

AGREEMENT BETWEEN
THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF CALIFORNIA
AND
BYRON-BETHANY IRRIGATION DISTRICT
FOR AN EXCHANGE OF WATER

Copy of
Original
mailed 9 sets to
DWR 9-2-93

This Agreement ("Agreement") is made this ____ day of _____, 1993, by and between the DEPARTMENT OF WATER RESOURCES of the STATE OF CALIFORNIA ("DWR"), and the BYRON-BETHANY IRRIGATION DISTRICT ("BBID"), a political subdivision of the State of California, duly organized and existing pursuant to the laws thereof, with its principal place of business in Byron, California.

The parties agree as follows:

1. Recitals. The recitals contained herein are an integral part of this Agreement.

A. BBID originally claimed water flowing in Old River, at the point where the west bank of Old River intersected the south bank of a branch or channel making south from said Old River and designated as "Italian Slough," which claimed water flows extended to the use of 40,000^{MINERS WAB Ge et} inches measured under a 4-inch pressure, and continues to divert water pursuant to a "Notice of Appropriation of Water" dated May 18, 1914, and executed by the president and secretary of the then Byron-Bethany Irrigation Company, predecessor in interest to BBID.

B. BBID subsequently entered into a contract with DWR in 1964 to avoid condemnation proceedings proposed to eliminate a portion of BBID's S-45 Lateral Canal by construction and installation of the Intake Channel to the Harvey O. Banks Delta Pumping Plant, which contract granted BBID an easement to construct and operate its current diversion facilities and pumps on said Intake Channel.

C. DWR holds certain appropriative water rights from the State Water Resources Control Board pursuant to which water is conveyed and distributed to contractors through what is commonly referred to as the State Water Project, which permits include certain rights to divert and redivert water through pumps in the Delta.

D. It is contemplated that land uses within portions of BBID will change from irrigated agriculture to urban development in the process of development of the Mountain House Community as defined herein. In order to accommodate such changing land uses, BBID desires to supplement its winter water rights to provide a reliable year round source of water for municipal and industrial use.

E. BBID is pursuing a winter water rights permit from the SWRCB, currently bearing Water Rights Application Number 29857, which may provide supplemental winter water rights within BBID as an alternative to this Agreement.

F. The parties acknowledge that BBID is within the place of use of the water rights permits for the SWP.

G. The parties desire by this Agreement to exchange a portion of the water available to each under their respective rights to divert water from the Delta so that a portion of BBID's water is made available to DWR generally between April 1 and October 31 of each year and in exchange receive from DWR an equivalent amount of SWP water generally during the period of November 1 through March 31 immediately following, for municipal and industrial use.

2. Definitions.

A. "BBID" shall mean the Byron-Bethany Irrigation District and shall include all of the lands currently within the Byron-Bethany Irrigation District at the time the Agreement is executed and those lands which may hereafter be included within BBID to the extent that those lands are within the place of use of the SWP, and are within the boundaries of the Mountain House Community.

B. "Mountain House Community" shall mean the development described in the Mountain House Community general plan amendment (GP-92-09) as approved by the San Joaquin County Board of Supervisors on February 25, 1993, by Resolution R-93-110, plus those incidental areas to be included within the

Master Plan of the Mountain House Community, as shown on the map dated May 5, 1993 attached as Exhibit "A," attached and incorporated into this Agreement by this reference.

C. "State Water Project" (SWP) shall mean the State Water Resources Development System as defined in Section 12931 of the Water Code of the State of California.

D. "BBID Exchange Water" shall mean the quantity of water made available each year to BBID for municipal and industrial purposes from the SWP between November 1 and March 31 as limited by the terms and conditions of this Agreement.

E. "Year" shall mean the calendar year.

F. "Delta" shall mean the Sacramento-San Joaquin Delta as defined in Section 12220 of the California Water Code as of the date of the execution of the Agreement.

G. "DWR" shall mean the Department of Water Resources of the State of California.

H. "DWR Exchange Water" shall mean the quantity of water made available each year to DWR from BBID's pre-1914 water rights between April 1 and October 31 equal to the BBID Exchange Water pursuant to the terms and conditions of this Agreement.

