7

### Committee:

This item was not discussed at committee.

### Fiscal Impact

There is no financial impact to the General Fund for approving the Committee by-laws.

<b>Name/Title/District</b>	<b>Organization/Address</b>	<b>Supervisory District</b>
<b>2013 MEMBERS</b>		
Sean Anderson Marysville	[REDACTED] Marysville, CA 95901	District 2
Sarbdeep Atwal Olivehurst/Arboga	[REDACTED] Yuba City, CA 95991	District 3
Terry Bentley County Wide	Recology, Inc. 3001 N. Levee Road Marysville, CA 95901	District 2
Tib Belza Foothills	Sunwest Real Estate 5363 Marysville Road Brown's Valley, CA 95918	District 5
Wayne Bishop Wheatland	Bishop's Pumpkin Farm 1415 Pumpkin Lane Wheatland, CA 95692-9424	District 4
Rick Brown Linda	Rick Brown Propane 5826 Lindhurst Avenue Linda, CA 95901	District 1
Steven Dambeck Foothills	[REDACTED] Oregon House, CA 95962	District 5
Rose Daoust Marysville	Rabobank 230 9 <sup>th</sup> Street Marysville, CA 95901	District 2
Randy Fletcher Marysville	Fletcher Insurance 300 4 <sup>th</sup> Street Marysville, CA 95901	District 2
Rich Gabel Marysville	Frank M. Booth 222 3 <sup>rd</sup> Street Marysville, CA 95901	District 2
Todd Hambrook Olivehurst	Ace Composites 1394 Sky Harbor Drive PO Box 266 Olivehurst, CA 95961	District 3
Theresa Hamilton Fremont-Rideout Health Group	989 Plumas Street Yuba City, CA 95935	District 2
Sheila Kern Linda/Olivehurst	Placer WaterWorks 1325 Furneaux Road Plumas Lake, CA 95961	District 1
David McConnell Linda/Olivehurst	Pack and Post 937 N. Beale Road, D Linda, CA 95901	District 1
Nate Pomeroy Linda/Marysville	Peach Tree Golf and Country Club 2043 Simpson-Dantoni Lane, Linda, CA 95901	District 1
Cary Wilson Wheatland	Wheatland, CA 95918	District 4

## **Yuba County Economic Development Advisory Committee -Committee By-Laws -**

The name of this committee, organized as a standing, ad-hoc committee to the Yuba County Board of Supervisors, shall be the *Yuba County Economic Development Advisory Committee*, hereinafter referred to as Committee.

### **Mission**

Advise and provide feedback to the Yuba County Board of Supervisors (Board) and the Yuba County Economic Development Coordinator on business-related policies and economic development issues within Yuba County.

### **Duties and Functions of the Committee**

The Committee shall:

- 1) Annually prioritize activities related to improving the local business environment
- 2) Operate as a sounding board to the Board on business-related issues
- 3) Identify new opportunities to improve the economic environment
- 4) Meet on a bi-monthly basis
- 5) Assist in the coordination of Business Perspectives luncheons for business retention purposes
- 6) Participate in tours and activities promoting Yuba County as ambassadors for Yuba County economic development
- 7) Assist in activities related to the economic development program
- 8) Provide outreach to the local business community and receive input
- 9) Annually present economic development recommendations and business opportunities to the Board of Supervisors

### **Limitations**

The Committee is a voluntary entity with no compensation. Members are approved and removed at the discretion of the Board. The Committee shall refrain from political campaigns and political agendas, and is limited to making recommendations to the Board based on business policy and economic development issues.

## **Article I - Membership**

### **A. Members**

The Members of the Committee shall adequately represent the five supervisorial districts and the primary private sector industry sectors within Yuba County. Selection to the Committee will be made by a recommendation by a Board Supervisor for a potential member in his or her supervisorial district, or a recommendation by the Economic Development Coordinator.

Nominated committee members must be subsequently approved by a majority of Board at a regularly scheduled Board of Supervisors meeting, and must be sworn in by the Clerk of the Board within 30 days following Board approval. Committee members serve as a volunteer member at the discretion of the Committee and Board.

## **Meetings**

The Committee shall meet bi-monthly, at a time and place designated by the Committee Chair or Economic Development Coordinator and advertised to Members and Affiliates. Committee business may be transacted at any meeting for which valid Notice has been given and at which a Quorum is present.

At the discretion of the Chair, meetings shall be conducted under the most current edition of Robert's Rules of Order.

Additional sub-committee meetings and workshops can be held at the discretion of the Committee Chair or Economic Development Coordinator. Meetings shall be held at various locations in Yuba County.

## **Voting & Quorum**

Once moved and seconded by Committee members, a simple majority vote is required for an item of business to be adopted. Presence of 50% plus one of the authorized voters at a meeting shall constitute a quorum. In a committee meeting, all current members of the committee are authorized to move, second and vote.

## **Notice**

Notice of a meeting of the Committee shall be posted at the meeting location and two additional public locations. Notice shall include the date, time, location, purpose of the meeting outlined in an agenda. The notices will be displayed 72 hours prior to the meeting, or 24 hours prior to the meeting for urgent items.

## **Article II – Committee Members**

### **A. Number**

**There shall be up to 20 Committee members.**

### **Officers**

The Chair and Vice Chair of the Committee shall be elected by majority vote of the Committee. Minutes of the vote must be entered. Only Committee members may be nominated as officers. Officers shall serve one year terms and be elected annually at the last meeting before the start of the coming calendar year. Officers shall remain in office until their successors are installed. Officers shall be installed at the next meeting after their election, except in the case of a vacancy when they shall take office immediately.

### **A. Chair**

The Chair shall be responsible for:

- 1) Setting all meeting agendas for the Committee in collaboration with County staff.
- 2) Presiding at all Board and Committee meetings.
- 3) Reviewing all materials prior to each meeting.
- 4) Speaking, writing, or communicating in other ways on behalf of the Committee between their meetings.

- 5) Presenting an annual report to the County Board of Supervisors.
- 6) Performing other duties as required by County staff or Board of Supervisors.

## **B. Vice Chair**

The Vice Chair shall be responsible for:

- 1) Any duties assigned by the Chair, County staff or Board of Supervisors.
- 2) Duties of the Chair in the absence of the Chair.

## **C. Removal**

A. Officers and committee members may be removed from the Committee by the Board or for cause. Cause shall be determined and defined by a majority vote of the full Committee, and removal shall be upon a two-thirds vote of the full Committee. The absence of a Committee member from two consecutive meetings of the Committee may be considered sufficient cause for removal.

A person who has resigned or has been removed as Chair or Vice Chair of the Committee shall not retain membership on the Committee and is disqualified from holding any Committee position unless reinstated by a two-thirds vote of the Committee.

## **D. Vacancies**

In the event that an Officer resigns or is unable to perform his or her duties due to death, disability, loss of membership, or for any other reason, that office shall be deemed vacant. If the office of Chair is vacant, the Vice Chair shall succeed to that office. If the office of Vice Chair is vacant, the Chair shall appoint a replacement to serve until a successor is elected at the next Committee meeting or election meeting.

## **III. Compensation**

No Committee member shall receive compensation from Yuba County for any service rendered to the Committee.

## **IV. Sub-Committees**

The Committee or Board may establish sub-committees and prescribe their purpose and composition. Committees may include persons not on the Committee. Sub-Committee chairs must be a Committee member.

## **V. Amendments**

These Bylaws may be amended by a two-thirds vote of the Committee at any regular Committee meeting and ratification by the Board.

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# The County of Yuba



## HEALTH & HUMAN SERVICES DEPARTMENT

**Suzanne Nobles, Director**

5730 Packard Ave., Suite 100, P.O. Box 2320, Marysville, California 95901  
Phone: (530) 749-6311 FAX: (530) 749-6281

**Michael Kinnison, M.D.,  
Interim Health Officer**  
Phone: (530) 749-6366

**TO:** Human Services Committee  
Yuba County Board of Supervisors

**FROM:** *Suzanne Nobles*  
Suzanne Nobles, Director  
Health & Human Services Department

**DATE:** December 17, 2013

**SUBJECT:** Agreement with the Yuba County Office of Education for  
Employment Services and Assessments for CalWORKs

**RECOMMENDATION:** It is recommended that the Board of Supervisors approve the Agreement between the County of Yuba, on behalf of its Health and Human Services Department, and the Yuba County Office of Education to administer occupational aptitude assessments and provide assistance with job search activities at the Yuba County One Stop Resource Center under the CalWORKs program in the amount of \$175,617.00 for the period of January 1, 2014 through June 30, 2015.

**BACKGROUND:** Through this new agreement, Yuba County Office of Education will administer occupational aptitude assessments and assist CalWORKs customers with job searching activities at the Yuba County One Stop Resource Center. Vocational assessments are the first step in the career planning process. Social Workers interpret assessment results which are used to determine suitable education and training activities for CalWORKs customers. Job search activities provided at the Yuba County One Stop Resource Center include assistance with developing resumes, completing applications, accessing labor market information and certifying typing speeds. These services will eliminate barriers to employment for CalWORKs customers and provide the ultimate goal of becoming self-sufficient.

**DISCUSSION:** The services provided under this Agreement will assist participants in achieving self-sufficiency by preparing them for unsubsidized employment, as well as creating job opportunities.

**COMMITTEE:** The Human Services Committee recommended approval on December 10, 2013.

**FISCAL IMPACT:** This Agreement will not impact County General Funds, as the \$175,617.00 in costs for services under this Agreement will be funded through the CalWORKs allocation.

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## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT for employment services and assessments at the Yuba County One Stop, ("Agreement") is made as of the Agreement Date set forth below by and between the County of Yuba, a political subdivision of the State of California ("the COUNTY"), on behalf of its Health and Human Services Department ("YCHHSD"), and Yuba County office of Education ("CONTRACTOR").

In consideration of the Services to be rendered, the sums to be paid, and each and every covenant and condition contained herein, the parties hereto agree as follows:

### **OPERATIVE PROVISIONS**

#### **1. SERVICES.**

The CONTRACTOR shall provide those services described in Attachment "A," Provision A-1. CONTRACTOR shall provide said services at the time, place and in the manner specified in Attachment "A," Provisions A-2 through A-4.

#### **2. TERM.**

Commencement Date: January 1, 2014

Termination Date: June 30, 2015

The term of this Agreement shall become effective on January 1, 2014, and shall continue in force and effect for a period of one (1) year(s) and six (6) months, unless sooner terminated in accordance with the terms of this Agreement.

Notwithstanding the term set forth above, and unless this contract is terminated by either party prior to its termination date, the term of the Agreement may be automatically extended up to ninety (90) days. Any Notice of Termination during this automatic extension period shall be effective upon a ten (10) day written notice to the other party. The purpose of this automatic extension is to allow for continuation of services, and to allow County time in which to complete a novation or renewal contract for CONTRACTOR AND COUNTY approval.

CONTRACTOR understands and agrees that there is no representation, implication, or understanding that the services provided by CONTRACTOR pursuant to this Agreement will be purchased by COUNTY under a new agreement following expiration or termination of this Agreement, and CONTRACTOR waives all rights or claims to notice or hearing respecting any failure to continue purchase of all or any such services from CONTRACTOR.

