



CITY OF IONE CITY COUNCIL STAFF REPORT



FOR THE MEETING OF: APRIL 7, 2009

DATE: APRIL 3, 2009
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: CHRISTOPHER JORDAN, AICP, CITY PLANNER
SUBJECT: HIGHWAY 124 MONUMENT SIGN - MAINTENANCE AGREEMENT

RECOMMENDED ACTION:

Staff recommends that the City Council:

- 1. Receive staff’s presentation; and
- 2. Adopt Resolution 1713, A Resolution of the City Council of the City of Ione Authorizing Entry into Highway Sign Agreement with the California Department of Transportation and the Ione Business and Community Association.

SOURCE OF FUNDING: GENERAL FUND

DISCUSSION:

In April of 2008, on behalf of the Ione Business and Community Association (IBCA), the City prepared and submitted an Encroachment Permit Application to Caltrans for the construction of a new monument sign along Highway 124 just outside of Howard Park. The sign, designed similar to the one on Heath Knoll, would feature a “Welcome to Ione” message at top and a manual readerboard sign below to identify upcoming events in Ione. In September, Caltrans approved the Encroachment Permit.

Part of the requirements for the issuance of the permit is that the City enter into a

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| TYPE OF ITEM: | City Council for the City of Ione |
| _____ Consent | Upon motion of Council Member |
| _____ Departmental | Seconded by Council Member |
| _____ Public Hearing | And carried _____ by those members present, |
| _____ Other _____ | The Council hereby adopts the recommended action contained in this report. |
| PREVIOUS ACTION/REFERRAL: | |
| Council Order No. _____ | Dated: _____ |
| Meeting of: _____ | Janice Traverso, City Clerk |
| | By: _____ |

maintenance agreement with Caltrans. This agreement has the City assuming ownership and maintenance responsibilities for the monument sign and all of its components. The Council has provided previous direction to sign this agreement; however Caltrans requires that the City approve a resolution delegating authority to sign the agreement.

As a parallel action, staff is recommending that the City enter into a maintenance agreement with IBCA for the sign. This second agreement will transfer all responsibility and liability for the sign to IBCA, including requirement for holding liability insurance. IBCA has obtained this insurance which names both the State and the City as insured parties.

The Council has provided previous direction to sign these agreements; however Caltrans requires that the City approve a resolution delegating authority to sign the agreement. Therefore, the only new action the Council would be taking is in delegating the authority to the Mayor.

FISCAL IMPACT:

There are no immediate fiscal impacts to the City for establishment of these maintenance agreements. If IBCA is unable to uphold their responsibility under the City-IBCA agreement, ultimate responsibility lies with the City.

OTHER AGENCY INVOLVEMENT:

The City Attorney has been involved in reviewing and preparing the agreements. The City Engineer's office assisted with development of the encroachment permit plans.

ALTERNATIVES TO STAFF RECOMMENDATION:

If the Council decides to not enter into these maintenance agreements, the monument sign cannot be established.

ATTACHMENTS:

1. Resolution 1713 – Agreement between the City and Caltrans and IBCA.

RESOLUTION NO. 1713

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IONE AUTHORIZING
ENTRY INTO HIGHWAY SIGN AGREEMENT WITH
CALIFORNIA DEPARTMENT OF TRANSPORTATION AND THE IONE BUSINESS
AND COMMUNITY ASSOCIATION**

WHEREAS, the Ione Business and Community Association (“IBCA”) desires to erect and maintain a community sign (“Sign”) located at South Church Street (State Highway 124) near Howard Park, in the City of Ione.

WHEREAS, the Sign is proposed to be located within the right-of-way of the California Department of Transportation (“Caltrans”) and cannot be erected without an encroachment permit and authorization from Caltrans.

WHEREAS, Caltrans and the City desire to enter into a Maintenance Agreement for Monument Sign, attached to this Resolution as “Exhibit A” that is required before Caltrans will approve the Sign and grant an encroachment permit.

WHEREAS, prior to construction or installation of the Sign, the City of Ione and IBCA will enter an agreement that assigns and transfers to IBCA all of the City of Ione’s maintenance and other responsibilities under the Maintenance Agreement for Monument Sign (“Exhibit B”).

