

**INTERAGENCY COOPERATION**  
**AGREEMENT**  
**(Regional Park Project/Nash Road Closure)**

This Interagency Cooperation Agreement (Regional Park Project/Nash Road Closure) ("Agreement") is entered into by and among **San Benito High School District**, a public school district of the State of California ("District"), **County of San Benito**, a political subdivision of the State of California ("County"), and **City of Hollister**, a municipal corporation of the State of California ("City"). District, County, and City may collectively be referred to as "Parties." This Agreement shall be effective on, and no sooner than, the date of its approval by the third and final Party hereto ("Effective Date").

**RECITALS**

A. District owns seven (7) parcels of land containing approximately 116.3 total acres in the City of Hollister, County of San Benito ("District Property"), upon which it operates the San Benito High School ("High School") located at 1220 Monterey Street. The District Property is depicted on the attached EXHIBIT A.

B. The District Property encompasses both the High School and approximately 47 acres of unimproved open land. The High School campus is approximately 69.3 acres and is bisected by Nash Road between West Street and Monterey Street, with the administrative office, main buildings, and pool located north of Nash Road and classrooms buildings, and an athletic compound located south of Nash Road (collectively, the "High School Campus"). The Parties are concerned about the High School students crossing Nash Road, between West Street and Monterey Street, to attend classes and athletic events on the District's bisected High School Campus, and desire to close Nash Road to vehicular traffic during and after school hours ("Nash Road Closure").

C. The District's unimproved open space located south of the High School Campus contains approximately 47 total acres and borders the San Benito River ("Unimproved District Property"). Maps depicting the High School Campus and Unimproved District Property are reflected in the attached EXHIBIT A.

D. County desires to develop a River Parkway and Regional Park Project ("County Project") which has two components: (1) the River Parkway, to provide multi-use public trails (e.g., hiking, bicycling, equestrian), open space and parks along an approximately 20-mile corridor of the San Benito River and Tres Pinos Creek; and (2) the Regional Park, to provide a diversified regional park to support active and passive recreation, and to conserve and enhance environmental or historical resources and features on approximately 31 acres of land between the proposed River Parkway to the south and San Benito High School to the north, and west of San Benito Street. The County Project will be developed in accordance with the conceptual draft of the San Benito River Parkway Master Plan and the River Parkway Focus Area and Regional Park Master Plan (collectively, the "Master Plans").

E. The Regional Park will be developed in a more urban environment along the River Parkway, near the southern limits of the City of Hollister. The Regional Park is conceptually depicted on EXHIBIT B, pursuant to the Master Plans. County's development of the Regional Park, including a corresponding parking lot ("Parking Lot"), will require at least a long-term lease of portions of the Unimproved District Property ("Park Property"), as well as other land owned by the County, adjacent to the Unimproved District Property, all as conceptually depicted on EXHIBIT B. Further, the development of the Regional Park will

include a new primary entry access that would extend from Nash Road, west of the High School Campus and connect to San Benito Street ("Access Road"), as depicted on EXHIBIT B.

F. The Parties have discussed options to assist each other in addressing community needs through coordinated inter-agency action that would result in addressing High School safety issues as well as development of the Regional Park and its associated components, all to the long-term benefit of the region, to be achieved with four separate, but related components: (1) development of the Access Road; (2) implementation of the Nash Road Closure; (3) development of the Regional Park; and (4) development of the Parking Lot.

G. Education Code section 10905 authorizes the governing bodies of two or more public agencies to cooperate with each other to: (i) promote and preserve the health and general welfare of the people of the state and to cultivate the development of good citizenship by provision for adequate programs of community recreation; and (ii) organize, promote, and conduct programs or community recreation as will contribute to the attainment of general educational and recreational objectives for children and adults of the state. To this end, Section 10905 authorizes the District, County, and City to enter into agreements and do all things necessary or convenient to aid and cooperate in carrying out the aforementioned purposes.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **AGREEMENT**

### **1. TERM.**

The term of this Agreement shall be ninety-nine (99) years commencing on the Effective Date set forth above ("Term"), unless earlier terminated as permitted in accordance with the terms of this Agreement.

### **2. SUMMARY OF ACTIONS.**

This Agreement covers a multi-faceted and interconnected set of actions by and among the Parties with respect to the four components to address the safety issues at the High School Campus and development of the Regional Park and its associated facilities, to memorialize the Parties' short-term and long-term goals and intentions.

#### **2.1 Access Road.**

County shall develop, construct, operate, and maintain the Access Road on a portion of the Unimproved District Property, which will extend for approximately 0.6 miles from Nash Road to San Benito Road, for the purpose of creating an access route to and primary entry into the Regional Park. The District shall grant an easement to County for these purposes. Details for District's grant of easement to County, and County's development and operation of the Access Road are provided at Section 3.

#### **2.2 Nash Road Closure.**

Pursuant to Vehicle Code section 21102, the County and the City shall temporarily close that portion of Nash Road bisecting the High School Campus, to vehicular traffic during

the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday, such closure to become effective and implemented only upon the completion of the contingencies identified in Section 4.2 hereof. The Parties intend that the County and the City will subsequently consider permanently relinquishing and vacating their respective rights in Nash Road as a public street and conveying title to the District. Details for development and implementation of the Nash Road Closure, are provided at Section 4.

### 2.3 Regional Park.

The County shall develop, construct, operate, and maintain an approximately 31-acre Regional Park to create open space and promote programs of community recreation for the benefit of the local community, including the High School students. The District shall grant County with a long-term lease of the Park Property for these purposes. The Parties' long-term goals are: (i) to develop a shared-use agreement for each Party's priority of use over certain facilities at the Regional Park during certain times of the year; and (ii) for District and County to conduct an exchange of property, between District's Park Property and County's interest in Nash Road. Details for the long-term lease between District and County, and the County's development and operation of the Regional Park are provided at Section 5. Details for the property exchange between District and County are provided at Section 5.4 hereof.

### 2.4 Parking Lot.

The County shall develop, construct, operate, and maintain a parking lot on a portion of the High School Campus, adjacent to the Regional Park, so the Regional Park visitors, and community members, including District students, parents, and invitees, may park their vehicles ("Parking Lot"). Details for the County's development and operation of the Parking Lot are generally provided at Section 6.

## 3. ACCESS ROAD.

### 3.1 Location and Design.

3.1.1 County's engineer shall generate a legal description for the Access Road, which shall be approved by the County and District governing boards, which approval shall not be unreasonably denied. The Access Road is conceptually depicted on the Site Diagram at EXHIBIT D.

3.1.2 County shall be solely responsible for the engineering and design of the Access Road, and the costs thereof, in accordance with the parameters depicted in the Site Diagram. The Access Road will be built to County standards, with a safe pedestrian corridor, as requested by the City and District, in addition to other stipulations set forth below.

3.1.3 County will coordinate with the Sunnyslope County Water District to establish location parameters for the pipeline anticipated to be located beneath the Access Road.

### 3.2 Timing and Process for Grant of Easement.

3.2.1 Section 17556 of the Education Code authorizes the governing board of the District ("District Board") to dedicate or convey to the state, or any political subdivision or municipal corporation thereof, for public street or highway purposes, either

with or without consideration and without a vote of the electors of the district first being taken, any real property belonging to the District, either in fee or any lesser estate or interest therein. Accordingly, the District shall grant an easement to the County for public street purposes, at no or nominal cost, following the process set forth in Education Code sections 17557 – 17560.

3.2.2 The process for District's grant of easement shall commence as of the Effective Date, upon the following conditions:

3.2.2.1 County shall be solely responsible for creating a new legal description for the Access Road, Regional Park, and remaining District Property, all subject to District approval and consent, which shall not be unreasonably withheld.

3.2.2.2 District's grant of easement to County shall allow for County to permit public utility companies and agencies to access the Access Road, and adjacent District Property, for purposes of laying, constructing, reconstructing, maintaining, and operating water, sewer, gas, or storm drain pipes or ditches, electric or phone lines, cable lines, and other utilities.

### 3.3 Stipulations.

3.3.1 County is solely responsible for designing and planning the Access Road, including all costs and fees associated with such preliminary services.

3.3.2 County is solely responsible for the development, construction, operations, upkeep, and maintenance of the Access Road, including all costs and fees associated therewith. County shall comply with the District's Construction Provisions, attached to this Agreement as EXHIBIT C, for any construction work related to the Access Road, including compliance with the insurance and indemnification requirements.

3.3.3 County shall commence the planning, design and construction process for the Access Road upon the Effective Date, and shall use reasonable efforts to complete the Access Road by July 1, 2018.

