

**ENCROACHMENT AGREEMENT
FOR CONSTRUCTION OF A WOODEN FENCE
ALONG GREEN VALLEY ROAD ADJACENT TO APN 126-180-009**

AGMT #20-54966

THIS ENCROACHMENT AGREEMENT, hereinafter called “Agreement” made and entered into by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California (hereinafter referred to as “County”) and **RAMIN BASIRI**, a married man, who’s principle place of residence is 1139 Lomond Drive, El Dorado Hills, California 95762 (hereinafter referred to as “Owner”), concerning a fence (hereinafter referred to as “Fence”) to be constructed within the County right of way along the south side of Green Valley Road approximately 1000 feet east of the intersection of Green Valley Road and Silva Valley Parkway in the El Dorado Hills area.

RECITALS

WHEREAS, Owner owns as primary residence, certain real property in El Dorado County (1139 Lomond Drive, El Dorado Hills, California, 95762, APN 126-180-009), and has requested permission from the County to allow construction within the County’s right of way of Green Valley Road near Allegheny Creek of a Fence to reduce noise to his property generated from traffic on Green Valley Road;

WHEREAS, Sound levels at the site met current County noise standards when the lot was created in 1984 and when the home was constructed in 2002 and the Fence is being constructed at the owners request due to perceived noise from vehicular traffic on Green Valley Road;

WHEREAS, Construction of a similar facility directly on the Owner’s property would not be effective at reducing noise to subject property due to grade differences between the property and Green Valley Road;

WHEREAS, County has determined that the Fence as described above lies within the County’s right-of-way and that is solely for the benefit of the Owner. Therefore, Owner shall bear 100% of the expense for both construction and maintenance of the Fence;

WHEREAS, El Dorado County Department to Transportation, hereinafter referred to as “Transportation” has the responsibility and authority to manage, administer, improve and maintain the County’s Roadways.

NOW, THEREFORE, the parties hereto in consideration of the recitals, terms, and conditions herein, do hereby agree as follows:

SECTION 1. THE WORK

The work consists of construction of a Fence within the County right of way. The Fence shall be designed and constructed with a gate, or removable panel(s) to allow County staff access to the embankment slope and drainage culvert for inspection, maintenance and repair of same. The minimum unobstructed width of the gate or panel opening shall be 12 feet and be located over the culvert entrance.

In addition to the gate, the ends of the fence shall be terminated, or be constructed with gates and/or removable panel(s) to allow maintenance access along the toe of the embankment slope.

Owner shall cause plans to be prepared, obtain an encroachment permit from County, and perform construction of the Fence in accordance with Plans approved by the County Engineer.

Owner agrees to pay for any and all damages to Green Valley Road resulting from construction or maintenance of the Fence.

Owner shall be responsible for performing all maintenance of the fence, including but not limited to, vegetation management within the County right of way on the roadway embankment slope behind the Fence, repair or replacement of all damaged parts of the Fence, and removal or remediation of any graffiti visible from Green Valley Road, or visible from neighboring properties.

Owner shall obtain an annual encroachment permit for maintenance activities to the Fence and to perform vegetation management within the County right of way. The owner shall notify the County a minimum of 24 hours in advance of working within the right of way. This Agreement does not grant permission to work across private property lines.

This Agreement does not constitute a granting of an easement to Owner.

The term of this Agreement will commence when it is fully executed and will last in perpetuity, unless this Agreement is nullified or ended as follows:

1. County terminates this Agreement due to default by Owner as described in Section 9.
2. County may nullify this Agreement by providing written notice to Owner. In which case, the Owner is allowed 90 days to remove the Fence, and return the area to its pre-construction condition as approved by the County.
3. The Owner retains the right to remove the Fence at any time, subject to obtaining an encroachment permit from Transportation. All portions of the fence shall be removed and the area returned to its pre-construction condition as approved by the County. In which case, this agreement is ended with removal of the Fence and finalization of the encroachment permit for said removal.
4. Owner agrees to remove the Fence from the County right of way prior to sale of the property and return the area to its pre-construction condition as approved by County,

and further, to disclose to potential buyers that the fence will be removed prior to the sale.

