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COACHELLA VALLEY WATER DISTRICT
Post Office Box 1058
Coachella, California 92236

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0322.12

STANDARD DRAINAGE SYSTEM
INSTALLATION AND SERVICE AGREEMENT

THIS STANDARD DRAINAGE SYSTEM INSTALLATION AND SERVICE AGREEMENT ("Agreement") is made on this _____ day of _____, 20 ("Effective Date") by and between the COACHELLA VALLEY WATER DISTRICT, a public agency of the State of California ("CVWD") and THE CITY OF COACHELLA, a California Public Corporation, also known as CITY OF COACHELLA, a California Municipal Corporation ("City"). CVWD and City are collectively referred to herein as "Parties" and singularly as "Party."

RECITALS

A. City is the owner of certain real property located in the County of Riverside, California and legally described on Exhibit "A" and depicted on Exhibit "B" attached hereto and by this reference incorporated herein ("City Property").

B. City is developing the Avenue 50 Drain Improvements on the City Property ("Project").

C. The drainage system ("Drainage System") is comprised of a system of open drains and drain piping which transport drainage water from on-farm drainage systems and hydrologically interconnected watersheds to the Coachella Valley Stormwater Channel and the Salton Sea. The CVWD Drainage System incorporates a limited number of connections from private drainage systems that drain subsurface return flows from irrigated lands, which forms an integrated and comprehensive system designed to protect irrigated agriculture on properties subject to CVWD drainage jurisdiction. CVWD owns, operates and maintains the Drainage System.

D. Agricultural Tile Drain System Components. There are approximately 2,300 miles of tile drains located on individual farms and owned by the farmer. These

drains do not discharge directly to Waters of the United States (WOTUS). Rather, they discharge to the CVWD-Owned Tile Drain System. There are approximately 166 miles of CVWD owned and operated tile drains, primarily located under dirt roads between farms. These tile drains receive subsurface return flows from the On Farm Drains plus any flows infiltrating into the CVWD Owned Tile Drains from hydrologically interconnected land overlying the drains or rising groundwater below the drains. The District Owned Tile Drains convey this water to and discharge the water into a system of roughly 21 miles of open channels described above.

E. City desires that the CVWD Drainage System receive hydrologically interconnected subsurface return flows from City Property into the Drainage System. The CVWD Drainage System may receive such drainage waters in order to protect agriculture on irrigated lands subject to the terms and conditions set forth herein.

F. Portions of the Drainage System lie within or adjacent to the City Property. City desires to tie into a portion of the Drainage System in accordance with the terms and conditions set forth herein.

NOW THEREFORE, THE RECITALS SET FORTH ABOVE ARE PART OF THIS AGREEMENT BELOW AND ARE INCORPORATED HEREIN, AND THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

1. City General Responsibilities. In accordance with the schedule and sequence requirements set forth herein, including, but not limited to, Appendix "A," attached hereto and incorporated herein ("Schedule"), City shall fulfill all of the following obligations, at its sole expense, to CVWD's sole satisfaction in order to obtain drainage service to the Project from CVWD.

(a) City will comply with CVWD's rules, regulations, ordinances and procedures regarding the design, installation and construction of the facilities contemplated herein, as may be amended by CVWD and the CVWD board of directors ("Board") from time to time, including but not limited to the Development Design Manual (collectively, "Rules"). The Rules are incorporated herein by this reference.

(b) (i) City shall, at City's sole expense, be responsible for compliance with the laws of the State of California and the United States, including, but not limited to, applicable state and federal environmental laws, such as the Federal Clean Water Act ("CWA"), California Environmental Quality Act ("CEQA"), the National Environmental Policy Act ("NEPA"), California Public Resources Code section 21000 et seq., and the Federal Endangered Species Act and the California Endangered Species Act, (collectively "Environmental Laws") applicable to the design and construction of the Drainage System. City shall be solely responsible for compliance with any conditions and mitigation measures required as a part of the compliance with the Environmental Laws. City shall be solely

responsible for and ensure that all of the City's discharges to and from CVWD's Drainage System conform with the National Pollution Discharge Elimination System ("NPDES") Permitting Program. When necessary to comply with the CWA and preserve the CVWD's exemption from NPDES permitting requirements, the City shall ensure that the its discharges to and from the CVWD Drainage System are independently incorporated under a valid NPDES permit. City shall ensure that a public agency of the State of California acceptable to CVWD acts as lead agency for the purposes of complying with CEQA, or CVWD may elect, but shall have no obligation, to act as lead agency for the purposes of this Agreement. As part of its obligation to comply with CEQA and applicable Environmental Laws, City shall prepare or cause to be prepared, at its sole cost, all instruments, documents, reports and other like or kind writings required to be prepared and/or filed by CEQA and applicable Environmental Laws.

