

RECORDING REQUESTED BY:

Office of the City Attorney
City of San José
200 East Santa Clara Street, 16th Floor Tower
San José, CA. 95113

WHEN RECORDED MAIL TO:

Lee Price, City Clerk
Office of the City Clerk
200 East Santa Clara Street, 2nd Floor Wing
San José, California 95113

**AGREEMENT
FOR SUBMETERING OF WATER**

THIS AGREEMENT is made and entered into on this _____ day of _____, 2010, by and between the CITY OF SAN JOSE, a municipal corporation, hereinafter referred to as "CITY" and MOSS CREEK MOBILEHOME COMMUNITY, L.P., a California Limited Partnership, hereinafter referred to as "OWNER".

RECITALS:

WHEREAS, OWNER owns certain real property located at 29292 Aborn Square Road, San José, CA 95121, as more particularly described in **Exhibit A** attached hereto and incorporated by reference herein ("PROPERTY"); and

WHEREAS, OWNER operates a 106 space mobile home park, commonly known as MOSS CREEK MOBILE HOME PARK, L.P. hereinafter referred to as ("MOSS CREEK") on the PROPERTY and

WHEREAS, CITY provides water service to MOSS CREEK; and

WHEREAS, MOSS CREEK presently has one master water meter and OWNER is responsible to CITY for payment for water service provided to the PROPERTY; and

WHEREAS, OWNER desires to install and maintain, at no cost or expense to CITY, separate water meters to service each mobile home dwelling unit and require the tenants of each unit to pay for water based upon metered usage at a rate no higher than that charged to OWNER by CITY; and

WHEREAS, CITY wishes to assure that there shall be compliance with all applicable laws and regulations and that there shall be reasonable assurance that the rights of tenants under applicable federal, state and local laws and regulations shall be protected at all times; and

WHEREAS, MOSS CREEK contains mobile homes which are subject to the City's Mobilehome Rent Control Ordinance, San Jose Municipal Code Chapter 17.22 and CITY wishes to assure that the submetering process and any subsequent tenant fees and charges are compliant with the Mobilehome Rent Control Ordinance; and

WHEREAS, OWNER has held at least two community meetings at MOSS CREEK and CITY's Rental Rights and Referrals Program Staff has reviewed the OWNER's water usage report for MOSS CREEK dated May 10, 2010; and

WHEREAS, Section 15.08.500 of the San José Municipal Code provides as follows:

"15.08.500 Resale of Water Prohibited.

Except by special AGREEMENT with the City upon such terms as the City elects, no person shall resell any of the water provided from the municipal water system nor shall such water be transmitted to premises other than those specified in such person's application for service."

WHEREAS, the purpose of this AGREEMENT is to set forth the terms and conditions which shall assure CITY that OWNER shall at all times comply with all applicable laws and regulations, that the rights of tenants shall be reasonably protected, and to provide OWNER with reasonable guidelines by which they may install and maintain water meters and collect for water actually furnished to tenants.

**NOW, THEREFORE, IT IS AGREED BY AND BETWEEN THE PARTIES AS
FOLLOWS:**

1. If water meters are installed by OWNER to measure the quantity of water used by each tenant, each meter shall be installed on the same space as the mobile home dwelling unit serviced by the meter and the tenant(s) thereof shall pay only for the water actually used as determined by the meter reading, unless there is proof that said meter is inaccurate. To the extent permitted under Chapter 17.22 of Title 17 of the San José Municipal Code and any other applicable laws, rules or regulations, OWNER may charge a meter charge as a component of OWNER's water service charge to each tenant, provided that the meter charge by OWNER shall not exceed the meter charge that would be charged by CITY for a comparable size meter if service were provided directly by CITY to the tenant. In addition to the meter charge, the OWNER may charge each tenant for water delivered to the mobile home dwelling unit, provided that each tenant shall be required to pay no more to OWNER as a water quantity charge than the amount that CITY would charge for an equal quantity of water, if the tenant were receiving such water directly from the CITY, including consideration of special CITY rate schedules and proration of rebates, as and when, and only to the extent that, such special rates and rebates are given by CITY to OWNER. CITY and OWNER intend that the total water quantity charges that OWNER is permitted to charge to its tenants for water shall not exceed the total costs and expenses, including taxes, paid by OWNER to CITY, as quantity charges for the water it delivers to its tenants, with each tenant being charged the for the quantity of water delivered to that tenant. This Section is not intended to authorize any fees or charges that are in any way inconsistent with those allowed pursuant the Mobilehome Residency Law, Civil Code Section 798 *et seq.*