I. "Winter Water Rights Permit" shall mean any permit and/or license issued upon Water Rights Application Number 29857 made by BBID to the SWRCB.

3. Term. This Agreement shall become effective on the date first written above and shall remain in effect until December 31, 2035. At the end of the term the parties shall enter into good faith negotiations to renew this Agreement on terms and conditions agreeable to the parties.

4. Regulatory Restrictions. If restrictions imposed by state or federal regulatory agencies restrict the ability of DWR to make water diversions from the Delta for SWP entitlement deliveries to its long-term water supply contractors, diversions by BBID under this Agreement shall be restricted in the same percentage as SWP entitlement deliveries are restricted. The parties shall make any necessary modifications to water exchange schedules and shall negotiate in good faith in an effort to make any necessary changes to this Agreement.

5. Year of Initial Water Exchange. The year of initial water exchange is presently estimated to be 1996. It is understood that the quantity of water to be exchanged may increase over time as lands are developed to municipal and industrial uses within BBID. To the extent practicable, BBID shall notify DWR of any change in this estimate.

6. Maximum Exchange. The maximum quantity of BBID Exchange Water available each year shall be 4,000 acre-feet. The monthly and total quantity of water which is to be exchanged each year shall generally be in accordance with a schedule as determined under Section 7. BBID may make water to be exchanged available to DWR generally between April 1 and October 31 of each year which will constitute the DWR Exchange Water. DWR shall make available to BBID an equal amount of water generally during the period from November 1 through March 31 immediately following which will constitute the BBID Exchange Water. Each party shall make exchange water available to the other at the Harvey O. Banks Intake Channel by reducing its diversions from said intake channel.

7. Schedule. The parties shall use their best efforts to exchange water under this Agreement according to schedules determined in the following manner:

A. On or before November 30 of each year, BBID shall submit in writing to DWR for DWR's review and approval an exchange schedule ("Schedule"), estimating in acre-feet per month, the total water to be used for municipal and industrial purposes within the Mountain House Community from April 1 of the next year through March 31 of the year following.

B. Each year BBID shall provide DWR with information identifying the number of acres shifted during the past year from agricultural use to municipal and industrial use within the Mountain House Community.

C. The Schedule may be amended from time to time upon mutual agreement of the parties. Proposed amendments shall be submitted within a reasonable time before the desired change is to become effective.

D. The parties shall cooperate in providing information and access to records to each other to facilitate development and administration of an exchange schedule.

E. Neither DWR nor any of its officers, agents, or employees shall be liable for any damage, direct or indirect, arising from shortages in the amount of water to be made available for diversion by BBID pursuant to the Schedule due to emergencies or other conditions or activities beyond the control of DWR.

8. Measurement of Water Diverted. BBID shall measure BBID Exchange Water diverted and shall keep and maintain accurate and complete records thereof. Said measuring devices and equipment shall be examined regularly, tested and serviced as needed to insure their accuracy by BBID at its sole cost. At any time or times, DWR may inspect such measuring devices and equipment and the measurements and records taken therefrom.

9. Inability to Make Water Available.

A. The obligations under this Agreement to make water available shall be suspended by the occurrence of any emergency, including, but not limited to, earthquake damage to Delta facilities, that prevents diversion of water from the intake channel for domestic purposes. Under such circumstances, the parties shall attempt to obtain alternative water supplies or means of delivery.

B. If for any reason DWR is unable to make BBID Exchange Water available pursuant to the Schedule established for that year, BBID may request DWR to reschedule the amount of BBID Exchange Water which otherwise would have been made available to it during the scheduled period at any other time that such water is available consistent with DWR's operation of the SWP. It is BBID's intent to store BBID Exchange Water received at times other than scheduled, if required, for use as needed pursuant to Water Code Section 22227.

10. Risk Responsibilities.

A. Neither party nor any of its officers, agents, or employees shall be liable for the storage, control, carriage, handling, use, disposal, or distribution of exchange water supplied to the other party after such water has passed the diversion point of the other party nor for claim of damage of any

nature whatsoever including, but not limited to, property damage, personal injury, or death arising out of or connected with the storage, control, carriage, handling, use, disposal, or distribution of such water beyond said diversion point, and each shall indemnify and hold harmless the other and its officers, agents, and employees from any such damages or claims of damages.

