

TO: James L. App, City Manager
FROM: Ed Gallagher, Community Development Director
SUBJECT: Extension of Subdivision Agreement Tract 2071 (Ernst)
DATE: August 16, 2011

Needs: That the City Council extend the time limit for construction of subdivision improvements in Tract 2071.

Facts:

1. Tract 2071 was recorded on October 19, 2001. Tract 2071 is located along the south side of Pacific Avenue near Merry Hill Road.
2. The subdivision allows for the development of ten single family residential lots ranging in size from 15,000 square feet to 2.4 acres.
3. The subdivision agreement, executed in 2001, calls for the completion of the private street serving the subdivision along with all utilities by September, 2011.
4. We have received a letter from the project owner, Don Ernst, requesting that the subdivision agreement be extended by five years to 2016.

Analysis
and

Conclusion: Tract 2071 was tentatively approved in 1992. The subdivision agreement and the accompanying securities satisfy the conditions of approval imposed by the Planning Commission.

Earlier this year the improvement plans were updated, reviewed and approved by the City Engineer. The subdivider's engineer has provided an updated estimate of improvement costs for bonding purposes.

Policy

Reference: General Plan
California Government Code Section 66499 ("Subdivision Map Act")
Paso Robles Municipal Code Section 22.16.160

Fiscal

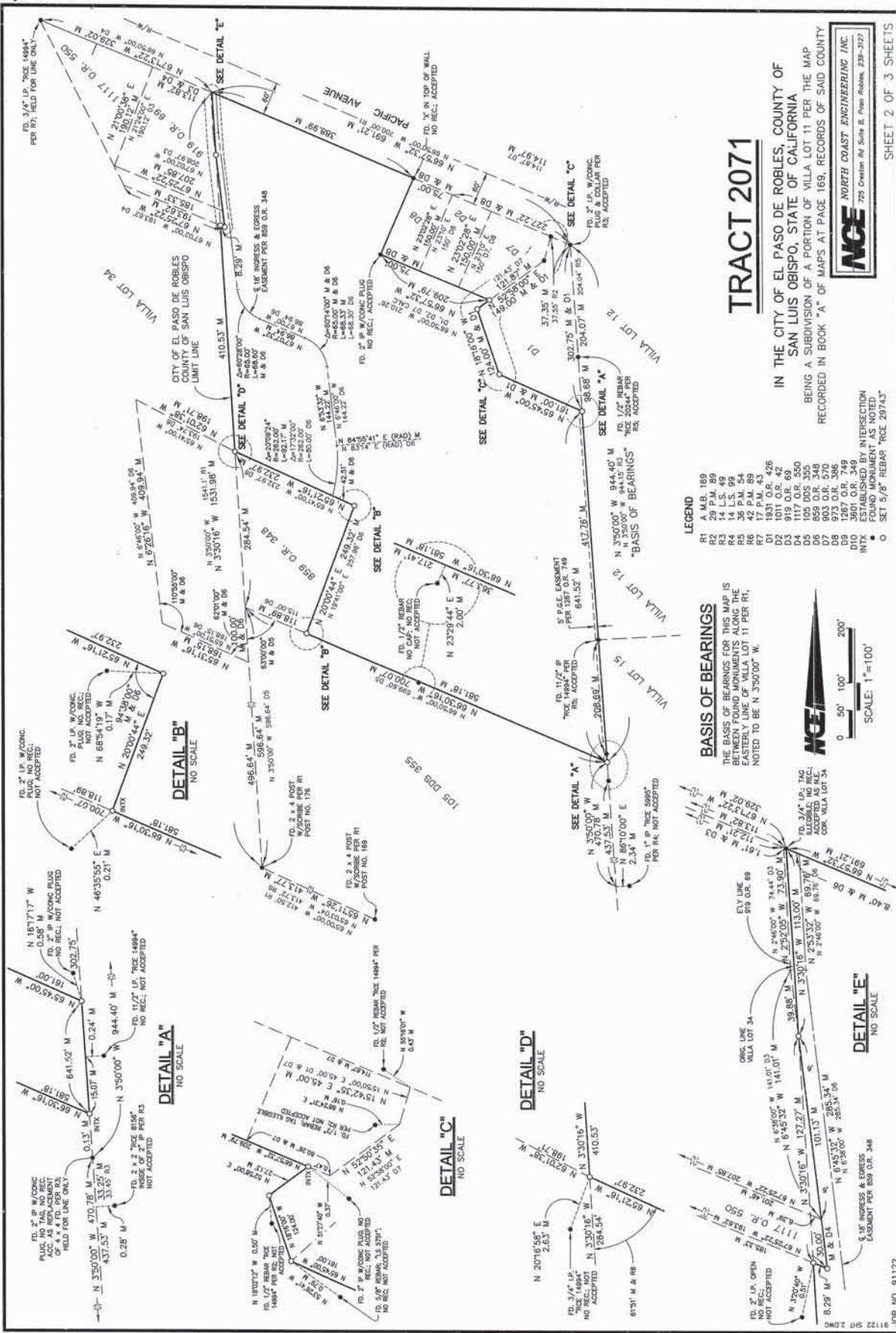
Impact: None.

