

AGREEMENT FOR REIMBURSEMENT

THIS AGREEMENT for Reimbursement (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter County) and Mesa Verde Development Partners II, LLC, a California limited liability company (hereafter Owner) wherein Owner agrees to provide and County agrees to accept the services specified herein.

WHEREAS, Owner owns certain real property (Assessor Parcel No. 100-400-008) (hereinafter "Project Site") in the unincorporated area of the County located approximately 0.5 acres south of Clark Avenue at the terminus of Black Oak Drive, in Key Site 7 of the Orcutt Community Plan ("OCP") area, Fourth Supervisorial District;

WHEREAS, on March 9, 2005, the Santa Barbara County Planning Commission (Planning Commission) approved a Vesting Tentative Tract Map (TM 14,556) to subdivide the 33.07-acre Project Site into 55 lots including 52 lots for single family dwellings, two public open space lots totaling approximately 20 acres, and one private open space lot. Due to the downturn in the economy, this map was not recorded;

WHEREAS, on March 19, 2015, Owner filed an application for approval of a Vesting Tentative Tract Map (TM 14,812) in compliance with County Code Chapter 21 to subdivide the 33.07-acre Project Site into: 1) 41 residential lots ranging in size from 9,685 sq. ft. to 17,575 sq. ft.; 2) two lots for private roads totaling 1.93 acres, and 3) two lots for open space totaling 18.46 acres on property zoned PRD (Case No. 15TRM-00000-00002/TM 14,812); a Final Development Plan in compliance with Section 35.82.080 of the County Land Use and Development Code on property zoned PRD to develop 41 market rate single family dwellings and associated infrastructure (Case No. 15DVP-00000-00002); a Minor Conditional Use Permit to allow for the construction of a retaining wall/privacy fence combination of up to 10 feet in height in compliance with Section 35.82.060 of the County Land Use and Development Code, on property zoned PRD (Case No. 15CUP-00000-00006); the naming of four private roads within the proposed tract in compliance with Chapter 35.76 of the County Land Use and Development Code, on property zoned PRD (Case No. 15RDN-00000-00002); and to accept the Addendum to the Orcutt Community Plan Environmental Impact Report (95-EIR-01, certified 7/22/97) pursuant to the State Guidelines for Implementation of the California Environmental Quality Act, hereinafter referred to as the "Project";

WHEREAS, on January 11, 2017, pursuant to its jurisdiction under County Code Chapter 21-6 and County Land Use and Development Code ("LUDC") Sections 35.82.080, Table 8-2; 35.80.020, Table 8-1; 35.76.050.C.2.a.3; and 35.80.020, the Planning Commission approved the Project with revisions to the Conditions of Approval. The Project was not appealed after the Planning Commission's approval. The time to appeal the Planning Commission's approval of the Project has expired;

WHEREAS, OCP Development Standard KS7-3 and KS7-4 require the Owner to construct a bridge or a box culvert if a span bridge is not feasible, on Black Oak Drive across Orcutt Creek ("Orcutt Creek Crossing Improvements"), funded in part through Orcutt Transportation Improvement Plan ("OTIP") fees;

WHEREAS, the OTIP does not reference the Orcutt Creek Crossing Improvements, nor does it include funding for any portion of the Orcutt Creek Crossing Improvements through collection of OTIP fees, which in turn gives rise to the need for County and Owner to agree on a mechanism for Owner's reimbursement of certain construction costs related to the Orcutt Creek Crossing Improvements as required by the OCP;

WHEREAS, County and Owner (individually a “Party” and collectively the “Parties”) have agreed on the portion of the Orcutt Creek Crossing Improvements that will be funded by the County pursuant to this Agreement (hereinafter the “Structure”); and

WHEREAS, the Parties hereto desire to set forth each’s obligations regarding (1) construction of the Structure on Black Oak Drive by Owner, and (2) reimbursement of Owner up to a certain dollar amount by County, in accordance with this Agreement and the Conditions of Approval on the Project.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. DESIGNATED REPRESENTATIVE

Chris Sneddon at phone number 805-568-3064 is the representative of County and will administer this Agreement for and on behalf of County. Jon Martin, at phone number (805) 805-962-1155 x965 is the authorized representative for Owner. Changes in designated representatives shall be made only after advance written notice to the other Party.

