

**CONSTRUCTION ACCESS, REIMBURSEMENT & LEASE AGREEMENT
BETWEEN
THE CITY OF COACHELLA
AND
THE COACHELLA SANITARY DISTRICT
FOR THE INSTALLATION OF ENERGY CONSERVATION MEASURES
& OTHER PROCESS IMPROVEMENTS**

This CONSTRUCTION ACCESS, REIMBURSEMENT & LEASE AGREEMENT (“**Agreement**”) is made and entered into this ____ day of _____, 2023 (“**Effective Date**”) by and between City of Coachella (“**City**”) and the Coachella Sanitary District (“**District**”). City and District are sometimes referred to herein individually as “**Party**” and collectively as “**Parties.**”

RECITALS

A. City entered into a design-build contract with Alliance Building Solutions, Inc. (“**Contractor**”), dated _____, 2023 attached hereto as **Attachment C** and incorporated herein by references (“**Design-Build Contract**”), which includes the installation of certain energy conservations measures (“**Project**”), including the following at District’s Wastewater Treatment Plant located at 87075 Avenue 54, Coachella, California (“**Treatment Plant**”): (i) solar photovoltaic panels and associated work and accessories to generate solar power, and (ii) certain process improvements, as each are described in sections ___ and ___ in Exhibit A to the Design-Build Contract (collectively, “**Improvements**”).

B. To finance the design and construction of the Project, City entered into that certain Equipment Lease/Purchase Agreement (Escrow Account) with Banc of America Public Capital Corp (together with its successors and assigns, “**Lender**”) dated October____, 2023 attached hereto as **Exhibit D** and incorporated herein by reference (as supplemented and amended, “**Financing Lease**”).

C. City is constructing the Improvements on behalf of District, and to facilitate the construction of the Improvements at the Treatment Plant, City requires: (i) a license to enter upon and construct the Improvements at the Treatment Plant; (ii) an agreement by District to reimburse City in a manner consistent with the terms of the Financing Lease; and (iii) a lease agreement whereby City leases to District the equipment constituting the Improvements, subject to Lender’s first priority lien and security interest, identified in the equipment schedule attached hereto as **Exhibit B** and incorporated herein by reference and the Equipment as defined in the Financing Lease (collectively, “**Equipment**”) for a term and on conditions consistent with the Financing Lease.

D. To facilitate the design and construction of the Improvements, District desires to: (i) grant City the License (as defined below) to permit City to enter upon the Treatment Plant to design and construct the Improvements; (ii) agree to reimburse City in installment payments that reflect District’s pro-rata share for the design and construction of the Project which consists of the

*Agreement & License – Construction & Lease of Equipment
City of Coachella & Coachella Sanitary District*

Improvements based on the reimbursement schedule attached hereto as **Attachment A (“Payment Schedule”)**; and (iii) after construction, to sublease the Equipment from City.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, it is mutually understood and agreed by the Parties as follows:

TERMS

1. **Incorporation of Recitals.** The recitals set forth above are true and correct and are incorporated into this Agreement as though fully set forth herein.

2. **Term.** This Agreement shall be effective as of the Effective Date, and shall continue in effect until District makes the final Sublease Payment (as defined below) to City as reflected in the Payment Schedule , or City’s full performance, and expiration of, the Financing Lease, whichever occurs last (“**Term**”).

3. **General Agreement to Cooperate.** The Parties agree to mutually cooperate to ensure that the Improvements are successfully installed at the Treatment Plant, and thereafter to ensure that the Improvements are maintained in good working order and consistent with the requirements of the Financing Lease.

4. **Construction & Maintenance of Improvements**

4.1 **Grant of the License.**

(a) **Grant of License.** District hereby grants, through the duration of the Term, to City and its agents, employees and contractors, including, without limitation, Contractor and its agents, employees and subcontractors, and Lender, and its agents, employees, and subcontractors, the temporary right to enter onto the Treatment Plant and take any related and necessary action to construct and maintain the Improvements, and for any reason that Lender may need access to the Improvements as set forth in the Financing Lease, and for no other purpose (“**License**”). The following conditions apply to this License:

(i) City shall be solely responsible for the design, construction, and maintenance of the Improvements and shall only be compensated as set forth in the “**District’s Obligation to Reimburse**” section below; and

(ii) City shall provide District reasonable notice of its intended construction activities and its schedule of activities, and shall make all reasonable efforts not to interfere with or impede the normal operations of the Treatment Plant; and

(iii) City shall ensure that, after completion of the Project as such completion is defined in the Design-Build Contract, that the portions of the Treatment Plant that City accessed during construction, will be restored to the same or similar condition as of the Effective Date, ordinary wear and tear excepted.

