

RESOLUTION NO. 90-63

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF PASO ROBLES
ADOPTING THE REVISED STANDARD FORM
FOR THE SUBDIVISION IMPROVEMENT AGREEMENT

WHEREAS, the City Attorney and the Engineering Division have redrafted the standard form of the Subdivision Improvement Agreement; and

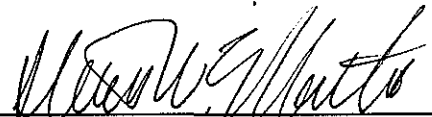
WHEREAS, the redraft of the Subdivision Improvement Agreement reflects current practices.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. That the City Council of the City of Paso Robles adopts the revised Subdivision Improvement Agreement.

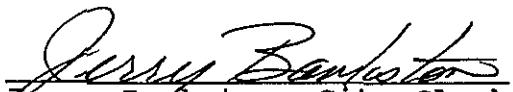
PASSED AND ADOPTED by the City Council of the City of Paso Robles, this 13th day of April 1990, on the following vote:

AYES:	Russell, Cousins, Conway and Martin
NOES:	None
ABSENT:	Reneau



Steven W. Martin, Mayor

ATTEST:




Jerry Bankston, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO) ss.
CITY OF EL PASO DE ROBLES)

I, Jerry Bankston, City Clerk/~~Deputy City Clerk~~ of the City of El Paso de Robles, California, do hereby certify that the foregoing Resolution No. 90-63 was duly and regularly adopted, passed and approved by the City Council of the City of El Paso de Robles, California, at a regular meeting of said City Council held at the regular meeting place thereof, on the ...17th..... day of ...April....., 1990....., by the following vote:

AYES:..... Russell, Conway, Cousins and Martin
NOES:..... None
ABSENT:..... Reneau
ABSTAINED:..... None

Dated this.....17th.....day of...April..., 1990.



City Clerk and Ex-Officio Clerk of the
City Council, City of El Paso de Robles,
State of California

SUBDIVISION IMPROVEMENT AGREEMENT

DATE OF AGREEMENT: _____

NAME OF SUBDIVIDER: _____
(referred to as "SUBDIVIDER")

SUBDIVISION TRACT NO.: _____
(referred to as "Subdivision")

TENTATIVE MAP RESOLUTION OF APPROVAL NO.: _____
(referred to as "Resolution of Approval")

ESTIMATED TOTAL COST OF IMPROVEMENTS: _____

ESTIMATED TOTAL COST OF MONUMENTATION: _____

SURETY: _____

BOND NOS.: _____

This Agreement is made and entered into by and between the CITY OF EL PASO DE ROBLES, a municipal corporation of the State of California (hereinafter referred to as "CITY") and "SUBDIVIDER."

RECITALS

A. SUBDIVIDER has presented to CITY for approval and recordation, a final subdivision map of a proposed subdivision pursuant to provisions of the Subdivision Map Act of the State of California and CITY's ordinances and regulations relating to the filing, approval and recordation of subdivision maps. The Subdivision Map Act and CITY's ordinances and regulations relating to the filing, approval and recordation of subdivision maps are collectively referred to in this Agreement as the "Subdivision Laws."

B. A tentative map of the Subdivision has been approved, subject to the Subdivision Laws and to the requirements and conditions contained in the Resolution of Approval. The Resolution of Approval is on file in the Office of the City Clerk and is incorporated into this Agreement by reference.

C. The Subdivision Laws establish as a condition precedent to the approval of a final map that SUBDIVIDER must have complied with the Resolution of Approval and must have either (1) completed, in compliance with CITY standards, all of the improvements and land development work required by the Subdivision Laws or the Resolution of Approval, or (2) have entered into a secured agreement with CITY to complete the improvements and land development within a period of time specified by CITY.

D. In consideration of approval of a final map for the Subdivision by the City Council, SUBDIVIDER desires to enter into this Agreement, whereby SUBDIVIDER promises to install and complete, at SUBDIVIDER's own expense, all the public improvement work required by CITY in connection with the proposed Subdivision. SUBDIVIDER has secured this Agreement by improvement security required by the Subdivision Laws and approved by the City Attorney.

E. Complete Improvement Plans for the construction, installation and completion of the improvements have been prepared by SUBDIVIDER and approved by the City Engineer. The Improvement Plans for Tract No. _____ are on file in the Office of the City Engineer and are incorporated into this Agreement by this reference. All references in this Agreement to the Improvement Plans shall include reference to any specifications for the improvements as approved by the City Engineer.

