

**OFFSITE ROAD IMPROVEMENT AGREEMENT
FOR SHINGLE SPRINGS VILLAGE, SPR 15-0003
BETWEEN THE COUNTY AND THE DEVELOPER**

AGMT #17-54634

THIS ROAD IMPROVEMENT 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 **SHINGLE SPRINGS BAND OF MIWOK INDIANS DEVELOPMENT CORPORATION**, a federally chartered corporation of the Shingle Springs Band of Miwok Indians, whose principal place of business is 5168 Honpie Road, Placerville, California 95667 (hereinafter referred to as “Developer”) concerning the offsite road and drainage improvements for the **Shingle Springs Village Project** (hereinafter referred to as “Project”) in accordance with the improvement plans entitled, “**Improvement Plans For: Shingle Springs Village Sewer Main & Water Main Extension**” and cost estimates prepared by Baker-Williams Engineering Group, Michael T. Roberston, R.C.E., Registered Civil Engineer, and approved by Andrew S. Gaber, P.E., Deputy Director, Development/Right-of-Way/Environmental (hereinafter referred to as “County Engineer”), County of El Dorado, Department of Transportation (hereinafter referred to as “Transportation”).

RECITALS

WHEREAS, Developer has prepared the Shingle Springs Village, SPR 15-0003 Improvement Plans and cost estimates for the construction of the Project that have been approved by County Engineer;

WHEREAS, the Developer shall provide County satisfactory security in the form of cash deposits in lieu of Performance Bonds and Laborers and Materialmens Bonds for the Project work prior to advertisement for bids;

WHEREAS, it is the intent of the parties hereto that the performance of Developer’s obligations shall be in conformance with the terms and conditions of this Agreement and shall be in conformity with all applicable state and local laws, rules, and regulations;

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

SECTION 1. THE WORK

Phase 1:

Developer shall, at its own cost and expense, in a workmanlike manner, faithfully and fully construct, or cause to be constructed, all of the improvements shown on the plans entitled “Improvement Plans For: Shingle Springs Village Sewer Main & Water Main Extension,” inclusive of but not limited to, water and sewer line extensions from Buckeye

Road to the Project site. The Project will resurface the road from approximate station 1+00 to 37+90 as shown on the improvement plans. The Project will also construct a two way left turn lane along the frontage of the Project as shown on the improvement plans.

Phase 2:

Developer shall, at its own cost and expense, in a workmanlike manner, faithfully and fully design and construct, or cause to be designed and constructed, all of the improvements shown in the plans entitled "Improvement Plans For: Shingle Springs Village Sewer Main & Water Main Extension" inclusive of but not limited to, widening of the existing road, resurfacing, and re-striping, as required by the Conditions of Approval and shall perform the requirements of this Agreement in accordance with the plans, change orders, and itemized cost estimates approved by County and hereby made a part of this Agreement for all purposes as if fully incorporated herein (Phase 2 Improvements).

Developer's obligations herein are for the completion of the improvements and shall not be relieved by contracting for the improvements.

An itemized account of the estimated cost of the Phase 1 improvements is set forth in Exhibit A, marked, "Preliminary Engineers Cost Estimate for work within El Dorado County right-of-way," which is incorporated herein and made by reference a part hereof. The exhibit describes quantities, units, and cost associated with the improvements to be made.

An itemized account of the estimated cost of the Phase 2 improvements is set forth in Exhibit B, marked, "Preliminary Engineers Cost Estimate for work with CALTRANS right-of-way," which is incorporated herein and made by reference a part hereof. The exhibit describes quantities, units, and costs associated with the improvements to be made.

County will require Developer to make such alterations, deviations, additions to, or deletions from the improvements shown and described on the plans, specifications, and cost estimates as may be reasonably deemed by County Engineer to be necessary or advisable for the proper completion or construction of the whole work contemplated. Developer shall be responsible for all design and engineering and construction management services of the improvements, at the location and as generally depicted in the plans, specifications, and contract documents ultimately approved by County. The design shall be prepared in accordance with all applicable laws, statutes, orders, map conditions, and County standards for the Project and the improvements. Upon completion of the work, Developer shall provide proof of adequate professional liability insurance of the engineer responsible for the improvements, and in favor of County.

