

RIO MESA BOULEVARD PROJECT AGREEMENT

This Rio Mesa Boulevard Project Agreement ("**Agreement**") by and between Tesoro Viejo Development, Inc., a Delaware corporation ("**TVDI**"), and the County of Madera, a municipal corporation ("**County**"), is entered into as of this ____ day of _____, 2022 ("**Effective Date**"). TVDI and County are each sometimes individually referred to herein as a "**Party**" and collectively as the "**Parties**."

Recitals

A. WHEREAS, on March 21, 1995, the Madera County Board of Supervisors ("**Board**") adopted the Rio Mesa Area Plan ("**RMAP**") which establishes definitions and guidelines for the development of an approximately 15,000-acre area of southeastern Madera County to provide the County with land use development decision-making guidance and to provide a planning framework for more detailed implementation plans and measures; and

B. WHEREAS, on November 5, 2012 the Board adopted the Tesoro Viejo Specific Plan ("**TVSP**") within the RMAP area and the TVSP includes a northern continuation of Rio Mesa Boulevard to serve development within the TVSP area ("**Northern Rio Mesa Boulevard**"); and

C. WHEREAS, on September 22, 2015, the Board adopted Resolution No. 2015-124 to adopt the Official Plan Line ("**OPL**") for a segment of Rio Mesa Boulevard between Avenue 12 and Avenue 14 ("**Rio Mesa Boulevard**") to establish the correct location of the right-of-way for future development by adjacent property owners; and

D. WHEREAS, Resolution No. 2015-124 also established geometrics and preliminary locations of joint utilities within the Rio Mesa Boulevard right-of-way including gas distribution, joint trench utilities, water pipelines, recycled water pipelines, storm drains, sewer pipelines, gas transmission pipelines, and above-ground electrical transmission lines; and

E. WHEREAS, on June 15, 2021, the Board adopted Resolution No. 2021-083 which adopted Findings in accordance with the California Environmental Quality Act, adopted a Mitigation Monitoring and Reporting Program ("**MMRP**"), and certified the Rio Mesa Boulevard Project Final Environmental Impact Report (dated May 2021; SCH No. 2017101048; "**FEIR**") with respect to the "Rio Mesa Boulevard Project" consisting of an approximately 2.3-mile segment of new roadway (Rio Mesa Boulevard), widening of an approximately 2,200-foot segment of Avenue 12, installation of utilities within the Rio Mesa Boulevard right-of-way and within two linked utility line corridors, and related improvements in southeastern Madera County (as depicted on **Exhibit "A"** attached hereto and incorporated herein; the "**Project**"); and

F. WHEREAS, on June 15, 2021, the Board adopted Resolution No. 2021-084 which amended the Rio Mesa OPL between Avenue 12 and Avenue 14; and

G. WHEREAS, on June 15, 2021, the Board authorized the County of Madera Chief of Development Services to proceed with negotiation of agreement(s) as necessary to implement the Project, and this Agreement has been negotiated pursuant to such authorization; and

H. WHEREAS, the Project would provide a new secondary arterial (four-lane undivided) roadway connection between the State Route 41/Avenue 12 intersection and the southern terminus of Northern Rio Mesa Boulevard within the TVSP area; and

I. WHEREAS, the Project would provide circulation and utilities for future development on properties adjacent to the Project as contemplated in the RMAP; and

J. WHEREAS, the County, having approved and determined to undertake the Project, now desires to commence development of the Project in furtherance of Board Resolution No. 2015-124, and in furtherance of Board Resolution Nos. 2021-083 and 2021-084 (collectively, the "**2021 Board Resolutions**"); and

K. WHEREAS, the Project is currently planned to be developed in two phases, with a first phase ("**Phase 1**") constructing Rio Mesa Boulevard as a two-lane roadway, utilities, and some of the associated improvements ("**Phase 1 Improvements**"), and a second phase ("**Phase 2**") expanding Rio Mesa Boulevard to a four-lane roadway, adding additional improvements, and expanding the portion of Avenue 12 from Rio Mesa Boulevard to State Route 41 to a four-lane roadway ("**Phase 2 Improvements**") as further detailed in the FEIR; and

L. WHEREAS, while the installation of utilities is included as part of the Phase 1 Improvements, the installation of these utilities, excepting storm drainage facilities (the "**Phase 1 Utilities Improvements**"), will occur sometime after the completion of the two-lane roadway portion of the Phase 1 Improvements, including the storm drainage facilities (the "**Phase 1 Roadway Improvements**"), with the timing of utilities installation dependent upon the pace of development of adjacent parcels and future demand for utility services generated by that development; and

M. WHEREAS, TVDI desires to facilitate the development of Phase 1 of the Project to provide the secondary arterial roadway connecting to the TVSP area; and

N. WHEREAS, the County and TVDI recognize the potential economic and environmental advantages of installing utility infrastructure within the Project's Rio Mesa Boulevard alignment as part of the construction of the Phase 1 Improvements, and agree that such infrastructure should be sized to serve future development on properties adjacent to the Project; and