Options:

- a. Authorize the Mayor to enter into an updated subdivision agreement with Don Ernst for Tract 2071 with an expiration date of September 1, 2016.
- b. Amend, modify, or reject the above option.

Attachments: (5)

- 1) Vicinity/Reduced size tract map
- 2) 2001 Subdivision Agreement
- 3) Letter from Don Ernst dated July 12, 2011
- 4) Updated Subdivision Agreement
- 5) Resolution



JULIE RODEWALD
San Luis Obispo County – Clerk/Recorder

DG
10/19/2001
8:00 AM

*Recording Requested By:
First American Title*

Recorded at the request of
First American Title Company

WHEN RECORDED RETURN TO:
ENGINEERING DIVISION
CITY OF EL PASO DE ROBLES
1000 SPRING STREET
PASO ROBLES, CA 93446

DOC#: **2001080974**



Titles: 1 Pages: 19
Fees 61.00
Taxes 0.00
Others 0.00
PAID \$61.00

SUBDIVISION IMPROVEMENT AGREEMENT

DATE OF AGREEMENT: Sept 11, 2001

NAME OF SUBDIVIDER: DONALD and TERI L. ERNST, Trustees of the Ernst Family Trust as to an undivided 3/4 interest and EUGENE W. and MARGARET L. ERNST, Trustees of the Ernst Family Trust as to an undivided 1/4 interest.
(referred to as "SUBDIVIDER")

TRACT MAP NO.: 2071 (Recorded 10/19/01, at Book 19 and Page 81)
(referred to as "SUBDIVISION")

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

ESTIMATED TOTAL COST OF IMPROVEMENTS: \$424,700.00 (Four Hundred Twenty-Four Thousand Seven Hundred Dollars)

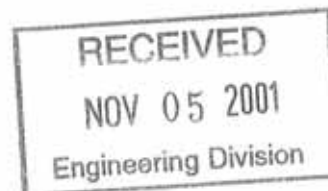
MONUMENTATION: (included above)

SURETY: _____

BONDS: PERFORMANCE BOND NO. _____ (\$424,700)

LABOR & MATERIALS (PAYMENT) BOND _____ (\$212,350)

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 **DONALD and TERI L. ERNST, Trustees of the Ernst Family Trust as to an undivided 3/4 interest, and EUGENE W. and MARGARET L. ERNST, Trustees of the Ernst Family Trust as to an undivided 1/4 interest** (hereinafter referred to as "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 in **July 2001**. The Improvement Plans for **TRACT MAP NO. 2071** 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

IMPROVEMENTS (Public):

Grading of Right-of-Way	September 2011
Underground Utilities Installation	September 2011
Storm Drainage Installation	September 2011
Water Main, Sewer Main, Detention Basin	September 2011
Street Improvements	September 2011
Street Trees	September 2011
Drive Approach	September 2011
Landscaping and Irrigation	September 2011

NOTE: All improvements must be completed within ten years from 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.

h. Comply with the notice of the City of El Paso de Robles building restrictions recorded concurrently with this Agreement.