County will require Developer to maintain, and to make such alterations, deviations, additions to, or deletions from, the Project erosion control features shown and described on the plans, specifications, and cost estimates and the Storm Water Pollution Prevention Plan (SWPPP) as may be deemed by County Engineer to be necessary or advisable for compliance with the Clean Water Act, Statewide General Permit requirements, and County's Grading, Erosion and Sediment Control Ordinances.

SHORING PLAN

As a first order of work, Developer's contractor shall submit a shoring plan **thirty (30) days prior to excavation** for any trench five (5) feet or more in depth. The contractor shall not begin excavation work until contractor has received approval from County's Contract Administrator of contractor's detailed shoring plan for worker protection from the hazards of caving ground during the excavation of that trench and any design calculations used in the preparation of the detailed plan. The detailed plan shall show the details of the design of shoring, bracing, sloping, or other provisions to be made for worker protection during the excavation. No plan shall allow the use of shoring, sloping, or a protective system less effective than that required by the Construction Safety Orders of the California Division of Occupational Safety and Health. If the plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared and signed by an engineer who is registered as a Civil Engineer in the State of California, and the plan and design calculations shall be submitted at least **thirty (30) days before** contractor intends to begin excavation for the trench. Nothing in this Article shall be deemed to allow the use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders.

SECTION 2. TRAFFIC CONTROL

A Traffic Control Plan that meets County's standards shall be prepared by the Developer's 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 closures will not be permitted without County's approval, and two (2) lanes of traffic must be open at the end of each working day. The Traffic Control Plan shall include proposed flagging, signage, protective barriers, and limits on excavation within four (4) feet of travel ways open to traffic. The Traffic Control Plan shall also include any proposed staging of the improvements.

SECTION 3. TIME

Developer shall commence with the improvements two (2) days after County's approval of the Agreement for the Project and shall complete Phase 1 and Phase 2 improvements for the Project no later than two (2) years from the date of approval of the plans, subject to extensions for delays not within the control of the Developer.

Construction of Phase 2 will depend on the Developer obtaining an encroachment permit onto Caltrans Right-of-Way.

SECTION 4. WARRANTY

Developer warrants the materials and workmanship utilized on this Project for a period of one (1) year from the date of County's acceptance of the Project and shall make such replacements and repairs during such one (1) year period, at its sole cost and expense, as are

necessary. County will retain a portion of the security deposit posted in the amount of ten percent (10%) of the total value of work performed, in the form of retaining 10% of the total value of the work performed from the deposits made under this Agreement and will retain that 10% for one (1) year following acceptance of the work by County to secure the repair of any hidden defects in workmanship or materials which may appear.

SECTION 5. DEPOSITS IN LIEU OF PERFORMANCE AND LABORERS AND MATERIALMENS BONDS

For Phase 1, Developer shall deliver to Department of Transportation a deposit payable to County in the sum of **One Million Four Hundred Thirty-Eight Thousand, Thirty-Five Dollars and Twenty-Three Cents (\$1,438,035.23)**, to be held by County and reimbursement conditioned upon the faithful performance of Developer's obligation for the full construction of the Phase 1 improvements for the Project as required under this Agreement on or before the completion date specified above. This deposit is in lieu of a performance bond.

In lieu of a Laborers and Materialmens Bond, Developer shall deliver to the Department of Transportation a deposit payable to the County in the sum of **One Million Four Hundred Thirty-Eight Thousand, Thirty-Five Dollars and Twenty-Three Cents (\$1,438,035.23)**, to be held by County and reimbursement conditioned upon the faithful performance of Developer's obligation for the full construction of the Phase 1 improvements for the Project as required under this Agreement on or before the completion date specified above.

For Phase 2, Developer shall deliver to Department of Transportation a deposit payable to County in the sum of **Fifty-Four Thousand, Two Hundred One Dollars and Thirty-Three Cents (\$54,201.33)**, to be held by County and reimbursement conditioned upon the faithful performance of Developer's obligation for the design, preparation and completion of improvement plans, and full construction of the Phase 2 improvements for the Project as required under this Agreement on or before the completion date specified above. This deposit is in lieu of a performance bond.

