

Attachment B

AGREEMENT In Connection with Application for Encroachment Permit

THIS INDEMNIFICATION AGREEMENT (the "Agreement") is entered into this _____ day of _____, 2013, by and between Hartland Christian Association, a California Corporation (HCA), a non-denominational Christian camp, with its principal place of business at 57611 Eshom Valley Drive, Badger, CA 93603, and the County of Tulare ("County").

WHEREAS, HCA has submitted an application for an encroachment permit (the "Permit Application") attached as EXHIBIT A, to County for a permit granting HCA encroachment for a water service pipeline (the "Pipeline"). HCA intends to construct a 2-inch private water service pipeline along County and private property, for domestic water service and fire suppression; and

WHEREAS, HCA will make certain covenants to County in connection with the proposed Pipeline and whereby HCA will indemnify County for damages or claims related to spill, leaks or other problems associated with the proposed Pipeline.

NOW, THEREFORE, AND IN CONSIDERATION of the mutual covenants contained herein, the parties hereto agree as follows:

1. Indemnification.

- (a) HCA shall hold harmless, defend and indemnify County, its agents, officers and employees or assigns from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including County property, arising from, or in connection with this agreement or permit including but not limited to construction of the Pipeline, actual, alleged or threatened spill, leak or other release of waste water. This indemnification obligation shall continue beyond the term of this Agreement or permit as to any acts or omissions of HCA occurring during the term of this Agreement or any extension of this Agreement.
- (b) HCA shall indemnify, defend and hold harmless the county from and against any claims, actions, or proceedings against the County to attach, set aside, void, or annul any findings, entitlements, certification of California Environmental Quality Act ("CEQA") or other environmental review, and/or approvals by the County given in regard to the Project described or identified in this Application, agreement or permit and/or any other related proceedings (hereinafter referred to collectively as "Project"), or to impose personal liability against such County officials, agencies, departments, commissions, agents, officers, or employees resulting from their official involvement in any Project proceedings, including any claims and actions for attorneys' fees, private attorney general fees and/or costs awarded to any party and against the County.

TULARE COUNTY AGREEMENT NO. _____

2. Effectiveness: Term and Termination. The effectiveness of this Agreement is conditioned on the issuance of an encroachment permit pursuant to the Permit Application (the "Pipeline Permit"). The term of this Agreement shall be the same as the term of the Pipeline Permit and any extensions thereof. This indemnification obligation will continue beyond the term of this Agreement or the permit as to any acts or omissions occurring during the term of this Agreement or permit or any extensions of this Agreement or permit.
3. Amendment. This Agreement shall not be modified or amended except by means of a writing signed by each of the parties to this Agreement.
4. Assignment. Subject to Tulare County Ordinance 3-07-1270, HCA will not assign or transfer their rights or obligations under this Agreement unless the County has given its prior written consent; such consent will not be unreasonably withheld.
5. Notices.

- (a) 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: Tulare County Resource Management Agency
5961 S. Mooney Blvd.
Visalia, CA 93277
Phone No.: 559-624-7000
Fax No.: 559-730-2653

HCA: Hartland Christian Association
57611 Eshom Valley Drive
Badger, CA 93603
Phone No.: 559-337-2349
Fax No.: 559-337-2251

- (b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.
6. Power to Grant. The Parties acknowledge that the County may authorize an encroachment permit under Streets and Highway Code § 1460 et seq. and Tulare County Ordinance Code 3-07-1160 et seq. The Parties also acknowledge that the encroachment permit is not a lease and that under Streets and Highways Code § 1463, the permit may be revoked on five (5) days notice.
 7. Insurance: Prior to approval of this Agreement by COUNTY, HCA shall file with the Clerk of the Board of Supervisors evidence of the required insurance as set forth in

EXHIBIT B attached. Insurance policies shall not be used to limit HCA'S liability or to limit the indemnification provisions and requirements of this contract or act in any way to reduce the policy coverage and limits available from the insurer(s).

