

Recorded at the Request of  
and Return to:

Merced Irrigation District  
Engineering Department  
744 W. 20<sup>th</sup> Street  
P. O. Box 2288  
Merced, California 95344

Recorded in Official Records, Merced County

**M. STEPHEN JONES**  
County Recorder

12/08/2005  
3:21 PM  
R07

**MID MERCED IRRIGATION DIST**

**G**

Doc#: **2005 - 098009**



Titles: 1 Pages: 14

Fees	0.00
Taxes	0.00
Other	0.00
<b>PAID</b>	<b>\$0.00</b>

### **DEFERMENT OF CONSTRUCTION AGREEMENT**

THIS DEFERMENT OF CONSTRUCTION AGREEMENT (herein "AGREEMENT") is made this 2ND day of DECEMBER 2005, by and between the MERCED IRRIGATION DISTRICT, an irrigation district existing by virtue of the laws of the State of California, whose address is 744 W. 20th Street, Merced, California 95340, hereinafter called the "MID" or "District", and TRS Enterprises, Inc., a California corporation, whose address is P.O. Box 3520, Modesto, CA 95352, hereinafter designated and called the "Owner".

### **RECITAL**

WHEREAS, Owner has filed with the City of Merced a certain application; The Crossing at River Oaks, Tentative Map No. 1263, for the development of land owned by Owner (herein "development"); and

WHEREAS, Owner desires to construct certain permanent improvements hereinafter specified for the following described parcel of land (herein said "real property"), as described on Exhibit "A" and as shown on Exhibit "B", attached hereto and incorporated herein; and

WHEREAS, the District consents to said development, to the extent of the proposed permanent improvements hereinafter specified, and subject to the terms herein set forth; and

WHEREAS, Owner desires to discharge storm drainage from the property to the MID's Doane Lateral in conjunction with the development through a city of Merced regional basin constructed in association with the Merced Sandcastle subdivision just south of this development; and

WHEREAS, pipelining the MID's Hartley and Doane Lateral within the development is a condition of storm water acceptance by the MID; and

WHEREAS, the Owner has requested that said pipelining of the Hartley Lateral be deferred until the remainder portion of the property, as delineated on Exhibits "A" and "B", is developed; and

WHEREAS, MID now enjoys the following interest and improvements in or adjacent to said real property:

### **Hartley Lateral**

An open concrete lined channel located within an unspecified width easement by water contract; adjacent to the North line of Lots 94, 95, 96, and 97 as shown on that certain map entitled "Merced Colony" filed in Book 4 of Official Plats, Page 24, as described in those certain Contracts To Furnish Water filed April 15, 1910, in Volume "L", Agreements, Pages 178, 181, 184 and 187, Merced County Records. MID is currently utilizing an approximate 15-foot wide right-of-way, all lying in Section 34, Township 7 South, Range 14 East, Mount Diablo Base and Meridian.

### **Doane Lateral**

An open earthen trapezoidal channel located within an unspecified width easements by water contract; adjacent to the East line of Lot 94 as shown on that certain map entitled "Merced Colony" filed in Book 4 of Official Plats, Page 24, as described in that certain Contract To Furnish Water filed April 15, 1910, in Volume "L", Agreements, Page 187, Merced County Records. MID is currently utilizing an approximate 40-foot wide right-of-way, all lying in Section 34, Township 7 South, Range 14 East, Mount Diablo Base and Meridian

### **Well No. 152**

MID operates and maintains Well No. 152 within a 50 foot by 50 foot square easement at the northeast corner of the property as evidenced by that certain Deed For Easement filed July 18, 1955 in Volume 1216 Official Records, Page 402, Merced County Records, including a right-of-way for ingress and egress, lying in Section 34, Township 7 South, Range 14 East, Mount Diablo Base and Meridian.

NOW, THEREFORE, in consideration of MID's consent to said construction conditioned upon Owner's promises hereinafter set forth, the Owner and the MID do hereby mutually agree as follows:

## **AGREEMENT**

### **I. RECITALS INCORPORATED INTO AGREEMENT**

The recitals hereto are true and correct and are incorporated into the body of this Agreement as though set forth in full.

### **II. AGREEMENT BINDING ON SUCCESSORS IN INTEREST**

This Agreement is an instrument affecting the title or possession of the real property described herein. All the terms, covenants and conditions herein imposed shall be an interest of Owner, and upon the subsequent sale or division of the property described herein the terms of this Agreement shall apply and the owner or owners of said property or parcel or any part thereof shall succeed and be bound by the obligations imposed on Owner by this Agreement.