3.3.4 County shall be solely responsible for the costs, permits, and governmental approvals to develop, construct, and operate the Access Road, but District, as the landowner, agrees to assist County in obtaining any permits and approvals, to the extent necessary and applicable.

3.3.5 County shall accept its easement interest in the Access Road on an "as-is" basis with no warranties provided by the District. District provides no warranties with respect to the portion of the Unimproved District Property comprising the Access Road. County is solely responsible for determining that the portion of the Unimproved District Property it will use to construct the Access Road complies with all federal, state and local environmental requirements applicable for use of the land as a public access road.

3.3.6 County agrees that it will act as the lead agency for purposes of complying with the provisions of the California Environmental Quality Act, Public Resources Code section 21000 et seq. ("CEQA"). County shall be solely responsible for compliance with CEQA, including all costs and fees.

3.3.7 The improvements for the Access Road shall meet or exceed County standards to allow for the safe passage of the public, including implementation of traffic

control and/or intersection control devices at or adjacent to the High School Campus.

3.3.8 The Parties agree that the Access Road shall consist of at least the following:

3.3.8.1 Two (2) travel lanes (one each way);

3.3.8.2 Class II bike lanes; and

3.3.8.3 Pedestrian walkway.

#### 3.4 Indemnification.

With respect to the grant of easement of the Access Road from District to County, to the extent permitted by law, County shall indemnify, defend, and hold the District, its trustees, officials, officers, employees, agents, representatives, consultants, volunteers, and invitees harmless from and against all liability, loss, claims, demands, actions, suits, legal or administrative proceedings, penalties, fines, damages, judgments, expenses (including reasonable attorneys' fees and costs of litigation), and costs (collectively, "Claims") arising out of or in any way directly or indirectly connected with: (i) County's access to and use of the District Property and Access Road pursuant to or in connection with this Agreement; (ii) County's maintenance and repair of the Access Road pursuant to this Agreement; or (iii) County's discretion, decision, and authority to permit public utility companies and agencies to enter on the Access Road for the purpose of laying, constructing, reconstructing, maintaining, or operating their respective public utility services, except Claims arising as a result of the negligence or willful misconduct of the District. District shall have the right to accept or reject any legal representation that County proposes to defend District.

#### 4. NASH ROAD CLOSURE.

##### 4.1 Location, Timing and Design.

4.1.1 The north half of the Nash Road bisecting the High School Campus between West Street and Monterey Street ("Nash Road Closure Area") is operated as a public roadway under the jurisdiction of the City. The south half of the Nash Road Closure Area is operated as a public roadway by the County. The conceptual depiction of the Nash Road Closure Area is attached to this Agreement as EXHIBIT E.

4.1.2 The District shall be solely responsible for the design and costs for signage and improvements to be installed at and/or near the Nash Road Closure Area, including any traffic calming measures. A list of the improvements and traffic calming measures for the Nash Road Closure Area, to be approved by the County and City, are attached to this Agreement as EXHIBIT F ("Nash Road Improvements").

4.1.3 In furtherance of the Parties' agreement under this Agreement, City and County hereby agree to diligently pursue all entitlements or other approvals necessary to give effect to the terms of this Agreement, including but not limited to encroachment permits or other form of entitlement to District for access over, onto, near, and around their respective portions of the Nash Road Closure Area for site inspection, design and construction purposes.

4.1.4 District shall commence the planning, design and construction of the Nash Road Improvements on the Effective Date, with an intention to complete the Nash

Road Improvements by the time the Access Road is completed pursuant to Section 3.3.3, above.

#### 4.2 Timing and Process for the Nash Road Closure.

4.2.1 The Nash Road Closure shall be implemented on the earliest possible date ("Closure Date") after all the following contingencies have been met. The Nash Road Closure is contingent upon:

4.2.1.1 The City, County and District governing bodies' approval of this Agreement;

4.2.1.2 County's and City's consideration and adoption of Resolutions to effect the temporary Nash Road Closure, pursuant to Vehicle Code section 21102, anticipated to have happened prior to their approval of this Agreement;

4.2.1.3 County's completion of the Access Road and opening the Access Road to the public;

4.2.1.4 District's installation of appropriate signage notifying the public of the Nash Road Closure and the Access Road; and

4.2.1.5 District's completion of the Nash Road Improvements.

#### 4.3 Stipulations.

4.3.1 Upon the Closure Date, the Nash Road Closure Area will be closed as a public roadway to vehicular traffic from 7:00 am to 7:00 pm Monday through Friday, for the term of this Agreement. District may request issuance of permits for additional temporary closures of Nash Road for special events at the High School, with advanced notice to the public, or for emergencies.

4.3.2 District shall be solely responsible for the costs, design, and construction of Nash Road Improvements. District shall be solely responsible for the costs of obtaining permits and governmental approvals to install and implement the Nash Road Closure, but County and City shall facilitate the issuance of all requisite permits and entitlements for said improvements and said permits and entitlements shall not be unreasonably withheld.

4.3.3 County shall act as the lead agency for purposes of complying with the provisions of CEQA for the Nash Road Closure, and shall be primarily responsible for compliance with CEQA, including the preparation of necessary CEQA documents and all costs and fees.

4.3.4 Regardless of the form of conveyance, or final form of disposition, of the Nash Road Closure Area to District, District accepts said property interest and/or license on an "as-is" basis with no warranties provided by the City and County. City and County provide no warranties with respect to the Nash Road Closure Area. District is solely responsible for determining that the Nash Road Closure Area it will use complies with all federal, state and local environmental requirements applicable for District's intended use of the land.

4.3.5 District shall be responsible for the maintenance and replacement of

the Nash Road Improvements, and will work with applicable agencies to ensure appropriate signage is installed around the Nash Road Closure Area. However, City or County, as applicable, shall be responsible to provide for, install, maintain, and repair any signage, signals or other notices they determine are necessary to warn or detour traffic to other routes (e.g., via the Access Road).

4.3.6 At least ninety (90) days prior to the implementation of the Nash Road Closure, District shall develop and circulate to County and City an operational plan for the Nash Road Closure, and work with the County and City to ensure that it meets the applicable rules, regulations, ordinances, and laws. The Parties shall meet at least semi-annually to discuss the operational details of the Nash Road Closure, including any modifications to enhance or improve upon the Nash Road Closure.

4.3.7 The Parties shall meet on or about August 1, 2021, or three (3) years from the Closure Date, to discuss an action plan for County and City's potential permanent closure of the Nash Road Closure Area and the transfer of applicable property interests to the District, in exchange for District's conveyance in fee or other property interest to the County for the Park Property. Additional details regarding the process for the property exchange between District and County are provided in Section 5.4 below.

#### 4.4 Indemnification.

4.4.1 District shall, to the extent permitted by law, indemnify, defend, and hold the City, its elected council, officers, agents, employees, representatives, contractors, and invitees harmless from and against all Claims arising out of or in any way directly or indirectly connected with: (i) District's access and use of the Nash Road Closure Area pursuant to this Agreement; (ii) installation of the Nash Road Improvements in accordance with this Agreement; or (iii) maintenance and repair of the Nash Road Closure Area or the Nash Road Improvements pursuant to this Agreement, except Claims arising as a result of the negligence or willful misconduct of the City. City shall have the right to accept or reject any legal representation that District proposes to defend City.

4.4.2 District shall, to the extent permitted by law, indemnify, defend, and hold the County, its elected board members, officers, agents, employees, representatives, contractors, and invitees harmless from and against all Claims arising out of or in any way directly or indirectly connected with: (i) District's access and use of the Nash Road Closure Area pursuant to this Agreement; (ii) installation of the Nash Road Improvements in accordance with this Agreement; or (iii) maintenance and repair of the Nash Road Closure Area or the Nash Road Improvements pursuant to this Agreement, except Claims arising as a result of the negligence or willful misconduct of the County. County shall have the right to accept or reject any legal representation that District proposes to defend County.

4.4.3 City shall, to the extent permitted by law, indemnify, defend, and hold the District, its elected trustees, officials, officers, employees, agents, representatives, consultants, volunteers, and invitees harmless from and against all Claims arising out of or in any way directly or indirectly connected with City's approvals for and access to the Nash Road Closure Area pursuant to this Agreement, or City's installation, implementation, and maintenance of any signage, signals or other notices necessary to detour traffic to other routes around the Nash Road Closure Area, except Claims arising as a result of the negligence or willful misconduct of the District. District shall have the right to accept or reject any legal representation that City proposes to defend District.

