

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

City Clerk  
1275 W. Main Street  
El Centro, California, 92243

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Subdivision Name: \_\_\_\_\_

Subdivider: \_\_\_\_\_

Effective Date is date of County recordation

**SUBDIVISION IMPROVEMENT AGREEMENT**

This Subdivision Improvement Agreement is entered into by and between the City of El Centro hereinafter called "CITY," and \_\_\_\_\_ hereinafter called "Subdivider," on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**RECITALS**

1. Subdivider has received approval from CITY of a tentative subdivision map commonly known as \_\_\_\_\_ ("the subdivision").
2. Subdivider wishes to have filed for record a final subdivision map, ("the map"), in substantial conformity with the approved tentative map. A copy of this map is on file at the City Clerk's office of the City of El Centro and by this reference incorporated herein.
3. CITY has approved the map, subject to the execution of this Agreement.
4. Subdivider is willing to execute this Agreement as a condition precedent to the recording of the map.
5. The authority for this Agreement is set forth in the Subdivision Map Act ("the Map Act") (Government Code section 66410 et seq.)

**AGREEMENT**

1. **IMPROVEMENTS.** Subdivider agrees to complete all the works of improvement ("the improvements") required for the subdivision as shown on the final improvement plans for the subdivision submitted to, approved by, and filed with the City of El Centro Works Department and in conformance with the City of El Centro ordinance (including future amendments therein) in accordance with the requirements of the Map Act, Title 16. Subdivider shall complete said improvements in a good workmanlike manner, in accordance with accepted construction practices and in a manner equal or superior to the requirements of the City Code and rulings made thereunder; and where there is a conflict between the improvement plans the City Code, the stricter requirements shall govern. Such work will be completed within \_\_\_\_ months, (not to exceed 36), of the date of this Agreement.
2. **ADDITIONAL REQUIREMENTS.** Subdivider further agrees to perform all additional work as specified in Exhibit 1 attached hereto and in the conditions of approval of the tentative subdivision map incorporated herein by reference.
3. **ACCEPTANCE OF IMPROVEMENTS UPON COMPLETION.** Upon satisfactory completion of the improvements in accordance with the approved improvement plans, the Standard Specifications and the conditions of approval of the tentative subdivision map,

CITY agrees to accept the improvements as complete, subject to the provisions of Paragraph 5 hereof.

4. NOTICE REGARDING CONSTRUCTION. Subdivider shall notify the City Engineer 48 hours prior to commencement of construction of the improvements.
5. GUARANTEE AND WARRANTY OF WORK. Subdivider guarantees that said work shall be free from defects in material or workmanship and shall perform satisfactorily for a period of one (1) year from and after the City Council accepts the work as complete. Subdivider agrees to correct, repair, or replace, at his expense, any defects in said work. The guarantee period does not apply to road improvements for private roads which are not to be accepted into the CITY road system.
6. PLANT ESTABLISHED WORK. Subdivider agrees to perform plant establishment work for landscaping installed under this Agreement. Said plant establishment work shall consist of adequately watering plants, and other work determined by the Public Works Department to be necessary to insure establishment of plants.

Said plant establishment work shall be performed for a period of one (1) year from and after the City Council accepts the work as complete.

7. IMPROVEMENTS PLAN WARRANTY. Subdivider warrants the improvement plans for the work are adequate to accomplish the work as promised in section 2 and as required by the Conditions of Approval for the Subdivision. If, at any time before the City Council accepts the work as complete or during the one year guarantee period, said improvement plans prove to be inadequate in any respect, Subdivider shall make whatever changes are necessary to accomplish the work as promised.
8. NO WAIVER BY CITY. Inspection of the work and/or materials, or approval of work and/or materials or statement by any officer, agent or employee of the city indicating the work or any part thereof complies with the requirements of this Agreement, or acceptance of the work or any part of said work and /or materials, or payments thereof, or any combination or all of these acts, shall not relieve the Subdivider of his obligation to fulfill this Agreement as prescribed; nor shall the CITY thereby be stopped from bringing any action for damages arising from the failure to comply with any of the terms and conditions hereof.
9. INDEMNITY AND HOLD HARMLESS. Subdivider shall defend, hold harmless and indemnify the indemnities from the liabilities as defined in this Section:

A. The indemnities benefited and protected by this promise are the City and its elective and appointive boards, commissions, officers, agents and employees.

