

**AGREEMENT REGARDING THE  
AVENUE 50 BRIDGE OVER COACHELLA VALLEY STORMWATER CHANNEL PROJECT**

This Agreement Regarding the Avenue 50 Bridge Over Coachella Valley Stormwater Channel Project ("Agreement") is entered into this      day of      , 2025 ("Effective Date"), by and between the City of Coachella, a California Public Corporation, also known as City of Coachella, a California Municipal Corporation ("City") and the Coachella Valley Water District, a public agency of the State of California ("CVWD"). The City and CVWD are sometimes referred to herein individually as a "Party" or collectively as "Parties".

**RECITALS**

A. City is administering a project to construct a public road realignment of Avenue 50 and Tyler Street, consisting of a bridge over the Coachella Valley Stormwater Channel ("CVSC"), ("Project").

B. In January 9, 1901, the County of Riverside declared a road right-of-way for the southern 30-feet from the north section line of the northeast quarter of Section 5, Township 6 South, Range 8 East, recorded April 17, 1959 as Instrument No. 32692 in Riverside County.

C. The City obtained CVWD Encroachment Permit No. 060805-1-004 on June 9, 1981 as the owner of the existing Avenue 50 low-flow road crossing (CVWD Drawing Nos. 9784 to 9786) within the CVSC, and desires to replace such crossing with a bridge and install related improvements.

D. GTE California, Inc installed underground telecommunication conduits within the road right-of-way of Avenue 50 under CVWD Encroachment Permit No. 050832-4-002 on February 15, 1991.

E. The City intends to continue to operate, maintain and repair the existing Avenue 50 low-flow road crossing in a reasonable and responsible manner.

F. The City shall be responsible, at its sole cost and expense, for any damage to the CVSC and shall indemnify and hold harmless CVWD from and against any liability which may result from a failure of the City to maintain the Avenue 50 low-flow road crossing.

G. The City intends to include a project in its Capital Improvement Plan to pursue funding for the design and construction of a future grade control structure in the CVSC to replace the existing Avenue 50 low-flow road crossing.

H. CVWD operates and maintains the CVSC within Assessor's Parcel Number ("APN") 763-020-019, 778-170-012, and 603-300-018 as a regional flood conveyance and control channel to protect human life and property and for related purposes ("CVWD Stormwater Facilities").

I. CVWD owns APN 763-020-019 and a portion of APN 778-170-012 in fee title. CVWD holds certain stormwater easement rights within APN 603-300-018 and a portion of APN 778-170-012 (collectively "CVWD Property").

J. CVWD operates and maintains an irrigation distribution system ("Irrigation Facilities") owned by the United States Bureau of Reclamation ("USBR") within USBR owned easements (collectively "USBR Property").

K. CVWD operates and maintains an agricultural drainage system which transports drainage water from on-farm drainage systems ("Ag Drainage Facilities"). These may be impacted as part of a future phase.

L. The Project will impact CVWD Stormwater Facilities and Irrigation Facilities, and will encroach onto CVWD Property.

M. Operation and maintenance of the CV Link Pathway in the CVSC shall be the responsibility of the Coachella Valley Association of Governments ("CVAG") and is governed by a separate agreement between CVWD and CVAG.

N. The Parties desire to enter into this Agreement to establish the responsibilities of each Party.

NOW THEREFORE, THE PARTIES AGREE TO THE FOLLOWING:

### AGREEMENT

#### 1. CITY RESPONSIBILITIES

- A. City is solely responsible for all cost and expense of project management, planning, environmental, design, and construction work on the Project. Any consultants or contractors hired by the City will be subject to the terms and conditions of this Agreement.
- B. City shall comply with CVWD's rules, regulations, ordinances, and procedures regarding the design, installation, and construction of the facilities contemplated herein, including but not limited to CVWD's Development Design Manual, and design standards, as may be amended by CVWD and the CVWD Board of Directors ("Board") from time to time (collectively, "Rules").
- C. City to 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 Project including, without limitation, the Federal Emergency Management Agency's floodplain management requirements; CVWD Ordinance No. 1234; City's equivalent ordinance or Riverside County Ordinance 458; all applicable provisions of the local ordinances regulating discharges of stormwater; 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 Order NO. 2010-0014-DWQ, Order No. 2009-0009-DWQ, and Order NO. 2012-0006-DWQ.