### **3. PAYMENT.**

COUNTY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the time and in the amount set forth in Attachment "B." The payment specified in Attachment "B" shall be the only payment made to CONTRACTOR for services rendered pursuant to this Agreement. CONTRACTOR shall submit all billings for said services to COUNTY in the manner specified in Attachment "B."

### **4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF COUNTY.**

CONTRACTOR shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement, unless an exception to this requirement is provided in Attachment "A."

### **5. ADDITIONAL PROVISIONS.**

Those additional provisions unique to this Agreement are set forth in Attachment "C."

### **6. GENERAL PROVISIONS.**

The general provisions set forth in Attachment "D" are part of this Agreement. Any inconsistency between said general provisions and any other terms or conditions of this Agreement shall be controlled by the other term or condition insofar as it is inconsistent with the general provisions.

### **7. CONFIDENTIALITY PROVISIONS.**

At no time shall CONTRACTOR's employees, agents, or representatives in any manner, either directly or indirectly, use for personal benefit or divulge, disclose, or communicate in any manner, any information that is confidential to the COUNTY. CONTRACTOR must maintain compliance with confidentiality regulations as set forth in Attachment "F."

### **8. DESIGNATED REPRESENTATIVES.**

The Director of YCHHSD is the representative of the COUNTY and will administer this Agreement for the COUNTY. The Yuba County One Stop Director is the authorized representative for CONTRACTOR. Changes in designated representatives shall occur only by advance written notice to the other party.

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## 9. ATTACHMENTS.

All attachments referred to herein are attached hereto and by this reference incorporated herein. Attachments include:

Attachment A – Services  
Attachment B – Payment  
Attachment C – Additional Provisions  
Attachment D – General Provisions  
Attachment E – Insurance Provisions  
Attachment F – Confidentiality Provisions and Statements  
Attachment F – Confidentiality Provisions and Statements  
Attachment G – Budget  
Attachment H – Invoice Format

## 10. TERMINATION.

COUNTY and CONTRACTOR shall each have the right to terminate this Agreement upon thirty (30) days written notice to the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on \_\_\_\_\_, 2013.


"COUNTY"

COUNTY OF YUBA

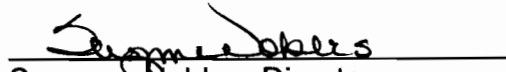
\_\_\_\_\_, Chair  
Yuba County Board of Supervisor

"CONTRACTOR"

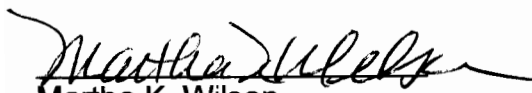
YUBA COUNTY  
OFFICE OF EDUCATION

  
Dr. Scotia Holmes Sanchez  
Superintendent of Schools  
Yuba County Office of Education

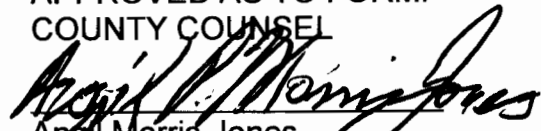
RECOMMENDED FOR APPROVAL:

  
Suzanne Nobles, Director  
Yuba County Health and  
Human Services Department

INSURANCE PROVISIONS APPROVED:

  
Martha K. Wilson,  
Risk Manager

APPROVED AS TO FORM:  
COUNTY COUNSEL

  
Angil Morris-Jones  
County Counsel

## **ATTACHMENT A SERVICES**

### **A.1 GENERAL.**

CONTRACTOR agrees to provide a full-time equivalent (FTE) Training and Employment Counselor I (TEC I) staff person to provide employment services assessments at the Yuba County One Stop.

### **A.2 CONTRACTOR SCOPE OF SERVICES AND DUTIES.**

The services to be provided by CONTRACTOR and the scope of CONTRACTOR's duties include the following:

**A.2.1.** For Assessments and Employment Services, CONTRACTOR agrees:

- A. Provide employment related services to CalWORKs participants and the general public conducting business or seeking services in the Yuba County One Stop.
- B. Educate CalWORKs participants and the general public on available services and tools in the Yuba County One Stop Resource Room. Assist with job search activities and provides information on appropriate employment or training resources.
- C. Administer the Career Ability Placement Survey (CAPS), Career Occupational Preference System (COPS) and Career Orientation Placement Evaluation Survey (COPES) assessments on a weekly basis. Provide comprehensive assessment results to the Yuba county Program Manager within five business days of testing date.
- D. Conduct ongoing research to identify employment and training opportunities for program participants.
- E. Ensure that CalWORKs participants complete a sign-in sheet at each assessment session. Deliver attendance sheets to the Yuba County Program Manager within five business days.

### **A.3. TIME SERVICES RENDERED.**

The Tech I staff person will be scheduled to work Thirty Seven and half (37.5) hours per week at the One Stop and flexible to meet the needs of both Yuba County CalWORKs program and client needs.

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#### **A.4. MANNER SERVICES ARE TO BE PERFORMED.**

As an independent contractor, CONTRACTOR shall be responsible for providing services and fulfilling obligations hereunder in a professional manner. COUNTY shall not control the manner of performance.

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## **ATTACHMENT B PAYMENT**

COUNTY shall pay CONTRACTOR as follows:

**B.1 BASE CONTRACT FEE.** COUNTY shall pay CONTRACTOR a contract fee not to exceed One Hundred Seventy Five Thousand Six Hundred Seventeen Dollars (\$175,617.00), payable in the following increments, as specified in Attachment G-Budget:

<b><u>Budget Time Period</u></b>	<b><u>Expenditure Budget</u></b>
January 1, 2014 –June 30, 2014	\$ 58,539.00
July 1, 2014 – June 30, 2015	\$117,078.00
<b>TOTAL</b>	<b>\$175,617.00</b>

In no event shall total compensation paid to CONTRACTOR under Provision B.1 exceed One Hundred Seventy Five Thousand Six Hundred Seventeen Dollars (\$175,617.00), without an amendment to this Agreement mutually agreed to by both parties in writing.

**B.1.1** Payment for services rendered pursuant to this Agreement shall be made after the invoice is received from CONTRACTOR. CONTRACTOR shall submit monthly invoices (with back-up documentation for all direct service charges attached) in a format in accordance with Attachment H – Invoice Format to COUNTY after completion of services but no later than the tenth (10th) day of the month following provision of services.

**B.1.1.2** For services rendered for the quarter of April through June for each fiscal year during the term of this Agreement, CONTRACTOR shall submit a quarterly invoice, in accordance with the format specified in Attachment H – Invoice Format, based upon the actual services rendered in the months of April and May and estimated costs of services to be rendered in June for each fiscal year no later than June 10th. CONTRACTOR shall submit a final quarterly invoice based on actual costs of services rendered no later than the tenth (10<sup>th</sup>) day of the month following the provision of services for each fiscal year. YCHHSD shall reconcile the amount of actual costs invoiced against the amount of estimated cost paid and issue payment of any amount due. In the event that CONTRACTOR has been overpaid, either CONTRACTOR shall reimburse YCHHSD the entire amount overpaid immediately upon receipt of written notice by

YCHHSD or the amount overpaid shall be offset against future invoice payments, whichever YCHHSD prefers.

**B.2 TRAVEL COSTS.** COUNTY shall not pay CONTRACTOR for meals, lodging or other travel costs not included in this Agreement.

**B.3 AUTHORIZATION REQUIRED.** Services performed by CONTRACTOR and not authorized in this Agreement shall not be paid for by COUNTY. Payment for additional services shall be made to CONTRACTOR by COUNTY if, and only if, this Agreement is amended by both parties in advance of performing additional services.

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## **ATTACHMENT C ADDITIONAL PROVISIONS**

**C.1 FUNDING.** CONTRACTOR and COUNTY agree that this Agreement will be null, void, and not enforceable if all or part of the federal or state funds secured by COUNTY for the purposes of this Agreement are not made available to COUNTY.

**C.2 CHILD ABUSE/ADULT ABUSE.** CONTRACTOR warrants that CONTRACTOR is knowledgeable of the provisions of the Child Abuse and Neglect Reporting Act (Penal Code section 11165 et seq.) and the Elder Abuse and Dependent Civil Adult Protection Act (Welfare and Institutions Code section 15600 et seq.) requiring reporting of suspected abuse. CONTRACTOR agrees that CONTRACTOR and CONTRACTOR's employees will execute appropriate certifications relating to reporting requirements.

**C.3 DRUG FREE WORKPLACE.** CONTRACTOR warrants that it is knowledgeable of the provisions of Government Code section 8350 et seq. in matters relating to providing a drug-free work place. CONTRACTOR agrees that CONTRACTOR will execute appropriate certifications relating to Drug Free Workplace.

**C.4 INSPECTION.** CONTRACTOR's performance, place of business, and records pertaining to this Agreement are subject to monitoring, inspection, review, and audit by authorized representatives of COUNTY, the State of California, and the United States government.

**C.5 CIVIL RIGHTS.** CONTRACTOR warrants that it is aware and understands that the California Department of Social Services (CDSS), in accordance with Division 21 of the Manual of Policies and Procedures (MPP), requires subcontractors that provide services for welfare programs comply with the nondiscrimination statutes as specified in Provision D.12 of this Agreement. CONTRACTOR is hereby informed that additional Civil Rights information and resources are available to CONTRACTOR on the California Department of Social Services, Civil Rights Bureau, website:

<http://www.cdss.ca.gov/civilrights/> and CONTRACTOR agrees to advise subcontractors of this website source of Civil Rights information.

**C.6 LAW, POLICY AND PROCEDURES, LICENSES, AND CERTIFICATES.** CONTRACTOR agrees to administer this Agreement in accordance with all applicable local, county, state, and federal laws, rules, and regulations applicable to their operations. CONTRACTOR shall further comply with all laws including, but not limited to, those relevant to wages and hours of employment, occupational safety, fire safety, health, sanitation standards and directives, guidelines, and manuals related to this Agreement. All issues shall be resolved using reasonable administrative practices and judgment. CONTRACTOR shall keep in effect all licenses, permits, notices, and certificates required by law and by this Agreement.

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**C.7 RECORDS.** CONTRACTOR agrees to maintain and preserve, and to be subject to examination and audit for a period of three (3) years after termination of Agreement to the COUNTY's Auditor and/to any duly authorized fiscal agent of the COUNTY, any books, documents, papers, and records of CONTRACTOR which are relevant to this Agreement for the purpose of making an audit, or an examination, or for taking excerpts and transcriptions.

**C.8 ACCEPTANCE.** All work performed and completed under this Agreement is subject to the acceptance of the COUNTY or its authorized representatives. Failure by the CONTRACTOR to take corrective action within 24 hours after personal or telephonic notice by the COUNTY's representative on items affecting essential use the facility, safety, or the preservation of property, and within ten days following written notice on other deficiencies, will result in the COUNTY taking whatever corrective action it deems necessary. All costs resulting from such action by the COUNTY will be claimed against CONTRACTOR.