(b) Liens. City shall not permit to be placed against the Treatment Plant, or any part thereof, any design professionals', mechanics', materialmen's contractors' or subcontractors' liens in any way related to City's actions upon the Treatment Plant. City agrees to hold District harmless for any loss or expense, including reasonable attorneys' fees and costs, arising from any such liens which might be filed against the Treatment Plant.

(c) Compliance with Laws/Permits. City shall, in all activities undertaken pursuant to this License, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, and policies. Without limiting the generality of the foregoing, City, at its sole cost and expense, shall obtain any all permits required by any law, regulation or ordinance for any activities City desires to conduct or have conducted pursuant to this License. District shall reasonably cooperate with City to obtain all such permits.

(d) Inspection. District and its representatives, employees, agents or independent contractors may enter and inspect the Treatment Plant or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify City's compliance with the terms and conditions of this License.

(a) Not Real Property Interest. It is expressly understood that this License is not exclusive and does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Treatment Plant to City.

4.2 City's Obligations for Design, Construction, & Maintenance.

(a) City shall be responsible for designing, constructing, and maintaining the Improvements by managing and administering Contractor's work under the Design-Build Contract. City shall be responsible for obtaining all applicable environmental and/or other clearances and permits and/or approvals necessary to complete the Improvements, subject to District's reasonable cooperation to obtain all such permits and/or approvals.

(b) City, upon District's reasonable request, shall furnish to District all cost information, including any and all invoices and payments, related to the design, construction, and maintenance of the Improvements.

(c) City shall provide District a reasonable opportunity to review and approve all design documents generated for the Improvements prior to approving such documents as set forth in the Design-Build Contract, and District's approval(s) shall not be unreasonably withheld, conditioned, or delayed.

(d) City shall require Contractor to obtain all required permits and approvals for all work related to the Improvements.

(e) City, upon District's reasonable request, shall provide District with as-built record drawings for the Improvements after acceptance of Improvements by City.

(f) After City's acceptance of the Improvements, City shall maintain all equipment in good working order and consistent with all requirements of the Financing Lease until the expiration or termination of the Financing Lease, or until title in the Equipment vests with District as set forth below, whichever occurs last.

5. **Sublease of Equipment.**

5.1 **Acknowledgement of Financing Lease.** District has reviewed the Financing Lease and recognizes that City is financing the Improvements by leasing, as lessee, the Equipment from Lender, as lessor, and further acknowledges that Lender has a first priority security interest in the Equipment until City fully performs and repays all rental payments in full under the Financing Lease. No obligation in this Agreement shall be construed in a manner that causes a breach of the Financing Lease, and if such a non-conflicting interpretation is not possible, the Parties agree that the provisions herein shall be reformed such that there shall be no breach of the Financing Lease. Further, District acknowledges that if City defaults under the Financing Lease or an Event of Non-appropriation (as defined in the Financing Lease) occurs, the Lender has the ability to repossess the Equipment or the City is required to return the Equipment to the Lender. Upon such a repossession and return of the Equipment in strict accordance with the terms of the Financing Lease, District's obligation to make Sublease Payments shall immediately cease and this Agreement shall terminate.

5.2 **Sublease.** City agrees to lease to District, and District agrees to lease from City, in accordance with the terms and conditions herein, and consistent with the terms of the Financing Lease, the Equipment, together with, to the extent applicable, any related accessories, attachments, firmware and software for the Term. Lessee shall have no right, title or interest in the Equipment during the Term of this Agreement.

5.3 **Binding Nature of Financing Lease.** District acknowledges and agrees that this Agreement and the Parties' performance of their obligations hereunder must be consistent with the terms of the Financing Lease. District expressly agrees not to take any action that will cause City to be in breach of the Financing Lease.

