

AGREEMENT REGARDING WITHDRAW OF APPEAL

This AGREEMENT (hereinafter referred to as “Agreement”) is by and between CALAVERAS COUNTY WATER DISTRICT (“CCWD”), FORD CONSTRUCTION COMPANY, INC., FOOTHILL MATERIALS, INC, CHESTER BROSS CONSTRUCTION COMPANY, and CB ASPHALT, INC., (collectively “Operator”). CCWD and Operator are collectively referred to as the “Parties.” The Parties agree as follows:

- 1.** Operator is the owner and operator of a gravel quarry located on 3650 Hogan Dam Road, (“Quarry”) which is located near the Calaveras River.
- 2.** CCWD is the owner of a water treatment plant in Jenny Lind that is also located along the Calaveras River and which draws its water from the Calaveras River and is across the river from the Quarry.
- 3.** In or about April 2015, Operator proposed to use a portable Asphaltic Concrete Batch Plant at the Quarry.
- 4.** On or about April 30, 2015, the County of Calaveras Planning Director sent Operator a letter indicating that Operator’s proposed Asphaltic Concrete Batch Plant (“ACBP”) at the Quarry was a permitted use under the current M2 zoning on the Quarry.
- 5.** On or about May 14, 2015, CCWD filed an appeal of the Planning Director’s determination to the Calaveras County Planning Commission. CCWD filed the appeal to protect its ability to have input into the review of the Asphaltic Concrete Batch Plant. CCWD was and is concerned that the Asphaltic Concrete Batch Plant could impact the water quality at CCWD’s Jenny Lind Water Treatment Plant.
- 6.** The Parties now desire to work out an agreement to avoid a public hearing on CCWD’s appeal.
- 7.** CCWD agrees to send a notice to the Calaveras County Planning Commission withdrawing its appeal on the condition that Operator agrees to take the following steps prior to operation of its Asphaltic Concrete Batch Plant.
 - (a)** Operator agrees to notify the California Regional Water Quality Control Board, Central Valley Region, of its proposed Asphaltic Concrete Batch Plant and apply for and obtain any necessary approvals or permits from the California Regional Water Quality Control Board, Central Valley Region.
 - (b)** Operator’s Industrial SWPPP will be updated to include the Asphaltic Concrete Batch Plant by June 30, 2015;
 - (c)** Operator has notified the Calaveras County Air Pollution Control District to obtain any and all necessary permits, and will obtain a permit from the Calaveras County Air Pollution Control Distirct;

- (d) Operator agrees to comply with all federal, state and local obligations to operate the Asphaltic Concrete Batch Plant;
- (e) Operator agrees to comply with any conditions imposed by any of the above agencies referenced in 7(a) through 7(d).

8. Operator agrees that during any of the above agencies' review of the Asphaltic Concrete Batch Plant, CCWD shall be entitled to submit comments to the agencies with any concerns and suggestions CCWD has with the operation of the Asphaltic Concrete Batch Plant.

9. After approval of the Asphaltic Concrete Batch Plant, as provided in Section 7 above, should CCWD have any concerns regarding the operation of the plant, prior to contacting any federal, state or local authority regarding the operation of the Asphaltic Concrete Batch Plant, CCWD shall first give notice to the Operator of its concerns and give Operator ten (10) business days from receipt of written notice to address CCWD's issues.

(a) Notwithstanding this Section, in the event that CCWD determines that waiting the ten (10) days required by Section 9 could result in additional risk of imminent harm to CCWD, CCWD can notify any necessary federal, state or local authorities at the same time it notifies Operator.

10. Except as necessary to operate the Asphaltic Concrete Batch Plant for purposes of conducting the testing required by the Air Pollution Control District prior to receipt of the Air Pollution Control District permit, FCCI agrees that should FCCI begin operating the Asphaltic Concrete Batch Plant in breach of this Agreement without the above review and approvals, that CCWD would suffer irreparable injury and therefore FCCI agrees that upon this breach, CCWD is entitled to an injunction from the Calaveras County Superior Court to prevent FCCI from operating the Asphaltic Concrete Batch Plant until this Agreement has been complied with by FCCI.

11. Notices. All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this section, shall be addressed to the parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (a) upon receipt when hand delivered during normal business hours (provided that, notices which are hand delivered shall not be effective unless the sending party obtains a signature of a person at such address that the notice has been received); (b) upon receipt when sent by facsimile to the number set forth below (provided that, notices given by facsimile shall not be effective unless the sending party also sends the notice by one other method permitted under this Section not later than one business day after the facsimile); (c) upon the date of delivery after notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that, the sender has in its possession the return receipt to prove actual delivery); or (d) one (1) business day after the notice has been deposited with either FedEx or United Parcel Service to be delivered by overnight delivery (provided that, the sending party receives a confirmation of actual delivery from the courier). The addresses of the parties to receive notices are as follows:

TO CCWD:

General Manager
Calaveras County Water District
120 Toma Court
San Andreas, CA 95249

With a copy to CCWD's Attorney:

Matt J. Weber
Downey Brand LLP
3425 Brookside Road, Suite A
Stockton, CA 95219

TO OPERATOR:

Nick Jones
President
Ford Construction Company, Inc.
300 W. Pine Street
Lodi, CA 95240

Shawn N. Simmons
CB Asphalt, Inc.
Chester Bross Construction Company
39 California Street, PMB 118
Valley Springs, CA 95252

With a copy to Operator's Attorney:

Diane G. Kindermann
Abbott & Kindermann, LLP
2100 21st Street
Sacramento, CA 95818

12. Execution. This Agreement may be executed in separate counterparts, each of which shall be deemed an original and shall be binding upon and inure to the benefit of the Parties hereto, but all of such counterparts together shall constitute one instrument. Copies and fax copies of this document may be used in lieu of the original and such copies shall be equally admissible in evidence.

13. Written Modification. This Agreement may be modified only by a written instrument signed by the Parties hereto.

14. Governing Laws. This Agreement shall be governed by the laws of the State of California.

15. No Admissions. It is understood that the release and discharge of claims or payment of any amounts under this Agreement shall not be construed as an admission of liability by any Party hereto.

16. Binding Effect. This Agreement is binding upon the Parties hereto and their respective agents, officers, directors, employees, executors, administrators, heirs, assigns and successors-in-interest.

17. Ambiguities. This Agreement has been reviewed by the Parties and their respective attorneys, and the Parties have had a full opportunity to negotiate the contents of this Agreement. The Parties expressly waive any common law or statutory rule of construction that

ambiguities should be construed against the drafter of this Agreement, and agree that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair and reasonable meaning.

18. Entire Agreement. This Agreement constitutes the entire agreement of the Parties relating to the subject matter hereof, and there are no other oral or written understandings or agreements between the Parties relating to the subject matter of this Agreement.

19. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.

The undersigned have read the foregoing Agreement and accept and agree to the provisions contained therein, and further represent they have the authority to bind their respective Party, and hereby execute it voluntarily and with full understanding of its consequences.

Remainder of this Page Left Intentionally Blank – Signatures on Attached Page

DATED: _____

CALAVERAS COUNTY WATER DISTRICT

By _____
Name _____
Its _____

DATED: _____

FORD CONSTRUCTION COMPANY, INC.

By _____
Name _____
Its _____

DATED: _____

FOOTHILL MATERIALS, INC.

By _____
Name _____
Its _____

DATED: _____

CB ASPHALT, INC.

By _____
Name _____
Its _____

DATED: _____

CHESTER BROSS CONSTRUCTION
COMPANY

By _____
Name _____
Its _____