4.4.4 County shall, to the extent permitted by law, indemnify, defend, and

hold the District, its elected trustees, officials, officers, employees, agents, representatives, consultants, volunteers, and invitees harmless from and against all Claims arising out of or in any way directly or indirectly connected with County's approvals for and access to the Nash Road Closure Area pursuant to this Agreement, or County's installation implementation, and maintenance of any signage, signals or other notices necessary to detour traffic to other routes around the Nash Road Closure Area, except Claims arising as a result of the negligence or willful misconduct of the District or County, respectively. District shall have the right to accept or reject any legal representation that County proposes to defend District.

4.4.5 City shall, to the extent permitted by law, indemnify, defend, and hold the County, its elected board members, officials, officers, employees, agents, representatives, consultants, volunteers, and invitees harmless from and against all Claims arising out of or in any way directly or indirectly connected with City's approvals for and access to the Nash Road Closure Area pursuant to this Agreement, or City's installation, implementation, and maintenance of any signage, signals or other notices necessary to detour traffic to other routes around the Nash Road Closure Area, except Claims arising as a result of the negligence or willful misconduct of the County. County shall have the right to accept or reject any legal representation that City proposes to defend County.

4.4.6 County shall, to the extent permitted by law, indemnify, defend, and hold the City, its elected council members, officials, officers, employees, agents, representatives, consultants, volunteers, and invitees harmless from and against all Claims arising out of or in any way directly or indirectly connected with County's approvals for and access to the Nash Road Closure Area pursuant to this Agreement, or County's installation implementation, and maintenance of any signage, signals or other notices necessary to detour traffic to other routes around the Nash Road Closure Area, except Claims arising as a result of the negligence or willful misconduct of the City. City shall have the right to accept or reject any legal representation that County proposes to defend City.

## 5. REGIONAL PARK.

### 5.1 Location and Design.

5.1.1 The Regional Park shall be comprised of the Park Property and other land owned by the County. County's engineer shall generate a legal description for the Regional Park and the remaining portions of the District Property, which shall be approved by the District Board, and is conceptually depicted in EXHIBIT B.

5.1.2 County shall be solely responsible for the costs for planning and design of the Regional Park including all improvements and facilities to be installed at the Regional Park. District and City shall review County's progress on design and be able to provide comments on the design of the Regional Park.

5.1.3 The Parties shall work together to finalize design details for the Regional Park, including improvements and specific facilities to be installed at the Regional Park, in accordance with the general concepts set forth in the Master Plans. City and District shall have input into the final design for the Regional Park, but the final design of Park facilities shall be at the County's discretion.



## 5.2 Lease between County and District.

### 5.2.1 Consideration.

By no later than the date of County's issuance of the invitation for bids for the construction of the Access Road ("Lease Commencement Date"), in consideration of the Nash Road Closure, District will execute and deliver to the County a long-term (99-year) lease ("Park Lease") of the Park Property, at no or nominal cost, under authority of Education Code section 10900 et seq., for development, operation and maintenance of the Regional Park for the benefit of the residents of the City, County and District, until the earliest of the following dates: (i) the end of the term of the Park Lease; (ii) the acquisition of fee title to the Park Property by the County; or (iii) County's decision to rescind the Nash Road Closure prior to the expiration of this Agreement. The Park Lease shall contain the terms described in this Section 5.2, including, without limitation, the following:

#### 5.2.1.1 District's Covenants to County.

The District shall covenant, warrant and represent that it has full right and power to execute and grant the Park Lease to the County, and to grant the estate demised therein, the Park Property. District shall covenant that as long as County complies with and performs the terms of this Agreement and the Park Lease, County shall peaceably and quietly have, hold and enjoy the Park Property and all rights, appurtenances and privileges belonging or in any way appertaining thereto, during the term of the Park Lease.

#### 5.2.1.2 Delivery of Park Property.

District shall deliver to County on the Lease Commencement Date actual and exclusive possession of the Park Property, assuming that the Park Lease has been approved by the District's and County's governing bodies.

#### 5.2.1.3 Condition of Park Property.

The Park Property shall be leased to County on an "as-is" basis. District shall not be required to make or construct any alterations to the Park Property.

### 5.2.2 Termination of Lease.

5.2.2.1 Termination on Notice. County shall have the right to terminate the Park Lease upon one (1) year's written notice to the District, if, in the County's determination, it is no longer able to develop or maintain the Regional Park for economic, feasibility or legal reasons, which shall be documented in County's written notice. In the event of termination under this Section, District shall have the right, but not the obligation, to pay "book value" to the County to acquire any improvements on the Park Property, as determined by a certified public accountant. In the event of termination under this Section, the Parties agree that return of the Park Property may occur on an "as-is" basis.

5.2.2.2 Consideration of Emergency. At any time during the term of the Park Lease, should District require a portion or the entirety of the Park Property for an unforeseen emergency or situation that impacts the health and safety of students (e.g., temporary housing after a fire), County agrees it will work with District to ensure that District's reasonable school housing needs are met.

### 5.3 Stipulations.

5.3.1 County is solely responsible for the development, construction, operation, security, maintenance, and repair of the Regional Park and related improvements and enhancements, including all costs and fees. County shall comply with the District's Construction Provisions (EXHIBIT C) while performing construction of the Regional Park, including compliance with the insurance and indemnification requirements.

5.3.2 County agrees that it shall act as the lead agency for purposes of complying with the provisions of CEQA, and shall be primarily responsible for compliance with CEQA, including all costs and fees. County shall coordinate with the District and City regarding ongoing CEQA compliance and shall include the District and City as responsible agencies, in the applicable CEQA process and documentation.

5.3.3 County is solely responsible for all costs, permits, inspections, and governmental approvals required for the development of Regional Park, including without limitation, final adoption of the Master Plans, and any associated environmental review. District, as the property owner, shall work with County to assist County in obtaining the appropriate permits and approvals, specifically with respect to those affecting the Park Property.

5.3.4 The Parties shall cooperate to develop a shared use agreement for use of sports fields and other facilities at the Regional Park by District ("Shared Use Agreement"), as well as the Parking Lot (see Section 6 hereof). Within sixty (60) days of the first Notice to Proceed for the County's construction of the Regional Park, the Parties shall meet to commence discussions for developing a Shared Use Agreement. The Parties agree that this Shared Use Agreement will enable the District and its students to have access (on such basis as may be set forth in the Shared Use Agreement) to sports fields or other amenities for sports practice, special events and other school-related activities, and that District shall reimburse County for a portion of its maintenance costs for such facilities. The parties are not limited in their discretion to negotiate the terms of this Shared Use Agreement.

### 5.4 Option to Exchange Property.

5.4.1 Section 17536 of the Education Code authorizes the District Board to exchange any of its real property for the real property of another person. Any exchange shall be upon such terms and conditions as the parties may agree and may be entered into by adoption of a resolution by the District Board of its intention to exchange properties, along with the property descriptions and the terms and conditions for the exchange.

5.4.2 The Parties shall meet three (3) years after the Closure Date to consider a property exchange.

5.4.3 District's agreement to transfer fee title to the Park Property (which excludes the Parking Lot) for Regional Park purposes to County, shall be in exchange for the permanent vacation of the Nash Road Closure Area by both City and County as a public right of way, and a quitclaim of any pre-existing fee or easement interest in the Nash Road Closure Area by the City and County to the District. The Parties agree that determining the value of the properties and property interests to be exchanged is difficult, if not impossible, to ascertain, due to the unique value of the Nash Road Closure to the District and the High School Campus, and due to the long term value to the local community, including City residents and the District, of the development of the Regional Park and the Access Road.

Therefore, the Parties agree that in the event of a property exchange in accordance with this Agreement, no Party will owe any other Party any additional compensation.

5.4.4 A property exchange may not occur between the District and the County unless and until the City agrees to a permanent vacation of its portion of Nash Road. The City agrees to diligently pursue the abandonment of its right, title and/or interest in and to the Nash Road Closure Area. City shall not impede or impair County's actions under this Agreement in furtherance of effectuating a permanent Nash Road Closure. The Parties may enter into a binding agreement to exchange property in advance of the permanent closure and vacation of Nash Road Closure Area by both City and County, as long as the transfer of fee title to the Park Property by the District is conditioned on the permanent closure and vacation of the Nash Road Closure Area being approved by both City and County.

5.4.5 County shall be solely responsible for obtaining new legal descriptions for the Park Property and remaining District Property, and District shall take all steps required to legally divide the District Property into the appropriate parcels.

5.4.6 Title and Escrow.

5.4.6.1 Title Office. Title and escrow services for the transactions contemplated under this Section of the Agreement will be handled by First American Title Company office located at 260 Tres Pinos Road in Hollister, California, 95023 ("Title Office") or such other title and escrow company as the parties shall mutually select.