**C.9 DEBARMENT.** COUNTY has verified that the CONTRACTOR does not hold any debarment or suspension filings as verified at [www.SAM.gov](http://www.SAM.gov). If a new debarment action arises during the term of this agreement, COUNTY reserves the right to suspend or terminate this contract without penalty.

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## **ATTACHMENT D GENERAL PROVISIONS**

**D.1 INDEPENDENT CONTRACTOR STATUS.** At all times during the term of this Agreement, the following apply:

**D.1.1** All acts of CONTRACTOR shall be performed as an independent Contractor and not as an agent, officer or employee of COUNTY. It is understood by both CONTRACTOR and COUNTY that this Agreement is by and between two independent parties and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.

**D.1.2** CONTRACTOR shall have no claim against COUNTY for employee rights or benefits, including, but not limited to, seniority, vacation time, vacation pay, sick leave, personal time off, overtime, medical, dental or hospital benefits, civil service protection, disability retirement benefits, paid holidays or other paid leaves of absence.

**D.1.3** CONTRACTOR is solely obligated to pay all applicable taxes, deductions and other obligations, including, but not limited to, federal and state income taxes, withholding and Social Security taxes, unemployment and disability insurance and Workers' Compensation and Medi-Care payments.

**D.1.4** As an independent contractor, CONTRACTOR is not subject to the direction and control of COUNTY except as to the final result contracted for under this Agreement. COUNTY may not require CONTRACTOR to change its manner of doing business, but may require it to redirect its efforts to accomplish what it has agreed to do.

**D.1.5** CONTRACTOR may provide services to others during the same period service is provided to COUNTY under this Agreement.

**D.1.6** If in the performance of this Agreement any third persons are employed by CONTRACTOR, such persons shall be entirely and exclusively under the direction, supervision and control of CONTRACTOR. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the CONTRACTOR.

**D.1.7** As an independent contractor, CONTRACTOR hereby indemnifies and holds COUNTY harmless from any and all claims that may be made against COUNTY based on any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

**D.2 LICENSES, PERMITS, ETC.** CONTRACTOR represents and warrants to COUNTY that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to COUNTY that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONTRACTOR to practice its profession at the time the services are performed. Failure of the CONTRACTOR to comply with this provision shall authorize the COUNTY to immediately terminate this Agreement notwithstanding any other provision in this Agreement to the contrary.

**D.3 TIME.** CONTRACTOR shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of CONTRACTOR's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

**D.4 INDEMNITY.** CONTRACTOR shall defend, indemnify, and hold harmless COUNTY, its elected and appointed councils, boards, commissions, officers, agents, and employees from any liability for damage or claims for damage for personal injury, including death, as well as for property damage, which may arise from the intentional or negligent acts or omissions of CONTRACTOR in the performance of services rendered under this Agreement by CONTRACTOR, or any of CONTRACTOR's officers, agents, employees, contractors, or sub-contractors.

**D.5 CONTRACTOR NOT AGENT.** Except as COUNTY may specify in writing, CONTRACTOR shall have no authority, express or implied, to act on behalf of COUNTY in any capacity whatsoever as an agent. CONTRACTOR shall have no authority, express or implied, pursuant to this Agreement to bind COUNTY to any obligation whatsoever.

**D.6 ASSIGNMENT PROHIBITED.** CONTRACTOR may not assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no legal effect.

**D.7 PERSONNEL.** CONTRACTOR shall assign only competent personnel to perform services pursuant to this Agreement. In the event that COUNTY, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONTRACTOR to perform services pursuant to this Agreement, CONTRACTOR shall remove any such person immediately upon receiving written notice from COUNTY of its desire for removal of such person or persons.

**D.8 STANDARD OF PERFORMANCE.** CONTRACTOR shall perform all services required pursuant to this Agreement in the manner and according to the standards

observed by a competent practitioner of the profession in which CONTRACTOR is engaged. All products of whatsoever nature which CONTRACTOR delivers to COUNTY pursuant to this Agreement shall be prepared in a first class and workmanlike manner and shall conform to the standards or quality normally observed by a person practicing in CONTRACTOR's profession.

**D.9 POSSESSORY INTEREST.** The parties to this Agreement recognize that certain rights to property may create a "possessory interest," as those words are used in the California Revenue and Taxation Code, §107. For all purposes of compliance by COUNTY with Section 107.6 of the California Revenue and Taxation Code, this recital shall be deemed full compliance by the COUNTY. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of the County Assessor and the contracting parties hereto. A taxable possessory interest may be created by this contract; and if created, the party in whom such an interest is vested will be subject to the payment of property taxes levied on such an interest.

**D.10 TAXES.** CONTRACTOR hereby grants to the COUNTY the authority to deduct from any payments to CONTRACTOR any COUNTY imposed taxes, fines, penalties and related charges which are delinquent at the time such payments under this Agreement are due to CONTRACTOR.

**D.11 TERMINATION.** Upon termination of this Agreement as otherwise provided herein, CONTRACTOR shall immediately cease rendering service upon the termination date and the following shall apply:

**D.11.1** CONTRACTOR shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing and form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

**D.11.2** COUNTY shall have full ownership and control of all such writings or other communications delivered by CONTRACTOR pursuant to this Agreement.

**D.11.3** COUNTY shall pay CONTRACTOR the reasonable value of services rendered by CONTRACTOR to the date of termination pursuant to this Agreement not to exceed the amount documented by CONTRACTOR and approved by COUNTY as work accomplished to date; provided, however, COUNTY shall not in any manner be liable for lost profits which might have been made by CONTRACTOR had CONTRACTOR completed the services required by this Agreement. In this regard, CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of the COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR,

the decision of the COUNTY shall be final. The foregoing is cumulative and does not affect any right or remedy which COUNTY may have in law or equity.

CONTRACTOR may terminate its services under this Agreement upon thirty (30) days written notice to the COUNTY, without liability for damages, if CONTRACTOR is not compensated according to the provisions of the Agreement or upon any other material breach of the Agreement by COUNTY.

**D.12 NON-DISCRIMINATION.** Throughout the duration of this Agreement, CONTRACTOR shall not unlawfully discriminate against any employee of the CONTRACTOR or of the COUNTY or applicant for employment or for services or any member of the public because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age, sex or sexual orientation. CONTRACTOR shall ensure that in the provision of services under this Agreement, its employees and applicants for employment and any member of the public are free from such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.). The applicable regulations of the Fair Employment Housing Commission implementing Government Code Section 12900, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONTRACTOR shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act. CONTRACTOR shall give written notice of its obligations under this clause to any labor agreement. CONTRACTOR shall include the non-discrimination and compliance provision of this paragraph in all subcontracts to perform work under this Agreement.

**D.13 REHABILITATION ACT OF 1973/AMERICANS WITH DISABILITIES ACT OF 1990.** In addition to application of the non-discrimination provision of this Agreement, above, CONTRACTOR agrees to comply with all provisions of section 504 et seq. of the Rehabilitation Act of 1973, and with all provisions of the Americans with Disabilities Act of 1990, and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts, pertaining to the prohibition of discrimination against qualified handicapped and disabled persons, in all programs or activities, as to employees or recipients of services.

**D.14 OWNERSHIP OF INFORMATION.** All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become the property of COUNTY, and CONTRACTOR agrees to deliver reproducible copies of such documents to COUNTY on completion of the services hereunder. The COUNTY agrees to indemnify and hold CONTRACTOR harmless from any claim arising out of reuse of the information for other than this Agreement.

**D.15 WAIVER.** A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available

hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

**D.16 COMPLETENESS OF INSTRUMENT.** This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made express or implied.

**D.17 SUPERSEDES PRIOR AGREEMENTS.** It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

**D.18 CAPTIONS.** The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**D.19 DEFINITIONS.** Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

**D.19.1 NUMBER AND GENDER.** In this Agreement, the neuter gender includes the feminine and masculine, and the singular includes the plural, the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

**D.19.2 MANDATORY AND PERMISSIVE.** "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

**D.20 TERM INCLUDES EXTENSIONS.** All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

**D.21 SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**D.22 MODIFICATION.** No modification or waiver of any provision of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

**D.23 COUNTERPARTS.** This Agreement may be executed simultaneously and in

several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

**D.24 OTHER DOCUMENTS.** The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

**D.25 PARTIAL INVALIDITY.** If any term, covenant, condition or provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**D.26 JURISDICTION.** It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a Court of competent jurisdiction in the County of Yuba, State of California.

**D.27 CONTROLLING LAW.** The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

**D.28 TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement and each covenant and term a condition herein.

**D.29 AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

**D.30 CONFLICT OF INTEREST.** Neither a COUNTY employee whose position in COUNTY enables such employee to influence the award of this Agreement or any competing Agreement, nor a spouse or economic dependent of such employee, shall be employed in any capacity by CONTRACTOR herein, or have any other direct or indirect financial interest in this Agreement.

CONTRACTOR may be subject to the disclosure requirements of the COUNTY conflict of interest code if in a position to make decisions or influence decisions that could have an effect on the CONTRACTOR's financial interest. The County Administrator shall determine in writing if CONTRACTOR has been hired to perform a range of duties that

is limited in scope and thus is not required to fully comply with the disclosure requirements described in the Yuba County Conflict of Interest Code.

**D.31 NOTICES.** All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

If to "COUNTY":

Suzanne Nobles  
Director  
Yuba County Health and  
Human Services Department  
5730 Packard Avenue, Suite 100  
P.O. Box 2320  
Marysville, CA 95901

With a copy to:

County Counsel  
County of Yuba  
915 8<sup>th</sup> Street, Suite 111  
Marysville, CA 95901

If to "CONTRACTOR":

Dr. Scotia Holmes Sanchez  
Superintendent of Schools  
Yuba County Office of Education  
935 14<sup>th</sup> Street  
Marysville, CA 95901

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## **ATTACHMENT E INSURANCE PROVISIONS**

**E.1 INSURANCE.** CONTRACTOR shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, its agents, representatives, or employees.

**E.2 MINIMUM SCOPE AND LIMIT OF INSURANCE.** Coverage shall be at least as broad as:

**E.2.1 Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

**E.2.2 Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if CONTRACTOR has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

**E.2.3 Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

**E.2.4 Professional Liability (Errors and Omissions)** Insurance as appropriate to CONTRACTOR's profession, with limits no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the CONTRACTOR maintains higher limits than the minimums shown above, COUNTY requires and shall be entitled to coverage for the higher limits maintained by CONTRACTOR.

**E.3 Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

**E.4 Additional Insured Status.** COUNTY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of CONTRACTOR; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability

coverage can be provided in the form of an endorsement to the CONTRACTOR's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).

**E.5 Primary Coverage.** For any claims related to this contract, **CONTRACTOR's insurance coverage shall be primary** insurance as respects COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, or volunteers shall be excess of CONTRACTOR's insurance and shall not contribute with it.

**E.6 Notice of Cancellation.** Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the COUNTY.**

**E.7 Waiver of Subrogation.** CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against COUNTY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not COUNTY has received a waiver of subrogation endorsement from the insurer.