2. NOTICES

Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To County: Chris Sneddon
Santa Barbara County Public Works
Transportation Division
123 E. Anapamu St.
Santa Barbara, CA 93101

To Owner: Mesa Verde Development Partners II, LLC
330 E. Canon Perdido Street
Santa Barbara, CA 93101

or at such other address or to such other person that the Parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

3. SCOPE OF SERVICES

Owner agrees to construct the Structure in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. TERM

Owner shall complete the Work (defined in EXHIBIT A) prior to issuance of an occupancy clearance for the first residential structures.

5. COMPENSATION OF OWNER

In full consideration for the Work, Owner shall be reimbursed for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference. Progress billing shall be made by invoice, which shall include the contract number assigned by County and which is delivered to the address given in Section 2 Notices above following completion of the project deliverables identified on Exhibit B-1. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from presentation of any invoice. In no event shall Owner be paid an amount in excess of the Contract Maximum (see EXHIBIT B attached hereto and incorporated herein by reference), plus Owner's actual costs associated with any County-approved change order(s) that Owner completes.

6. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that Owner (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent contractor as to County and not as an officer, agent, servant, employee, joint venture, partner, or associate of County. Furthermore, County shall have no right to control, supervise, or direct the manner or method by which Contractor shall perform its work and function. However, County shall retain the right to administer this Agreement so as to verify that Owner is performing its obligations in accordance with the terms and conditions hereof, including but not limited to the Standard of Performance below. Owner understands and acknowledges that it shall not be entitled to any of the benefits of a County employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. Owner shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Owner shall be solely responsible and save County harmless from all matters relating to payment of Owner's agents, contractors/subcontractors, and employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, Owner may be providing services to others unrelated to the County or to this Agreement.

7. STANDARD OF PERFORMANCE

Owner represents that any persons or entities with whom he contracts to perform the Work shall have the skills, expertise, and licenses/permits necessary to perform the Work required under this Agreement. Accordingly, such persons or entities shall perform all such Work in the manner and according to the standards observed by a competent practitioner of the same profession in which such persons or entities are engaged. All products of whatsoever nature, which Owner delivers to County pursuant to this Agreement, shall be completed using County and Caltrans design standards and construction practices as set forth in Caltrans Standard Plans and Specifications (2018) and County Engineering Design Standards (2011), and reflected in the approved project documents attached as EXHIBIT A-1. Owner shall correct or revise any construction related errors or omissions, at County's request without additional compensation. Permits necessary to complete the Work shall be obtained and maintained by Owner the reasonable costs of which shall be a component of the Contract Maximum.

8. DEBARMENT AND SUSPENSION

Owner certifies to County that he shall not contract with persons or entities for the Work who are debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or County government contracts.

9. TAXES

Owner shall pay all taxes, levies, duties, and assessments of every nature due in connection with installation and construction of the Work under this Agreement and shall make any and all payroll deductions required by law. County shall not be responsible for paying any taxes on Owner's behalf, and should County be required to do so by state, federal, or local taxing agencies, Owner agrees to promptly reimburse County for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

10. CONFLICT OF INTEREST

Owner certifies that it shall not contract with or employ persons or entities for the Work who have any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Owner must promptly disclose to County, in writing, any potential conflict of interest. County retains the right to waive a conflict of interest disclosed by Owner if County determines it to be immaterial, and such waiver is only effective if provided by County to Owner in writing.

11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

Owner and County shall have joint ownership of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, engineering plans and as-built drawings, including CAD files, all photos, design documents, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. Owner shall not release any of such items to other parties except after prior written approval of County.

Unless otherwise specified in EXHIBIT A, Owner hereby assigns to County joint ownership rights to all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by Owner pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). County shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. Owner agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. Owner warrants that any Copyrightable Works and Inventions and other items provided under this agreement will not infringe upon any intellectual property or proprietary rights of any third party. Owner at its own expense shall defend, indemnify, and hold harmless County against any claim that any Copyrightable Works or Inventions or other items provided by Owner hereunder infringe upon intellectual or other proprietary rights of a third party, and Owner shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by County in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

12. NO PUBLICITY OR ENDORSEMENT

Owner shall not use County's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Owner shall not use County's name or logo in any manner that would give the appearance that the County is endorsing Owner. Owner shall not in any way contract on

behalf of or in the name of County. Owner shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the County or its projects, without obtaining the prior written approval of County.

