

**CITY OF MISSION VIEJO
EXECUTION INSTRUCTIONS FOR
SUBDIVISION IMPROVEMENT AGREEMENT**

1. Leave the first open space for the date of agreement blank. This will be filled in with the date the agreement is sent to City Council.
2. The second open space should reference the legal name of the subdivider.
3. **Final Map Number** is the final tract or parcel map number of the subdivision.
4. **Tentative Map Resolution of Approval No.** is the number of the resolution for your conditions of approval received from the Planning Commission. Also, please note what type of approval you received from the Planning Commission (i.e., Resolution 91-10 and Tentative Tract Map 10000, Resolution 89-76 and Site Plan 89-56).
5. **Title of Improvement Plans** is the title of your street improvement plans in which the bond estimate numbers were derived from.
6. **Surety Company Name, Address and Contact Person** shall be noted in the designated blank.
7. **Estimated Cost of Improvements** should include the approximate cost of the improvement listed. Add any additional items being bonded for on the spaces provided (i.e., traffic signals). Place the total amount of the improvements on the designated line. The bond number for these improvements should be placed below.
8. The monumentation bond amounts and number should be placed on the lowest two lines.
9. Place the appropriate contact person, name, and address of the subdivider on page 10. The subdivider must sign the document with name and title printed. **All signatures must be notarized.**
10. Submit two copies of the agreement to the City with two copies of the appropriate bonds. The second copy may be an original or a duplicate.
11. **Do not submit illegible copies of bonds or agreements that have been faxed or are blurry.** The City reserves the right to reject all documents that have not been properly photocopies or transmitted.

**CITY OF MISSION VIEJO
SUBDIVISION IMPROVEMENT AGREEMENT**

THIS SUBDIVISION AGREEMENT is made and effective as of _____
_____, 20____, by and between the **CITY OF MISSION VIEJO**, a municipal corporation of the
State of California, hereinafter referred to as "CITY", and _____
_____, hereinafter referred to as "SUBDIVIDER". In consideration of the approval and
recordation by CITY of the final map of the subdivision described below and the mutual covenants
and agreements contained herein, CITY and SUBDIVIDER agree as follows:

RECITALS

This Agreement is made with respect to the following facts which each party
acknowledges as true and correct:

Final Map No. (referred to as "SUBDIVISION"): _____

Tentative Map Resolution of Approval No.: _____

Title of Improvement Plans: _____

Surety Company Name, Contact Person: _____

Surety Company Address: _____

Estimated Cost of Improvements:

Streets–Public/Private \$ _____

Storm Drain \$ _____

Sewer \$ _____

Water \$ _____

Landscaping \$ _____

_____ \$ _____

Estimated Total Cost of Improvements \$ _____

Faithful Performance Bond/Labor & Materials Bond Nos.: _____

Estimated Total Cost of Monumentation _____

Monumentation Bond No.: _____

A. SUBDIVIDER has presented to CITY for approval and recordation a final subdivision map of a proposed subdivision pursuant to provisions for the Subdivision Map Act of the State of California and CITY ordinances and regulations relating to the filing, approval and recordation of subdivision maps. The Subdivision Map Act and CITY ordinances and regulations relating to the filing, approval and recordation of subdivision maps are collectively referred to in this Agreement as the "Subdivision Laws."

B. A tentative map of the SUBDIVISION has been approved subject to the Subdivision Laws and to the requirements and conditions contained in the Resolution of Approval. The Resolution of Approval is on file in the office of the City Clerk and is incorporated into this Agreement by reference.

C. In consideration of approval of a final map for the SUBDIVISION by the City Council, SUBDIVIDER desires to enter into this Agreement, whereby SUBDIVIDER promises to install and complete, at SUBDIVIDER'S own expense, all the public improvement work required by CITY in connection with the proposed subdivision. SUBDIVIDER has secured this Agreement by improvement security required by the Subdivision Laws and approved by the City Attorney.

D. Complete Improvement Plans for the construction, installation and completion of the improvements have been prepared by SUBDIVIDER and approved by the City Engineer. The Improvement Plans for this subdivision are on file in the office of the City Engineer and are incorporated into this Agreement by this reference. All references in this Agreement to the Improvement Plans shall include reference to any specifications for the improvements as approved by the City Engineer.

