

A-03-951

**AMENDED AND RESTATED**  
**PUBLIC SERVICES ALLOCATION AGREEMENT**  
**BY AND BETWEEN**  
**THE COUNTY OF SAN JOAQUIN**  
**AND**  
**MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT**  
**RELATING TO THE DEVELOPMENT KNOWN AS**  
**MOUNTAIN HOUSE COMMUNITY**

**DATED:** NOV 18 2003

A-03-951

THIS AMENDED AND RESTATED PUBLIC SERVICES ALLOCATION AGREEMENT is entered into this NOV 18 2003 day of       , 2003, by and between the COUNTY OF SAN JOAQUIN, a political subdivision of the State of California, and THE MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT, a Community Services District formed pursuant to Division 3 (commencing at Section 61000) of Title 6 of the Government Code.

RECITALS

Recital A. Mountain House is a comprehensive community located in the western portion of San Joaquin County which was approved for development by the Board as an urban community. It is anticipated that Mountain House will be developed over a twenty to forty year period and is expected to have approximately 44,000 residents at Community build-out.

Recital B. Because the Community is not contiguous to a city and is located in a relatively isolated area of the County, the most cost-effective and efficient manner for providing the required Services and Improvements to the Community is through the formation of a Community Services District. However, it is not contemplated that a Community Services District will provide all of the required Services and Improvements to the Community.

Recital C. On April 16, 1996, following a duly notice public hearing, the Board by Resolution No. R-96-196 declared the MHCSO duly organized, giving the district the name Mountain House Community Services District, detailing the purposes for which the MHCSO was formed, describing its initial boundaries, and its Sphere of Influence. This Agreement covers the property located within the MHCSO boundaries and any property within the Community which is later annexed to the MHCSO.

Recital D. The MHCSO has the power or powers necessary to provide the Services and Improvements allocated to it, the power or powers being established in its petition for formation or otherwise provided by law. The MHCSO further asserts that it intends to act as an independent entity from the County, to the extent of the powers granted to it.

Recital E. It is intended that the MHCSO will be expanded from time to time and will ultimately include the entire area of property designated as the Mountain House Community on the General Plan Land Use Map.

Recital F. The County desires assurance that the MHCSD will provide those Services and Improvements allocated to it by this Agreement, so as to permit the Community to proceed in accordance with the Community Approvals. The County further desires assurance that development of the Community will proceed in accordance with the Community Approvals and in a timely manner so that the Services and Improvements which the MHCSD will provide will be provided as contemplated for the benefit of the residents of the Community.

Recital G. The MHCSD desires assurance that the County will provide those Services and Improvements allocated to it by this Agreement, so as to permit the Community to proceed in accordance with the Community Approvals. The MHCSD further desires assurance that development of the Community will proceed in accordance with the Community Approvals and in a timely manner so that the Services and Improvements which the County will provide will be provided as contemplated for the benefit of the residents of the Community.

Recital H. This Agreement serves to implement the applicable Community Approvals by allocating the responsibility for providing the Services and Improvements required by the Community between the Parties. To the extent that this Agreement covers the same subject matter in the Community Approvals, this Agreement is intended to be consistent with those portions of the Community Approvals, and shall be carried out in accordance with the Community Approvals. Actions taken by the County or the MHCSD are intended to be consistent with the Community Approvals.

Recital I. The major objectives of this Agreement are to protect the fiscal resources of the County by allocating to the MHCSD the responsibility of providing the Community with certain Services and Improvements, so as to avoid a continuing negative fiscal impact being placed on the County by the development of the Community, and to ensure that the MHCSD will provide the necessary Services and Improvements allocated by this Agreement, as requested and required, within the MHCSD's Sphere of Influence when the lands are annexed to the MHCSD.

Recital J. It is anticipated by the parties that the Services and Improvements outlined in Section 4.C. of this Agreement will be provided by the designated Responsible Entity. The parties desire to work cooperatively to see that those designated Responsible Entities will provide the Services and Improvements allocated to them in that Section.

Recital K. As part of the formation proceedings, the property comprising the MHCSD was detached from the Tracy Rural Fire Protection District simultaneously with the creation of the MHCSD. As property is later annexed to the MHCSD, it is anticipated that simultaneous detachment will occur from the Tracy Rural Fire Protection District to the MHCSD subject to the approval of LAFCO and a reallocation of property tax revenue.

Recital L. It is contemplated that this Agreement will be supplemented and amended from time to time by more specific agreements detailing the specific requirements and obligations for the provision of Services and Improvements.

Recital M. It is intended that the MHCSD and the County shall require any Developer within the Community wishing to obtain Services and Improvements from the MHCSD to annex the property to the MHCSD and enter into a Master Acquisition and Reimbursement Agreement with the MHCSD.

Recital N. Both the MHCSD and the County have the power to enter into this Agreement, have taken all steps necessary to enter into this Agreement, and have determined that all of the above recitals are true and correct.

O. Recital O. The Public Service Allocation Agreement has been amended on January 26, 1999 and this Amended and Restated Agreement incorporates this previous amendment.

