

AGREEMENT
TRACT 36485-6, IP17-043
FOR THE CONSTRUCTION OF WATER SYSTEM IMPROVEMENTS

This Agreement for Construction of Water System Improvements ("Agreement") is made and entered into by and between the City of Menifee, State of California, hereinafter called City, and Sutter Mitland 01, LLC, a Limited Liability Company, hereinafter called Developer.

WITNESSETH:

FIRST: Developer, as part of the City's consideration of the final map for that certain land division known as Tract 36485-6, IP17-043, hereby agrees, at Developer's own cost and expense, to furnish all labor, equipment and materials necessary to perform and complete, within Seven Hundred and Thirty Days from the date this Agreement is executed, in a good and workmanlike manner, a water distribution system, complete with all necessary pipes, valves, fire hydrants, connections and appurtenances necessary to the satisfactory operation of said distribution system, and, further, to extend main or mains from the existing supply system maintained and operated by Eastern Municipal Water District, to connect with the distribution system described above with all pipe laid at such a depth as to provide a fully-thirty six inch (36") minimum cover from the top of the pipe to street grade, unless otherwise specified by the City Engineer, office of the City of Menifee Engineering Department, and do all work incidental thereto in accordance with the standards set forth in Riverside County Ordinance No. 460 and City Standards and Specifications, as amended, or its successor, which are hereby expressly made a part of this Agreement. All the above required work shall be done under the inspection of and to the satisfaction of the City Engineer, and shall not be deemed complete until approved and accepted in writing as complete by the City Engineer. Developer further agrees to maintain the above required improvements for a period of one year following acceptance by the City, and during this one year period to repair or replace, to the satisfaction of the City Engineer, any defective work or labor done or defective materials furnished. Developer further agrees that all underground improvements covered by this Agreement shall be completed prior to the paving of any roadway. The estimated cost of said work and improvements is the sum of Four Hundred Forty One Thousand Five Hundred and no/100, Dollars, \$ 441,500.00, ("Estimated Cost"). Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the work and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer.

SECOND: Developer agrees to pay to City the actual cost of such inspections of the work and improvements as may be required by the City Engineer. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of construction of the work performed pursuant to this Agreement, including, but not limited to fees for checking, filing, and processing of improvement plans and specifications and for inspecting the construction of said work. These fees must be paid in full prior to approval of the final map and improvement plans, unless such fees have not yet been assessed and are not yet due and payable. The fees referred to the above are not necessarily the only City fees, charges, or other cost that have been or will be imposed on the subdivision and its development, and this Agreement shall in no way exonerate or relieve Developer from paying such other applicable fees, charges and/or cost. Developer further agrees that, if suit is brought upon this Agreement or any bond guaranteeing the completion of the road and drainage improvements, all costs and reasonable expenses and fees incurred by City in successfully enforcing such obligations shall be paid by Developer, including reasonable attorney's fees, and that, upon entry of judgment, all such costs, expenses and fees shall be taxed as costs and included in any judgment rendered. Developer, not the City, shall be legally responsible for making any payment and/or taking any action required by any such judgment.

THIRD: City shall not, nor shall any officer or employee of City, be liable or responsible for any accident, loss, injury, or damage happening or occurring to the works specified in this agreement prior to the completion and acceptance thereof, nor shall City or any officer or employee thereof, be liable for any persons or property injured or damage by reason of the nature of the work, or by reason of the acts or omissions of Developer, its

agents or employees, in the performance of the work, and all or said liabilities are assumed by Developer. Developer shall defend, indemnify, and hold harmless City, its elected officials, officers, employees, agents, and volunteers from any and all actual or alleged claims, demands, causes of action, liability, loss, administrative action of any federal, state, or local government body or agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its personnel, employees, agents, or contractors in connection with or arising out of construction or maintenance of the work contemplated under this Agreement, or performance of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all legal expenses, and cost incurred by each of them. This indemnification excludes only such portion of any claim, demand, cause of action, liability, loss, damage, penalty, fine, or injury, to property or persons, including wrongful death, which is caused by the negligence or willful misconduct of City as determined by a court or administration body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, officers, employees, agents, or volunteers.