5.4 **Use of Equipment.** All Equipment which is leased by City to District shall be used by District consistent with its intended use in the normal course of operating the Treatment Plant, consistent with the terms of the Financing Lease, and shall only be used for public purposes, and shall not be used by any private party for any private purpose. District hereby covenants that, with respect to the Equipment, it will not take any action, or fail to take any action, that would affect the tax-exempt statute of the Financing Lease.

5.5 **Possession/Title.** During the Term, District shall have only have possession of the Equipment and title to the Equipment shall remain with City at all times. District covenants to keep the Equipment free from levy, legal process, tax and other claims, liens, and encumbrances. At the expiration of the Term, and if City has fully complied with all obligations under the Financing Lease, and District is not in breach or default of this Agreement and paid all Sublease Payments (as defined below) to City, then title to all Equipment shall vest with District and this

Agreement shall terminate. City shall cooperate with District to execute any documents necessary to affect such title transfer.

5.6 Encumbrances or Liens; Notice. District shall not pledge, encumber, create a security interest in, or permit any lien to become effective on any leased Equipment. If any of these events takes place, District shall be deemed to be in default under the Agreement. District shall promptly notify City in writing of any liens or other encumbrances on the Equipment of which District has knowledge. The District will promptly pay or satisfy any obligation from which any lien, claim or encumbrance arises, and will otherwise keep the Equipment and all title and interest free of any liens, claims or encumbrances.

5.7 Removal. During the Term, City shall be responsible for all costs related to the proper removal of any Equipment, at the City's sole cost and expense. After title in the Equipment has vested with District, District shall be responsible for all costs related to the proper removal of any Equipment, at the District's sole cost and expense.

6. District's Obligation to Reimburse.

6.1 Obligation to Reimburse City for Lease Payments & Amount of Lease Payments. As of the Effective Date, District will reimburse City for the Improvements by paying sublease payments to City in an amount equal to its pro-rata share of the lease payments City shall pay to Lender under the Financing Lease, inclusive of interest ("**Sublease Payment(s)**"). The "pro-rata share" shall be equal to the percentage of the Contract Price (as defined in the Design-Build Contract) allocated for the Improvements in the Schedule of Values (as defined in the Design-Build Contract). The amount of each Lease Payment is set forth in the attached Payment Schedule.

6.2 Timing & Duration of Lease Payments. District shall pay each Sublease Payment to City within thirty (30) days of City's payment of its lease payments to Lender as set forth in the Financing Lease. District shall pay such Sublease Payments to City until all Sublease Payments as reflected in the Payment Schedule have been paid.

6.3 Agreement to Adjust Payment Schedule. If City and Lender adjust the lease payments and the lease payment schedule in the Financing Lease, then: (i) the Parties shall amend the Payment Schedule accordingly to adjust the Payment Schedule consistent with the adjusted terms of the Financing Lease; or (ii) the Payment Schedule shall be deemed equitably adjusted such that the monthly Sublease Payments shall be proportional to District's pro-rata share.

6.4 Subordinate Pledge of Net Revenues. All of the Net Revenues are hereby irrevocably pledged, charged and assigned, on a subordinate basis to the Bonds and Parity Obligations currently outstanding and issued in the future, to the punctual payment of the Sublease Payments. The District shall fix, prescribe, revise and collect, or cause to be fixed, prescribed, revised and collected, rates, fees and charges for the services and improvements furnished by the Wastewater System during each Fiscal Year which are sufficient to yield Net Revenues for the Wastewater System, which are sufficient to pay the Sublease Payments coming due and payable in such Fiscal Year. Defined terms in this Section 6.4 shall have the same meaning ascribed to them in that certain Indenture of Trust, dated as of October 1, 2015, by and between the District

and MUFG Union Bank, N.A., related to the District's Wastewater Revenue Refunding Bonds, Series 2015A, unless otherwise defined herein.

