



# Council Agenda Report

From: David Athey, City Engineer

Subject: Acceptance of Final Map of PR 16-0193, 875 Oriole Way (La Mirada Holdings, LP) for Recordation

Date: September 15, 2017

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## Facts

1. Applicant, Michael Harrod, representing La Mirada Holdings LP, has requested that the Final Map for Parcel Map PR 16-0193 be accepted by the City for recordation.
2. The Final Map is comprised of a four lot parcel map for a residential project located at the corner of Oriole Way and Ashwood Place.
3. The map provides a ten-foot Public Utility Easement offer of dedication and authorized public utility companies.
4. The applicant is conditioned to construct public improvements consisting of paving, curb and gutter along Oriole Way and Ashwood Place. The improvements are conditioned to be completed prior to Final Map recordation.
5. The applicant has requested the City approve and record the Final Map prior to construction of the public improvements.
6. The City's Subdivision Ordinance allows the recordation of the Final Map prior to public improvement construction. The Applicant must enter into a Subdivision Improvement Agreement with the City, and provide financial securities to guarantee public improvement construction.
7. The Applicant has signed the subdivision Improvement Agreement and provided Certificates of Deposits as the financial securities.

## Options

1. Do nothing.
2. Take action to:
  - a) Accept the Final Map for Parcel Map PR16-0193.
  - b) Approve Resolution #17-XXX authorizing execution and recordation of the Final Map for PR 16-0193, accepting the public utility easement offer of dedication.
  - c) Direct the City Clerk to state on the Final Map that the City Council on September 19, 2017, approved the Map of PR 16-0193, and accepted the public utility easement offer of dedication as shown on the Final Map.
  - d) Authorize the City Manager to sign a Subdivision Improvement Agreement with the Applicant that provides financial assurances for public improvement construction required by the Conditions of Approval for Parcel Map PR-0193.
3. Refer back to staff for additional analysis.

### **Analysis & Conclusion**

Parcel Map PR16-0193 was approved by the Planning Commission on October 25, 2016. The Planning Commission approved a Vesting Tentative Parcel and amendment to PD 91-002 & PD 91-003 with standard conditions of approval. The amendments to PD 91-002 & 003 allowed the Applicant to create three additional lots. Prior to the amendment the PDs only allowed one lot. The project consists of:

- a) A Vesting Parcel Map that subdivides a two acre lot, to create three 20,000 and one 29,000 square foot Parcels.
- b) Conditions of approval that require frontage improvements on Oriole Way and Ashwood Place.
- c) Abandonment of a domestic well and septic system.
- d) A public utility easement offer of dedication on Oriole Way and Ashwood Place.

The Planning Commission conditions of approval require all conditions imposed be completed prior to map recordation. The applicant has satisfied all conditions except construction of the frontage improvements. Therefore, the applicant is requesting that the City enter into a subdivision improvement agreement to guarantee frontage improvement construction. The subdivision improvement agreement will allow the applicant to record the Final Map while providing assurance to the City that frontage improvement construction will occur. The applicant has provided the necessary financial securities to cover the cost of offsite improvement construction.

### **Fiscal Impact**

There are no fiscal impacts as a result of the final map adoption or subdivision improvement agreement.

### **Recommendations**

1. Accept the Final Map for Parcel Map PR16-0193.
2. Approve Resolution #17-XXX authorizing execution and recordation of the Final Map for PR 16-0193, accepting the public utility easement offer of dedication.
3. Direct the City Clerk to state on the Final Map that the City Council on September 19, 2017, approved the Map of PR 16-0193, and accepted the public utility easement offer of dedication as shown on the Final Map.
4. Authorize the City Manager to sign a Subdivision Improvement Agreement with the Applicant that provides financial assurances for public improvement construction required by the Conditions of Approval for Parcel Map PR-0193.