### **III. STORM DRAINAGE USE OF SUBJECT LATERAL**

Owner specifically agrees and represents to MID that Owner acknowledges and understands that the canal/lateral subject to this Agreement serves a vital and important function as a storm drainage facility for the run-off of natural and artificial waters. Use of the waterway as such is therefore continuous and year round and particularly important during the non-irrigation season when rains are heaviest.

Owner therefore agrees to conduct all work hereunder in a manner so as not to interfere with the use of said lateral as a flood control channel and agrees to indemnify and save the MID harmless as set forth in Paragraph IX hereunder, and in addition thereto, for all such liability to which the District might become liable by virtue of the work of Owner as set forth herein.

### **IV. MID IMPROVEMENTS**

A. Owner and MID agree that the permanent improvements to the Hartley Lateral set forth in this section may be deferred until such time the Remainder Portion of the property adjacent to Childs Avenue, as shown on Exhibit "B", is developed.

B. When MID determines, after notification by Owner, that the reasons for the deferment of the improvements no longer exist, MID shall direct Owner in writing to commence installation and construction within ninety (90) days after such written notice is made upon the Owner. The notice shall be mailed to the current Owner or Owners of the property as shown on the latest adopted County Assessment roll. The notice shall describe the work to be done by the Owner, the time within which the work shall commence and the time within which the work shall be completed.

C. Owner agrees to construct the following permanent improvements (herein "said improvements"), on the property described herein, in the manner set forth in this Agreement:

1. Secure a specific easement of adequate width (anticipated to be 25-feet) across the frontage of Merced County APN 061-250-024 from the owner of that parcel prior the commencement of construction of the deferred improvements.
2. Demolish approximately 2,600 linear feet of open concrete lined channel and appurtenances within the existing MID right-of-way. Owner shall salvage and deliver to the MID Franklin Yard all existing irrigation delivery gates and appurtenances as directed by the MID Engineer.
3. Provide and install approximately 2,600 linear feet of 66-inch diameter rubber gasket, reinforced concrete pipe meeting specifications of ASTM 361, B-25, including appurtenances.
4. Construct a minimum of five pressure manholes and vents, including appurtenances. Pressure manholes shall have a maximum spacing of 400 linear feet.

5. Construct one pressure delivery box, including gates, board slots and other required appurtenances.
6. Demolish the existing headwall at Childs Avenue and Coffee Avenue intersection and construct a new pressure manhole (if connecting to existing pipeline) or pressure box (if connecting to existing box culvert), including required appurtenances.
7. All of the above and other MID required irrigation and storm water improvements to be in accordance with current MID Standard Details and MID approved plans.

D. Owner shall provide said improvements at owner's sole expense, without notice, upon the commencement of improvements to the property described in attached Exhibit "A" and shown on Exhibit "B," and prior to any subsequent property divisions, subdivisions or splits of said property, or sale of any parcel of said property or the whole of said property.

E. Owner shall cause a MID signature/approval block to be placed on the cover sheet of the Subdivision Improvement Plans of the property described in attached Exhibit "A" and shown on Exhibit "B".

F. Construction between March 1 and October 31 shall not encroach into the existing or future MID embankments, levees, or right-of-ways along the MID Hartley Lateral.

G. An on-site pre-construction meeting between MID representatives and the construction manager, and the project engineer if deemed necessary, shall take place not less than 2 working days and not more than 10 working days prior to the commencement of construction. Owner, or construction manager, shall notify MID at least 2 working days prior to said meeting.

H. Approved "As Built" plans shall be submitted to MID prior to the release of the "Warranty Bond" of item VII following. Failure to provide said "As Built" plans may defer or affect the amount and the release time of said "Warranty Bond."