5.4.6.2 Fees and Costs. Each Party shall pay its own costs for any preliminary title report or title policy requested by that Party. The Parties will share equally the Escrow Officer's fees and other customary charges for document drafting, recording, and miscellaneous charges, even if a Party terminates this Agreement or escrow fails to close.

5.5 Indemnification.

With respect to District's Lease to County for the Park Property and County's development and operation of the Regional Park, to the extent permitted by law, County shall indemnify, defend, and hold the District, its trustees, officials, officers, employees, agents, representatives, consultants, volunteers, and invitees harmless from and against all Claims arising out of or in any way directly or indirectly connected with: (i) County's access to and lease of the District Property and Regional Park pursuant to or in connection with this Agreement; or (ii) County's construction, operation, maintenance and repair of the Regional Park pursuant to this Agreement, except Claims arising as a result of the negligence or willful misconduct of the District. District shall have the right to accept or reject any legal representation that County proposes to defend District.

6. PARKING LOT.

6.1 Location and Design.

6.1.1 County will design, subject to the District Board's approval, the location and design for the Parking Lot, which shall be located North of the Access Road on the southwestern portion of the High School Campus, the exact location of which is to be determined by County and District and thereafter appended to this Agreement via an Addendum approved by the County and District.

6.1.2 County shall be solely responsible for the costs and fees for the design and planning of the Parking Lot.

6.2 Timing and Process for Shared Use of Parking Lot.

6.2.1 District hereby grants County a license for access onto, around and on the Parking Lot for purposes of pre-construction and construction activities, and, after completion, for control and maintenance thereof. The primary use of the Parking Lot shall be for members of the general public using the Regional Park or other public recreational amenities to be located on the High School Campus. The shared use of the Parking Lot shall be documented in the Shared Use Agreement referenced in Section 5.3.4 hereof. The Parties agree that this Shared Use Agreement will enable the District and its students to have access (on such basis as may be set forth in the Shared Use Agreement) to the Parking Lot for special events, and that District shall reimburse County for a portion of its maintenance costs for such facilities. The parties are not limited in their discretion to negotiate the terms of this Shared Use Agreement

6.3 Stipulations.

6.3.1 County is solely responsible for the design, planning, construction, and operation of the Parking Lot, with District Board approval of location and design County shall comply with the District's Construction Provisions while performing construction services for the Parking Lot, including compliance with the insurance and indemnification requirements of the Construction Provisions.

6.3.2 County is solely responsible for the maintenance to and repair of the Parking Lot, including security and costs for insurance. However, District shall reimburse County for a portion of County's annual costs for maintenance to and repair of the Parking Lot in an amount to be determined based on rough proportion of annual use.

6.3.3 District shall have the right to use the Parking Lot only for overflow or special events purposes, as may be determined in the County's reasonable discretion. The District shall ensure that there remains sufficient public parking to support the Regional Park during periods that the public parking is used for overflow purposes.

6.3.4 County shall post signs limiting the use of spaces in the Parking Lot that will prohibit the use of the Parking Lot by individuals on a full-day or overnight basis, but the level and frequency of enforcement shall be at the County's discretion.

6.3.5 County agrees that it will act as the lead agency for purposes of complying with the provisions of CEQA, and shall be solely responsible for compliance with CEQA, including all costs and fees.

6.3.6 County is solely responsible for all costs, permits, and governmental approvals required for the development of the Parking Lot, including DSA approval, if required. District, as the land owner, shall work with County in order to assist County in obtaining its required permits and approvals, to the extent necessary.

6.4 Indemnification. With respect to County's development and operation of the Parking Lot, County shall, to the extent permitted by law, indemnify, defend, and hold the District, its trustees, officials, officers, employees, agents, representatives, consultants, volunteers, and invitees harmless from and against all Claims arising out of or in any way directly or indirectly connected with (i) County's access to and use of the District Property

and Parking Lot pursuant to or in connection with this Agreement, or (ii) County's maintenance and repair of the Parking Lot pursuant to this Agreement, except Claims arising as a result of the negligence or willful misconduct of the District. District shall have the right to accept or reject any legal representation that County proposes to defend District.

7. DISPUTE RESOLUTION PROCESS. The Parties agree to the following resolution process for claims, disagreements, controversies, or disputes arising out of or in relation to the interpretation, application, or enforcement of this Agreement (collectively, "Dispute"), whether during construction or operations.

7.1 Informal Discussions. If any Dispute arises, the Parties will make all reasonable efforts to resolve it through informal discussions. Any Party may initiate such discussions by written notice. With respect to setting a meeting or meetings, the Parties shall reasonably accommodate the other Parties' schedules. The Parties shall cooperate to provide any relevant documentation and information necessary for resolving any Dispute.

7.2 Mediation. If the Dispute is not resolved through informal discussions, then the Dispute shall be submitted to non-binding mediation. If this method proves unsuccessful, nothing in this Section shall be construed to prevent either Party from bringing a legal action to resolve any such Dispute.

7.3 Government Code Claim Filing. If the Dispute is not resolved by the process outlined above, then the grieved Party shall file a timely "claim" pursuant to the provisions of Government Code section 910 et seq. prior to commencing an action or legal proceeding against a Party or Parties, arising out of this Agreement.

7.4 No Waiver. This dispute resolution process shall be undertaken in good faith and exhausted prior to commencing an action or legal proceeding. However, compliance with this process does not waive any Party's obligation to comply with, or right to assert as a defense, any applicable statute of limitations. The Parties may agree in writing to toll any applicable statute of limitations for such period as may reasonably be necessary to complete the dispute resolution process.

7.5 Default.

7.5.1 Notice of Default. Failure or unreasonable delay by any Party to perform any material provision herein shall constitute a default under this Agreement. In the event of a default, the party alleging such default shall give the defaulting party not less than thirty (30) days' written notice of default ("Notice of Default"), unless the parties extend such time by mutual written consent or except in cases where Party's default presents a threat of imminent harm to the public; provided, however, failure or delay in giving a Notice of Default shall not waive a party's right to give future notice of the same or any other default. The Notice of Default shall specify the nature of the alleged default and the manner and period of time in which said default may be satisfactorily cured.

7.5.2 Cure Period; Right to Terminate or Initiate Arbitration Proceedings. The defaulting party shall provide evidence establishing it was never, in fact, in default or shall cure the default within thirty (30) days; provided, however, that if the nature of the alleged default is such that it cannot be reasonably cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period. During any period of curing, the party charged shall not be considered in default for purposes of terminating this

Agreement or instituting arbitration proceedings. If the default is cured, then no default shall exist or be deemed to have existed and the noticing party shall take no further action. After proper notice and the expiration of such 30-day cure period without cure the Dispute Resolution procedures set forth below shall apply to determine whether a breach has occurred sufficient to warrant termination of this Agreement.

7.5.3 Remedies Generally. The parties agree that remedies to enforce the terms of this Agreement shall be limited to actions for mandamus, specific performance, injunctive relief, declaratory relief, or other equitable relief, and that neither party shall be liable for monetary damages. Either party may seek equitable relief prior to resorting to the Dispute Resolution procedures set forth below to preserve the status quo pending the completion of the Dispute Resolution process. It is the intent of the parties to this Agreement that any disputes arising out of this Agreement be resolved in conformity with the terms and condition set forth below.

7.6 Informal Resolution of Disputes; Mediation. If a dispute arises related to the interpretation or enforcement of, or compliance with, the provisions of this Agreement ("Dispute"), the Applicable Parties shall first attempt to resolve it through informal discussions. In the event a Dispute cannot be resolved in this manner within twenty-one (21) days, the Parties shall endeavor to settle the Dispute by mediation. The Dispute shall be submitted to the San Jose, California office of Judicial Arbitration and Mediation Services, Inc. ("JAMS") for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS for final binding arbitration. Either Party may commence mediation by providing to JAMS and the other party a written request for mediation setting forth the subject of the Dispute and the relief requested. All involved Parties shall cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals and in scheduling the mediation proceedings. If the parties cannot agree on the appointment of the mediator or the date of the mediation within thirty (30) days after the written request for mediation has been received, then JAMS shall appoint the mediator at its discretion and/or set a mediation date. All parties agree to participate in any such mediation in good faith, and shall share equally in its costs. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by either of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process.

