



Improvement District No. N/A

**MISSION SPRINGS WATER DISTRICT
WATER SYSTEM CONSTRUCTION AGREEMENT
(DEVELOPER INITIATED/CONTRACTOR INSTALLED)**

THIS WATER SYSTEM CONSTRUCTION AGREEMENT ("Agreement") is made on this _____ day of _____, 20__ by and between MISSION SPRINGS WATER DISTRICT, a County Water District ("District") with its headquarters at 66575 2nd Street, Desert Hot Springs, Riverside County, California," and **Lennar Homes of California LLC** ("Developer") located at 4140 Temescal Canyon Rd., Corona CA 92883, phone No. (951) 817-3503.

RECITALS

WHEREAS, Developer is planning the construction of a project ("Project") of two hundred eighty six (286) residential lot(s) which is the subject to a **Tract Map No. 32030-3** further described and identified on the map attached to and made a part of this Agreement as Exhibit "A" ("Property") and which is subject to the Landscape Plan attached hereto and made a part hereof by this reference as Exhibit "B"; and

WHEREAS, the Project will require a water distribution system to provide domestic water service to the to be designed and built by Developer (the "System"); and

WHEREAS, said Developer is desirous of having the District provide domestic water service to said Project and is willing to convey to the District the System after the construction thereof, contingent upon the District's acceptance of such conveyance on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. Compliance with Law.** Developer will comply with all applicable state, federal and local laws, statutes and ordinances and the District's ordinances, policies and regulations for planning and constructing the System ("Requirements"). The forgoing laws and regulations, as amended from time to time, are hereby incorporated herein by reference. Developer agrees to comply with the water conservation requirements set by MSWD and the Land Use Agency as well as the Landscape Plan.
- 2. District Expenses Covered.** The Developer shall deposit, with the District, costs to cover necessary engineering and other services, permits, inspections and water system connection costs in an amount estimated by the District. Said deposit shall be increased and/or replenished if District determines that the amount deposited is not sufficient to cover the costs as estimated by the District from time to time.

3. **Completion of Work.** The Developer shall contract for the design of the System by a licensed civil engineer experienced in the design of similar systems. The System to service the Project shall comply with the Requirements and construction plans for the same shall be presented to the District for approval by the District prior to the presentation thereof to Contractors for bidding purposes. Such System shall include all pipelines, valves, hydrants and appurtenances as required by District subject to the Requirements. The Developer shall at its sole cost and expense secure title to property, easements, and rights of way needed for the System prior to the commencement of construction and shall convey offers of dedication or grant deeds along with necessary roads for ingress and egress and for maintenance and operation of the water system. The Developer shall file a Notice of Completion upon completion of the water system.
4. **Licensed Contractor.** The Developer will contract for the services of a licensed and qualified contractor ("Contractor") to construct the System. Said contract shall be signed by Developer and the licensed Contractor. Said Contractor shall be currently licensed by the State of California with a General engineering Contractor, "A" license and/or other appropriate license needed to construct the System. Said Contractor shall be experienced in the construction of domestic water systems and shall have been reviewed by the District and listed by the District as qualified contractor before a contract is signed and actual system construction begins. However, the District's approval of the Contractor shall in no way be deemed to impose on District any liability for the acts or omissions of said Contractor.
5. **Payment and Performance.** The entire cost of the construction of the System shall be paid by the Developer as and when the amounts are due in such regards. Developer and Contractor shall assure that such construction is inspected by District personnel for conformance with the approved plans and specifications and the Requirements. Whenever the Contractor desires to work outside the regular or specified work periods or to vary the work period during any particular day, Contractor shall request permission from the District at least 24 hours in advance so that inspection services may be provided. If the District grants permission and if the work period includes hours outside the normal work hours of the District, the Developer shall pay for the inspection services provided outside of normal work hours in accordance with established District rates. Construction shall not begin until the "Notice to Proceed" is given by the District inspector nor until the Developer, or other authorized party, completes a "CERTIFICATION OF STREETS TO FINAL GRADE" for the streets in which the water pipelines are to be constructed. District inspection is for the purpose of conformance of construction with District requirements, and not for compliance by the Contractor with safety requirements. Inspection or final acceptance shall not constitute a waiver by the District of any claims against Developer and/or Contractor for any defects in the work performed hereunder and shall not result in the imposition on District of any liability with regards to the same. Developer shall guarantee the completion of construction of the Work by _____. Developer agrees to pay all costs incurred by the District as it may incur and as may be necessary in connection with Contractor completing the Work, including administrative costs.
6. **Insurance and Indemnity.** Developer's contractor shall provide required insurance certificates and endorsements as outlined below:

6.1 Indemnification: To the extent permitted by law, Developer (as well as Contractor and any other contractors or subcontractors hired to do any construction work), shall defend, indemnify and hold harmless Mission Springs Water District, its directors, officers, employees, and authorized volunteers from and against all claims, damages, losses and

expenses, including reasonable attorneys' fees and costs to defend arising out of the performance of the work described herein, and caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone whose acts any of them may be liable, except where caused by the active negligence, sole negligence, or willful misconduct of the Mission Springs Water District, its directors, officers, employees, and authorized volunteers.