2. Only water meters which have been certified for accuracy and meet the requirements of the American Waterworks Association may be installed on the PROPERTY. Evidence of said certification shall be furnished by OWNER to CITY's Director of Environmental Services prior to installation of the meters. Water meters shall be serviced and tested as recommended by the American Waterworks Association. OWNER shall maintain records of meter testing and maintenance for a period at least sixty (60) months following the time to which they relate and hereby grants permission to CITY to examine said records during normal hours of business upon reasonable notice.

3. OWNER shall maintain a book of accounts or system of records relating to tenant charges for water service in a manner which shall allow tenants and CITY representatives reasonable access to same to insure compliance with the terms and conditions of the herein AGREEMENT. OWNER hereby grants permission to CITY to examine said book of accounts or records for the purpose stated during normal hours of business on a reasonable basis, and upon reasonable notice. OWNER shall also permit each tenant to examine records pertaining to said tenant's water service and CITY's charges to OWNER for water service during normal hours of business on a reasonable basis, and upon reasonable notice. Such records shall be maintained by OWNER for at least sixty (60) months following the time to which they relate.

4. OWNER shall be responsive to the complaints of tenants concerning water service within the PROPERTY to the extent that such complaints relate to water delivery facilities and meters which are owned and maintained by OWNER. Each such complaint shall be investigated by OWNER as soon as reasonably practical, and within no more that five (5) business days the initial investigation shall be completed and a response sent to the tenant. If, after investigation, the complaint is determined to have

merit, the problem or condition shall promptly be corrected or adjusted. OWNER shall advise the tenant of the action, if any, which is being taken in response to the complaint. OWNER shall maintain, for a period of thirty-six (36) months, a record of OWNER's handling of the complaint, and such record shall be available for review by CITY upon request and during normal business hours.

5. In addition to any other legal requirements which may apply to the termination of water service to any mobile home by OWNER, prior to the termination of water service to any mobile home, OWNER agrees to comply with all legal requirements applicable to the termination of water by a public utility furnishing water service in the State of California.

6. Prior to any scheduled interruption in water service to any mobile home within the PROPERTY, OWNER shall provide written notice to the tenant(s) of said mobile home, informing the tenant(s) of the effective date on which the water service will be interrupted and the reason(s) for such termination. The Notice shall also advise the tenant(s) that they have the right to have a meeting, prior to the interruption of service, with a designated representative of the OWNER, by submitting a written request for such meeting to OWNER or its designated representative on or before the effective date for termination of water service as specified in the notice. The designated representative shall be a person empowered to resolve any disputes concerning the interruption of service. OWNER shall maintain a written record of all notices and meetings relating to interruption of service which shall be available to CITY in the same manner and for the same length of time as provided for tenant water charges in Section 4 herein.

7. Notwithstanding of any provisions of the herein AGREEMENT which may imply to the contrary, the Parties agree that the contractual relationship for furnishing of

water service to the PROPERTY by CITY and payment for same by OWNER which existed prior to the installation of the water meters referred to herein shall remain unchanged by said installation, subject to Section 1 above. Collection of payments from tenants for water service provided to each mobile home dwelling unit shall be the sole responsibility of OWNER.

8. OWNER hereby agrees to defend, indemnify and hold harmless CITY, its officers, agents and employees from any and all claims, loss or liability, whether with or without merit, arising from the installation, maintenance and administration of water delivery facilities, submeters and meters owned and maintained by OWNER within the PROPERTY contemplated by this AGREEMENT or otherwise arising from the performance by OWNER of its obligations under this AGREEMENT, and shall, at its own expense, defend CITY, and pay any judgments, legal expenses and costs arising from any such actions.

9. OWNER agrees to observe and comply with all laws, orders, regulations, rules, ordinances or requirements, now in force or which may hereafter be in force, of federal, state, county or city, or other lawful governmental bodies, or any or their departments, bureaus or officers, having jurisdiction over the water delivery facilities and meters which are owned and maintained by OWNER within the PROPERTY or otherwise pertaining to the performance by OWNER of its obligations under this AGREEMENT, including but not limited to Civil Code §§789.3, 798.38, 798.40, 798.41, and §4090 of Title 4 of the California Code of Regulations and San José Municipal Code Chapters 4.68 and 17.22.