WHEREAS, Caltrans has requested that the City of Ione authorize a designated official to sign the Maintenance Agreement for Monument Sign on behalf of the City of Ione.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Ione does hereby authorize the Mayor, Lee Ard, on behalf of the City of Ione, to sign the Maintenance Agreement for Monument Sign, and the maintenance agreement with IBCA.

Introduced and adopted at the regular meeting of the City Council of the City of Ione on _____, 2009 by the following vote:

AYES:

NOES:

ABSTAIN:

Lee Ard, Mayor

ATTEST:

Janice Traverso, City Clerk

Exhibit A
Caltrans Agreement

AGREEMENT FOR MAINTENANCE OF MONUMENT SIGN
WITHIN STATE HIGHWAY RIGHT OF WAY ON ROUTE 124
IN THE COUNTY OF AMADOR

THIS AGREEMENT is made and executed effective this ____ day of _____, 2008, by and between the State of California, acting through its Department of Transportation, hereinafter referred to as "STATE," and the City of Ione, hereinafter referred to as "CITY," together referred to as "PARTIES".

WITNESSETH

RECITALS:

1. PARTIES desire to work together to allocate their respective obligations relative to newly constructed or revised improvements within STATE's right of way by Permit Number 10-08-N-AD-0343.
2. The purpose of this agreement is to document that CITY will assume ownership, maintenance and full operational responsibilities of the Monument Sign (MONUMENT SIGN) under conditions set by STATE.
3. This Agreement addresses CITY responsibility for the MONUMENT SIGN placed within State Highway right of way on State Route 124, as shown on Exhibit "A", attached to and made a part of this Agreement.

SECTION 1

In consideration of the mutual covenants and promises herein contained, CITY and STATE agree as follows:

- a) CITY agrees to accept full maintenance responsibilities that includes, but is not limited to, inspection, providing emergency repair, replacement, & maintenance, (collectively hereinafter "MAINTAIN/MAINTENANCE") of MONUMENT SIGN as shown on said Exhibit "A."
- b) When a planned future improvement is constructed and/or a minor revision has been effected with STATE's consent or initiation within the limits of the STATE's right of way herein described which affects PARTIES' Division of Maintenance's responsibility as described herein, PARTIES will agree upon and provide a new dated and revised Exhibit "A" which will be made a part hereof by an amendment to this Agreement when executed and will thereafter supersede the attached original Exhibit "A" to thereafter become a part of this Agreement.
- c) CITY will have ownership and full maintenance responsibilities for this MONUMENT SIGN, which is include but are not limited to the following:

- d) CITY will maintain, at CITY's expense, the structural integrity of this MONUMENT SIGN. If STATE desires the MONUMENT SIGN area, as shown on Exhibit "A" to be restored to original condition, then CITY will do so at CITY expense.
- e) CITY will maintain, the MONUMENT SIGN at CITY'S expense. Work will include but is not limited to: removal of debris and cleaning and/or painting for removal of dirt or graffiti.
- f) CITY will be fully responsible for all the electrical services including but not limited to energy bill, replacement/repair of any lighting fixture, which are used in the letters.
- g) CITY will be fully responsible for any structural failure of this MONUMENT SIGN.
- h) City agrees that the STATE can inspect the MONUMENT SIGN with or without giving notice to CITY.

SECTION II

CITY agrees, at CITY expense, to do the following:

- a) CITY will MAINTAIN as per Section 27 of the Streets and Highways Code MONUMENT SIGN conforming to those plans and specifications (PS&E) pre-approved by STATE.
- b) CITY shall ensure that MONUMENT SIGN area designated on Exhibit "A" is provided with adequate scheduled routine MAINTENANCE necessary to MAINTAIN a neat and attractive appearance.
- c) An Encroachment Permit rider may be required for any changes to the scope of work allowed by this agreement prior to the start of any work within STATE's right of way.
- d) CITY contractors will be required to obtain an Encroachment Permit prior to the start of any work within STATE's right of way.
- e) To remove MONUMENT SIGN and appurtenances and restore STATE owned MONUMENT SIGN area to a safe and attractive condition acceptable to STATE in the event this Agreement is terminated as set forth herein.
- f) To inspect MONUMENT SIGN on a regular monthly or weekly basis to ensure the safe operation and condition of the MONUMENT SIGN.
- g) To expeditiously MAINTAIN, replace, repair or remove from service any element of the MONUMENT SIGN that has become unsafe or unsightly.

