

BASIN CONSTRUCTION AND EXCAVATION AGREEMENT

This "Basin Construction and Excavation Agreement" (hereinafter "Agreement") is made and entered into effective _____, by and between Granite Construction, a corporation authorized to do and doing business in California (hereinafter "Contractor"), and City of Visalia, a California charter city (hereinafter "City"), and hereinafter collectively referred to as the "Parties".

WITNESSETH:

A. WHEREAS, City owns Basin 3 and Basin 4, and it is interested in enlarging both these basins by deepening, which requires excavation, and these existing basins are located in Tulare County near the intersection of Avenue 280 and Road 44 and Avenue 280 and Road 68 near the City of Visalia, California; and,

B. WHEREAS, Contractor has been hired by the California Department of Transportation to the construct the Caldwell and Highway 99 overpass widening project, Caltrans Contract No. 06-487404 (hereinafter "Project"), which is located near Basin 3 and Basin 4; and,

C. WHEREAS, Contractor has need for the material to be excavated and removed for enlargement of the basins; and,

D. WHEREAS, the excavated material removed for enlargement of the two basins may be transported by Contractor and used for improvements of Project; and,

E. WHEREAS, Contractor is willing and capable of excavating, removing and hauling the material from the two basins as the material is needed for Project, subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

1. Excavation of Basin 3 and Basin 4. Contractor agrees to excavate and remove material for enlargement by deepening each basin to provide final embankment and bottom slopes as per City requirements for each basin as to which material is no longer needed by Contractor, which are attached hereto as Exhibit A and Exhibit B and incorporated herein by this reference. The enlargement of the two basins shall exclude the placement and grading of materials for embankments outside the limits of existing embankments, except as may be required for haul roads by Contractor.

Contractor acknowledges that the excavation is being conducted to supply materials for the Caltrans project, that this is a prevailing wage project. The City of Visalia Labor Compliance Manual terms apply to this Agreement and are included herein by reference. City will also require a payment bond from the Contractor in the amount of \$300,000 which is the estimated cost of performing the excavation to guarantee payment to any laborers or material suppliers. In addition, a performance bond in the amount of \$300,000 will be required, which is the estimated cost to reshape and grade the basins so that they are suitable for City usage if necessary. Both bonds are required prior to start of work by Contractor in a form acceptable to City. The Contractor shall furnish the City with a Performance Bond in the amount of Three Hundred Thousand Dollars (\$300,000) and a Payment Bond in the amount of Three Hundred Thousand Dollars (\$300,000), each issued by a corporate surety authorized to do business in the State of California. Such bonds shall be in a form approved by the City Attorney and shall guarantee faithful performance of

this Agreement and payment to persons furnishing labor and/or materials in connection with the work performed under this Agreement.

CITY has made the determination that it would be in the best interest of the CITY to allow the CONTRACTOR to excavate and remove an estimated 115,000 cubic yards of dirt from Basin 3; excavate and remove an estimated 270,000 cubic yards of dirt from the Northwest quadrant of Basin 4; and an estimated 110,000 cubic yards of dirt from the Northeast quadrant of Basin 4. These amounts are estimates with the final amounts to be determined between City and Contractor as excavation proceeds under this Agreement. The final elevation of the bottom of Basin 3 and Basin 4 will be determined by the quantity of material removed by the Contractor, but in all cases the grading plan will match the grading and sloping requirements as shown in the Exhibits. Contractor may only temporarily stockpile excavated materials for the purpose of staging said excavated materials so that they can be removed from City property during excavation by Contractor. Contractor shall not stockpile excavated materials in Basin 3 or Basin 4 during any period of time where Contractor is not actively undertaking excavation or grading activities. If stockpiled material is determined by the City to be detrimental to the basin's function or in a manner contrary to applicable legal requirements, the Contractor will, upon 48 hours written notice, remove such stockpiles to a grade acceptable to the City. Upon completion of excavation, Contractor shall remove all stockpiled material and grade slopes and bottom that complies with the Exhibits prepared by City, based upon the quantity of material removed by the Contractor. There shall be no depressions greater than six inches in the bottom of the basins upon completion of excavation and construction of the sides. The bottom of each basin shall be ripped to a depth of three feet in a grid pattern at intervals of six feet apart to promote optimal infiltration, reduce compaction, and enhance percolation capacity. All finish grades of each basin, after excavation and removal of material by Contractor, shall be approved by City.

