

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Monterey County
Water Resources Agency
PO Box 930
Salinas, California 93902

**SUBDIVISION IMPROVEMENT AGREEMENT CONCERNING
PERMITTING, CONSTRUCTION, AND MAINTENANCE
OF THE BRYANT CANYON CHANNEL IMPROVEMENT PROJECT
AND REQUIRED PROVISIONS**

**MIRAVALE SUBDIVISION DEVELOPMENT
CITY OF SOLEDAD**

THIS SUBDIVISION IMPROVEMENT AGREEMENT ("AGREEMENT") is made and entered into by and between UCP Soledad, LLC, a Delaware limited liability company ("UCP SOLEDAD"), and the MONTEREY COUNTY WATER RESOURCES AGENCY, a public agency of the State of California created pursuant to the Monterey County Water Resources Agency Act (Cal. Water Code, Appendix Chap. 52)("AGENCY").

RECITALS

This AGREEMENT is made with respect to the following facts which each party acknowledges as true and correct:

- A. The AGREEMENT specifies each entity's responsibility for implementation of certain portions of infrastructure to be completed for the Bryant Canyon Channel Improvement Project; and
- B. On March 20, 2017 the Monterey County Water Resources Agency Board of Directors approved and recommended that the Monterey County Water Resources Agency Board of Supervisors approve a *Subdivision Improvement Agreement*, and authorizes the Chairman of the Monterey County Water Resources Agency Board of Supervisors to execute the AGREEMENT.
- C. City of Soledad, California, Resolution No. 3379 approved a Vesting Tentative Map for Phase II of the MIRAVALE SUBDIVISION DEVELOPMENT ("SUBDIVISION"), Tentative Map No. 2002-01, subject to the Subdivision Laws and to the requirements and

conditions of approval ("Conditions of Approval") contained in the Resolution of Approval. On November 2, 2005, the City Council adopted Resolution 3699 conditionally approving the first revision of the Vesting Tentative Map. The Resolutions of Approval are on file in the office of the City Clerk of the City of Soledad.

- D. In consideration of approval of a final map for the SUBDIVISION by the City of Soledad, UCP SOLEDAD desires to enter into this AGREEMENT, whereby UCP SOLEDAD promises to install and complete, at UCP SOLEDAD'S sole expense, all the improvement work required by AGENCY (hereinafter "Improvements") in connection with the proposed Bryant Canyon Channel Improvement Project. UCP SOLEDAD has secured this AGREEMENT by improvement security required by the AGENCY and approved by the Office of the Agency Counsel.
- E. Complete Improvement Plans for the construction, installation and completion of the Improvements have been prepared by UCP SOLEDAD and approved by the AGENCY Engineer (hereinafter "Improvement Plans"). The Improvement Plans for this subdivision are on file in the office of the AGENCY Engineer and are incorporated into this AGREEMENT by Exhibit A. All references in this AGREEMENT to the Improvement Plans shall include reference to any specifications for the Improvements as approved by the AGENCY Engineer. The term "AGENCY Engineer" as used in this AGREEMENT refers to the AGENCY General Manager or his/her designee licensed to practice civil engineering in the State of California.
- F. Within thirty (30) days after completion of the required Improvements and their acceptance or approval by AGENCY, it is necessary that certain monuments and stakes as specified on the Improvement Plans for the Bryant Canyon Channel Improvement Project be installed.

NOW, THEREFORE, in consideration of the approval and Improvement Plans, UCP SOLEDAD and AGENCY agree as follows:

Title of Improvement Plans: Bryant Canyon Channel Improvement Plan, prepared by Schaaf and Wheeler Consulting Civil Engineers, Inc., dated 6/9/2014 and subsequent revisions approved by the AGENCY.