SECTION 2. TRAFFIC CONTROL

A Traffic Control Plan that meets County Standards shall be prepared by a Registered Civil Engineer and submitted to the Department of Transportation for review and approval **prior to the start of work on the Project.**

The Traffic Control Plan shall address access to adjacent properties and the safe and convenient passage of public traffic through the work area. Road closure will not be permitted without Transportations approval, and two (2) lanes of traffic must be open at all times. The Traffic Control Plan shall include proposed flagging, signage and protective barriers. The Plan shall also include any proposed staging of the improvements.

SECTION 3. TIME

Owner shall cause the commencement of construction of the Fence after County's approval of the plans for the Fence and shall complete the Fence no later than two (2) months from the date of execution of this Agreement, subject to extensions for delays not within the control of Owner. Construction activities shall be between 9:00 a.m. and 7:00 p.m. Mondays through Fridays; and 8:00 a.m. and 5:00 p.m. on weekends and federally recognized holidays. Maintenance activities shall be conducted within the same work hours.

SECTION 4. INDEMNIFICATION

To the fullest extent allowed by law, Owner shall defend, indemnify, and hold County harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to or death of any person including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with Owner's obligations under this Agreement, or work on the Project, and the design, including the plats and legal descriptions for the acquisition of right-of-way, of the improvements whether by Owner's consultant, or performance of this Agreement, regardless of the existence or degree of fault or negligence on the part of County, Owner, any Contractor(s), Subcontractor(s), and employee(s) of any of these, except for the sole or active negligence of County, its officers and employees, or as expressly provided by statute. This duty of Owner to indemnify and hold County harmless includes the duties to defend set forth in California Civil Code Section 2778. This duty to indemnify is separate and apart from the insurance requirements herein and shall not be limited thereto.

SECTION 5. ATTORNEY FEES

In the event that there is any controversy, complaint, cause of action, or claim arising out of or relating to this Agreement, or to the interpretation, breach or enforcement thereof,

and any action or proceeding is commenced to enforce the provisions of this Agreement or in enforcing or defending the security obligations provided herein, the prevailing party shall be entitled to reasonable attorney's fees, including reasonable County Counsel fees and costs if so incurred, costs and expenses.

SECTION 6. INSURANCE

GENERAL INSURANCE REQUIREMENTS: Owner shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Management Division and documentation evidencing that Owner maintain insurance that meets the following requirements. In lieu of this requirement, Owner may have their Contractor provide proof of a policy of insurance satisfactory to the County's Risk Management Division and documentation evidencing that Contractor maintains said insurance so long as Contractor's insurance meets these same requirements and standards, and subject to Contractor assuming the same obligations as Owner as follows:

1. Full Workers' Compensation and Employers' Liability Insurance covering all employees performing work under this Agreement as required by law in the State of California.
2. Commercial General Liability (CGL) Insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage, including but not limited to endorsements for the following coverage: premises, personal injury, operations, blanket contractual and independent contractors liability and a Two Million Dollar (\$2,000,000) aggregate limit.
3. Automobile Liability Insurance of not less than One Million Dollars (\$1,000,000) is required in the event motor vehicles are used by Owner in performance of the Agreement.
4. In the event Owner or their agents are licensed professionals and are performing professional services under this contract, Professional Liability Insurance is required, with a limit of liability of not less than One Million Dollars (\$1,000,000).
5. Explosion, Collapse, and Underground (XCU) coverage is required when the scope of work includes XCU exposure.

PROOF OF INSURANCE REQUIREMENTS:

1. Owner shall furnish proof of coverage satisfactory to County's Risk Management Division as evidence that the insurance required herein is being maintained. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
2. The County of El Dorado, its officers, officials, employees, and volunteers shall be included as additional insured, but only insofar as the operations

under this Agreement inclusive of the obligation to design and construct the Project are concerned. This provision shall apply to all general and excess liability insurance policies. Proof that County is named additional insured shall be made by providing the Risk Management Division with a certified copy, or other acceptable evidence, of an endorsement to the insurance policies naming County an additional insured.