- h) To MAINTAIN MONUMENT SIGN within the AGREEMENT limits of the STATE highway right of way, as shown on Exhibit "A", at CITY expense. MAINTENANCE includes, but is not limited to, the repair and replacement of the MONUMENT SIGN, and the removal of dirt, debris, graffiti, weeds, and any deleterious item or material deposited on or about the MONUMENT SIGN area in an expeditious manner.
- i) To allow random inspection of MONUMENT SIGN by a STATE representative.
- j) All work by or on behalf of CITY will be done at no cost to STATE.

SECTION III

STATE agrees to do the following:

- a) Provide CITY with timely written notice of unsatisfactory conditions that require correction by CITY.
- b) Issue encroachment permits to CITY and CITY contractors at no cost to them.

SECTION IV

Legal Relations and Responsibilities:

- a) Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement, or affect the legal liability of either PARTY to this Agreement by imposing any standard of care respecting the design, construction and MAINTENANCE of these STATE highway improvements or CITY facilities different from the standard of care imposed by law.
- b) If during the term of this Agreement, CITY should cease to MAINTAIN the MONUMENT SIGN to the satisfaction of STATE as provided by this Agreement, STATE may either undertake to perform that MAINTENANCE on behalf of CITY at CITY's expense or direct CITY to remove or itself remove MONUMENT SIGN at CITY's sole expense and restore STATE's right of way to its prior or a safe operable condition. The CITY hereby agrees to pay said STATE expenses within thirty (30) days of receipt of billing by STATE. However, prior to STATE performing any MAINTENANCE or removing MONUMENT SIGN, STATE will provide written notice to CITY to cure the default and CITY will have thirty (30) days within which to effect that cure.
- c) Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the CITY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by

reason of anything done or omitted to be done by STATE under this Agreement with the exception of those actions of STATE necessary to cure a noticed default on the part of CITY.

- d) Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction arising under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.

e) Insurance

CITY and their contractors shall maintain in force, during the term of this agreement, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming the State of California, its officers, agents and employees as the additional insured in an amount of \$1 million per person and \$2 million in aggregate. Coverage shall be evidenced by a certificate of Insurance in a form satisfactory to Department that shall be delivered to Department with a signed copy of this Agreement.

f) Prevailing Wage Requirements

Workers employed in the performance of work contracted for by CITY, and/or performed under encroachment permit, are covered by the prevailing wage provisions of the Labor Code in the same manner as arc workers employed by STATE's contractors.

CITY shall require its contractors to include prevailing wage requirements in all subcontracts entered into to perform the work mentioned in this agreement. All the CITY'S contracts with their contractors shall include a requirement that contractors and their subcontracts shall include prevailing wage requirements identical to those set forth in this Agreement.

g) Termination

This Agreement may be terminated by timely mutual written consent by the PARTIES and CITY's failure to comply with the provisions of this Agreement will be grounds for a Notice of Termination by STATE.

h) Term of Agreement

This Agreement shall become effective on the date first shown on its face sheet and shall remain in full force and effect until amended or terminated at any time upon mutual consent of the parties or until terminated by STATE for cause.

The PARTIES are empowered by Street and Highways Code section 114 & 130 to enter into this Agreement and have delegated to the undersigned the authority to execute this Agreement on behalf of the respective agencies and covenant to have followed all the

necessary legal requirements to validly execute this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

THE CITY OF IONE

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
LEE ARD
Mayor

WILL KEMPTON
Director of
Transportation

Attest:

By: _____
JANICE TRAVERSO
City Clerk

By: _____
DINAH N. BORTNER
Deputy District Director
Maintenance & Operations

By: _____
KRISTEN CASTANOS
City Attorney

By: _____
Attorney
Department of Transportation

Exhibit B
IBCA Agreement

MAINTENANCE AGREEMENT

(City of Ione / Ione Business and Community Association)

1. IDENTIFICATION

This MAINTENANCE AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2009 by and between the City of Ione (“City”), a California municipal corporation, and the Ione Business and Community Association (“IBCA”), a California _____.