O. WHEREAS, since the Project benefits these adjacent properties, a fee or other funding mechanism should be established so that those properties pay their fair share of the costs of the Project improvements; and

P. WHEREAS, except for portions already conveyed to the County, TVDI or its affiliates own in fee or hold roadway easements over the entirety of the right-of-way from Avenue 12 to Avenue 14 for Rio Mesa Boulevard; and

Q. WHEREAS, prior to the commencement of construction of the Phase 1 Improvements, the fee owners of the properties over the portions of the right-of-way not already conveyed to the County may offer to dedicate to the County, and the County may determine to accept dedication of, rights-of-way over said properties; and

R. WHEREAS, the Parties intend that TVDI will take the lead in pursuing issuance to the County (or to other permittees, as applicable) of all other necessary public agency approvals for the Phase 1 Improvements ("**Other Approvals**" and together with the 2021 Board Resolutions, the "**RMB Approvals**"; and

S. WHEREAS, the Parties intend that TVDI will coordinate the design, permitting, and construction of all of the Phase 1 improvements in accordance with all terms and conditions of the RMB Approvals and the terms of this Agreement; and

T. WHEREAS, the Parties intend that WWTP, LLC ("**WWTP**"), an affiliate of TVDI, or County Community Services District No. 22 ("**CSA 22**") will own the wet utilities improvements of the Phase 1 Utilities Improvements (the "**Wet Utilities Improvements**"), together with the associated easement rights therefor, and that, once constructed as part of Phase 1 of the Project, (i) if WWTP owns the Wet Utilities Improvements then WWTP will be solely responsible for undertaking all operation, maintenance, repair, and replacement (collectively, "**Operation & Maintenance**") of the Wet Utilities Improvements at WWTP's sole cost and expense, or (ii) if CSA 22 owns the Wet Utilities Improvements, CSA 22 will be solely responsible for undertaking all Operation & Maintenance of the Wet Utilities Improvements at CSA 22's sole cost and expense from such fees and charges that CSA 22 collects from customers who benefit from such Wet Utilities Improvements; and

U. WHEREAS, the Parties intend that upon completion of construction of the Phase 1 Improvements, TVDI will dedicate to CSA 22, and that CSA 22 will own, all Phase 1 Improvements, except the Wet Utilities Improvements if owned by WWTP ("**County Phase 1 Improvements**"), and that, once constructed as part of the Project, CSA 22 will be solely responsible for undertaking all Operation & Maintenance of the County Phase 1 Improvements at CSA 22's sole cost and expense from such fees and charges that CSA 22 collects from customers who benefit from such County Phase 1 Improvements (but in no event will TVDI or any of its affiliates be responsible for such cost and expense pursuant to this Agreement); and

V. WHEREAS, the County and Tesoro Viejo, Inc, entered into that certain Development Agreement (Contract No. 9736-C-2012), dated November 5, 2012 (the "**Development Agreement**"), pursuant to which, under certain circumstances, Tesoro Viejo, Inc. (an affiliate of TVDI; "**TVI**") agreed to construct, and/or advance the funding for construction of, certain road and other infrastructure improvements, including the widening of State Route 41, and through this Agreement the County is confirming that those potential TVI State Route 41 widening obligations (as referenced in Section 1.13.7 on page 31 and in Exhibit C of the Development Agreement) are being satisfied instead by the construction of the Phase 1 Improvements; and

W. WHEREAS, the Parties anticipate that construction of the widening of State Route 41 to a four-lane roadway, from Avenue 10 ½ to just north of Avenue 15, will commence during calendar year 2024; and

X. WHEREAS, this Agreement is not intended to and shall not alter, amend, affect, or disturb the permits, approvals, and other governmental entitlements TVDI and its affiliates (including TVI) have obtained with respect to the TVSP area ("**TVDI Entitlements**"); and

Y. WHEREAS, Northern Rio Mesa Boulevard is not part of the Project, is not included in the RMB Approvals, and is included in the TVDI Entitlements; and

Z. WHEREAS, the County and TVDI (together with two TVDI affiliates) entered into a Memorandum of Understanding (dated November 5, 2019; Madera County Contract No. 11512-19; the "MOU"), which was nonbinding and which contemplated that, if and upon approval of the Project, the parties would enter into a definitive agreement to effectuate the Project, and this Agreement is that definitive agreement.

Agreement

NOW, THEREFORE, in consideration of the foregoing Recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, TVDI and County hereby agree as follows:

1. Other Approvals; Design, Permitting, and Construction of Phase 1 Improvements.

1.1 TVDI shall take the lead in pursuing the issuance of the Other Approvals to the County.

1.2 The County hereby designates TVDI as its designee to pursue the issuance of the Other Approvals and as its designee under all RMB Approvals for the purpose of constructing the Phase 1 Improvements. TVDI agrees to be responsible for compliance with all terms and conditions of the RMB Approvals relating to the construction of the Phase 1 Improvements, including all interactions with the various public agencies with jurisdiction over any aspect of the construction of the Phase 1 Improvements.