**E.8 Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by COUNTY. COUNTY may require CONTRACTOR to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

**E.9 Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the COUNTY.

**E.10 Claims Made Policies.** If any of the required policies provide coverage on a claims-made basis:

**E.10.1** The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

**E.10.2** Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

**E.10.3** If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

**E.11 Verification of Coverage.** CONTRACTOR shall furnish COUNTY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be

received and approved by COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive CONTRACTOR's obligation to provide them. COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

**E.12 Subcontractors.** CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

**E.13 Special Risks or Circumstances.** COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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**ATTACHMENT F  
COUNTY OF YUBA  
CONFIDENTIALITY PROVISIONS AND STATEMENTS**

**F.1 INTRODUCTION.**

For the purposes of carrying out a contract for General Education Diploma (GED) preparation courses entered into between the COUNTY and CONTRACTOR, the COUNTY has provided the CONTRACTOR access to Confidential Information. The provisions and statements set forth in this document outline the CONTRACTOR's responsibilities for safeguarding this information.

**F.2 DEFINITIONS.**

**F.2.1 CONFIDENTIAL INFORMATION** shall include, but is not limited to, personally identifiable information, protected health information, financial information, financial account numbers, driver's license numbers, social security numbers, marital status, etc.

**F.2.1 PERSONALLY IDENTIFIABLE INFORMATION** is confidential information and includes, but is not limited to, names, dates of birth, social security numbers, addresses, phone numbers, driver's license numbers, State ID numbers, etc.

**F.2.3 BREACH** shall mean the acquisition, access, use or disclosure of confidential information which compromises the security or privacy of such information.

**F.2.4 SECURITY INCIDENT** shall mean any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any confidential information.

**F.3 BACKGROUND.**

The COUNTY maintains confidential information to perform functions, activities, and/or services directly related to the administration of a social service program. Such confidential information may not be used, accessed, or disclosed for any other purposes.

The COUNTY must take appropriate steps to ensure its compliance with all applicable state and federal confidentiality laws and desires to protect the privacy of those to which it provides services. As such, it must require that CONTRACTOR also obey all applicable state and federal laws. Any individual who violates the privacy, confidentiality, or security of confidential information in

any form or medium may be subject to civil and/or criminal prosecution under state and federal law.

Establishing safeguards for confidential information can limit the potential exposure of confidential information and CONTRACTOR is expected to adhere to current industry standards and best practices in the management of data collected by, or on behalf of, the COUNTY, and within the CONTRACTOR's possession.

However, even with sound practices and safeguards, exposure can occur as a result of a theft, loss, compromise or breach of the data and/or systems containing data. At these times, the CONTRACTOR must immediately report the incident surrounding the loss or breach of data in the CONTRACTOR's possession and absorb any associated costs as deemed by the COUNTY to be reasonable and necessary.

#### **F.4 PROVISIONS.**

**F.4.1** The CONTRACTOR shall sign the "Confidentiality Provisions and Statements" and adopt it by reference in the underlying Agreement.

**F.4.2** The COUNTY requires at least the following minimum standards of care in handling the confidential information:

**F.4.2.1** Securing all areas where confidential information is maintained and/or stored;

**F.4.2.2** Utilizing all industry standard encryption and methodology through which confidential information is transmitted and/or stored. This includes desktop and laptop computers (whole drive encryption – not file encryption), personal digital assistants (PDA), smart phones, thumb or flash-type drives, CDs, diskettes, backup tapes, etc.;

**F.4.2.3** Limiting the removal of confidential information from the CONTRACTOR's premises except for those purposes as designated in the underlying Agreement;

**F.4.2.4** Ensuring only the minimum necessary amount of confidential information is downloaded and/or accessed when absolutely necessary for the purposes as designated in the underlying Agreement;

**F.4.2.5** Not leaving unattended or accessible to unauthorized individuals; and

**F.4.2.6** Disposing of confidential information, after obtaining COUNTY authorization and approval, through confidential means for the purposes designated in the underlying Agreement.

**F.4.3** Confidential information shall only be used or disclosed for the purposes designed in the underlying Agreement and at no time shall be disclosed or used for personal, non-contract/agreement related reasons, unless specifically authorized by the COUNTY.

**F.4.4** In all circumstances, the CONTRACTOR shall have no ownership rights or interests in any data or information, including confidential information. All data collected by the CONTRACTOR on behalf of the COUNTY, or received by the CONTRACTOR on behalf of the COUNTY, is owned by the COUNTY. There are no exceptions to this provision.

**F.4.5** The COUNTY may periodically monitor and/or audit use of the information systems and other record-keeping systems at a CONTRACTOR's location or COUNTY location in an effort to ensure compliance with these provisions.

**F.4.6** If there is an incident involving theft, loss, compromise, and/or breach of confidential information, the CONTRACTOR must notify the COUNTY immediately and under no circumstances no less than twenty four (24) hours after discovery of such an incident.

**F.4.7** If the incident involves a theft or is incidental to another crime, the CONTRACTOR shall notify the appropriate law enforcement officials and a police report generated to document the circumstances of the incident so as to establish whether the crime involved a motive to obtain the confidential information. The police report will be forwarded to the COUNTY within forty eight (48) hours of receipt of the report.

**F.4.8 NOTIFICATION OF BREACH.**

**F.4.8.1** Upon the suspicion or discovery of a breach, security incident, intrusion, or unauthorized use or disclosure of confidential information, the CONTRACTOR shall notify the COUNTY within twenty four (24) hours by telephone in addition to follow up by either email or fax.

**F.4.8.2** Notification of any breach, security incident, or unauthorized access as described in section 4.8.1 shall be provided to:

Kathy Cole, Yuba County Privacy Officer  
Phone: (530) 749-6382 or (530) 749-6311

E-Mail: [kcole@co.yuba.ca.us](mailto:kcole@co.yuba.ca.us)  
Fax: (530) 749-6281

**F.4.8.3** The CONTRACTOR shall immediately investigate such actual or suspected breach, security incident, or unauthorized access of confidential information. Within seventy two (72) hours of the discovery, if an actual breach has occurred, the CONTRACTOR shall notify the individual identified in section 4.8.2 of the following:

- (a) What data elements were involved and the extent of the data involved in the breach (e.g. number of records or affected individual's data);
- (b) The identity of the unauthorized persons known or reasonably believed to have improperly used or disclosed Personally Identifiable Information and/or confidential information;
- (c) A description of where the confidential information is believed to have been improperly transmitted, sent, or utilized;
- (d) A description of the probable causes of the improper use or disclosure; and
- (e) Whether any state or federal laws requiring individual notifications of breaches are triggered.

**F.4.8.4** The COUNTY will coordinate with the CONTRACTOR to determine additional specific actions that will be required of the CONTRACTOR for mitigation of the breach, which may include notification to the individual or other authorities.

**F.4.8.5** All associated costs shall be borne by the CONTRACTOR. This may include, but is not limited to, costs associated with notifying the affected individuals.

**F.4.9** The COUNTY may require that the CONTRACTOR provide evidence of adequate background checks for individuals who are entrusted by the CONTRACTOR to work with the COUNTY's confidential information.

**F.4.10** The COUNTY requires that the CONTRACTOR have comprehensive policies and procedures to adequately safeguard the confidential information before it is conveyed to the CONTRACTOR. The

CONTRACTOR's policies should articulate all safeguards in place for the COUNTY's confidential information, including provisions for destruction of all data and backup copies of data. All COUNTY-owned media containing confidential information shall be returned to the COUNTY when no longer legitimately needed by the CONTRACTOR.

#### **F.5 ACKNOWLEDGEMENT OF RECEIPT AND SIGNATURE.**

The CONTRACTOR hereby understands the above provisions and statements. The CONTRACTOR further understands the sensitivity of the confidential information and understands that the CONTRACTOR must protect the confidentiality of all COUNTY information placed within the CONTRACTOR's care or which the CONTRACTOR may come across during the course of the Agreement.

DATED: \_\_\_\_\_

CONTRACTOR

  
(Signature)

Dr. Scotia Holmes Sanchez,

Superintendent of Schools

(Print Name and Title)

# ATTACHMENT G BUDGET

BUDGET FY 2013/14 January 1, 2014 - June 30, 2014					TOTALS
PERSONNEL EXPENSE					
	Salary	% FTE	# of Periods	Total	
Tech 1	\$2,062.00	100%	6	\$ 12,372.00	
Subtotal:				\$ 12,372.00	
BENEFITS EXPENSE					
	Salary	% of Total Salary		Total	
PERS	\$ 12,372.00	11.417%		\$ 1,413.00	
MEDI	\$ 12,372.00	1.145%		\$ 142.00	
UI	\$ 12,372.00	1.100%		\$ 136.00	
Staff Development-Continuing	\$ 12,372.00	1.500%		\$ 186.00	
WC	\$ 12,372.00	1.964%		\$ 243.00	
Subtotal:				\$ 2,120.00	
HEALTH INSURANCE EXPENSE					
	Amount		# of Periods	Total	
Health	\$898.00		6	\$ 5,388.00	
Subtotal:				\$ 5,388.00	
Total Personnel, Benefits and Health Budget: \$ 19,880.00					
OPERATING COSTS					
	Description			Total	
Office Supplies	General Office Supplies			\$150.00	
Communications/Tech	IT Contract			\$ 521.00	
Subtotal:				\$ 671.00	
Total Operating Costs Budget: \$ 671.00					
DIRECT COSTS					
	Amount/person	Mo. Avg	# of periods	Total	
Assessments	\$120.00	20	6	\$14,400.00	
Subtotal:				\$ 14,400.00	
Total Direct Costs Budget: \$ 14,400.00					
ADMINISTRATIVE COST					
	%	Total Budget			
Administrative Cost*	10%	\$ 19,880.00			
*10% Personnel, Benefits and Health					
TOTAL ANNUAL COST: \$ 36,839.00					

**ATTACHMENT G  
BUDGET-Continued**

BUDGET FY 2014/15 July 1, 2014 - June 30, 2015				
PERSONNEL EXPENSE				TOTALS
	Salary	% FTE	# of Periods	
Tech 1	\$2,062.00	100%	12	
Subtotal:			\$ 24,744.00	
BENEFITS EXPENSE				
	Salary	% of Total Salary	Total	
PERS	\$ 24,744.00	11.417%	\$ 2,826.00	
MEDI	\$ 24,744.00	1.145%	\$ 284.00	
UI	\$ 24,744.00	1.100%	\$ 273.00	
Staff Development-Continuing	\$24,744.00	1.500%	\$ 372.00	
WC	\$24,744.00	1.964%	\$ 486.00	
Subtotal:			\$ 4,241.00	
HEALTH INSURANCE EXPENSE				
	Amount	# of Periods	Total	
Health	\$898.00	12	\$ 10,776.00	
Subtotal:			\$ 10,776.00	
Total Personnel, Benefits and Health Budget: \$ 39,761.00				
OPERATING COSTS				
	Description	Total		
Office Supplies	General Office Supplies	\$300.00		
Communications/Tech	IT Contract	\$ 1,041.00		
Subtotal:			\$ 1,341.00	
Total Operating Costs Budget: \$ 1,341.00				
DIRECT COSTS				
	Amnt/person	Mo. Avg	# of periods	Total
Assessments	\$120.00	20	12	\$28,800.00
Subtotal:				\$ 28,800.00
Total Direct Costs Budget: \$ 28,800.00				
ADMINISTRATIVE COST				
	%	Total Budget		
Administrative Cost*	10%	\$ 39,761.00		
*10% Personnel, Benefits and Health				
TOTAL ANNUAL COST: \$ 73,878.00				

