

AGREEMENT FOR CONSTRUCTION OF IMPROVEMENTS

WHEREAS, the undersigned DMSD FOODS, INC..

whose business address is 41856 Ivy Street, Suite 201, Murrieta, CA 92562

herein referred to as "Owner/Developer", has submitted to the City of Lake Elsinore for its approval a Parcel Map of a subdivision designated as PM 37477 which map was prepared by Robert J. Russell, L.S.; and,

WHEREAS, the Owner/Developer has not completed all of the work, or made all of the improvements required by Title 16, Lake Elsinore Municipal Code or such other ordinances of the City of Lake Elsinore requiring construction of improvements in conjunction with land divisions, subdivisions, and the like, hereinafter collectively referred to as "said ordinance"; and,

WHEREAS, Owner/Developer desires to enter into an agreement providing for the completion of the work and the making of the improvements and to furnish security for the performance of this agreement in accordance with the provisions of said ordinance;

NOW, THEREFORE, in consideration of the approval of said Parcel Map by the City, and as a condition of such approval, the Owner/Developer promises and agrees at his own expense to do all of the work and make all of the improvements required by said ordinance, which work and improvements, without limitation by enumeration, consists of: Street Improvements associated with City approved improvement plan no. 18-111
– 18-117 .

The above enumeration of items is understood to be only a general designation of the work and improvements, and not a binding description thereof. All of said work shall be done and improvements made and completed which are shown on and in strict compliance with applicable plans and specifications, and any subsequent alterations thereto, which alterations in said plans and specifications and the work to be performed may be accomplished without first giving prior notice thereof to the surety; provided, however in the event the estimated cost of any changes or alterations in said work exceeds ten percent (10%) of the original estimated cost of the improvements, then the consent of the surety shall be obtained, and absent such consent, the surety's obligations shall not then exceed the cost of improvements to be constructed under the said originally approved plans prior to said alterations; provided, further, in no event shall such change result in exonerating the surety's obligations. Such work shall be completed and improvements made within one year from the date of this agreement, unless such time be extended by the City upon written application of the Owner/Developer. Failure to make such written request shall not preclude the City from extending this agreement. In the absence

of written notice by the City to the Developer that the agreement has been terminated, said agreement shall remain in effect. It is understood that by providing security for this agreement, the surety consents in advance to any extension of time as may be given by the City to the Owner/Developer and waives notices of such extension. The making of an application for an extension of time by the Owner/Developer shall, upon the granting of the application by the City, constitute a waiver by the Owner/Developer and by the surety of all defenses of laches, estoppel, statutes of limitations, and other limitations of action in any action or proceeding filed by the City.

The Owner/Developer further agrees that any and all grading done or to be done in conjunction with the development in the herein described Final Map shall conform to the requirements of the Lake Elsinore Municipal Code and any other applicable ordinances regulating excavations and fills (e.g., grading regulations) and shall be completed within the period of time described above and prior to the acceptance by or on behalf of the City of the work and improvements and prior to the release by the City of the surety guaranteeing performance of this agreement, in order that said improvements will not be endangered by improper drainage or other hazards.

The Owner/Developer promises and agrees to maintain all of the improvements to be constructed under this contract in a state of good repair, until all of the work and improvements are completed and accepted by or on behalf of the City and until the security for the performance of this agreement is released. Said maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, parkways, sewers, and removal of debris from sewers and storm drains; said maintenance shall also include, but not be limited to by this enumeration, sweeping, repairing and maintaining in good and safe condition all streets and street improvements. It shall be the Owner/Developer's responsibility to initiate this work but if he should fail to do so, he shall promptly perform such maintenance when notified to do so by the City Engineer of the City of Lake Elsinore. Upon failure of the Owner/Developer to properly maintain, the City may do all necessary work required by this paragraph, the cost thereof being chargeable to the Owner/Developer and his surety under this agreement. The Owner/Developer further agrees under this agreement to hold the City and its officers and employees free and harmless from any claims, demand or action for damages, injury or death, and to indemnify the City for any loss, arising out of or incurred as the result of or in connection with improper maintenance or dangerous conditions or any act or omission in connection with any of the maintenance activities required under this paragraph, existing or occurring or arising out of any act or omission occurring prior to final acceptance by the City of all the work and improvements constructed under this contract.