B. Neither party nor any of its officers, agents, or employees shall make any claim against the other for damage of any nature whatsoever including, but not limited to, property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water before it has passed said diversion point.

11. Area Served. BBID Exchange Water shall not be sold or otherwise disposed of by BBID for use outside of the Mountain House Community, as defined in Section 2.B, without the prior written consent of DWR. In no event shall BBID sell or otherwise dispose of BBID Exchange Water outside of the place of use of the SWP.

12. Water Quality. Neither party, nor its officers, agents, or employees, guarantees, nor shall be liable for, the quality of the water diverted by the other party, including, but not limited to, property damage, personal injury, or death arising out of or in connection with the quality of the water delivered beyond the

party's diversion point. Each shall indemnify and hold harmless the other and its officers, agents, and employees from any such damages or claims of damages.

13. Reservation with Respect to State Laws. Nothing herein contained shall be construed as estopping or otherwise preventing either party, or any person, firm, association, corporation, or public body claiming by, through, or under either party, from contesting by litigation or other lawful means, the validity, constitutionality, construction or application of any law of the State of California.

14. Opinions and Determinations. Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

15. Sunset. At the option of BBID, this Agreement may be terminated and be of no further force and effect upon the issuance of the Winter Water Rights Permit. In no event shall BBID make diversions pursuant to both the Winter Water Rights Permit and this Agreement. In the event of BBID diversion of water pursuant to the Winter Water Rights Permit, such diversions shall be phased in gradually as needed by the Mountain House Community.

16. Successor and Assigns. This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

17. Waiver of Rights. Any waiver at any time by either party hereto of its rights with respect to a default, or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any other default or matter.

18. Assurance Relating to Validity of Agreement. After the execution and delivery of this Agreement, BBID may file and pursue to a final decree, including any appeal therefrom to the highest court of the State of California, in a court of competent jurisdiction a special proceeding for the judicial examination, approval, and confirmation of the proceedings of BBID's Board of Directors leading up to and including the making of this Agreement and the validity of the provisions thereof as a binding and enforceable obligation upon DWR and BBID. If, in this proceeding or other proceeding before a court of competent jurisdiction, any portion of this Agreement should be determined to be constitutionally invalid, then the remaining portions of this Agreement shall remain in full force and effect, unless either party determines in good faith that the court's determination renders the provisions of the remaining Agreement unable to provide to the party the benefit of its bargain under the Agreement, in which case that party has the right to terminate this Agreement.

19. Notices. All notices that are required, either expressly or by implication, to be given by one party to the other under this Agreement shall be deemed to have been given if delivered personally or if enclosed in a properly addressed envelope and deposited in the United State Post Office for delivery by registered or certified mail and sent by facsimile. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown below:

DWR:

DEPARTMENT OF WATER RESOURCES
Division of Operation and Maintenance
Post Office Box 942836
1416 Ninth Street
Sacramento, CA 94236-0001
Attention: Chief, State Water Project Analysis Office
Facsimile: (916) 653-9628

BBID:

BYRON-BETHANY IRRIGATION DISTRICT
Post Office Box 273
3944 Main Street
Byron, California 94514
Attention: General Manager
Facsimile: (510) 516-1239

20. Standard Clauses. The standard clauses contained in the attached Exhibit "B" are hereby incorporated into and made a part of this Agreement by this reference. For purposes of Exhibit B, reference to "contractor" shall mean BBID, and references to "state" shall mean DWR.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

Approved as to legal form
and sufficiency:

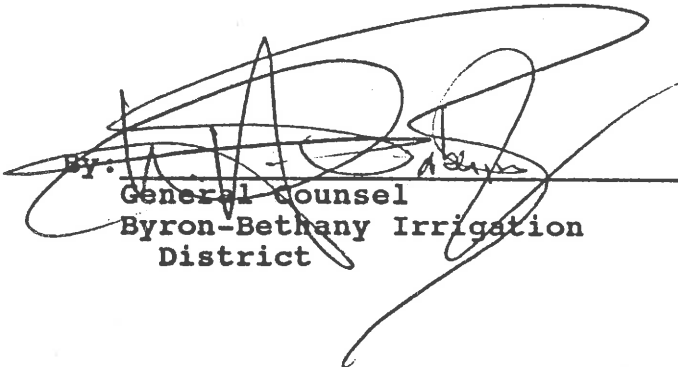
DEPARTMENT OF WATER RESOURCES
of the State of California