# ATTACHMENT H INVOICE FORMAT

<b>Contractor's Name and Address</b>		<b>Contact Name and Phone Number</b>	
Yuba County Office of Education 935 14th Street Marysville, CA 95901		Dr. Scotia Holmes, Superintendent of Schools Phone: Fax:	
<b>Program</b>		<b>Period of Service</b>	
CalWORKs-Assessments			
<b>Personnel Position/Class</b>	<b>Salary</b>	<b>% of Time</b>	<b>Amount</b>
Tech 1		100%	\$ -
<b>Benefits</b>	<b>Salary</b>	<b>% of benefits</b>	<b>Amount</b>
PERS	\$ -	11.417%	\$ -
MEDI	\$ -	1.145%	\$ -
UI	\$ -	1.100%	\$ -
Staff Development-Continuing	\$ -	1.500%	\$ -
WC	\$ -	1.964%	\$ -
<b>Health Insurance</b>	<b>Amount</b>	<b># of Periods</b>	<b>Amount</b>
Health	\$ 898.00		\$ -
<b>Operating Expenses</b>			
<b>Description</b>			<b>Amount</b>
Office Supplies			\$ -
Communications/Tech			\$ -
<b>Direct Expenses</b>	<b>Amount</b>	<b># of Periods</b>	<b>Amount</b>
Assessments			\$ -
<b>Administrative Expense</b>	<b>%</b>	<b>Personnel Expense</b>	<b>Amount</b>
Administrative Expense	10%	\$ -	\$ -
<b>GRAND TOTAL</b>			<b>\$ -</b>

## Certification:

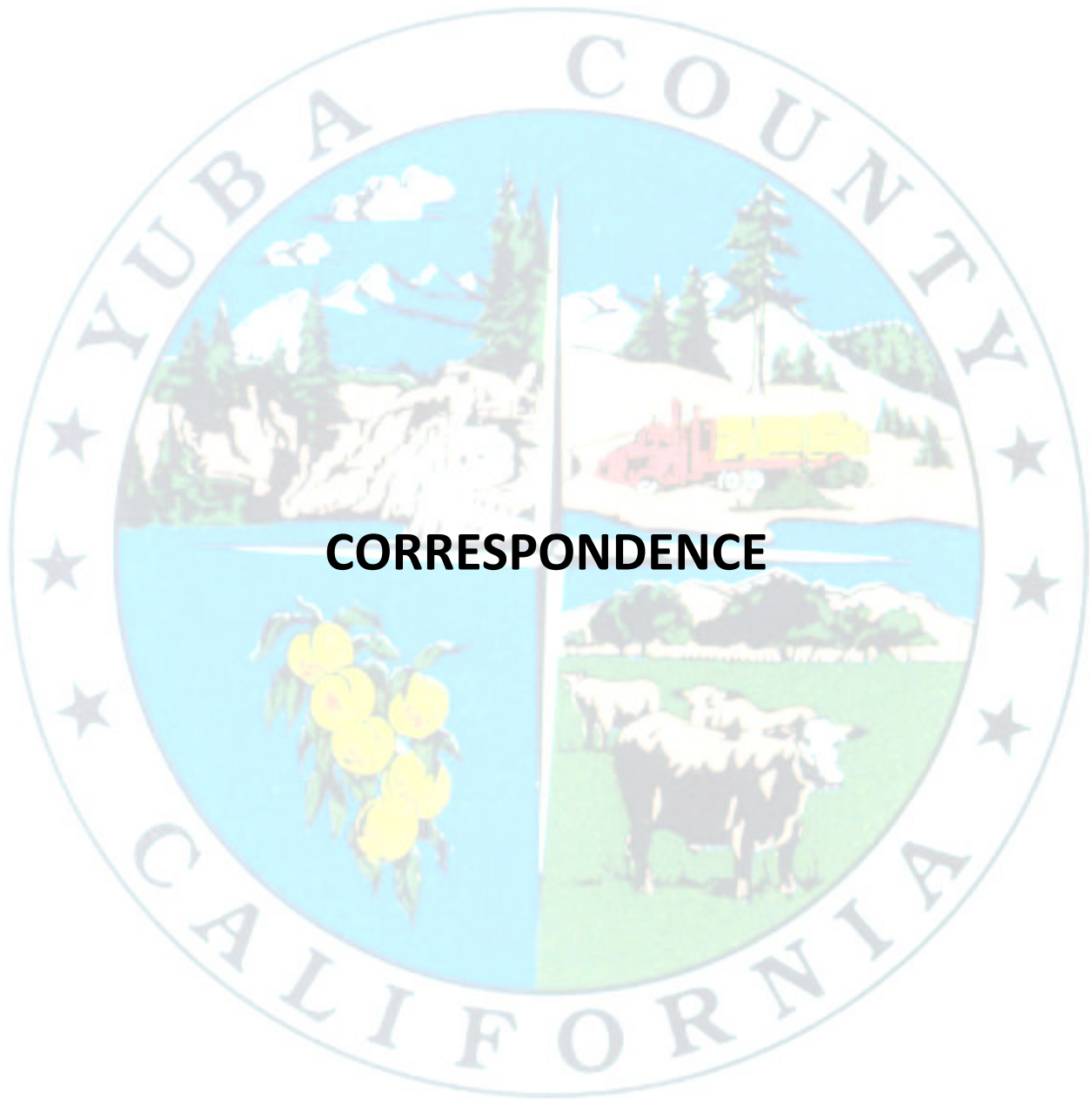
I certify that this invoice is in all respects true and correct; that all material, supplies, or services claimed have been received or performed, and were used or performed exclusively in connection with the Agreement; that payment has not been previously received for the amount invoiced herein; and that the original invoices, payrolls, or other documentation are on file.

\_\_\_\_\_  
Authorized Signer

\_\_\_\_\_  
Date

Mail original and back-up documentation to:  
Yuba County Health and Human Services Department  
Attention: Administration/Finance  
P.O. Box 2320  
Marysville, CA 95901

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# The County of Yuba

AUDITOR - CONTROLLER



510-13 A

C. RICHARD EBERLE, CPA

915 8<sup>th</sup> Street, Suite 105  
Marysville, CA 95901-5273  
(530) 749-7810

November 12, 2013

Board of Supervisors  
County of Yuba  
915 8<sup>th</sup> Street Suite 109  
Marysville CA 95901

**RECEIVED**

DEC 4 2013

Clerk/Board of Supervisors

Honorable Members:

An Independent Audit of the financial records for the following agency has been completed for the year(s) specified:

DISTRICT 10 HALLWOOD COMMUNITY SERVICES DISTRICT

JUNE 30, 2012

Yours truly,

A handwritten signature in black ink, appearing to read "C. Eberle", written over a horizontal line.

C. Richard Eberle  
Auditor-Controller

CRE/kmd  
Enclosure (1)

**DISTRICT 10 HALLWOOD  
COMMUNITY SERVICES DISTRICT  
FINANCIAL STATEMENTS  
JUNE 30, 2012**

**DISTRICT 10 HALLWOOD COMMUNITY SERVICES DISTRICT  
JUNE 30, 2012  
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P.O. Box 160  
661 5th Street, Suite 101  
Lincoln, CA 95648  
Office (916) 434-1662  
Fax (916) 434-1090

**DISTRICT 10 HALLWOOD COMMUNITY SERVICES DISTRICT  
INDEPENDENT AUDITOR'S REPORT**

To the Members of the Board of Directors  
District 10 Hallwood Community Services District  
3511 Kibbe Road  
Marysville, CA 95901

We have audited the accompanying financial statements of the governmental activities and the major funds of District 10 Hallwood Community Services District (the District), as of and for the year ended June 30, 2012 which collectively comprise the District's basic financial statements as listed in the table of contents. These financial statements are the responsibility of the District's management. Our responsibility is to express opinions on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinions.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities and the major funds of District 10 Hallwood Community Services District (the District), and the respective changes in financial position, as of and for the year ended June 30, 2012 in conformity with accounting principles generally accepted in the United States of America and with the California State Controller's Minimum Audit Requirements and Reporting Guidelines for Special Districts.

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and budgetary comparison information on pages 3

through 5 and 14 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

A handwritten signature in cursive script that reads "Jensen Smith".

Jensen Smith  
Certified Public Accountants  
Lincoln, California  
October 16, 2013

**DISTRICT 10 HALLWOOD COMMUNITY SERVICES DISTRICT  
MANAGEMENT'S DISCUSSION AND ANALYSIS  
FOR THE YEAR ENDED JUNE 30, 2012**

Our discussion and analysis of the District 10 Hallwood Community Services District's (hereafter referred to as the District) financial performance provides an overview of the District's financial activities for the fiscal year ended June 30, 2012.

**FINANCIAL HIGHLIGHTS**

The financial statements included in this report provide insight into the financial status for the year.

- The District's assets exceeded its liabilities (fund balance) by \$604,261 at June 30, 2012. This is an increase of \$60,990 over last year.
- The District's activities for 2011-2012 can be summarized as follows:

Revenues	\$175,083
Expenditures	<u>114,093</u>
Surplus	<u>\$ 60,990</u>

This is a decrease of \$8,131 in revenues and a decrease of \$13,509 in expenses over last year.

- Resources available for appropriation, which includes the prior year's ending fund balance plus the current change in fund balances, for all governmental activities was \$604,261.

**Using this Annual Report - Overview of the Financial Statements**

This report consists of two combined financial statements. The Governmental Funds Balance Sheet/Statement of Net Assets and the Statement of Revenue, Expenditures and Changes in Fund Balance/Statement of Activities (Pages 6 and 7) illustrate how the governmental type activities were financed in the short term, as well as what remains for future spending. The columns of these statements titled Statement of Net Assets, and Statement of Activities provide information about the financial activities of the District as a whole and a longer view of the District's finances.

**Government-Wide Financial Statements and Fund Financial Statements**

The District has two governmental funds: its operating fund and its capital improvement fund. The government-wide financial statements and the fund financial statements have been combined because the District is only reporting on two governmental funds. The government-wide information is included in the columns Statement of Net Assets and Statement of Activities, on pages 6 and 7, and is designed to provide readers with a broad overview of the District as a whole and about its activities for the current period. They include all assets and liabilities using the accrual basis of accounting, which is similar to the accounting methods used in the private sector. In this method, all of the current year's revenues and expenses are taken into account when earned or incurred rather than when cash is received or paid.