(ii) City shall, upon request by and at no cost to CVWD, provide CVWD with such information as City possesses or has available to it from any consultants, engineers, contractors or other persons engaged by or under the control of City relating to the environmental assessment for the Drainage System and the improvements contemplated in this Agreement. Notwithstanding the preceding or anything to the contrary herein, nothing set forth herein shall be deemed to require CVWD to participate in any legal action related to the Drainage System.

(c) (i) Storm, surface, ground, nuisance, or other waters may be encountered at various times during construction of the improvements. City hereby acknowledges that it has investigated the risk arising from such waters and assumes any and all risks and liabilities arising therefrom.

(ii) City shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the construction of the improvements, including, without limitation, CVWD Ordinance No. 1234; Riverside County Ordinance 458; all applicable provisions of the local ordinances regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to California Regional Water Quality Control Board, Colorado Region, Order No. R7-2013-0011 (NPDES Permit No. CAS617002) and State Water Resources Control Board ("State Board") Order No. 2010-0014-DWQ, Order No. 2009-0009-DWQ, and Order No. 2012-0006-DWQ ("Construction General Permit"), and any amendment or renewal thereof.

(iii) City shall comply with the lawful requirements of CVWD, and any municipality, drainage district, or other local agency with jurisdiction over the location where the improvements are to be conducted, regarding discharges of storm water to separate storm drain systems or watercourses.

(iv) City shall be required to comply with all aspects of the Construction General Permit, including any amendment or renewal thereof, for any project that involves construction on or disturbance of one acre or more of land or which are part of a larger common area of development or sale that disturbs one acre or more.

(v) Failure to comply with laws, regulations, and ordinances listed in this Section is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, City agrees to indemnify and hold harmless CVWD, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which CVWD, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the improvements, except for liability resulting from the sole established negligence, willful misconduct or active negligence of CVWD, its officials, officers, agents, employees or authorized volunteers.

(vi) CVWD reserves the right to defend any enforcement action or civil action brought against CVWD for City's failure to comply with any applicable water quality law, regulation, or policy. City hereby agrees to be bound by, and to reimburse CVWD for the costs associated with, any settlement reached between CVWD and any relevant enforcement entity.

(d) (i) City shall employ, at its sole expense, a qualified professional engineering firm ("City's Engineer") to plan, design and prepare detailed construction plans and specifications ("Plans") for the improvements described herein in full and complete accordance with CVWD's Rules, including but not limited to, the design criteria and standards, such as CVWD's "Development Design Manual." City's Engineer shall complete the design and Plans and the same shall be submitted to CVWD as set forth below. All such planning and design work and the Plans performed and prepared by City's Engineer shall be subject to review and written approval by CVWD prior to presentation thereof to contractors for bidding purposes. CVWD shall approve or disapprove the Plans in writing within a reasonable amount of time after submittal to CVWD. In the event CVWD disapproves the Plans, City shall modify the Plans in accordance with the reasons given for disapproval and shall resubmit the revised Plans to CVWD for approval or disapproval. The foregoing procedure shall be continued until the Plans have been approved by CVWD. City hereby

acknowledges and understands that CVWD may approve or disapprove City's planning and design work and Plans, in CVWD's sole and absolute discretion. City represents that the Plans will conform to all applicable federal, state and local governmental rules, ordinances and regulations, including but not limited to, the Rules and all applicable Environmental Laws. In submitting the Plans to CVWD for review, City represents that, to City's knowledge, after reasonable inquiry, that the Plans are complete, accurate, workable and are in compliance with all governmental requirements with respect thereto.

(ii) City and City's successors, assigns and successors-in-interest to the City Property shall be liable at its sole expense, for any surface improvements, including, but not limited to, entry gate(s), pilasters, call boxes, island medians/planters, landscape and associated irrigation systems, decorative concrete, alternative paving methods, seal coating, overlaying or other surface improvements ("Surface Improvements") both within and outside the immediate area of construction and/or easement for the Drainage System which CVWD may be required to remove in the future to gain access to the Drainage System. All Surface Improvements must adhere to CVWD's Development Design Manual and Landscape Ordinance, as amended from time to time. CVWD shall not be responsible for any Surface Improvements either within or outside the immediate area of construction and/or easement for the Drainage System. If the Surface Improvements or the installation or use thereof cause damage to the Drainage System, City and City's successors, assigns and successors-in-interest to the City Property shall reimburse any cost incurred by CVWD in repairing such damage. Such costs shall be paid by City and City's successors, assigns and successors-in-interest within ten (10) calendar days following receipt of an invoice from CVWD.

(e) This Agreement contemplates the use of the CVWD Drainage System to receive hydrologically interconnected return flows from irrigated City Property. The CVWD Drainage System may receive such drainage waters from the City in order to protect agriculture on irrigated lands from harm, including but not limited to harm caused or threatened by perched or semi-perched groundwater and constituents contained therein.

