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AGREEMENT

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

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

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

C. The COUNTY Board of Supervisors has directed, in Board Resolution No. 2005-0519, that the COUNTY will require the formation of an assessment district for the maintenance of new public roadways resulting from land division and land development activities; and

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

E. The OWNER/SUBDIVIDER has consented to pay the continuing cost to maintain the public streets and roadways through an assessment district and the COUNTY Board of Supervisors has by Resolution No. _____ formed an assessment district known as Assessment District No. 20-770R-PIXLEY of the County of Tulare, State of California for that purpose.

ACCORDINGLY, IT IS AGREED:

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

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

TULARE COUNTY AGREEMENT NO. _____

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3. OWNER/SUBDIVIDER shall maintain complete and accurate records with respect to the conveyance of lots or parcels subject to the Agreement and with respect to the assessments due under this Agreement. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, OWNER/SUBDIVIDER shall make such records available to the COUNTY Auditor and to his agents and representatives within the COUNTY, for the purpose of auditing and/or copying such records, until final payment is made under this Agreement.

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

5. This Agreement represents the entire agreement between OWNER/SUBDIVIDER and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified, waived or repealed without the written consent of both parties.

6. Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY: Reed Schenke, Director
Tulare County Resource Management Agency
5961 S. Mooney Blvd.
Visalia, Ca 93277

(FAX No.: (559) 730-2653 / Confirming No.: (559) 624-7000)

OWNER/SUBDIVIDER: Downs Equipment Rentals
P. O. Box 80536
Bakersfield, CA 93380

(Confirming No.: (661) 834-5526)
Email: brant@downsequip.com

Notice delivered personally or sent by facsimile transmission is deemed to be received upon receipt. Notice sent by first class mail shall be deemed received on the fourth day after the date of mailing. Either party may change the above address or fax number by giving written notice pursuant to this paragraph.

7. The Agreement is binding on all heirs, assigns and successors in interest. No 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