1.3 In accordance with the terms and conditions of all RMB Approvals relating to the construction of the Phase 1 Improvements, TVDI shall, at its sole cost and expense (subject to reimbursement as set forth in Section 5, below), undertake Design, Permitting, and Construction (as each term is defined below) of the Phase 1 Improvements. For the avoidance of doubt, the Parties acknowledge and agree that such Design, Permitting, and Construction will be undertaken by consultants, contractors, and subcontractors engaged to undertake such activities on behalf of TVDI. The Improvements shall be designed, engineered, installed, erected, and constructed pursuant to the procedures and standards contained in the Subdivision Map Act, Government Code sections 66410-66499.38 (the "Subdivision Map Act"), Title 11 (Streets and Sidewalks) of the Madera County Code, Title 17 (Subdivisions) of the Madera County Code (the "County Subdivision Ordinance"), the plans, specifications and profiles approved by Community and Economic Development and Public Works Departments.

1.4 Inspection and Approval of Work. The Improvements shall be subject to inspection by the Chief of Development Services and/or Deputy Public Works Director (the "Deputy Public Works Director"), or their designees, as appropriate for the particular category of Improvements, subject to the following terms and procedures:

1.4.1 Timing of Inspections. Inspection of Improvements shall be performed within a reasonable time after TVDI provides written notice (which may be via e mail) to

Community and Economic Development and/or Public Works, as appropriate, at the following address(es):

Chief of Development Services
200 West 4th Street
Madera, CA 93637

Public Works Department
Attn: Deputy Director
200 West 4th Street
Madera, CA 93637

1.4.2 Reasonable Satisfaction Standard. All Improvements shall be completed to the reasonable satisfaction of the Chief of Development Services and/or Deputy Public Works Director, or their designees, as appropriate for the particular Improvements.

1.4.3 Certificates of Completion. From time to time, when the Chief of Development Services and/or Deputy Public Works Director, or their designees, determine that a particular component of the Phase 1 Improvements has been satisfactorily completed (such as upon inspection after TVDI's notification that the two-lane roadway component of the Phase 1 Improvements has been completed), they shall promptly file a certificate (the "Certificate of Completion") with the Clerk of the Board of Supervisors. The Certificate of Completion shall state the following information:

- a. The nature of Improvement(s);
- b. The date of inspection;
- c. The name of the inspector;
- d. A statement that the Improvement(s) have been satisfactorily completed and are thereby approved.

1.4.4 Acceptance by Board Supervisors. If County's Board of Supervisors finds that the facts in a Certificate of Completion filed by Community and Economic Development and/or Public Works are true and correct, then it shall accept such Improvements and immediately record a notice of the foregoing action(s) (the "Notice of Acceptance") in the Office of the County Recorder.

1.5 Prevailing wages to be paid. TVDI understands and agrees that as a condition of reimbursement, as set forth hereinafter, it will ensure full compliance with all prevailing wage laws by all contractors and subcontractors employed in constructing the Phase 1 Improvements, including the wet utilities.

2. Dedication of, and Operation & Maintenance of, Phase 1 Improvements.

2.1 Upon completion of the Construction of the Phase 1 Improvements, and following satisfactory inspections under Section 1.4, above, TVDI shall dedicate to the County, and the County shall accept the dedication of, the County Phase 1 Improvements (including, for the avoidance of doubt, the Wet Utilities Improvements unless owned by WWTP); provided, however, that if construction of the Phase 1 Roadway Improvements and the Phase 1 Utilities

Improvements is completed at different times, the dedication and acceptance shall occur in stages as the components of such County Phase 1 Improvements are completed. Upon acceptance of such dedication, County shall be solely responsible, at its sole cost and expense, for undertaking all Operation & Maintenance of the County Phase 1 Improvements (including the Wet Utilities Improvements unless such improvements are owned by WWTP) in compliance with the RMB Approvals relating to the Phase 1 Improvements, and other applicable law, including obtaining and complying with any additional public agency approvals that may subsequently become needed for Operation & Maintenance activities therefor. For the avoidance of doubt, the Phase 1 Roadway Improvements will not be opened for public use until the dedication of the County Phase 1 Improvements has been accepted by the County, and in no event shall TVDI be responsible for the Operation & Maintenance of the County Phase 1 Improvements; provided, however, that nothing shall preclude the County and TVDI from entering into any separate arrangement for the performance of such Operation & Maintenance, or some of it, by TVDI.

2.2 Inspection for Defects. County expressly reserves the right to inspect the Improvements for defective workmanship or materials for a period of one (1) year after acceptance of the Improvements by County's Board of Supervisors. This Section 2.2 shall not be construed as inhibiting, preventing or limiting any inspections otherwise required by law to be made by County or any other public entity, public agency, public utility, or employees thereof, subsequent to the expiration of the one (1) year period stated herein.