- D. City to 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 California Environmental Quality Act ("CEQA"), the National Environmental Policy Act ("NEPA"), California Public Resources Code section 21000 et seq., and the Federal Species Act and the California Endangered Species Act, (collectively "Environmental Laws") application to the design and construction of the Project.
- E. City to indemnify and hold harmless CVWD, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liability 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 Project, including the failure of the Avenue 50 low-flow road crossing, except for liability resulting from the sole established negligence, willful misconduct or active negligence of CVWD, its officials, officers, agents, employees or authorized volunteers.
- F. Prior to construction, City shall submit the construction plans for the Project, Irrigation Facilities abandonments, concrete slope protection, storm drain outlet and access road (collectively "Plans") to CVWD for CVWD's review and approval. City to depict the CV Link Pathway on the Project Plans. 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. This procedure shall continue until the Plans have been approved by CVWD.
- G. City shall not allow any utilities to be constructed within the Project or CVWD Property without prior approval from CVWD, which will be subject to issuance of an encroachment permit or other applicable permission as determined by CVWD.
- H. City acknowledges and shall include information to bidders that work within the CVSC is subject to flooding risks and that no stockpiling, staging, or leaving equipment overnight is allowed.
- I. Insurance Requirements
  - i. The City, along with any contractors or subcontractor of the City, shall throughout the term of the Agreement, comply and maintain the insurance coverages described in the Exhibit "A".
  - ii. CVWD's insurance requirements are periodically updated to reflect adjustments in insurance amounts and types of coverage. As such, Insurance Requirements are adjusted from time to time, CVWD will provide written notice to the city of changes in the Insurance Requirements, after which the City will have thirty (30) calendar days within which to implement any changes and provide proof of coverage.
- J. Operation and Maintenance Responsibilities

- i. City shall operate and maintain the Project.
- ii. City shall operate and maintain the City's existing 16-inch (16") water line located north of the existing Avenue 50 low-flow road crossing.
- iii. City shall construct concrete slope protection as follows:
  - a. Northeast side of the CVSC from approximately Sta: 794+42.21 to Sta: 801+31.75 per CVWD drawing nos. 50362, 50363, and 50365 through 50367.
  - b. Southwest side of the CVSC from approximately Sta: 794+90.66 to Sta: 804+86.20 per CVWD drawing nos. 50362 and 50364 through 50367.
- iv. City shall construct, operate and maintain storm drain outlets as follows:
  - a. Two 48-inch diameter reinforced concrete pipe (RCP) storm drain outlets with flap gates, a combined headwall, and contained ¼ ton rock rip-rap at approximate Sta: 798+80.24 and 799+02.28 per CVWD drawing nos. 50359 and 50368.
  - b. One 24-inch diameter reinforced concrete pipe (RCP) storm drain outlet with flap gates, energy dissipator, and headwall at approximate Sta: 795+02.49 per CVWD drawing nos. 50359 and 50368.
  - c. One 72-inch corrugated metal pipe (CMP) storm drain outlet and headwall at approximate Sta: 801+01.35 per CVWD drawing nos. 50362 and 50363.
    - Existing outlet to be reconstructed pursuant to the Project needs
    - Outlet was initially constructed by Caltrans and turned over to the City for operation and maintenance pursuant to Freeway Agreement dated September 6, 1988 and Cooperative Agreement No. 08-1237 dated May 25, 2005.
  - d. City shall provide a letter from the land use authority having jurisdiction over the Project certifying that all Project storm drain outlets have been reviewed and determined to meet the requirements of the National Pollutant Discharge Elimination System permit and Waste Discharge Requirements for the discharge of stormwater in the Whitewater River Watershed, which is known as the MS4 Permit, including any amendment to or replacement of such MS4 Permit that may be issued in the future. This certification applies to requirements included in the Drainage Area Management Plan, Stormwater Management Plan, Stormwater Pollution Prevention Plan and Water Quality Management Plan described in the MS4 Permit.