### **Attachments**

1. Location Map
2. Draft Resolution #17-XXX - Final Map Acceptance
3. Subdivision Improvement Agreement with La Mirada Holdings, LP

Attachment 1  
Location Map PR 16-0193



RESOLUTION NO. 17-XXX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES  
ACCEPTING THE FINAL MAP FOR PARCEL MAP PR 16-0193 FOR RECORDATION  
(ORIOLE WAY / RAY HARROD, LA MIRADA HOLDINGS, LP)

WHEREAS, the Planning Commission approved the Vesting Tentative Map for Parcel Map PR 16-0193, located at 875 Oriole Way, on October 25, 2016; and

WHEREAS, the subdivider of Vesting Parcel Map PR 16-0193, located at the north end of Gardenia Court and Niblick Road has requested recordation of the final map; and

WHEREAS, Parcel Map PR 16-0193 creates four parcels: Parcel 1 – 20,000.9 square feet; Parcel 2 – 20,567.6 square feet; Parcel 3 – 28,940.4 square feet; and Parcel 4 – 20,057.6 square feet; and

WHEREAS, all conditions of approval, except for frontage improvements and monumentation, for this subdivision have been satisfied by the subdivider; and

WHEREAS, the applicant has requested that the City enter into a subdivision improvement agreement for the public improvements and monumentation and has provided financial assurances for both; and

WHEREAS, City staff has reviewed the final map and finds it to be in substantial conformance with the approved tentative map and technically correct.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY RESOLVE AS FOLLOWS:

- Section 1. All of the above recitals are true and correct and incorporated herein by reference.
- Section 2. The City Council hereby approves the final map for Parcel Map PR 16-0193, and authorizes the execution and recordation of the final map consistent with Exhibit A.
- Section 3. The City Council accepts the offer of dedication for public utility easements as shown on the map.
- Section 4. The City Council directs the City Manager to sign a subdivision improvement agreement with the applicant.

APPROVED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Steven W. Martin, Mayor

ATTEST:

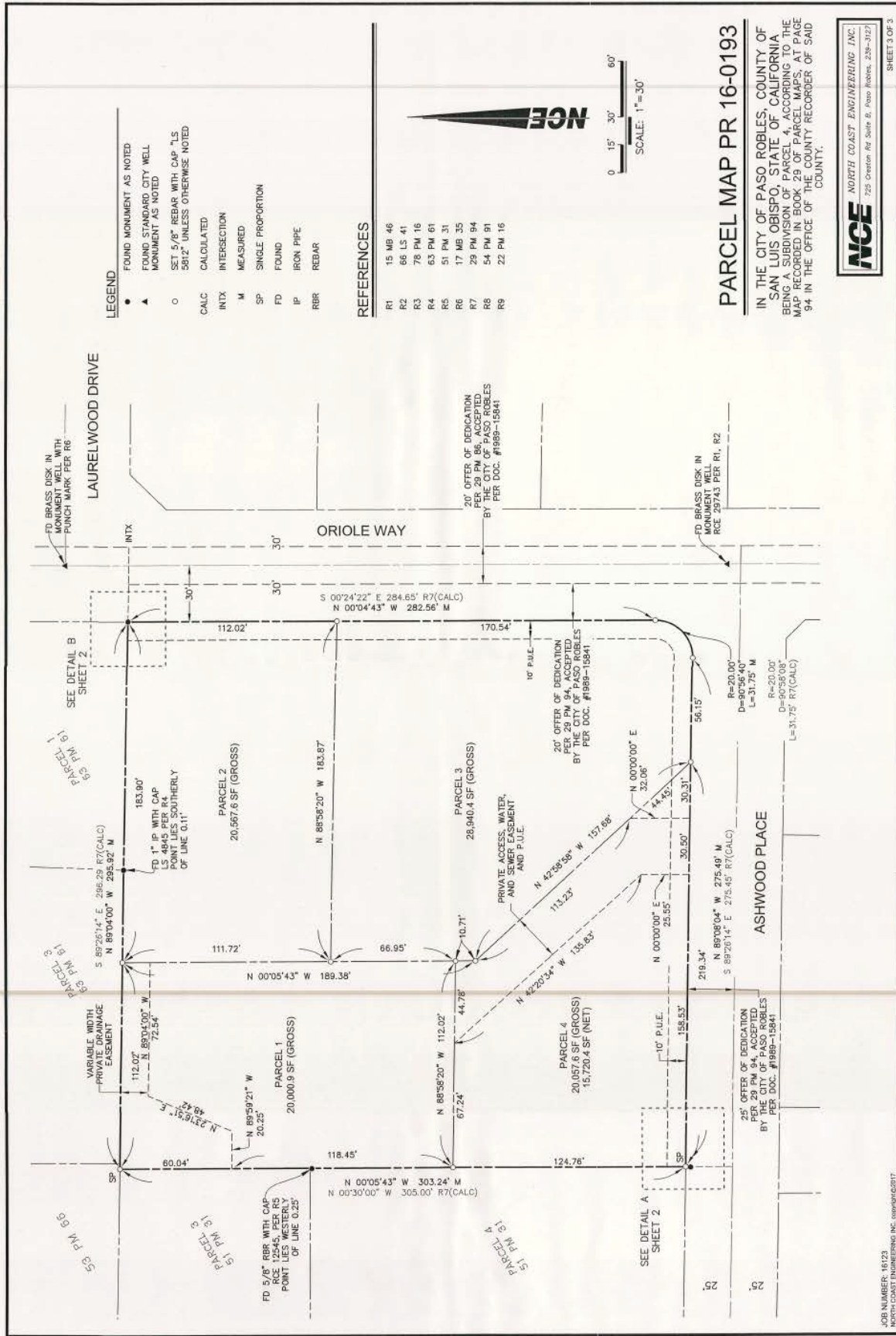
\_\_\_\_\_  
Kristen L. Buxkemper, Deputy City Clerk