B. The liabilities protected against are any liability or claim for damage of any kind allegedly suffered, incurred or threatened because of actions defined below, and including personal injury, death, property damage, inverse condemnation, or any combination of these, and regardless of whether or not such liability, claim or damage was unforeseeable at any time before the CITY reviewed said defense of any suit(s), action(s) or other proceeding(s) concerning said liabilities and claims.

C. The actions causing liability are any act of omission (negligent or non-negligent) in connection with the matters covered by this Agreement and attributable to the Subdivider, contractor, subcontractor or any other, agent or employee of one or more of these.

D. Non-Conditions: The promise and agreement in this Section are not conditioned or dependent on whether or not any indemnitee has prepared, supplied or reviewed any plan(s) or specification(s) in connection with this work or Subdivision, or has insurance or other indemnification covering any of these matters, or that the alleged damage resulted party from any negligent or willful misconduct of any indemnity

E. Subdivider agrees to identify all existing utilities on the Plans and Specifications, and pay all costs and expenses for relocation of utilities, whether shown on such Plans and

Specifications or not, and to defend and hold harmless CITY from any claims arising out of failure to show or relocate such utilities.

F. It is mutually understood that Subdivider will bear the full responsibility for losses incurred by destruction or damage to all improvements, from any cause whatsoever, and shall bear full responsibility for costs incurred or reasonably necessary, until such improvements are accepted by the CITY or other appropriate public agency.

10. DELAY. If the construction of the improvements is delayed without fault of Subdivider, the time for completion thereof may be extended by the City Engineer for such period of time as City may deem reasonable.

11. SECURITY.

A. Upon executing this agreement, the Subdivider shall, pursuant to Government Code Section 66499, and Section 24-61 and Section 24-62 of the City Code, provide improvement security to the CITY. Such improvement security shall be in a form acceptable to the City Counsel. If bonds are submitted, Subdivider must provide documentation, in a form acceptable to the City Counsel, that the surety is duly admitted surety authorized to conduct business in the State of California. Such security shall be in the amounts and purposes as defined in the following paragraphs.

Improvements:

Estimated Cost \$ \_\_\_\_\_ Date amount Approved by City \_\_\_\_\_

Monuments:

Estimated Cost \$ \_\_\_\_\_ Date amount Approved by City \_\_\_\_\_

B. For Performance and Guarantee: \$ \_\_\_\_\_ cash, plus additional security, in the amount of \$ \_\_\_\_\_ which together total \_\_\_\_\_ percent (\_\_\_\_%) of the estimated cost of the work of the improvements securing performance of this Agreement. Such securities presented in the form of:

- \_\_\_\_\_ Cash, certified check, or cashier's check deposit with CITY, Escrow Agent or Trust Company
- \_\_\_\_\_ Acceptable corporate surety bond.
- \_\_\_\_\_ Acceptable irrevocable letter of credit.

In no event shall this security be reduced to an amount less than ten percent (10%) of the improvements cost until that liability established by all parts and subsections of this Agreement is satisfied, including the 12 month period specified in Paragraph 5.

C. For Payment: Security in the amount of \$ \_\_\_\_\_ which is \_\_\_\_\_ percent (\_\_\_\_%) of the estimated cost of the work as set forth in Paragraph A immediately preceding, securing payment to the contractor of improvements, to his subcontractors, and to persons furnishing labor, materials, or equipment to them. Such security is presented in the form of:

- \_\_\_\_\_ Cash, certified check, or cashier's check deposit with CITY, Escrow Agent or Trust Company
- \_\_\_\_\_ Acceptable corporate surety bond.
- \_\_\_\_\_ Acceptable irrevocable letter of credit.

D. For Monuments: Subdivider shall, concurrently with the execution hereof, furnish a cash deposit or corporate surety bond in the amount stated in paragraph A as security guaranteeing the faithful performance for the placement of survey monumentation as described on the Map.

12. IRREVOCABILITY OF SECURITY. The improvement security furnished pursuant to Paragraph 11 shall be irrevocable, shall not be limited as to time (except as to the 12 month period specified in Paragraph 5), and shall provide that it shall be released, in whole or in part, only upon the written approval of the City Engineer.