Name of Surety or Financial or Other Institution Providing Security Instrument

PHILADELPHIA INDEMNITY INSURANCE CO. (hereafter referred to as "Surety"),

Address: ONE BALA PLAZA, SUITE 100

BALA CYNWYD, PA 19004, and Contact Person: MICHELLE HAASE

Estimated Cost of Improvements:

Drop Structure(s):	<u>\$ 792,900</u>
Box Culvert and related (sta. 12+00 to 22+80):	<u>\$ 644,000</u>
Side Drain(s):	<u>\$ 12,000</u>
Rock Slope Protection and cutoff walls:	<u>\$ 264,200</u>
Other Infrastructure: Grading, Mobilization, Hydroseeding, etc.	<u>\$ 58,000</u>

Estimated Total Costs of Improvements:

	<u>\$ 1,771,100</u>
10% Contingency	<u>\$ 177,100</u>

Faithful Performance Bond (100% of Estimated Total Cost + Contingency):	<u>\$ 1,948,210</u>
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Form of Security, if other than bond: —

Reference information (e.g., Bond No.): PB03010403806

Labor & Materials Bond (50% of Estimated Total Cost):	<u>\$ 885,550</u>
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Form of Security, if other than bond: —

Reference information (e.g., Bond No.): PB03010403806

Warranty Security (20% of Estimated Total Costs) ¹	<u>\$ 354,220</u>
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Form of Security, if other than bond: _____

Reference information (e.g., Bond No.) _____

¹ This Bond or Security shall be provided to County upon acceptance of dedicated Bryant Canyon Channel improvements by Agency.

1. UCP SOLEDAD'S Obligations to Construct Improvements. UCP SOLEDAD shall:
 - a. Comply with all the requirements of the Conditions of Approval of the tentative map for the subdivision.
 - b. Construct and install at UCP SOLEDAD'S sole expense all the Improvements in conformance with final Improvement Plans meeting applicable AGENCY and State standards as approved by the AGENCY.
 - c. The City of Soledad will withhold approval of construction permits, and prohibit construction of homes, on the area shown as Lots 1 to 16 inclusive as shown in the Overall Site Grading Miravale II Subdivision Unit III plans by Bestor Engineers, Inc. dated April 30, 2010. These lots cannot be built or sold before the completion of the 6-foot by 10-foot reinforced concrete box culvert, or equivalent and the gabion drop structure downstream of that culvert (Reference letter dated October 21, 2010, Exhibit B).
 - d. The City of Soledad will withhold approval of construction permits, and prohibit construction of homes, on the area shown as Lots 49 through 57 inclusive and 90 through 94 inclusive as shown in the Overall Site Grading Miravale II Subdivision Unit III plans by Bestor Engineers, Inc. dated April 30, 2010. These lots cannot be built or sold before the completion of the entire Bryant Canyon Channel Improvement Project as shown in the plans by Schaaf & Wheeler dated June 9, 2014 (Reference letter dated October 21, 2010, Exhibit B).
 - e. Commence the construction and installation of the Improvements within 180 days from the AGENCY'S approval of said Improvement Plans and the receipt of all necessary permit authorizations, and complete said work within ONE (1) year from the date of said approval unless otherwise approved by the AGENCY. Any such extension may be granted without notice to UCP SOLEDAD'S Surety and shall not affect the validity of this AGREEMENT or release the Surety or Sureties on any security given under this AGREEMENT. Strikes, boycotts, or similar actions by employees or labor organizations which prevent the conducting of work and which were not caused by or contributed to by UCP SOLEDAD, or any other delay caused by forces or situations beyond UCP Soledad's reasonable control, shall constitute good cause for an extension of the time for completion. As a condition of such extension, the AGENCY Engineer may require UCP SOLEDAD to furnish new security guaranteeing performance of this AGREEMENT as extended in an increased amount as necessary to compensate for any increase in construction costs as determined by the AGENCY Engineer.
 - f. Acquire and dedicate, or pay the cost of acquisition by AGENCY, of all right-of-way, easements and other interests in real property for construction or installation of the Improvements, free and clear of all liens and encumbrances that compromise or interfere with the intended purposes of the rights-of-way, easements, or other interests. UCP SOLEDAD'S obligations with regard to acquisition by AGENCY of off-site rights-of-way, easements and other interests in real property may be subject to a separate agreement between UCP SOLEDAD and AGENCY. AGENCY may require UCP SOLEDAD to deposit, within 10 days of written demand therefor, the full amount estimated by the AGENCY Engineer to acquire the property, including, but not limited to, fair market value of the land, costs to cure, appraisal expenses, court costs, attorney's fees, and AGENCY staff

and administrative costs. UCP SOLEDAD shall also be responsible for obtaining any public or private drainage easements or authorizations to accommodate the SUBDIVISION.