Exhibit A – Final Map Parcel Map PR 16-0193



# Exhibit A

## Final Map PR 16-0193



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

FOR RECORDER USE ONLY

## **SUBDIVISION IMPROVEMENT AGREEMENT**

**DATE OF AGREEMENT:** \_\_\_\_\_

**NAME OF SUBDIVIDER:** Oriole-Paso, Inc.  
(Referred to as "SUBDIVIDER")

**PARCEL MAP NO.:** PR- 16-0193 Recorded \_\_\_\_\_, at Book \_\_\_\_\_ and Page(s) \_\_\_\_\_  
(Referred to as "SUBDIVISION")

**TENTATIVE MAP RESOLUTION OF APPROVAL NO.:** 16-051  
(Referred to as "Resolution of Approval")

**ESTIMATED TOTAL COST OF IMPROVEMENTS:** \$ 121,140.22 (One Hundred Twenty One One Hundred Fourty and Twenty Two Cents. Does Not Include Contingency or Construction Staking/Engineering/Administration.)

**MONUMENTATION:** (included above)

**SURETY:** Pacific Premier Bank

**Certificate of Deposit:** PERFORMANCE CD (\$157,482.29)

LABOR & MATERIALS (PAYMENT) CD (\$78,741.00)

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 (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 on **March 21, 2017**. The Improvement Plans for **PARCEL MAP NO. PR 16-0193** 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:

<u>IMPROVEMENT</u>	<u>DEADLINE DATE</u>
<b>IMPROVEMENTS (Public):</b>	
Grading of Right-of-Way	September 2018
Underground Utilities Installation	September 2018
Storm Drainage Installation	September 2018
Water Main, Sewer Main, Detention Basin	September 2018
Street Improvements	September 2018
Street Trees	September 2018
Drive Approach	September 2018
Landscaping and Irrigation	September 2018

**NOTE: All improvements must be completed within 1 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.

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

a. The offer of dedication to **CITY** of appropriate rights-of-way, easements or other interest in real property, and appropriate authorization from the property owner to allow construction or installation of the improvements or work, or

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

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

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

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

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

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

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

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

**4. Alterations to Improvements Plans.**

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

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

**5. Observation of Construction.** **SUBDIVIDER** shall at all times maintain proper facilities and safe access for observation of the public improvements by the **CITY** 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 recommend acceptance 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 the **CITY** observation of construction.

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 10, 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**.



**10. Warranty.**

a. **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.

b. **SUBDIVIDER**'s warranty shall include the responsibility for the maintenance of landscaping improvements installed pursuant to Section 1 of the Agreement. **SUBDIVIDER** shall provide on-going maintenance of landscape improvements installed pursuant to Section 1 of this Agreement for a period of one-year after final acceptance by the City Council without any cost to **CITY**. The responsibility of maintenance of landscape improvements shall include, but not be limited to, the repair, replacement or replanting of any landscaping of deteriorating condition as directed by the City Maintenance Services Superintendent.

**11. 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.

**12. 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**.

13. **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.

14. **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.

15. **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**.

16. **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 notifies the City Council that the work has been finally completed, as provided in Paragraph 5. Such acceptance shall not constitute a waiver of defects by **CITY**.

17. **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.

**18. 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**.

**19. Time of the Essence.** Time is of the essence of this Agreement.

**20. 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.

21. **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.

22. **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:** Oriole Paso, Inc.  
2530 Beechwood Drive  
Paso Robles, CA 93446

**Surety:** Pacific Premier Bank  
400 South River Road  
Paso Robles, CA 93446

23. **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.

24. **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.

25. **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.