(i) As a condition of drainage service, CVWD will only consider use of the Drainage System for urban drainage if (i) the Drainage System can physically handle the new urban drainage from the Project, (ii) the Project is incorporated under a valid National Pollutant Discharge Elimination System permit that includes both discharges to and from CVWD's Drainage System, and complies with the Waste Discharge Requirements for the discharge of stormwater in the Whitewater River Watershed, which is known as the MS4 Permit and (iii) the Project is annexed into a future district(s) for recovery of capital and operation/maintenance costs

associated with the new urban drainage system. In addition, the land may be subject to all assessments, taxes and charges which may be levied within this new district.

(f) City shall provide groundwater protection from pollutants, including but not limited to, nitrates and pesticides leaching into the groundwater by employing the use of Best Management Practices (“BMP”) as established by the University of California Turf Grass Research. CVWD reserves the right to modify or substitute the BMP standard with sixty (60) days prior written notice to City. All costs of the evaluation shall be at the expense of City.

2. City’s Responsibilities for Service

City shall do the following for drainage service at such time or times described herein or on Appendix “A” attached hereto and by this reference incorporated herein:

(a) City shall do the following for the design and construction of certain facilities:

(i) Subject to Section 5(b), design and construct, at City's sole expense, to CVWD specifications, the pipelines or facilities shown on Exhibit “C” attached hereto and by this reference incorporated herein before drainage service is initiated by CVWD to the Project in accordance with the Schedule on Appendix A. The pipelines shall be of the type and material as shall be acceptable to CVWD in CVWD’s sole and absolute discretion. The provisions relating to the design, construction and installation of the improvements shall apply to the design and construction of the pipelines described herein.

Subject to Section 5(b), design and construct, at City's sole expense, to CVWD specifications, the agricultural drain line manhole shown on Exhibit “C” attached hereto before drainage service is initiated by CVWD to the Project in accordance with the Schedule on Appendix A. The design of the drainage facilities shall comply with CVWD procedures as provided in CVWD’s Development Design Manual.

3. City Pre-Plan Check Requirements

(a) Prior to submitting the Plans to CVWD for initial plan check, City shall do the following:

(i) Concurrently with the execution of this Agreement by City, City shall deliver to CVWD a current preliminary title report (“PTR”) affecting the City Property dated within thirty (30) days of the delivery thereof to CVWD. CVWD will notify City of any title exceptions within the PTR which must be subordinated to the lien of this Agreement. Notwithstanding the foregoing, any monetary liens or liens of any covenants, conditions and restrictions must be subordinated to the lien of this Agreement. City shall

have a period of thirty (30) days after the receipt of written notice to cause the subordination of the items listed in CVWD's notice, as well as any monetary liens or liens of any covenants, conditions and restrictions.

(ii) Pay CVWD's plan check deposit and any amounts necessary to reimburse CVWD for costs incurred in connection with review of the Plans.

(iii) Furnish to CVWD the applicable standard installation agreement, if any.

(iv) Complete and deliver to CVWD the original Bill of Sale on a form supplied by CVWD.

(b) Prior to submitting Plans to CVWD for the second plan check, City shall do the following:

(i) City, at its sole expense, shall furnish to CVWD recorded grant deeds and/or recorded easement document(s) and/or easements proposed to be dedicated on tract maps and/or public rights-of-way, if applicable, satisfactory to CVWD (in their sole and absolute discretion) as to content, form, location, and width and which assure CVWD's unequivocal right to own, operate, maintain, replace, repair, enlarge, reconstruct, remove and improve the improvements. City shall ensure that all deeds of trust, mortgages and covenants, conditions and restrictions are reconveyed as to fee ownership and subordinated to the easement(s) set forth herein. City shall also ensure that the grant deeds and easements comply with the requirements of CVWD's rules and regulations.

4. City Plan Approval/Release Requirements

Prior to the approval/release of the Plans by CVWD for the improvements, City shall furnish to CVWD the following:

(a) The approved Plans in electronic CAD format; and

(b) This signed, notarized Agreement.

5. City Pre-Construction Requirements

Following receipt of CVWD's approval of the design and Plans for the improvements and prior to the construction thereof, City shall do the following:

(a) Furnish to CVWD, prior to the pre-construction meeting set forth in subsection (c) below, a deposit in the amount of Five Thousand Dollars (\$5,000.00) or five percent (5%) of the amount of the construction costs for the Drainage System and construction costs of the Drainage facilities, whichever sum is greater, in immediately available funds, as security for the purpose of guaranteeing the completion of the abandonment and construction of the

applicable portions of the Drainage System. The term “immediately available funds” shall mean cash, wire transfer or a cashier’s check drawn on good and sufficient funds on a federally insured bank and made payable to the order of CVWD. CVWD shall not be required to keep the funds separate from its general funds. In the event CVWD invests the deposit, CVWD shall pay the minimum interest rate set forth in California Government Code Section 53079(b). CVWD shall have the absolute right five (5) days after the mailing of a written notification to City by certified mail, at City’s address herein, to draw all or a portion of the funds represented by the deposit as may be necessary to complete construction, including administrative and all other project costs or to secure compliance with this Agreement, including the construction of drainage facilities; immediately available funds shall be delivered on a case-by-case basis, for each contract based on the construction required as outlined herein.