13. COUNTY PROPERTY AND INFORMATION

All of County's property, documents, and information provided for Owner's use in connection with the services shall remain County's property, and Owner shall return any such items whenever requested by County and whenever required according to the Termination section of this Agreement. Owner may use such items only in connection with the Work. Owner shall not disseminate any County property, documents, or information without County's prior written consent.

14. RECORDS, AUDIT, AND REVIEW

Owner shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent developer and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. County shall have the right to audit and review all such documents and records at any time during regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), Owner shall be subject to the examination and audit of the California State Auditor, at the request of the County or as part of any audit of the County, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). Owner shall participate in any audits and reviews, whether by County or the State, and each Party shall bear its own costs related to same.

If federal, state or County audit exceptions are made relating to this Agreement, Owner shall reimburse all costs incurred by federal, state, and/or County governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from County, Owner shall reimburse the amount of the audit exceptions and any other related costs directly to County as specified by County in the notification.

15. INDEMNIFICATION AND INSURANCE

- A. Owner agrees to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.
- B. Owner shall require its contractor(s) performing work on the Project Site to agree to the indemnification and insurance provisions set forth in EXHIBIT D attached hereto and incorporated herein by reference.

16. NONDISCRIMINATION

County hereby notifies Owner that County's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and Owner agrees to comply with said ordinance. Owner further agrees that persons or entities with whom he contracts shall also be required comply with such ordinance in regards to the Work

17. NON-ASSIGNMENT

Owner shall not assign or transfer this Agreement or any of its rights or obligations under this Agreement without notice to County and appointment of a transferee subject to the terms of this Agreement. Upon delegation of the duties and obligations under this Agreement to a transferee, Owner shall be released from his obligations under this Agreement with respect to the Work so transferred arising subsequent to the effective date of such transfer if (i) the transferee or Owner has provided the County prior written notice of such transfer and (ii) the transferee has agreed in writing to be subject to the provisions of this Agreement.

18. TERMINATION

- A. **By County.** County may, by written notice to Owner, terminate this Agreement in whole or in part at any time, whether for County's convenience, for nonappropriation of funds, or because of the failure of Owner to fulfill the obligations herein.
1. **For Convenience.** County may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, Owner shall, as directed by County, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on County from such winding down and cessation of services.
 2. **For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, state or County governments, or funds are not otherwise available for payments in the fiscal year(s) covered by the term of this Agreement, then County will notify Owner of such occurrence and County may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Upon receipt of notice of termination or suspension pursuant to this subsection, Owner shall immediately discontinue all services affected (unless the notice directs otherwise) and notify County as to the status of its performance. The date of termination shall be the date the notice is received by Owner, unless the notice directs otherwise.
 3. **For Cause.** Should Owner default in the performance of this Agreement or materially breach any of its provisions, provided such default is not remedied by Owner within thirty (30) days of written notice to Owner, County may, at County's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, Owner shall immediately discontinue all services affected (unless the notice directs otherwise) and notify County as to the status of its performance. The date of termination shall be the date the notice is received by Owner, unless the notice directs otherwise.
 4. **County Completion of Work.** In the event the County terminates the Agreement pursuant to subsection A.1. or A.2. above, the County shall timely complete the Work itself at its own expense without unreasonable delay. The Parties recognize and expressly acknowledge that completion of the Work must occur prior to occupancy clearance for the first residential structures. In the event County performs the Work, in whole or in part, Owner shall grant to County easements or other permissions reasonably necessary for County to perform such Work.

- B. By Owner: Should County fail to pay Owner all or any part of the payment set forth in EXHIBIT B, Owner may, at Owner's option terminate this Agreement if such failure is not remedied by County within thirty (30) days of written notice to County of such late payment.
- C. Upon termination, Owner shall deliver to County copies of all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by Owner in performing this Agreement, whether completed or in process. Notwithstanding any other payment provision of this Agreement, County shall pay Owner for performance of the Work to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Owner be paid an amount in excess of the Contract Maximum under this Agreement, plus any County-approved change orders completed prior to the date of termination. Owner shall furnish to County such financial information as in the judgment of County is necessary to determine the reasonable value of the services rendered by Owner. In the event of a dispute as to the reasonable value of the services rendered by Owner, the decision of County shall be final. The foregoing is cumulative and shall not affect any right or remedy which County or Owner may have in law or equity.

19. SECTION HEADINGS

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

20. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

21. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved to County is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

22. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement and each covenant and term is a condition herein.