All costs of ratably excavating and removal of materials for enlargement of two basins, for hauling of material and maintenance of haul roads and for grading of embankments and bottom slopes in conformance with the City's Map 1, shall be borne exclusively by the Contractor, provided that costs for services of the City's consultants, included project management, shall be borne by the City.

The Contractor shall be responsible for coordinating all necessary approvals, plans, and compliance with affected utilities and public agencies prior to commencing work, including—but not limited to—the San Joaquin Valley Air Pollution Control District, California State Water Resources Control Board, California Department of Fish and Wildlife, U.S. Bureau of Reclamation (for Central Valley Project canals), local irrigation districts (such as Tulare Irrigation District and Kaweah Delta Water Conservation District), and any energy or telecommunications providers, along with any other entity that any environmental review process requires compliance with during excavation, and shall submit all permit applications, notifications, and required environmental submittals; ensure compliance with applicable standards; and promptly address any conditions, inspections, or mitigation measures imposed by such agencies, with no right to delay City work schedules.

2. Excavation Fee. In acknowledgement of the benefits to the City being provided by the enlargement of the basin and the completion by the Contractor of the finished slopes and grades for each basin to operate per City requirements, there shall be no charge by the City for dirt that is removed by the Contractor.

3. Contractor Obligations. Contractor represents and warrants that Contractor and its agents are fully and properly licensed, bonded and insured to perform the work contemplated in this Agreement. Contractor shall comply and pay all costs applicable for fugitive dust emission control, stormwater pollution prevention, and any other State and County requirements for the excavation, removal and hauling of material for Project. This includes but is not limited to applying for all required encroachment

permits to utilize roadways.

Contractor acknowledges that an encroachment permit will be required from the City for this project and that Contractor will be required to comply with all City of Visalia Encroachment Permit requirements. All work must comply with the City's Standard Construction Specifications and the conditions of the Encroachment Permit as issued by the City Engineer. The permit application shall include required plans such as traffic control, erosion control, and any other documents as determined necessary by the City. No work may begin within the right-of-way until the permit is issued. The Contractor shall pay all applicable fees and deposits and is responsible for restoring all affected areas to a condition equal to or better than that which existed prior to work, as determined by the City. The City may inspect work at any time to ensure compliance with permit conditions. Failure to comply may result in suspension or revocation of the permit and corrective action at the Contractor's expense. It is the Contractor's responsibility to coordinate with all affected utilities and public agencies. All requirements related to the permit shall be the Contractor's obligation, and the City shall not be held liable for delays related to permitting or compliance. Full permit details are available through the City's Engineering Division and must be reviewed and understood by the Contractor prior to starting work.

It is understood that Caltrans has no obligation, under this Agreement, to the City and that to the extent of its fault or negligence, the Contractor agrees to hold the City harmless from all claims for injury to persons or damages to property resulting from the Contractor's operations on City's property.

4. Coordination; Scheduling. Contractor intends to proceed with excavating the basins as soon as practicable so as to complete excavation of material and avoid interference with the use of the basins by the City. Sequence of excavation will be Basin 3, Northeast quadrant of Basin 4, Northwest quadrant of Basin 4. Change to sequence of work must be agreed upon by both parties. It is understood that under this Agreement material may be removed over a fourteen-month period with an anticipated start of May 2026. The excavation and removal of material from the basins may be affected by weather delays and change order work issued by Caltrans. The Parties recognize that movement of excavated material to and incorporation in the Project will depend on the Caltrans schedule for Project, but the Parties agree the removal of excavated material to deepen the basins shall be accomplished as soon as possible, consistent with the schedule of Project and the terms and conditions of this Agreement.