The deposit, less draws, if any, will be returned to City on a case-by-case basis, upon CVWD declaring that the drainage facilities are final and complete (including, but not limited to, the paving of road/street/right-of-way above such facilities) in CVWD’s sole and absolute discretion. City hereby understands, acknowledges and agrees that the determination that the drainage facilities are complete and final may come after CVWD has accepted such facilities.

(b) Employ, with written concurrence of CVWD, a qualified contractor or contractors (collectively, “City’s Contractor”) properly licensed by the State of California to construct and complete the improvements.

(c) Arrange, or cause the City’s Contractor to arrange, a pre-construction meeting with CVWD. At such meeting there shall be at least one (1) representative of City, City’s Contractor and CVWD. At such meeting, City shall be required to pay to CVWD such deposit for inspection costs as shall be required by CVWD. CVWD shall deduct from said deposit all reasonable cost and expense of CVWD, including, but not limited to, CVWD’s agents, employees or independent contractors. CVWD shall handle such deposit consistent with CVWD’s rules, regulations and procedures with respect to such deposits.

(d) Obtain and maintain in full force and effect during the term of this Agreement, the insurance coverages listed on Exhibit “D” attached hereto and by this reference incorporated herein.

6. City Construction Requirements

Following satisfaction of the requirements set forth in Section 5, City shall construct the improvements in accordance with the following requirements:

(a) City shall, at its sole expense, apply for and obtain all necessary consents, approvals, permits, authority, licenses or entitlements as shall be required for the construction and installation of each facility or improvement from all appropriate governmental authorities.

(b) Once construction and/or installation of an improvement has commenced, City shall diligently prosecute the same to completion at no cost or expense to CVWD in conformance with the laws, rules and regulations of all governmental bodies and agencies, including those of CVWD.

(c) City shall perform, or cause to be performed, all construction and installation of the improvements in good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken and in compliance with the construction standards set forth herein. City shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, construction and installation of the improvements.

(d) City shall name CVWD as an express third party beneficiary in its construction contract with City's Contractor.

(e) City shall ensure that CVWD is a named additional insured in the insurance policies provided by City's Contractor pursuant to the City's construction contract.

(f) City shall include CVWD and the CVWD Indemnitees as defined herein, as indemnitees in the indemnification clause in the construction contract between City and City's Contractor.

(g) City shall cause the City's Contractor to comply with the applicable Occupational Safety and Health Act ("OSHA") standards and requirements, including, but not limited to, OSHA safety standards and submitting construction and shoring plans.

(h) CVWD shall be under no obligation to protect any improvement to be constructed by or on behalf of City, or any material, tool, equipment and facilities until written acceptance thereof by CVWD. Prior to the acceptance, City shall bear all risk of loss or damage thereto by whatever cause inflicted. City shall bear the sole cost and responsibility to rebuild, repair, restore and replace or cause to be rebuilt, repaired, restored or replaced, and make good all injuries or damages to any portion of the improvements before completion and acceptance by CVWD and City shall bear the expense thereof.

(i) City shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to City for the improvements and shall keep the improvements free and clear of any liens related to such charges. City shall indemnify CVWD for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the improvements in connection with such charges; provided, however, that City shall have the right to contest any such lien, so long as it provides a statutory

bond or other reasonable assurances of payment that either remove such lien from title to the improvements or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the improvements.

(j) Each improvement shall be installed in strict compliance with the Plans. Any deviations from the approved Plans must have CVWD's prior written approval.

(k) City is required by this Agreement to install and construct certain improvements which will be dedicated to CVWD upon completion thereof in accordance with the terms of this Agreement. Notwithstanding the foregoing, if City does not believe that it is required to perform such work in the same manner and subject to the same requirements as would be applicable to CVWD had it undertaken construction, including, without limitation, the payment of prevailing wages, and other public works requirements pursuant to the California Labor Code, the California Government Code and the California Public Contract Code, then City undertakes such construction at City's risk. Should it be determined in the future by either the legislature or a court of competent jurisdiction that City was required to comply with some or all of the requirements as would be applicable to CVWD had it undertaken such construction, City shall indemnify, defend and hold harmless CVWD Indemnitees (as defined in Exhibit "E") from all Costs (as defined in Exhibit "E") to which they may be subjected or put, by reason of or resulting from failure to comply with public works requirements, including, but not limited to, the failure to pay prevailing wages or such other requirements as would be applicable to CVWD had it undertaken such construction.