E. Within thirty (30) days after completion of the required improvements and their acceptance by CITY, it is necessary that certain monuments and stakes as specified on the final map for the SUBDIVISION shall be installed.

NOW, THEREFORE, in consideration of the approval and recordation by the City Council of the final map of the SUBDIVISION, SUBDIVIDER and CITY agree as follows:

1. **SUBDIVIDER'S Obligations to Construct Improvements.** SUBDIVIDER shall:
 - a. Comply with all the requirements of the conditions of said tentative map.
 - b. Construct and install at SUBDIVIDER'S own expense all the public improvement work in conformance with the Improvement Plans and CITY standards.
 - c. Commence the construction and installation of the improvements within 180 days from the approval of said map by CITY and shall complete said work within two (2) years from the date of said approval.

d. Acquire and dedicate, or pay the cost of acquisition by CITY, of all rights-of-way, easements and other interests in real property for construction or installation of the public improvements, free and clear of all liens and encumbrances. SUBDIVIDER'S obligations with regard to acquisition by CITY of off-site rights-of-way, easements and other interests in real property shall be subject to a separate agreement between SUBDIVIDER and CITY.

SUBDIVIDER shall also be responsible for obtaining any public or private drainage easements or authorizations to accommodate the SUBDIVISION.

2. **Acquisition and Dedication of Easements or Rights-of-Way.** If any of the public improvement and land development work contemplated by this Agreement is to be constructed or installed on land not owned by SUBDIVIDER, no construction or installation shall be commenced before:

a. The offer of dedication to CITY of appropriate rights-of-way, easements or other interest in real property, and appropriate authorization from the property owner to allow construction or installation of the improvements or work, or

b. The dedication to, and acceptance by, CITY of appropriate rights-of-way, easements or other interests in real property, as determined by the City Engineer, or

c. The issuance by a court of competent jurisdiction pursuant to the State Eminent Domain Law of an order of possession. SUBDIVIDER shall comply in all respects with the order of possession.

Nothing in Section 2 shall be construed as authorizing or granting an extension of time to SUBDIVIDER.

3. **Security.** SUBDIVIDER shall at all times guarantee SUBDIVIDER'S performance of this Agreement by furnishing to CITY, and maintaining, good and sufficient security as required by the Subdivision Laws on forms approved by CITY for the purposes and in the amounts as follows:

a. to assure faithful performance of this Agreement in regard to said improvements in an amount of 100% of the estimated cost of the improvements; and

b. to secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor and materials for the improvements required to be constructed or installed pursuant to this Agreement in the additional amount of 100% of the estimated cost of the improvements; and

c. to guarantee or warranty the work done pursuant to this Agreement for a period of one (1) year following acceptance thereof by CITY against any defective work or labor

done or defective materials furnished in the additional amount of 25% of the estimated cost of the improvements; and

d. SUBDIVIDER shall also furnish to CITY good and sufficient security in the amount of 100% of the estimated cost of setting subdivision monuments as stated previously in this Agreement; and

e. The securities required by this Agreement shall be kept on file with the City Clerk. The terms of the security documents referenced on Page 1 of this Agreement are incorporated into this Agreement by this reference. If any security is replaced by another approved security, the replacement shall be filed with the City Clerk and, upon filing, shall be deemed to have been made a part of and incorporated into this Agreement. Upon filing of a replacement security with the City Clerk, the former security may be released. The City Engineer shall approve replacement of security.

4. **Inspection.** SUBDIVIDER shall at all times maintain proper facilities and safe access for inspection of the public improvements by CITY and to the shops wherein any work is in preparation. Upon completion of the work, the SUBDIVIDER may request a final inspection by the City Engineer or the City Engineer's authorized representative. If the City Engineer or the designated representative determines that the work has been completed in accordance with this Agreement, then the City Engineer shall certify the completion of the public improvements to the City Council. No improvements shall be finally accepted unless all aspects of the work have been inspected and determined to have been completed in accordance with the Improvement Plans and CITY standards. SUBDIVIDER shall bear all costs of plan check, inspection and certification.