5. Advice of Counsel. Each party hereto is represented by counsel or other advisor(s) of their choice or have determined to forgo the seeking of such counsel or advisor(s) notwithstanding advisement and encouragement to do so. The Parties hereto have read this Agreement, and understand the terms used herein, and the consequences thereof, explained to them by their respective counsel or other advisor(s) (if any) prior to the execution hereof.

6. Amendment. The terms, covenants, and conditions of this Agreement may not be altered, changed or modified except by a writing executed by the Parties hereto.

7. Assignment. The Parties to this Agreement shall not assign all or any part of this Agreement or any interest therein, or delegate all or any part of the obligations under this Agreement without the prior written consent of both Parties.

8. Attorneys' Fees; Costs. In the event that any action, suit, or other proceeding is instituted by any party hereto to remedy, prevent or obtain relief from a breach of this Agreement, or arising out of a breach of this Agreement, or to contest the validity of, or attempt to rescind, negate, modify or reform this Agreement, or any of the terms or provisions hereof, or any of the matters referred to herein, the prevailing party in such action, suit, or other proceeding shall recover all such party's attorneys' fees

together with all costs (including costs of expert witnesses) incurred in such action, suit, or other proceeding, including any and all appeals or petitions therefrom.

9. Indemnification. Contractor waives any and all claims and recourse against City, including the right of contribution of loss or damage to person or property arising from, growing out of, or in any way connected with or incidental to Contractor's performance of this Agreement, except claims arising from the concurrent or sole negligence of City or its officers, agents or employees. Contractor will indemnify, hold harmless, and defend (at City's option) City against any and all claims, demands, damages, costs, expenses, or liability arising out of Contractor's performance of this Agreement except for liability arising out of the concurrent or sole negligence of City or its officers, agents, or employees. This indemnity and hold harmless provision, insofar as it may be adjudged to be against public policy, shall be void and unenforceable only to the minimum extent necessary so that the remaining terms of this indemnity and hold harmless provision may be within public policy and enforceable.

10. Insurance Requirements. Contractor, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain at a minimum compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects City and any insurance or self-insurance maintained by City shall be in excess of Contractor's insurance coverage and shall not contribute to it.

If Contractor utilizes one or more subcontractors in the performance of this Agreement, Contractor shall obtain and maintain independent insurance as to each subcontractor or otherwise provide evidence of insurance coverage for each subcontractor equivalent to that required of Contractor in this Agreement.

The following types of insurance and minimum limits are required providing at least the following minimum coverage and limits of liability: (a) Workers' Compensation written in accordance with the laws of the State of California providing coverage for any and all employees of Contractor in the minimum statutorily required coverage amounts; (b) Automobile Liability Insurance for each of Contractor's vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by Contractor's employees or sub-contractors), leased or hired vehicles, in the minimum amount of \$1,000,000 combined single limit per occurrence for bodily injury and property damage; (3) Comprehensive or Commercial General Liability Insurance coverage in the minimum amount of \$1,000,000 combined single limit, including coverage for: bodily injury, personal injury; broad form property damage, contractual liability, cross-liability, and products and completed operations liability.

If any insurance coverage required in this Agreement is provided on a "Claims Made" rather than "Occurrence" form, Contractor agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter "post agreement coverage") and any extensions thereof. Contractor may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable.

All required Automobile and Comprehensive or Commercial General Liability Insurance shall be endorsed to contain the following clauses: "The City of Visalia, its officers, agents, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of the named insured, performed under contract with the City of Visalia."

It is agreed that any insurance maintained by the City shall apply in excess of and not contribute with insurance provided by this policy.

This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days prior written notice has been given to the City. Contractor agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide City on or before the effective date of this Agreement with Certificate(s) of Insurance for all required coverage. Copies of all the required Endorsements shall be attached to the Certificate(s) of Insurance or other evidence of insurance acceptable to the City, which shall be provided by Contractor's insurance company as evidence of the stipulated coverage.