NOW, THEREFORE, in consideration of the promises and provisions set forth herein, the parties hereby agree as follows:

## AGREEMENT

**SECTION 1. DEFINITIONS.** Each reference in this Agreement to any of the following terms shall have the meaning set forth in this Section 1 for that term. All capitalized terms contained herein which are not otherwise defined in this Agreement shall have the same meaning as contained in the Master Plan.

1.A. Agreement. This Public Services Allocation Agreement.

1.B. Assessment Act(s). The Improvement Act of 1911, the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, the Benefit Assessment Act of 1982, the Landscaping and Lighting Act of 1972, and/or any other appropriate assessment act.

1.C. Board. The San Joaquin County Board of Supervisors.

1.D. Community. The Mountain House Community consisting of approximately 4,784 acres as designated on the General Plan Land Use Map, as well as any off-site lands required by the MHCSD or the County to fulfill the requirements of the Community Approvals.

1.E. Community Approvals. The approvals as granted by the Board at the public hearing held on November 10, 1994, including the General Plan Amendment, Master Plan, Development Title Amendments, Public Financing Plan, Specific Plan I, Master Plan Development Agreement, Mitigation Monitoring Program, the Tentative Williamson Act Cancellations WC-90-7 and W-90-8 as approved on February 25, 1993, by Resolution No. R-93-111 adopted by the Board, and such approvals detailed in Exhibit No. 1 and Exhibit No. 2 to the Master Acquisition and Reimbursement Agreement, and other approvals applicable to the Community, and as they may be amended.

1.F. Community Services District. A district formed pursuant to Division 3 (commencing at Section 61000) of Title 6 of the Government Code.

1.G. County. The County of San Joaquin and any board, commission, department, officer, or authorized agent thereof.

1.H. County Financing Mechanism(s). Funding available to the County, including, but not limited to, County Revenues; Mello-Roos, Assessment Acts, or any other financing district or entity; Revenue Bonds, general obligation bonds, or other debt financing; area of benefit facility fee; development, impact, mitigation, planning, environmental, and processing fees; monitoring program fees; stand-by charges; Developer Equity; franchise fees; and other means of financing (including, but not limited to, Federal, State, regional, and local funding sources); to be applied, formed, adopted, or secured by the County.

1.I. County Revenues. Funds available to the County in its General Fund and other funds, including, but not limited to, property taxes, sales taxes, Road District Funds, the

County Road Fund, Impact Fees, and any other available County funds, or any combination of the foregoing.

1.J. Developer(s). Any person, including Trimark, owning or developing land within the Community or contemplating development within the Community.

1.K. Developer Equity. The funds, land, or capital improvements provided by a Developer which are needed to facilitate development of the Community, which may be subject to reimbursement.

1.L. Development Agreement. The agreements entered into between the County and Developers pursuant to the authority under Government Code Section 65865 et seq.

1.M. Effective Date. The effective date of this Agreement as set forth in Section 2A hereof.

1.N. Flood Control District. The San Joaquin County Flood Control and Water Conservation District.

1.O. Franchises and Licenses. The right, privilege and franchise hereinafter more particularly described in each particular franchise ordinance and/or agreement.

Any person or corporation, except those granted special privileges by law of the State of California, desiring to make use of any public street or public highway within the MHCS D Sphere of Influence and County for the purpose of erecting or installing therein or thereon any facility shall be required to obtain from County a franchise authorizing such use.

1.P. General Plan. The County's General Plan.

1.Q. Impact Fees. Fees imposed by the County pursuant to Chapter 5 (commencing at Section 66000) of Division 1 of Title 7 of the Government Code.

1.R. LAFCO. The San Joaquin County Local Agency Formation Commission.

1.S. Land(s). Any interest in real property.

1.T. Master Acquisition and Reimbursement Agreement. An agreement entered into between a Developer and the MHCS D which delineates the obligations of the parties for providing Services and Improvements and the payment thereof, including the Master Acquisition and Reimbursement Agreement entered into between the MHCS D and Trimark dated January 30, 2001.

1.U. Master Plan. The Master Plan approved by the Board on November 10, 1994 and as may be amended.

1.V. Master Plan Development Agreement. The Development Agreement entered into between the County and Trimark which was approved and adopted by the Board on November 10, 1994, and as may be subsequently amended.

1.W. MHCSD. The Mountain House Community Services District, a political subdivision of the State, established to administer and provide to the Community certain urban services and infrastructure necessary for the development of the Community as set forth in the Community Approvals, and any present or future director, officer, or authorized agent thereof.

1.X. MHCSD Fees. Any fee, rate, tax, assessment, or charge which may be lawfully imposed by the MHCSD.

1.Y. MHCSD Financing Mechanism(s). Funding available to the MHCSD, including, but not limited to, Mello-Roos, Assessment Acts, or any other financing district or entity; Revenue Bonds, general obligation bonds, or other debt financing; area of benefit facility fee; development, impact, mitigation, planning, environmental, and processing fees; monitoring program fees; property tax revenues; special tax revenues; Road District Funds; stand-by charges; Developer Equity; MHCSD Fees; User Fees; Homeowner's Association fees; franchise fees; and other means of financing (including, but not limited to, Federal, State, regional, and local funding sources); to be applied, formed, adopted, or secured by the MHCSD.