(l) City hereby irrevocably appoints CVWD to inspect the furnishing and installation of the improvements. City shall provide CVWD representatives with reasonable access for inspection purposes. It is understood and agreed that CVWD's inspection personnel shall have the authority to enforce the Plans, which authority shall include requiring that all unacceptable materials, workmanship and/or installation be replaced, repaired or corrected by City's Contractor. Nothing herein shall be construed to grant CVWD direct control over City's Contractor or anyone but City or its designee. CVWD's inspection does not include inspection for compliance with safety requirements by City's Contractor. Any inspection completed by CVWD shall be for the sole use and benefit of CVWD, and neither City nor any third party shall be entitled to rely thereon for any purpose. CVWD does not undertake or assume any responsibility for or owe a duty to select, review or supervise the creation of the improvements. CVWD's inspection services shall not include the calculation of installed footage of pipeline.

7. City Project Completion and Acceptance

(a) (i) Upon and completion and testing of an improvement and/or abandonment of the applicable portion of the Drainage System, the City's

Engineer of Record shall provide signed and approved As-Built Drawings (electronic or hard copy) and City shall provide the actual construction cost of the improvements to CVWD. Upon completion and testing of an improvement and/or abandonment of the applicable portion of Drainage System, and after final paving, City shall give CVWD notice of the same. CVWD shall make a final inspection and provide written notice to City either (A) confirming that such improvement has been completed and/or abandoned in accordance with the requirements of this Agreement or (B) setting forth a punchlist of items that need to be completed or corrected. If CVWD provides such a punchlist, the above-referenced notice and inspection procedure shall be repeated upon completion of the punchlist items to CVWD's sole satisfaction. Nothing herein shall be considered a waiver of any warranty, guarantee or other right in favor of CVWD.

(ii) Upon completion and acceptance of each applicable improvement and/or abandonment of the applicable portion of the Drainage System, City shall prepare and execute a Certificate of Completion and Final Acceptance as to each applicable improvement and record said notice with the Office of Recorder of the County of Riverside, State of California.

(iii) Upon receipt of the Certificate of Completion and final acceptance, the Bill of Sale provided herein shall convey title to the improvements at no cost and expense to CVWD. The improvements shall be transferred to CVWD free of all liens and encumbrances.

(iv) City warrants and represents to CVWD that the improvements covered hereby shall be free from construction defects for eighteen (18) months from the date of CVWD final acceptance. The City shall maintain in force the deposit required under Section 5(a) for the duration of the eighteen (18) month guarantee.

(v) CVWD shall repair, at City's cost and expense, all failures of any improvement which was furnished, installed and/or constructed due to faulty materials or installation during the eighteen (18) month warranty period referred to in subsection (iv) above. City shall, within thirty (30) days after written demand therefor, pay or cause City's Contractor or surety to pay such cost shown on the invoice. Nothing in this subsection or subsection (iv) above shall limit or abrogate any other claims, demands or actions CVWD may have against City, City's Contractor or the bond sureties on account of damages sustained by reason of such defects, nor shall the provisions of this Section limit, abrogate or affect any warranties in favor of CVWD which are expressed or implied by law or set forth in any construction agreement.

(b) City's Engineer shall provide to CVWD all field engineering surveys associated with the construction of the improvements, at City's sole expense. City shall promptly furnish to CVWD all field notes and grade sheets, together

with all location, offset, and attendant data and reports, resulting from City's field engineering survey and/or proposed facility design changes, all of which have been prepared in accordance with generally accepted engineering practices, and allow CVWD sufficient time to approve or make any required design changes resulting therefrom prior to construction. Any inspection or review pursuant to this subsection shall be for the sole use and benefit of CVWD, and neither City nor any third party shall be entitled to rely thereon for any purpose.

8. Project Close Out Requirements

Within thirty (30) days of providing CVWD with the Certificate of Completion and final acceptance, City shall provide CVWD with the following:

(a) Unconditional lien and material releases from all contractors and all subcontractors, materialmen, and suppliers.

(b) A declaration by City's Contractor that the City's Contractor and all persons and entities who furnished material in the construction of the improvements have been paid in full.

(c) All permits, plans and operating manuals related thereto, shall be delivered to and become the sole property of CVWD, subject to City's warranty work and other obligations required hereunder. On the acceptance of an improvement, City shall deliver to CVWD, at no cost to CVWD, all surveys and as-built drawings associated with the construction of the improvement.

9. CVWD Requirements

CVWD shall do the following for drainage service to the City Property:

(a) Subject to City constructing the drainage service system and complying with the terms of this Agreement, CVWD shall provide drainage service to the Project subject to circumstances within the control of CVWD or as otherwise provided by CVWD's rules, regulations and indices, policies and procedures, as may be amended from time to time.

(b) City acknowledges and agrees that the drainage provided by CVWD may cease at any time. In the event that drainage services cease, City further acknowledges and agrees that CVWD shall have no obligation to provide alternative drainage to the City. If CVWD does not or is unable to provide drainage for any reason, City waives and releases CVWD from any claims, loss, damage or action City may have against CVWD for failure to provide drainage service, including, but not limited to, loss of business, loss of profit or inconvenience (collectively, "Claims") and City shall hold CVWD free and harmless from any and all liabilities or economic losses which result in the failure to provide drainage service to the Project. The foregoing indemnity shall not apply to the extent any Claims are ultimately established by a court of competent

jurisdiction to have been caused by the gross negligence or willful misconduct of CVWD.