11. Prevailing Wages. To the extent applicable, Contractor shall comply with all requirements of the Department of Industrial Relations in accordance with the California Labor Code, and all other applicable federal, state and local laws and regulations pertaining to labor standards and payment of prevailing wages (collectively, "Prevailing Wage Laws"). As applicable, Contractor shall (i) require its contractors and subcontractors to submit certified copies of payroll records to Contractor; (ii) maintain complete copies of such certified payroll records; and (iii) make such records available to City and its designees for inspection and copying during regular business hours at the request of City.

Contractor shall defend, indemnify and hold harmless City and its officers, employees, volunteers, agents and representatives from and against any and all present and future causes of action, claims, liabilities, obligations, damages, fines, penalties, judgments, actions or expenses (including attorney fees) (collectively, the "Claims"), arising out of or in any way connected with Contractor's obligation to comply with all governmental requirements, including all Claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781, as amended and added by Senate Bill 966.

Contractor hereby waives, releases and discharges forever City, and its employees, officers, volunteers, agents and representatives, from any and all present and future Claims arising out of or in any way connected with Contractor's obligation to comply with all Prevailing Wage Laws in connection with the work on City's basins.

Contractor is aware of and familiar with the provisions of Section 1542 of the California Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

As such relates to this Section, Contractor hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

12. DIR Registration. The CONTRACTOR shall be currently registered with the Department of Industrial Relations (DIR) pursuant to Labor Code Section 1725.5 and qualified to perform public work pursuant to Section 1771.1 of the Labor Code. The CONTRACTOR shall comply with all applicable provisions of the Labor Code, including but not limited to the requirement to submit certified payroll records electronically to the DIR as required under Labor Code Section 1776.

13. Emergency Use. The City reserves the right to utilize Basin 3 and/or Basin 4 for operational purposes in the event of an emergency, including but not limited to significant storm events or operational issues at the Water Reclamation Facility. In such cases, the City will make provide 48 hour advance written notice to the Contractor. The City shall not be held liable for impacts to the Contractor's excavation activities arising from such emergency use.

14. Default. Failure by any party to perform any action or covenant required by this Agreement within the time periods provided herein following Notice and expiration of any applicable cure period, shall constitute a "Default" under this Agreement. A party claiming a Default shall give written Notice of Default to the defaulting party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and no other party shall be in Default if such party within thirty (30) days following receipt of such Notice of Default immediately, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence. Failure to cure any Default after providing written Notice of Default within the time period specified herein shall allow the complaining party to immediately terminate this Agreement.

15. Authority of Parties. The execution and delivery by each party of this Agreement, and any other agreements or instruments required by this Agreement, the consummation of the transactions and contracts required or contemplated by this Agreement, and the performance by each party of its obligations in connection with this Agreement and said instruments and contracts: (i) have been each duly authorized by all necessary board of directors or shareholder action, if required; (ii) to the best of each party's knowledge, after appropriate investigation and inquiry, require no registrations with or approvals of any person or entity not heretofore obtained; and (iii) to the best of each party's knowledge, after appropriate investigation and inquiry, do not violate, contravene or conflict with any applicable law, order or regulation of any court or governmental authority, official or agency, or any contract, indenture or other instrument to which that party is a party or by which it or any of its properties relevant to the subject matter hereof may be bound. (iv) it is understood by both parties that the Department of Conservation, Office of Mine Reclamation's position with regards to the applicability of the SMARA exemption, may be different than that of the City, Caltrans, and Tulare County, which serves as lead agency for purposes of SMARA. If this basin enlargement agreement is the subject of enforcement proceedings by the Office of Mine Reclamation, the Contractor shall, upon written notice from the City, cease all excavation until the issue is resolved and be responsible for complying with investigation by the Department of Conservation.

16. Binding Effect. Each of the terms of this Agreement is binding upon the Parties affected thereby and their respective successors, transferees, assigns, executors, administrators, representatives (including principals, agents, officers, directors, and employees) and beneficiaries.