F. An estimate of the cost for construction of the public improvements and performing land development work in connection with the improvements according to the Improvement Plans has been made and had been approved by the City Engineer. The estimated amount is stated on Page 1 of this Agreement. The basis for the estimate is attached as Exhibit "A" to this Agreement.

G. CITY has adopted standards for the construction and installation of improvements within CITY. The Improvement Plans

have been prepared in conformance with CITY standards in effect on the date of approval of the Resolution of Approval.

H. Prior to completion of the required improvements and their acceptance by CITY, it is necessary that certain monuments and stakes, as specified on the final map for the Subdivision, shall be installed and also that street signs be placed at intersections.

I. SUBDIVIDER recognizes that by approval of the final map for Subdivision, CITY has conferred substantial rights upon SUBDIVIDER, including the right to sell, lease, or finance lots within the Subdivision, and has taken the final act necessary to subdivide the property within the Subdivision. As a result, CITY will be damaged to the extent of the cost of installation of the improvements by SUBDIVIDER's failure to perform its obligations under this Agreement, including, but not limited to, SUBDIVIDER's obligation to commence construction of the improvements by the time established in this Agreement. CITY shall be entitled to all remedies available to it pursuant to this Agreement and law in the event of a default by SUBDIVIDER. It is specifically recognized that the determination of whether a reversion to acreage or rescission of the Subdivision constitutes an adequate remedy for default by the SUBDIVIDER shall be within the sole discretion of CITY.

NOW, THEREFORE, in consideration of the approval and recordation by the City Council of the final map of the Subdivision, SUBDIVIDER and CITY agree as follows:

1. SUBDIVIDER's Obligations to Construct Improvements.
SUBDIVIDER shall:

a. Comply with all the requirements of the Resolution of Approval, and any amendments thereto, and with the provisions of the Subdivision Laws.

b. Complete, at SUBDIVIDER's own expense, all the public improvement work required on the Tentative Map and Resolution of Approval in conformance with approved Improvement Plans and the CITY standards as follows:

IMPROVEMENT

DEADLINE DATE

(NOTE: All improvements must be completed within one year from the the date of this Agreement.)

SUBDIVIDER agrees that CITY may impose necessary changes to the scope of the improvement work if CITY determines that such changes are necessary and incidental to the successful completion and function of the improvements or required to meet CITY's standards.

c. Furnish the necessary materials for completion of the public improvements in conformity with the Improvement Plans and CITY standards.

d. Acquire and dedicate, or pay the cost of acquisition by CITY, of all rights-of-way, easements and other interests in real property for construction or installation of the public improvements, free and clear of all liens and encumbrances. The SUBDIVIDER's obligations with regard to acquisition by CITY of off-site rights-of-way, easements and other interests in real property shall be subject to a separate agreement between SUBDIVIDER and CITY. SUBDIVIDER

shall also be responsible for obtaining any public or private drainage easements or authorization to accommodate the Subdivision.

e. Commence construction of the improvements by the time established in Section 21 of this Agreement and complete the improvements by the deadline stated in Paragraph 1(b) above, unless a time extension is granted by the CITY as authorized in Section 21.

f. Install all Subdivision monuments required by law prior to the completion and acceptance of the public improvements by CITY.

g. Install street name signs conforming to CITY standards. If permanent street name signs have not been installed before acceptance of the improvements by CITY, SUBDIVIDER shall install temporary street name signs according to such conditions as the City Engineer may require.

2. Acquisition and Dedication of Easements or Rights-of-Way.

If any of the public improvement and land development work contemplated by this Agreement is to be constructed or installed on land not owned by SUBDIVIDER, no construction or installation shall be commenced before:

a. The offer of dedication to CITY 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, the CITY of appropriate rights-of-way, easements or other interests in real property, as determined by the City Engineer, or

c. The issuance by a court of competent jurisdiction pursuant to the State Eminent Domain Law of an order of possession. SUBDIVIDER shall comply in all respects with the order of possession.

3. Security. SUBDIVIDER shall at all times guarantee SUBDIVIDER's performance of this Agreement by furnishing to CITY, and maintaining, good and sufficient security as required by the Subdivision Laws on forms approved by CITY for the purposes and in the amounts as follows:

a. To assure faithful performance of this Agreement in regard to said improvements in an amount of 100% of the estimated cost of the improvements; and

b. To secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor, materials for the improvements required to be constructed or installed pursuant to this Agreement in the additional amount of 50% of the estimated cost of the improvements; and

c. To guarantee or warranty the work done pursuant to this Agreement for a period of one year following acceptance thereof by CITY against any defective work or labor done or defective materials furnished in the additional amount of 10% of the estimated cost of the improvements; and

d. SUBDIVIDER shall also furnish to CITY good and sufficient security in the amount of 100% of the estimated cost of setting Subdivision monuments as stated previously in this Agreement.