2.3 Guarantee Against Defects. For a period of one (1) year after acceptance of the Improvements by County's Board of Supervisors, TVDI guarantees such Improvements against defective workmanship or materials furnished in the performance of this Agreement. TVDI agrees to correct, repair, or replace promptly upon demand by County all such defective work or materials as may be discovered by County inspectors within such one (1)-year period and reported to County's Board of Supervisors.

3. Ownership of the Wet Utilities Improvements.

3.1 Upon completion of the Construction of the Wet Utilities Improvements, TVDI shall transfer ownership of the Wet Utilities Improvements to WWTP or to CSA 22, as the County and TVDI may hereafter agree, and such transferee shall be solely responsible, at its sole cost and expense, for undertaking all Operation & Maintenance of the Wet Utilities Improvements in compliance with the RMB Approvals relating to the Wet Utilities Improvements, and other applicable law, including obtaining and complying with any additional public agency approvals that may subsequently become needed for Operation & Maintenance activities therefor.

4. Phase 2 Improvements.

4.1 As described in the FEIR, the Phase 2 Improvements are contemplated to be constructed when traffic volumes on Rio Mesa Boulevard (as constructed in Phase 1) approach 16,000 vehicles per day. The Parties acknowledge and agree that this volume of traffic is not anticipated to occur for 18 years but that the timing of reaching this actual traffic volume will be dependent on the pace and location of future development. Accordingly, the Parties agree that

this Agreement does not create any rights or obligations between them with respect to the Phase 2 Improvements.

5. Cost Reimbursement.

5.1 The Parties intend that TVDI shall be reimbursed for its costs incurred in the Design, Permitting, and Construction of the Phase 1 Improvements ("**Cost Reimbursement**"), including for the avoidance of doubt (a) the Wet Utilities Improvements which are owned and operated by the County through CSA 22 and (b) any costs incurred for the Design, Permitting, and Construction that cover both Phases 1 and 2 (for example, the costs for mitigation of the Project and the cost for obtaining permits that authorize together the Phase 1 Improvements and the Phase 2 Improvements).

5.1.1 Upon recording of a Notice of Acceptance of each component of the Phase 1 Improvements, TVDI shall submit to the County an invoice for such component.

5.1.2 The source of funds for such Cost Reimbursement may occur through impact fees collected by the County from within the RMAP area (south of Road 206) through its Transportation Fee and/or Vehicle License Fee Programs (not otherwise committed or pledged to the State Route widening project described in Recital "W"), a regional public infrastructure financing mechanism, and/or any other County sources that may exist or come to exist in the future (including, for example, but not limited to "Project Financing Mechanisms" and "Revenue Sharing" referenced in Sections 2.2 and 2.3 of the Development Agreement (hereinafter, collectively, the "Eligible Funds"), provided, however, that no new CFD assessments or taxes shall be imposed on property owned by TVDI or its affiliates under Section 2.3 of the Development Agreement for purposes of reimbursement under this Agreement without the written consent of TVDI) through which funds for such Cost Reimbursement legally may be obtained; provided, however, that the Parties acknowledge that certain of the Phase 1 Improvements are not eligible for funding from particular sources. (For example, the Wet Utilities Improvements are not eligible for Cost Reimbursement under the Transportation Fee Program.) The County shall collect and deliver to TVDI, or its designee, such Cost Reimbursement in accordance with applicable law and Section 5.1.3, below.

5.1.3 The County shall provide an initial payment of Cost Reimbursement in the amount of Five Million dollars (\$5,000,000) within thirty (30) days after the Notice of Acceptance of the two-lane roadway component of the Phase 1 Improvements is recorded as provided in Section 1.4.4, above. Further Cost Reimbursement shall be provided commencing upon the completion of the widening of State Route 41 to a four-lane roadway, from approximately Avenue 10 ½ north to Avenue 12, out of Eligible Funds available for this purpose, with payments made quarterly until the Cost Reimbursement has been completed.

5.2 Design, Permitting, and Construction shall mean and include all costs incurred or expended by TVDI (i) relating to the design and preparation of construction plans for the Phase 1 Improvements, including, but not limited to, preparing of plans related to environmental, cultural resource, and habitat protections ("**Design**"); (ii) relating to obtaining all of the RMB Approvals, including, but not limited to, all costs incurred for CEQA compliance ("**Permitting**"); (iii) relating to the construction of the Phase 1 Improvements, including, but not limited to, all costs

for implementing the measures provided in the MMRP and all other measures undertaken pursuant to conditions or requirements of the RMB Approvals for the Phase 1 Improvements, and including procurement, mobilization, and restoration ("**Construction**").

5.3 In the event that the Cost Reimbursement occurs, but not otherwise unless and until such occurs, all records of TVDI pertaining to "cost" or "costs" referenced in this Agreement that are required by applicable law to be provided, and that are provided, to the County for such Cost Reimbursement to occur shall be deemed public records.