5. **Release of Securities.** Subject to approval by the City Council of CITY, the securities required by this Agreement shall be released as follows:

a. Security given for faithful performance of any act, obligation, work or agreement shall be released upon the final completion and acceptance of the act or work, subject to the provisions of subsection (b) hereof.

b. The City Engineer may release a portion of the security given for faithful performance of improvement work as the improvement progresses upon application therefore by the SUBDIVIDER; provided; however, that no such release shall be for an amount less than 25% of the total improvement security given for faithful performance of the improvement work. In no event shall the City Engineer authorize a release of the improvement security, which would reduce such security to an amount below that required to guarantee the completion of the improvement work and any other obligation imposed by this Agreement.

c. Security given to secure payment to the contractor, his or her subcontractors and to persons furnishing labor, materials or equipment shall, six (6) months after the completion and acceptance of the work, be reduced to an amount equal to the total claimed by all claimants for whom liens have been filed and of which notice has been given to the legislative body, plus an amount reasonably determined by the City Engineer to be required to assure the performance of any other obligations secured by the security. The balance of the security shall be released upon the settlement of all claims and obligations for which the security was given.

d. No security given for the guarantee or warranty of work shall be released until the expiration of the warranty period and until any claims filed during the warranty period have been settled. As provided in paragraph 7, the warranty period shall not commence until final acceptance of all the work and improvements by the City Council.

e. CITY may retain from any security released an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorneys' fees.

6. Injury to Public Improvements, Public Property or Public Utilities Facilities. SUBDIVIDER shall replace or have replaced, or repair or have repaired, as the case may be, all public improvements, public utilities facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work under this Agreement. SUBDIVIDER shall bear the entire cost of replacement or repairs of any and all public or public utility property damaged or destroyed by reason of any work done under this Agreement, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by CITY or any public or private utility corporation or by any combination of such owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.

7. Permits. SUBDIVIDER shall, at SUBDIVIDER'S expense, obtain all necessary permits and licenses for the construction and installation of the improvements, give all necessary notices and pay all fees and taxes required by law.

8. Default of SUBDIVIDER.

a. Default of SUBDIVIDER shall include, but not be limited to, SUBDIVIDER'S failure to timely commence construction of this Agreement; SUBDIVIDER'S failure to timely complete construction of the improvements; SUBDIVIDER'S failure to timely cure any defect in the improvements; SUBDIVIDER'S failure to perform substantial construction work for a period of twenty (20) days after commencement of the work; SUBDIVIDER'S insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which

SUBDIVIDER fails to discharge within thirty (30) days; the commencement of a foreclosure action against the SUBDIVISION or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or SUBDIVIDER'S failure to perform any other obligation under this Agreement.

b. CITY reserves to itself all remedies available to it at law or in equity for breach of SUBDIVIDER'S obligations under this Agreement. CITY shall have the right, subject to this section, to draw upon or utilize the appropriate security to mitigate CITY damages in event of default by SUBDIVIDER. The right of CITY to draw upon or utilize the security is additional to and not in lieu of any other remedy available to CITY. It is specifically recognized that the estimated costs and security amounts may not reflect the actual cost of construction or installation of the improvements and, therefore, CITY damages for SUBDIVIDER'S default shall be measured by the cost of completing the required improvements. The sums provided by the improvement security may be used by CITY for the completion of the public improvements in accordance with the improvement plans and specifications contained herein.

c. In the event of SUBDIVIDER'S default under this Agreement, SUBDIVIDER authorizes CITY to perform such obligation twenty (20) days after mailing written notice of default to SUBDIVIDER and to SUBDIVIDER'S Surety, and agrees to pay the entire cost of such performance by CITY.

d. CITY may take over the work and prosecute the same to completion, by contract or by any other method CITY may deem advisable, for the account and at the expense of SUBDIVIDER, and SUBDIVIDER'S Surety shall be liable to CITY for any excess cost or damages occasioned CITY thereby; and, in such event, CITY, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to SUBDIVIDER as may be on the site of the work and necessary for performance of the work.

e. Failure of SUBDIVIDER to comply with the terms of this Agreement shall constitute consent to the filing by CITY of a notice of violation against all the lots in the SUBDIVISION or to rescind the approval or otherwise revert the SUBDIVISION to acreage. The remedy provided by this Subsection C is in addition to and not in lieu of other remedies available to CITY. SUBDIVIDER agrees that the choice of remedy or remedies for SUBDIVIDER'S breach shall be within the discretion of CITY.