10. OWNER agrees to provide tenants with copies of all information provided by the CITY to OWNER concerning water service, including but not limited to, rate notices, water quality reports, and conservation information.

11. Unless sooner terminated by either of the Parties, this AGREEMENT shall be effective for an initial term of twenty (20) years and shall thereafter be automatically renewed for an additional terms of five (5) years each. Either Party may terminate this AGREEMENT effective as of the expiration of the then term by giving written notice to the other Party, which notice, in order to be effective, must be delivered to the other Party at least thirty-six (36) months before the expiration of the then term.

12. In addition to all other rights and remedies that CITY may have in the event of a default by OWNER under this Agreement, CITY may provide a written notice of default to OWNER, specifying the nature of the default and demanding that the default be corrected as soon as reasonably practicable. OWNER shall be responsible correct the default within thirty (30) days of the date of the notice, provided however, if the default cannot reasonably be corrected within thirty (30) days of the date of the notice, OWNER shall be responsible for commencing the correction and OWNER shall, within thirty (30) days of the date of the notice, provide CITY with a schedule acceptable to CITY for completing the correction. If a noticed default is not corrected within thirty (30) days of the date of a notice of default, or a schedule for correction is not provided within said thirty (30) day period, and correction is not completed within such additional reasonable time as may be set forth in the schedule provided by OWNER, CITY may, at its sole option, in addition to any and all other remedies it may have in law or equity, terminate this AGREEMENT immediately by providing written notice of termination to OWNER.

13. CITY's Director of Environmental Services Department ("ESD Director") is empowered to exercise on behalf of CITY any termination rights CITY may have under this AGREEMENT.

14. The Parties agree that the law governing this AGREEMENT shall be that of the State of California.

15. All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY: Director, Environmental Services Department
 Attn: Manager Municipal Water System
 3025 Tuers Road
 San José, CA 95121

To OWNER: Brandenburg, Staedler & Moore
 Attn: Property Management Department
 1122 Willow Street, Suite 200
 San José, CA 95125

Notice that is personally delivered shall include a "proof of service" and must be delivered during normal business hours, Monday through Friday, except for days on which federally chartered banks are closed. Notice shall be deemed effective on the date personally delivered or, if mailed, five (5) business days after deposit in the mail.

16. In the event that suit shall be brought by any party to this AGREEMENT, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

17. In the event that CITY shall no longer be the entity providing water service to MOSS CREEK, or the Property shall no longer be operated as mobilehome park with submetered service to tenants, CITY or OWNER shall each have the option to terminate this AGREEMENT upon the provision of written notice to the other party.

18. The Parties agree that this AGREEMENT shall be recorded in the Office of the Santa Clara County Recorder and shall be binding upon OWNER and its successors and assignees and all agents, employees and authorized representatives of OWNER who are engaged in or connected with the operation and management of MOSS CREEK.

19. OWNER represents and warrants that OWNER has full authority to execute and record this AGREEMENT and OWNER's signature shall constitute a representation and warranty that no person other than OWNER is required to consent to or approve this AGREEMENT.

20. The above recitals are hereby incorporated and made a part hereof.
Executed the day and year first above written.

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

APPROVED AS TO FORM:

Senior Deputy City Attorney

"CITY"

CITY OF SAN JOSE, a municipal corporation

By _____
Name:
Title:

"OWNER"

MOSS CREEK MOBILE HOME
COMMUNITY, L.P., a California Limited
Partnership

By: Brandenburg, Staedler & Moore-
Moss Creek, LLC, a California
Limited Liability Company, General
Partner

By: _____
Managing Member

By: _____
Managing Member

RD:MD1
10/14/2010

State of California)
County of Santa Clara)

On _____ before me, _____, personally appeared _____ who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

State of California)
County of Santa Clara)

On _____ before me, _____, personally appeared _____ who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

BEGINNING at the Northwest corner of that certain parcel of land conveyed from Henry Anthony Pappani and Jean Ann Pappani, his wife to Anthony P. Perrucci and Josephine E. Perrucci, his wife as described in that certain Joint Tenancy Deed filed in Book 2080 of Official Records at page 569 in the office of the Recorder of the County of Santa Clara, State of California;