5.4 All TVDI obligations under this Agreement shall be performed in a commercially reasonable manner.

6. Responsibilities of the County.

6.1 By approving and authorizing the execution of this Agreement, the Board hereby authorizes the Chief of Developmental Services, or his/her designee, to execute all Other Approvals (including applications and other related documents for pursuit of such approvals) and to take such other actions as are necessary on behalf of County to fulfill the obligations of the County under this Agreement with respect to the Phase 1 Improvements.

6.2 All County obligations under this Agreement shall be performed in a commercially reasonable manner.

7. Duty to Cooperate.

7.1 The Parties agree to cooperate with each other to timely undertake all actions required to pursue issuance of the Other Approvals, and to comply with the RMB Approvals, and to renew and/or amend said approvals or seek other public agency authorizations as necessary for the Design, Permitting, and Construction of the Phase 1 Improvements.

8. Termination.

8.1 By TVDI.

8.1.1 TVDI may not terminate this Agreement at any time, except upon (i) an Event of Default by the County, (ii) the approval of the Board, (iii) the failure to obtain all of the Other Approvals after TVDI's commercially reasonable efforts within two (2) years of the Effective Date, or (iv) an enforceable decision by a third party (e.g., public agency or court order) to significantly impair, terminate, or non-renew the RMB Approvals prior to the completion of the Construction of the Phase 1 Improvements. Any such termination shall be preceded, if practicable, by delivering written notice of termination to the County at least thirty (30) days prior to the termination date.

8.1.2 Prior to TVDI's termination of this Agreement, TVDI shall offer the County the opportunity to assume by assignment, transfer, or otherwise, ownership of the County Phase 1 Improvements, if and to the extent constructed.

8.2 By County.

8.2.1 The County may not terminate this Agreement at any time, except upon (i) an Event of Default by TVDI, (ii) the approval of TVDI, (iii) the failure of TVDI to obtain all of the Other Approvals after commercially reasonable efforts, and after County's cooperation in such efforts as provided in Section 7.1, above, within two (2) years of the Effective Date, or (iv) an enforceable decision by a third party (*e.g.*, public agency or court order) to significantly impair, terminate or non-renew the RMB Approvals prior to the completion of Construction of the Phase 1 Improvements. Any such termination shall be preceded, if practicable, by delivering written notice of termination to TVDI at least thirty (30) days prior to the termination date.

9. **Indemnification.**

9.1 To the fullest extent permitted by law, County shall indemnify, defend, protect, and hold harmless TVDI and its affiliates, and each of their officers, directors, employees, attorneys, agents, representatives, successors, and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, demands, directives, orders, forfeitures, losses, costs, or expenses (including reasonable attorneys', consultants', and expert fees) arising from, related to, or in connection with the death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by County's, or any of its employees', agents', or representatives', acts or omissions (i) in undertaking the Operation & Maintenance of, its ownership of, and use by the public of, the County Phase 1 Improvements, and (ii) in fulfilling its duties and obligations under this Agreement, except in each case as such claim, loss, cause of action, damage or injury is caused or contributed to by the negligent acts or omissions of TVDI.

9.2 To the fullest extent permitted by law, TVDI shall indemnify, defend, protect, and hold harmless County, and each of its officers, directors, employees, attorneys, agents, representatives, successors, and assigns, from and against any and all claims, liabilities, penalties, fines, judgments, demands, directives, orders, forfeitures, losses, costs, or expenses (including reasonable attorneys', consultants', and expert fees) arising from, related to, or in connection with the death of or injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by TVDI's, or any of its employees', agents', or representatives', acts or omissions (i) in undertaking the Design, Permitting, and Construction of the Phase 1 Improvements, and (ii) in fulfilling its duties and obligations under this Agreement, except in each case as such claim, loss, cause of action, damage or injury is caused or contributed to by the negligent acts or omissions of County.

10. **Assignment.**

10.1 Subject to County approval, TVDI may assign its interest in this Agreement if and only if (i) the assignee of TVDI's interest, or the entity which results from the consolidation, merger, acquisition, sale, agreement, transfer and/or disposition of assets, assumes in writing all of TVDI's obligations, duties, and liabilities under this Agreement; and (ii) any such assignment, consolidation, merger, acquisition, sale, transfer and/or disposition of assets would not result in a violation of any regulatory or permit requirement applicable to the Project. TVDI shall notify the County of any intended assignment of TVDI's interest in this Agreement not less than thirty

(30) days prior to the effective date of such assignment, for County review and approval, such approval not to be unreasonably withheld.