23. NO WAIVER OF DEFAULT

No delay or omission of County to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to County shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of County.

24. ENTIRE AGREEMENT AND AMENDMENT

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the Parties and there have been no promises, representations, agreements, warranties or undertakings by any of the Parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the Parties to this Agreement and by no other means. Each Party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

25. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties 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.

26. COMPLIANCE WITH LAW

Owner shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of Owner in any action or proceeding against Owner, whether County is a Party thereto or not, that Owner has violated any such ordinance or statute, shall be conclusive of that fact as between Owner and County.

27. CALIFORNIA LAW AND JURISDICTION

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

28. EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Parties shall preserve undestroyed, shall together constitute one and the same instrument.

29. AUTHORITY

All signatories and 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, or firms represented or purported to be represented by such entity(ies), person(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. Furthermore, by entering into this Agreement, Owner hereby warrants that he shall not have breached the terms or conditions of any other contract or agreement to which Owner is obligated, which breach would have a material effect hereon.

30. SURVIVAL

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

Agreement for Reimbursement between the County of Santa Barbara and Mesa Verde Development Partners, LLC.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective on the date executed by County.

ATTEST:

COUNTY OF SANTA BARBARA:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: *Shirley de la Guerra*
Deputy Clerk

By: *[Signature]*
Chair, Board of Supervisors

Date: 11-17-20

RECOMMENDED FOR APPROVAL:

PUBLIC WORKS

By: *[Signature]*
Department Head

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: *[Signature]*
Brian Pettit (Oct 22, 2020 09:10 PDT)
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM:

Betsey M. Schaffer, CPA
Auditor-Controller

By: *Juan Izquierdo*
Juan Izquierdo (Oct 22, 2020 10:38 PDT)
Deputy

APPROVED AS TO FORM:

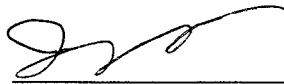
Risk Management

By: *[Signature]*
Risk Management

Agreement for Reimbursement between the County of Santa Barbara and Mesa Verde Development Partners II, LLC.

MESA VERDE DEVELOPMENT PARTNERS II, LLC, a
California limited liability company
By Martin Farrell Homes, Inc. its Manager

By:

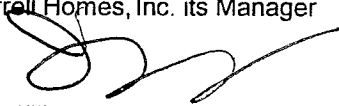


By Jon Martin, President

Agreement for Reimbursement between the County of Santa Barbara and Mesa Verde
Development Partners II, LLC.

MESA VERDE DEVELOPMENT PARTNERS II, LLC, a
California limited liability company
By Martin Farrell Homes, Inc. its Manager

By:



By Jon Martin, President

EXHIBIT A

STATEMENT OF WORK

I. THE WORK

1. Owner shall do the following: (a) cause the construction of the Structure as shown in EXHIBIT A-1, (County-approved project documents), attached hereto and incorporated herein by reference, according to approved specifications; and (b) obtain and comply with all necessary County and/or environmental permits throughout construction of the Structure ("the Work").

II. PERFORMANCE OF THE WORK

2. Owner shall submit plans and specifications for the Structure to be approved by at least Public Works, Flood Control, and Planning & Development. The County-approved plans and specifications shall be attached as EXHIBIT A-1.

3. Owner shall build or cause to be built the Structure as shown in EXHIBIT A-1, and shall furnish all labor, equipment and materials necessary to perform and complete the Work. Owner shall complete such Work in a workmanlike manner in compliance with all County-approved specifications for such Work set forth in EXHIBIT A-1 to the satisfaction of the Santa Barbara County Director of Public Works.

4. Owner shall obtain all permits necessary for the Work in accordance with applicable County permitting requirements. County shall act diligently and without unreasonable delay in the review of said permit applications. Nothing herein shall be deemed to be a waiver or infringement of the County's police power, nor shall any part or all of this Agreement be construed on the part of the County as an obligation to grant any permits, entitlements, or approvals.

5. Any Work performed by Owner or his agents under this Agreement shall be done in compliance with all regulations governing engineering and construction standards and specifications, including California Department of Transportation specifications, design review and right of way, and Local Assistance Performance Manual, the Santa Barbara County Engineering Design Standards; and all uniform codes adopted by the State of California and subsequently adopted by the County, including local amendments to those codes pursuant to those codes; and the Project's Conditions of Approval.