The funds financial statement information is included in the columns General Fund and Capital Improvement Fund. This information focuses on how money flows into and out

of the funds and the balance left at period end that is available for spending. The funds are reported using an accounting method called modified accrual accounting, which measures cash and all other financial assets that can be readily converted to cash. The governmental fund information provides a detailed short-term view of the District's general government operations and the basic services it provides. Governmental fund information helps you determine whether there are more or fewer resources that can be spent in the near future. At June 30, 2012, there are no differences between the governmental activities (government-wide information) and governmental funds (fund information).

#### **The District's Funds - Governmental Funds**

The focus of the District's governmental funds is to provide information on near-term inflows, outflows, and balances of spendable resources. Such information is useful in assessing the District's financing requirements. In particular, the unassigned fund balance may serve as a useful measure of a government's net resources available for spending at the end of the fiscal year. As the District completed the year, its governmental funds reported a combined ending fund balance of \$604,261.

The General Fund is the chief operating fund of the District. At the end of the twelve-month period ended June 30, 2012, the unassigned balance of the General Fund was \$220,902. The Capital Improvement Fund is used to collect fire mitigation fees, and its committed fund balance at June 30, 2012 was \$383,359. These amounts constitute balances that are available for spending at the District's discretion.

#### **BUDGET**

The District adopts a preliminary budget each year at its monthly board meeting in May per California Health and Safety Code Section 13890 for the General Fund. The final budget for the General Fund is adopted at the monthly meeting in July. For fiscal year 2011-2012 the preliminary budget was for expenditures and did not include revenues; it was adopted at \$111,850. No revisions were made during the year. Actual General Fund revenue for fiscal year 2011-2012 was \$160,334 and expenditures were \$111,093 (see page 12 for the budget to actual comparisons).

#### **DISTRICT ASSETS**

At the end of the fiscal year the district did not own any capital assets. On a per request basis, the District's Board of Directors hears requests for fire equipment for the City of Marysville Fire Department and votes for the approval, purchase, and final distribution to the City of Marysville Fire Department. During the year, the District expended \$105,000 per the contract with the City of Marysville towards the purchase of fire equipment for the City.

#### **CASH BALANCES**

The District's funds are held on deposit with the County of Yuba. Interest generated by these funds is automatically deposited into the account.

The District's general cash operating accounts showed an increase of \$60,714 during the fiscal year. The total for these accounts at June 30, 2012 was \$654,465.

#### **ECONOMIC FACTORS AND NEXT YEARS BUDGET**

The District expects no significant changes in economic factors that would affect revenue in the upcoming year. Property tax revenues are historically estimated to increase 2-3% per year.

#### **CONTACTING THE DISTRICT'S FINANCIAL MANAGEMENT**

This financial report is designed to provide our citizens, taxpayers, customers and creditors with a general overview of the District's finances and to show the District's accountability for the money it receives. Any questions about this report or requests for additional information may be directed to Louise Smith, District Secretary, 3511 Kibbe Road, Marysville, CA 95901.

**DISTRICT 10 HALLWOOD COMMUNITY SERVICES DISTRICT  
GOVERNMENTAL FUNDS BALANCE SHEET/STATEMENT OF NET ASSETS  
JUNE 30, 2012**

	<u>GOVERNMENTAL FUND TYPES</u>				
	<u>General Fund</u>	<u>Capital Improvement Fund</u>	<u>Total</u>	<u>Adjustments</u>	<u>Statement of Net Assets</u>
<u>Assets</u>					
Cash in County Investment Pool	\$ 272,352	\$ 382,113	\$ 654,465	\$ -	\$ 654,465
Interest Receivable	1,050	1,246	2,296	-	2,296
<b>Total Assets</b>	<u>\$ 273,402</u>	<u>\$ 383,359</u>	<u>\$ 656,761</u>	<u>-</u>	<u>656,761</u>
<u>Liabilities &amp; Fund Balances</u>					
Liabilities:					
Accounts Payable	\$ 52,500	\$ -	\$ 52,500	-	52,500
<b>Total Liabilities</b>	<u>52,500</u>	<u>-</u>	<u>52,500</u>	<u>-</u>	<u>52,500</u>
Fund Balances:					
Committed	-	383,359	383,359	(383,359)	-
Unassigned	220,902	-	220,902	(220,902)	-
<b>Total Fund Balances</b>	<u>220,902</u>	<u>383,359</u>	<u>604,261</u>	<u>(604,261)</u>	<u>-</u>
<b>Total Liabilities &amp; Fund Balances</b>	<u>\$ 273,402</u>	<u>\$ 383,359</u>	<u>\$ 656,761</u>		
Net Assets:					
Unrestricted				220,902	220,902
Restricted				383,359	383,359
<b>Total Net Assets</b>				<u>\$ -</u>	<u>\$ 604,261</u>

See accompanying notes

**DISTRICT 10 HALLWOOD COMMUNITY SERVICES DISTRICT  
STATEMENT OF REVENUES, EXPENDITURES AND  
CHANGES IN FUND BALANCES/ STATEMENT OF ACTIVITIES  
FOR THE YEAR ENDED JUNE 30, 2012**

	General Fund	Capital Improvement Fund	Total	Adjustments	Statement of Activities
Revenues:					
Current Secured Property Taxes	\$ 7,979	\$ -	\$ 7,979	\$ -	\$ 7,979
Current Unsecured Property Taxes	399	-	399	-	\$ 399
Property Taxes Prior Unsecured	25	-	25	-	25
Current Supplemental Property Taxes	9	-	9	-	9
Direct Assessments	143,834	-	143,834	-	143,834
Direct Assessments - Prior Years	3,558	-	3,558	-	3,558
Homeowners Property Tax Reduction	158	-	158	-	158
Reimbursement for Equipment	-	-	-	-	-
Fire Mitigation	-	13,300	13,300	-	13,300
Interest	4,352	3,991	8,343	-	8,343
Unrealized Gains (Losses)	(1,638)	(904)	(2,542)	0	(2,542)
Miscellaneous	20	-	20	-	20
Total Revenues	158,696	16,387	175,083	-	175,083
Expenditures:					
Current General Governmental:					
City of Marysville					
Contract Payments	105,000	-	105,000	-	105,000
Reimbursable Equipment	-	3,000	3,000	-	3,000
Secretary and Bookkeeper	2,200	-	2,200	-	2,200
Supplies, Postage, etc.	180	-	180	-	180
Election Costs	446	-	446	-	446
County Services	95	-	95	-	95
Insurance	2,160	-	2,160	-	2,160
Special District Fee	-	-	-	-	-
Office Equipment	1,012	-	1,012	-	1,012
Total Expenditures	111,093	3,000	114,093	-	114,093
Excess of Revenues over Expenditures	47,603	13,387	60,990	(60,990)	-
Change in Net Assets					60,990
Fund Balances/Net Assets:					
Beginning of the year	297,799	245,472	543,271	-	543,271
End of the year	\$ 345,402	\$ 258,859	\$ 604,261	\$ -	\$ 604,261

See accompanying notes

**DISTRICT 10 HALLWOOD COMMUNITY SERVICES DISTRICT**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**JUNE 30, 2012**

**NOTE 1 – NATURE OF THE ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

Description of the Organization

The District 10 Hallwood Community Services (the District) is a special district organized by the residents of the District 10 and Hallwood areas to provide fire prevention and suppression, emergency rescue, and related services for the community.

The District's primary source of revenue is property taxes collected by Yuba County. The Yuba County Auditor-Controller's office acts as a fiduciary for the District's funds and disburses these funds at the direction of the District's Board of Directors. Yuba County also maintains the District's accounting records.

The District is administered by a Board of Directors that acts as the authoritative and legislative body of the entity. The Board is comprised of five board members. Board members do not receive compensation for services, travel, or attendance of board meetings.

**Basis of Presentation and Accounting**

Government-Wide and Fund Financial Statements

The District has a single program and therefore combined the government-wide and fund financial statements. The government-wide financial statements information (i.e., the statement of net assets and the statement of activities) reports information on the primary government (District) as a whole.

Measurement Focus, Basis of Accounting, and Financial Statement Presentation

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Grants and similar items are recognized as revenue as soon as all eligibility requirements by the provider have been met.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized as soon as they are both measurable and available. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose the District considers revenues to be available if they are collected within sixty days after the end of the current fiscal year. Expenditures generally are recorded when a liability is incurred as under accrual accounting.

**DISTRICT 10 HALLWOOD COMMUNITY SERVICES DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2012**

**NOTE 1 – NATURE OF THE ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – continued**

Fund Accounting

The District uses funds to maintain its financial records during the year. A fund is defined as a fiscal and accounting entity with a self-balancing set of accounts. At June 30, 2012, the District had two governmental funds; the general fund and the capital improvement fund.

The General Fund is used to account for all the other operations of the District.

The Capital Improvement Fund is used to collect fire mitigation fees and for the purchase of equipment to be used by the City of Marysville.

Governmental Funds

Governmental funds are those through which most governmental functions typically are transacted. Governmental funds reporting focuses on the sources, uses and balances of current financial resources. Expendable assets are assigned to the various governmental funds according to the purpose for which they may or must be used. Current liabilities are assigned to the fund from which they will be paid. The difference between governmental fund assets and liabilities is reported as fund balance.

Fund Balances

The Government Accounting Standards Board (GASB) has issued Statement No. 54 *Fund Balance Reporting and Governmental Fund Type Definitions* (GASB 54) This Statement defines the different types of fund balances that a governmental entity must use for financial reporting purposes.

GASB 54 requires the fund balance amounts to be properly reported within one of the fund balance categories as noted below.

- **Nonspendable –**  
This category includes elements of the fund balance that cannot be spent because of their form, or because they must be maintained intact. For example
  - Assets that will never convert to cash, such as prepaid items and inventories of supplies;
  - Assets that will not convert to cash soon enough to affect the current period, such as non-financial assets held for resale; or
  - Resources that must be held intact pursuant to legal or contractual requirements, such as revolving loan fund capital or the principal of an endowment.
- **Restricted –**  
This category includes resources that are subject to constraints that are externally enforceable legal restrictions. Examples include:

**DISTRICT 10 HALLWOOD COMMUNITY SERVICES DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2012**

**NOTE 1 – NATURE OF THE ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - continued**

Fund Balances - continued

• **Restricted – continued**

- Funding from the state, federal entities, or foundations that are legally restricted to specific uses. For example, funds advanced by a federal entity under specific agreements for services, or matching funds for specific initiatives.
- Funds legally restricted by county, state, or federal legislature, or a government's charter or constitution.
- Amounts collected from non-spendable items, such as the long term portion of loan outstanding, if those amounts are also subject to legal constraints.
- Funding that has been designated for legally enforceable contracts but not yet spent.

• **Committed –**

Two criteria determine the District's fund balance:

1. Use of funds is constrained by limits imposed by the government's highest level of decision making. The highest level of decision making for the District would be the Board of Directors.
2. Removal or modification of use of funds can be accomplished only by formal action of the authority (i.e., Board of Directors) that established the constraints.

Both commitments and modifications or removal must occur prior to the end of reporting period; that is, the fiscal year being reported upon.