11. Events of Default.

11.1 Events of Default By TVDI. Any of the following occurrences or acts shall constitute an event of default (each an "**Event of Default**") by TVDI under this Agreement:

11.1.1 If TVDI fails to perform any covenant, agreement, or obligation on its part to be performed under this Agreement, and any such failure continues for a period of thirty (30) days after written notice thereof is given by County to TVDI, unless such failure is curable and TVDI is diligently pursuing correction of such default (but in no event for a total period of longer than one hundred eighty (180) days after such notice is given as provided above); or

11.1.2 If TVDI files a petition in bankruptcy or for reorganization or for an arrangement pursuant to the Bankruptcy Code, or is adjudicated bankrupt or becomes insolvent or makes an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as such debts become due, or dissolves, or suspends payment of its obligations, or takes any corporate or municipal action in furtherance of any of the foregoing; or

11.1.3 If a petition or answer is filed proposing the adjudication of TVDI as bankrupt, or proposing its reorganization pursuant to the Bankruptcy Code, and (i) TVDI consents to the filing thereof, or (ii) such petition or answer is not discharged or denied within sixty (60) days after the filing thereof; or

11.1.4 If a receiver, trustee or liquidator (or other similar official) is appointed for, or takes possession or charge of, TVDI or of all or substantially all of its business or assets or its estate or interest in the Project, and such official is not discharged within sixty (60) days thereafter, or if TVDI consents to or acquiesces in such appointment; or

11.1.5 If, as of the time when the same shall have been made, any representation or warranty of TVDI set forth herein, or in any consent, notice, certificate, demand, request or other instrument delivered by or on behalf of TVDI in connection with or pursuant to this Agreement shall prove to have been incorrect or untrue in any material respect as of the time when made, and the condition or circumstance giving rise to such incorrect or untrue representation or warranty shall continue for a period of thirty (30) days after TVDI has actual knowledge thereof, unless such condition or circumstance is curable and TVDI is diligently pursuing correction of such condition or circumstance (but in no event for a total period of longer than one hundred eighty (180) days after TVDI has actual knowledge thereof).

11.2 Events of Default By County. Any of the following occurrences or acts shall constitute an Event of Default by County under this Agreement:

11.2.1 If County fails to perform any covenant, agreement, or obligation on its part to be performed under this Agreement, and any such failure continues for a period of thirty (30) days after written notice thereof is given by TVDI to County, unless such failure is curable and County is diligently pursuing correction of such default (but in no event for a total period of longer than ninety (90) days after such notice is given as provided above).

12. Representatives; Licensees, Designees, Other Agents; Notices.

12.1 Authorized Representatives. Not later than fifteen (15) days after the Effective Date, each Party shall designate at least one individual officer or employee who will be its representative and will be authorized to act on behalf of such Party for all purposes in performing the provisions of this Agreement ("**Representative**"). Each Party shall also designate an alternate Representative who will serve in the place of (and with the same authority as) the Representative if the latter is unavailable. A Party may also designate more than one Representative. The designation may be changed from time to time. Any designation under this Section 12.1 shall be made in a writing delivered to the other Party.

12.2 Licensees, Designees, and Other Agents. The Parties each acknowledge and agree that their respective rights and obligations under this Agreement may be exercised by and performed by their respective contractors and subcontractors, licensees, designees, and other agents.

12.3 No Release. Each Party is responsible for the acts or omissions of its contractors and subcontractors, licensees, designees, other agents, and Representative(s). The designation of a Representative by a Party does not release the Party from responsibility for performance of its obligations under this Agreement.

12.4 Notice. All notifications, notices, demands, requests and other communications herein provided for or made pursuant hereto shall be in writing and shall be deemed properly served if: (i) delivered in person, (ii) sent by registered or certified mail, return receipt requested, and the giving of such communication shall be deemed complete on the third (3rd) business day after the same is deposited in a United States Post Office with postage charges prepaid, or (iii) sent by reputable overnight delivery service for next business day delivery, and the giving of such communication shall be deemed complete on the immediately succeeding business day after the same is deposited with such delivery service. All notifications, notices, demands, requests, and other communications shall be sent to:

For TVDI:

Tesoro Viejo Development, Inc.
Attn: Brent McCaffrey
7020 North Van Ness Boulevard
Fresno, CA 93771
Telephone: (559) 256-7000

For County:

Madera County
Attn: Chief of Development Services
200 West 4th Street
Madera, CA 93637
Telephone: (559) 675-7811

or as otherwise specified in writing from time to time by each Party.

13. Dispute Resolution.

13.1 This section governs the resolution of all disputes that arise under this Agreement.

13.2 Good faith negotiations. A Party that believes a dispute exists under this Agreement, including disputes involving costs and maintenance responsibilities, shall first refer the dispute to the Representatives for resolution. The Representatives of each Party shall

personally meet and attempt in good faith to resolve the dispute. If the Representatives cannot resolve the dispute within thirty (30) days, a Party that still believes a dispute requires resolution may avail itself of the provisions of Section 13.3, below.

13.3 Non-binding Mediation. If said dispute cannot be settled through good faith negotiations per Section 13.2, above, the Parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of JAMS before seeking recourse in a court of law. The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required travel and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties, unless they agree otherwise in writing. Any agreements resulting from mediation shall be documented in writing. All mediation proceedings, results, and documentation shall be inadmissible for any purpose in any legal proceeding (pursuant to California Evidence Codes sections 1115 thru 1128), unless such admission is otherwise agreed upon in writing by both Parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery. The mediator must have substantial experience with the water utility industry. Mediation shall be completed within thirty (30) days after request for the mediation by either Party.

