

TO: TOWN COUNCIL

FROM: TOWN MANAGER 

RE: WESTERN CARE COMPANY SIERRA COLLEGE BLVD LEFT TURN POCKET AGREEMENT

ISSUE

Western Care Construction Co wishes to have an agreement with the Town to have a left turn access off Sierra College Blvd to their office building at 4020 Sierra College Blvd.

RECOMMENDATION

Authorize agreement generally as shown in the draft or as may be edited by the Council and subject to the satisfaction of the Town Attorney as to form and authorize Mayor to sign.

CEQA

CEQA issues for the improvements on Sierra College Blvd were handled by the City of Rocklin and the improvements as depicted on the drawing were approved.

MONEY

All costs to install the left turn pocket, maintain it and to one day remove it will be the responsibility of Western Care.

DISCUSSION

The Sierra College Blvd improvements, between Granite Dr and Taylor Rd, were developed by the Town and the City of Rocklin. A key aspect of Council's desire on the improvements was to have a center median that could be heavily landscaped. Rocklin agreed to include a dirt median instead of a painted median as they had originally proposed and left the planting to Loomis to be done after the improvements were completed.

At the September meeting Council agreed that a left turn pocket could be installed if the details of same could be worked out. In the intervening time Western Care has worked with Rocklin and the contractor, Teichert, to come up with a plan and agreed upon cost. Western Care has also worked with the Town to develop an agreement by which the left turn pocket could be installed, maintained and later removed when certain things occur. The following agreement has been developed by the Town Attorney.

Mr. John Margowski of Western Care discussed certain changes with Staff that were still being worked on when this report had to be submitted for inclusion in the agenda. The matters being discussed were:

- **SECTION 1 (c):** regards an encroachment permit, it may not be necessary because the work is being done through a contract with Rocklin as opposed to a contract with Western Care.
- **SECTION 2 (5):** Western Care suggests inserting the words “where Company or its officers, agents or employees are determined to be “at fault” for the claim or demand.” Western Care was going to have their legal counsel discuss this with the Town Attorney.
- **SECTION 2 (6):** Western Care suggests this may not be possible since the contractor is hired by Rocklin and the Town has given authority to Rocklin to proceed on its behalf to do the Sierra College Blvd improvements including the left turn pocket. Western Care was going to have their legal counsel discuss this with the Town Attorney.
- **SECTION 3 (f):** regards Western Care no longer operating at the address, it is suggested that there be a successor in interest clause instead. Town Staff does not favor such a clause believing that when Western Care moves it will be as good a time for the left turn pocket to be eliminated as the reasons noted to eliminate the pocket.

Council will receive an update on the foregoing at the meeting if not before under separate cover.

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

David J. Larsen
Law Offices of David J. Larsen
18 Crow Canyon Court, Suite 206
San Ramon, CA 94583

FOR RECORDER'S USE ONLY

**Road Improvement and
Maintenance Agreement**

THIS AGREEMENT is entered into on _____, 2010 by and between

Western Care Construction Company, Inc., a private corporation [Company], and the Town of Loomis, a municipal corporation [Town].

Recitals

WHEREAS, there are existing plans to construct improvements on Sierra College Boulevard between Granite Drive and Taylor Road, which plans would have to be modified to allow northbound traffic on Sierra Boulevard to make a left-hand turn across the proposed Sierra Boulevard median in Loomis to enter the Company's business at 4020 Sierra College Boulevard, Rocklin, CA;

WHEREAS, Company seeks Loomis' permission to allow Company to work with Rocklin to change said plan in order to accommodate a left-hand turn movement for its employees and the public; and

WHEREAS, Loomis is willing to give its permission under the terms and conditions set out in this Agreement;

Agreement

NOW, THEREFORE, in consideration of the mutual promises and covenants made below, the parties agreed as follows:

Section 1. Loomis' Obligations.

(a) Loomis agrees that the Company may work with the City of Rocklin to re-engineer the drawings entitled _____, which were prepared by _____ and dated _____, only to the extent necessary to revise the median shown in Exhibit A to provide a left turn pocket as shown in Exhibit B, subject to the Company:

- (1) paying all costs the City of Rocklin does not pay in connection with this re-engineering;
- (2) submitting the final re-engineered drawings and all related documents to the Loomis Town Engineer no later than _____;
- (3) obtaining final engineering and design approvals by the Town Engineer no later than _____ which approvals shall not be unreasonably withheld;
- (4) assuring no costs are incurred by Loomis in connection with this re-engineering; and
- (5) satisfactorily fulfilling all of its obligations under this Agreement.