2. RECITALS

2.1 IBCA has requested permission from City to install a community sign (“Sign”) within the State Highway right-of-way, on the east side of South Church Street (State Highway 124) adjacent to Howard Park. This Sign may not be installed without approval by and an encroachment permit from the California Department of Transportation (“Caltrans”). As a condition of the encroachment permit and Caltrans’ Sign approval, the City is also required to assume ownership of the Sign and enter into a maintenance agreement with Caltrans (“Caltrans Agreement”), attached to this Agreement as Exhibit “A.”

2.2 The City and IBCA (collectively “Parties”) mutually desire to clarify the responsibility for construction, installation, operation and maintenance of the Sign and area within Caltrans’ right-of-way, as described in the Caltrans Agreement and set forth in Exhibit “B” attached to this Agreement (“Sign Area”).

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein, the City and IBCA agree as follows:

3. DEFINITIONS

3.1 “Maintenance” or “Maintain” shall include all activity as set forth in section 27 of the California Streets and Highways Code or other work or repairs to the Sign or Sign Area required to be performed pursuant to the Caltrans Agreement and Section 6 of this Agreement.

3.2 “Sign” includes all appurtenances, lighting, and other fixtures attached to or made a part of the sign structure.

3.3 “State” means the State of California and any of its agencies.

3.4 “Subcontractor” shall include any person or entity employed by or performing work for IBCA to carry out the provisions of this Agreement.

4. **SIGN OWNERSHIP, MAINTENANCE AND RESPONSIBILITY**

4.1 The Sign shall be property of City. IBCA assumes complete responsibility for the Sign and Sign Area, including, but not limited to construction, installation, maintenance, and operation, as set forth in this Agreement. IBCA shall be fully responsible for the safe condition of the Sign and Sign Area. IBCA agrees to pay all costs, in addition to any costs incurred by City, associated with the Sign, including, but not limited to costs of construction, installation, maintenance, operation, removal, and costs incurred from liability arising from the performance or failure to perform such work, or other work associated with the Sign.

5. **TERM**

The term of this Agreement shall commence upon signature by both PARTIES, and shall be binding upon any future owners, their successors, heirs or assigns and shall continue in effect until the City approves termination of the Agreement.

6. **SCOPE OF DUTIES**

6.1 The City allows IBCA to install the Sign within the Sign Area and install any landscaping subject to approval by City and/or Caltrans. IBCA shall be responsible for all costs, labor, and other materials necessary to construct, install and maintain the Sign. The Sign must comply with all applicable State, City, and other laws, including, but not limited to building and safety codes. The Sign must conform to Caltrans' requirements, and plans and specifications as approved by Caltrans. IBCA agrees that Caltrans, the State, or the City may perform random inspections of the Sign and Sign Area at any time during or after construction and installation, to ensure that the Sign complies with all applicable laws and regulations.

6.2 IBCA agrees to assume all responsibility for construction, installation, operation and maintenance of the Sign and Sign Area, including but not limited to the following:

(a) Maintain, at IBCA's expense, the structural integrity of the Sign. IBCA shall be liable for any structural failure of the Sign. If the State, Caltrans or City require the Sign to be removed, or the Sign Area restored to its original condition, IBCA shall do so at IBCA's expense.

(b) Regularly inspect Sign and Sign Area on a monthly basis to ensure the safe operation and condition of Sign and Sign Area.

(c) Provide regularly scheduled routine cleaning, maintenance, and repair as necessary to maintain a neat and attractive appearance of the Sign and Sign Area.

(d) Timely remove any debris, weeds, dirt, litter, refuse or graffiti from Sign and Sign Area.

(e) Expediently maintain, replace, repair, and remove any element of the Sign that has become unsafe or unsightly.

(f) Clean and paint Sign and/or Sign Area as necessary, and timely remove and replace any old, broken or damaged fixtures, equipment or appurtenances from the Sign and/or Sign Area.

(g) Assume all responsibility for all electrical services associated with the Sign, including but not limited to paying energy and other associated costs, and replacing and repairing any lighting or other electrical fixtures.

(h) Allow Caltrans or City to inspect Sign or Sign Area at any time without notice.