The securities required by this Agreement shall be kept on file with the City Clerk. The terms of the security documents referenced on Page 1 of this Agreement are incorporated into this Agreement by this reference. If any security is replaced by another approved security, the replacement shall be filed with the City Clerk and, upon filing, shall be deemed to have been made a part of and incorporated into this Agreement. Upon filing of a replacement security with the City Clerk, the former security may be released.

4. Alterations to Improvements Plans.

a. Any changes, alterations or additions to the improvement plans and specifications or to the improvements, not exceeding 10% of the original estimated cost of the improvement, which are determined by CITY to be necessary and incidental to the successful completion and function of the improvements or required to meet CITY standards, shall not relieve the improvement security given for faithful performance of this Agreement. In the event such changes, alterations, or additions exceed 10% of the original estimated cost of the improvement, SUBDIVIDER shall provide improvement security for faithful performance as required by Paragraph 3 of this Agreement for 100% of the total estimated cost of the improvement as changed, altered, or amended, minus any completed partial releases allowed by Paragraph 6 of this Agreement.

b. SUBDIVIDER shall construct the improvements in accordance with CITY standards in effect at the time of adoption of the Resolution of Approval. CITY reserves the right to modify the standards applicable to the Subdivision and this Agreement, when necessary to protect the public safety or welfare or comply with applicable State or Federal law or CITY zoning ordinances. If SUBDIVIDER requests and is granted an extension of time for completion of the improvements, CITY may apply the standards in effect at the time of the extension.

5. Inspection. SUBDIVIDER shall at all times maintain proper facilities and safe access for inspection of the public improvements by CITY inspectors and to the shops wherein any work is in preparation. Upon completion of the work, SUBDIVIDER may request a final inspection by the City Engineer, or the City Engineer's authorized representative. If the City Engineer, or the designated representative, determine that the work has been

completed in accordance with this Agreement, then the City Engineer shall certify the completion of the public improvements to the City Council. No improvements shall be finally accepted unless all aspects of the work have been inspected and determined to have been completed in accordance with the Improvement Plans and CITY standards. SUBDIVIDER shall bear all costs of inspection and certification.

6. Release of Securities. The securities required by this Agreement shall be released as follows:

a. Security given for faithful performance of any act, obligation, work or agreement shall be released upon the final completion and acceptance of the act or work, subject to the provisions of subsection (b) hereof.

b. Security given to secure payment to the contractor, his or her subcontractors and to persons furnishing labor, materials or equipment shall, six months after the completion and acceptance of the work, be reduced to an amount equal to the total claimed by all claimants for whom lien have been filed and of which notice has been given to the legislative body, plus an amount reasonably determined by the City Engineer to be required to assure the performance of any other obligations secured by the security. The balance of the security shall be released upon the settlement of all claims and obligations for which the security was given.

c. No security given for the guarantee or warranty of work shall be released until the expiration of the warranty period and until any claims filed during the warranty period have been settled. As provided in Paragraph 11, the warranty period shall not commence until final acceptance of all the work and improvements by the City Council.

d. CITY may retain from any security released an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorneys' fees.

7. Injury to Public Improvements, Public Property or Public Utilities Facilities. SUBDIVIDER shall replace or have replaced, or repair or have repaired, as the case may be, all public improvements, public utilities facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work under this Agreement. SUBDIVIDER shall bear the entire cost of replacement or repairs of any and all public or private 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 CITY 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 City Engineer.

8. Permits. SUBDIVIDER shall, at SUBDIVIDER's expense, obtain all necessary permits and licenses for the construction and installation of the improvements, give all necessary notices and pay all fees and taxes required by law.