1.Z. Ministerial Acts. Actions as defined as "ministerial" found in the 2003 version of the CEQA Guideline Section 15369 (14 CCR 15369, 2003) and including, but is not limited to, such things as (1) issuance of will serve letters, (2) acceptance of Services and Improvements, infrastructure, easements and rights of way, (3) agreements and acts to implement tentative maps, subdivision conditions including subdivision improvement and deferred improvement agreements, (4) issuance of encroachment permits, (5) approval of traffic control devices and markings except stop signs and traffic signals.

1.AA. Mosquito District. The San Joaquin County Mosquito Abatement District.

1.BB. Off-Site. All land, roads, improvements, and the like, which are located outside the boundaries of the MHCSD and which are required by the Community Approvals.

1.CC. Party. Either the County or the MHCSD.

1.DD. Parties. The County and the MHCSD.

1.EE. Person. Any individual, partnership, corporation, or other legal entity.

1.FF. Responsible Entity. The entity required to provide a particular Service and/or Improvement. For the purposes of this definition, "provide" includes, but is not limited to, land acquisition, design and construction, management, planning, ownership, financing, budgeting, operation, and maintenance. Services and Improvements may be assigned to or be required of a contractor, another Agency, or other entity acting on the behalf of the Responsible Entity.

1.GG. Revenue Bonds. Bonds issued pursuant to the Revenue Bond Act of 1941, Chapter 6 (commencing at Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code.

1.HH. Road District Funds. Property taxes collected by the County and allocated to the Road District in which the Community is located.

1.II. Service(s) and Improvement(s). One or more public services, facilities, programs, items of infrastructure, or capital improvements required for the Community or for the implementation of the Community Approvals.

1.JJ. Specific Plan I. The Specific Plan approved by the Board on November 10, 1994 and as may be amended.

1.KK. Sphere of Influence. The Sphere of Influence established by LAFCO for the CSD.

1.LL. State. The State of California.

1.MM. Term. The term of this Agreement as set forth in Section 2B below.

1.NN. Transit District. The San Joaquin Regional Transit District.

1.OO. Trimark. Trimark Communities, LLC, a California limited liability corporation or its assignees or transferees as approved by the County under the Development Agreements, and the third party beneficiary of this Agreement.



1.PP. User Fee. A fee imposed on a user of a service such as, but not limited to, a charge for water or sewer service or a parking fee for the use of a parking area. A User Fee includes standby charges.

## **SECTION 2. GENERAL PROVISIONS.**

2.A. Effective Date. This Agreement shall become effective upon its execution by the Parties

2.B. Term. The term of this Agreement shall commence upon the Effective Date and shall continue until otherwise modified or terminated by the mutual consent of the Parties.

## **SECTION 3. MUTUAL OBLIGATIONS OF THE COUNTY AND THE MHCSD**

Both parties agree to work cooperatively and constructively for progressive development of the Community throughout the entire build-out of the Community. Both parties agree that in carrying out any obligation, responsibility, or requirement provided in this Agreement, all actions shall be performed in accordance with the Community Approvals in a timely manner so as not to hinder or delay buildout of the Community. This obligation includes but is not limited to issuance of will serve letters and encroachment permits; extension and expansion of infrastructure; acceptance of dedication of infrastructure improvements, property, easements and rights of way; approval of plans and specifications; insuring expansion of water, wastewater and storm water facilities in advance of the development schedule subject to and consistent with state and federal requirements; and such other reviews and approvals necessary to insure construction of infrastructure improvements in accordance with the Master Acquisition and Reimbursement Agreement. Both parties agree that in the event that there is an application to LAFCO for incorporation of all or any part of the area within the boundaries of MHCSD, they will positively urge LAFCO to provide that any LAFCO approval is conditioned upon the newly incorporated city honoring all of the terms of the Community Approvals as defined in Section 1.E of this Agreement and that the newly incorporated city shall carryout the terms of such Community Approvals in a timely manner so as not to hinder or delay buildout of the Community. This obligation includes but is not limited to issuance of will serve letters and encroachment permits; extension and expansion of infrastructure; acceptance of dedication of infrastructure

improvements, property, easements, and rights of way; approval of plans and specifications; insuring expansion of water, wastewater and storm water facilities in advance of the development schedule subject to and consistent with state and federal requirements; and such other reviews and approvals necessary to insure construction of infrastructure improvements in accordance with the Master Acquisition and Reimbursement Agreement.

3.A. Obligations of the County to the MHCSD. In consideration of the MHCSD entering into this Agreement, the County agrees as follows:

3.A.1. Development of the Community. To cooperate with the MHCSD in the progressive development of the Community.

3.A.2. Services and Improvements. To provide the Services and Improvements allocated to it within the boundaries of the MHCSD, except as may be mutually agreed to by the Parties, and to refrain from providing any of the Services and Improvements allocated to the MHCSD in this Agreement within the MHCSD boundaries, unless mutually agreed upon by the Parties.