- e. CVWD requires City to implement control measures to the maximum extent practicable to prevent the discharge of non-stormwater generated runoff into the CVSC. City shall repair and maintain these stormdrain outlets and structures and CVSC to mitigate any condition of nuisance and/or damage to these stormdrain outlets and structures and the CVSC caused by City's non-stormwater discharge as determined by CVWD. This maintenance and repair shall include, but not be limited to, outlet concrete repairs, CVSC bottom scour repair, slope protection repair, vegetation clearing, ponded/nuisance water removal, etc. Failure to comply with these conditions of approval may result in revocation by CVWD of this Agreement associated with the outlet and removal or sealing of the outlet. In the event City fails to perform the abovementioned responsibilities, CVWD may elect to complete any or all of such tasks at City's cost and expense. Such cost shall be paid by City within ten (10) calendar days following receipt of an invoice from CVWD.
- v. City shall grade and establish new access road per stationing shown on CVWD drawing no. 50338.
- vi. City shall prohibit and lawfully enforce the prohibition on camping or over-night occupancy. Post appropriate signage at the Project location to give notices to these prohibited activities. City acknowledges and agrees that all reports and/or complaints associated with trespassing through unauthorized encampments within the Project shall be the sole responsibility of the City and that City shall perform the removal of said encampments, associated debris, and/or personal belongings.
- vii. City shall maintain reasonable security precautions and programs to protect the Project and CVWD Stormwater Facilities against vandalism, graffiti, theft, arson, or other similar actions. City shall be responsible to perform and pay for all associated costs for graffiti abatement on the Project.
- viii. City shall allow CVWD access for purposes related to the operation, maintenance, and repair of CVWD Stormwater Facilities and the Irrigation Facilities.
- ix. City shall notify CVWD Right-of-Way Division a minimum of 72-hours for any planned maintenance activities by City staff.
- x. For emergency repairs, City shall endeavor to notify CVWD as soon as possible about the emergency repairs.
- xi. If City contracts for any of the operations, maintenance, repairs, and construction work, City's contractor(s) shall apply for a construction encroachment permit with CVWD Right-of-Way Division and comply with all the requirements including insurance and indemnification. City's contractor shall allow for a minimum of 30 calendar days for CVWD to

process the construction permit and shall be responsible for any inspection costs incurred by CVWD.

K. Irrigation Facilities

- i. City shall design and remove, at City's sole expense, to CVWD specifications, the abandonment of those Irrigation Facilities located within the USBR Property per CVWD drawing nos. 42676 through 42678. The design and abandonment of the Irrigation Facilities shall comply with CVWD and USBR requirements and procedures as provided in CVWD's Development Design Manual. USBR requirements include the federal abandonment submittal process, including a recorded quitclaim for each parcel where the USBR Property will be abandoned ("USBR Requirements"). Upon approval of the abandonment by the USBR, City shall have the applicable portions of the Irrigation Facilities removed in accordance with the terms hereof and a CVWD construction encroachment permit.
- ii. CVWD strongly recommends that the City obtain written approval of the fee title owner(s) of the real property on which CVWD and USBR's easements are located prior to constructing the Project.
- iii. The City shall be fully responsible to ascertain the location of all facilities constructed by others, and to construct the Project in a manner which will not damage, conflict or interfere with any existing facilities or CVWD's and USBR's use of the easement area for the purpose set forth in the easements. City shall be responsible for all costs for the protection and/or repair of the existing irrigation pipeline during construction and future maintenance activities within or near the CVWD and USBR easements.
- iv. In the event any action is brought by any person(s) regarding CVWD's or USBR's easements for injury, death and/or damages to property in connection with construction of the Project and City's use of the easements, CVWD and USBR shall be defended, held harmless and indemnified by the City. CVWD and USBR assume no responsibility for damages, claims or suits in connection with said Project. These requirements should not be construed as subordination of CVWD's and USBR's rights, title and interest in and to said easements or as a waiver of any of the provisions contained in said easements.

L. Existing Avenue 50 Low-flow Road Crossing

- i. The City shall operate, maintain and repair the existing Avenue 50 low-flow road crossing in a reasonable and responsible manner so as to not cause the road to deteriorate.
- ii. In the event that the Avenue 50 low-water crossing becomes damaged and requires significant repair or replacement, then the City shall develop a Capital Improvement Plan for the immediate and timely repairs with full review and approval from CVWD. Improvements required for future

repairs may include, but are not limited to, full replacement with an engineered grade control structure to replace the Avenue 50 low flow road crossing. The City shall include a project in its Capital Improvement Plan to pursue funding options for design and construction of an engineered grade control structure to replace the Avenue 50 low-flow road crossing to prevent damage to CVWD's CVSC.