- g. **Erosion Control.** UCP SOLEDAD will take all necessary actions during the course of construction to prevent erosion damage to adjacent properties during inclement weather. It is understood and agreed that in the event of failure on the part of UCP SOLEDAD to prevent erosion, within 15 days prior notice from AGENCY, the AGENCY may do the work on an emergency basis and back-charge the UCP SOLEDAD for the actual expenses incurred, and, if necessary, after providing notice to UCP SOLEDAD, proceed against the Faithful Performance Security to cover AGENCY'S expenses.

2. **Acquisition and Dedication of Easements or Rights-of-Way.** If any of the Improvements and land development work contemplated by this AGREEMENT is to be constructed or installed on land not owned by UCP SOLEDAD, no construction or installation on such land shall be commenced before:

- a. The offer of dedication to AGENCY of appropriate rights-of-way, easements or other interest in real property, and appropriate authorization from the property owner to allow construction or installation of the improvements or work, or
- b. The dedication to, and acceptance by, AGENCY of appropriate rights-of-way, easements or other interests in real property, as determined by the AGENCY Engineer, or
- c. The issuance by a court of competent jurisdiction pursuant to the State Eminent Domain Law of an order of possession. UCP SOLEDAD shall comply in all respects with the order of possession.

Nothing in this Section shall be construed as authorizing or granting an extension of time to UCP SOLEDAD.

3. **Security.** UCP SOLEDAD shall at all times guarantee UCP SOLEDAD'S performance of this AGREEMENT by furnishing to AGENCY good and sufficient security acceptable to the AGENCY and in conformity with the Monterey County Code and by maintaining said security for the purposes and in the amounts as follows:

- a. A Performance Bond or security acceptable to AGENCY in the amount of 100% of the estimated cost of the Improvements to guarantee construction and installation of all the Improvements; and
- b. A Payment Bond or security acceptable to AGENCY in the amount of 50% of the estimated cost of the Improvements to secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor and materials for the Improvements required to be constructed or installed pursuant to this AGREEMENT; and
- c. A Warranty Bond or security acceptable to AGENCY in the amount of 20% of the estimated cost of the Improvements to guarantee or warranty the work done pursuant to this AGREEMENT for a period of one (1) year following the completion and acceptance or approval thereof by AGENCY against any defective work or labor done or defective materials furnished; and

- d. The securities required by this AGREEMENT shall be kept on file with the Clerk to the AGENCY Board of Supervisors. The amount of the security shall be as described herein above and in the recitals to this AGREEMENT. All bonds shall be issued by a surety duly authorized to do business in the State of California. If any security is replaced by another approved security, the replacement shall be filed with the AGENCY Clerk to the Board of Supervisors and, upon filing, shall be deemed to be part of and incorporated into this AGREEMENT. Upon filing of a replacement security with the AGENCY Clerk to the Board of Supervisors, the former security may be released. The AGENCY shall approve in advance of any such replacement of security and release of former security.

4. **Inspection.** UCP SOLEDAD shall retain a qualified and independent consulting Civil Engineer(s) to inspect construction of the Improvements and to certify that the Improvements are constructed in conformance with the Improvement Plans and any approved addenda thereto and applicable ordinances and regulations. An encroachment permit, obtained by UCP SOLEDAD shall be required for work in the Monterey County right-of-way. UCP SOLEDAD shall at all times maintain proper facilities and safe access for periodic inspection of the Improvements by AGENCY. Upon completion of the work, the UCP SOLEDAD's Engineer shall file original sealed "as-built" plans with AGENCY Engineer and shall submit a sealed letter to AGENCY Engineer certifying that UCP SOLEDAD's Engineer has inspected the Improvements throughout construction and that said Improvements are completed in conformance with the Improvement Plans and in accordance with this AGREEMENT. Thereafter, the AGENCY Engineer shall file the notice of completion of the Improvements with the AGENCY Board of Supervisors. No Improvements shall be finally accepted or approved by AGENCY unless all aspects of the work have been inspected and certified as completed in accordance with the Improvement Plans and AGENCY standards. UCP SOLEDAD shall bear all costs of plan check, inspection and certification.

5. **Release of Securities.** Subject to approval by the AGENCY Board of Supervisors the securities required by this **AGREEMENT** shall be released as follows:

- a. Release of improvement securities shall be in conformance with Monterey County Code.
- b. AGENCY may retain from any security released an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorneys' fees incurred by AGENCY in successfully enforcing the obligation secured.