In lieu of a Laborers and Materialmens Bond, Developer shall deliver to the Department of Transportation a deposit payable to the County in the sum of **Fifty-Four Thousand, Two Hundred One Dollars and Thirty-Three Cents (\$54,201.33)**, to be held by County and reimbursement conditioned upon the faithful performance of Developer's obligation for the design, preparation and completion of improvement plans, and full construction of the Phase 2 improvements for the Project as required under this Agreement on or before the completion date specified above.

The deposits required by this section are a condition precedent to County entering into this Agreement and are subject to the one (1) year warranty guarantee against defects in materials and workmanship in section 4. The deposits shall be held in the Department of Transportation Director's trust fund. The deposits shall not bear interest.

Within thirty days of acceptance of the work by County, the deposits made under this section shall be returned to the Developer, with the exception of the County's retention of ten percent (10%) of the total value of work performed, which the County shall retain for one (1) year following acceptance of the work by County to secure the repair of any hidden defects in workmanship or materials which may appear.

SECTION 6. PREVAILING WAGE

Developer shall require its Contractor to (1) pay wages according to a scale of prevailing wage rates determined by California law, which scale is on file at County's Transportation Division's principal office and (2) comply with all applicable wage requirements, as set forth in Labor Code Sections 1770 et seq., 1773.2, 1775, 1776, 1810 and 1813. In accordance with the provisions of Labor Code Section 1810, eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and Developer's Contractor and any Subcontractor(s) employed under this Agreement shall also conform to and be bound by the provisions of Labor Code Sections 1810 through 1815.

SECTION 7. CERTIFIED PAYROLL

As required under the provisions of Labor Code Section 1776, Developer shall require its Contractor and any Subcontractor(s), if any are authorized herein, to keep accurate payroll records. A certified copy of all payroll records shall be available for inspection at all reasonable hours at the principal office of Developer's Contractor or any Subcontractor(s). All Contractors and Subcontractor(s) must furnish electronic certified payroll records directly to the Department of Industrial Relations.

SECTION 8. RECORDS EXAMINATION AND AUDIT REQUIREMENTS

Developer shall require that its Contractor and its Subcontractor(s), if any are authorized hereunder, maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the various aspects of the Agreement. In accordance with Government Code Section 8546.7, all of the above-referenced parties shall make such materials available at their respective offices at all reasonable times during the contract period and for four (4) years from the date that final payment and all other pending matters are closed. Representatives of County, the State Auditor, and any duly authorized representative of other government agencies shall have access to any books, documents, papers and records that are pertinent to the Agreement for audit, examination, excerpts, and transactions and copies thereof shall be furnished upon request.

SECTION 9. INDEMNIFICATION

To the fullest extent allowed by law, Developer shall defend, indemnify, and hold County and its officers, agents, employees, and representatives 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 Developer's funding, 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 Developer or Developer's consultant, or performance of this Agreement, regardless of the existence or degree of fault or negligence on the part of County, Developer, any Contractor(s), Subcontractor(s), and employee(s) of any of these, except for the sole or active negligence of County, its officers, agents, employees, and representatives, or as expressly provided by statute. This duty of Developer 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 10. ATTORNEY FEES

Developer shall pay County's costs and reasonable attorney fees should County be required to commence an action to enforce the provisions of this Agreement or in enforcing the security obligations provided herein.

SECTION 11. INSURANCE

GENERAL INSURANCE REQUIREMENTS: Developer shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Developer maintains insurance that meets the following requirements. In lieu of this requirement, Developer may have its 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 Developer 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 Developer or its contractors or agents in performance of the Agreement.

4. In the event Developer or its contractors or agent(s) 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. Developer 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, on an additional insured endorsement, 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 policy naming County as additional insured.

3. In the event Developer cannot provide an occurrence policy, Developer 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 Developer 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. Developer 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, Developer shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Developer fails 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 Developer agrees 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 Division, either independently or in consultation with County's Risk Management Division, as essential for protection of County.

COMMENCEMENT OF PERFORMANCE: Developer 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 Developer 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: Developer's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of Developer's insurance and shall not contribute with it.