The Owner/Developer shall be responsible for maintaining all improvements for a period of one year following completion of the work and acceptance by the City against any defective work or labor done, or defective materials furnished in the performance of the contract, and it is further agreed that upon completion and acceptance of the improvements by the City of Lake Elsinore, the liability of the surety for no less than ten percent (10%) of the face amount thereof or \$300.00, whichever is greater, will continue for the purpose of guaranteeing maintenance of the improvements for a period of one year following the completion and acceptance by the City against any defective

work or labor done, or defective materials furnished in the performance of this contract with the City of Lake Elsinore.

If the Owner/Developer and the surety fail to install all or any part of the improvements required by this agreement within the time set forth herein, or fail to comply with any other obligation contained herein, they shall be jointly and severally liable to the City for any administrative expenses and attorney's fees incurred in obtaining compliance with this agreement and any such expenses and fees incurred in processing any action for damages or for any other remedies permitted by law.

It is further understood and agreed that upon default of any obligation hereunder, and at any time after any such default, the City may make written demand upon the Owner/Developer and surety to immediately remedy the default or complete the work. If said remedial activities or completion of work are not commenced within sixty (60) days after such demand is made and are not thereafter diligently prosecuted to completion and fully completed within one hundred twenty (120) days after the making of such demand (or such other time as may be contained in said demand), the City may then complete or arrange for completion of all remaining work or conduct such remedial activity as in the sole judgement of the City may be required, all at the full expense and obligation of the Owner/Developer and surety and all without the necessity of giving any further notice to the Owner/Developer or surety before the City performs or arranges for performance of any remaining work or improvements, and whether or not the Owner/Developer or surety have constructed any of the required improvements at the time. In the event the City elects to complete or arrange for completion of remaining work and improvements, the City Engineer, upon such election, may require all work by the Owner/Developer or surety to cease in order to permit adequate coordination by the City for completing any remaining work and improvements not yet completed.

It is agreed that all work and improvements done pursuant to this agreement shall conform to the standards applicable at the time work is actually commenced.

The Owner/Developer shall provide security in the amount One Hundred Forty Thousand Eight Hundred and Three and 61/100 Dollars (\$ 140,803.61) to guarantee the performance of this agreement. In addition, the Owner/Developer shall provide security in the amount of One Hundred Forty Thousand Eight Hundred and Three and 61/100 Dollars (\$ 140,803.61) to guarantee payment to any contractors, subcontractors, and persons furnishing labor, materials and equipment to them for the performance of the work herein described. Said security shall be in the form of cash deposit, invoice no. INV-00014176 in the sum of \$281,607.22.

The Owner/Developer acknowledges and agrees to City regulations governing signs and advertising structures. Owner/Developer agrees and consents to removal by the City of all signs erected, placed, or situated in violation of any City ordinance governing size, location, or required permits. Removal shall be at the expense of the Owner/Developer and Owner/Developer shall indemnify and hold the City free and harmless from any claim or demand arising out of or incurred as a result of such removal, excepting negligent acts or omissions by the City, its

agents or employees. Owner/Developer agrees that said signs may be erected only pursuant to a permit issued by the City upon payment of necessary fees or deposits.

The Owner/Developer agrees to provide to the City a Public Liability Insurance Policy, making the City of Lake Elsinore, its officers, agents and employees, additional insured against any injuries or death to any person and property damage. The amount and the insurance company must be approved by the City Engineer.

In addition, the Owner/Developer shall deposit a copy of the Workmen's Compensation Insurance coverage by an approved insurance company and in an amount satisfactory to the City, and as required by law.

For purposes of enforcing this agreement, the term "City" includes the City Council, the City Manager, the City Attorney, City Engineer, or any of them, or any of their authorized representatives.

In WITNESS WHEREOF, the Owner/Developer has caused this agreement to be executed this ____ day of _____, 2018.

SIGNED: _____
(Type Name/Title)

FOR: _____
(Name of Company on above line)

CITY OF LAKE ELSINORE

BY: _____
Grant M Yates, City Manager
CITY OF LAKE ELSINORE

ATTEST:

Susan Domen, City Clerk
CITY OF LAKE ELSINORE