8. Repairs. HCA will make all repairs on the project as soon as is possible. In the event HCA has not commenced a repair referred to in a written notice from County to HCA within thirty (30) days after date of notice, County will have the right to repair or contract to repair and to be reimbursed by HCA. The full amount of the reimbursement is to be paid within thirty (30) days after County's delivery to HCA or a written statement or bill evidencing the cost of the repair.
9. Damages. HCA is solely responsible for any damages to the Pipeline and any subsequent repairs to the Pipeline and the County's facilities including, but not limited to, road shoulder, and pavement in the County right of way should any excavation, construction, or road work, either by County or any entities permitted by the County to work in County right of way, damage the Pipeline.
10. Lawful Permit. The encroachment permit may become invalid if HCA has not obtained all necessary permits, if any permits become invalid, or if HCA fails to comply with the conditions of any permit or this Agreement.
11. Encroachment Fee. HCA agrees to pay to the County an encroachment fee not to exceed one thousand eight hundred (\$1800) dollars on a reimbursement basis for actual expenditures incurred for Agreement preparation and Permit Application processing.
12. Exhibits and Recitals. The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.
13. Conflict with Laws. This Agreement is subject to all applicable laws and regulations. If any provision of this 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 any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.
14. Compliance with Law. HCA shall provide services in accordance with applicable Federal, State and local laws, regulations and directives.
15. Governing Law. The construction and interpretation of this Agreement shall be governed by and construed according to the laws of the State of California.
16. Counterparts. This Agreement may be executed and delivered in multiple counterparts, all of which, when executed and delivered, shall have the full force and effect of an original.

17. Bond. HCA will file a bond that guarantees the full performance of the work authorized by the permit. The bond must be in a form approved by the County. The amount of the bond will be based on estimated costs to complete the work and repair the highway.

18. Maintenance. HCA will be responsible for all maintenance, monitoring, repair and up-keep of the Pipeline insuring that it is safe and leak-free.

19. Property Taxes. HCA acknowledges and understands that this Agreement may create a possessory interest subject to property taxation. HCA will pay any property taxes levied upon that interest before they become delinquent.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth above.

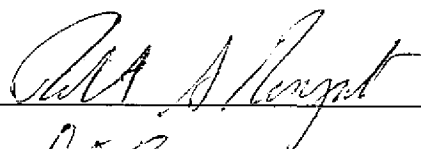
COUNTY OF TULARE
RESOURCE MANAGEMENT AGENCY

By: _____
Chairman Board of Supervisors

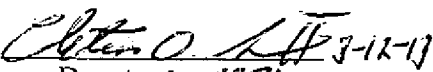
ATTEST: JEAN ROUSSEAU
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

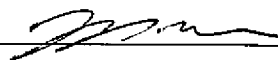
By: _____
Deputy Clerk

HARTLAND CHRISTIAN
ASSOCIATION, INC.

By: 
Title: CEO

Approved as to form
County Counsel

By: 
Deputy 2013371

By: 
Title: Board Chair

APPLICATION FOR ENCROACHMENT PERMIT

COUNTY OF TULARE
RESOURCE MANAGEMENT AGENCY
5961 S. MOONEY BLVD.
VISALIA, CA 93277
(559) 624-7000

ANY REQUIREMENTS OR REGULATIONS YOU FEEL UNJUST MAY BE APPEALED TO THE COUNTY BOARD OF SUPERVISORS. THE CONTRACTOR AND APPLICANT UNDERSTAND THAT THIS IS AN APPLICATION ONLY, NOT A PERMIT. NO WORK SHALL START UNTIL A PERMIT IS ISSUED AND THE PERMIT IS ON THE JOB SITE.

The undersigned hereby applies for a permit to allow them to do certain work within the right-of-way of a County Highway, in accordance with Sections 3-07-1160 to 3-07-1385 of the Ordinance Code of Tulare County. The necessary information concerning said work is as follows:

1. LOCATION and DESCRIPTION of the proposed work to be done within right-of-way.

A. General location described by number or name of highway.

Road _____ From Avenue _____ To Avenue _____
Avenue _____ From Road _____ To Road _____
Other Eshom Valley Dr From Redbud Ln / Eshom To Pine Lane

B. Description of exact location in feet of encroachment from the County property line or section line and edge of pavement, starting from the nearest cross road property line. (If more room is needed attach a sheet).

Example: Install 6" steel Water main on Road 100 starting 15'10" south of the Center Line of Ave. 100, at 25' east of the center line or section line of Road 100, and 5' east of the edge of oil, then south for 350', then east 5' to private property.

INSTALL:

Install approximately 360' of 2" PVC water main approximately 3' to 5' west of Eshom Valley Dr. in the right of way. Project will begin at the N/E corner of the Hartland Ball Field with the line going north approximately 360' then going west down the center of Pine lane.

2. ATTACH TWO (2) SETS OF PLANS showing road right-of-way, edge of pavement from property line. The exact location of proposed work, all County drain pipes, roads, avenues, type of driveways, bridges (need blowup), footage of encroachment for each road and all existing utilities.