10. General Provisions

(a) City shall defend, indemnify, and hold harmless CVWD and its officers, directors, administrators, representatives, consultants, engineers, employees and agents and their respective successors and assigns (collectively, "CVWD Indemnitees"), in accordance with the provisions of Exhibit "E" attached hereto and by this reference incorporated herein.

(b) Prior to the acceptance of the improvements by CVWD, City shall furnish to CVWD any and all documents reasonably requested by CVWD.

(c) In the event that construction of the improvements to be constructed hereunder has not begun within twelve (12) months of the date of approval of the Plans, CVWD shall have the right to terminate this Agreement effective upon written notice to City. Following such termination, the Parties may enter into a new agreement which shall be subject to the fees, charges and Rules applicable at the time of the making of the new agreement.

(d) All notices under this Agreement shall be in writing and mailed (registered or certified, postage prepaid, return receipt requested), or by express carrier (return receipt requested) or hand delivered to Parties the addresses set forth below. All such notices shall, if hand delivered, or delivered by express carrier, be deemed received upon delivery and, if mailed, be deemed received three (3) business days after such mailing.

CVWD:

Coachella Valley Water District
Attention: J.M. Barrett, General Manager
Post Office Box 1058
Coachella, CA 92236

CITY:

City of Coachella
Attention: William Pattison, City Manager
53990 Enterprise Way
Coachella, CA 92236

(e) Time is of the essence of this Agreement and each and every term and provision thereof.

(f) This Agreement shall be construed as if prepared by all of the Parties hereto. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived.

(g) No delay on the part of any Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise of any other right, power or privilege hereunder.

(h) If any of the provisions of this Agreement are held to be contrary to law by a court or governmental administrative agency of competent jurisdiction, such provisions will not be deemed valid and subsisting, except to the extent permitted by law, and the parties shall, if possible, enter into negotiations for the sole purpose of arriving at a mutually satisfactory replacement for such provisions. The remainder of this Agreement shall not be affected thereby and shall continue in full force and effect.

(i) This Agreement may only be modified in a writing signed by both Parties.

(j) In the event of any litigation or other action between the Parties arising out of or relating to this Agreement or the breach thereof, the prevailing party shall be entitled, in addition to such other relief as may be granted, to its reasonable costs and attorneys' fees.

(k) The invalidity or illegality of any provision of this Agreement shall not affect the remainder of this Agreement.

(l) Each Party hereto agrees to execute and deliver such documents and perform such other acts as may be necessary to effectuate the purposes of this Agreement.

(m) Each individual executing this Agreement hereby represents and warrants that he or she has the full power and authority to execute this Agreement on behalf of the named Parties.

(n) City shall maintain and make available for inspection by CVWD during regular office hours, accurate records pertaining to the design, construction and installation of the improvements to be constructed by City.

(o) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

(p) If any payment due CVWD hereunder is not paid when due, City shall pay to CVWD an additional ten percent (10%) for each payment due as an administrative processing charge. The Parties agree that this late charge represents a fair and reasonable estimate of the costs that CVWD will incur by reason of late payment by City. Acceptance of any late charge shall not constitute a waiver of City's default with respect to the overdue amount or prevent CVWD from exercising any of the other rights and remedies available to CVWD. Any payment not paid when due shall bear simple interest at the rate of

ten percent (10%) per annum (provided such amount shall not exceed the maximum rate allowed under California law) from the date due until paid in full.

(q) The Parties agree that any action or proceeding to enforce or relating to this Agreement shall be brought exclusively in the Federal or State courts located in Riverside County, California, and the Parties hereto consent to the exercise of personal jurisdiction over them by any such courts for purposes of any such action or proceeding.

(r) This Agreement is entered into within the State of California, and all questions concerning the validity, interpretation and performance of any of its terms or provisions or any of the rights or obligations of the Parties hereto shall be governed by and resolved in accordance with the laws of the State of California.

(s) The terms and provisions set forth in this Agreement shall be deemed provisions, terms and/or covenants running with the City Property in accordance with applicable law, including, without limitation, Section 1468 of the California Civil Code and shall pass to and be binding upon the successor owners of the City Property. This Agreement shall burden the City Property and is binding on the successors, assigns and all persons acquiring ownership of any interest in, or any portion of the City Property. This Agreement shall benefit the City Property and inure to the benefit of the owners of the City Property. As such, all successor owners of the City Property will have any of the rights, responsibilities and liabilities of City, as if such person or entity originally executed this Agreement in place and stead of City. Each and every contract, deed or other instrument hereafter executed covering or conveying the City Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to such terms and conditions regardless of whether such terms and conditions are set forth in such contract, deed or other instrument. No transfer of the City Property shall relieve City of any responsibility or liability under this Agreement.

