

CONSTRUCTION AND ACCESS AGREEMENT

This Construction and Access Agreement (“**Agreement**”), dated October __, 2023 is entered in by and between A. Teichert & Son, Inc., (“**Teichert**”) and Yuba County, California (“**County**”). Collectively, Teichert and County are referred to herein as “**the Parties**.”

RECITALS

WHEREAS, Teichert intends to purchase approximately 1.645 acres of real property in Yuba County pursuant to that certain Purchase and Sale Agreement, dated February 24, 2023 (“**Purchase Agreement**”), as such property is described on Exhibit A (“**Property**”);

WHEREAS, pursuant to the Purchase Agreement, Teichert intends to dedicate and transfer the Property directly to the County;

WHEREAS, the Property is being purchased and dedicated to the County for the purpose of improving the intersection of SR20 and Kibbe Road in Yuba County, as described in that certain State Route 20/Kibbe Road Intersection Project CEQA Findings of Fact, approved by the Board of Supervisors of the County of Yuba, pursuant to Resolution No. 2022-152 (“**Project**”);

WHEREAS, the County and Teichert have applied for an encroachment permit from the State of California, Department of Transportation (“**CalTrans**”) in order to allow construction of the Project within State Route 20, a State highway; and

WHEREAS, the County and Teichert desire to evidence their agreement regarding the rights and responsibilities with respect to the Property and the completion of the Project.

AGREEMENT

NOW THEREFORE, in consideration of the promises, covenants, and conditions set forth herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Effective Date of Agreement.** Teichert has entered into the Purchase Agreement with the owners of the Property (“**Property Owners**”). Teichert and Property Owners have opened an escrow and are actively working to complete the purchase of the Property and transfer the Property to the County. Due to timing constraints associated with the Project, including the permitting process with CalTrans, the Parties are entering into this Agreement in advance of transfer of the Property to County. The Parties agree that all terms and conditions of this Agreement will only come into effect upon, and the Agreement shall be void until, the date that the grant deed transferring the Property to the County is recorded in the Official Records of Yuba County (the “**Effective Date**”). This Agreement will become invalid, null and void if the Property is not transferred to the County by April 12, 2024.
2. **Purpose of Dedication of Property.** The Parties agree and acknowledge that the Property is being dedicated to facilitate construction of the Project. It is not being dedicated as a result of this Agreement.

3. **Maintenance of Property Preceding Construction.** Prior to the commencement of Project-related construction, the County shall be responsible for maintaining the Property in good condition and repair. County shall further be responsible for the payment of all taxes and assessments, if any, which are levied on the Property during this period.
4. **Construction of Project.** The County, as the owner of the Property, hereby authorizes Teichert (or its affiliates or contractors) to complete the construction of the Project in accordance with that certain Grading Permit (PWGR 20-0020) submitted to and approved by the County (“**Grading Permit**”). The specific terms and conditions governing construction of the entirety of the Project will be set forth in a separate agreement between the County and Teichert. The County shall promptly review and, if in compliance with County standards, approve all improvement plans submitted to the County by Teichert for the construction of the Project pursuant to the Grading Permit (“**Improvement Plans**”). These Improvement Plans shall include the extension of driveways of residential homes affected by the Project such that Teichert shall be permitted to extend these driveways across property owned by the County to provide access to a public right of way to these residences. Upon completion of construction of the Project by Teichert in accordance with the Improvement Plans, the County shall promptly approve and accept the Project, after which the County shall own all of the improvements constructed for the Project and shall sign any applications, submissions, plans, and to accept the Project and the Improvements. Teichert shall not have any obligation other than to construct the Project in accordance with the Improvement Plans. Teichert will guarantee and warranty its construction for a period of one (1) year following completion and acceptance thereof, against any defective work or labor done or defective materials furnished in the performance of this Agreement or the performance of the Agreement with the County or the performance of an act under the Agreement or by law. Other than this one (1) year maintenance warranty, Teichert shall not have any obligation to maintain or improve the Project or any infrastructure built pursuant to the Improvement Plans.
5. **Access Rights.** The County, as the owner of the Property, hereby grants Teichert the right to enter upon and conduct activities on the Property with regard to the Project, as such activities are set forth on Exhibit B (“**Permitted Activities**”).
6. **Term.** The term of this Agreement shall be for a period commencing on the Effective Date, and ending upon the completion of the Project and acceptance by the County. This Agreement shall be irrevocable during the Term, except in the case of material breach of the terms and conditions of this Agreement by either party, in which case the non-breaching party may terminate this Agreement.
7. **Termination of Agreement and Transfer of Property.** If, at any time, Teichert determines, in its sole and reasonable opinion, that the Project is not feasible, it may terminate this Agreement by providing written notice of such termination to the County’s representative listed in Section 12 of this Agreement. Within thirty (30) days after receiving

such notice of termination, the County shall transfer the Property to Teichert for one dollar (\$1.00) and other good and valuable consideration.