3. TYPE OF WORK to be done. (check one)

Sewer ☐ Water ☒ Elec. Service ☐ A.C. Driveway ☐ Pipeline ☐
TV Cable ☐ Other _____

4. PURPOSE OF THE PROPOSED WORK. (check one)

New Main ☒ Replacement ☐ New Service ☐ Other _____

5. Will pavement be cut or disturbed.

Yes ☐ No ☒ Bore ☐ Open Trench ☐

6. The materials which will be used to perform this work are as follows.

Plastic Pipe <input type="checkbox"/>	Steel Pipe <input type="checkbox"/>	Cable <input type="checkbox"/>	Concrete Pipe <input type="checkbox"/>	Other _____
Size <u>2"</u>	Size _____	Size _____	Size _____	Size _____
Type <u>PVC</u>	Type _____	Type _____	Type _____	Type _____
SDR Rating <u>SCH - 40</u>				

7. The proposed work will be commenced on or about April 2013

To be completed on or about October 2013

8. Other pertinent information, including additional information required by the Resource Management Agency (RMA).

IF ADDITIONAL SPACE IS REQUIRED FOR FURNISHING ANY OF THE INFORMATION REQUIRED, PUT THE INFORMATION ON A SEPARATE SHEET OF PAPER AND ATTACH IT TO THIS APPLICATION.

The applicant agrees that the aforementioned work is subject to, and will be performed in accordance with all of the provisions of Sections 3-07-1160 to 3-07-1385 of the Ordinance Code of Tulare County. The applicant agrees to hold the County, its officers, agents and employees harmless from any and all causes of action, penalties, liabilities or loss resulting from claims or court actions arising out of any accidents, loss or damage to persons or property occurring as a result of any work performed pursuant to the permit.

The applicant agrees that the County shall not be responsible for any damage to any structure or installation constructed pursuant to a permit which is not clearly or visibly marked by the construction, reconstruction, maintenance or repair or by use of overweight equipment on the highway. The applicant agrees that he, his successors and assigns, upon being notified of such damage by the Resource

Management Agency Director or designee, shall immediately repair, remove or relocate the damaged structure or installation.

9. As required by sections 3-07-1195 to 3-07-1215 of the Ordinance Code of Tulare County, the following insurance policy and bond are furnished covering said work.

BOND (Min. \$5,000 to Max. \$25,000 determined by R.M.A.) (check one) INSURANCE POLICY (check one)

☒ On file with R.M.A.

☒ On file with R.M.A.

☐ Enclosed

☐ Enclosed

Bond Amount \$

10. APPROVAL OF SERVING PUBLIC UTILITY, PUBLIC AGENCY, OR COMMUNITY SERVICES DISTRICT FOR UTILITY, SEWER OR WATER CONNECTIONS:

Name of Serving Utility

Phone number

Signature

Date

CONTRACTOR

APPLICANT (PROPERTY OWNER)

Company Name Same as Owner

Name Hartland Christian Camp

Address: _____

Address: 57611 Eshom Valley Dr

City: _____ Zip Code: _____

City: Badger Zip Code: 93603

Signature: _____

Signature: [Signature]