(b) Loomis agrees that the Company may work with Rocklin to construct the left turn pocket shown in Exhibit "B" subject to the Company:

- (1) first fully complying with Section (a) (1) – (4);

- (2) paying all costs the City of Rocklin does not pay in connection with this construction;
 - (3) submitting the final construction specifications and documents to the Loomis Town Engineer no later than _____;
 - (4) obtaining final approvals of the construction specifications and documents by the Town Engineer no later than _____ which approvals shall not be unreasonably withheld;
 - (5) assuring no costs are incurred by Loomis in connection with this construction; and
 - (6) satisfactorily fulfilling all of its obligations under this Agreement.
- (c) Loomis agrees to issue an encroachment permit to the Company allowing it to construct and maintain the left turn pocket.

Section 2. Company's Obligations.

- (a) The Company shall:
 - (1) keep Loomis informed of its progress hereunder and Immediately notify Town of its intention to abandon further pursuit of the design or construction of the left turn pocket;
 - (2) post a bond or other surety agreeable to the Loomis Town Attorney to assure satisfactory completion of all work required in Subsection (3) below;
 - (3) upon termination of this Agreement, conform the left hand turn pocket area to the median area immediately to the south and

immediately to the north, so that it will appear that there was never a left turn pocket. This work shall include, but not be limited to, the removal of all improvements, signing and other aspects and indicia associated with the left turn pocket; and installation of an irrigation system and landscaping compatible with that nearby - - both to the reasonable satisfaction of the Loomis Town Manager;

(4) during the term of this Agreement, maintain in full force and effect the following policies of insurance and include Loomis as an additionally-named insured:

a. general liability - - \$2,000,000 per occurrence for bodily injury and property damage. If Commercial General Liability Insurance or another form with a general aggregate limit is used, either said limit shall apply separately to this project or shall be twice the required per occurrence limit.

(b) automobile liability - - \$2,000,000 per accident for bodily injury, personal injury and property damage.

(c) worker's compensation insurance - - in amounts required by law.

(5) save harmless and indemnify Town from every claim or demand of any kind or nature which arises out of the design, construction, maintenance or use of the left turn pocket except for that resulting from the sole negligence or intentional acts of the Town, its officers, agents, or employees;

(6) require the designers and contractors of the left turn pocket to indemnify and hold the Company harmless from every claim or demand associated with the design and construction, respectively, of the left turn pocket;

(7) to pay for all costs reasonably incurred by the Town in maintaining the left turn pocket including asphalt, striping and curbing, payment to be made within thirty (30) days of demand; and

- (8) satisfactorily fulfill all of its obligations under this Agreement.

Section 3. Term.

The term of this Agreement shall be for ten (10) years commencing on the _____ day of _____ 2010, and ending on the _____ day of _____, 2020, unless otherwise extended in writing for a time as determined by the parties, or upon the happening of any of the following events, whichever first occurs:

(a) Company notifies Town that it no longer intends to pursue the design or construction of the left turn pocket;

(b) the construction of three southbound travel lanes on Sierra College Boulevard west of the median;

(c) the construction of a four way signal at the intersection of Brace and Sierra College;

(d) if there are changes in traffic conditions which result in use of the left turn pocket being unsafe in the written opinion of a traffic engineer;

(e) when the stores at Rocklin Commons and Rocklin Crossing open; or

(f) when the Company itself ceases to conduct business at its current Sierra College site (e.g. even if a successor-in-interest intends to operate at the existing site).

Section 4. Recordation.

The parties shall record this Agreement in Placer County within ten business days after its execution.

Section 5. Dispute Resolution.

The parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties. If a party commences an action based on a dispute or claim to which this paragraph applies, without first attempting to resolve the matter through mediation, then that party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in Placer County on the date first written above.

WESTERN CARE CONSTRUCTION
COMPANY, INC

TOWN OF LOOMIS

BY: _____

BY: _____

TITLE: _____

TITLE: _____

Attest:

Attest:

Town Clerk

Approved as to form:

Approved as to form:

Company Counsel

Town Attorney