(i) Assume all City responsibilities set forth in the Caltrans Agreement.

6.3 If for any reason IBCA ceases to maintain the Sign and Sign Area in a manner satisfactory to City or Caltrans, or otherwise breaches this Agreement, City may either perform such maintenance or other work on behalf of IBCA at IBCA's expense, remove or direct IBCA to remove the Sign at IBCA's expense and restore or direct IBCA to restore the Sign Area to its previous condition. IBCA agrees to pay all City expenses incurred subject to this provision within 30 days of receipt of billing. Before City performs any maintenance, work or other duty assumed by IBCA under this Agreement or removes the Sign, City shall provide timely written notice to IBCA. IBCA shall make or cause to be made any necessary maintenance, repairs or removal to the City's satisfaction within 10 days of such written notice.

6.4 Caltrans and/or the City reserve the right to order IBCA to remove the Sign for reasons including but not limited to breach or termination of this Agreement, or construction, maintenance, rehabilitation or other activities affecting State Highway 124, without any obligation, compensation to, or approval from IBCA. If City orders Sign removal, City shall provide timely written notification to IBCA.

7. RELATIONSHIP OF PARTIES

7.1 IBCA is, and shall at all times remain as to City, a wholly independent contractor. IBCA shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of IBCA or any of its subcontractors or employees, except as set forth in this Agreement. IBCA shall not represent that it is, or that any of its agents, Subcontractors or employees are, in any manner affiliated with the City.

8. PREVAILING WAGES

8.1 Any worker employed in the performance of work contracted for by City, and/or work performed in connection with an encroachment permit is subject to the

prevailing wage provisions of the California Labor Code in the same manner as are workers employed by the State's contractors.

8.2 Pursuant to section 1771 of the California Labor Code, except for public works projects of one thousand dollars (\$1,000.00) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works. These requirements apply to any work performed subject to this Agreement, as required by Caltrans.

8.3 Any contracts between IBCA and any Subcontractor or other person or entity performing work pursuant to this Agreement shall also include these prevailing wage requirements as set forth in the California Labor Code.

9. INDEMNIFICATION

9.1 To the fullest extent permitted by law, IBCA shall indemnify, hold harmless and defend City, its officers, agents and employees from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of IBCA or of any of its agents or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by City.

9.2 IBCA agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Agreement from each and every Subcontractor or other person or entity involved by, for, with or on behalf of IBCA in the performance of this Agreement. Such indemnity agreements shall be on file with City prior to construction or installation of the Sign. If IBCA fails to obtain such indemnity agreements as required herein, IBCA shall be fully responsible and shall indemnify, hold harmless and defend City, its officers, agents and employees from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions for IBCA's subcontractors or any other person or entity involved by, for, with or on behalf of IBCA in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by City.

10. INSURANCE

10.1 During the term of this Agreement, IBCA shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with IBCA's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:

(a) Comprehensive general liability insurance, including coverage of bodily injury liability and property damage liability, naming the City of Ione, its officers, agents and employees, and the State of California, its officers, agents and employees as additional insureds in an amount of One Million Dollars (\$1,000,000.00) per person and Two Million Dollars (\$2,000,000.00) in aggregate.

(b) Automobile liability insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000.00) per claimant and One Million Dollars (\$1,000,000.00) per incident;

(c) Public officials errors and omissions coverage with coverage limits not less than One Million Dollars (\$1,000,000.00).

(d) IBCA shall either obtain Worker's Compensation insurance as required by the laws of the State of California, or if the maintenance or other work is performed by IBCA's Subcontractors or other persons, IBCA shall require those persons or entities to obtain Worker's Compensation insurance. IBCA shall require its Subcontractors to maintain insurance coverage that meets the requirements of this Agreement.

10.2 The policies required by this Agreement shall be issued by an insurer admitted and licensed in the State, and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.

10.3 All insurance policies required by this Agreement shall contain an endorsement naming City and its officers, employees and agents as named additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be cancelled or reduced except on thirty days' prior written notice to City.

10.4 The insurance provided by IBCA shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City shall be in excess of IBCA's insurance and shall not contribute to it.