6. Owner shall be responsible to otherwise satisfy the conditions of the Project.

7. Owner understands that no permits will be issued until all bonds, insurance certificates and other required certifications have been provided to County as required.

8. Owner guaranties that he shall engage a construction management specialist that has the skills, expertise, and licenses necessary to perform the Work required under this Agreement. Owner shall provide the name and contact information of such construction management specialist for review and approval by the County's Designated Representative prior to commencement of the Work. Accordingly, Owner and his agents shall perform the Work in the manner and according to the standards observed by a competent person engaged in the design and construction of this type of Work. The Work shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person engaged in the design and construction of this type of Work. Owner shall correct or revise any errors or omissions, at County's request without additional compensation. Permits and/or licenses shall be obtained and maintained by Owner without additional compensation.

9. Pursuant to Section 18 of the Agreement, the County may terminate the Agreement and complete the Work itself at its own expense. If the County terminates the Agreement pursuant to Section 18, unless the Owner has abandoned the Project, as determined by the County, the County shall timely complete the Work without unreasonable delay. In such event, the County shall not be liable to Owner for any reimbursement regarding the Work, except for any portion of the Work completed by Owner prior to the County's provision of notice of termination of the Agreement. In the event County performs the Work, in whole or in part, Owner shall grant to County easements or other permissions reasonably necessary for County to perform such Work.

10. County's reimbursement for the Work under EXHIBIT B (or the completion of the Work by County in accordance with this EXHIBIT A) shall fully fulfill the obligations of County regarding the Structure.

III. PUBLIC WORKS

11. Any work performed by Owner or his agents shall be performed in the same manner and subject to the same requirements as would be applicable to the County or such other public agency should it have undertaken such construction of the Work, including, but not limited to, the Local Agency Public Construction Act (Public Contracts Code sections 20100 *et seq.*), the Uniform Public Construction Cost Accounting Act (Public Contracts Code sections 22000 *et seq.*), dispute resolution (Public Contracts Code section 9201 *et seq.*), and the payment of the prevailing wages pursuant to Labor Code section 1770 *et seq.*

12. Owner warrants that he understands that the Work is a "public work" as defined in Division 2, Part 7, Chapter 1 of the Labor Code to which Labor Code section 1771 Requirement of Prevailing Local Rate for Work under Contract applies.

13. Owner shall identify in the notice inviting bids for the Work that the Work is a "public work" as defined in Division 2, Part 7, Chapter 1 of the Labor Code to which Labor Code Section 1771 Requirement of Prevailing Local Rate for Work applies and shall state the requirement for contractors and subcontractors to pay at least the prevailing wage for performance of such Work.

IV. ENVIRONMENTAL MATTERS

14. Owner is responsible for obtaining and complying with all necessary environmental permits throughout construction of the Structure, the reasonable costs of which are a component of the Contract Maximum.

EXHIBIT B

PROGRESS PAYMENT ARRANGEMENTS Compensation Upon Completion of Identified Project Deliverables

- A. Owner shall be reimbursed for the Work, including all cost expenditures, up to but not to exceed (\$605,000) ("Contract Maximum"), plus Owner's actual costs associated with any County-approved change order(s) that Owner completes.
- B. Progress payments for the Work shall be made periodically, but no more frequently than quarterly, upon Owner's satisfactory completion of each project deliverable set forth in the Purchase Order EXHIBIT B-1, attached hereto and incorporated herein by reference, based upon the scope and methodology contained in **EXHIBIT A** as determined by the County.
- C. Upon completion of a project deliverable set forth in the Purchase Order (EXHIBIT B-1) and/or delivery to County of item(s) specified therein, Owner shall submit to the County Transportation Permits Section an invoice or certified claim on the County Treasury for payment of the cost associated with completion of the project deliverable. The invoice or claim must cite the assigned Board Contract Number. The County Transportation Permits Section shall evaluate the quality of the Work completed in compliance with the project deliverable and if found to be satisfactory shall initiate payment processing for that deliverable. County shall pay invoices or claims for satisfactory work within 30 days of receipt of correct and complete invoices or claims from Owner.
- D. County's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of County's right to require Owner to correct such work or billings or seek any other legal remedy.