7.7 Arbitration. Any party may initiate arbitration with respect to a Dispute by filing a written demand for arbitration at any time following completion of the informal dispute resolution and mediation processes described above; provided however, that mediation may continue after the commencement of arbitration, if any of the Parties so desire. Unless otherwise agreed to by the parties, the mediator shall be disqualified from serving as the arbitrator in the case. The provisions of this Section may be enforced by any court of competent jurisdiction, and the prevailing party shall be entitled to an award of all costs, fees, and expenses, including attorneys' fees, to be paid by the non-prevailing party. Any Dispute arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate, not resolved by the mediation process set forth above, shall be determined by arbitration to be held in San Benito County before one arbitrator. Neither party may request an arbitration hearing in conformity with this Section until after the completion of informal dispute resolution and mediation processes above are

complete; provided, however, that mediation may continue after the commencement of arbitration if the Parties so mutually desire. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures, which rules shall govern the commencement of arbitration and the selection of the arbitrator among other things. Judgment on the arbitration award may be entered in the San Benito County Superior Court or any court having jurisdiction. This Section shall not preclude any Party from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The costs and fees of arbitration (including those fees and expenses set forth in JAMS' fee schedule in effect at the time of commencement of the arbitration) shall be borne equally by the Parties involved in the dispute, and each side shall be responsible for its own attorney(s) and expert(s) witness fees.

7.8 Final and Binding. The dispute resolution process described herein shall be undertaken in good faith. A mediator or arbitrator other than JAMS may be mutually agreed upon by the Parties in writing. By agreeing to this dispute resolution process, no Party hereby loses or waives its right to assert the operation of any applicable statute of limitations as an affirmative defense. Any arbitration award shall be final and binding upon all Involved Parties and each shall accept such decision and award as binding and conclusive and shall abide thereby and neither party may commence civil litigation as a means of resolving a Dispute except for an action to obtain equitable relief.

8. INSURANCE. Without limiting the Parties' duties of indemnification, the Parties shall comply with the following insurance coverage requirements during the Term of this Agreement:

8.1 Minimum Scope and Limits. The Parties shall maintain at least the following insurance policies in full force and effect:

8.1.1 Commercial General Liability. Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location, or the general aggregate limit shall be twice the required occurrence limit.

8.1.2 Commercial Automobile Liability, Any Auto. Two million dollars (\$2,000,000) per accident for bodily injury and property damage, for liability arising out of activities performed by or on behalf of the Party or its contractors, or automobiles owned, leased, hired, or borrowed by each Party or its contractors

8.1.3 Workers' Compensation Insurance. Each Party shall maintain a workers' compensation plan covering all of its employees as required by Labor Code section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations (DIR).

8.1.4 Employers' Liability Coverage. Each Party shall maintain employer's liability coverage for each employee who is subject to this Agreement. That policy shall provide employer's liability coverage with minimum liability coverage of one million dollars (\$1,000,000) per occurrence.

8.2 Verification of Coverage. Upon the Effective Date, each Party shall provide the other Parties with:

8.2.1 Certificates of insurance or consents to self-insure, evidencing that the

Parties have in effect the insurance required by this Agreement. The Parties shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on-file.

8.2.2 Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverages on its behalf. All endorsements are to be received and approved by the party being endorsed before any work commences.

8.2.3 Endorsements naming the other Parties and their respective elected officials, officers, employees, agents, representatives, consultants, and volunteers, as additional insureds, with respect to the general liability and automobile liability policies. The coverage shall contain no special limitations on the scope of protection afforded to these additional insureds.

### 8.3 Other Insurance Provisions.

8.3.1 For claims arising from this Agreement, each Party's insurance coverage shall be primary insurance as respects the additional insureds. Any insurance or self-insurance maintained by the additional insureds shall be in excess of the Party's insurance and shall not contribute with it.

8.3.2 Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the additional insureds.

8.3.3 Each Party's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

8.3.4 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the other Parties.

8.3.5 With the exception of Professional Liability Insurance, if any, and Workers' Compensation Insurance, and Employers' Liability Insurance, County shall ensure that all policies shall be written on an occurrence form.

8.4 Self Insurance. If any Party elects to be self-insured, in lieu of providing proof of insurance, any Party may provide proof of self-insurance satisfactory to the other Parties and meeting the requirements imposed herein which can be a consent to self-insure issued by the State Director of Industrial Relations (DIR). Any Party providing proof of self-insurance warrants that the self-insurance provides substantially the same protection as the insurance required herein. Each Party further agree to notify the other Parties in the event any change in self-insurance occurs that would alter the obligations undertaken in this Agreement within thirty (30) days of such change.

9. NOTICES. Any notice to be given hereunder to either Party shall be in writing and shall be given either by personal delivery (including express or courier service) or by registered or certified mail, with return receipt requested, postage prepaid, and addressed as follows:



**If to District:** San Benito High School District  
Attn: Superintendent  
1220 Monterey Street  
Hollister, CA 95023  
Email: jperales@sbhsd.k12.ca.us

With a copy to: Dannis Woliver Kelley  
Attn: Janet L. Mueller  
750 B Street, Suite 2310  
San Diego, CA 92101  
Fax: (619) 702-6202  
Email: jmueller@DWKesq.com

**If to County:** County of San Benito  
Attn: Capital Program Manager  
2301 Technology Parkway  
Hollister, CA 95023  
Email: agoldstone@cosb.us

With a copy to: San Benito County Counsel's Office  
Attn: Shirley L. Murphy  
481 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95203  
Email: smurphy@cosb.us

**If to City:** City of Hollister  
Attn: City Manager  
375 Fifth Street  
Hollister, CA 95023  
Email: coh-manager@hollister.ca.gov

With a copy to: L+G, LLP Attorneys At Law  
Attn: Bradley W. Sullivan  
530 San Benito Street, Suite 202  
Hollister, CA 95023  
Fax: (831) 630-5935  
Email: Brad@LG-Attorneys.com

Any notice given by personal delivery, or registered or certified mail shall be effective upon receipt. Any notice given by overnight delivery shall be effective the day after the notice is submitted to the overnight delivery service.

#### 10. **MISCELLANEOUS PROVISIONS.**

10.1 **No Joint Venture.** No provision of this Agreement shall be deemed to constitute the Parties as partners, principal and agent, or joint venturers with each other.

10.2 **Authority and Capacity.** The Parties and the Parties' signatories each warrant and represent that each has full authority and capacity to enter into this Agreement.

10.3 Binding on Successors. All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of the Parties. The Parties and all of Parties' heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this Agreement.

10.4 Interpretation of Agreement. This Agreement has been arrived at through negotiation among the Parties. None of the Parties shall be deemed the Party which prepared this Agreement within the meaning of Civil Code section 1654.

10.5 Severability. Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this Agreement are declared to be severable.

10.6 Force Majeure. No Party shall be held responsible or liable for an inability to fulfill or delay in fulfilling any obligation under this Agreement (other than the payment of money), by reason of an act of God, natural disaster, accident, strikes, lockouts or other labor disturbances or disputes, unavailability of materials or labor, rationing or restrictions on the use of utilities or public transportation whether due to energy shortages, war, civil disturbance, riot, governmental rules, regulations, or restrictions, building moratorium, delay in issuance of any permits or governmental approvals, litigation or other legal action by a third party arising out of or relating to this Agreement, or by any other occurrence that is beyond the reasonable control of that party including without limitation a Severe Economic Recession (collectively, "Force Majeure"). Any Party relying on a Force Majeure shall give the other Parties reasonable notice thereof and the Parties shall use their best efforts to minimize potential adverse effects from such Force Majeure. If a Force Majeure event prevents County from completing the Regional Park in a timely manner, but does not prevent Developers from continuing construction of a portion or portions of the Regional Park, the Parties shall meet and confer regarding the priority of construction for the Regional Park improvements, and shall use best efforts to agree to such priority.

10.7 Entire Agreement. This is the entire agreement of the Parties with respect to the various proposals and creation of the Definitive Agreements. The making, execution and delivery of this Agreement by the Parties have not been induced by any representations, statements, warranties or agreements other than those expressed herein, and there are no understandings or agreements pertaining to this Agreement except as are expressly stated in writing in this Agreement or in any document attached hereto or incorporated herein by reference.

10.8 Time of the Essence. Time is of the essence in the performance of each Party's respective obligations under this Agreement.

10.9 Amendments. This Agreement may be supplemented, amended, or modified only by the mutual agreement of the Parties. No supplement, amendment, or modification of this Agreement shall be binding and effective unless it is in writing and signed by all the Parties.

10.10 Attorneys' Fees. Except as specifically set forth in this Agreement, each Party shall bear its own attorneys' fees incurred in connection with any negotiations, disputes, litigation, or other proceedings relating to or in furtherance of this Agreement.