7. **Default & Remedies**

7.1 Any of the following shall constitute an event of default hereunder:

(a) Failure by District to pay any Sublease Payment within thirty (30) days of when due as specified herein; and

(b) Failure by District to observe and perform any covenant, condition or agreement contained in this Agreement on its part to be observed or performed for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to District by City, unless City shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, City will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by District within the applicable period and diligently pursued until the default is corrected; and

(c) An Event of Default (as that term is defined in the Financing Lease) by the City under the Financing Lease or the City's failure to observe or perform any material covenant, condition, or agreement contained in the Financing Lease on its part to be observed or performed.

7.2 Whenever any event of default occurs hereunder, City shall have the right, at its sole option without further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to District, City may declare all Sublease Payments payable hereunder to be immediately due and payable;

(b) City may enter the premises where the Equipment is located and retake possession of such Equipment or require District at District's expense to promptly return any or all of such Equipment to the possession of City; and/or

(c) City may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement.

8. **Time is of the Essence.** Each Party warrants that it shall make its best efforts to perform all obligations assigned to it related to the Improvements in such a manner as to allow the Improvements to progress as scheduled.

9. **Dispute Resolution.** Unless otherwise specified herein, the Parties shall submit any unresolved dispute to each Party's designated representative for negotiation. The Parties agree to undertake good faith attempts to resolve said dispute, claim, or controversy within ten (10) calendar days after the receipt of written notice from the Party alleging that a dispute, claim or controversy exists. The Parties additionally agree to cooperate with the other Party in scheduling negotiation sessions. However, if said matter is not resolved within thirty (30) calendar days after

conducting the first negotiating session, either Party may, but is not required to, request that the matter be submitted to further dispute resolution procedures, as may be agreed upon by the Parties.

10. **Legal Action.** If a matter is not resolved within thirty (30) calendar days after the first negotiating session between the Parties, unless otherwise agreed upon in writing by the Parties, either Party may proceed with any other remedy available in law or in equity.

11. **Indemnification.** Each Party shall indemnify, defend and hold the other Party, its officials, officers, employees, agents, consultants and contractors free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts or omissions or willful misconduct of the indemnifying Party, its officials, officers, employees, agents, consultants or contractors in the performance of the indemnifying Party's obligations under this Agreement, including the payment of all reasonable attorneys' fees.

12. **Force Majeure.** The failure of performance by either Party (except for payment obligations) hereunder shall not be deemed to be a default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, railroad, or suppliers; acts of the other Party; acts or failure to act of any other public or governmental agency or entity (other than that acts or failure to act of the Parties); or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform or relief from default. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by mutual agreement between the Parties.

13. **Written Notices.** All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CITY:

City of Coachella

53990 Enterprise Way

Coachella, CA 92236

Attn: City Manager

DISTRICT:

Coachella Sanitary District

53462 Enterprise Way

Coachella, CA 92236

Attn: Utilities Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

14. **Amendments.** This Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing with the prior written consent of the Lender.
15. **Assignment of Agreement.** Neither Party may assign or transfer its respective rights or obligations under this Agreement without the express written consent of the other Party and the Lender. Any purported assignment or transfer by one Party without the express written consent of the other Party and the Lender shall be null and void and of no force or effect.
16. **Waiver.** No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of either Party shall be deemed to waive or render unnecessary such Party's consent to or approval of any subsequent act of the other Party. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. The provisions of this Agreement may not waived without the prior written consent of the Lender.
17. **Governing Law and Venue.** This Agreement will be governed by the laws of California. Venue for any action arising out of this Agreement shall be in the federal or state courts, as applicable, located in the County of Riverside, California, and each Party hereby submits to the jurisdiction of such courts.
18. **Successors and Assigns.** This Agreement and each of its provisions will be binding on and will inure to the benefit of the respective successors and permitted assigns of the parties to this Agreement.
19. **Severability.** In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.
20. **Survival.** All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, shall survive any such expiration or termination.
21. **Third Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
22. **Entire Agreement / Execution in Counterparts.** This Agreement contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings. This Agreement may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first herein above written.

CITY OF COACHELLA

COACHELLA SANITARY DISTRICT

By: _____

By: _____

Name: Dr. Gabriel Martin

Name: _____

Title: City Manager

Title: _____

ATTEST:

ATTEST:

By: _____

By: _____

City Clerk

[INSERT TITLE]