EXHIBIT B-1 Scope and Payment Schedule

Item	Milestone	Amount	Up to Max
Prefabricated Undercrossing	Upon order, delivery, and payment of prefabricated components	Invoiced Cost	\$200,000
Excavation and placement	Upon completion of excavation and placement of undercrossing	Invoiced Cost	\$100,000
Cover and finishing work	Upon fill and recompaction of soil, construction of wingwalls/headwalls	Invoiced Cost	\$100,000
Erosion control, planting, finishing and punch list	Upon project sign off	Invoiced Cost	\$130,000

EXHIBIT C

Indemnification and Insurance Requirements (For Construction Contracts)

INDEMNIFICATION

Owner agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless County and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by County on account of any claim except where such indemnification is caused by the active negligence, sole negligence, or willful misconduct of the County.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

Owner shall notify County immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

Owner shall procure and maintain prior to, and for the duration of construction, 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 and the results of that work by the Owner, his agents, representatives, employees, contractors or subcontractors as required by this EXHIBIT C.

A. Minimum Scope and Limit of Insurance

Coverage shall be at least as broad as:

- 1. Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
- 2. Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), with limit no less than \$2,000,000 per accident for bodily injury and property damage.
- 3. Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employers' Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- 4. Contractors' Pollution Legal Liability and/or Asbestos Legal Liability:** (if project involves environmental hazards) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If Owner maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

B. Other Insurance Provisions

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

1. **Additional Insured** – County, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Owner 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 if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the Owner's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents or volunteers shall be excess of Owner's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the County.
4. **Waiver of Subrogation Rights** – Owner shall waive rights of subrogation which any insurer of Owner may acquire from Owner by virtue of the payment of any loss. Owner agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the County for all work performed by the Owner, its employees, agents, contractors, and subcontractors. This provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the Owner shall cause the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, agents and volunteers; or the Owner or Owner shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A-VII".
7. **Verification of Coverage** – Owner shall furnish the County with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Owner's obligation to provide them. The Owner shall furnish evidence of renewal of Owner's coverage throughout the term of the Agreement. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

- 8. Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, County has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by County as a material breach of contract.
- 9. Contractors and Subcontractors** – Owner shall require and verify that the contractors and subcontractors hired to perform the Work shall maintain insurance meeting all the requirements stated herein, and Owner shall ensure that County is an additional insured on insurance required under this Agreement. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.
- 10. Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
- i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - iii. 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, the Owner must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
- 11. 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 circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Owner agrees to require his Contractor to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of County.

EXHIBIT D

Indemnification and Insurance Requirements (For Design/Build Construction Contracts)

INDEMNIFICATION

A. **Indemnification pertaining to other than Design Professional Services:** CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is caused by the active negligence, sole negligence, or willful misconduct of the COUNTY.

B. **Indemnification pertaining to Design Professional Services:** CONTRACTOR agrees to fully indemnify and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, suits damages, costs, expenses, judgments and/or liabilities that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONTRACTOR and its employees, subcontractors, or agents in the performance of services under this Agreement but this indemnity does not apply to liability for damages arising from the sole negligence, active negligence, or willful acts of the COUNTY. The indemnity includes the cost to defend COUNTY to the extent of the CONTRACTOR's proportionate percentage of fault. Should one (or more) defendants be unable to pay its share of the defense costs due to bankruptcy or dissolution of the business, CONTRACTOR shall meet and confer with other parties regarding unpaid defense costs and CONTRACTOR shall pay County's cost of defense to the fullest extent permitted by law.

NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

CONTRACTOR shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

INSURANCE

CONTRACTOR shall procure and maintain for the duration of this Agreement 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 and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

A. **Minimum Scope and Limit of Insurance**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$5,000,000 per occurrence and \$5,000,000 in the aggregate.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), with limit no less than \$2,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation:** 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.
4. **Professional Liability:** Insurance appropriate to the CONTRACTOR'S profession, with limit of no less than \$2,000,000 per occurrence or claim, \$3,000,000 aggregate.
5. **Contractors' Pollution Legal Liability and/or Asbestos Legal Liability:** (*if project involves environmental hazards*) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

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

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the 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 if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – CONTRACTOR hereby agrees to waive rights of subrogation which any insurer of CONTRACTOR may acquire from CONTRACTOR by virtue of the payment of any loss. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors. This provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.
5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. At the option of the COUNTY, either: the CONTRACTOR shall cause the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the COUNTY, its officers, officials, employees, agents and volunteers; or the Contractor shall provide

a financial guarantee satisfactory to the COUNTY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
 - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - iii. 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, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
11. **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 circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.