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. To secure payment as provided in this subparagraph b, Subdivider may record a Deed of Trust, provided that Subdivider substitute the Deed of Trust with an irrevocable letter of credit (in the same form as the letter of credit securing performance) prior to the issuance of any permits for development or construction of the Property referenced in this Agreement ; 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, ensure that his/her contractors 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 Section 1 of 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. **SUBDIVIDER** further acknowledges and understands within the one (1) year warranty period as the project is accepted as final, **SUBDIVIDER** will bear the total responsibility for all repair and/or replacement of the improvements as installed, reserving to **SUBDIVIDER** the right of recourse or indemnity against any third party who causes damage to such improvements. 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 therefore, 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, and to be responsible for maintenance and care of the improvements. 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. **SUBDIVIDER** shall provide **CITY** with a certificate of insurance in the aggregate amount of \$1,000,000.00 and in a form acceptable to the City Engineer.

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 **SUBDIVIDER** is unable to complete the improvement work by the deadline, a written request to extend the deadline shall be submitted to the City Engineer at least four (4) weeks in advance of the deadline, and said request will be presented to the City Council for consideration. At that time, the City Council shall have

the option of terminating or extending this Agreement. If an extension of the deadline is allowed, the City Council may require additional securities, including, but not limited to, forfeitable cash deposits, to guarantee construction of the public improvements by the extended deadline. The City Council 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 prohibits 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
1000 Spring Street
Paso Robles, CA 93446

SUBDIVIDER: Donald Ernst and Teri L. Ernst
Trustees of the Ernst Family Trust as to an undivided $\frac{3}{4}$
interest
Eugene W. Ernst and Margaret L. Ernst
Trustee of the Ernst Family Trust as to an undivided $\frac{1}{4}$
interest
1020 Palm Street
San Luis Obispo, CA 93401

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 Mayor.

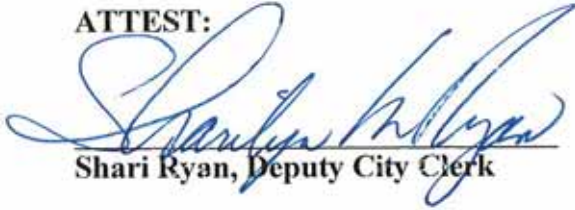
CITY:

CITY OF EL PASO DE ROBLES

By: _____


Mayor, Frank R. Mecham

ATTEST:


Shari Ryan, Deputy City Clerk

SUBDIVIDERS:

Donald Ernst and Teri L. Ernst, Trustees
the Ernst Family Trust as to an
undivided 3/4 interest

Eugene W. Ernst and Margaret L. Ernst,
Trustees of the Ernst Family Trust as to an
undivided 1/4 interest


Donald Ernst, Trustee
(SIGNATURE MUST BE NOTARIZED)


Eugene W. Ernst, Trustee
(SIGNATURE MUST BE NOTARIZED)


Teri L. Ernst, Trustee
(SIGNATURE MUST BE NOTARIZED)


Margaret L. Ernst, Trustee
(SIGNATURE MUST BE NOTARIZED)

Exhibit "A"

BONDING ESTIMATE - CITY OF PASO ROBLES

Effective Date 05/19/98

THIS ESTIMATE IS FOR BONDING PURPOSES ONLY AND IS NOT TO BE USED AS A BIDDING DOCUMENT. UNIT PRICES ARE AS REQUIRED BY THE CITY OF PASO ROBLES, OR, WHEN NOT PUBLISHED BY THE CITY, ARE BASED ON THE ENGINEER'S BEST JUDGEMENT. CONTRATOR IS RESPONSIBLE FOR OWN ESTIMATE OF QUANTITIES FOR BID PURPOSES.