13.4 Remedies. The preceding provisions of this Section 13 are intended to set forth the primary procedure to resolve all disputes under this Agreement. It is expected that all disputes that would traditionally be resolvable by a court of law would be resolvable under this procedure. However, the Parties recognize that certain business relationships could give rise to the need for one or more of the Parties to seek equitable remedies from a court that were traditionally available from an equity court, such as emergency, provisional or summary relief, and injunctive relief. Immediately following the issuance of any such equitable relief by the court, the Parties will stay any further judicial proceeding pending mediation of all underlying claims between the Parties.

13.5 If an action shall be brought for the enforcement of any provision of this Agreement in which it is found that an Event of Default has occurred, the non-defaulting prevailing Party shall be entitled to seek reimbursement of its attorneys' fees and expenses.

14. Force Majeure.

14.1 If as a result of "force majeure," as defined in this section, a Party is rendered unable, wholly or in part, to carry out its obligations under this Agreement, and if such Party gives notice and an explanation of such force majeure in writing to the other Party promptly after the occurrence of the cause relied upon, the affected Party, and only so far as and to the extent that the Party is affected by such force majeure, shall be excused from performance under this Agreement without liability; provided, however, the Party relying on force majeure must make its best efforts to remedy such cause and with all reasonable dispatch.

14.2 For purposes of this Agreement, "force majeure" shall mean an event that creates an inability to perform that could not be prevented or overcome by the commercially reasonable best efforts of the affected party, including but not limited to, any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy,

wars, revolution, sabotage, blockades, insurrections, riots, civil strife, sabotage, vandalism, other violence, epidemics, pandemic, disease, plague, quarantine, actual or threatened public health emergency or significant public health risk, governmental edicts, actions, declarations, or quarantines by a governmental entity or health organization (including, without limitation, any shelter-in-place orders, stay at home orders, or any restrictions on travel related thereto), landslides, lightning, windstorm, earthquakes, fires, storms, hurricanes, tornadoes, unusually inclement weather, floods, washouts, drought, other natural catastrophe, civil disturbances, breaches in cybersecurity, explosions, power outages, the failure or inability to obtain any necessary governmental authorization which has been sought or requested, as the case may be, in good faith by all reasonable legal means, and any other cause, whether of the kinds herein enumerated or otherwise, not reasonably within the control of the affected party.

15. Agreement Supersedes Memorandum of Understanding.

15.1 This Agreement constitutes the binding definitive agreement contemplated by the MOU. The Parties hereby confirm that the MOU is superseded by this Agreement, is of no further effect, and is terminated.

16. Miscellaneous.

16.1 Integration. This Agreement embodies the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements and understandings, written or oral, relating to such subject matter.

16.2 Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of and be enforceable by, the Parties hereto and their respective successors and assigns permitted hereunder.

16.3 Amendments or Waivers. No term or provision hereof or exhibit hereto may be amended, changed, waived, discharged, terminated or replaced orally except by a written instrument, in accordance with applicable terms and provisions hereof, executed by each of the Parties hereto.

16.4 Waiver. No failure, delay, forbearance or indulgence on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, or as an acquiescence in any breach, nor shall any single or partial exercise of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

16.5 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

16.6 Neutral Construction. This Agreement is the product of negotiation between the Parties. No Party is deemed the drafter of this Agreement.

16.7 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third person to any Party. This Agreement does not create any duty, liability or standard of care to any person who is not a Party.

16.8 Relationship of Parties. Each Party is an independent entity. This Agreement will not constitute either Party as the agent of the other Party, except as otherwise provided in this Agreement or as otherwise agreed by the Parties. This Agreement will not constitute the Parties as partners or joint venturers (or as co-owners of a business entity) for common law purposes, federal, state or local income tax purposes, or otherwise. The Parties will not conduct business under a common name, or execute an agreement identifying any or all of them as partners, shareholders or members of a business entity.

16.9 Controlling Law; Conflicts of Law. This Agreement shall be construed, governed and applied in accordance with the laws of the State of California, without regard to the conflicts of law principles thereof.

16.10 Venue. In connection with this Agreement, the Parties hereby agree that any action, proceeding, or dispute regarding this Agreement shall be filed in the Superior Court of the State of California, in and for the County of Madera. Nothing in this section shall be construed as a waiver of the County's rights under California Code of Civil Procedure section 394.

16.11 Incorporation of Exhibits and Recitals. All of the exhibits attached hereto are hereby incorporated herein by this reference. The Recitals hereto are true and correct, form an integral part of this Agreement, and are hereby incorporated by this reference.

16.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute but one and the same instrument.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered in their name and on their behalf, respectively, as of the Effective Date.