• **Assigned –**

The assigned portion of the fund balance reflects the District's intended use of resources, which is established either by the Board of Directors, a body created by the Board, such as a finance committee, or an official designated by the Board. The "assigned" component is similar to the "committed" component, with two essential differences, shown in the following table:

Key Differences Between Committed and Assigned Fund Balance		
	Committed	Assigned
A decision to use funds for a specific purpose requires action of the Board of Directors	Yes	No
Formal action of the Board of Directors is necessary to impose, remove or modify this constraint and formal action has taken place before end of reporting period	Yes	No

Another key difference is that the purpose of the assignment must be narrower than the fund itself. Resources that fit into this category include:

**DISTRICT 10 HALLWOOD COMMUNITY SERVICES DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2012**

**NOTE 1 – NATURE OF THE ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – continued**

Fund Balances - continued

- **Assigned – continued**
  - Appropriation of a portion of existing fund balance sufficient to eliminate a projected deficit in the subsequent year's budget.
  - Resources assigned to a specific program or project or organization for which the District has approved a plan or budget
  - Resources approved by the District for a long range financial plan where formal approval is not required to modify the amount.
- **Unassigned –**

This category includes the fund balance that cannot be classified into any of the other categories.

If situations arise where there is a possibility of assigning an expense into more than one category, the restricted amount will be reduced first, followed by committed, assigned, and then unassigned amounts.

Net Assets

In the government-wide financial statements, net assets are classified in the following categories:

*Invested in Capital Assets, Net of Related Debt:* This category records capital assets net of accumulated depreciation and reduced by any outstanding balances of bonds, mortgages, notes or other borrowing attributable to the acquisition, construction or improvement of capital assets.

*Restricted Net Assets:* This category represents the net assets of the District which are restricted by external sources such as banks or by law. When assets are required to be retained in perpetuity, these non-expendable net assets are recorded separately from expendable net assets.

*Unrestricted Net Assets:* This category represents the net assets of the District which are not restricted for any project or other purpose.

If situations arise where there is a possibility of assigning an expense into more than one category, the restricted amount will be reduced first, followed by unrestricted amounts.

Budget

The Board provides for a budget for the General Fund expenses for the fiscal year in accordance with Chapter 7 of the Fire Protection District Law of 1987 as contained in the Health & Safety Code Sections 13890 and 13895, inclusive. The Board prepares a preliminary budget in May and adopts a final budget in July. Supplemental appropriations are adopted throughout the year as necessary.

**DISTRICT 10 HALLWOOD COMMUNITY SERVICES DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2012**

**NOTE 1 – NATURE OF THE ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES – continued**

Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Fixed Assets

The District does not own any personal property or equipment and all fire protection services are met by a contract between the District and the City of Marysville. The District receives requests for fire equipment from the City of Marysville Fire Department, which the Board of Directors votes on as to whether or not to fulfill the request. The District then purchases equipment, and donates the equipment to the City of Marysville Fire Department. During the year, the District expended \$105,000 in accordance with a contract with the City of Marysville to be used towards the purchase of fire equipment for the City. Of this amount, \$52,500 was payable to the City of Marysville as of June 30, 2012.

Cash

All cash at June 30, 2012 is pooled for investment purposes and held by Yuba County. Interest is apportioned to the District based on the average daily balance on deposit with the County of Yuba.

**NOTE 2 – SPECIAL TAX COLLECTIONS**

Taxes are levied on November 1 of the fiscal year and can be paid in two equal installments. The first and second installments are due November 1 and February 1, respectively, and are considered delinquent if not paid before the close of business on December 10 and April 10, respectfully. After June 30, delinquent taxes are in tax default and a property lien attaches to the secured property the following fiscal year on March 1. Tax default property can be sold after five years.

**NOTE 3 – CREDIT RISK, CARRYING VALUE, AND MARKET VALUE OF INVESTMENTS**

All cash at June 30, 2012 is pooled for investment purposes and held by Yuba County. Interest is apportioned to the Commission based on the average daily balances on deposit with the County of Yuba. The Yuba County Treasury is an external investment pool for the District and the District is considered an involuntary participant. The investments made by the Treasurer are regulated by the California Government Code and by the County's investment policy. Investments are monitored by the Treasury Oversight Committee established by the County.

**DISTRICT 10 HALLWOOD COMMUNITY SERVICES DISTRICT**  
**NOTES TO FINANCIAL STATEMENTS**  
**JUNE 30, 2012**

**NOTE 3 – CREDIT RISK, CARRYING VALUE, AND MARKET VALUE OF INVESTMENTS - continued**

The District adopted Governmental Accounting Standards Board (GASB) Statement No. 31 “Accounting for Financial Reporting and Certain Investments and for External Investment Pools” during 1998. This statement requires investments be carried at fair value if the difference between carrying value and fair value is material. Fair value is based on quoted market prices.

The District does not own any specific identifiable investments in the pool. The carrying amount and fair value of investments as of June 30, 2012 are as follows:

Pooled Investments:	Carrying Amount	Fair Value	Difference
Yuba County	\$653,239	\$654,310	\$ 1,071

**NOTE 4 – SUBSEQUENT EVENTS**

Events subsequent to June 30, 2012 have been evaluated through October 16, 2013, the date at which the District’s audited financial statements were available to be issued. No events requiring disclosure have occurred through this date.

## **REQUIRED SUPPLEMENTARY INFORMATION**

**DISTRICT 10 HALLWOOD COMMUNITY SERVICES DISTRICT**  
**SCHEDULE OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES**  
**BUDGET TO ACTUAL (NON-GAAP BUDGETARY BASIS)**  
**GENERAL FUND**  
**JUNE 30, 2012**

	<u>Original and Final Budget</u>	<u>Actual</u>	<u>Variance (Unfavorable)</u>
<b>Revenues</b>			
Current Secured Property Taxes	\$ 7,979	\$ 7,979	\$ -
Current Unsecured Property Taxes	399	399	-
Property Taxes Prior Unsecured	25	25	-
Current Supplemental Property Taxes	9	9	-
Direct Assessments	143,834	143,834	-
Direct Assessments - Prior Years	3,558	3,558	-
Homeowners Property Tax Reduction	158	158	-
Interest	4,352	4,352	-
Miscellaneous	20	20	-
Total Revenues	<u>160,334</u>	<u>160,334</u>	<u>-</u>
<b>Expenditures</b>			
Secretary and Bookkeeper	2,200	2,200	-
Supplies, Postage, etc.	150	180	(30)
Professional Services	1,700	-	1,700
Election Costs	-	446	(446)
County Services	100	95	5
Insurance	2,500	2,160	340
Special District Fee	-	-	-
Miscellaneous	200	-	200
Office Equipment	-	1,012	(1,012)
<b>Fire Protection Costs:</b>			
Contract with City of Marysville	<u>105,000</u>	<u>105,000</u>	<u>-</u>
Total Expenditures	<u>111,850</u>	<u>111,093</u>	<u>757</u>
Excess of Revenues Over (Under) Expenditures	<u>\$ 48,484</u>	<u>\$ 49,241</u>	<u>\$ 757</u>
	Budget Basis	\$ 49,241	
	Unrealized Gains	<u>(1,638)</u>	
	GAAP Basis	<u>\$ 47,603</u>	

See notes to the financial statements.

P.O. Box 160  
661 5th Street, Suite 101  
Lincoln, CA 95648  
Office (916) 434-1662  
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### **Communication of Significant Deficiencies and Material Weaknesses**

To the Board of Directors  
District 10 Hallwood Community Services District  
Marysville, CA

In planning and performing our audit of the financial statements of the governmental activities and the major funds of District 10 Hallwood Community Services District (District) as of and for the year ended June 30, 2012, in accordance with auditing standards generally accepted in the United States of America, we considered the District's internal control over financial reporting (internal control) as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control. Accordingly, we do not express an opinion on the effectiveness of the District's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be significant deficiencies or material weaknesses and therefore there can be no assurance that all such deficiencies have been identified. However, as discussed below, we identified a deficiency in internal control that we consider to be a material weakness.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

We consider the following deficiency in the District's internal control to be a material weakness:

**12-01 Reliance upon Auditor for Generally Accepted Accounting Principles**  
**(Uncorrected from prior year)**

**Condition:** To assure compliance with generally accepted accounting principles, management relies on the auditor to recommend footnote disclosures for the financial statements and to suggest for approval the adjusting entries to convert the organization's financial statements from the cash basis of accounting to the accrual basis of accounting.

**Criteria:** Statement of Auditing Standards No.115 states that the auditor may not be part of the District's internal control system. Someone in the District must be knowledgeable in generally accepted accounting principles and capable of preparing financial statements in conformity with generally accepted accounting principles.

**Cause:** The District does not have either an employee educated in generally accepted accounting principles or an accounting firm engaged to prepare full-disclosure financial statements in conformity with generally accepted accounting principles.

**Effect:** District must rely on auditor to draft financial statements in conformity with generally accepted accounting principles.

**Recommendation:** Whenever financial statements are required to be issued prior to the audit, we recommend that Management consider the cost benefit of hiring an accountant familiar with generally accepted accounting principles or hiring an independent CPA firm to compile financial statements in conformity with generally accepted accounting principles.

**Response:** The District does not have the financial resources to hire an accountant educated or trained in generally accepted accounting principles and does not see a cost benefit to having its financial statements compiled by such an accountant prior to the annual audit. The District will continue to rely on the auditor to suggest the journal entries and footnote disclosures as part of the audit process. The District understands that without professional assistance it might release financial statements which would not be in conformity with generally accepted accounting principles and will seek such assistance should it need to issue financial statements to a third party prior to the audit of those financial statements.

This communication is intended solely for the information and use of management, the Board of Directors, and funding agencies of District 10 Hallwood Community Services District and is not intended to be and should not be used by anyone other than these specified parties. However, this report is a matter of public record and its distribution is not limited.



Jensen Smith  
Certified Public Accountants  
Lincoln, California  
October 16, 2013

P.O. Box 160  
661 5th Street, Suite 101  
Lincoln, CA 95648  
Office (916) 434-1662  
Fax (916) 434-1090

October 16, 2013

To the Board of Directors  
District 10 Hallwood Community Services District  
Marysville, CA

Dear Ladies and Gentlemen,

The audit of the District's financial statements went smoothly, again. We would like to acknowledge the great job the District does in keeping its records. It is always a pleasure to work with this level of organization.

In planning and performing our audit of the financial statements of District 10 Hallwood Community Services District (the District) for the year ended June 30, 2012, we considered the District's internal controls in order to determine our auditing procedures for the purpose of expressing an opinion on the financial statements and not to provide assurance on internal control. However, during our audits, we may come upon items that do not rise to the level of "findings" but should be considered and/or corrected to ensure maximum operating efficiency and compliance.

Our only recommendation is that we work with the District Secretary and the Board to plan a consistent start date for the audit to ensure that it is completed by the following June 30. Having an audit report at a consistent time year after year would enhance the completeness of the District's records.

We reported on the District's internal control in the preceding report. This letter does not affect our reports dated October 16, 2013, on the financial statements or internal control of the District.

If you have any questions, please feel free to contact us.