## **V. PERFORMANCE OF THE IMPROVEMENTS**

Owner agrees to perform the improvements set forth herein, or as may be reasonably modified by the MID. Owner shall cause, at Owner's expense, plans and specifications for the improvements to be prepared by competent persons legally qualified and licensed by the State of California to do the work and to submit improvement plans and specifications for approval prior to installation of said improvements and to pay all City/County and Merced Irrigation District review, study, map and inspection fees. The work shall be done in accordance with Merced Irrigation District Standards in effect at the time of execution of this agreement. Owner shall notify the MID at least 2 working days prior to the start of any work, and 2 working days prior to the re-start of any work after any work stoppages. MID shall also be notified a minimum of 2

working days prior to all construction scheduled on a holiday or weekend (phone: 209-722-5761). In no event will the work of said improvements interfere with the conveyance of irrigation or drainage waters by the MID, or be done between March 1 and October 31. In the event Owner fails to construct any improvements required under this agreement, MID may, at its option, upon 30 days prior written notice to the Owner, do the work and collect all the costs from Owner of said real property. Permission to enter onto the property of Owner is granted to MID or its contractors, assigns, and agents as may be necessary to construct such improvements

Where the MID causes such work to be performed, the cost thereof shall constitute a special assessment against the property described herein which is benefited by the improvement and shall become a lien of the land.

#### **VI. REVIEW OF REQUIREMENTS**

If Owner disagrees with the requirements set forth in any notice to commence installation of improvements, he shall, within ten (10) days of the date the notice was mailed, request a review of the requirements by the Merced Irrigation District Board of Directors. The decision of the Merced Irrigation District Board of Directors shall be binding upon both MID and Owner.

#### **VII. BONDS**

Prior to approval of improvement plans by the District, Owner shall be required to execute and deliver to the District a faithful performance bond and a labor and materials bond in an amount equal to 100 percent of the Engineer's Construction Cost Estimate of the "District Improvements" on a form acceptable to the District. This performance bond will be released following final inspection and acceptance of the work by the District. The Owner shall notify the District in writing when it believes the project is complete and ready for final inspection. Upon written delivery to the District, the District shall immediately schedule a final inspection. Upon completion of the final inspection, if the District accepts the work as complete then it shall forthwith secure the immediate release of the performance bond and upon the passing of the statutory period under California Civil Code Section 3249 the District shall release the labor and material bond. If the District does not accept the work as complete then the District shall in good faith determine a reasonable amount of the performance bond to be maintained to protect the District and assure the completion of the work then unfinished. The District shall issue a partial release of the performance bond for any additional amount not necessary to complete the work. A condition precedent to a partial release of the performance bond shall be that MID certifies that the newly constructed works can safely convey water and meet MID water tightness standards. A condition precedent to the full release of any performance or labor and material bond shall be the presentation of a second bond to the District by the Owner for 10 percent of the construction cost estimate at the time of satisfactory completion which will be held as a "Warranty Bond" for 1 year following completion and will be released by the District at the end of one year if all outstanding Warranty work for the District Improvements has been satisfactorily been completed.

## **VIII. INSURANCE**

A. Owner shall provide, at all times during the performance of the work called for herein and for all periods for which liability insurance for the work hereunder may exist, liability insurance that will fully protect the MID against claims of any and all persons for personal injury, death or property damage. The following minimum requirements must be met in respect to insurance required under this agreement:

### **Minimum Scope of Insurance:**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001.)
2. Insurance Services Office form number CA 0001 (ed. 1/87) covering Automobile liability, code 1 (any auto).
3. Employer's Liability insurance and Workers' Compensation insurance as required by the State of California.
4. Course of Construction insurance form providing coverage for "all-risks" of loss.

### **Minimum Limits of Insurance:**

Owner shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage.
3. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.

### **Deductibles and Self-Insured Retentions**

Any deductible or self-insured retention must be declared to and approved by the District. At the option of the District, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officials, officers, employees, agents and volunteers; or the owner shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

**Other Insurance Provisions:**

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

1. The District, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of the negligent activities performed by or on behalf of the Owner, products and completed operations of the Owner; premises owned, occupied or used by the Owner; or automobiles owned, leased, hired or borrowed by the Owner. The coverage shall contain no special limitation on the scope of protection afforded to the District, its officers, officials, employees, agents or volunteers.
2. For any claims related to this project, the Owner's insurance shall be primary insurance as respects the District, its officers, officials, employees, agents or volunteers.
3. Any failure to comply with reporting or other provisions of the policies by the Owner shall not affect coverage provided to the District, its officers, officials, employees, agents or volunteers.
4. The Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested has been given to the District.

Course of Construction policies shall contain the following provisions:

1. District shall be named as loss payee.
2. The insurer shall waive all rights of subrogation against the District.

**Acceptability of Insurers:**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII or equivalent.

**Verification of Coverage:**

Contractor shall furnish the District with certificates of coverage and endorsements effecting coverage required by this clause. The District reserves the right to request original policies. All documents are to be received and approved by the District prior to the commencement of work.