8. **Indemnification.** Teichert shall indemnify, defend and hold the County and the County's Board of Supervisors, employees, representatives, officers, contractors, consultants, representatives, and agents (collectively, with the County, "**Yuba County Representatives**") harmless from any and all claims, losses, actions, causes of action, damages, liabilities, costs and expenses (including, without limitation, attorneys' fees and costs, consulting fees, and expert witness fees) arising out of, in connection with and/or resulting from, directly or indirectly, Teichert's or Teichert's employees, agents, invitees, guests, contractors, consultants, and representatives (collectively, with Teichert, "**Teichert Representatives**") exercise of the rights granted under this Agreement (individually a "**Claim**", collectively, the "**Claims**"), except to the extent caused by the negligence or willful misconduct of any Yuba County Representatives. Such Claims shall include, without limitation, any Claims related to (a) the entry onto or any activities upon the Property or the Property by any Teichert Representatives; (b) liens arising from the exercise of the right to enter pursuant to this Agreement; (c) any negligent act or omission of any Teichert Representatives on or about the Property; (d) the discharge of any hazardous or toxic material or substance regulated by any local, state or federal agency in, on, under or about the Property by any Teichert Representatives; and (e) the failure of any Teichert Representatives to comply with the terms and conditions of this Agreement. This indemnification obligation shall survive the termination of this Agreement.
9. **Compliance with Laws.** Interpretation and enforcement of this Agreement shall be governed by the laws of the State of California. In exercising the rights granted under this Agreement, Teichert shall comply with all laws, ordinances, and regulations ("**Laws**") pertaining to its use of the Property. Teichert shall have the right to access the Property as reasonably necessary to allow it to meet any Project obligations, if any, after the Term.
10. **Insurance.** Prior to any entry on the Property, Teichert shall obtain its own policies, at their own expense, and shall provide the County evidence of workers' compensation insurance or qualified self-insurance, general liability insurance or self-insurance and auto liability insurance or qualified self-insurance covering entry on to the Property and for use of the Property (collectively, the "**Policies**"). Each general liability policy shall provide coverage with limits no less than \$1,000,000 per occurrence with \$2,000,000 in the aggregate, \$1,000,000 per accident for employer's liability, and \$2,000,000 general aggregate (if applicable). The general liability coverage shall include an endorsement, using form CG 2011 or equivalent, naming the County as additional insured and shall contain wording that the Teichert's coverage is primary and that the County Representatives' coverage or self-insurance is excess and noncontributory. The auto liability policy shall provide limits no less than \$1,000,000 per accident. Each such Policy shall contain a provision requiring the insurance company to provide at least fifteen (15) days advance written notice to the County prior to the termination or cancellation of any such Policy. All Policies shall be maintained during the Term.

11. **"As Is"; Assumption of the Risk.** Teichert hereby acknowledges and agrees that the County has not made any representations or warranties concerning the condition of the Property, and therefore, it is taken in its "as is" condition. Furthermore, Teichert hereby assumes all risks associated with conditions existing in, on or under the Property and the risk of damage, theft and destruction of Teichert Representative's property, including its equipment, vehicles, and machinery, and hereby releases and discharges the County of and from any and all damages, charges, claims, causes of action or detriment whatsoever, both known and unknown, foreseeable or unforeseeable arising from or related to all such conditions and risks.
12. **No Representations.** The County makes no representations or warranties regarding whether the Property satisfies and complies with all applicable Laws for Teichert's intended use of the Property. Teichert is responsible for determining whether or not the Property meets all applicable Laws for Teichert's or any Teichert Representative's intended use and shall comply with all Laws pertaining to their respective use of the Property.
13. **Entire Agreement.** This Agreement supersedes all previous oral and written agreements between and representation by or on behalf of the parties and constitutes the entire agreement of the parties with respect to Teichert's construction of the Project on the Property. The terms of this Agreement may not be amended except by a written agreement executed by the parties.
14. **Notices.** Any notices or communications hereunder shall be in writing and shall be personally delivered, or by email transmission, or sent by first class mail, certified or registered, postage prepaid, or by national overnight courier, with charges prepaid for next business day delivery, addressed to the addressee party at the address or addresses listed below, or to such other address or addresses as such party may from time to time designate in writing. Notices shall be deemed received upon actual receipt or refusal of the notice by the party being sent the notice.