3.A.3. Annexation to the MHCSD. As a subsequent condition to approval of entitlements for any property outside the MHCSD, but within the Sphere of Influence, to require annexation to the MHCSD of all such property, subject to approval by LAFCO and excepting existing uses and development under the AU zone.

3.A.4. Detachment from Fire District. To the extent of its ability, the County shall cooperate to encourage future detachments from the Tracy Rural Fire Protection District when annexations to the MHCSD occur and shall reallocate the property tax revenues allocated to Tracy Rural Fire Protection District to the MHCSD for the property detached.

3.A.5. Development Agreement. To act consistent with and take all actions necessary to implement the Development Agreements applicable to the Community.

3.A.6. Master Acquisition and Reimbursement Agreement. To take no action to frustrate the implementation of the Master Acquisition and Reimbursement Agreements applicable to the Community.

3.A.7. Services and Improvements Restrictions. As set forth in Section 2.3 of the Amended and Restated Development Agreement between the County and Trimark dated October 17, 2000, no future modification of the County Code or any ordinance or regulation, by initiative or otherwise, which otherwise limits or regulates the rate of development over time shall be applicable. In furtherance of this objective, County agrees that to the maximum extent permitted under law, the development of the Community shall be exempt from growth control measures, development moratoria, including limitation on the number of building permits, and/or such other measures which affect the rate, timing, or sequence of development, whether enacted by the County or by vote of the electorate of the County or State, which would stop or delay the development of the Community in conflict with the Community Approvals or the provisions of this Agreement. The County shall not require the MHCS D to provide any additional Services and Improvements other than that which is contained in the Community Approvals without prior approval of the MHCS D.

3.A.8. Plans and Programs for the Community. To adopt or accept, and amend as necessary, the community plans and programs as set forth in Exhibit "A." The County shall refer these community plans and programs and amendments thereto to the MHCS D for review and comment. The County shall accept the community plans and programs set forth in Exhibit "B" when consistent with the Community Approvals.

3.A.9. Impact Fees. To transfer to the MHCS D the Impact Fees identified and collected for the MHCS D by the County.

3.A.10. Community Monitoring Program. To work in good-faith to develop and participate in the Community Monitoring Program required by the Master Plan.

3.A.11. Police Protection Services. To provide police protection services to the MHCSD by contract at a level consistent with the level provided on a county-wide basis.

3.A.12. Road District #5 Funds. To allocate to the MHCSD Road District #5 revenues collected for the roads for which the MHCSD has assumed ownership and maintenance responsibilities.

3.B. Obligations of the MHCSD to the County. In consideration of the County entering into this Agreement, the MHCSD agrees as follows:

3.B.1. Development of the Community. To cooperate with the County in the progressive development of the Community and in carrying out any obligation, responsibility, or requirement provided in this Agreement, all actions shall be performed in accordance with the Community Approvals in a timely manner so as not to hinder or delay buildout of the Community. This obligation includes but is not limited to issuance of will serve letters and encroachment permits; extension and expansion of infrastructure; acceptance of dedication of infrastructure improvements, property, easements and rights of way; approval of plans and specifications; insuring expansion of water, wastewater and storm water facilities in advance of the development schedule subject to and consistent with state and federal requirements; and such other reviews and approvals necessary to insure construction of infrastructure improvements in accordance with the Master Acquisition and Reimbursement Agreement.

3.B.2. Services and Improvements. To provide the Services and Improvements allocated to it only within its boundaries, except as provided in the Community Approvals, agreements with governmental agencies and with utilities, and except that Services and Improvements may be provided to land owned by the MHCS D outside its boundaries, and as may be mutually agreed to by the Parties.

3.B.3. Development Agreement. To take no action to frustrate the implementation of the Development Agreements applicable to the Community.

3.B.4. Master Acquisition and Reimbursement Agreement. To act consistent with and take all actions necessary to implement the Master Acquisition and Reimbursement Agreements applicable to the Community.

3.B.5. Expedite Provision of Services and Improvements. To act in good faith and manage its affairs in a manner which enables prompt response to any request to provide the Services and Improvements to the participants who have paid for the improvements and/or are willing to pay for the Services and Improvements allocated by this Agreement.

3.B.6. Services and Improvements Restrictions. To the maximum extent permitted under law, the development of the Community shall be exempt from growth control measures, development moratoria, and/or such other measures which affect, hinder, stop, delay or frustrate Trimark's rate, timing, or sequence of development, including any such measures which purport to regulate or limit the number of building permits which may be issued by the County, whether annually or otherwise, and whether enacted by the County, MHCS D or by vote of the electorate of the MHCS D, County, or State, which would stop or delay the development of the Community as contemplated in the Community Approvals or the provisions of this Agreement.

3.B.7. Implementation Measures. To observe and follow the policies and abide by and implement the implementation measures as required in the Community Approvals for the MHCSD and the "Community" as used in the Master Plan. The MHCSD agrees that it shall seek to achieve the timing requirements as prescribed in the applicable implementation measures.