6. **Injury to Improvements, Public Property or Public Utilities Facilities.** UCP SOLEDAD shall replace or have replaced, or repair or have repaired, as the case may be, all Improvements, public utilities facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work under this AGREEMENT. UCP SOLEDAD shall bear the entire cost of replacement or repairs of any and all public or public utility property damaged or destroyed by reason of any work done under this AGREEMENT, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by AGENCY or any public or private utility corporation or by any combination of such

owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the AGENCY Engineer.

7. Default of UCP SOLEDAD.

- a. Default of UCP SOLEDAD shall include, but not be limited to, UCP SOLEDAD'S failure to timely commence or complete construction of the Improvements; UCP SOLEDAD'S failure to timely cure any defect in the Improvements; or UCP SOLEDAD'S failure to perform any other obligation under this AGREEMENT.
- b. Default of UCP SOLEDAD shall also include UCP SOLEDAD'S insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which UCP SOLEDAD fails to discharge within thirty (30) days; or the commencement of a foreclosure action against the SUBDIVISION or a portion thereof; or any conveyance in lieu or in avoidance of foreclosure. Notwithstanding the foregoing, the AGENCY may find UCP SOLEDAD is not in default under this subsection if AGENCY finds that UCP SOLEDAD, in the opinion of the AGENCY Engineer, continues to prosecute construction of the Improvements to completion and the securities provided pursuant to this AGREEMENT remain in full force and effect.
- c. AGENCY reserves to itself all remedies available to it at law or in equity for breach of UCP SOLEDAD'S obligations under this AGREEMENT. AGENCY shall have the right, subject to this section, to draw upon or utilize the appropriate security to mitigate AGENCY damages in event of default by UCP SOLEDAD. The right of AGENCY to draw upon or utilize the security is additional to and not in lieu of any other remedy available to AGENCY. The sums provided by the improvement security may be used by AGENCY for the completion of the Improvements in accordance with the approved Improvement Plans.
- d. In the event of UCP SOLEDAD'S default under this AGREEMENT, UCP SOLEDAD authorizes AGENCY to perform such obligation twenty (20) days after mailing written notice of default to UCP SOLEDAD and to UCP SOLEDAD'S Surety, and UCP SOLEDAD agrees to pay the entire cost of such performance by AGENCY.
- e. AGENCY may take over the work and prosecute the same to completion, by contract or by any other method AGENCY may deem advisable, for the account and at the expense of UCP SOLEDAD, and UCP SOLEDAD'S Surety shall be liable to AGENCY for any excess cost or damages occasioned AGENCY thereby; and, in such event, AGENCY, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to UCP SOLEDAD as may be on the site of the work and necessary for performance of the work.
- f. In the event that UCP SOLEDAD fails to perform any obligation under this AGREEMENT, UCP SOLEDAD agrees to pay all costs and expenses incurred by AGENCY in securing performance of such obligations, including costs of suit and reasonable attorneys' fees.

- g. The failure of AGENCY to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or subsequent default or breach of UCP SOLEDAD.

8. **Warranty.** UCP SOLEDAD shall guarantee and warranty the work done pursuant to this AGREEMENT for a period of one (1) year following the completion of the work and Improvements and acceptance or approval thereof by the AGENCY Board of Supervisors' against any defective work or labor done or defective materials furnished. If within the warranty period any work or improvement or part of any work or improvement done, furnished, installed, constructed or caused to be done, furnished, installed or constructed by UCP SOLEDAD fails to fulfill any of the requirements of this AGREEMENT or conform to the Improvement Plans and specifications referred to herein, UCP SOLEDAD shall without delay and without any cost to AGENCY, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should UCP SOLEDAD fail to act promptly or in accordance with this requirement, UCP SOLEDAD hereby authorizes AGENCY, at AGENCY'S option, to perform the work twenty (20) days after mailing written notice of default to UCP SOLEDAD and to UCP SOLEDAD'S Surety, and UCP SOLEDAD agrees to pay the cost of such work by AGENCY. Should AGENCY determine that an emergency requires repairs or replacements to be made before UCP SOLEDAD can be notified, AGENCY may, in its sole discretion, make the necessary repairs or replacements to the Improvements or perform the necessary work, and UCP SOLEDAD shall pay to AGENCY the cost of such emergency repairs, not to exceed the maximum amount of the warranty security under this AGREEMENT.