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

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

SECTION 12. RESPONSIBILITY OF ENGINEER

Developer shall employ and make available to County an individual or firm acceptable by County Engineer to provide responses to contractor and construction inspector requests for information, and to provide requisite design revisions as requested by County Engineer before, during, and close out of construction, and through the one-year warranty period of the Project. County Engineer shall be notified by Developer one (1) month in advance of terminating the services of the individual or firm accepted by County Engineer and shall employ a comparable replacement individual or firm acceptable by County Engineer simultaneously to the termination notice date. The individual or firm so employed shall act as Developer's representative to ensure full compliance with the terms and conditions set forth in the plans, specifications, all permits, and any other agreements, notices, or directives related to the Project. County Engineer shall have full access to the individual or firm to ensure that the Project is being constructed in accordance with the approved plans and County

specifications. The cost associated with County's utilization of the individual or firm shall be a Project cost for which Developer is responsible.

SECTION 13. 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 14. RECORD DRAWINGS

Developer shall have an engineer prepare Record Drawings describing the finished work. The Record Drawings shall be submitted to Transportation Division at the completion of the work.

SECTION 15. FEES

Developer shall pay all fees in accordance with Transportation Division's fee schedules, including but not limited to application, plan checking, construction oversight, inspection, administration, and acceptance of the work by County.

SECTION 16. DEFAULT, TIME TO CURE, AND REMEDY

Developer'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 Developer shall cure the default within ten (10) days ("Time to Cure") from the date of the Notice. In the event that the Developer fails to cure the default within the Time to Cure, Developer shall be deemed to be in breach of this Agreement.

SECTION 17. PUBLIC UTILITIES

Developer shall investigate and determine if existing public and private utilities conflict with the construction of the Project. Developer shall make all necessary arrangements with the owners of such utilities for their protection, relocation, or removal. Developer shall pay all costs of protection, relocation, or removal of utilities. In the event that the utility companies do not recognize this Project as a County project for which the utility companies bear one hundred percent (100%) of the cost of relocation, then, as between County and Developer, Developer shall pay all costs of protection, relocation, or removal of utilities. Notwithstanding the aforementioned, nothing in this provision shall be construed to prevent Developer from making a claim to the owner of said utilities for reimbursement for relocation costs.

SECTION 18. RIGHT-OF-WAY CLEARANCE

There are no Right-of-Way requirements that pertain to this Project.

SECTION 19. NO DEVELOPER REIMBURSEMENT

The Parties agree and acknowledge that the Project costs associated with the improvements contemplated herein are not eligible for reimbursement by County and all costs shall be funded by Developer.

SECTION 20. CONTRACT ADMINISTRATOR

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

SECTION 21. ACCEPTANCE

Upon completion of the Project (Phase 1 and Phase 2) and upon receipt by County's Board of Supervisors of a certification from the Department of Transportation that all work has been completed and that the conditions of this Agreement have been fulfilled, the Board of Supervisors will accept the Project road improvements.

SECTION 22. REIMBURSEMENT TO COUNTY

County shall be entitled to reimbursement by Developer for 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 23. THE PROJECT/ DEVELOPER STATUS

Developer is constructing and completing the Project improvements as set forth herein, and is acting as an independent agent and not as an agent of County.

SECTION 24. 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
Community Development Services
Department of Transportation
2850 Fairlane Court
Placerville, CA 95667

With a copy to:

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

Attn: Andrew S. Gaber, P.E.,
Deputy Director, DRE

Attn: Greg Hicks, P.E.,
Senior Civil Engineer

or to such other location as County directs.

Notices to Developer shall be in duplicate and addressed as follows:

Shingle Springs Band of Miwok Indians
P. O. Box 1340
Shingle Springs, CA 95682

Attn.: AmyAnn Taylor
Attorney General

or to such other location as Developer directs.

SECTION 25. 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

Community Development Services
Department of Transportation

Dated: _____

Requesting Department Concurrence:

By: _____
Bard Lower, Interim Director
Community Development Services
Department of Transportation

Dated: _____

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:

James S. Mitrisin
Clerk of the Board of Supervisors

By: _____

Dated: _____

Deputy Clerk

**-- SHINGLE SPRINGS BAND OF MIWOK INDIANS
DEVELOPMENT CORPORATION --**

By: _____

Dated: _____

Timothy Adams, Chairperson
"Developer"

DEVELOPER

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)