3.B.8. Mitigation Monitoring Program. To the extent the MHCSD is responsible, the MHCSD shall observe, follow, and implement the Mitigation Monitoring Programs.

3.B.9. Annexation. Approve all annexations within the Sphere of Influence as approved by LAFCO, subject to the payment of a reasonable annexation fee and Applicant's compliance with all other reasonable conditions of annexation as determined by the MHCSD.

3.B.10. Plans and Programs for the Community. To adopt and amend as necessary, the community plans and programs set forth in Exhibit "B." The MHCSD shall refer these community plans and programs and amendments thereto to the County for review and comment. The MHCSD shall review and comment on the community plans and programs set forth in Exhibit "A" and shall work with the County to implement these programs.

3.B.11. Water Service Agreement. The Water Service Agreement with Byron Bethany Irrigation District has been executed.

3.B.12. Acquisition of Lands. To acquire, and if necessary exercise its power of eminent domain, for all land necessary for improvements required under the Community Approvals.

3.B.13. Community Monitoring Program. To work in good-faith to participate in the Community Monitoring Program required by the Master Plan.

3.B.14. Jobs/Housing Monitoring Program. To work in good-faith to participate in the Jobs/Housing Monitoring Program required by the Master Plan.

3.B.15. Interim Funding Agreement. An Interim Funding Agreement with Trimark Communities has been executed.

**SECTION 4. ALLOCATION OF RESPONSIBILITY FOR PROVIDING SERVICES AND IMPROVEMENTS.**

4.A. County Responsibility. The County shall be the Responsible Entity, subject to its budgeting process and the "fair share" requirements in the Master Plan, for providing the Services and Improvements as outlined in this Section and/or in the Community Approvals. The funding source for the Services and Improvements allocated to the County shall be through the use of the County Financing Mechanisms, unless otherwise specified.

4.A.1. Development and Building Requirements. To provide land use planning and regulation.

4.A.2. Off-Site County Roads. To maintain off-site county roads, including routine maintenance, signalization, landscaping, signage, and lighting.

4.A.2.a. Traffic Regulations. The County shall, upon recommendation of the MHCSO, process, adopt, and implement traffic regulations for the roadways within the Community which are consistent with State law and which under State law the MHCSO is unable to adopt and implement.

4.A.3. Existing Roads. The County consents to, pursuant to Community Service District Law in Government Code Section 61600(j) and (k), the MHCSO ownership and maintenance of the streets and incidental works within the MHCSO and within the MHCSO's Sphere of Influence.

4.A.4. Off-Site Regional Bicycle Facilities. To provide off-site regional bicycle facilities.

4.A.5. Altamont Platform. To the extent of the County's responsibility, to provide a rail platform including construction of a passenger platform, multi-modal station, or other similar facility.

4.A.6. Emergency Preparedness. To provide Emergency Preparedness to the extent provided in the Community's Emergency Preparedness Plan.

4.A.7. Hazardous Waste Management. To provide for the management of hazardous waste including coordination of toxic materials information.

4.A.8. Animal Control. To provide animal control services and facilities consistent with the level provided on a county-wide basis.

4.A.9. Affordable Housing Program. To implement and monitor an Affordable Housing Program, as provided in the Community Approvals.

4.A.10. Employee Benefits. At the MHCS D's request, to contractually provide or administer health, dental, and life insurance and other benefits for employees of the MHCS D, so long as permissible by the providers of the benefits.

4.A.11. Other Governmental Services. All other general local governmental services shall be provided by the County except as otherwise provided by law or specifically mentioned in this Agreement and except as otherwise provided in the Master Plan.

4.B. MHCS D Responsibility. The MHCS D shall be the Responsible Entity, subject to its budgeting process, for providing the Services and Improvements outlined in this Section and/or in the Community Approvals. The funding source for the Services and Improvements allocated to the MHCS D shall be through the use of the MHCS D Financing Mechanisms, unless otherwise specified.

4.B.1. Community Roadways. To provide all public roadways, streets, collectors, and alleys within the Community, including the signalization, landscaping, signage, lighting, monuments, sound walls and other noise mitigation measures, buffers, grade separation, bridges, sidewalks, multi-purpose paths, transit stops, and community and neighborhood entries.

4.B.1.a. Traffic Regulations. Under Vehicle Code Section 21104 the MHCS D shall have exclusive jurisdiction to develop, adopt, and implement traffic control devices and traffic regulations for the Community Roadways within the Community, except where prevented by State law.

4.B.2. Existing Roadways. The MHCS D has accepted ownership and responsibility for all existing County roadways within the boundaries and Sphere of Influence of the MHCS D. The MHCS D and the County may enter into subsequent agreements whereby the County provides road maintenance services to the MHCS D.

4.B.3. Neighborhood and Community Parks and Open Space Areas. To provide neighborhood parks, community parks, and other open space and publicly owned recreational facilities, including, but not limited to, improvements for flood control, wetland preservation, erosion control, recreational and park improvements and recreational activities programming within the Community.