9. **UCP SOLEDAD Not Agent of AGENCY.** Neither UCP SOLEDAD nor any of UCP SOLEDAD'S agents or contractors are or shall be considered to be agents of AGENCY in connection with the performance of UCP SOLEDAD'S obligations under this AGREEMENT.

10. **Injury to Work.** Until such time as the Improvements are accepted or approved by AGENCY, UCP SOLEDAD shall be responsible for and bear the risk of loss to any of the Improvements constructed or installed. Until such time as all Improvements required by, this AGREEMENT are fully completed and accepted or approved by AGENCY, UCP SOLEDAD will be responsible for the care, maintenance of, and any damage to such Improvements. AGENCY shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the work or Improvements specified in this AGREEMENT prior to the completion and acceptance of the work or Improvements. All such risks shall be the responsibility of and are hereby assumed by UCP SOLEDAD.

11. **Other Agreements.** Nothing contained in this AGREEMENT shall preclude AGENCY from expending monies pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with others for the apportionment of costs of other improvements, pursuant to the provisions of AGENCY

ordinances providing therefor, nor shall anything in this AGREEMENT commit AGENCY to any such apportionment.

12. **UCP SOLEDAD'S Obligation to Comply with Good Construction Practices.** Until final acceptance of the Improvements, UCP SOLEDAD shall take all reasonable actions consistent with prevailing safety standards and generally accepted good construction practices to protect the public.

13. **Vesting of Ownership.** Upon acceptance or approval of the work on behalf of AGENCY and recordation of the Notice of Completion, ownership of the Improvements constructed pursuant to this AGREEMENT shall vest as shown on the Improvement Plans and in accordance with the provisions set forth in the Conditions of Approval.

14. **Indemnity/Hold Harmless.**

- a. AGENCY or any officer, agent, or employee thereof shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of UCP SOLEDAD, its agents or employees in the performance of this AGREEMENT. UCP SOLEDAD further agrees to protect, defend, indemnify, and hold harmless AGENCY, its officials, agents, and employees, from any and all claims, demands, causes of action, liability or loss of any sort, including, but not limited to, attorney fees and litigation expenses, because of, or arising out of, acts or omissions of UCP SOLEDAD, its agents or employees in the performance of this AGREEMENT, including all claims, demands, causes of action, liability, or loss because of, or arising out of, in whole or in part, the design or construction of the Improvements. This indemnification and AGREEMENT to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said Improvements as provided herein.
- b. Acceptance or approval by AGENCY of the Improvements shall not constitute an assumption by AGENCY of any responsibility for any damage or taking covered by this paragraph. AGENCY shall not be responsible for the design or construction of the Improvements pursuant to the approved Improvement Plans, regardless of AGENCY'S approval of the plans, unless the particular improvement design was specifically required by AGENCY over written objection by UCP SOLEDAD submitted to the AGENCY Engineer before approval of the particular improvement design, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternative safe and feasible design. Except as may be provided above, AGENCY shall not be liable for approving, reviewing, checking, or correcting any plans or specifications or for approving, reviewing or inspecting any work or construction. Nothing contained in this paragraph is intended to or shall be deemed to limit or waive any protections or immunities afforded by law to AGENCY, its officials, agents and employees, by virtue of AGENCY'S approval of the plan or design of the Improvements, including without limitation the protections and immunities afforded by Government Code Section 830.6. After acceptance or approval of the Improvements, UCP SOLEDAD shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect during

the warranty period. It is the intent of this paragraph that UCP SOLEDAD shall be responsible for all liability for design and construction of the Improvements installed or work done pursuant to this AGREEMENT and that AGENCY shall not be liable for approving, reviewing, checking, or correcting any plans or specifications or for approving, reviewing or inspecting any work or construction. The improvement security shall not be required to cover the provisions of this paragraph.