10.5 All insurance coverage provided pursuant to this Agreement shall not prohibit IBCA and IBCA's agents, employees or Subcontractors from waiving the right of subrogation prior to a loss. IBCA hereby waives all rights of subrogation against City.

10.6 Any deductibles on the insurance described in this section must be declared to and approved by City.

10.7 Procurement of insurance by IBCA shall not be construed as a limitation of IBCA's liability or as full performance of IBCA's duties to indemnify, hold harmless and defend City under this Agreement.

10.8 A Certificate of Insurance, in a form satisfactory to the City shall be delivered to the City with a signed copy of this Agreement. Such insurance certificates shall be on file with the City prior to construction or installation of the Sign. At all times

while this Agreement is in effect, IBCA shall maintain on file with the City a certificate or certificates of insurance showing that the above policies are in effect in the required amounts. IBCA agrees that if it does not keep the above insurance in full force and effect, City may either (1) immediately terminate this Agreement; or (2) take out the necessary insurance and pay, at IBCA's expense, the premium thereon.

10.9 IBCA shall pay all costs and expenses related to City's insurance that City is required to obtain pursuant to the Caltrans Agreement.

11. PERMITS AND APPROVALS

11.1 City agrees to obtain an encroachment permit for the Sign from Caltrans prior to the start of any construction or work within the Sign Area. The cost and expense of all other applicable permits and regulatory approvals necessary for construction and maintenance of the Sign shall be borne by IBCA.

12. NOTICES

12.1 Any notices, bills, invoices or other information required by this Agreement shall be deemed received on the day of delivery if delivered by hand, facsimile, e-mail or overnight courier service during City and IBCA's regular business hours, or on the third business day following deposit in United States mail to the addresses listed below.

If to City:

City of Ione
P.O. Box 398
Ione, CA 95640
Phone: 209-274-2412
Facsimile: 209-274-2830

If to IBCA:

Ione Business and Community Association
P.O. Box 637
Ione, CA 95640
Phone: 209-217-7481
Facsimile: _____

13. TERMINATION

13.1 City shall have the right to terminate this Agreement for any reason on five (5) calendar days' written notice to IBCA. If this Agreement is terminated, IBCA shall remove Sign and any appurtenances and restore Sign Area to a safe and attractive condition that is deemed acceptable by City and Caltrans within 60 days of termination.

14. CHANGES TO IBCA

14.1 IBCA agrees to notify City in writing at least 30 days prior to any change in the name, organization or legal status of IBCA, including, but not limited to, dissolution, suspension, reorganization, or other changes to IBCA that could affect IBCA's rights and duties under this Agreement. A change under this section may be grounds for CITY to terminate this Agreement.

15. **ASSIGNMENT**

15.1 IBCA shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City’s prior written consent, and any attempt to do so without such consent shall be void and of no effect. City must approve any Subcontractor selected by IBCA to perform work under this Agreement. City shall not be obligated or liable under this Agreement to any party other than IBCA.

16. **MODIFICATION AND WAIVER**

16.1 If City or IBCA waives any breach of any term, covenant or condition in this Agreement, such waiver shall not waive any subsequent breach of that same term, covenant or condition. This Agreement constitutes the entire agreement of the Parties and supersedes all proposals, oral and written, and all negotiations, conversations, or discussions between the Parties related to the subject matter of this Agreement. No terms or provisions of this Agreement may be changed, waived, discharged, or terminated unless in writing and signed by the Parties.

17. **CONSTRUCTION**

17.1 This Agreement shall be governed and construed in accordance with the laws of the State of California. The venue for any litigation arising from this Agreement shall be in the Superior Court of Amador County, California.

17.2 If any term or provision of this Agreement is invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to cure such invalidity, and in its amended form shall be enforceable. In such event, the remainder of this Agreement shall remain valid and enforceable.

17.3 All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. This instrument contains the entire Agreement between City and IBCA. No other oral or written agreements are binding upon the parties. No term, covenant or condition of this Agreement shall be deemed to have been waived or modified without the signed, written consent of the Parties.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the on this ____ day of _____, 2009.

CITY OF IONE

IONE COMMUNITY BUSINESS ASSOCIATION

By: _____
Mayor

By: _____

Attest:

Approved as to form:

JANICE TRAVERSO, City Clerk

City Attorney