M. Pre-Construction Requirements

- i. Following receipt of CVWD's approval of the design Plans and prior to construction, the City shall do the following:
  - a. Furnish to CVWD, prior to the pre-construction meeting set forth in subsection (d), a Performance Guarantee Deposit in the amount of Five Thousand Dollars (\$5,000.00) or five percent (5%) of the amount of the construction costs of the concrete slope protection, whichever sum is greater, in immediately available funds, as security for the purpose of guaranteeing the completion of the construction of the improvements. 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), less one (1) full percentage point. 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 the improvements; 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 improvements 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 improvements are complete and final may come after CVWD has accepted such facilities.
  - b. Employ, a qualified contractor or contractors (collectively, "City's Contractor") properly licensed by the State of California, to construct and complete the Project, Irrigation Facilities abandonments, concrete slope protection, storm drain outlet and access road.
  - c. Arrange or cause City's Contractor to arrange for a preconstruction meeting with CVWD a minimum of 7 calendar

days before mobilization. At such meeting there shall be at least one (1) representative of CVWD, City and City's Contractor. At such meeting, City shall be required to pay to CVWD an Inspection Services Deposit for inspection as shall be required by CVWD. CVWD shall deduct from said Inspection Services Deposit all reasonable expense of CVWD, including, but not limited to, CVWD's agents, employees, consultants, or independent contractors. CVWD shall handle such deposit consistent with CVWD's rules, regulations and procedures with respect to such deposits. The Inspection Services Deposit is the minimum required amount and may be modified in CVWD's sole discretion, based on the project size, complexity, or impacts to CVWD. CVWD may elect to use consultants to perform the inspection services for a specific project based on either technical needs and/or staff availability.

#### N. Construction Requirements

- i. City's Contractor shall obtain two (2) CVWD construction encroachment permits ("EP") prior to commencing the Project construction in the CVWD Property and USBR Property. One EP will be issued solely for the Irrigation Facilities abandonment, the second will be issued for construction of the Project, concrete slope protection, bridge foundations and columns, storm drain outlet and access road.
- ii. City's Contractor shall name CVWD additionally insured in the insurance policies provided by City's Contractor pursuant to the City's construction contract.
- iii. City shall include CVWD and the CVWD Indemnitees as defined herein, as indemnitees in the indemnification clause in the City's construction contract with the City's Contractor.
- iv. City shall cause the City's Contractor to comply with the applicable Occupational Safety and Health Administration ("OSHA") standards and requirements, including, but not limited to, submitting construction and shoring plans.
- v. City shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to City for the Project and shall keep the Project 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 Project 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 Project or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Project.



- vi. The Project, Irrigation Facilities abandonments, concrete slope protection, storm drain outlet and access road shall all be installed in strict compliance with the approved Plans. Any deviations from the approved Plans must have CVWD's prior written approval.
- vii. 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.
- viii. Upon completion and acceptance of the Project, City shall provide CVWD a recorded copy of the Notice of Completion.
- ix. City warrants and represents to CVWD that the concrete slope protection and the Irrigation Facilities abandonments shall be free from construction defects for twelve (12) months from the date of the Notice of Completion. The City shall maintain in force the Performance Guarantee Cash Deposit for the duration of the twelve (12) month Guarantee.
- x. City shall repair, or cause to be repaired, at City's expense all failures of the concrete slope protection and Irrigation Facilities abandonments, which were furnished, installed, and/or constructed by the City due to faulty materials or installation during the twelve (12) month period commencing from the Notice of Completion. If repairs cannot be completed in a timely manner sufficient to maintain protection to life and property, CVWD shall perform the work and shall invoice City for such costs. City shall, within thirty (30) days after written demand therefor, pay or cause City's Contractor or surety to pay such costs shown on the invoice. Nothing in this subsection shall limit or abrogate any other claims, demands or actions CVWD may have against City or City's Contractor 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.

## 2. CVWD Responsibilities

- A. CVWD to grant the City the ability to construct, operate and maintain the Project within the CVWD Property and USBR Property.
- B. CVWD to grant the City the ability to abandon those portions of the Irrigation Facilities and to construct the concrete slope protection, storm drain outlet, and access road pursuant to CVWD EPs.

- C. CVWD to coordinate and cooperate with the City to process the USBR Irrigation Facilities abandonment package.
- D. CVWD to review the Plans and provide City approval or disapproval with comments.
- E. CVWD to attend any pre-bid meetings during the City bidding process.
- F. CVWD to attend any pre-construction meetings prior to commencement of construction.
- G. CVWD to perform the operation and maintenance of the concrete slope protection
  - i. CVWD will operate, maintain and repair the concrete slope protection once it is constructed by the City in accordance with Article 1.J.iii. above.
- H. CVWD to perform the operation and maintenance of future engineered grade control structure.
  - i. CVWD will operate, maintain and repair the engineered grade control structure once it is constructed by the City in place of the existing Avenue 50 low-flow road crossing.