17. Entire Agreement; Consent Freely Given. This Agreement constitutes the sole and only agreement among the parties hereto respecting the subject matters hereof and sets forth the Parties' obligations to each other as of the date hereof. Any prior agreements or representations respecting the same or the duties of the Parties in relation thereto not expressly set forth herein are null and void. Contractor and City represent and warrant to each other that each has conducted its own investigation and due diligence about the subject matter of this Agreement and the individuals who are the principal owners or agents of the Parties to this Agreement, and that based on their own investigation and due diligence, this Agreement is freely and voluntarily executed by the Parties, and each of them, after consultation with the legal counsel and other experts and consultants of their own choosing. The Parties executing this Agreement acknowledge and warrant that in entering into this Agreement, they did not rely upon any inducement, promises, representations or warranties made by any party, or its representative which are not contained in this Agreement.

18. Cooperation; Further Assurances. The Parties hereto shall take such action, or execute, acknowledge and deliver, or obtain the execution, acknowledgment, and delivery of such further documents, as are reasonably necessary, appropriate or desirable to give effect to the terms of this Agreement.

19. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, and all of which together shall constitute but one and the same instrument.

20. Effect of Headings. The subject headings of the paragraphs of this Agreement are included for purposes of convenience only and shall not affect the meaning or the construction or interpretation of any of the provisions hereof.

21. Gender and Number. Whenever the context of this Agreement so requires in interpreting this Agreement, the pronouns "he" and "it" are deemed to refer to either or both sexes and to natural persons and the business entities (all of which are sometimes referred to as "persons") equally, depending upon the context.

22. Governing Law and Venue. This Agreement shall be controlled by and is to be construed under the laws of the State of California, the state in which the Agreement is executed. Any suit, action or other proceeding initiated by either of the Parties shall be in Tulare County, State of California.

23. No Third Parties Benefitted. The Parties agree that this Agreement is made and entered into for the sole protection and benefit of the Parties hereto, their successors and assigns, and no other person, shall be a direct or indirect beneficiary of, or have any direct or indirect cause of this Agreement.

24. Notices. All notices and other communications required under this Agreement shall be in writing, and shall be deemed to have been duly given on the date of service, if served personally on the agent for receipt of notice for the party to whom notice is to be given, or on the third (3rd) day after mailing, if mailed to the agent for receipt of notice for the party to whom notice is to be given by first class mail, postage prepaid, and properly addressed as set forth in this paragraph or at such other address as any party by like notice shall designate to the other party in writing. Notwithstanding the methods of notice specified in this paragraph, the parties may also give notice by use of facsimile transmission and /or electronic mail, provided such notice is within one day thereafter personally delivered or mailed to the agent for receipt of notice. The agents for receipt of notice are the respective counsel of record for the parties herein.

IF TO CONTRACTOR:

Granite Construction
2716 Granite Court
Fresno, CA 93706
Attention: Stephan Hartley, Project Manager

IF TO CITY:

City of Visalia
315 E. Acequia Avenue
Visalia, CA 93291
Attention: Nick Bartsch, Director of Public Works

25. Receipt of Agreement. Each party acknowledges receipt of a full and complete copy of this Agreement.

26. Severability. The provisions of this Agreement shall be deemed to be independent and several in that the invalidity or partial invalidity or unenforceability of any kind provision or portion thereof shall not affect the validity or the enforceability of any other provision hereof, and this Agreement shall be construed as if such unenforceable provision had not been contained herein. As used herein, the term “unenforceable” is used in its broadest and most comprehensive sense and includes the concepts void and voidable.

27. Status of Entities. Each party to this Agreement that is not a natural person represents and warrants that it is duly organized and validly exists, and it is in good standing under the laws of the State of California, and is duly qualified to transact business in each jurisdiction in which the character of its properties or the nature of the activities conducted by it makes such qualification necessary. Each said party has full power, authority and right to enter into, execute, deliver, performed be bound by this Agreement and each of the other agreements and instruments required by this Agreement, to own property and to carry on its business as it is now being conducted, and has complied with all applicable laws and regulations of governmental agencies, officials or authorities, has obtained all necessary permits, licenses and approvals necessary and appropriate to proceed with the conduct of its business in accordance with the requirements of this Agreement and has followed all necessary, proper and appropriate procedures in procuring such permits, licenses and approvals.