  
Jensen Smith  
Certified Public Accountants  
Lincoln, California

**Commissioners**  
**Michael Sutton**, President  
Monterey

**Richard Rogers**, Vice President  
Santa Barbara

**Jim Kellogg**, Member  
Discovery Bay

**Jack Baylis**, Member  
Los Angeles

**Jacque Hostler-Carmesin**, Member  
McKinleyville

STATE OF CALIFORNIA  
Edmund G. Brown Jr., Governor

## Fish and Game Commission



**Sonke Mastrup, Executive Director**  
1416 Ninth Street, Room 13  
Sacramento, CA 95814 510-138  
(916) 653-4899  
(916) 653-5040 Fax  
[www.fgc.ca.gov](http://www.fgc.ca.gov)

**RECEIVED**

DEC 9 2013

Clerk/Board of Supervisors

December 2, 2013

### TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to sections 149 and 149.1, Title 14, California Code of Regulations, relating to the commercial take of market squid, which will be published in the California Regulatory Notice Register on December 6, 2013.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

**Dr. Craig Shuman, Manager of Marine Region, Department of Fish and Wildlife, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.**

Sincerely,

Sherrie Fonbuena  
Associate Governmental Program Analyst

Attachment

## **TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 713, 1050, 7078, 7701, 7708, 7923, 8026, 8425, 8428 and 8429.5 of the Fish and Game Code and to implement, interpret or make specific sections 1050, 7050, 7071, 7701, 7708, 7852.2, 7923, 8026, 8101, 8425, 8428, 8429.5, 8429.7, 12159 and 12160 of said Code, proposes to amend Section 149 and subsection (a) of Section 149.1, Title 14, California Code of Regulations (CCR), relating to the commercial take of market squid.

### **Informative Digest/Policy Statement Overview**

The Market Squid Fishery Management Plan (MSFMP) was developed under the provisions set forth by the Marine Life Management Act (MLMA) and sets goals and objectives to govern the conservation, sustainable use, and restoration of the market squid resource. Section 149, Title 14, CCR, governs commercial market squid fishing activities off California, pursuant to the MSFMP.

Under current regulations, market squid is allowed to be landed commercially after the catch limit of 118,000 short tons has been reached so long as the amount does not exceed two tons within a calendar day or if the squid will be used for live bait. The regulation also provides for an incidental allowance of up to two tons per calendar day or per trip; however, "incidental" is not defined. The intent of this regulation was to allow for incidental take of market squid in other fisheries. It was never the intent, nor is it compatible with the management goals of the MSFMP to have a two ton directed fishery occurring after the Seasonal Catch Limit has been reached. The Department proposes to clarify regulations defining incidental take to ensure that after the season ends, market squid is only landed or possessed on a vessel incidental to the take of other species or for live bait purposes.

The following changes are proposed:

- Subsection 149(h): Modify language and broaden the scope of the regulation to specify that squid taken in violation of any commercial squid fishing law or regulation shall be forfeited to the Department. Also, the requirement that squid fishermen or buyers sign a release of property form is proposed to be repealed.
- Subsection 149(i): Modify the incidental take provisions specifying that incidentally taken squid shall meet the following criteria:
  - 1) The volume landed or possessed on a vessel cannot exceed two tons per trip;
  - 2) The amount of squid incidentally taken cannot exceed a specified percentage of the total volume of the fish landed or possessed on a vessel. The Department is proposing that the Commission consider an incidental take allowance ranging from 0 – 30 percent.

The Department recommends establishing an incidental take allowance of 10 percent; however, the Commission may select an incidental take allowance within the range between 0 and 30 percent.

The following changes are also proposed to improve the organization, clarity and consistency of the regulations:

- Subsection 149(a): Add text referencing the existing permit requirements in Section 149.1 for vessels fishing for market squid, and to clarify that vessels taking or possessing squid incidentally or for live bait are not subject to these permit requirements.
- Subsections 149(a-i): Renumber each subsection due to the proposed addition of the new subsection 149(a).
- Subsection 149(i): Removal of "or to vessels pursuing squid for live bait purposes only" is proposed because the exemption of live bait is clarified in the proposed opening paragraph of the regulatory language.
- Subsection 149(k): Changes are proposed to clarify that operators and crewmembers on a permitted market squid vessel are exempt from the requirement to possess a Tidal Invertebrate Permit.
- Subsection 149(m): Clarify that squid taken for live bait must be used for that purpose and that take of live squid for bait is exempt from other requirements in Section 149, unless expressly specified.
- Subsection 149.1(a): Update cross reference to current subsection 149(g) to reflect renumbering of Section 149 subsections.

### **Benefits of the Regulation**

The proposed regulatory action will benefit fishermen, processors, the State's economy, and the environment by maintaining a healthy sustainable market squid fishery.

### **Consistency with State Regulations**

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. The proposed regulations are consistent and compatible with regulations concerning the commercial take of market squid in marine protected areas [subsection 632(b), Title 14, CCR] and with regulations concerning squid weighing provisions (sections 4470, 4471, 4472, Title 4, CCR). Commission staff has searched the California Code of Regulations and statutes and has found no other state regulations related to the take of market squid and no other state agency with authority to promulgate commercial squid fishing regulations.

**NOTICE IS GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Hilton San Diego Mission Valley, 901 Camino del Rio South, San Diego, California, on Wednesday, December 11, 2013 at 8:30 a.m., or as soon thereafter as the matter may be heard.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, on Wednesday, February 5, 2014, at 8:00 a.m., or as soon thereafter as the matter may be heard.

Written comments may be submitted at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). **Written comments delivered to the Commission office must be received before 5:00 p.m. on January 31, 2014.** All comments must be received no later

than February 5, 2014, at the hearing in Sacramento, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Sherrie Fonbuena at the preceding address or phone number. **Dr. Craig Shuman, Marine Region Manager, Department of Fish and Wildlife, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

#### Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

#### Impact of Regulatory Action/Results of the Economic Impact Analysis

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made.

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations continue to allow all actively permitted market squid vessels (vessel, light, and brail) to participate in a directed fishery for market squid during the commercial market squid season until the season closes. The proposed regulations close the loophole, which unintentionally allows directed fishing after the Seasonal Catch Limit has been reached. Allowing directed squid fishing after the season is closed can pose risk to the squid resource and the ecosystems that rely on it, while also creating an unfair market advantage for those who have availed themselves of the loophole in past seasons when the fishery closed early. In addition, the proposed regulations would set limits on the allowable take of squid caught incidentally in landings with other species.

Brail fishermen, like all squid permittees, will be authorized to fish for squid only up until the Seasonal Catch Limit has been reached. The proposed regulations clarify that when the fishery is closed, it is closed for all directed commercial squid fishing activity

regardless of gear type. Impacts to individual fishing operations will vary, as some operations may maximize their squid fishing efforts early in the season, while others may not begin squid fishing activity until later in the season. Neither the MSFMP nor existing regulations establish allocations of squid between fishermen or fishery sectors to allow them to select desired fishing dates. Rather, the fishery operates on a single seasonal limit, which has been attained in only four seasons since the limit's inception in 2001.

Under the proposed regulatory amendments, fishermen currently taking advantage of this loophole will no longer be able to take up to two tons of squid per day after the Seasonal Catch Limit has been reached unless it occurs incidentally to another fishery. Therefore the proposed regulation changes are not expected to result in significant statewide adverse economic impacts to businesses. Additionally, if the full seasonal catch limit is attained, there has likely been a great deal of economic success for at least some squid fishing operations and businesses. Market squid fishery permits of all gear types provide authorization to commercially fish for squid during the open season and time periods, but regulations do not provide more refined opportunities for some sectors, gears or individual vessels at the exclusion of others.

Depending on which option is chosen, limits on the percent composition of squid caught incidentally could result in impacts to aggregate ex-vessel revenue potential for the 36 fishermen affected. The estimated, per season aggregate revenue impacts resulting from a zero to 30 percent incidental take limit are \$(804,000) to \$(19,000), respectively. Dis-aggregating these estimates result in a projected average potential revenue impact of \$(7,000) to \$(200), respectively, per fishermen per season.

Under the proposed regulations, limits on the percent composition of squid caught incidentally ranging from zero to 30 percent could result in statewide economic impacts of \$(521,000) to \$(13,000), respectively, in total economic output. These estimates are on a per season basis, and represent the aggregate impact to all 36 fishermen potentially affected by incidental take limits on squid. In light of the entire landings taken by these fishermen, the zero to 30 percent limits would affect statewide economic output by about -2.1 percent to -0.1 percent, respectively.

Overall, the ex-vessel fishing revenue of squid landings after the early season closure averaged only 1.10 percent of total seasonal squid landings ex-vessel fishing revenue from 2010-2013. When viewed as a percentage of landings using brail gear only, landings after the closure constituted a larger proportion of total landings for this gear type, averaging 31.82 percent over the last three years. Compared to average after-season-closure landings over the past three years (2010-2013), the proposed regulatory change to eliminate the two ton directed take of squid could result in the direct loss of ex-vessel fishing revenue of about \$(726,000), indirect losses in the amount of \$(76,000), and the potential loss of up to eight (8.0) jobs. It is important to note that there are seasons when the squid fishery does not close early; therefore, the unintended directed fishery during the post-closure period would not occur during these seasons nor would associated income be earned.

The Commission recognizes that some individuals, vessels, and processing plants engaged in the market squid fishery have no other viable alternative fisheries available to them and that a decline or a loss of the market squid resource would cause economic losses to the individuals or corporations engaged in the market squid fishery. However the continued management of this marine resource through the implementation of these

regulations will serve to preserve the ongoing viability of market squid fisheries and associated businesses.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate significant adverse impacts on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses in California. Depending on which option the Commission chooses, potential job losses range from 0.5 to 0.1 for an incidental take allowance from 5 percent to 30 percent, respectively; if the Commission decides not to allow incidental take of squid (zero allowance), then three jobs could be lost. These estimates are on a per season basis, and represent the aggregate impact arising from all 36 fishermen potentially affected by incidental take limits on squid.

Up to eight jobs could be lost if the 2-ton directed fishery is eliminated in years when the fishery closes early. Estimated job losses are for the squid fishery; spending to businesses linked to fishery operations; and for businesses impacted by direct and intermediary employees' spending. Thus, job losses would be shared across an array of associated businesses which would lessen adverse impacts to the viability of individual squid fishery businesses. Additionally, the overall economic effects of eliminating the 2-ton directed fishery are likely to be ameliorated by other revenue sources such as lighting or targeting other species.

The Commission anticipates benefits to the environment in the sustainable management of the squid resource and benefits to species dependent upon a healthy squid resource.

The Commission anticipates generalized benefits to the health and welfare of California residents through the protection of the market squid population and the fish and wildlife resources that depend upon them. The Commission does not anticipate any benefits to worker safety because the proposed regulations will not impact worker conditions.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The state may incur landings tax revenues losses. Depending on which option the Commission selects, the decreases in landings tax revenues could range from \$20,000 to \$195,000 per year. There will be no costs/savings in federal funding to the state.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None

- (f) Programs Mandated on Local Agencies or School Districts: None

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None

(h) Effect on Housing Costs: None

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Dated: November 26, 2013

Sonke Mastrup  
Executive Director

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