(t) This Agreement, together with the exhibits attached hereto and other writings referenced herein, such as, but not limited to the Rules, contains the entire agreement between the Parties relating to the subject matter hereof and supersedes any and all prior agreements between the Parties, oral or written, and any and all amendments thereto. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

IN WITNESS WHEREOF, the Parties have caused this Standard Drainage System Installation and Service Agreement to be executed as of the day and year first set forth above.

Dated: _____

CITY:

**CITY OF COACHELLA, A CALIFORNIA
PUBLIC CORPORATION, ALSO KNOWN
AS CITY OF COACHELLA, A CALIFORNIA
MUNICIPAL CORPORATION**

By: _____
William Pattison
City Manager

Dated: _____

CVWD:

**COACHELLA VALLEY WATER DISTRICT,
a public agency of the State of California**

By: _____
J.M. Barrett
General Manager

ATTEST:

Sylvia Bermudez
Clerk of the Board

EXHIBIT LIST

EXHIBIT "A"	LEGAL DESCRIPTION CITY PROPERTY
EXHIBIT "B"	DEPICTION CITY PROPERTY
EXHIBIT "C"	DESCRIPTION/DEPICTION OF FACILITIES AND DESCRIPTION OF ABANDONED FACILITIES
EXHIBIT "D"	INSURANCE
EXHIBIT "E"	INDEMNITY
APPENDIX A	SCHEDULE

EXHIBIT "A"
TO
STANDARD DRAINAGE SYSTEM
INSTALLATION AND SERVICE AGREEMENT
LEGAL DESCRIPTION CITY PROPERTY

EXHIBIT "B"
TO
STANDARD DRAINAGE SYSTEM
INSTALLATION AND SERVICE AGREEMENT
DEPICTION CITY PROPERTY

EXHIBIT "C"

TO

STANDARD DRAINAGE SYSTEM
INSTALLATION AND SERVICE AGREEMENT

DESCRIPTION/DEPICTION OF FACILITIES AND
DESCRIPTION OF ABANDONED FACILITIES

- Construct manhole on existing 24" CVWD Drain Line per CVWD standard detail drawings S-5 and S-10B and approved CVWD drawings numbers 46241-26242.

EXHIBIT "D"
TO
STANDARD DRAINAGE SYSTEM
INSTALLATION AND SERVICE AGREEMENT
INSURANCE

EXHIBIT "D"
INSURANCE REQUIREMENTS

1. **MINIMUM SCOPE AND LIMIT OF COVERAGE.** Prior to and at all times after executing the Agreement, City shall procure and maintain, at its sole cost, for the duration of City's obligations hereunder, not less than the following coverage and limits of insurance with insurers and under policy forms satisfactory to CVWD.

(a) **Commercial General Liability Insurance** written on an occurrence basis of at least \$2,000,000 per occurrence/\$4,000,000 aggregate providing coverage for ongoing and products and completed operations, property damage, bodily injury, personal and advertising injury, property damage, and premises/operations liability.

(i) Coverage for Commercial General Liability insurance shall be at least as broad as Insurance Services Office Commercial General Liability coverage form (Occurrence Form CG 00 01) or exact equivalent.

(ii) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(iii) The policy shall be endorsed to name Coachella Valley Water District, its employees, directors, officers, and agents as additional insureds using ISO endorsement forms CG 20 10 07 04 and 20 37 07 04, or endorsements providing the exact same coverage.

(b) **Commercial Automobile Liability Insurance** written on a per occurrence basis of at least \$1,000,000 per occurrence for bodily injury and property damage.

(i) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto)

(ii) The policy shall be endorsed to name Coachella Valley Water District, its employees, directors, officers, and agents as additional insureds.

(c) **Workers' Compensation Insurance/Employers Liability** as required by the State of California with statutory limits or be legally self-insured pursuant to Labor Code section 3700 *et. seq.* along with Employer's Liability limits of no less than \$1,000,000 per occurrence for bodily injury or disease. The workers compensation insurer shall agree, using form WC 00 03 13 or the exact

equivalent to waive all rights of subrogation against Coachella Valley Water District, its employees, directors, officers, and agents.

2. **OTHER INSURANCE PROVISIONS.** All of City's policies shall meet the following requirements and contain all specified provisions/endorsements noted hereunder.

(a) Insurers shall provide CVWD at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that insurers shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. In the event any insurer issuing coverage hereunder does not agree to provide notice of cancellation to CVWD, City shall assume such obligation and provide written notice of cancellation in accordance with the above. If any of the required coverage is cancelled or expires during the term of this Agreement, City shall deliver renewal certificate(s) including endorsements to CVWD at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that City's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by CVWD or any additional insureds shall not be called upon to contribute to any loss.

(c) All required insurance coverages shall contain a provision, or be endorsed, to waive subrogation in favor of the Coachella Valley Water District, its employees, directors, officers, and agents or shall specifically allow City to waive its right of recovery prior to a loss. City hereby waives its own right of recovery against Coachella Valley Water District, its employees, directors, officers, and agents.