### 3. Indemnity

- A. The City, on its own behalf and on behalf of successor entities, shall defend, indemnify and hold CVWD, its officers, directors, administrators, representatives, consultants, engineers, employees and agents, their successors and assigns (collectively "CVWD Indemnitees") free and harmless from and against any and all claims, actions, causes of action, damages, demands, liabilities, costs (including, without limitation, reasonable attorneys' fees), losses and expenses of every type and description ("Claims" and "Costs") to which CVWD and the Indemnitees may be subjected resulting from or arising out of this Agreement; the design, construction, installation, repair, maintenance and operation of the Project on the CVWD Property and USBR Property; 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 the City or its Representatives (as defined below); 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; any breach by City of its obligations under this Agreement; and any enforcement by CVWD of any provision of this Agreement. The forgoing indemnity shall not apply to the extent that such Claims and Costs are ultimately established by a court of competent jurisdiction to have been caused by the gross negligence or willful misconduct of CVWD or its Indemnitees. Except as set forth in the immediately preceding sentence, the City, as a material part of the consideration of this Agreement, waives all claims or demands against CVWD and the Indemnities for any such Claims related to this Agreement. All who enter upon the CVWD Property and USBR Property pursuant to this Agreement shall do so at their own risk and shall at all times

comply with all instructions and directions of CVWD. CVWD shall make all decisions regarding its representation in any legal proceeding described in this Agreement. The City shall not settle any claim without prior written consent of CVWD. If the City fails to indemnify CVWD, CVWD shall have the right, but not the obligation, to defend against the matters described herein and charge all direct or incidental Costs of such defense to the City and recover the same from the 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 the 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

- B. Storm, surface, ground, nuisance, or other waters may be encountered at various times during construction and/or maintenance activities thereafter. The City hereby acknowledges and agrees that there are certain inherent risks and dangers associated with such waters; and that, except as expressly set forth herein, it knowingly and voluntarily accepts and assumes responsibility for, each of these risks and dangers, and all other risks and dangers that could arise out of, or occur during, construction and/or maintenance activities. Such inherent risks and dangers include, but are not limited to: flooding, health hazards, slippery ground, uneven surfaces, and debris.
- C. CVWD shall not be responsible for any part of the Project either within or outside the CVWD Property and USBR Property areas. If the City's construction and/or maintenance activities cause damage to CVWD Stormwater Facilities, and the City does not repair or restore the same, CVWD may repair or restore the same and the City and the City's successor entities shall reimburse any cost incurred by CVWD in repairing such damage. Such costs shall be paid by the City and its successor entities within thirty (30) calendar days following receipt of an invoice from CVWD.
- D. If operation, repair, maintenance, or emergency work on the CVSC, by or on behalf of CVWD, requires removal of all or part of Project, CVWD will not be liable for any damage to or repair of the Project. Unless resulting from the gross negligence or willful misconduct of CVWD or the Indemnitees (as held by final determination of a court of competent jurisdiction), CVWD or its Indemnitees will not be liable for any death, injury or property damage caused or claimed to be caused by CVWD's exercise of its rights with respect to the maintenance, repair, replacement and operation of the CVWD Stormwater Facilities.

- E. The City shall be responsible, at the City's sole cost and expense, for the repair replacement, and removal of any portion of the Project, the City's improvements or the City's property disturbed, broken, or destroyed by CVWD in the course of operating, repairing, or performing emergency work on CVWD Stormwater Facilities within the Project. Under no circumstances other than the gross negligence or willful misconduct by CVWD or its agents or employees shall the City be entitled to compensation for damage or destruction of any personal property or improvements on the CVWD Property and USBR Property or any interruption of or interference with the City's conduct of business and the City hereby releases and waives the right of claim, loss, damage or action against CVWD arising out of or in connection with the same.
- F. The City hereby releases CVWD and waives any claims against CVWD in connection with the Agreement. This waiver shall not apply to Claims that are ultimately established by a final determination of a court of competent jurisdiction, to have been caused by the gross negligence or willful misconduct of CVWD or the Indemnitees. The City and CVWD intend that this Agreement be effective as a full and final release of the above matters released hereby.

#### 4. Conflict of Interest

- A. The City shall not engage directly or indirectly in any activity which materially conflicts with the City's faithful performance of services, commitments, and obligations undertaken to be performed pursuant to this Agreement.