6.2 Minimum Insurance Requirements: The Developer shall require Contractor (including any contractors or subcontractors hired to do any construction work) to procure and maintain for the duration of the proposed construction, insurance against claims for injuries or death to persons or damages to property which may arise from or in connection with the proposed construction and the activities of the Contractor, guests, agents, representatives, employees or contractors and subcontractors. The Developer's contractor shall provide and maintain the following commercial general liability, automobile liability, workers' compensation coverages as permitted by law:

6.3 Coverage: Coverage shall be at least as broad as the following:

- a) **General Liability** - Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 00 01) including products and completed operations, property damage, bodily injury and personal & advertising injury with limits of at least two million dollars (\$5,000,000) per occurrence or the full per occurrence limits of the policies available, whichever is greater. If Commercial General Liability Insurance or other form with a general aggregate limit, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 25 03, or ISO CG 25 04, or insurer's equivalent endorsement provided to MSWD) or the general aggregate limit shall be twice the required occurrence limit.
- b) **Automobile Liability** - Insurance Services Office (ISO) Business Auto Coverage (Form CA 00 01), covering Symbol 1 (any auto) or if Contractor has no owned autos, Symbol 8 (hired) and 9 (non-owned) with limit of one million dollars (\$1,000,000) for bodily injury and property damage each accident.
- c) **Workers' Compensation Coverage** – By his/her signature hereunder, Developer certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and it shall cause Contractor to comply with such provisions before commencing the performance of the work of this agreement. Contractors and sub-contractors will keep workers' compensation insurance for their employees in effect during all work covered by this Agreement. The Contractor shall provide workers' compensation coverage as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease. **Waiver of Subrogation** (also known as Transfer of Rights of Recovery Against Others to Us): The Contractor will be required to waive rights of subrogation to obtain endorsement necessary to affect this waiver of subrogation in favor of the Mission Springs Water District, its directors, officers, employees, and authorized volunteers, for losses paid under the terms of this coverage which arise from work performed by the Named Insured for the Mission Springs Water District; this provision applies regardless of whether or not the Mission Springs Water District has received a waiver of subrogation from the insurer.

- d) **Builder's Risk – (Course of Construction)** if necessary- insurance utilizing an "All Risk" (Special Perils) coverage form with limits equal to the completed value of the project and no coinsurance penalty provision.
- e) **Contractor's Pollution Liability – (optional:** if project involves environmental hazards) with limits no less than \$5,000,000 per occurrence or claim, and \$10,000,000 policy aggregate.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the District requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the District.

6.4 Required Provisions - The Commercial General Liability policies are to contain, or be endorsed to contain, the following provisions:

- a) **Additional Insured Status:** MSWD, its directors, officers, employees, and authorized volunteers are to be given insured status (at least as broad as ISO Form CG 20 12 05 09 or for projects including construction ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 including ongoing and completed operations), as respects: liability arising out of the work or activities performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations, and automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to District, its directors, officers, employees, and authorized volunteers.
- b) **Primary Coverage:** For any claims related to this project, the Contractor's insurance coverage shall be primary at least as broad as ISO CG 20 01 04 13 as respects to the District, its directors, officers, employees, and authorized volunteers. Any insurance or self-insurance maintained by the District, its directors, officers, employees, and authorized volunteers; shall be excess of the Contractor's insurance and shall not contribute with it.

6.5 Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Mission Springs Water District.

6.6 Acceptability of Insurers: Insurance is to be placed with insurers having a current A.M. Best rating of no less than A: VII, or as otherwise approved by Mission Springs Water District.

The Contractor agrees and he/she will comply with such provisions before commencing project. All of the insurance shall be provided on policy forms and through companies satisfactory to Mission Springs Water District. Mission Springs Water District reserves the right to require complete, certified copies of all required insurance policies, including policy Declaration and Endorsement pages. Failure to continually satisfy the Insurance requirements is a material breach of contract.

6.7 Verification of Coverage: Contractor shall furnish the District with certificates and amendatory endorsements affecting coverage required by the above provisions. All

certificates and endorsements are to be received and approved by the District least five days before the Contractor commences activities.

6.8 Contractors and Subcontractors: Contractor shall require and verify that all Contractors and subcontractors maintain the liability insurance requirements stated herein, and Contractor shall ensure that Mission Springs Water District, its directors, officers, employees, and authorized volunteers are additional insureds on the commercial general liability insurance policy of all Contractors who hire subcontractors to perform work on the scheduled project with a form at least as broad as CG 20 38 04 13.