10.11 Choice of Law; Jurisdiction and Venue. This Agreement has been entered into in the State of California and all questions with respect to this Agreement and the rights and liabilities of the Parties shall be governed by the laws of California. Jurisdiction and venue for any disputes arising from this Agreement shall be in the County of San Benito.

10.12 Incorporation of Recitals and Exhibits. The Recitals and each Exhibit attached hereto are hereby incorporated by reference.

10.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one instrument.


[SIGNATURES AND EXHIBITS ON FOLLOWING PAGES.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates indicated below, but to be effective as of the Effective Date.

**APPROVED BY COUNTY:**


  
Robert Rivas, Chair  
San Benito County Board of Supervisors  
Date: 11/8/16

**APPROVED AS TO LEGAL FORM:**  
San Benito County Counsel's Office


  
Shirley L. Murphy, Deputy County Counsel  
Date: Oct. 31, 2016

**ATTEST:**


Chase Graves, Clerk of the Board

  
Date: 11/21/2016

**APPROVED BY CITY:**

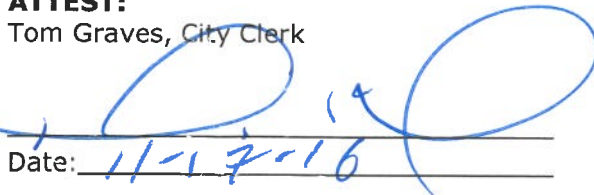
  
William Avera, City Manager  
Date: 11-17-16

**APPROVED AS TO LEGAL FORM:**  
L+G, LLP


  
Paul A. Rovella, City Attorney  
Date: 11-17-16

**ATTEST:**


Tom Graves, City Clerk

  
Date: 11-17-16

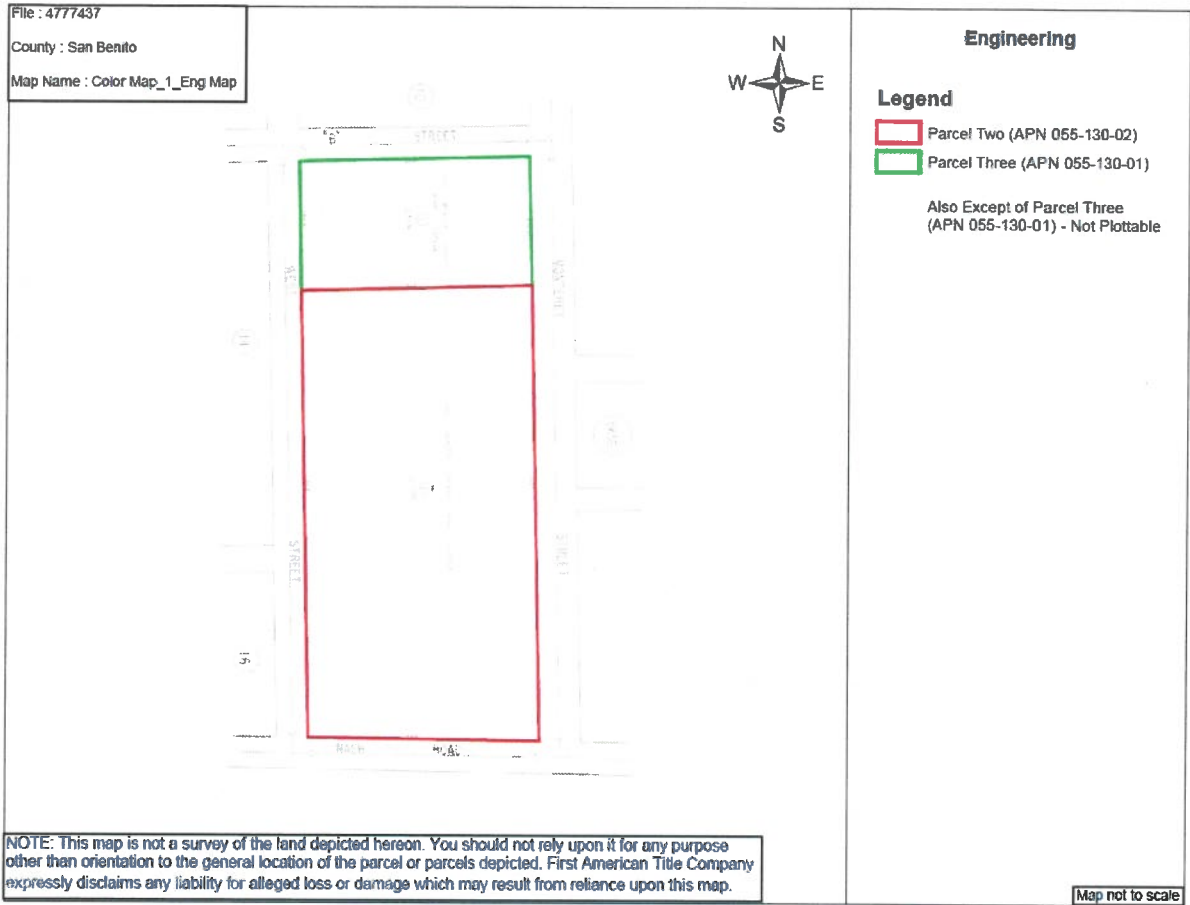
**APPROVED BY DISTRICT:**

  
John Perales, Superintendent  
San Benito High School District  
Date: 11/1/2016

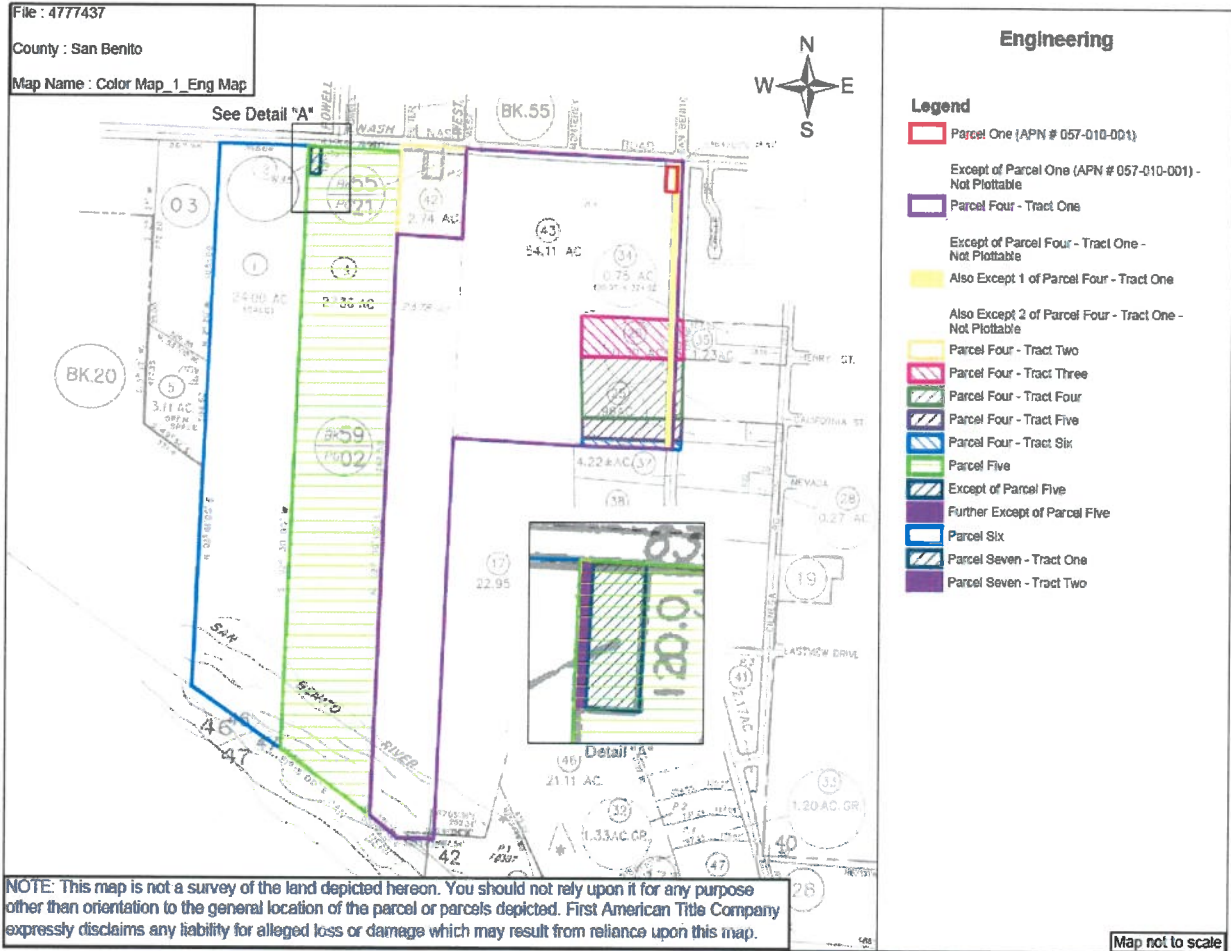
**APPROVED AS TO LEGAL FORM:**  
Dannis Woliver Kelley

  
Janet L. Mueller, Attorney for District  
Date: 11-1-16

**EXHIBIT A**  
**DEPICTION OF DISTRICT PROPERTY**



[CONTINUES ON NEXT PAGE.]



[END OF EXHIBIT A]

**EXHIBIT B**  
**CONCEPTUAL DEPICTION OF PARK PROPERTY**



[CONTINUES ON NEXT PAGE.]





[END OF EXHIBIT B.]



**EXHIBIT C**  
**DISTRICT'S CONSTRUCTION PROVISIONS**

District policy and State law require certain specifications with respect to construction and construction workers on school sites. The Parties agree that the following construction provisions shall apply for any construction work performed on District Property ("Work") pursuant to this Agreement ("Construction Provisions"). County understands and agrees that it shall incorporate these Construction Provisions into any agreements with contractor(s) performing the Work or any portion of the Work. Any Work shall not commence until (a) the District, or City as applicable, has been provided with a copy of the design for the work and has had an opportunity to comment; (b) County has provided to District copies of all required certificates, permits, and approvals; and (c) all safety requirements have been installed, implemented, or adopted (e.g., barriers, notices, Safety Plan).

1. Performance of Work. County shall perform or cause to be performed all Work under County supervision and the District is in no way responsible to perform any portion of the Work. County may perform Work between the hours permitted by County Code of Ordinances. County shall not perform any Work on Sunday. The "Work Site" shall refer to each and all of County's Work areas in relation to the construction of the Work.

1.1 All staging for the Work must be located on the Unimproved District Property, near the Work Site.

1.2 According to generally accepted construction practices, the County will be solely and completely responsible for conditions at the Work Site, including safety of all persons and property during completion of the Work. This requirement will apply continuously and not be limited to normal working hours. Implementation and maintenance of safety programs shall be the sole responsibility of the County.

1.3 The County shall furnish and place proper guards for the prevention of accidents, including, but not limited to, fencing around the Work Site and any staging areas on the Unimproved District Property. The County shall provide and maintain any other necessary measures reasonably required to secure safety of life or property, particularly when High School students are present, and as may be reasonably requested by the District.

1.4 The County shall pay when due all claims for labor and material furnished to the Work Site. District may elect to record and/or post notices of non-responsibility on the Work Site.

1.5 Contractors retained by County with respect to the Work shall be fully licensed and bonded as required by law, and must maintain levels of casualty, liability, and workers' compensation insurance (as detailed below), as well as performance and payment bonds satisfactory to District and consistent with law and District's Construction Provisions. County shall ensure that the Work is performed in a sound and workmanlike manner, in compliance with all laws, ordinances, and regulations applicable to the Work, including, but not limited to, applicable building codes and regulations, prevailing wage, and other labor and public works laws. District, and City if applicable, shall have a continuing right at all times during the performance of the Work to enter the Work Site and to inspect the Work.

2. Communications. All communication with the District related to the Work Site, Work, or the District Property shall be with the District's designated representative, the

Superintendent or his designee. Other employees of the District shall not be required or asked to communicate with any of the County's on-site employees or contractors, or to direct the Work.

3. Mutual Cooperation. During performance of the Work, the County's contractors and relevant employees shall have the right to enter upon the Work Site on the days and at the times permitted herein, to perform any and all construction activities as may reasonably be necessary or desirable to perform and complete the Work. The County shall use care and consideration in connection with all of its construction and activities. The County agrees to coordinate its activities with the District to minimize any inconvenience to or interruption of the conduct of any activities on the High School Campus or District Property.

4. Maintenance of Work Site. The County shall promptly and properly clean the Work Site and the surrounding areas as it progresses with the Work. The County is responsible to provide sufficient debris containers for clean-up of all debris associated with the County's construction activities at the Work Site and on the District Property.

5. Repair of Damage. The County shall protect and preserve the Work Site and the District Property from all damage or accident. The County shall be solely and fully responsible for damage done during the Work to existing structures, furnishings, equipment, buildings, walks, roads, trees, landscaping, and/or improvements in all of County's working areas, including, without limitation, on the Work Site and any portion of the District Property. The County shall provide adequate protection therefor. If temporary removal is necessary of, or any damage results to, any of the High School's improvements, the County agrees to replace the same at County's expense with at least the same kind, quality, and size of improvements as those removed or damaged.

6. Existing Conditions. The County is responsible for verifying all measurements and existing conditions, including, but not limited to, the location of any underground utilities, conduits, pipes, or similar improvements in and around the Work Site prior to the start of any Work. If County's failure to properly verify measurements results in any damage, harm, or impairment to existing conditions (e.g., underground utilities, conduits, pipes), the County shall be solely responsible for rectifying and resolving any such damage, harm, or impairment. The County shall maintain in operation the drainage lines, storm drains, sewers, water, gas, electrical, steam, telephone, data transmission, and other utility service lines servicing the High School. County shall ensure that its contractor(s) maintain in operation the drainage lines, storm drains, sewers, water, gas, electrical, steam, telephone, data transmission, and other utility service lines servicing the High School. District will provide County with documents in its possession relating to the location and type of such utilities.

7. Permits. The County, at no expense to the District, shall obtain any and all required approvals, permits, registrations, inspections, or similar items, if any, from all agencies or authorities with jurisdiction, including DSA review and approvals if necessary.

8. Access to Work. District and its representatives shall at all times have access to the Work wherever it is in preparation or in progress. County and its contractor(s) shall provide safe and proper facilities for such access.

9. Change in Scope of Work. Reserved.

10. Indemnity. To the extent permitted by law, County shall ensure that its contractors, agents, representatives, and consultants agree to indemnify, defend, and hold harmless

District, its respective elected officials, officers, employees, agents, representatives, consultants, and volunteers from and against any and all claims, suits, actions, damages, costs, liabilities, obligations, expenses, fines, or penalties (collectively "claims") of any kind, nature, and description, including, but not limited to attorneys' fees and costs directly or indirectly resulting from or arising out of the performance of the Work and maintenance of the Work Site, including, but not limited to, injury or death of any person, damage or loss to property, any non-compliance with any federal, state, or local laws or regulations, investigations, and/or remediation by County or County's consultants, contractors, or agents, except to the extent that such claims result from the negligence or willful misconduct of District. The District shall have the right to accept or reject any legal representation that County proposes to defend District under this section.

11. Insurance. County and its contractors shall procure, prior to commencement and maintain for the duration of the Work, insurance against claims for injuries to persons or damage to property, which may arise from or in connection with the performance of the Work pursuant to this Agreement. County's liabilities, including, but not limited to, indemnity obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement, and County's failure to maintain coverage as required, or when requested, may be treated by the District as a material breach of contract and will have the right to any legal remedies provided by law.

11.1 Minimum Scope and Limits. During performance of the Work, County and its contractors, and any other person or entity permitted onto the Work Site on behalf of County, shall obtain and maintain at least as broad as the following scopes and limits:

11.1.1 Commercial General Liability. Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to each project/location, or the general aggregate limit shall be twice the required occurrence limit.

11.1.2 Commercial Automobile Liability, Any Auto. Two million dollars (\$2,000,000) per accident for bodily injury and property damage, for liability arising out of activities performed by or on behalf of the Party or its contractors, or automobiles owned, leased, hired, or borrowed by each Party or its contractors.

11.1.3 Workers' Compensation Liability and Employers' Liability. For all of County employees who are subject to this Agreement and to the extent required by the applicable state or federal law, County shall keep, in full force and effect, a Workers' Compensation policy pursuant to the requirements of the California Labor Code and Employers' Liability insurance for One Million Dollars (\$1,000,000). County shall require the same coverage of its contractors for its contractor's employees.

11.2 Verification of Coverage. Prior to any Work, County shall furnish District with:

11.2.1 Certificates of insurance or consent to self-insure, showing evidence of the required insurance coverages. County shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on-file.

11.2.2 Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that

insurer to bind coverages on its behalf. All endorsements are to be received and approved by the District before any Work commences.

11.2.3 County and its contractors shall provide an endorsement naming the District and its elected officials, officers, employees, agents, representatives, consultants, and volunteers, as additional insureds, with respect to the general liability and automobile liability policies. The coverage shall contain no special limitations on the scope of protection afforded to these additional insureds.