FOURTH: The Developer hereby grants to City, or any agent or employee of City, the irrevocable permission to enter without any additional consent upon the lands of the subject land division for the purpose of completing the improvements. This permission shall terminate in the event that Developer has completed work within the time specified or any extension thereof granted by the City. Under such circumstances, Developer shall be responsible for any and all expenses, costs, liabilities, and fees (including attorneys' fees and litigation cost) ("Completion Costs") incurred by the City in connection with ensuring that the work contemplated by this Agreement. Developer shall remit such completion Costs to the City no more than thirty (30) days of the date that the City notifies Developer of such Completions Cost. Failure to remit the Completion Costs in a timely matter shall result in the City having the right to invoke any remedy provided by law including the encumbrance of the any property owned by Developer in the amount equal to any unpaid Completion Cost.

FIFTH: The Developer shall provide adequate notice and warning to the traveling public of each and every hazardous or dangerous condition caused or created by the construction of the works of improvement at all times up to the completion and formal acceptance of the works of improvement. The Developer shall protect all persons from such hazardous or dangerous conditions in compliance with State law regulations and standards for traffic regulatory control methods, including, but not limited to, stop signs, regulatory signs or signals, barriers, or detours.

SIXTH: Developer, its agents and employees, shall give written notice to the City Engineer at least forty eight (48) hours before beginning any work. Developer shall provide the City Engineer or his designee reasonable access to facilities for obtaining full information with respect to the progress and manner of work and shall fully cooperate with any investigation regarding the same.

SEVENTH: If Developer, its agents or employees, neglects, refuses, or fails to prosecute the work with such diligence as to insure its completion within the specified time, or within such extensions of time which have been granted by City, or if Developer violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, Developer shall be in default of this Agreement and notice of such default shall be served upon Developer. City shall have the power, on recommendation of the City Engineer, to terminate all rights of Developer as a result of such default. The determination by the City Engineer of the question as to whether any of the terms of the Agreement or specifications have been violated, or have not been performed satisfactorily, shall be conclusive upon the Developer, and any and all parties who may have any interest in the Agreement or any portion thereof. The foregoing provisions of this section shall be in addition to all other rights and remedies available to City under this Agreement or the law. The failure of the Developer to commence or complete construction shall not relieve the Developer or surety from completion of the improvements required by this Agreement.

EIGHTH: Developer agrees to file with City, prior to the date that this Agreement is executed, both a good and sufficient improvement security in an amount not less than the Estimated Costs of the work and improvements for the faithful performance of the terms and conditions of this Agreement, and good and

· sufficient security for payment of labor and materials in the amount prescribed by Article XVII of Riverside County Ordinance 460 as amended to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California. Developer agrees to renew each and every said bond or bonds with good and sufficient sureties or increase the amount of said bonds, or both, within ten (10) days after being notified by the City Engineer that the sureties or amounts are insufficient. Notwithstanding any other provisions herein, if Developer fails to take such action as is necessary to comply with said notice, Developer shall be in default of this Agreement unless all required improvements are completed within ninety (90) days of the date on which the City Engineer notified Developer of the insufficiency of the security or the amount of the bonds or both.

NINTH: It is further agreed by and between the parties hereto, including the surety or sureties on the bonds securing this Agreement, that, in the event it is deemed necessary to extend the time of completion of the work contemplated to be done under this Agreement, extensions of time may be granted in writing, from time to time, by City, either at its own option, or upon request of Developer, and such extensions shall in no way affect the validity of this Agreement or release the surety or sureties on such bonds. Developer further agrees to maintain the aforesaid bond or bonds in full force and effect during the terms of this Agreement, including any extensions of time as may be granted therein.

TENTH: It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain that particular part, term or provision held to be invalid.

ELEVENTH: This Agreement contains the entire Agreement of the parties as to the matters set forth herein. No waiver of any term or condition of this Agreement shall be a continuing waiver thereof.