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

27. **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: \_\_\_\_\_  
Steve Martin, Mayor

ATTEST:

\_\_\_\_\_  
Deputy City Clerk

SUBDIVIDER:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

(SIGNATURES MUST BE NOTARIZED)

## CALIFORNIA NOTARY ACKNOWLEDGEMENT

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

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(Insert the name and title of the officer)  
personally appeared \_\_\_\_\_

\_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (SEAL)

## CALIFORNIA NOTARY ACKNOWLEDGEMENT

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

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(Insert the name and title of the officer)  
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\_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (SEAL)

PROJECT : 16123  
BY : MAP  
DATE : 07/10/2017  
CK'D BY : SPD  
DATE : 07/11/2017

**ORIOLE WAY SUBDIVISION**  
**PRELIMINARY OPINION OF QUANTITIES**  
**OFF-SITE WORK, CIVIL ONLY**  
**PUBLIC BONDING ESTIMATE**

<b>ITEM</b>	<b>QUANTITY</b>	<b>UNIT COST</b>	<b>TOTAL</b>
<b><u>MOBILIZATION</u></b>			
MOBILIZATION (LS)	1	\$1,500.00	\$1,500.00
		SUBTOTAL	\$1,500.00
<b><u>DEMOLITION<sup>(1)</sup></u></b>			
REMOVAL OF HOT MIX ASPHALT (CY)	102	\$50.00	\$5,080.56
REMOVAL OF CLII BASE (CY)	203	\$29.00	\$5,893.44
CONCRETE REMOVAL(SF)	171	\$10.00	\$1,710.00
REMOVE AC DIKE(LF)	543	\$3.00	\$1,629.00
SAWCUT (LF)	815	\$1.00	\$815.00
		SUBTOTAL	\$15,128.00
<b><u>EARTHWORK</u></b>			
CLEARING & GRUBBING (SF)	5,171	\$0.10	\$517.10
CUT EXPORT (CY)	441	\$9.60	\$4,233.60
		SUBTOTAL	\$4,750.70
<b><u>SEWER<sup>(2)</sup></u></b>			
4" LATERALS	4	\$1,350.00	\$5,400.00
		SUBTOTAL	\$5,400.00
<b><u>WATER<sup>(2)</sup></u></b>			
2" WATER SERVICE MANIFOLD (EA)	1	\$3,400.00	\$3,400.00
1" WATER SERVICE (EA)	2	\$1,700.00	\$3,400.00
		SUBTOTAL	\$6,800.00



**STREETS**<sup>(3)</sup>

6" CURB + 24" GUTTER (LF)	516	\$24.00	\$12,384.00
6" CURB ONLY (LF)	52	\$18.00	\$936.00
CROSS GUTTER (SF)	272	\$15.16	\$4,123.52
HOT MIX ASPHALT (3" THICK) (TON)	351	\$120.00	\$46,332.00
CLASS 2 AGGREGATE (CY)	272	\$50.00	\$14,960.00
DRIVEWAY APPROACH (SF)	414	\$9.00	\$3,726.00
MONUMENTS (EA)	11	\$500.00	\$5,500.00
		<b>SUBTOTAL</b>	<b>\$87,961.52</b>

**EROSION CONTROL**

EROSION & SEDIMENTATION CONTROL (LS)	1	\$5,000.00	\$5,000.00
		<b>SUBTOTAL</b>	<b>\$5,000.00</b>

TOTAL CONSTRUCTION ITEMS	\$121,140.22
CONTINGENCY @ 10%	\$12,114.02
CONSTRUCTION STAKING/ENGINEERING/ADMINISTRATION @ 20%	\$24,228.04
<b>TOTAL ESTIMATED COST</b>	<b>\$157,482.29</b>

**ASSUMPTIONS:**

(1) REMOVAL OF ALL ASPHALT AND CONCRETE PAVEMENT, AC DIKE, CONCRETE CURB AND ASSOCIATED BASE MATERIAL TO SUBGRADE, INCLUDING DISPOSAL TO AN ACCEPTABLE DISPOSAL SITE.

(2) WATER AND SEWER LINE COSTS INCLUDE FITTINGS, THRUST BLOCKS AND MISCELLANEOUS ITEMS AS NEEDED FOR COMPLETE LINE INSTALLATION.

(3) ASSUMED STRUCTURAL SECTION: 3" HMA / 9" CL2 AGG BASE, T.I. = 6.0

**EXCLUSIONS:**

· CITY CONNECTION FEES