4.B.4. Regional Park. To provide an on-site regional park as set forth in the Master Plan.

4.B.5. Habitat Management. To implement, monitor, and provide related management for required species mitigation, including, but not limited to, implementation of the Habitat Management Plan and/or participation in the San Joaquin County Multi-Species Habitat Conservation Plan.

4.B.6. Bicycle and Pedestrian Circulation. To provide a bicycle and pedestrian circulation system and facilities, including multi-purpose paths, bicycle facilities, lockers, bicycle racks, and bicycle storage areas within the Community, and to provide a direct route within the boundaries of the MHCS D to the City of Tracy in conjunction and coordination with the City of Tracy.

4.B.7. Fire Protection and Emergency Response. To provide fire protection services and emergency medical response services consistent with an adopted Fire Protection Plan.

4.B.8. Police Protection. To provide police protection service consistent with an adopted Police Services Plan.

4.B.9. Weed Abatement. To provide weed abatement.

4.B.10. Transit Services. To provide local and regional transit services and facilities as provided in the Transit Services Plan and in conjunction with the Transit District, including providing three (3) free months transit for each new resident of the Community, if available at no cost to the MHCS D.

4.B.11. Altamont Pass Bus Shuttle Service. Upon implementation of passenger rail service over the Altamont Pass, initiate, operate, and maintain a bus shuttle service in San Joaquin County to and from the Community to a platform west of Interstate 580.

4.B.12. Rail Transit Facility. Upon implementation of passenger rail service on the Mococo Line and in conjunction with the appropriate entity, to construct a passenger platform, and later a multi-modal station within the Community at the Mococo Line.

4.B.13. Telecommunications and Cable Television. To exercise the powers granted under Government Code Section 61601.26(f), including, but not limited to, granting franchises and licenses pursuant to Government Code Section 53066. The MHCS D

agrees to honor any existing franchise issued by the County until expiration of the current term of the franchise.

4.B.14. Water Treatment Plant and Storage Facilities. To provide potable water to meet all phases of development of the Community.

4.B.15. Water Distribution System. To provide a water distribution system as needed to meet the requirements of all phases of development of the Community.

4.B.16. Wastewater Treatment Plant. To provide wastewater treatment services, including wastewater storage, reuse and/or disposal to meet all phases of development of the Community.

4.B.17. Wastewater Collection System. To provide a wastewater collection system to meet the requirements of all phases of development of the Community.

4.B.18. Stormwater Drainage System. To provide a stormwater drainage system to meet the requirements of all phases of development of the Community.

4.B.19. Flood Control Protection. To provide flood control protection, including, but not limited to, the design and construction of a levee system and levee maintenance, and flood and erosion control.

4.B.20. Public Art and Monuments. To provide public art and monuments throughout the Community as determined to be appropriate by the Board of Directors of the MHCS D.

4.B.21. Dissemination of Information. To disseminate information to the Community regarding aspects of the Community for which the MHCS D has the responsibility.

4.B.22. Waste Management. To provide waste management services, including waste collection, and recycling. The MHCS D's solid waste stream shall be directed to a facility as designated by the San Joaquin County Department of Public Works.

4.B.23. Child Care. To act as the clearinghouse for all child care providers in the Community.

4.B.24. Joint Use of Facilities. To actively work with the Lammersville Elementary School District and the Tracy Joint Union High School District for the joint use of community and school facilities.

4.B.25. Public Land Equity Program. To administer the Public Land Equity Program.

4.B.26. Library Facilities. To provide library facilities when the Community requires more or expanded Library Services.

4.B.27. Emergency Preparedness. To provide Emergency Preparedness to the extent provided in the Community's Emergency Preparedness Plan.

4.C. Other Services and Improvements Providers. The following Services and Improvements may be provided by the designated Responsible Entities:

4.C.1. Ambulance Services. The San Joaquin County Emergency Medical Services Agency is responsible for the emergency medical transport services by private contractor within the Community.

4.C.2. Freeway Improvements. The California Department of Transportation is responsible for the required improvements to all State highways, except that the MHCS D shall participate in accordance with the Community Approvals.

4.C.3. Library Services. The Stockton-San Joaquin Library system is responsible for library services including staffing and bookmobile services. The MHCS D may augment the library services by the contribution of funds.

4.C.4. Schools. The Lammersville Elementary School District and the Tracy Joint Union High School District, respectively, are responsible for school facilities for elementary and high school levels, except that the MHCS D shall participate in accordance with the Community Approvals.

4.C.5. Mosquito Abatement. The Mosquito District is responsible for mosquito abatement services.

4.C.6. Regional Transit Service. The Transit District is responsible for regional transit services and facilities except as supplemented by the MHCS D and in accordance with the Community Approvals.

4.C.7. Consent of Flood Control District. By allocating the responsibility for providing flood control protection service to the MHCS D, the Board of Supervisors as the governing Board of the Flood Control District has consented, as set forth in the Certificate of Flood Control District attached as Exhibit "C" and incorporated herein by reference, to the

MHCSD's exercise of its power to provide flood control protection service, but the Flood Control District shall retain the responsibility for approving any flood control improvements which have an impact beyond the Community boundaries.