28. Time of Essence. Time is expressly declared to be of the essence of this Agreement.

29. Waiver. Waiver of any breach of this Agreement by any party hereto shall not constitute a continuing waiver, or a waiver of any other breach, of the same or any other provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

[SIGNATURES TO ON FOLLOWING PAGE]

CONTRACTOR:

GRANITE CONSTRUCTION

By: _____

Name: _____

Title : _____

Date: _____

CITY :

CITY OF VISALIA

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Attorney for CONTRACTOR

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT "A"

Basin 3 Excavation and Grading Plan

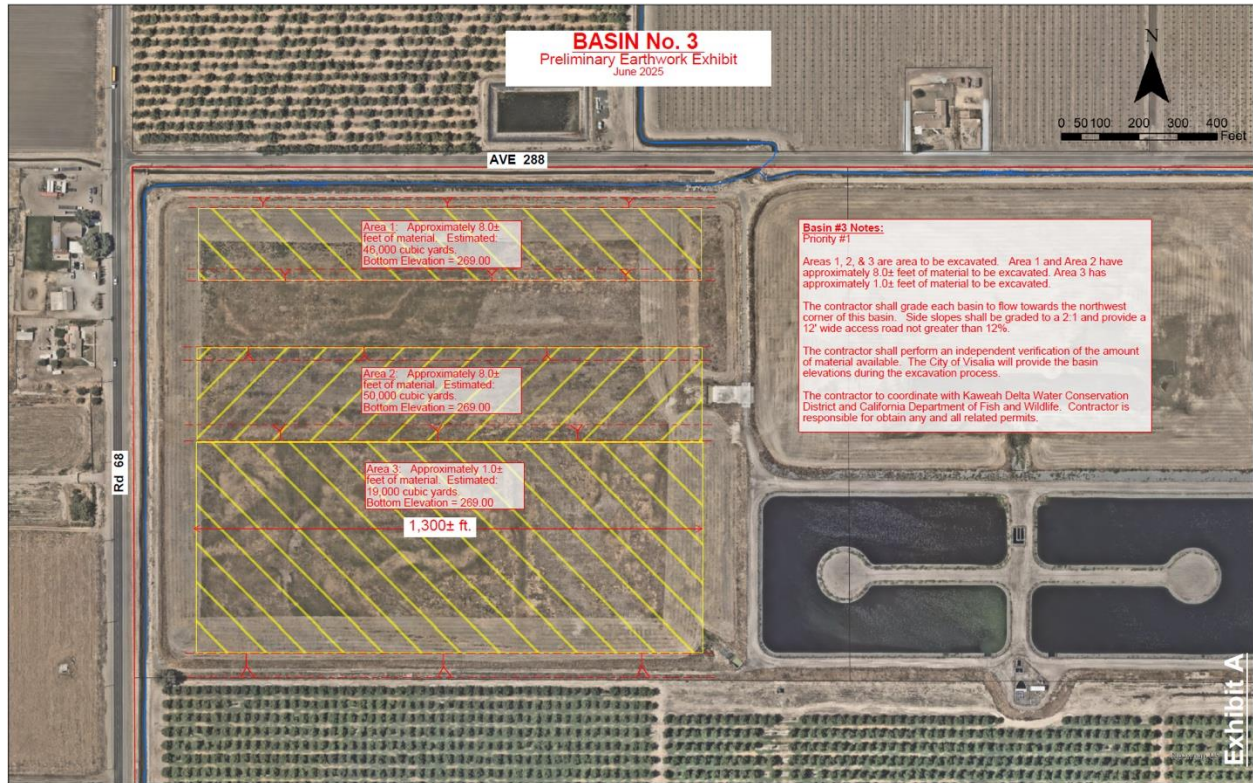


EXHIBIT "B"

Basin 4 Excavation and Grading Plan