(d) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, CVWD has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CVWD will be promptly reimbursed by City. In the alternative, CVWD may cancel this Agreement.

(e) CVWD may require City to provide complete copies of all insurance policies and endorsements in effect for the duration of the Agreement.

(f) City shall not allow any of its contractors, consultants, subcontractors or subconsultants to commence work under this Agreement until City has verified that contractors, subcontractors, consultants, or subconsultants have secured all insurance required herein, including waivers of subrogation and other endorsements. Policies of commercial general liability insurance provided by such contractors, consultants, subcontractors or subconsultants shall be endorsed to name Coachella Valley Water District, its employees, directors, officers, and agents as additional insureds using ISO form CG 20 38 04 13 or an

endorsement providing the exact same coverage. If requested by City, CVWD may approve different scopes or minimum limits of insurance for particular contractors, consultants, subcontractors or subconsultants.

(g) The general liability program and automobile liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by CVWD, and provided that such deductibles shall not apply to CVWD as an additional insured.

(h) Claims made policies are not acceptable.

3. **VERIFICATION OF COVERAGE.** Prior to execution of the Agreement, City shall file with CVWD evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance. All policies required shall be issued by acceptable insurance companies, as determined by CVWD. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

4. **LIABILITY NOT LIMITED.** Defense costs shall be payable in addition to the limits set forth herein. Requirements of specific coverage or limits contained herein are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve City from liability in excess of such coverage, nor shall it limit City's indemnification obligations to CVWD and shall not preclude CVWD from taking such other actions available to CVWD under other provisions of the Agreement or law.

5. **AVAILABLE LIMITS.** Notwithstanding the minimum limits set forth above, any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds.

6. **RESERVATION OF RIGHTS.** CVWD reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

EXHIBIT "E"
TO
STANDARD DRAINAGE SYSTEM
INSTALLATION AND SERVICE AGREEMENT
INDEMNITY

EXHIBIT "E"

INDEMNITY

City shall assume the defense of, indemnify and hold harmless CVWD and its officers, directors, administrators, representatives, consultants, engineers, employees and agents, and their respective successors and assigns (collectively, "CVWD Indemnitees") and each and every one of them, from and against all actions, causes of action, damages, demands, liabilities, costs (including, but not limited to reasonable attorneys' fees), claims, losses and expenses of every type and description (collectively, "Costs") to which they may be subjected or put, by reason of, or resulting from: (A) this Agreement, (B) the design, engineering and construction of the improvements, (C) the removal and abandonment of the applicable portions of the Drainage System, (D) the performance of or failure to perform, the work covered by this Agreement which is caused or occasioned by any act or neglect on the part of City or its Representatives (as defined below), (E) any death, injury, property damage, accident or casualty caused or claimed to be caused by City or its Representatives or including City or its Representatives or its or their property, (F) any breach by City of its obligations under this Agreement, and (G) any enforcement by CVWD of any provision of this Agreement. The foregoing indemnity shall not apply to the extent any such Costs are ultimately established by a court of competent jurisdiction to have been caused by the gross negligence or willful misconduct of CVWD Indemnitees or any of them. CVWD shall make all decisions with respect to its representation in any legal proceeding concerning this Section. If City fails to do so, CVWD shall have the right, but not the obligation, to defend the same and charge all of the direct or incidental costs of such defense, including fees and costs, to City and to recover the same from City. The term "Representatives" shall mean employees, representatives, agents, contractors, subcontractors or any other persons directly or indirectly employed by any of the foregoing or reasonably under the control of any of the foregoing or for whose acts any of the foregoing may be liable. No provision of this Agreement shall in any way limit the extent of the responsibility of City for payment of damages resulting from its operations or the operations of any of its Representatives. City further covenants and agrees to pay, or reimburse CVWD Indemnitees, or any of them for any and all Costs in connection with the investigating, defending against or otherwise in connection with City's obligations pursuant to this Agreement, except liability arising through the gross negligence or willful misconduct of CVWD Indemnitees, or any of them. CVWD shall have the right, at City's expense, to commence, to appear in, or to defend any action or proceeding arising out of or in connection with this Agreement, and in connection therewith, may pay all necessary expenses if City fails upon reasonable notice to so commence, appear in or defend any action or proceeding with counsel reasonably acceptable to CVWD. City shall be furnished with copies of bills relating to the foregoing upon request.

APPENDIX A
 TO
 STANDARD DRAINAGE SYSTEM
 INSTALLATION AND SERVICE AGREEMENT
 SCHEDULE

No.	Facilities Item	Reference	Required Size	Oversize	Construction and/or design of the facility described herein must be completed before grading and construction of driveway improvements.
1.	Construct manhole on existing 24" CVWD Drain Line per CVWD standard detail drawings S-5 and S-10B and approved CVWD drawings numbers 46241-46242	2(a)(i)	X		Unit 1

ACKNOWLEDGEMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____)

On _____ before me, _____
(insert name and title of officer)

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: _____ (Seal)