County:
Yuba County Counsel
915 8th Street, Suite 111
Marysville, CA 95901

Teichert:
A. Teichert & Son, Inc.
Attn: Michael Smith
3500 American River Dr.
Sacramento, CA 95864

15. **Authority of Signatory.** Each party to this Agreement warrants to the other that it has the right and authority to enter into and consummate this Agreement and all related documents.
16. **Successors, Heirs, and Assigns.** This provision of this Agreement shall inure to the benefit of and bind the successors and assigns of the respective parties.

17. **Electronic Signatures.** This Agreement may be executed by electronic signature(s) and transmitted either by facsimile or in a portable document format (“pdf”) version by email and such electronic signature(s) shall be deemed as original for purposes of this Agreement and shall have the same force and effect as a manually executed original.
18. **Execution in Counterparts.** This Agreement may be executed in two or more counterpart copies, each of which shall be deemed as an original and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

YUBA COUNTY

A. TEICHERT & SONS, INC.

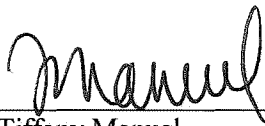
Andy Vasquez
Board Chair
Chair of Supervisors

Dana Davis
President, Teichert Materials

Attest:


Mary Pasillas
Clerk of the Board

Insurance Provisions Approved:



Tiffany Manuel
Risk Manager

Approved as to form and procedure:



Joseph Larmour
County Counsel

EXHIBIT A

Legal description of the Property

The area described hereinbelow is situated in the County of Yuba, State of California, and is a portion of the northeast one-quarter of Section 26, Township 16 North, Range 4 East, M.D.B.&M., being also a portion of the following Grant Deeds: (1) Document No. 98000465, (2) Document No. 2018-009653 and (3) Document No. 2020-017949, all being Official Records filed for record in the Office of the Recorder of Yuba County, and is described as follows:

Beginning at the intersection of the east line of said Section 26 with the north right of way line of State Highway 20 as described in that certain Grant Deed to the State of California, filed for record in the Office of said Recorder in Document No. 2018-001229, Official Records, said Point of Beginning being also located on the east line of said Section 26, North 00°16'06" East 265.11 feet from the east one-quarter thereof, said Point of Beginning being also located on the east line of said Grant Deeds; thence from said Point of Beginning along said right of way line per said Document No. 2018-001229 the following two (2) courses: (1) South 21°15'19" West 95.14 feet and (2) curving to the right on an arc of a 1669.86 foot radius non tangent curve, said arc having an interior angle of 07°18'03", an arc length of 212.78 and being subtended by a chord bearing South 78°45'04" West 212.63 feet; thence leaving said line North 27°09'46" East 11.29 feet; thence North 72°09'46" East 70.13 feet; thence North 03°58'07" East 162.40 feet; thence curving to the right on an arc of a 450.00 foot radius tangent curve having an interior angle of 20°34'32", an arc length of 161.60 feet and being subtended by a chord bearing North 14°15'23" East 160.73 feet; thence North 24°32'39" East 100.22 feet; thence curving to the left on an arc of a 605.00 foot radius tangent curve, said arc having an interior angle of 21°28'58", an arc length of 226.84 feet and being subtended by a chord bearing North 13°48'10" East 225.52 feet; thence North 03°03'41" East 112.36 feet; thence south 89°43'54" East 21.88 feet to the east line of said Section 26, being also the east line of said Grant Deeds; thence along said east line South 00°16'06" West 641.44 feet to the Point of Beginning; containing 1.645 Acres, more or less.

Distances shown hereon are ground distances. To obtain grid distances, multiply distances shown by 1.0000827.

The basis of bearings for this description are based on the California Coordinate System, Zone 2, as determined by GPS observations.

EXHIBIT B

Permitted Activities

Any and all activities authorized by the Grading Permit for the Project (PWGR 20-0020) and analyzed in the Environmental Impact Report for the SR20/Kibbe Road Intersection Project (SCH# 2021040495) (March 2022) including, but not limited to, the following activities:

- (a) Access the Property
- (b) Testing (soil, toxics, biological)
- (c) Surveying
- (d) Staging of equipment
- (e) Grading, trenching
- (f) Stockpiling of material
- (g) Paving
- (h) Signage as required
- (i) Erosion control/seeding
- (j) Lime treating (weather dependent)
- (k) Dewatering (if necessary)
- (l) Road closure/traffic control
- (m) Ability to connect existing driveways of residential homes affected by the Project
- (n) Release of any bonds or financial assurances once work is completed
- (o) Aerial access for drone coverage of site