DEPARTMENT: Public Works  BY: Dana Hertfelder  PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION:

Discussion, direction, and possible action regarding adopting a Resolution approving the adoption of a maintenance and liability agreement between the County of Mariposa and Halferty Development Company, LLC.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

At its meeting of June 10, 2008, the Board of Supervisors gave direction to staff to bring back an alternative to the Sidewalk Ordinance. Since the June 10, 2008 The California Department of Transportation has finalized the encroachment permit for the required improvements within the State right-of-way and the Building Department has issued a certificate of occupancy for the project.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

<table>
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<tr>
<th>Financial Impact?</th>
<th>( ) Yes</th>
<th>(x) No</th>
<th>Current FY Cost: $</th>
<th>Annual Recurring Cost: $</th>
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<tr>
<td>Budgeted In Current FY?</td>
<td>( ) Yes</td>
<td>( ) No</td>
<td>( ) Partially Funded</td>
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<tr>
<td>Amount in Budget:</td>
<td>$________</td>
<td></td>
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<tr>
<td>Additional Funding Needed:</td>
<td>$________</td>
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<tr>
<td>Source:</td>
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<td>Internal Transfer</td>
<td></td>
<td></td>
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<tr>
<td>Unanticipated Revenue</td>
<td>______ 4/5's vote</td>
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<tr>
<td>Transfer Between Funds</td>
<td>______ 4/5's vote</td>
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<tr>
<td>Contingency</td>
<td>______ 4/5's vote</td>
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<tr>
<td>( ) General</td>
<td>( ) Other</td>
<td></td>
<td></td>
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</tbody>
</table>

CLERK'S USE ONLY:

Res. No.  ( ) Ord. No. ______
Vote – Ayes: ______  Noes: ______
Absent: ______
Approved ______
Minute Order Attached ( ) No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.
Date: ______

Attest: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California
By: ________________________________
Deputy

COUNTY ADMINISTRATIVE OFFICER:

( ) Requested Action Recommended
( ) No Opinion
Comments: ________________________________

CAO: ______
TO: DANA HERTFELDER, Public Works Director

FROM: MARGIE WILLIAMS, Clerk of the Board

SUBJECT: B) Discussion, Direction and Possible Action Regarding Adopting a Resolution and Approving a Maintenance and Liability Agreement with Halferty Development Company, LLC and Authorize the Board of Supervisors Chair to Sign the Agreement

RESOLUTION 08-307

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on July 8, 2008

ACTION AND VOTE:

11:28 a.m. B) Discussion, Direction and Possible Action Regarding Adopting a Resolution and Approving a Maintenance and Liability Agreement with Halferty Development Company, LLC and Authorize the Board of Supervisors Chair to Sign the Agreement

BOARD ACTION: Discussion was held with Dana Hertfelder and he advised of a correction to the agreement to delete the duplication of “neat and attractive appearance.” County Counsel advised that Section B. of the Recitals of the agreement should reflect State Route 49; and Section 1B under HWN Obligations should include making a maintenance contribution of a dollar amount that is recommended by the Public Works Director; and he advised of language changes in Section 2. County Obligations to delete “at County’s expense” and “asphalt” and to add “along State Route 49.” Supervisor Bibby clarified that the maintenance costs is a one-time amount to be paid by Halferty for the life of the sidewalk. Dana Hertfelder recommended that the maintenance contribution be $2,000. Discussion was held relative to the portion of the sidewalk included in the agreement, and it was clarified that agreement covers everything in the State right-of-way. It was clarified that it is State Route 49 North.

Chris Peto, Halferty Development Company, advised that they are okay with the requested changes to the agreement, and their intent is just to cover the CalTrans encroachment area of the sidewalk. He offered their assistance and support in the development of a sidewalk policy and Ordinance for the future.

Further discussion was held. (M)Fritz, (S)Aborn, Res. 08-307 was adopted approving the agreement with the changes as requested/Ayes: Aborn, Turpin, Bibby, Fritz; Excused: Pickard.