3. In the event Owner cannot provide an occurrence policy, Owner shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

4. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or Owner shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

INSURANCE NOTIFICATION REQUIREMENTS:

1. The insurance required herein shall provide that no cancellation or material change in any policy shall become effective except upon prior written notice to County at the office of the Department of Transportation, 2850 Fairlane Court, Placerville, CA 95667.

2. Owner agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Owner shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Owner fail to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event. New certificates of insurance are subject to the approval of the Risk Management Division, and Owner agree that no work or services shall be performed prior to the giving of such approval.

ADDITIONAL STANDARDS: Certificates shall meet such additional standards as may be determined by Transportation, either independently or in consultation with the Risk Management Division, as essential for protection of County.

COMMENCEMENT OF PERFORMANCE: Owner shall not commence performance of this Agreement unless and until compliance with each and every requirement of the insurance provisions is achieved.

MATERIAL BREACH: Failure of Owner to maintain the insurance required herein, or to comply with any of the requirements of the insurance provisions, shall constitute a material breach of the entire Agreement.

REPORTING PROVISIONS: Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.

PRIMARY COVERAGE: Owner's insurance coverage shall be primary insurance as respects the 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 Owner's insurance and shall not contribute with it.

PREMIUM PAYMENTS: The insurance companies shall have no recourse against the County of El Dorado, its officers, agents, employees, or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

OWNER'S OBLIGATIONS: Owner's indemnity and other obligations shall not be limited by the insurance required herein and shall survive the expiration of this Agreement.

SECTION 7. INSPECTION

An authorized representative of County will perform construction inspection and material testing in accordance with the most current State of California, Department of Transportation, Standard Specifications. All testing shall be accomplished to the reasonable satisfaction of County.

SECTION 8. FEES

Owner shall pay all fees in accordance with Transportation's fee schedules, including but not limited to application, plan checking, construction oversight, inspection, administration and acceptance of the work by County. This will include fees for annual permit for maintenance activities and time and materials charges for inspection of traffic control for maintenance work.

SECTION 9. DEFAULT, TIME TO CURE, AND REMEDY

Owner's failure to perform any obligation at the time specified in this Agreement will constitute a default and County will give written notice of said default ("Notice") in accordance with the notice provisions of this Agreement. Notice shall specify the alleged default and the applicable Agreement provision Owner shall cure the default within forty-five (45) days ("Time to Cure") from the date of the Notice. In the event that the Owner fails to cure the default within the Time to Cure, Owner shall be deemed to be in breach of this Agreement.

SECTION 10. PUBLIC UTILITIES

Owner shall investigate and determine if existing public and private utilities conflict with the construction of the Project. Owner shall make all necessary arrangements with the

Utility Purveyor(s) for the protection, relocation, or removal of such utilities. Owner shall pay all costs of protection, relocation, or removal of utilities.

SECTION 11. RIGHT-OF-WAY and LAND ACCESS

The Owner is responsible to determine property lines, and obtain any necessary easements, permits, or rights to enter for properties not under the control of County or Owner.

SECTION 12. NO OWNER REIMBURSEMENT

The Parties agree and acknowledge that the Fence costs contemplated herein are not eligible for reimbursement by County and all costs shall be borne by Owner.

SECTION 13. CONTRACT ADMINISTRATOR

The County Officer or employee with responsibility for administering this Agreement is Andrew S. Gaber, Deputy Director, Development, Right of Way, Environmental, Department of Transportation, or successor.

SECTION 14. REIMBURSEMENT TO COUNTY

County shall be entitled to reimbursement by Owner of costs and expenses incurred by County for construction oversight, inspection, right-of-way, administration and acceptance of the work performed pursuant to this Agreement.

SECTION 15. THE PROJECT/ OWNER STATUS

Owner is constructing and completing the Fence as described herein and is acting as independent agent and not as agent of County.

SECTION 16. FORCE MAJEURE

No party shall be in default if performance of any obligation hereunder is rendered impossible or impracticable solely by unforeseen and supervening conditions beyond such party's control.