9. Default of SUBDIVIDER.

a. Default of SUBDIVIDER shall include, but not be limited to, SUBDIVIDER's failure to timely commence construction of this Agreement; SUBDIVIDER's failure to timely cure any defect in the improvements; SUBDIVIDER's failure to perform substantial construction work for a period of 20 calendar days after commencement of the work; SUBDIVIDER's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which SUBDIVIDER fails to discharge within 30 days; the commencement of a foreclosure action against the subdivision or a portion

thereof, or any conveyance in lieu or in avoidance of foreclosure; or SUBDIVIDER's failure to perform any other obligation under this Agreement.

b. CITY reserves to itself all remedies available to it at law or in equity for breach of SUBDIVIDER's obligations under this Agreement. CITY shall have the right, subject to this section, to draw upon or utilize the appropriate security to mitigate CITY's damages in event of default by SUBDIVIDER. The right of CITY to draw upon or utilize the security is additional to and not in lieu of any other remedy available to CITY. It is specifically recognized that the estimated costs and security amounts may not reflect the actual cost of construction or installation of the improvements and, therefore, CITY's damages for SUBDIVIDER's default shall be measured by the cost of completing the required improvements. The sums provided by the improvement security may be used by CITY for the completion of the public improvements in accordance with the improvement plans and specifications contained herein.

In the event of SUBDIVIDER's default under this Agreement, SUBDIVIDER authorizes CITY to perform such obligation 20 days after mailing written notice of default to SUBDIVIDER and to SUBDIVIDER's surety, and agrees to pay the entire cost of such performance by CITY.

CITY may take over the work and prosecute the same to completion, by contract or by any other method CITY may deem advisable, for the account and at the expense of SUBDIVIDER, and SUBDIVIDER's surety shall be liable to CITY for any excess cost or damages occasioned CITY thereby; and, in such event, CITY, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to SUBDIVIDER as

may be on the site of the work and necessary for the performance of the work.

c. Failure of SUBDIVIDER to comply with the terms of this Agreement shall constitute consent to the filing by CITY of a notice of violation against all the lots in the Subdivision, or to rescind the approval or otherwise revert the Subdivision to acreage. The remedy provided by this subsection c. is in addition to and not in lieu of other remedies available to CITY. SUBDIVIDER agrees that the choice of remedy or remedies for SUBDIVIDER's breach shall be in the discretion of CITY.

d. In the event that SUBDIVIDER fails to perform any obligation hereunder, SUBDIVIDER agrees to pay all costs and expenses incurred by CITY in securing performance of such obligations, including costs of suit and reasonable attorneys' fees.

e. The failure of CITY 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 any subsequent default or breach of SUBDIVIDER.

11. Warranty. SUBDIVIDER shall guarantee or warranty the work done pursuant to this Agreement for a period of one year after final acceptance by the City Council of the work and improvements 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 SUBDIVIDER fails to fulfill any of the requirements of this Agreement or the improvement plans and specifications referred to herein, SUBDIVIDER shall without delay and without any cost to CITY, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should

SUBDIVIDER fail to act promptly or in accordance with this replacement, SUBDIVIDER hereby authorizes CITY, at CITY's option, to perform the work 20 days after mailing written notice of default to SUBDIVIDER and to SUBDIVIDER's surety, and agrees to pay the cost of such work by CITY. Should CITY determine that an urgency requires repairs or replacements to be made before SUBDIVIDER can be notified, CITY may, in its sole discretion, make the necessary repairs or replacement or perform the necessary work and SUBDIVIDER shall pay to CITY the cost of such repairs.

12. SUBDIVIDER Not Agent of CITY. Neither SUBDIVIDER nor any of SUBDIVIDER's agents or contractors are or shall be considered to be agents of CITY in connection with the performance of SUBDIVIDER's obligations under this Agreement.

13. Injury to Work. Until such time as the improvements are accepted by CITY, SUBDIVIDER 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 by CITY, SUBDIVIDER will be responsible for the care, maintenance of, and any damage to such improvements. CITY shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of the 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 SUBDIVIDER.

14. Other Agreements. Nothing contained in this Agreement shall preclude CITY from expending monies pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with other subdividers for the apportionment of costs of water and sewer mains, or other improvements, pursuant to the provisions of CITY ordinances providing therefor,

nor shall anything in this Agreement commit CITY to any such apportionment.

15. SUBDIVIDER's Obligation to Warn Public During Construction. Until final acceptance of the improvements, SUBDIVIDER shall give good and adequate warning to the public of each and every dangerous condition existent in said improvements, and will take all reasonable actions to protect the public from such dangerous condition.

16. Vesting of Ownership. Upon acceptance of the work on behalf of CITY and recordation of the Notice of Completion, ownership of the improvements constructed pursuant to this Agreement shall vest in CITY.