Phone No (____) _____

Phone No (559) 337.2349

Date: _____

Date: _____

FOR COUNTY USE ONLY

Application Received _____

Field Review _____ By _____

Insurance expires _____

Office Check _____ By _____

Bond expires _____

OK for Permit _____ By _____

Returned _____ for _____ correction _____

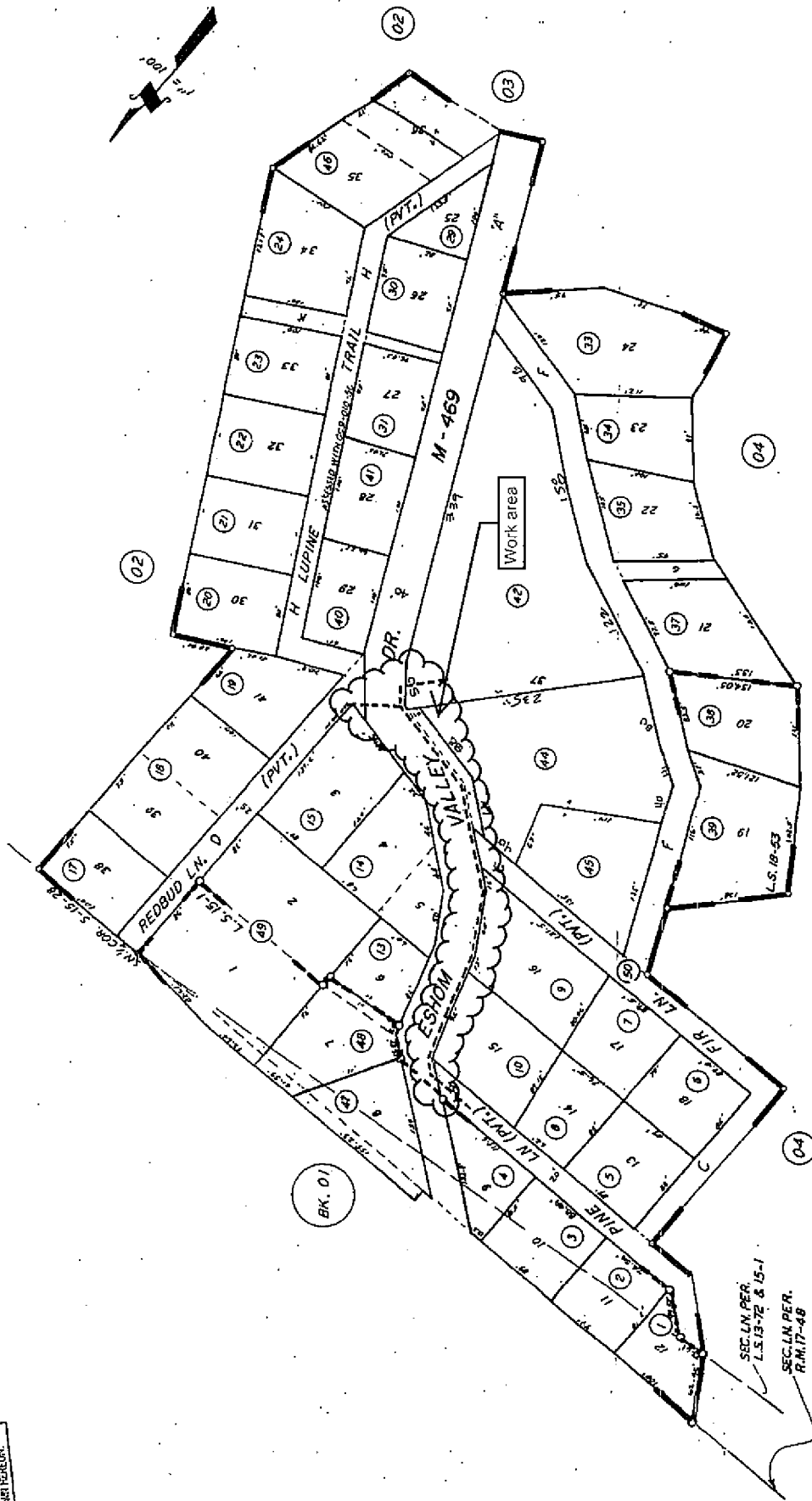
Notes to be added to Permits _____

POR. N¹/₂ OF E¹/₂ OF NW¹/₄ & POR. N¹/₂ OF W¹/₂ OF NE¹/₄ SEC. 5,
T.15S., R.28E., M. D. B. & M.

TAX CODE AREA
68-023

09-01

DISCLAIMER FOR LOCAL
PROPERTY ASSESSMENT PURPOSES ONLY.
THE PARCELS SHOWN HEREIN MAY NOT
CORRESPOND EXACTLY TO THE RECORDS
OF THE COUNTY OF TULARE, CALIF.
NO LIABILITY IS ASSUMED FOR
USE OF THE INFORMATION HEREON.



RECORD OF SURVEY, L.S. 18-53
RECORD OF SURVEY, L.S. 15-1
HARTLAND R. M. 17-48.
POR. RECORD OF SURVEY, L.S. 13-72 (ALL SEC. 5)
POR. RECORD OF SURVEY, L.S. 16-92 (ALL SEC. 5)

ASSESSOR'S MAPS BK 09, PG. 01.
COUNTY OF TULARE, CALIF.

NOTE - ASSESSOR'S BLOCK NUMBERS SHOWN IN ELIPSES
ASSESSOR'S PARCEL NUMBERS SHOWN IN CIRCLES

EXHIBIT B

PROFESSIONAL SERVICES CONTRACTS INSURANCE REQUIREMENTS

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Insurance Services Office Commercial General Liability coverage of \$1,000,000 combined single Limit per occurrence (occurrence Form CG 00 01). If an annual aggregate applies it must be no less than \$2,000,000.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability, (any auto) of \$1,000,000 per occurrence. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) Insurance appropriate to the CONTRACTOR'S profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.

B. Specific Provisions of the Certificate

1. CONTRACTOR must submit endorsements to the General Liability and Auto Liability reflecting the following provisions:
 - a. *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the CONTRACTOR.*
 - b. *For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.*
 - c. *Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice has been provided to the County.*
2. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors.

- a. *Waiver of Subrogation. The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the contractor, its employees, agents and subcontractors. CONTRACTOR waives all rights against the County and its officers, agents, official, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.*

C. Deductibles and Self-Insured Retentions

The COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A(-):VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage and a copy of the declarations page from the policy in effect in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.