A Force Majeure Event shall include but not be limited to:

1. Fire, casualties, chemical or radioactive contamination, earthquakes, lightning, cyclones, hurricanes, floods, droughts or such other extreme weather or environmental conditions, unanticipated geological, environmental or ground conditions, epidemic, famine, plague, or other similar natural calamities and/or acts of God;

2. Explosion, accident, structural collapse, quarantine restrictions, or chemical contamination (other than resulting from an act of war, terrorism, or sabotage);

3. Acts of war (whether declared or undeclared), invasion, acts of terrorists, blockade, embargo, riot, public disorder, violent demonstrations, sabotage, insurrection, rebellion, civil commotion, and sabotage;

4. Strikes, lockouts, work stoppage, material shortages, labor disputes, and such other industrial actions;

5. Conditions affecting the property, the Project improvements, or any portion of either, including any delay caused or resulting from the investigation or remediation of such conditions; litigation or a referendum that enjoins construction or other work on the property, the Project or any portion of either; litigation or a referendum that challenges this Agreement, the Project Approvals, or a development moratorium;

6. Any action or failure to act by any competent authority, the issuance of an order or injunction against Owner proceeding to complete its obligations under this Agreement by a court, legislative or regulatory tribunal having jurisdiction over the subject matter of the Agreement, including passing of a statute, decree, regulation, formal requirement, or order prohibiting completing the subject matter of the Agreement, other than as a result of Owner's failure to comply with the law or any order, consent decree, rule, regulation, or other legislative, or judicial instrument passed by a competent authority as regards the subject matter of the Agreement.

Required Notice of a Force Majeure Event:

In the occurrence of a Force Majeure Event, Owner shall, as soon as practical, notify County of the nature and expected duration of such Force Majeure Event and shall thereafter reasonably keep County informed until such time as Owner is able to perform its obligations.

Effects of an Event of Force Majeure:

Owner shall be excused from performance and shall not be in default in respect of any obligation hereunder to the extent that the failure to perform such obligation is due to a Force Majeure Event.

If and to the extent that Owner is prevented from completing its obligations under the Agreement by the Force Majeure Event, while Owner is so prevented, Owner shall be relieved of its obligations as prevented by the circumstances, but shall attempt to reasonably continue to perform the remainder of its obligations under the Agreement as reasonably practicable.

If and to the extent that Owner suffers a delay during the Construction Period as a result of the Force Majeure Event, then Owner shall be entitled to an extension for the Time for Completion.

The Time period under Section 3 of the Agreement shall be extended by a period equal to the period of interruption or delay caused by the Force Majeure Event.

Owner and County shall use their reasonable and good faith efforts to: (1) overcome the effects of the Force Majeure Event; (2) mitigate the effect of any delay occasioned by any Force Majeure Event, including by recourse to alternative mutually acceptable (which acceptance shall not be unreasonably withheld by either party) design, sources of services, equipment, and materials; and (3) subject to the foregoing provisions regarding satisfaction of applicable Conditions of Approval for final map(s), attempt resumption of normal performance of obligations under this Agreement as soon as reasonably practicable.

SECTION 17. NOTICE TO PARTIES

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667

Attn: Andrew S. Gaber, P.E.
Deputy Director
Development/ROW/Environmental

or to such other location as County directs.

Notices to Owners shall be addressed as follows:

Ramin Basiri
1139 Lomond Drive
El Dorado Hills, CA 95762

or to such other location as Owners direct.

With a copy to:

County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667

Attn: Dave Spiegelberg, P.E.
Sr. Civil Engineer

SECTION 18. AUTHORIZED SIGNATURES

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

Requesting Contract Administrator Concurrence:

By: _____

Andrew S. Gaber, P.E.
Deputy Director
Development/ROW/Environmental
Department of Transportation

Dated: _____

Requesting Department Concurrence:

By: _____

Rafael Martinez, Director
Department of Transportation

Dated: _____

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:

Kim Dawson
Clerk of the Board of Supervisors

By: _____

Dated: _____

Deputy Clerk

-- RAMIN BASIRI --

Owner
APN# 126-180-009
1139 Lomond Drive, El Dorado Hills CA 95762
a California Limited Liability Company

By: _____

Dated: _____

Ramin Basiri
Owner

OWNER

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____

On _____ before me, _____,
(here insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)