15. **Insurance.** Without limiting UCP SOLEDAD'S duty to indemnify the AGENCY, UCP SOLEDAD shall maintain in effect throughout this AGREEMENT a policy or policies of insurance with the limits of liability specified herein. AGENCY does not and shall not waive any rights against UCP SOLEDAD which it may have by reason of the aforesaid hold harmless AGREEMENT, because of the acceptance by AGENCY of any deposit with AGENCY by UCP SOLEDAD or any of the insurance policies described in herein. The aforesaid hold harmless AGREEMENT by UCP SOLEDAD shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid activities or operations referred to herein, regardless of whether or not AGENCY has prepared, supplied or approved plans and/or specifications for the subdivision, or regardless of whether or not such insurance policies have been determined to be applicable to any such damages or claims for damages. Further, UCP SOLEDAD shall not commence work under this AGREEMENT until UCP SOLEDAD shall have obtained all insurance required herein. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

- a. **Workers' Compensation Insurance.** UCP SOLEDAD shall maintain, during the life of this AGREEMENT, workers compensation insurance for all UCP SOLEDAD'S employees employed at the site of improvement in accordance with California Labor Code Section 3700 and with a minimum of \$1,000,000 per occurrence for employer's liability. UCP SOLEDAD shall require any contractor or subcontractor similarly to provide workers' compensation insurance for all contractors' and/or subcontractors' employees, unless such employees are covered by this protection afforded by UCP SOLEDAD. In any case, if any class of employees engaged in work under this AGREEMENT at the site of the project is not protected under any workers' compensation law, UCP SOLEDAD shall provide insurance acceptable to AGENCY for the protection of employees not otherwise protected. UCP SOLEDAD hereby indemnifies AGENCY for any damage resulting to it from failure of either UCP SOLEDAD or any contractor or subcontractor to take out or maintain such insurance.
- b. **Commercial General Liability Insurance.** UCP SOLEDAD shall take out and maintain during the life of this AGREEMENT such commercial general liability insurance as shall protect the AGENCY, its officers, agents and employees, UCP SOLEDAD and any contractor or subcontractor performing work covered by this AGREEMENT from claims for damages for personal injury, including death, as well as from claims for property damage which may arise from UCP SOLEDAD'S or any contractor's or subcontractor's operations hereunder, whether such operations be by UCP SOLEDAD or any contractor or subcontractor, or by

anyone directly or indirectly employed by either UCP SOLEDAD or any contractor or subcontractor performing work covered by this AGREEMENT. The amount of such insurance shall be not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for contractual liability, independent contractors, personal injury, broadform property damage, explosion, collapse and underground (XCU) products and completed operations.

- c. Business automobile liability insurance: UCP SOLEDAD shall maintain during the life of this AGREEMENT, business automobile liability insurance covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit of not less than \$1,000,000 per occurrence combined single limit for Bodily Injury and Property Damage.
- d. Professional liability insurance: In connection with Section 15.B. above which provides that UCP SOLEDAD shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect and that UCP SOLEDAD shall be responsible for all liability for design and construction of the Improvements installed or work done pursuant to this AGREEMENT, UCP SOLEDAD shall maintain in effect throughout the term of this AGREEMENT, professional liability insurance, as applicable, in the amount of not less than \$1,000,000 per claim and \$3,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three (3) years following the expiration or earlier termination of this AGREEMENT.
- e. All insurance required by this AGREEMENT shall be with a company acceptable to the AGENCY and authorized by law to transact insurance business in the State of California. The general liability insurance policies shall contain a standard form of endorsement, with coverage equal to that provided by ISO Form 20 10 (11-85 edition) insuring and naming the AGENCY, its officers, agents and employees as additional insured and providing that such insurance is primary insurance to any insurance or self-insurance maintained by the AGENCY and that the insurance or self-insurance of the Additional Insured shall not be called upon to contribute to a loss covered by the UCP SOLEDAD'S insurance. Prior to or concurrently with the execution of this AGREEMENT, UCP SOLEDAD shall furnish AGENCY with. a certificate of insurance, showing that the UCP SOLEDAD has in effect the insurance required by this AGREEMENT and showing that each carrier is required to give AGENCY at least thirty (30) days written prior notice of any cancellation or reduction in coverage of any policy during the effective period of this AGREEMENT. UCP SOLEDAD shall file with the AGENCY a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information of the certificate then on file. Acceptance or approval of insurance shall in no way

modify or change the indemnification clause of this AGREEMENT, which shall remain in full force and effect.

16. **Time of the Essence.** Time is of the essence in the performance of this AGREEMENT.

17. **Time for Commencement of Work/Time Extensions.** UCP SOLEDAD shall commence substantial construction of the improvements required by this AGREEMENT within one hundred eighty (180) days from the AGENCY's approval of said Improvements. Any extensions shall be in accordance with Monterey County Code.