**Tesoro Viejo Development, Inc.,
a Delaware corporation**

By: _____
Name: _____
Title: _____

COUNTY OF MADERA

By: _____
Name: _____
Title: _____

ATTEST:

Clerk of the Board

APPROVED AS TO LEGAL FORM:

**Dale E.
Bacigalupi**

County Counsel

Digitally signed by: Dale E. Bacigalupi
DN: CN = Dale E. Bacigalupi email =
dbacigalupi@lozanosmith.com C = US
O = Lozano Smith
Date: 2022.11.29 09:32:08 -08'00'


List of Exhibits:

Exhibit "A" – Depiction of Rio Mesa Boulevard Project

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered in their name and on their behalf, respectively, as of the Effective Date.

**Tesoro Viejo Development, Inc.,
a Delaware corporation**

COUNTY OF MADERA

By: 
Name: Robert A. McCaffrey
Title: CEO

By: _____
Name: _____
Title: _____

ATTEST:

Clerk of the Board

APPROVED AS TO LEGAL FORM:

County Counsel

List of Exhibits:

Exhibit "A" – Depiction of Rio Mesa Boulevard Project

Exhibit "A"

Depiction of Rio Mesa Boulevard Project

[exhibit on following page]

EXHIBIT "A"

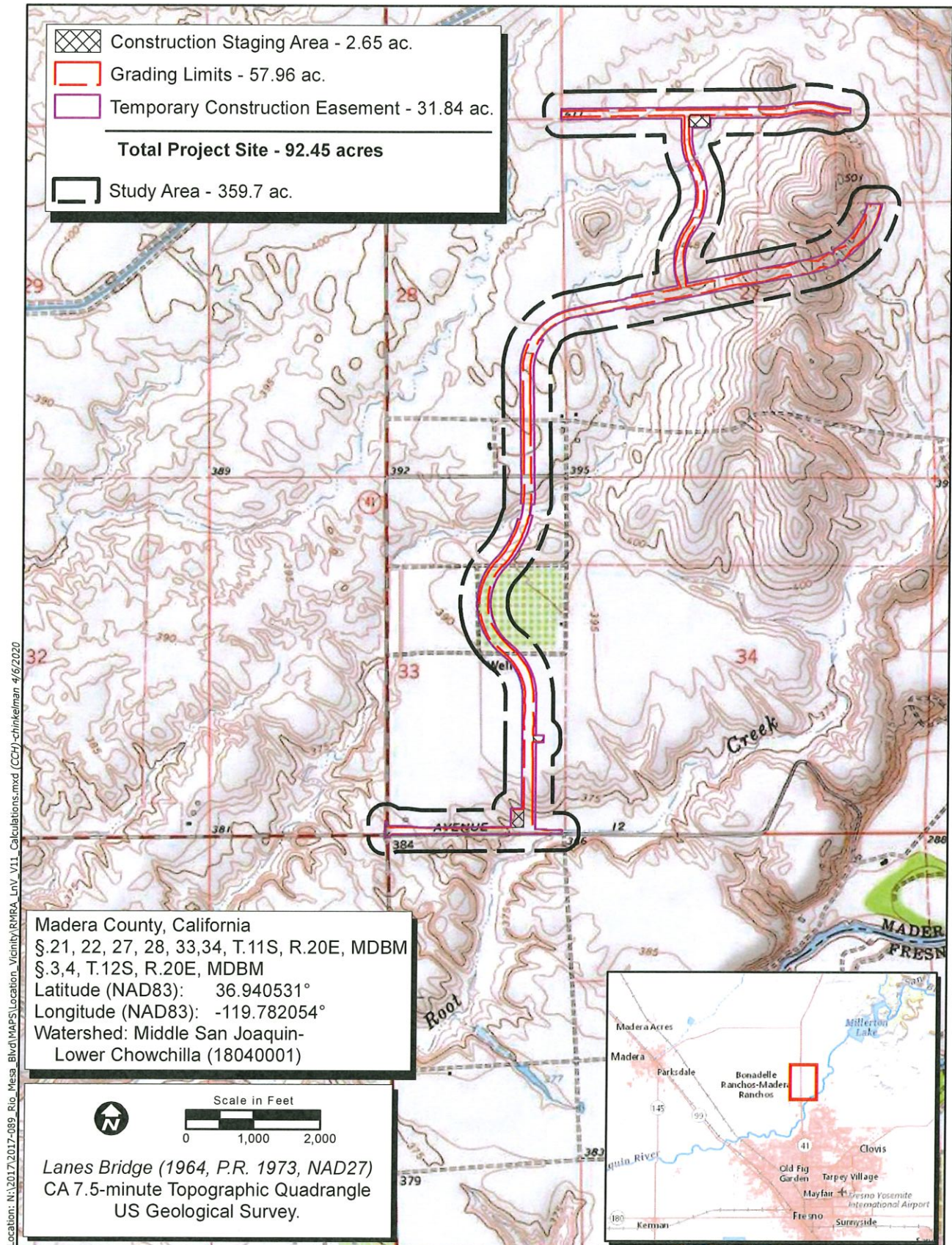


Figure 1-1. Project Location and Vicinity

2017-089 Rio Mesa Boulevard Project