By: _____
Chief Counsel
Department of Water Resources

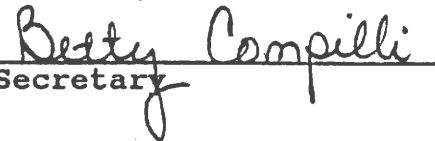
By: _____
Director
Department of Water Resources

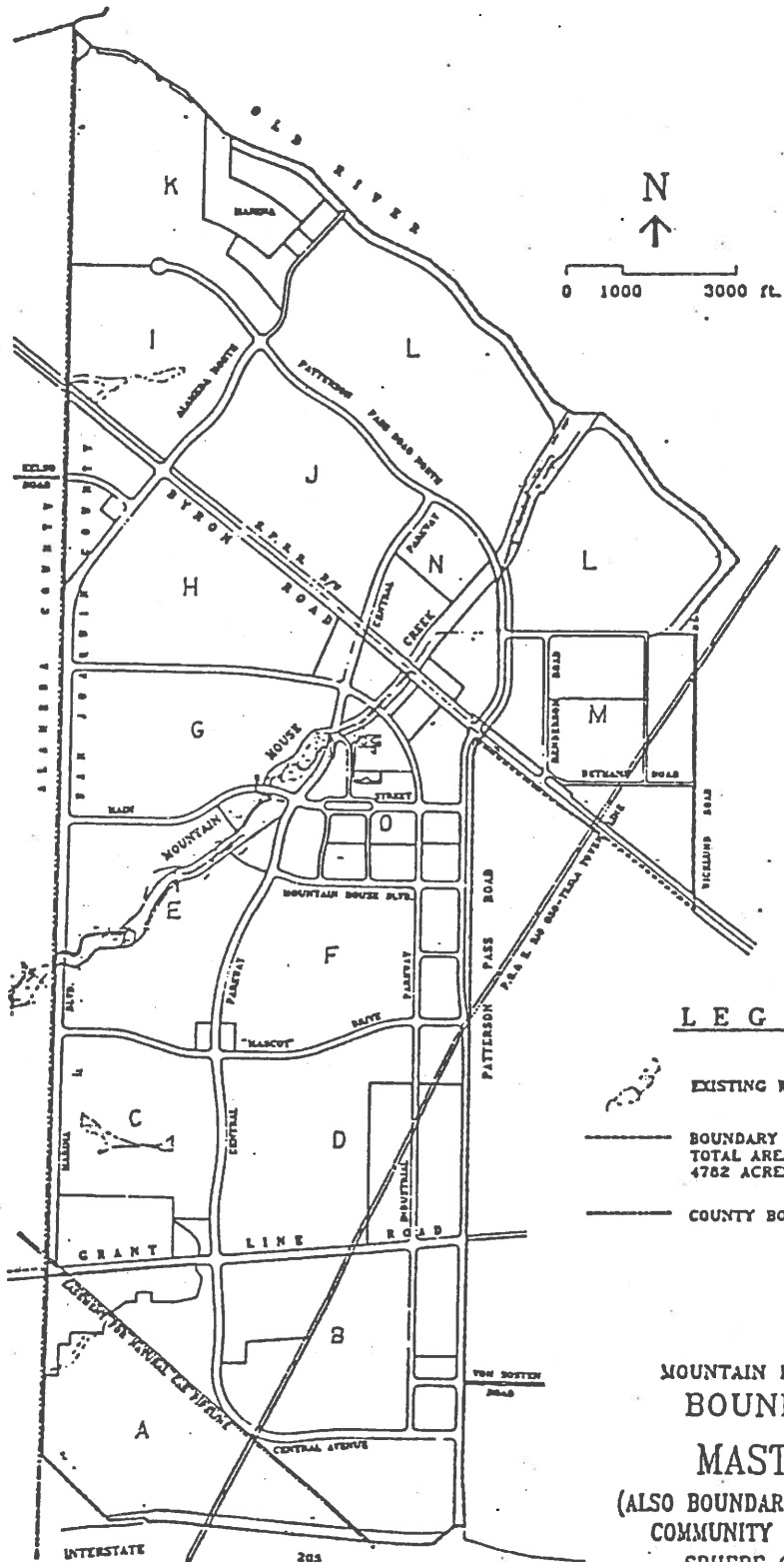
Approved as to legal form
and sufficiency:

BYRON-BETHANY IRRIGATION DISTRICT




By:  _____
General Counsel
Byron-Bethany Irrigation
District

By:  _____
Manager

Attest:  _____
Secretary



LEGEND

-  EXISTING WETLANDS
-  BOUNDARY OF MASTER PLAN
TOTAL AREA WITHIN BOUNDARY
4762 ACRES
-  COUNTY BOUNDARY LINE

MOUNTAIN HOUSE COMMUNITY
 BOUNDARY MAP
 OF
 MASTER PLAN
 (ALSO BOUNDARY MAP OF PROPOSED
 COMMUNITY SERVICE DISTRICT
 SPHERE OF INFLUENCE)
 MAY 5, 1993

PREPARED BY: SIEGFRIED ENGINEERING, INC.
 4643 CORONADO AVENUE
 STOCKTON, CALIFORNIA 95204

Agreement No. _____

Exhibit B **STANDARD CLAUSES —
CONTRACTS WITH PUBLIC ENTITIES**

Workers' Compensation Clause. Contractor affirms that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor affirms that it will comply with such provisions before commencing the performance of the work under this contract.

Claims Dispute Clause. Any claim that Contractor may have regarding the performance of this agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the Director, Department of Water Resources, within thirty days of its accrual. State and Contractor shall then attempt to negotiate a resolution of such claim and process an amendment to this agreement to implement the terms of any such resolution.

Nondiscrimination Clause. During the performance of this contract, the recipient, contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40), or sex. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), the regulations promulgated thereunder (California Administrative Code, Title 2, Sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Sections 11135 - 11139.5), and the regulations or standards adopted by the awarding State agency to implement such article. Contractor or recipient shall permit access by representatives of the Department of Fair Employment and Housing and the awarding State agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Recipient, contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

Availability of Funds. Work to be performed under this contract is subject to availability of funds through the State's normal budget process.

Audit Clause. The contracting parties shall be subject to the examination and audit of the Auditor General for a period of three years after final payment under the contract. (Government Code Section 10532).

