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4 AGREEMENT

5 THE AGREEMENT, is made and entered into this _____ day of _____, 2020
6 between the COUNTY OF TULARE, hereinafter referred to as COUNTY, and DOWNS
7 EQUIPMENT RENTALS, INC. a California Corporation, hereinafter collectively referred to as
8 OWNER/SUBDIVIDER, with reference to the following:

9 A. The COUNTY has conditionally approved the Tentative Map of Subdivision Tract
10 No. 770; and

11 B. The OWNER/SUBDIVIDER currently owns the property described as Subdivision
12 Tract No. 770; and

13 C. The COUNTY Board of Supervisors has directed, in Board Resolution No. 93-1375,
14 that the COUNTY will accept no new drainage systems in any new land division or development
15 unless the developer provides a mechanism to fund future maintenance activities; and

16 D. Pursuant to COUNTY Ordinance Code Section 7-01-1375 et seq. and Condition No.
17 20 established by COUNTY Planning Commission Resolution No. 8201, approving the Tentative
18 Subdivision Map for Tract No. 770, an assessment district is required to pay for the continuing
19 cost of the maintenance of the storm drainage system and ponding lot dedicated by the Final Map
20 of Subdivision Tract No. 770 and the OWNER/SUBDIVIDER of Tract No. 770 has filed an
21 application for and consent to form such an assessment district; and

22 E. The OWNER/SUBDIVIDER has consented to pay the continuing cost to maintain
23 these storm drainage system improvements through an assessment district and the COUNTY
24 Board of Supervisors has by Resolution No. _____ formed an assessment district known as
25 Assessment District No. 20-770-PIXLEY of the County of Tulare, State of California for that
26 purpose.

27 ACCORDINGLY, IT IS AGREED:

28 1. OWNER/SUBDIVIDER agrees to pay in full the assessments approved and levied
29 by the COUNTY Board of Supervisors Resolution No. _____ upon first conveyance of each
30 lot or parcel subject to such assessments or by June 30, 2021, whichever first occurs.

31 2. To secure such payment of such assessments, the COUNTY has or will cause to be
32 recorded a Notice of Assessment, imposing a lien for such assessments, and an assessment
33 diagram to be filed in accordance with Streets and Highways Code Section 3114. Upon payment
34 in full of each assessment, the COUNTY shall cause the County Treasurer to record pursuant to
35 Streets and Highways Code Section 3114.3 an addendum to such Notice of Assessment stating
36 that the assessment has been paid and the associated lien discharge as to that particular lot or
37 parcel.

38 TULARE COUNTY AGREEMENT NO. _____
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2 3. OWNER/SUBDIVIDER shall maintain complete and accurate records with respect
3 to the conveyance of lots or parcels subject to the Agreement and with respect to the assessments
4 due under this Agreement. All such records shall be prepared in accordance with generally
5 accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible.
6 Upon request, OWNER/SUBDIVIDER shall make such records available to the COUNTY
7 Auditor and to his agents and representatives within the COUNTY, for the purpose of auditing
8 and/or copying such records, until final payment is made under this Agreement.
9

10 4. Nothing in the Agreement shall be construed to constitute the
11 OWNER/SUBDIVIDER or any of its agents, employees or officers as an agent, employee or
12 officer of COUNTY.
13

14 5. This Agreement represents the entire agreement between OWNER/SUBDIVIDER
15 and COUNTY as to its subject matter and no prior oral or written understanding shall be of any
16 force or effect. No part of this Agreement may be modified, waived or repealed without the
17 written consent of both parties.
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19 6. Except as may be otherwise required by law, any notice to be given shall be written
20 and shall be either personally delivered, sent by facsimile transmission or sent by first class mail,
21 postage prepaid and addressed as follows:
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23
24 COUNTY: Reed Schenke, Director
25 Tulare County Resource Management Agency
26 5961 S. Mooney Blvd.
27 Visalia, Ca 93277
28
29 (FAX No.: (559) 730-2653 / Confirming No.: (559) 624-7000)
30

31
32 OWNER/SUBDIVIDER: Downs Equipment Rentals
33 P. O. Box 80536
34 Bakersfield, CA 93380
35
36 (Confirming No.: (661) 834-5526)
37 Email: brant@downsequip.com
38
39

40 Notice delivered personally or sent by facsimile transmission is deemed to be received
41 upon receipt. Notice sent by first class mail shall be deemed received on the fourth day after the
42 date of mailing. Either party may change the above address or fax number by giving written
43 notice pursuant to this paragraph.
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45 7. The Agreement is binding on all heirs, assigns and successors in interest. No
46 assignment of this Agreement may be made without the express written consent of the COUNTY.

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8. This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code Section 1654 shall not apply to address and interpret any uncertainty.

9. Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

10. This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflict of law principles. Any litigation arising out of this Agreement shall be brought in Tulare County California. OWNER/SUBDIVIDER waives the removal provisions of California Code of Civil Procedure Section 394.

11. The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

12. The recitals to this Agreement are fully incorporated into and are integral parts of this Agreement.

13. This Agreement is subject to all applicable laws and regulations. If any provision of the Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying and conflicting provision is such that a material benefit of the Agreement to the COUNTY is lost, the parties shall comply with paragraph No. 14 below to ensure payment in full to the COUNTY by the OWNER/SUBDIVIDER of the subject assessments. If all other cases the remainder of the Agreement shall continue in full force and effect.

14. Each party agrees to execute any additional documents and to perform any further acts which may be reasonably required to affect the purposes of this Agreement.

15. Unless otherwise provided in the Agreement, no part of this Agreement may be assigned or subcontracted by OWNER/SUBDIVIDER without the prior written consent of COUNTY.

16. This Agreement shall become effective upon execution of both parties hereto and shall terminate upon issuance by COUNTY of a receipt for payment in full of the assessments imposed by COUNTY Board of Supervisors Resolution No. _____.

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THE PARTIES, having read and considered the above provision, indicate their agreement by their authorized signatures below.


COUNTY OF TULARE

By _____
Chairman, Board of Supervisors
"County"

ATTEST: JASON T. BRITT
County Administrative Officer/Clerk
of the Board of Supervisors

By _____
Deputy

Downs Equipment Rentals, Inc.


Gordon Downs, President


Brant Ambrose, VP Finance

"Owner/Subdivider"

APPROVED AS TO FORM:
COUNTY COUNSEL

By 
Deputy

Matter No. 2020829