f. In the event that SUBDIVIDER fails to perform any obligation hereunder, SUBDIVIDER agrees to pay all costs and expenses incurred by CITY in securing performance of such obligations, including costs of suit and reasonable attorneys' fees.

g. The failure of CITY to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or subsequent default or breach of SUBDIVIDER.

h. SUBDIVIDER recognizes that by approval of the final map for SUBDIVISION, CITY has conferred substantial rights upon SUBDIVIDER, including the right to sell, lease, or finance lots within the SUBDIVISION, and has taken the final act necessary to subdivide the property within the SUBDIVISION. As a result, CITY will be damaged to the extent of the cost of installation of the improvements by SUBDIVIDER'S failure to perform its obligations under this Agreement, including, but not limited to, SUBDIVIDER'S obligation to complete construction of the improvements by the time established in this Agreement. CITY shall be entitled to all remedies available to it pursuant to this Agreement and the Subdivision Laws in the event of a default by SUBDIVIDER. It is specifically recognized that the determination of whether a reversion to acreage or rescission of the SUBDIVISION constitutes an adequate remedy for default by the SUBDIVIDER shall be within the sole discretion of CITY.

9. **Warranty.** SUBDIVIDER shall guarantee or warranty the work done pursuant to this Agreement for a period of one (1) year after final acceptance by City Council of the work and improvements against any defective work or labor done or defective materials furnished. If within the warranty period any work or improvement or part of any work or improvement done, furnished, installed, constructed or caused to be done, furnished, installed or constructed by SUBDIVIDER fails to fulfill any of the requirements of this Agreement or the improvement plans and specifications referred to herein, SUBDIVIDER shall without delay and without any cost to CITY, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should SUBDIVIDER fail to act promptly or in accordance with this requirement, SUBDIVIDER hereby authorizes CITY, at CITY option, to perform the work twenty (20) days after mailing written notice of default to SUBDIVIDER and to SUBDIVIDER'S Surety, and agrees to pay the cost of such work by CITY. Should CITY determine that an urgency requires repairs or replacements to be made before SUBDIVIDER can be notified, CITY may, in its sole discretion, make the necessary repairs or replacement or perform the necessary work and SUBDIVIDER shall pay to CITY the cost of such repairs.

10. **SUBDIVIDER Not Agent of CITY.** Neither SUBDIVIDER nor any of SUBDIVIDER'S agents or contractors are or shall be considered to be agents of CITY in connection with the performance of SUBDIVIDER'S obligations under this Agreement.

11. **Injury to Work.** Until such time as the improvements are accepted by CITY, SUBDIVIDER shall be responsible for and bear the risk of loss to any of the improvements

constructed or installed. Until such time as all improvements required by this Agreement are fully completed and accepted by CITY, SUBDIVIDER will be responsible for the care, maintenance of, and any damage to such improvements. CITY shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the work or improvements specified in this Agreement prior to the completion and acceptance of the work or improvements. All such risks shall be the responsibility of and are hereby assumed by SUBDIVIDER.

12. **Other Agreements.** Nothing contained in this Agreement shall preclude CITY from expending monies pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with other subdividers for the apportionment of costs of water and sewer mains, or other improvements, pursuant to the provisions of CITY ordinances providing therefor, nor shall anything in this Agreement commit CITY to any such apportionment.

13. **SUBDIVIDER'S Obligation to Warn Public During Construction.** Until final acceptance of the improvements, SUBDIVIDER shall give good and adequate warning to the public of each and every dangerous condition existent in said improvements, and will take all reasonable actions to protect the public from such dangerous condition.

14. **Vesting of Ownership.** Upon acceptance of the work on behalf of CITY and recordation of the Notice of Completion, ownership of the improvements constructed pursuant to this Agreement shall vest in CITY.