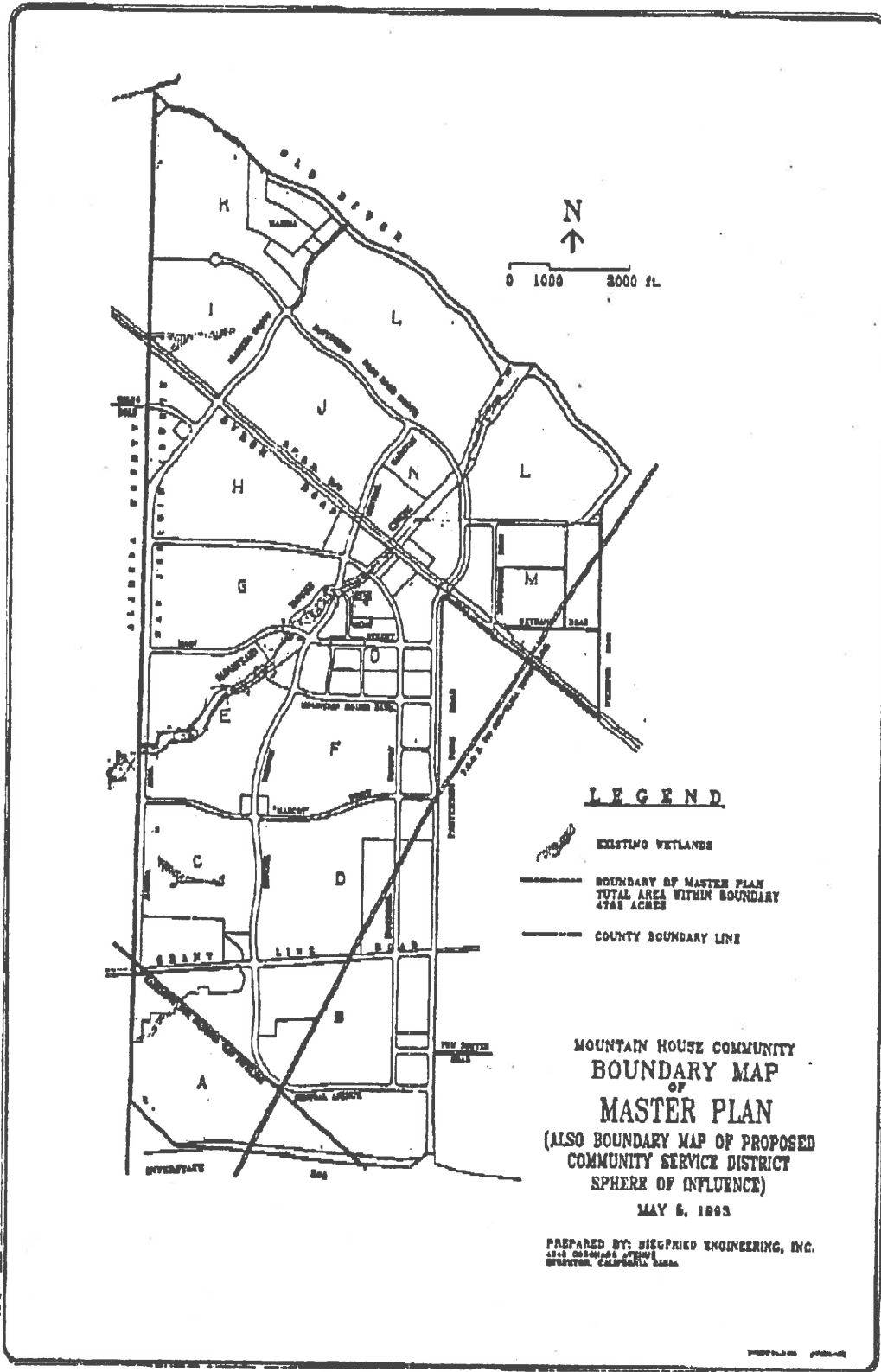
Payment Retention Clause. Ten percent of any progress payments that may be provided for under this contract shall be withheld per Public Contract Code Sections 10346 and 10379 pending satisfactory completion of all services under the contract.

Reimbursement Clause. If applicable, travel and per diem expenses to be reimbursed under this contract shall be at the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations. Contractor's designated headquarters for the purpose of computing such expenses shall be: _____.




Termination Clause. The State may terminate this contract without cause upon 30 days advance written notice. The Contractor shall be reimbursed for all reasonable expenses incurred up to the date of termination.

Drug-Free Workplace Certification. The contractor certifies, under penalty of perjury, compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The contractor will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
2. Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b), to inform employees about all of the following:
 - (a) The dangers of drug abuse in the workplace,
 - (b) The person's or organization's policy of maintaining a drug-free workplace,
 - (c) Any available counseling, rehabilitation and employee assistance programs, and
 - (d) Penalties that may be imposed upon employees for drug abuse violations.
3. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed contract:
 - (a) Will receive a copy of the company's drug-free policy statement, and
 - (b) Will agree to abide by the terms of the company's statement as a condition of employment on the contract.



LEGEND

-  EXISTING WETLANDS
-  BOUNDARY OF MASTER PLAN
TOTAL AREA WITHIN BOUNDARY
4788 ACRES
-  COUNTY BOUNDARY LINE

MOUNTAIN HOUSE COMMUNITY
BOUNDARY MAP
 OF
MASTER PLAN
 (ALSO BOUNDARY MAP OF PROPOSED
 COMMUNITY SERVICE DISTRICT
 SPHERE OF INFLUENCE)
 MAY 6, 1983

PREPARED BY: SIEGFRIED ENGINEERING, INC.
 4545 COLLEGE AVENUE
 BERKELEY, CALIFORNIA 94704