#### 5. Attorney's Fees

- A. In the event of any legal action or proceeding arising from or related in any way to a breach of or enforcement or interpretation of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court.

#### 6. Termination

- A. In the event the City fails to perform any obligation required by this Agreement, CVWD shall demand in writing that the City cure such non-performance. The City shall have thirty (30) calendar days after receipt of such demand to cure. In the event the City fails to cure a default within the thirty (30) day period, CVWD may terminate this Agreement. Following a termination, CVWD shall have the right to take whatever steps it deems necessary to correct the City's deficiencies, including but not limited to, hiring a third-party to perform the City's obligations and charge the cost thereof to the City, who shall be liable for the full cost of CVWD's corrective action, including reasonable overhead, attorneys' fees, and a ten percent (10%) supervision fee shall be due and payable within thirty (30) days of invoice by CVWD.
- B. In the event CVWD fails to perform any obligation required by this Agreement, the City shall demand in writing that CVWD cure such non-performance. CVWD

shall have thirty (30) calendar days after receipt of such demand to cure. In the event the CVWD fails to cure a default within the thirty (30) day period, the City may terminate this Agreement.

- C. Notwithstanding any other provision, this Agreement may be terminated by CVWD as to all or any portion of the CVWD Property or USBR Property if CVWD determines that such termination is necessary in order to protect human lives or property against those hazards for which CVWD has responsibility as a public agency. Any such termination will be effected with maximum possible notice to the City consistent with the nature of circumstances threatening public safety.

## 7. General Provisions

### A. Notices

- i. 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: Andrew Simmons  
53990 Enterprise Way  
Coachella, CA 92236

### B. Waiver

- i. Except as otherwise expressly provided in this Agreement, no waiver by a party of any breach of this Agreement or of any warranty or representation hereunder by the other party shall be deemed to be a waiver of any other breach by such other party (whether preceding or succeeding and whether or not of the same or similar nature) and no acceptance of payment or performance by a party after any breach by the other party shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by such other party whether or not the first party knows such breach at the time it accepts such payment or performance. Except as otherwise expressly provided in this Agreement, no failure or delay by a party to exercise any right it may have by reason of the default of the other party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right by the first party while the other party continues to be so in default.

C. Governing Law

- i. The rights and obligations of the parties and the interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflicts of rules of law.

D. Jurisdiction and Venue

- i. The parties agree that venue for any action brought to enforce the terms of this Agreement or arising out of this Agreement shall be in a court of competent jurisdiction in the County of Riverside, California, and consent to the jurisdiction thereof.

E. Counterparts; Entirety

- i. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. The parties agree that this Agreement constitutes the entire and only Agreement between the parties with reference to the subject matter hereof and supersedes any prior Agreement, oral or written, with respect thereto.

F. Modification

- i. The provisions of this Agreement may not be amended, changed or modified orally, except by an Agreement in writing signed by the party against whom any amendment, change or modification is sought.

G. Severability

- i. Any provision of this Agreement adjudicated by a court of competent jurisdiction to be invalid or unenforceable for any reason shall be ineffective to the extent of such prohibition or invalidity and shall not invalidate or otherwise render invalid or unenforceable any remaining provisions of this Agreement.

H. No Interpretation Against the Drafter

- i. This Agreement is the product of negotiations between the Parties hereto represented by counsel and any rules of construction relating to interpretation against the drafter of an Agreement shall not apply to this Agreement and are expressly waived by the Parties hereto.

I. Assignability

- i. This Agreement shall not be assigned by either party without prior written consent of the other party.

J. Time

- i. Time is of the essence for this Agreement.

K. No Third Party Beneficiaries

- i. Except as set expressly set forth herein, no third party shall have the right to enforce any term of this Agreement.

[REMAINDER OF PAGE LEFT BLANK – SIGNATURES ON NEXT PAGE]

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

Dated: \_\_\_\_\_

**CITY:**

**THE CITY OF COACHELLA, A California  
public corporation, also known as City of  
Coachella, a California municipal corporation**

By: \_\_\_\_\_

Name: William Pattison

Title: City Manager

Dated: \_\_\_\_\_

**CVWD:**

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

By: \_\_\_\_\_

J. M. Barrett

General Manager



## **EXHIBIT LIST**

EXHIBIT "A"

INSURANCE REQUIREMENTS

**EXHIBIT "A"**  
**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.