**SECTION 5. MHCSD MANAGEMENT STRUCTURE – GENERAL MANAGER.** The MHCSD shall employ a General Manager to implement the Community Approvals. The General Manager shall report directly to the MHCSD Board of Directors. The MHCSD shall by ordinance set forth the duties of the General Manager including, but not limited to, implementing Ministerial Acts.

**SECTION 6. COMPREHENSIVE FISCAL ANALYSIS.** Government Code Section 56833.5 obligates the County to pay the costs associated with the preparation of a comprehensive fiscal analysis required for incorporation of a city within the territory of the MHCSD. The MHCSD agrees that it shall pay all costs associated with the preparation of the required comprehensive fiscal analysis.

**SECTION 7. THIRD PARTY BENEFICIARY.** The County and the MHCSD agree that Trimark is the third party beneficiary under this Agreement and Trimark, either separately or jointly with one of the Parties, may enforce any of the provisions of this Agreement.

**SECTION 8. DEFAULT; REMEDIES; TERMINATION.**

8.A. General Provisions. Failure or unreasonable delay by any party to perform any material term, provision, or condition of this Agreement for a period of ninety (90) days after written notice thereof from any party, including Trimark, shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. The time of notice shall be measured from the date of certified mailing. The notice shall specify the nature of the alleged default and, where appropriate, the manner and period of time, in no event less than 90 days, in which said default may be satisfactorily cured. If the nature of the alleged default is of a nature that it cannot reasonably be cured within the 90-day period, the commencement of the cure within the time period and the diligent prosecution to completion of the cure shall be

deemed a cure within the period. During any period of curing, any party shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is cured, then no default shall exist and the noticing party shall take no further action.

8.B. Default by County. In the event the County defaults under the terms of this Agreement, the MHCS D and/or Trimark shall have all rights and remedies provided herein or under applicable law, which may include specific performance, as set forth in Section 8.E. and 8.E.1 of this Agreement.

8.C. Default by MHCS D. In the event the MHCS D defaults under the terms of this Agreement, the County and/or Trimark shall have all rights and remedies provided herein or under applicable law, which may include specific performance, as set forth in Section 8.E. and 8.E.1 of this Agreement.

8.D. Enforced Delay; Extension of Time for Performance. In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, judicial decisions, or similar basis for excused performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement, any of the Community Approvals, or any permit, ordinance, entitlement, or other action of a governmental agency necessary for the development of the Community shall be deemed to create an excusable delay as to any party. Upon the request of any party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon by the parties.

8.E. Legal Action. Any party may, including Trimark in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any provision or agreement herein, enjoin any threatened or attempted violation thereof; enforce by specific performance the obligations and rights of the parties hereto; or to obtain any remedies consistent with the purpose of this Agreement. The legal actions shall be initiated in the Superior Court of the County of San Joaquin, State of California.

8.E.1. Specific Performance. The Parties recognize that damages may not be sufficient to compensate a party for breach of this Agreement. The Parties agree that all obligations and acts required by each respective Party, pursuant to this Agreement, are sufficiently certain to make the precise act which is to be done clearly ascertainable. The Parties further agree that the remedy of specific performance shall be available to enforce any and all provisions under this Agreement.

8.F. Applicable Law/Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State. If legal action by any party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and court costs. Attorney's fees shall include attorney's fees on any appeal, and in addition, a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating the actions, taking depositions and discovery, and all other necessary costs incurred in the litigation. All fees shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not the action is prosecuted to a final judgment. If legal action is brought by a third party, Sections 11 and 12 of this Agreement shall apply.

**SECTION 9. HOLD HARMLESS AGREEMENT.** The MHCSD hereby agrees to defend, and hold harmless, the County and its elected and appointed officers, agents, employees, and representatives against and from, any and all claims, costs, and liabilities for any personal injury, death, or property damage which arise directly or indirectly, from the Services and Improvements performed under this Agreement by the MHCSD, the MHCSD's contractors, subcontractors, agents or employees, whether the operations were performed by the MHCSD or any of the MHCSD's contractors, subcontractors, by any one or more persons directly or indirectly employed by, or acting as agent for the MHCSD or any of the MHCSD's contractors or subcontractors. The County hereby agrees to defend, and hold harmless, the MHCSD and its elected and appointed officers, agents, employees, and representatives against and from, any and all claims, costs, and liabilities for any personal injury, death, or property damage which arise directly or indirectly, from the Services and Improvements performed under this Agreement by the County, the County's contractors, subcontractors, agents or employees, whether the

operations were performed by the County or any of the County's contractors, subcontractors, by any one or more persons directly or indirectly employed by, or acting as agent for the County or any of the County's contractors or subcontractors.

#### **SECTION 10.     MISCELLANEOUS PROVISIONS.**

10.A.   Severability. If any term, provision, or condition of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

10.B.   Other Necessary Acts. Each party shall execute and deliver to the other all other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

10.C.   Amendment of Agreement. This Agreement may only be amended in writing by the original parties, or their successors in interest. The Parties shall cooperate in effecting needed amendments to this Agreement.