18. **Notices.** All notices required or provided for under this AGREEMENT shall be in writing and delivered in person or sent by mail, postage prepaid, and addressed as provided in this section. Notice shall be effective on the date it is delivered in person or, if mailed, on the date of deposit in the United States Mail. Notices shall be addressed as follows, unless a written change of address is filed with the AGENCY.

AGENCY: Monterey County Water Resources Agency
Deputy General Manager of Operations & Maintenance
P.O. Box 930
Salinas CA 93902

UCP SOLEDAD: James W. Fletcher, Division President
UCP Soledad, LLC
99 Almaden Boulevard, Suite 400
San Jose, CA 95113

19. **Binding on Successors and Assigns.** This AGREEMENT shall be binding upon the successors and assigns of each of the parties. Sale of all or part of the lands of the underlying SUBDIVISION shall not serve to transfer the obligations of the UCP SOLEDAD under this AGREEMENT. All obligations under this AGREEMENT attach to UCP SOLEDAD until all obligations of UCP SOLEDAD are fulfilled or transferred by substitution of replacement agreement and replacement securities acceptable to AGENCY.

20. **Incorporation of Recitals.** The Recitals to this AGREEMENT are hereby incorporated into the terms of this AGREEMENT.

21. **Entire AGREEMENT.** This AGREEMENT constitutes the entire AGREEMENT of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this AGREEMENT must be in writing and approved and executed by the appropriate representatives of the parties.

22. **Negotiated Document.** It is agreed and understood by the parties hereto, that this AGREEMENT has been arrived at through negotiations and that neither party is deemed to be the party which prepared the AGREEMENT within the meaning of Civil Code Section 1654.

23. **Recordation.** Upon execution of this AGREEMENT, UCP SOLEDAD shall cause recordation thereof with the County of Monterey Recorder's Office.

24. **Effective Date.** This AGREEMENT takes effect upon its execution by all parties.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the date written below.

UCP SOLEDAD, LLC,
a Delaware limited liability company

By: James W. Fletcher
Name: **James W. Fletcher**
Title: **Division President**
Dated: 3/23/17

By: _____
Name: _____
Title: _____
Dated: _____

ACKNOWLEDGEMENT

State of California
County of _____

On _____ before me, _____

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)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

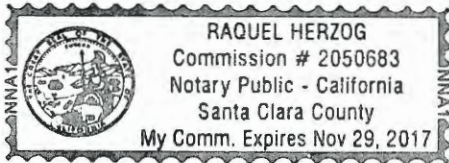
A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Santa Clara

On March 23, 2017 before me, Raquel Herzog, Notary Public, personally appeared James W. Fletcher, 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.

Raquel Herzog
Signature of Notary Public

ACKNOWLEDGEMENT

State of California

County of _____

On _____ before me, _____

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.

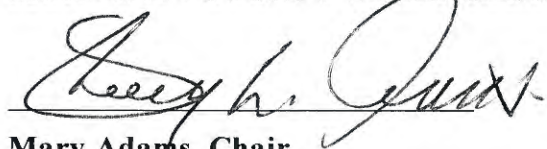
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

MONTEREY COUNTY WATER RESOURCES AGENCY



Date: APRIL 11, 2017

**Mary Adams, Chair
Monterey County Water Resources Agency
Board of Supervisors**

CLERK'S ACKNOWLEDGEMENT

On APRIL 11, 2017, before me, SALLY KIDALOV, Clerk of the Board of Supervisors, personally appeared Mary Adams, Chair, Monterey County Water Resources Agency Board of Supervisors, 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.

Gail T. Borkowski,
Clerk of the Board of Supervisors

By: 

SALLY KIDALOV
Type/Print Name, Deputy Clerk

Legal Reference for Acknowledgement by County Official (SEAL)
California Civil Code Section 1181, 1184, 1188, 1189
Code of Civil Procedure Section 20

APPROVED AS TO FORM & LEGALITY:

OFFICE OF THE COUNTY COUNSEL

CHARLES. J. McKEE, COUNTY COUNSEL

Ex-officio Counsel

MONTEREY COUNTY WATER RESOURCES AGENCY



Jesse J. Avila
Deputy County Counsel

Date: 4-6-17