THENCE Easterly from, the Point of Beginning along the North line of the lands described in the said Joint Tenancy Deed to Anthony P. Perrucci and Josephine E. Perrucci, North $79^{\circ}13'59''$ East for a distance of 774.76 feet to Northwest corner of Parcel F as shown on that Record of Survey filed in Book 258 of Maps at page 15 in the office of the Recorder of the County of Santa Clara, State of California;

THENCE Southerly, along the West line of said Parcel F that was conveyed to the County of Santa Clara for the purposes of an expressway (Capitol Expressway) in that certain Grant Deed filed in Book 9040 of Official Records at page 211, South $1^{\circ}09'48''$ East for a distance of 984.906 feet to the North corner of "area to be deeded to the County of Santa Clara" as shown on that certain Record of Survey filed in Book 326 of Maps at page 15 in the office of the Recorder of the County of Santa Clara, State of California;

THENCE continuing Southerly, departing from the West line of said Parcel F and along the West line of said "area to be deeded to the County of Santa Clara" in that certain Grant Deed filed in Book 0568 of Official Records at page 248 in the office of the Recorder of the County of Santa Clara, State of California, South $2^{\circ}19'38''$ West for a distance of 200.51 feet;

THENCE continuing Southerly along West line of said "area to be deeded to the County of Santa Clara", South $1^{\circ}10'47''$ East for a distance of 150.13 feet to a point of curvature;

THENCE along the arc of a curve to the right with a central angle of $90^{\circ}12'17''$, a radius of 50.00 feet, and an arc length of 50.18 feet to a point of tangency;

THENCE Westerly along the North line of said "area to be deeded to the County of Santa Clara", (Square Loop Road), South $89^{\circ}01'30''$ West for a distance of 430.283 feet to a point of curvature;

THENCE along the arc of a curve to the left with a central angle of $21^{\circ}30'11''$, a radius of 264.00 feet, and an arc length of 99.08 feet to a point of reverse curvature;

EXHIBIT A

VAUGHN SHAHINIAN ASSOCIATES

THENCE departing from the North line of said "area to be deeded to the County of Santa Clara" (Square Loop Road), along the Northeast line of the "area to be deeded to City of San Jose", along the arc of a curve to the right having a central angle of $80^{\circ}47'19''$, a radius of 30.00 feet and an arc length of 42.30 feet to a point of tangency;

THENCE Northwesterly along the Northeast line of the "area to be deeded to City of San Jose", North $31^{\circ}50'12''$ West for a distance of 126.91 feet to a point of curvature;

THENCE continuing along the Northeast line of the "area to be deeded to City of San Jose", along the arc of a curve to the left having a central angle of $28^{\circ}53'16''$, a radius of 145.00 feet, and an arc length of 73.11 feet to a point on the South line of the lands of the Evergreen School District as shown on that certain Record of Survey filed in Book 249 of Maps at page 41 in the office of the Recorder of the County of Santa Clara, State of California, said point being distant South $88^{\circ}49'28''$ West a distance of 32.30 feet from point of intersection of the monument lines of Atwood Drive and Monrovia Drive as shown on that certain map of tract 4851 filed in Book 280 of Maps at page 31 in the office of the Recorder of the County of Santa Clara, State of California;

THENCE Easterly along the said South line of the lands of the Evergreen School District, South $88^{\circ}49'28''$ West for a distance of 159.13 feet;

THENCE Northeasterly along the Southeasterly line of the said lands of the Evergreen School District, North $27^{\circ}49'08''$ East for a distance of 370.78 feet;

THENCE Northerly along the East line of the said lands of the Evergreen School District, North $1^{\circ}10'47''$ West for a distance of 709.92 feet;

THENCE Westerly along the North line of the said lands of the Evergreen School District more particularly described in that certain deed filed in Book 7910 of Official Records at page 661 in the office of the Recorder of the County of Santa Clara, State of California, South $79^{\circ}14'01''$ West for a distance of 366.04 feet to a point on the West line of that certain parcel of land described in the aforesaid Joint Tenancy Deed to Anthony P. Perrucci and Josephine E. Perrucci;

THENCE Northerly along the West line of the lands described in the said Joint Tenancy Deed to Anthony P. Perrucci and Josephine E. Perrucci, North $1^{\circ}09'55''$ West for a distance of 126.68 feet to the Point of Beginning.

Containing 15.116 acres of land more or less and being a portion of the Rancho Yerba Buena.

Exhibit A (Continued)

VAUGHN SHAHINIAN ASSOCIATES