In no event shall security be reduced in amount until progress reports are submitted to the City Engineer and the City Engineer determines that the work in fact, has been completed and the amount by which the security shall be reduced. The determination by the City Engineer as to the completion of work or improvement and the amount by which the security shall be reduced shall be conclusive.

13. RELEASE OF REMAINING SECURITY At the conclusion of the construction of the improvements, and upon written acceptance of them by the City Council and approval of a Notice of Completion, the City Engineer shall authorize the release of the security provided pursuant to Paragraph 11 as provided by Government Code Section 66499.7.
14. LEGAL JURISDICTION This contract is subject to the laws and jurisdiction of the State of California. In the event that any court action should be brought in conjunction with this Contract it shall be subject to the interpretation under the laws of the State of California and any legal proceedings shall be brought under the jurisdiction of the Superior Court of the County of Imperial, State of California. Each party waives any federal court removal and/or original jurisdiction rights it may have.
15. INSURANCE. Subdivider shall file with CITY a Certificate of Insurance, with companies admitted to practice business in the State of California, and acceptable to CITY, with a Best's Rating of no less than A:VII showing the following coverage:
  - A. General Liability Insurance
    - 1) Comprehensive General Liability or Commercial General Liability insurance shall be provided in the name of Subdivider covering all operations by or on behalf of Subdivider, covering bodily injury liability and property damage liability for the limits of liability indicated below, and including coverage for contractual liability insuring the obligations assumed by Subdivider in this Agreement.
    - 2) One of the following forms is required:
      - a) Comprehensive General Liability;
      - b) Commercial General Liability (Occurrence); or
      - c) Commercial General Liability (Claims Made).
    - 3) If Subdivider carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:
      - a) One million dollars (\$1,000,000) each occurrence;
      - b) One million dollars (\$1,000,000) aggregate.
    - 4) If Subdivider carries a Commercial General Liability (Occurrence) policy:
      - a) The limits of liability shall not be less than:
        - i) One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);
        - ii) One million dollars (\$1,000,000) for Products-Completed Operations;
        - iii) One million dollars (\$1,000,000) General Aggregate.
      - b) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately to this contract, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).
    - 5) Special Claims Made Policy Form Provisions:

Subdivider shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of CITY, which consent, if given, shall be subject to the following conditions:

      - a) The limits of liability shall not be less than:
        - i) One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage);

- ii) One million dollars (\$1,000,000) aggregate for Products-Completed Operations;
  - iii) One million dollars (\$1,000,000) General Aggregate.
- b) The insurance coverage provided by Subdivider shall contain language providing coverage up to six (6) months following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy.

B. **Worker's Compensation and Employer's Liability Insurance.** Subdivider shall fully comply with the law of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability Subdivider may have for worker's compensation. Subdivider shall also maintain in full force and effect a policy of employer's liability insurance with limits no less than the following: one million dollars (\$1,000,000) each accident; one million dollars (\$1,000,000) policy limit bodily injury by disease; one million dollars (\$1,000,000) each employee bodily injury by disease.

C. **Automobile.** Subdivider shall maintain in full force and effect a policy of commercial automobile liability insurance (ISO Form CA0001 Code 1 (any auto) or Code 8, 9 if no automobiles owned), with limits no less than the following: one million dollars (\$1,000,000) per accident for bodily injury and property damage.

D. The general liability and automobile policies are to contain, or be endorsed to contain, the following provisions:

1.) The CITY, its officers, employees and volunteers shall be added as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Subdivider, and with respect to liability arising out of work or operations performed by or on behalf of the Subdivider including materials, parts or equipment furnished in connection with such work or operations. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under subdivision (b) of section 2782 of the Civil Code.

2.) For any claims related to work or operations performed by or on behalf of Subdivider, the Subdivider's insurance coverage shall be primary insurance as respects the CITY, its officers, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, employees, or volunteers shall be excess of the Subdivider's insurance and shall not contribute with it.

3.) Coverage shall not be canceled by the Insurer except after thirty (30) days prior written notice has been given to the CITY.

E. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, if officers, employees and volunteers; or the Subdivider shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

F. If Subdivider, for any reason, fails to maintain insurance coverage which is required under this Agreement, the failure shall be deemed a material breach of contract. CITY, at its sole option, may terminate this Agreement and obtain damages from Subdivider resulting from the breach.

G. Subdivider shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

H. Concurrently with the execution of this Agreement, Subdivider shall furnish CITY with fully completed and properly executed certificates of insurance for each type of coverage required.