6.9 Continuation of Coverage: Contractor shall maintain for the duration of the contract, and for 5 years thereafter, insurance against claims for injuries or death to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors. Contractor shall be required to waive all rights of subrogation under this Agreement. If any of the required coverages expire during the term of this Agreement, the Contractor shall be required to provide a renewal Certificate including the Additional Insured endorsement to the District at least ten (10) days prior to the expiration date.

6.10 Other Considerations/Exceptions: When the Mission Springs Water District determines that any construction work may involve potential environmental pollution liability, the Commercial General Liability policy shall include Contractor's Pollution Liability –with limits no less than \$5,000,000 per occurrence or claim, and \$10,000,000 policy aggregate.

7. Bonds. Developer shall provide the District with bonds or evidence of bonds as follows:

- a) Performance bond with corporate surety or sureties satisfactory to the District said performance bond being for not less than one hundred percent (100%) of the total contract price.
- b) A labor and materials payment bond being for not less than one hundred percent (100%) of the total contract price.

8. Notice of Completion. The District's Inspector shall complete a "Notice of Final Inspection" when all work has been completed in accordance with District requirements and prior to the Acceptance of said domestic water system by the District. An executed Notice of Completion shall be filed by the District. The Developer shall comply with the following requirements:

- a) A Bill of Sale executed by the Developer vesting title of said water system and appurtenances to the District;
- b) A copy of the contract between Developer and Developer's Contractor or other documents which verify the actual cost of the domestic water system as installed.
- c) Payment to the District by the Developer of any and all applicable fees including, but not limited to Connection Charge, Fire flow or front footage fee, and meter installation fees.

9. Warranty. The Developer shall guarantee the entire work shall be constructed in a good and workman like manner and all materials furnished shall be new and of high quality and both of

the forgoing will meet all the requirements specified herein. This warranty shall include both the quality of the workmanship and the materials used as well as that of subcontractors and suppliers.

- a) The Developer shall agree to make any repairs or replacements made necessary by defective materials or workmanship in the pipe materials supplied which have become evident within one year after date of recording Notice of Completion, and to restore to full compliance with the requirements of these specifications, including the test requirements, any part of the water system, which during said one-year period, is found to be deficient with respect to any provision of this specification.
- b) The Developer shall make all repairs and replacements promptly upon receipt of written orders from MSWD or if, in the event the repair work must be performed by MSWD, shall reimburse MSWD for actual labor, equipment and material expenses incurred to perform such corrective work. If the Developer fails to make the repair and replacements promptly, MSWD may do the work, and the Developer shall be liable to MSWD for the cost thereof as described above.

10. Water Services. The District will not furnish service to the water system until the completed system passes final inspection by the District, and Developer has fully complied with all provisions of this Agreement. Following fulfillment of the terms and conditions herein and acceptance by the District of said domestic water system, the District will provide service to said lands in accordance with the District's rules and regulations governing the provisions of such service. District requires that a permanent meter must be installed prior to landscaping.

11. Successors and Assigns. This agreement is binding on the assigns of the District and on the assigns, successors and representatives of the Developer. Assignment of this agreement by the Developer shall require the prior written consent of the District.

12. Contractor's License. The Contractor must possess at the time of commencing work and throughout the Project duration, a Contractor's License, issued by the State of California, which is current and in good standing. The Developer and Contractor shall ensure that any subcontractor working on the Project possesses at the time of commencing work and throughout the Project duration, a Contractor's License, issued by the State of California, which is current and in good standing.

13. Corporation In Good Standing. If Contractor and/or Developer is a corporation or other entity, the undersigned hereby represents and warrants that the corporation or other entity is duly incorporated and in good standing in the State of California, and that the undersigned is authorized to act for and bind the corporation.

14. Provisions Required by Law. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

15. Attorneys' Fees. In the event that either party brings an action to enforce this Agreement, the prevailing party in such action shall be entitled to an award of the costs and expenses

incurred in connection with such action including but not limited to attorneys fees, expert witness fees, and filing fees.

16. Entire Agreement. This Agreement and the Exhibits and Recitals to this Agreement, which are incorporated herein by this reference, constitute the entire contract of the parties. No other agreements or contracts, whether oral or written, pertaining to the work to be performed, exists between the parties. This Agreement can be modified only by an amendment in writing, signed by both parties.

EXHIBITS:

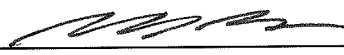
Project Overview Map – Exhibit A
Approved Landscape Plan – Exhibit B

MISSION SPRINGS WATER DISTRICT

DEVELOPER

Company: Lennar Homes of California, LLC,
a California limited liability company

By: _____

By:  _____

Name: Brian Macy

Name: Geoffrey Smith

Title: General Manager

Title: Vice President

Date: _____

Date: _____