17. Final Acceptance of Work. Acceptance of the work on behalf of CITY shall be made by the City Council upon recommendation of the City Engineer after final completion and inspection of all improvements. The City Council shall act upon the Engineer's recommendation within 30 days from the date the City Engineer certifies that the work has been finally completed, as provided in Paragraph 5. Such acceptance shall not constitute a waiver of defects by CITY.

18. Indemnity/Hold Harmless. CITY or any officer or employee thereof shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of SUBDIVIDER, its agents or employees in the performance of this Agreement. SUBDIVIDER further agrees to protect, indemnify, and hold harmless CITY, its officials and employees from any and all claims, demands, causes of action, liability or loss of any sort, because of, or arising out of, acts or omissions of SUBDIVIDER, 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 Subdivision, and the public improvements as provided herein, and in addition, to adjacent property owners as a consequence of the diversion of waters from the design or construction of public drainage systems, streets and other public improvements. Acceptance by CITY of the improvements shall not constitute an assumption by the CITY of any responsibility for any damage or taking covered by this paragraph. CITY shall not be responsible for the design or construction of the Subdivision or the improvements pursuant to the approved improvement plans or map, regardless of any negligent action or inaction taken by CITY in approving the plans or map, unless the particular improvement design was specifically required by CITY over written objection by SUBDIVIDER submitted to the City 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. After acceptance of the improvements, SUBDIVIDER shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect; however, SUBDIVIDER shall not be responsible for routine maintenance. Provisions of this paragraph shall remain in full force and effect for 10 years following the acceptance by CITY of improvements. It is the intent of this section that SUBDIVIDER shall be responsible for all liability for design and construction of the improvements installed or work done pursuant to this Agreement and that CITY shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving, reviewing, checking, or correcting any plans or specifications or in approving, reviewing or inspecting any work or construction. The improvement security shall not be required to cover the provisions of this paragraph.

19. Sale or Disposition of Subdivision. Sale or other disposition of this property will not relieve SUBDIVIDER from the obligations set forth herein. SUBDIVIDER agrees to notify CITY in writing at least 30 days in advance of any actual or pending sale or other disposition of the property. If SUBDIVIDER sells the property or any portion of the property within the subdivision to any other person, SUBDIVIDER may request a novation of this Agreement and a substitution of security. Upon approval of the novation and substitution of securities, SUBDIVIDER may request a release or reduction of the securities required by this Agreement. Nothing in the novation shall relieve SUBDIVIDER of the obligations under Paragraph 17 for the work or improvement done by SUBDIVIDER.

20. Time of the Essence. Time is of the essence of this Agreement.

21. Time for Commencement of Work/Time Extensions. SUBDIVIDER shall commence substantial construction of the improvements required by this Agreement not later than nine (9) months prior to the time for completion. In the event good cause exists as determined by the City Manager, the time for commencement of construction or completion of the improvements hereunder may be extended. The extension shall be made in writing executed by the City Manager. Any such extension may be granted without notice to SUBDIVIDER's surety and shall not affect the validity of this Agreement or release the surety or sureties on any security given for this Agreement. The City Manager shall be the sole and final judge as to whether or not good cause has been shown to entitle SUBDIVIDER to an extension. Delay, other than delay in the commencement of work, resulting from an act of CITY, or by an act of God, which SUBDIVIDER could not have reasonably foreseen, or by storm or inclement weather which permits the conducting of work, or by strikes, boycotts, similar actions by employees or labor organizations, which prevent the conducting of work, and which were

not caused by or contributed to by SUBDIVIDER, shall constitute good cause for an extension of the time for completion. As a condition of such extension, the City Manager may require SUBDIVIDER 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 City Engineer.

22. No Vesting of Rights. Performance by SUBDIVIDER of this Agreement shall not be construed to vest SUBDIVIDER's rights with respect to any change in any zoning or building law or ordinance.

23. 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 CITY:

CITY: City of El Paso de Robles
P.O. Box 307
Paso Robles, CA 93447-0307

SUBDIVIDER:

Surety:

24. Severability. The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

25. Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction or meaning of any provisions of this Agreement.

26. Litigation or Arbitration. In the event that suit or arbitration is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees.

27. Incorporation of Recitals. The Recitals to this Agreement are hereby incorporated into the terms of this Agreement.

28. 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 signed by the appropriate representatives of the parties. In the case of CITY, the appropriate party shall be the City Manager.

IN WITNESS WHEREOF, this Agreement is executed by CITY, by and through its City Manager.

CITY:
CITY OF EL PASO DE ROBLES

By: _____

ATTEST:

APPROVED AS TO FORM:

City Attorney

SUBDIVIDER:
