

BOS Agreement No. 20-144

DOT Agreement No. 20-0011

**COUNTY OF MENDOCINO
DEPARTMENT OF TRANSPORTATION**

**SUBDIVISION IMPROVEMENT AGREEMENT
FOR
TRACT NO. 261**

THIS AGREEMENT, executed and made this 20TH day of OCTOBER 2020, between the COUNTY OF MENDOCINO, a political subdivision of the State of California, hereafter referred to as "**COUNTY**", and **RANCHO YOKAYA LP**, hereafter referred to as "**SUBDIVIDER**".

PREMISES

SUBDIVIDER proposes to subdivide that certain property situated in the County of Mendocino, State of California, and more particularly described on that certain map entitled TRACT NO. 261 (Exhibit A), known as Assessor Parcel Number 184-033-15.

Sections 17-43(G)(3) and 17-73 of the Mendocino County Code provide that if required subdivision improvements are not completed at the time the subdivision final map is submitted for filing, the subdivider shall enter into an agreement with Mendocino County to complete said improvements in consideration of acceptance and approval of the subdivision final map by Mendocino County.

Section 17-74 of the Mendocino County Code requires that a subdivision improvement agreement be secured by a surety bond, cash deposit, certified or cashier's check, or instrument of credit in such sum as is sufficient to cover the estimated cost of all required improvements.

AGREEMENT

In consideration of the above premises, and the promises and agreements described below, it is agreed between the parties as follows:

1. The Board of Supervisors of Mendocino County, upon execution of this Agreement, shall, in accordance with the conditions hereinafter set forth, accept and approve for filing the subdivision final map for the subdivision identified above.
2. **SUBDIVIDER** shall have two years from the execution of this agreement to complete to the satisfaction of the Director of Transportation all street improvements and appurtenant drainage facilities, lot grading, sanitary sewer,

water, utilities, and erosion control, as defined on the following documents:

- Tract 261 Subdivision Improvement Plans, prepared by Doble Thomas and Associates, Inc., signed and dated by Mendocino County April 5, 2010, on file in the office of the Department of Transportation; and
- Joint Trench Layout for Oak Court Tract 261, prepared by LACO Associates, dated December 31, 2019, on file in the office of the Department of Transportation.

3. **SUBDIVIDER** covenants and agrees that if the improvements as specified herein are not completed within the specified time and in the specified manner, **COUNTY** may elect to complete same and recover the full cost and expense thereof from **SUBDIVIDER** or **SUBDIVIDER'S** surety. Said costs and expenses to be recorded as a lien against all lots and parcels within the subdivision.
4. The **COUNTY** has received an engineer's estimate prepared by LACO Associates, dated March 26, 2020, which outlines cost of improvements associated with Lot 1 and 2 (Attachment B) and an engineer's estimate prepared by LACO Associates, dated April 16, 2020, which outlines cost of improvements associated with Lot 3 and 4 (Attachment C).
5. **SUBDIVIDER** shall obtain and file with **COUNTY** a good and sufficient surety bond, cash deposit, certified or cashier's check or instrument of credit, in favor of **COUNTY** and in a form approved by **COUNTY** securing the full and faithful performance by **SUBDIVIDER** pursuant to the terms of this Agreement. Said performance surety shall be in the sum of **\$442,035**. In addition **SUBDIVIDER** shall obtain and file with **COUNTY** a good and sufficient surety bond, cash deposit, certified or cashier's check or instrument of credit, in favor of **COUNTY** and in a form approved by **COUNTY** securing payment for labor and materials incorporated in the subdivision improvements in the sum of **\$221,017**. Procurement and delivery of said security shall be a condition precedent to acceptance and approval of the subdivision final map and to the promises of **COUNTY** herein.
6. As a part of the obligations guaranteed by the security and in addition to the face amount of the security, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees incurred by the **COUNTY** in successfully enforcing the obligation secured. (Government Code Section 66499.4).
7. The performance and labor and materials security provided as required above shall be released at the time and in the manner prescribed in Section 66499.7 of the Government Code.
8. Prior to submitting the subdivision final map for filing, **SUBDIVIDER** shall cause the exterior boundary of the land being subdivided to be completely monumented and shall cause all interior lot corner and right of way monumentation to be completed as prescribed on the subdivision final map; or shall, pursuant to the provisions in Section 66496 of the Government Code, provide by separate

agreement security guaranteeing the payment of the cost of setting such monumentation.