10.D.   Other Miscellaneous Terms. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

10.E.   Binding on Successors. All of the provisions, agreements, rights, powers, terms, and obligations contained in this Agreement shall be binding upon the Parties and their respective successors.

10.F.   Notices. Any notice or communication required hereunder must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing the notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days written

notice to the other party hereto, designate any other address in substitution of the address to which the notice or communication shall be given. The notices or communications shall be given to the parties at their addresses set forth below:

If to the County, to:

Chairman of the Board of Supervisors  
San Joaquin County  
222 East Weber Avenue, 7th Floor  
Stockton, California 95202

If to the MHCSO, to:

General Manager  
Mountain House Community Services District  
222 East Weber Avenue, Room 3  
Stockton, California 95202

With Copies to:

County: Terrence Dermody  
County Counsel  
222 East Weber Avenue, 7th Floor  
Stockton, California 95202

MHCSO: Michael F. McGrew  
Special Counsel  
222 East Weber Avenue, Room 3  
Stockton, California 95202

A party may change its address by giving notice in writing to the other party. Thereafter, notices, demands, and other pertinent correspondence shall be addressed and transmitted to the new address.

#### **SECTION 11. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.**

If any legal or equitable action or other proceeding is brought by any third party, including any governmental entity or official, challenging the validity of any provision of this Agreement or any action taken or decision made hereunder, the Parties shall cooperate in defending the action or proceeding, and the cost and expense of the defense, including, but not limited to attorney's



fees, shall be split equally between the parties. In the event the Parties are unable to select mutually agreeable legal counsel to defend the action or proceeding, each Party may select its own legal counsel at each Party's expense.

**SECTION 12. THIRD PARTY LITIGATION.** If any Party is required to initiate or defend any action or proceeding with a third party, including, without limitation, any cross-complaint, counterclaim, or third-party claim, because of the other Party's commission of any event of default, or other breach of or failure to perform this Agreement, then the Party bringing or defending the action shall be entitled to recover its costs and expenses incurred in the action, including reasonable attorneys' fees, from the other Party.

**SECTION 13. ENTIRE AGREEMENT.** This Agreement consists of thirty-one (31) pages which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement shall be in writing and signed by the appropriate authorities of the parties.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

**(\*\* Signatures on the next page\*\*)**

COUNTY OF SAN JOAQUIN:

By: JACK A. SIEGLOCK

JACK A. SIEGLOCK

Chairman of the Board  
of Supervisors

MOUNTAIN HOUSE COMMUNITY  
SERVICES DISTRICT:

By: \_\_\_\_\_

PAUL M. SENSIBAUGH

General Manager

APPROVED AS TO FORM:

By: Michael F. McGrew

MICHAEL F. MCGREW

Special Counsel

ATTEST: LOIS M. SAHYOUN  
Clerk of the Board of Supervisors  
of the County of San Joaquin, and  
Secretary of the Board of Directors  
of the Mountain House Community  
Services District

By: LOIS M. SAHYOUN

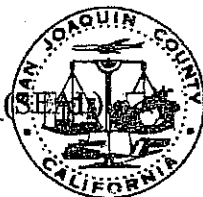


EXHIBIT "A"  
**COUNTY PLANS AND PROGRAMS**

- A. Parks and Open Space Plan
- B. Mountain House Development Title, Design Standards
- C. Affordable Housing Program/Implementing Ordinances
- D. Public Land Equity Program/Implementing Ordinances
- E. Cost Reimbursement Program/Implementing Ordinances
- F. Initial Transit Services Plan
- G. Emergency Preparedness Plan
- H. Revision of TIMF Program
- I. Transportation Offset Program
- J. County Mountain House Community Monitoring Program
- K. Pipeline Safety Plan
- L. Energy Conservation Plan

A-G: County adopts and amends through the public hearing process.

H-I: Board of Supervisors adopt at a public hearing without Planning Commission recommendation.

K-L: County staff acceptance without formal public hearing process.

EXHIBIT "B"  
**MHCSD PLANS AND PROGRAMS**

- A. Fire Protection Plan
- B. Design Guidelines Manual
- C. Mountain House Creek and Old River Discharge Plan
- D. TDM, TSM, and Parking Management Program
- E. Transit Services Plan
- F. Road Landscaping Plan
- G. Road Improvement Plan
- H. Parks and Open Space Manual
- I. CSD Mountain House Community Monitoring Plan
- J. Water Conservation Plan
- K. Wastewater Reclamation Plan, as may be incorporated in the engineering report for the wastewater treatment plan
- L. Hazardous Materials Management Plan
- M. Construction Truck Management Plan
- N. Street/Storm Sewer Maintenance Program

\* All the above listed plans and programs must be accepted by the County in order to satisfy the Community Approvals. These plans and programs are not considered under the regulatory control of the County; these can be amended from time to time by the MHCSD, subject to review and comment by the County and in accordance with the Community Approvals.