PROJECT: 91112
 BY : RDK
 DATE : 07/13/01
 REV. DATE:

TRACT 2071
 Paso Robles

ITEM	UNIT	QUANTITY	UNIT COST	TOTAL
<u>DEMOLITION/EARTH WORK</u>				
REMOVE/DISPOSE ALMOND TREE	EACH	6	\$25.00	\$150.00
REMOVE/DISPOSE OAK TREE	EACH	1	500.00	500.00
REMOVE EXISTING PAVEMENT	S.F.	15,195	0.50	7,597.50
CLEAR AND GRUB	ACRE	1.7	250.00	425.00
CUT AND FILL	C.Y.	1,080	3.00	3,240.00
EXPORT	C.Y.	7,630	5.00	38,150.00
		SUBTOTAL		\$50,062.50
<u>STORM DRAINAGE</u>				
18" PIPE	L.F.	115	\$30.00	\$3,450.00
12" SLOT DRAIN	L.F.	105	60.00	6,300.00
24" FIELD CATCH BASIN	EACH	1	1,500.00	1,500.00
OVERSIDE DRAIN	EACH	3	1,500.00	4,500.00
RIP-RAP	C.Y.	6	100.00	600.00
CATCH BASIN	EACH	2	2,000.00	4,000.00
DRAINAGE SWALE	L.F.	700	3.00	2,100.00
CONCRETE DRAINAGE SWALE	S.F.	145	3.00	435.00
SIDEWALK UNDERDRAIN	EACH	1	1,750.00	1,750.00
		SUBTOTAL		\$24,635.00
<u>SEWER SYSTEM</u>				
4" PIPE	L.F.	2,000	\$12.00	\$24,000.00
6" PIPE	L.F.	366	20.00	7,320.00
4" LATERAL	EACH	3	300.00	900.00
MANHOLE	EACH	3	2,500.00	7,500.00
		SUBTOTAL		\$39,720.00
<u>WATER SYSTEM</u>				
8" PIPE	L.F.	1,110	\$25.00	\$27,750.00
1" SERVICE	EACH	10	300.00	3,000.00
8" TAPPING SLEEVE	EACH	1	500.00	500.00
AIR RELIEF VALVE	EACH	1	500.00	500.00
BOOSTER PUMP, GENSET AND HOUSE	EACH	1	50,000.00	50,000.00
FIRE HYDRANT	EACH	2	2,100.00	4,200.00
REINSTALL FIRE HYDRANT	EACH	1	1,500.00	1,500.00
		SUBTOTAL		\$87,450.00
<u>STREETS</u>				
6" A.C. BERM	L.F.	1,880	\$2.50	\$4,700.00
TYPE "E" MOUNTABLE DIKE	L.F.	105	7.50	787.50
CURB AND GUTTER	L.F.	324	10.00	3,240.00

Exhibit "A" (Continued)