9. **SUBDIVIDER** shall notify the Director of Transportation in writing at the commencement of construction. Said improvements shall, during the construction and installation thereof, be subject to inspection by the Director of Transportation or his authorized representative.
10. The improvements described in Paragraph No. 2 above shall be completed within the time period herein specified. If construction of the improvements should be delayed due to circumstances beyond the control of **SUBDIVIDER**, the time of completion thereof may be extended by **COUNTY** for such period of time as **COUNTY** may deem reasonable. A request by **SUBDIVIDER** for a time extension shall be made in writing to the Board of Supervisors at least thirty (30) days in advance of the specified completion date. Pursuant to Mendocino County Code Section 17-76, no extension of time shall be made except upon (A) the recommendation of the Director of Transportation, which recommendation shall include a finding that **SUBDIVIDER** is proceeding to do the work required with all reasonable diligence and has given satisfactory evidence of being able and willing to complete all the work required within the time contemplated by the requested extension, (B) written approval by sureties agreeing to extend for the additional period of time at the original amount of security, or, if recommended by the Director of Transportation, at an increased amount, and (C) approval of the Board of Supervisors by a four-fifths vote. The Board of Supervisors may, as consideration for granting a time extension, require **SUBDIVIDER** to agree to comply with whatever additional requirements the Board deems reasonable to protect the public interest.
11. Any extension of time hereunder or authorized changes to the approved plans and specifications shall not operate to release the security filed pursuant to this Agreement. In connection with the foregoing, surety waives the provisions in Section 2819 of the Civil Code.
12. Upon written request by **SUBDIVIDER**, **COUNTY** may make progress payments from cash deposits made with **COUNTY** to secure faithful performance or may make partial releases of other forms of faithful performance surety. No progress payment or partial release of surety shall be construed to be acceptance by **COUNTY** of any part or portion of the required improvements or acceptance of any defective work or improper materials. No more than four (4) progress payments or partial releases will be made. No progress payment or partial release will be made except: (A) upon verification by the Director of Transportation, that the work required in order to qualify for such payment or release has been satisfactorily completed, and (B) upon approval of the Board of Supervisors by a four-fifths vote.
13. No verification, progress payment, or partial release of surety, except the Notice of Completion, shall be considered as any evidence of performance by **SUBDIVIDER**

either wholly or in part. There will be no partial acceptance by **COUNTY** of any required improvements.

14. **SUBDIVIDER** shall obtain and provide all payment for all permits, licenses, and inspections necessary for construction of all required improvements that are not otherwise provided for by Mendocino County Code Section 17-83.
15. **SUBDIVIDER** shall indemnify and hold harmless the County, its officers, employees, and agents from any and all loss, damage, or liability resulting from acts or failures to act of **SUBDIVIDER**, its agents, servants or employees, committed in the course of performing the work of improvement referred to in Paragraph No. 2 above or from failure to perform such work of improvement.
16. No term or condition of this Agreement may be changed unless made in writing signed by the **COUNTY** and **SUBDIVIDER**.

The parties have executed this Agreement the day and year first above written.

SUBDIVIDER:

RANCHO YOKAYA LP, A California Corporation

By: _____

Signature

Title: _____

MEMBER

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS, County Counsel

By: _____

Deputy

COUNTY OF MENDOCINO:

JOHN HASCHAK, Chair

Mendocino County Board of Supervisors

ATTEST:

CLERK of Board of Supervisors

By: _____

Deputy

OCT 21 2020

APPROVAL RECOMMENDED:

HOWARD N. DASHIELL, Director
Department of Transportation

**EXECUTIVE OFFICE REVIEW
APPROVAL RECOMMENDED:**

BY: _____

CARMEL J. ANGELO,
Chief Executive Officer

SURETY DATA:

Performance -

#4437796 \$442,035

Labor & Materials -

#4437796 \$221,017