TWELFTH: In any action or proceeding arising out of this Agreement, or the transactions contemplated hereby, the prevailing party therein shall be entitled to recover from the other party thereto the reasonable attorneys' and paralegals' fees, court costs, filing fees, publication cost and other expenses incurred by the prevailing party in connection therewith, at trial and all appellate proceedings.

THIRTEENTH: This Agreement may be amended at any time by the mutual consent of the parties by a written instrument signed by both parties.

FOURTEENTH: The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that, by so executing this Agreement, the parties hereto are formally bound to the provisions of this Agreement.

FIFTEENTH: Developer shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of City. Any attempt to do so shall be null and void, and any assignee, hypothecate, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecate, or transfer. Unless specifically stated to the contrary in City's written consent, any assignment, hypothecation, or transfer shall not release or discharge Developer from any duty or responsibility under this Agreement. In the event that City consents in writing to such an assignment, any assignee, hypothecate, or transferee shall expressly assume Developer's obligations hereunder by a written agreement in a form, and containing such surety, as is reasonably acceptable to City.

SIXTEENTH: Developer shall perform all work contemplated by this Agreement in accordance with all approved maps, conditions, plans, specifications, standard drawings, and special amendments thereto on file with the City, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements. Developer and its contractors, if any, shall perform all work required to construct all work performed pursuant to this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses,

- permits, qualifications, and approvals shall maintained throughout the term of this Agreement.

The agreement, hypothecation, or transfer shall be to the satisfaction of the City Attorney and shall include provisions requiring the assignee to post bonds or submit another form of financial security, satisfactory to City and approved by the City Attorney, to guarantee construction of the work covered by this Agreement. The Agreement shall survive the recordation of the Final Map and shall be recorded against each of the proposed lots to inform successors and assigns of the required work covered by this Agreement to be constructed and their time frame for construction. Following any permitted assignment, hypothecation, or transfer of the work covered by this Agreement, as set forth in this Section, City shall release Developer from its obligations so assigned and shall release to Developer any bonds or other security posted to secure the work covered by this Agreement so assigned; provided, however, that City shall not release any security or undertakings given to secure the performance of any of the work covered by this Agreement not assigned, hypothecated, or transferred.

SEVENTEENTH: This agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instruments.

EIGHTEENTH: This Agreement is to be governed by the laws of the State of California.

NINETEENTH: Any notice or notices required or permitted to be given pursuant to this Agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

City

City of Menifee
29714 Haun Road
Menifee, CA 92586

Developer

Sutter Mitland 01, LLC
3200 Park Center Dr., Ste 1000
Costa Mesa, CA 92626

TWENTIETH: City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or City's waiver of any breach of this Agreement, shall not relieve Developer of any of its obligations under this Agreement, whether of the same or similar type. The foregoing shall be true whether City's actions are intentional or unintentional.


TWENTY-FIRST: Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the parties, and their successors, heirs, personal representatives, or assigns. This Section shall not be construed as an authorization for any Party to assign any right or obligation.

IN WITNESS WHEREOF, Landowner has affixed his name, address and seal.

Dated: January, 2018

By: Sutter Mitland 01, LLC
Limited Liability Company
Its Manager


David E. Bartlett, Vice President


Richard T. Whitney, CFO

Dated: April 17, 2018

CITY OF MENIFEE

By: 
Jonathan G. Smith, Public Works Director/
City Engineer

CITY OF MENIFEE

By: 
Bill Zimmerman, Mayor

ATTEST:

By: 
Sarah Manwaring, City Clerk

APPROVED AS TO FORM:

By: 
Jeffery T. Melching, City Attorney

**SIGNATURES OF DEVELOPER MUST BE ACKNOWLEDGED BY NOTARY
AND EXECUTED IN TRIPLICATE**

A notary public or other officer completing this certificate verified only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF Orange) ss.

On January 13, 2019, before me, Danielle Monique Moss, Notary Public, personally appeared David E. Bartlett & Richard T. Whitney, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they/executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Danielle Monique Moss
Notary Public