**Subcontractors:**

Owner shall include all contractors or subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each contractor or subcontractor involved in the project.

B. No cancellation provision in any insurance policy shall be construed in degradation of the continuous duty of Owner or Contractor to furnish insurance during the term of this Agreement. At least thirty (30) days prior to the expiration of any such policy, a signed complete certificate of insurance, with all endorsements required by Section VIII. Insurance, of this Agreement, showing that such insurance coverage has been renewed or extended shall be filed by Owner or Contractor with the District.

C. Owner or Contractor shall be solely liable for and shall pay and all deductible amounts provided for in said policies of insurance and for any self-insured amounts of such policies as maintained by Owner or Contractor.

**IX. INDEMNITY**

The Owner shall assume the defense and indemnify and save harmless the MID, its officers, agents and employees, from every expense, liability, claim, demand or payment by reason of injury, including death, to persons or damage to property suffered through any act or omission, including negligence or acts of negligence, or both, of the Owner, his employees, agents, contractors, subcontractors, or anyone directly or indirectly employed by Owner, arising in any way from the work called for by this Agreement, on any part of the premises, or the performance or nonperformance of the work. This provision shall require the Owner to indemnify the MID against liability for damage arising from all sources except the negligence or willful misconduct of the MID or its agents, servants or independent contractors who are directly responsible to the MID.

**X. PAYMENT OF FEES**

Owner agrees to pay to the MID the following amounts:

1. \$300.00 non-refundable for engineering and administrative costs associated with the preparation and filing of this Agreement.
2. \$50.00 non-refundable Land Development application fee.
3. \$1,000.00 deposit for engineering services, including but not limited to site review, plan checking, construction inspection, testing, and follow-up, to be charged at the following MID Engineering Department rates: \$85.00/hour for Senior Engineer time, \$70.00/hour for engineering time, \$55.00/hour for technical time, and \$0.50 per mile for vehicle usage. The fees charged, may or may not exceed deposit amount. Balance of any funds are refundable at the satisfactory completion of the job. Fees charged in excess of the deposit will be billed by MID and payable by owner upon receipt.



#### **XI. ATTORNEY'S FEES**

In the event of any action, legal or equitable, by either party hereto to enforce the within Agreement or any of its provisions, the prevailing party shall be allowed a reasonable attorney's fee to be fixed by the Court and their costs in said action.

#### **XII. JOINT AND SEVERAL LIABILITY**

The obligations of Owner and successors in interest shall be joint and several, and the MID shall pursue remedy against Owner or anyone or more owners or successors in interest without suit against them all. In the event litigation is required, any cross-complaint or offset for indemnity by one owner against the other shall be severed from the initial MID action and no delays shall occur thereby to the District in pursuit of remedy.

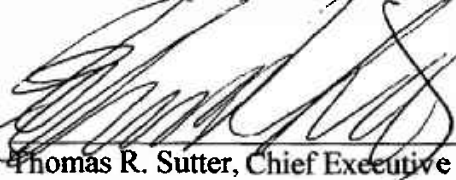
#### **XIII. AMENDMENTS**

The provisions of this Agreement may be waived, altered, amended, or repealed, in whole or in part, only on the written consent of all parties to this Agreement.

\*\*\*\*\*

IN WITNESS WHEREOF, the Owner has executed this agreement as of the 2nd day of December, 2005.

Owner: TRS Enterprises, Inc., a California Corporation

By:   
Thomas R. Sutter, Chief Executive Officer

IN WITNESS WHEREOF, the MID has executed this agreement as of the 2nd day of December, 2005.

MERCED IRRIGATION DISTRICT

By:   
Ted Selb, Deputy General Manager

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Stanislaus } ss.