Cc: Thomas P. Guarino, County Counsel
Kris Schenk, Planning Director
File
MARIPOSA COUNTY RESOLUTION NO. 08-307

RESOLUTION APPROVING THE ADOPTION OF A MAINTENANCE AND LIABILITY AGREEMENT BY AND BETWEEN THE COUNTY OF MARIPOSA AND HALFERTY DEVELOPMENT COMPANY, LLC

WHEREAS, on May 4, 2007 Halferty Development Company ("Halferty") received approval from the Mariposa County Planning Commission ("Commission") for Halferty’s Design Review Application No. 2006-296 to develop a Rite Aid pharmacy in the General Commercial land use and Design Review Overlay of the Mariposa Town Planning Area ("Project"); and

WHEREAS, the Project is located on a 1.67 acre parcel located on the southeast corner of Joe Howard Street and Highway 49 North in the Town of Mariposa; property is also known as APN 013-230-050 and 013-230-051; and

WHEREAS, Condition #37 of the Commission approval of the Project required Halferty to construct frontage improvements, including a commercial width sidewalk along the Project’s frontage of Highway 49 North, and associated improvements including asphalt, curbs and gutters (herein collectively referred to as "Sidewalk") within the State of California right-of-way; said Condition stated that an encroachment permit shall be obtained from the California Department of Transportation ("CalTrans") for these required improvements to Highway 49 North on the subject property and that all required improvements shall be completed and approved by CalTrans prior to the issuance of a Certificate of Occupancy; and

WHEREAS, pursuant to the encroachment permit obtained by Halferty from CalTrans, CalTrans requires that maintenance and liability of the Sidewalk within the State right-of-way be the responsibility of an entity other than CalTrans; and

WHEREAS, CalTrans has agreed that said responsibility for maintenance and liability of the Sidewalk may be the subject of a Maintenance Agreement by and between Halferty and the County of Mariposa; and

WHEREAS, said Sidewalk is unique in that it is not intended primarily to provide access to the Project, but does provide a public access for County of Mariposa residents and visitors within a State owned right-of-way; and

WHEREAS, the County of Mariposa has applied for and has received grants for the purpose of construction and has constructed sidewalks within the State owned right-of-way; and

WHEREAS, the County of Mariposa has applied for and has received grants for the purpose of implementing the Mariposa Creek Parkway Project and whereby the County of Mariposa seeks to further extend the Mariposa Creek Parkway Project; and
WHEREAS, said Sidewalk is an integral part of the pedestrian circulation along the State Highways 49 and 140; and

WHEREAS, said Sidewalk is necessary for and serves a public need by providing additional access to the Mariposa Creek Parkway Project; and

WHEREAS, said Sidewalk serves a public need by providing pedestrian circulation in the Mariposa Town Planning Area; and

WHEREAS, Halferty has agreed to provide funds to Mariposa County for maintenance of said sidewalk;

NOW THEREFORE, BE IT RESOLVED THAT the Board of Supervisors OF THE County Of Mariposa recognizes the public benefit of said Sidewalk and the Board of Supervisors of the County of Mariposa does hereby approve the Maintenance Agreement (Attached hereto as Exhibit “A”) by and between the County of Mariposa and Halferty providing that Halferty shall provide funds for maintenance of frontage improvements that consist of a commercial width sidewalk along the Project’s frontage of Highway 49 North, and the associated improvements of asphalt, curbs and gutters all of which were installed by Halferty in the State right-of-way and the County of Mariposa shall maintain and accept liability for these herein referenced improvements collectively referred to as Sidewalk.

PASSED AND ADOPTED this 8th day of July 2008 by the following vote:

AYES: ABORN, TURPIN, BIBBY, FRITZ
NOES: NONE
EXCUSED: PICKARD
ABSTAIN: NONE

Lyle Turpin, Chairman
Mariposa County Board of Supervisors

ATTEST:
Margie Williams, Clerk, of the Board

APPROVED AS TO FORM:
Thomas P. Guarino, County Counsel