I. Concurrently with the execution of this Agreement, Subdivider shall furnish CITY with endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.

- 16. COSTS. Subdivider shall pay when due all the costs of the work including inspections thereof and relocating existing utilities required thereby.
- 17. MONUMENTS. Subdivider shall set and establish survey monuments in accordance with the filed map and to the satisfaction of the City Engineer before acceptance of any work as complete by the City Council as a condition of this approval.
- 18. FAILURE OF PERFORMANCE. In the event Subdivider fails to complete the work or one or more of the conditions herein within the time specified in this Agreement and subsequent extensions, or fails to maintain the work, CITY shall have recourse to the security given to guarantee the performance of such acts. CITY shall have recourse against so much of the security as is necessary to discharge the responsibility of Subdivider hereunder (including, but not limited to: engineering, inspection, surveys, contract, overhead, etc.). CITY shall have recourse against Subdivider for any and all amounts necessary to complete the obligations of Subdivider in the event the security therefore is insufficient to pay such amounts. All administrative costs incurred by the CITY, in addition to the costs of the improvements, shall be a proper charge against the security and/or Subdivider.

Subdivider hereby consents to entry on the Subdivision property by the CITY and its forces, including contractors, in the event the CITY proceeds to complete and/or maintain the work.

- 19. ATTORNEY'S FEES. Should CITY sue to compel performance under this Agreement or to recover costs incurred in completing or maintaining the work. Subdivider agrees to pay all attorneys' fees, and all other expenses of litigation incurred by City in connection therewith, even if Subdivider subsequently proceeds to complete the work.
- 20. RECORD MAP. In consideration hereof, CITY shall allow Subdivider to file and record the Final Map or Parcel Map for said Subdivision.
- 21. AGREEMENT BINDING ON SUCCESSORS, ETC. This Agreement shall be binding upon all the heirs, successors, and assigns of either party, and the same shall be recorded in the office of the Recorder of Imperial County upon its execution, and shall be a covenant running with the land and equitable servitude upon the parcel or parcels of real property subdivided by the map.
- 22. SUBDIVISION MAP ACT CONTROLLING. To the extent any provision of this Agreement conflicts with any provision of the Map Act, the applicable provision of such Act shall control, and no action taken pursuant to this Agreement which conflicts with any provision of the Map Act shall relieve the person taking such action from compliance with the provisions of the Map Act.
- 23. ENGINEERING FEES. Subdivider to pay a fee of three and fifty-three hundreds percent (3.53%) of the estimated construction cost as set out in Resolution No. 03-67 of the City of El Centro, as engineering fees.

24. OTHER PROVISIONS:

**A. DEVELOPER AND CITY TO INSERT INFORMATION HERE**

**B. FEES, ETC. (developer and city to coordinate based on conditions of approval)**

- a. Development Fees (per City schedule) \$w/bldg.permit
- b. Water/Sewer Capacity Fees (per City Schedule) \$w/bldg.permit
- c. Drainage Fee (\$500.00/ac x YY ac.) \$TBD
- d. Final Map Processing Fee \$1173.00
- e. Fair Share Fee \$TBD

WHEREFORE, the parties hereto have executed this Agreement on the day and in the year first above written.

CITY COUNCIL APPROVAL:  
CITY OF EL CENTRO

SUBDIVIDER  
Insert company or owner name

By \_\_\_\_\_  
City Manager

By \_\_\_\_\_  
Name, Title

By \_\_\_\_\_  
Name, Title

APPROVAL RECOMMENDED

(Note: All signatures to be acknowledged. If Subdivider is incorporated, signatures must confirm with the designated representative groups pursuant to Corporations Code Code Section 313).

By \_\_\_\_\_  
City Engineer

FORM APPROVED-CITY ATTORNEY:

By \_\_\_\_\_  
City Attorney's Office

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ACKNOWLEDGEMENT  
(By Individual, Partnership or Corporation)

STATE OF CALIFORNIA )  
COUNTY OF Imperial ) ss

On \_\_\_\_\_ before me,

\_\_\_\_\_,  
A Notary Public in and for said County and State, personally appeared

\_\_\_\_\_,  
personally known to me (or 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.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

Name: \_\_\_\_\_

My Commission Expires

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ADDITIONAL REQUIREMENTS - EXHIBIT I

NONE