CURB RETURN AND RAMP	EACH	1	800.00	800.00
CONTINUOUS CROSS GUTTER	EACH	1	4,500.00	4,500.00
ASPHALT CONCRETE PAVEMENT	S.F.	29,950	2.00	59,900.00
TRENCH RESURFACING	S.F.	2,340	4.00	9,360.00
1" OVERLAY	S.F.	14,400	0.35	5,040.00
FOG SEAL	TON	2	400.00	800.00
STREET LIGHTS	EACH	2	2,000.00	4,000.00
SIGNS	EACH	3	150.00	450.00
PAVEMENT MARKING	S.F.	49	0.25	12.25
TRAFFIC STRIPING	L.F.	305	0.10	30.50
			SUBTOTAL	\$93,620.25
<u>MISCELLANEOUS</u>				
RETAINING WALL (6')	S.F.	700	\$25.00	\$17,500.00
HYDROSEEDING	ACRE	0.9	2,500.00	2,278.47
			SUBTOTAL	\$19,778.47
<u>UTILITIES</u>				
GAS	L.F.	1,010	\$10.00	\$10,100.00
COMBINED TRENCH	L.F.	1,480	15.73	23,280.40
TRENCH TAX	L.F.	1,480	0.86	1,258.00
REMOVE UTILITY POLE	EACH	2	2,000.00	4,000.00
			SUBTOTAL	\$38,638.40
			CONSTRUCTION TOTAL	\$353,904.62
			CONTINGENCIES @ 10%	35,390.46
			INFLATION @10%	35,390.46
			TOTAL	\$424,685.54

CURB AND GUTTER ESTIMATES INCLUDE CURB AROUND HANDICAP RAMPS AND INCLUDES GUTTER ADJACENT TO DRIVEWAYS. SIDEWALK QUANTITY DOES NOT INCLUDE DRIVEWAY AREAS. CROSSGUTTER SPANDRELS INCLUDE ADJACENT INTEGRAL CURB.

WATER AND SEWER LINE COSTS INCLUDE FITTINGS, THRUST BLOCKS AND

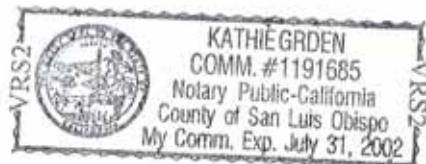


STATE OF CALIFORNIA }
COUNTY OF San Luis Obispo } ss.

On September 11, 2001, before me, Kathie Grden,
personally appeared Donald Ernst and
Dei L. Ernst, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Kathie Grden



(This area for official notarial seal)

Title of Document	<u>Subdivision Improvement Agreement</u>
Date of Document	_____ No. of Pages _____
Other signatures not acknowledged	<u>_____</u>

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

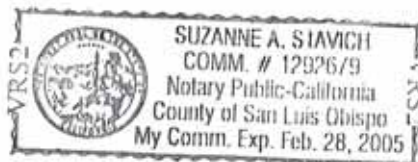
STATE OF CALIFORNIA)
COUNTY OF San Luis Obispo)

On September 11, 2001 before me, Suzanne A. Stavich
personally appeared Eugene W. Ernst and Margaret L. Ernst
~~personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.~~

WITNESS my hand and official seal.

Signature

[Handwritten Signature]



This area for official notarial seal.

OPTIONAL SECTION
CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- INDIVIDUAL
- CORPORATE OFFICER(S) _____ TITLE(S)
- PARTNER(S) - LIMITED GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER _____

SIGNER IS REPRESENTING:

Name of Person or Entity

Name of Person or Entity

OPTIONAL SECTION

Though the date requested here is not required by law, it could prevent fraudulent reattachment of this form.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW

TITLE OR TYPE OF DOCUMENT: Subdivision Improvement Agreement

NUMBER OF PAGES 15 DATE OF DOCUMENT 9-11-01

SIGNER(S) OTHER THAN NAMED ABOVE YES

RECEIVED

JUL 14 2011

Engineering Division

John Falkenstien
City Engineer
City of Paso Robles
1000 Spring Street
Paso Robles, CA 93446
July 12, 2011

Dear John,

Thank you for your help and input on our progress on Tract 2071.

Please find attached the application materials for my request to extend my Subdivision Agreement for Tract 2071.

The City Council granted us a 10 year Subdivision Agreement in the year 2001 when we recorded our Tract Map. We would like to extend the agreement for another 5 years until 2006.

As you know, we have recently had North Coast Engineering coordinate with you and had them update the plans to conform to current City Standards. It is still our intent to build the project, but in today's economic climate it makes more sense to wait a bit longer before building the project.