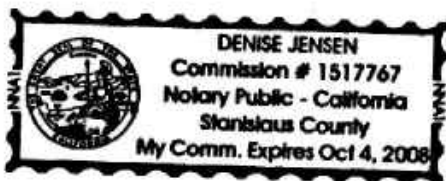
On Dec. 2, 2005 before me, Denise Jensen, Notary Public

personally appeared Thomas R. Sutter

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

Name(s) of Signer(s)

- ☒ personally known to me  
☐ 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~~<sup>they</sup> executed the same in his/~~her~~<sup>their</sup> authorized capacity(ies), and that by his/~~her~~<sup>their</sup> 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 of Notary Public

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer


Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney-in-Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

State of: <u>California</u>		Right Thumbprint (Optional)
County of: <u>Merced</u>		
On: <u>December 7, 2005</u> before me, Bonnie Willey, Notary Public		
personally appeared: <u>Ted Selb</u>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input checked="" type="checkbox"/> personally known to me - <b>OR</b> - <input type="checkbox"/> </div> <div style="width: 50%;"> <p>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.</p> </div> </div>		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%; text-align: center;">  <p>(SEAL)</p> </div> <div style="width: 50%;"> <p>WITNESS MY HAND AND OFFICIAL SEAL</p> <p style="text-align: center;"><i>Bonnie Willey</i> (signature of notary)</p> </div> </div>		
<p><b>ATTENTION NOTARY</b></p> <p>The information requested below is <b>OPTIONAL</b>.  Recording of this document is not required by law and is also optional.  It could, however, prevent fraudulent attachment of this certificate to any unauthorized document.</p> <p>This Certificate    Title/Type of Document: _____  must be attached    No. of Pages:    Date of Document: _____  to the document    described at right: _____  Signer(s) other than named above: _____  _____  _____</p>		

## **EXHIBIT "A"**

### **LEGAL DESCRIPTION**

All that certain real property described in that certain Grant Deed from TRS Enterprises, Inc., formerly named Sutco Construction, Inc., a California Corporation to TRS Enterprises, Inc., A California corporation, filed December 22, 1997 in Volume 3668 Official Records, Page 69, Merced County Records, all lying in a portion of Northwest One-Quarter of Section 34, Township 7 South, Range 14 East, Mount Diablo Base and Meridian, in the City of Merced, County of Merced and the State California, being more particularly described as follows:

Lots 94 through 98 inclusive as shown on the map entitled "Map of Merced Colony" filed February 3, 1910 in Volume 4 Official Plats, Page 24, Merced County Records, **EXCEPTING THEREFROM**, the following:

All that portion of Lot 96 described as Beginning at a point that is South 0° 20' West, 30.0 feet and north 89° 47' East, 80.0 feet from the Northwest corner of said Lot 96; thence South 0° 20' West, 157.0 feet parallel with the West line of said Lot 96; thence North 89° 47' East, 125.0 feet parallel with the North line of said Lot 96; thence North 0° 20' East, 125 feet parallel with the North line of said Lot 96, to a point on the South line of Lot "G" now known as Childs Avenue; thence South 89° 47' West, 125 feet along the South line of said Childs Avenue to the point of beginning.

**ALSO EXCEPTING THEREFROM**, all that portion of Lots 95, 96, and 98, described as follows:

Commencing at the Southwest corner of said Lot 98, said corner being located at the centerline intersection of Coffee Street and Dinkey Creek Avenue as shown on that certain map entitled "Sandcastle Subdivision Phase 2" recorded in Volume 67 of Official Plats, Page 43-45 inclusive, Merced County Records; thence North 89° 54' 15" East along the centerline of Dinkey Creek Avenue a distance of 20.00 feet to the **TRUE POINT OF BEGINNING** of this exception, said point being on the east line of 40.00 foot wide Coffee Street; thence along said east line of Coffee Street North 00° 12' 49" West, a distance of 59.88 feet; thence North 89° 47' 11" East a distance of 17.00 feet to a point which is 17.00 feet distant at right angles from the current East line of said Coffee Street; thence South 46° 14' 16" East, a distance of 37.41 feet to a point which is 34 feet distant at right angles from the centerline of Dinkey Creek Avenue; thence

parallel with the centerline of said Dinkey Creek Avenue, North 89° 54' 15" East, a distance of 212.55 feet; thence North 00° 12' 49" West, a distance of 100.00 feet to the north line of Phase 1; thence North along said north line of Phase 1, North 89° 54' 15" East, a distance of 1501.98 feet to the east line of said Phase 1 and the east line of proposed Albert Drive; thence along the east line of said Albert Drive, South 00° 12' 49" East, a distance of 134.00 feet to the centerline of said Dinkey Creek Avenue, being also the south line of Lot 95; thence along the centerline of Dinkey Creek Avenue and the South line of said Lots 95, 96, and 98, South 89° 54' 15" West, a distance of 1758.45 feet more or less to the point of beginning and the end of this exception.

Subject to rights of record.

APN 061-250-025

# EXHIBIT "B"