15. **Indemnity/Hold Harmless.**

a. CITY or any officer, agent, or employee thereof shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of SUBDIVIDER, its agents or employees in the performance of this Agreement. SUBDIVIDER further agrees to protect and hold harmless CITY, its officials and employees from any and all claims, demands, causes of action, liability or loss of any sort, including, but not limited to, attorney fees and litigation expenses, because of, or arising out of, acts or omissions of SUBDIVIDER, its agents or employees in the performance of this Agreement, including all claims, demands, causes of action, liability, or loss because of, or arising out of, in whole or in part, the design of construction of the improvements. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said subdivision, and the public improvements as provided herein, and in addition, to adjacent property owners as a consequence of the diversion of waters from the design or construction of public drainage systems, streets and other public improvements.

b. Acceptance by CITY of the improvements shall not constitute an assumption by CITY of any responsibility for any damage or taking covered by this paragraph. CITY shall not be responsible for the design or construction of the subdivision or the improvements pursuant to the approved Improvement Plans or map, regardless of any negligent action or inaction taken by CITY in approving the plans or map, unless the particular improvement design was specifically required by CITY over written objection by SUBDIVIDER submitted to the City Engineer before approval of the particular improvement design, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternative safe and feasible design. Except as may be provided above, CITY shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving, reviewing, checking, or correcting any plans or specifications or in approving, reviewing or inspecting any work or construction. Nothing contained in this paragraph is intended to or shall be deemed to limit or waive any protections or immunities afforded by law to CITY, its officials, agents and employees, by virtue of CITY'S approval of the plan or design of the improvements, including without limitation the protections and immunities afforded by Government Code Section 830-6. After acceptance of the improvements, SUBDIVIDER shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect; however, SUBDIVIDER shall not be responsible for routine maintenance. Provisions of this paragraph shall remain in full force and effect for ten (10) years following the acceptance by CITY of the improvements. It is the intent of this paragraph that SUBDIVIDER shall be responsible for all liability for design and construction of the improvements installed or work done pursuant to this Agreement and that CITY shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving, reviewing, checking, or correcting any plans or specifications or in approving, reviewing or inspecting any work or construction. The improvement security shall not be required to cover the provisions of this paragraph.

16. **Time of the Essence.** Time is of the essence of this Agreement.

17. **Time for Commencement of Work/Time Extensions.** SUBDIVIDER shall commence substantial construction of the improvements required by this Agreement within thirty (30) days of this Agreement. In the event good cause exists as determined by the City Manager, the time for commencement of construction or completion of the improvements hereunder may be extended. The request for extension shall be made in writing to the City Manager. The approval of the extension shall be executed by the City Manager. Any such extension may be granted without notice to SUBDIVIDER'S Surety and shall not affect the validity of this Agreement or release the Surety or Sureties on any security given for this Agreement. The City Manager

shall be the sole and final judge as to whether or not good cause has been shown to entitle SUBDIVIDER to an extension. Delay, other than delay in the commencement of work, or by strikes, boycotts, similar actions by employees or labor organizations, which prevent the conducting of work, and which were not caused by or contributed to by SUBDIVIDER, shall constitute good cause for an extension of the time for completion. As a condition of such extension, the City Manager may require SUBDIVIDER to furnish new security guaranteeing performance of this Agreement as extended in an increased amount as necessary to compensate for any increase in construction costs as determined by the City Engineer.

18. **No Vesting of Rights.** Performance by SUBDIVIDER of this Agreement shall not be construed to vest SUBDIVIDER'S rights with respect to any change in any zoning or building law or ordinance.

19. **Notices.** All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepared, and addressed as provided in this section. Notice shall be effective on the date it is delivered in person or, if mailed, on the date of deposit in the United States Mail. Notices shall be addressed as follows, unless a written change of address is filed with CITY.

CITY: City Engineer
City of Mission Viejo
200 Civic Center
Mission Viejo, California 92691

SUBDIVIDER: _____

20. **Litigation or Arbitration.** In the event that suit or arbitration is brought to enforce the terms of this contract, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees.

21. **Incorporation of Recitals.** The Recitals to this Agreement are hereby incorporated into the terms of this Agreement.

22. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and signed by the appropriate representatives of the parties. In the case of CITY, the appropriate party shall be the City Manager.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the effective date first written above.

SUBDIVIDER:

CITY OF MISSION VIEJO

By: _____

Name: _____

Mayor

Title: _____

ATTEST:

By: _____

Name: _____

Karen Hamman
City Clerk

Title: _____

APPROVED AS TO FORM:

(Proper Notarization of SUBDIVIDER'S signature is required and shall be attached)

William P. Curley III
City Attorney