Please schedule this matter for the next available City Council Meeting.
Thank you again for your help.

Respectfully,


Don A. Ernst

WHEN RECORDED RETURN TO:
ENGINEERING DIVISION
CITY OF EL PASO DE ROBLES
1000 SPRING STREET
PASO ROBLES, CA 93446

FOR RECORDER USE ONLY

AMENDED AND RESTATED
SUBDIVISION IMPROVEMENT AGREEMENT

DATE OF AGREEMENT: _____

NAME OF SUBDIVIDER: **DONALD and TERI L. ERNST, Trustees of the Ernst Family Trust.**
(referred to as "SUBDIVIDER")

TRACT MAP NO.: **2071** (Recorded Oct. 19, 2001 , at Book 19 and Page 81)
(referred to as "SUBDIVISION")

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

ESTIMATED TOTAL COST OF IMPROVEMENTS: \$840,654.00 (Eight Hundred Forty Thousand Six Hundred and Fifty-four Dollars)

MONUMENTATION: (included above)

SURETY: _____

PERFORMANCE \$840,654

LABOR & MATERIALS (PAYMENT) \$420,327

This AMENDED AND RESTATED SUBDIVISION IMPROVEMENT AGREEMENT ("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 **DONALD and TERI L. ERNST, Trustees of the Ernst Family Trust** (hereinafter collectively referred to as "**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. **SUBDIVIDER** and **CITY** previously entered into a Subdivision Improvement Agreement, dated September 11, 2001, (the "Original Agreement") to complete the public improvements and land development by September 11, 2011. Neither the improvements nor the land development have yet been constructed, and **SUBDIVIDER** has requested that the term of the Original Agreement be extended for five (5) years.

E. In consideration of approval of a final map for the Subdivision by the City Council, and the extension of time for the completion of the improvements, **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, which is based on the current estimated cost of the required public improvements.

F. Complete Improvement Plans for the construction, installation, and completion of the improvements have been prepared by **SUBDIVIDER** and approved by the City Engineer on

January 31, 2011. The Improvement Plans for **TRACT MAP NO. 2071** 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 in January 2011 and as updated at the time of construction.

G. An updated 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 has 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.

H. **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 Improvement Plans, and as updated by the City Engineer in 2011.

I. 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.

J. **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**.

K. The **SUBDIVIDER** and **CITY** intend that this Agreement replace and superseded the Original Agreement in its entirety, and that the Original Agreement be null and void, and of no further force or effect.

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:

PUBLIC IMPROVEMENTS

DEADLINE

Grading of Right-of-Way	September 11, 2016
Underground Utilities Installation	September 11, 2016
Storm Drainage Installation	September 11, 2016
Water Main, Sewer Main, Detention Basin	September 11, 2016
Street Improvements	September 11, 2016
Street Trees	September 11, 2016
Drive Approach	September 11, 2016
Landscaping and Irrigation	September 11, 2016

NOTE: Notwithstanding the dates shown above, all public improvements must be completed upon the earlier of (i) the sale of any lot within the Subdivision; or (ii) five (5) years from 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**.

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. In lieu of obtaining performance and/or labor and materials bonds from a surety, **SUBDIVIDER** may, in its discretion, provide security in the form of cash or a certified check in the total amount of the sum of the estimated cost of (i) performance; and (ii) labor and materials, as shown on the first page of this Agreement, which security must be provided within ten (10) days of the date of this Agreement.

4. **Alterations to Improvements Plans.**

a. Any changes, alterations or additions to the improvement plans and specifications or to the improvements 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.

b. **SUBDIVIDER** shall construct the improvements in accordance with **CITY** standards in effect on the date of this Agreement. **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. **Construction Observation.** **SUBDIVIDER** shall at all times maintain proper facilities and safe access for observation of the public improvements by the **CITY**

Engineer and his representatives and to the shops wherein any work is in preparation. Upon completion of the work, **SUBDIVIDER** may request a final walk-through 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 report the completion of the public improvements to the City Council. No improvements shall be finally accepted unless all aspects of the work have been determined to have been completed in accordance with the Improvement Plans and **CITY** standards. **SUBDIVIDER** shall bear all costs of construction observation and reporting.