### 11.3 Other Insurance Provisions.

11.3.1 For any claims related to the Work or the Work Site, County's insurance coverage shall be primary insurance as respects the additional insureds. Any insurance or self-insurance maintained by the additional insureds shall be in excess of County's insurance and shall not contribute with it.

11.3.2 Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the additional insureds.

11.3.3 County's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

11.3.4 Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

11.3.5 With the exception of Professional Liability Insurance, if any, and Workers' Compensation Insurance, and Employers' Liability Insurance, County shall ensure that all policies shall be written on an occurrence form.

12. Criminal Background Investigation. County shall be responsible for ensuring compliance with the provisions of Education Code Section 45125.2, or any successor statute for any project performed where, in the determination of the District, there may be more than limited contact with students. For any such project or portion thereof, as an alternative to requiring the fingerprinting and clearance of all County employees or contractors, County shall ensure that (a) a physical barrier is installed at the worksite to limit contact with pupils by County or its contractors; or (b) all of a contractor's employees are continually monitored by a County employee or contractor employee who has been fingerprinted and cleared in accordance with Education Code section 45125.1.

13. Compliance with Laws. County and its contractors shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If County or its contractors perform any Work that is in violation of any laws, ordinances, rules or regulations, the District shall not be responsible for any costs arising from such violations.

14. Labor Code Requirements. To the extent applicable, the County shall ensure that its contractors comply with all applicable provisions of the Labor Code, Division 3, Part 7, Chapter 1, Articles 1 – 5, including, without limitation, the payment of the general prevailing per diem wage rates and the general prevailing rate for holiday and overtime

work as determined by the Director of the Department of Industrial Relations (DIR) for the type of work performed and the locality in which the work is to be performed within the boundaries of the District pursuant to Labor Code section 1770 et seq. Copies of the prevailing rate of per diem wages are on file with the District. In addition, the County's contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with Section 1720, and including Sections 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by contractor or subcontractors.

15. Hazardous Materials. With respect to the existence or use of Hazardous Materials (as defined below) on the Work Site or District Property, District and County agree to the following provisions:

15.1 As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term Hazardous Materials includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, Section 66261.30 et seq., (ii) defined as a "hazardous waste" pursuant to Paragraph 5 of 42 U.S.C. § 6903, the federal Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), or (iii) defined as a "hazardous substance" pursuant to Paragraph 14 of 42 U.S.C. § 9601, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.). The term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release, or disposal of any Hazardous Materials.

15.2 County shall not cause or permit any Hazardous Materials to be generated, brought onto, used, stored, or disposed of in or about the Work Site, District Property, or any improvements constructed by County. County shall comply with all Hazardous Materials Laws.

15.3 Any handling, transportation, storage, treatment, disposal, or use of Hazardous Materials in or about the Work Site, District Property, and any County improvements shall be the responsibility of County and shall strictly comply with all applicable Hazardous Materials Laws and the provisions of this Agreement.

15.4 County shall indemnify, defend upon demand with counsel reasonably acceptable to District, and hold harmless District and its trustees, officials, officers, employees, agents, representatives, consultants, and volunteers from and against any liabilities, losses, claims, damages, lost profits, consequential damages, interest, penalties, fines, monetary sanctions, attorneys' fees, experts' fees, court costs, remediation costs, investigation costs, and other expenses which result from or arise in any manner whatsoever out of the County or its contractor's use, storage, treatment, transportation, release, or disposal of Hazardous Materials on or about the Work Site, District Property, and any improvements constructed by the County.

15.5 In the event that County or its elected officials, officers, employees, agents, representatives, consultants, volunteers, or contractors cause or allow any Hazardous Materials to be released, spilled, or otherwise exposed through or during its Work on the Work Site or access onto District Property, County shall be solely responsible for all costs

associated with the proper handling, mitigation, remediation, and disposal of the Hazardous Materials and all related cleanup.

16. Studies and Investigations. County shall conduct such independent investigations, studies and tests as it deems necessary or appropriate concerning County's proposed use and/or the suitability of the Unimproved District Property for County's intended purposes, including studies related to requirements or limitations imposed on the use of the land and/or its use, and shall not rely upon any representations by District with regard to the condition or past or proposed use of either the Unimproved District Property or any portion of the District Property.

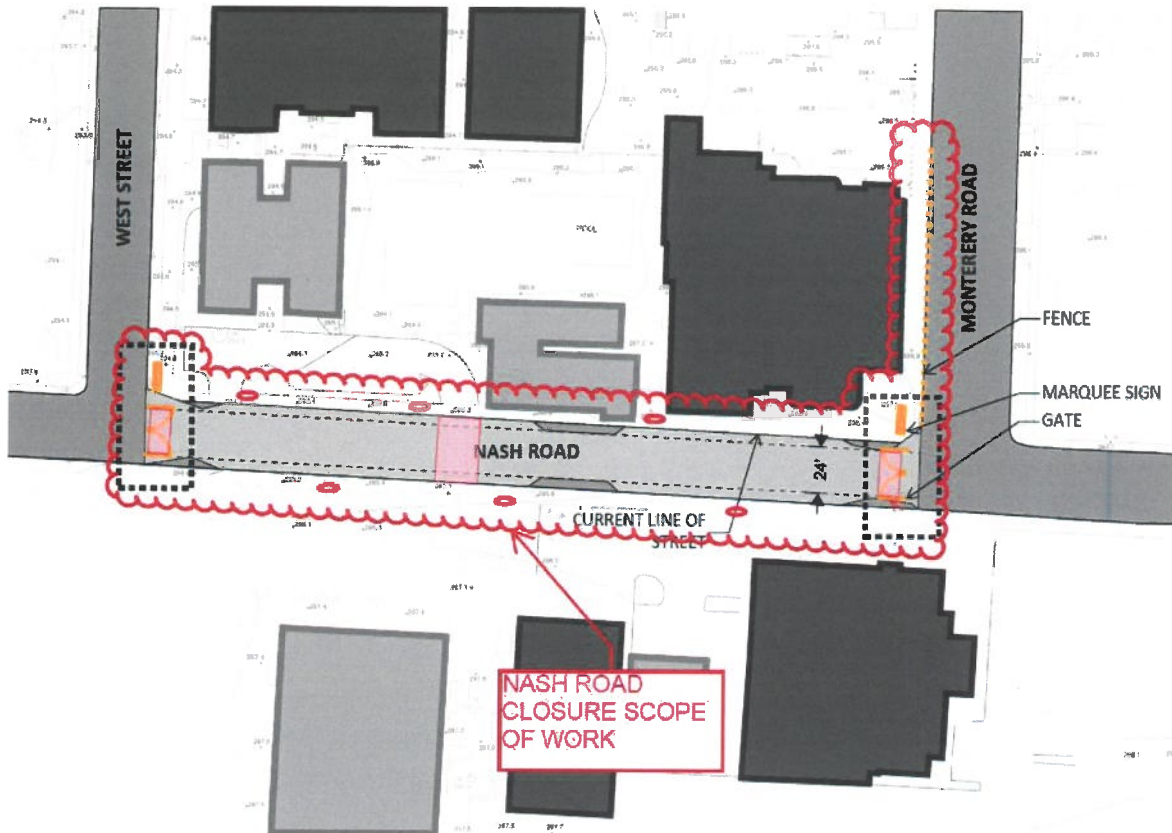
[END OF EXHIBIT C.]

**EXHIBIT D**  
**ACCESS ROAD SITE DIAGRAM**





**EXHIBIT E**  
**DEPICTION OF NASH ROAD CLOSURE AREA**





**EXHIBIT F**  
**NASH ROAD IMPROVEMENTS**

1. **NASH ROAD CLOSURE**

- a. Closure gates at Nash Road and West Street, and at Nash Road and Monterey Street.
- b. Traffic calming measures on Nash Road between West Street and Monterey Street (e.g., traffic bulbs, curbs, speed regulating measures).
- c. Crosswalks with warning flashers, including associated curb cuts on Nash Road at West Street, and at Monterey Street.
- d. Signage and truncated domes along Nash Road, as needed and approved by City/County.
- e. Landscaping along Nash Road, as needed.

2. **TRAFFIC CALMING AND SAFETY MEASURES**

- a. Traffic calming measures and devices on Monterey Street, West Street, Powell Street, B Street, and D Street, including:
  - i. Speed bulbs;
  - ii. Speed humps; and/or
  - iii. Speed tables.
- b. Solar radar speed display(s) on Powell Street.