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, ensure that his/her contractors 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 Section 1 of 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. **SUBDIVIDER** further acknowledges and understands within the one (1) year warranty period as the project is accepted as final,

SUBDIVIDER will bear the total responsibility for all repair and/or replacement of the improvements as installed, reserving to **SUBDIVIDER** the right of recourse or indemnity against any third party who causes damage to such improvements. 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 therefore, 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 public 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 of all improvements. The City Council shall act upon the Engineer's recommendation within 30 days from the date the City Engineer reports 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, and to be responsible for maintenance and care of the improvements. 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. **SUBDIVIDER** shall provide **CITY** with a certificate of insurance in the aggregate amount of \$1,000,000.00 and in a form acceptable to the City Engineer.

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 **SUBDIVIDER** is unable to complete the improvement work by the deadline, a written request to extend the deadline shall be submitted to the City Engineer at least four (4) weeks in advance of the deadline, and said request will be presented to the City Council for consideration. At that time, the City Council shall have the option of terminating or extending this Agreement. If an extension of the deadline is allowed, the City Council may require additional securities, including, but not limited to, forfeitable cash deposits, to guarantee construction of the public improvements by the extended deadline. The City Council 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 prohibits 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
1000 Spring Street
Paso Robles, CA 93446

SUBDIVIDER: Donald Ernst and Teri L. Ernst
Trustees of the Ernst Family Trust
1020 Palm Street
San Luis Obispo, CA 93401

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 Mayor.

CITY:

CITY OF EL PASO DE ROBLES

By: _____
Duane Picanco, Mayor

ATTEST:

Dennis Fansler, City Clerk

SUBDIVIDERS:

Donald Ernst and Teri L. Ernst, Trustees
of the Ernst Family Trust

Donald Ernst, Trustee
(SIGNATURE MUST BE NOTARIZED)

Teri L. Ernst, Trustee
(SIGNATURE MUST BE NOTARIZED)

RESOLUTION NO. 11-xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES APPROVING AND AUTHORIZING THE EXECUTION AND RECORDATION OF AN AMENDED AND RESTATED SUBDIVISION IMPROVEMENT AGREEMENT FOR TRACT 2071 (ERNST/PACIFIC AVE.)

WHEREAS, the Subdivider, Ernst Family Trust, previously entered into a Subdivision Improvement Agreement, dated September 11, 2001, as a condition of approval of a Tentative Map for Tract 2071 and posted payment and performance bonds as security to guarantee the installation of required public improvements; and

WHEREAS, the Subdivider is desirous of deferring installation of the required improvements for an additional 5 years, or whenever development occurs, whichever occurs first; and

WHEREAS, the Subdivider has provided updated improvement plans, approved by the City Engineer, on January 31, 2011; and

WHEREAS, the Subdivider has provided an updated estimate of cost of subdivision improvements, approved by the City Engineer; and

WHEREAS, the Subdivider has agreed to post security in an amount sufficient to ensure completion of the updated improvements; and

WHEREAS, Section 66462 of the California Government Code, "Subdivision Map Act" authorizes the City and the Subdivider to enter into an agreement upon mutually agreeable terms; and

THEREFORE, BE IT RESOLVED AS FOLLOWS:

That the City Council of the City of Paso Robles does hereby authorize the Mayor and the City Clerk to execute the Amended and Restated Subdivision Improvement Agreement for Tract 2071., in substantially the form attached hereto as Exhibit A and incorporated herein by reference, subject to any minor technical, clarifying or non-substantive changes as approved by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 16th day of August, 2011 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Duane Picanco, Mayor

ATTEST:

Caryn Jackson, Deputy City Clerk