

APPENDIX D

**WATER AGREEMENTS AND
RELATED TEMPLATE FORMS**



WATER AGREEMENTS AND RELATED TEMPLATE FORMS

Instructions:

Customer information should be completed, and pertinent boxes should be checked for documents submitted to IWA. Completed documents can be submitted to IWAEngineering@indio.org.

Applicant Name:	
Phone #:	
Email Address:	
Project Name:	
Project Address:	
Tract No.:	
Phase & Lot No.:	

Water Improvement Procedure Checklist

Official Board Approval Documents

Comments

Customer

IWA

- | | | | |
|--------------------------|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | IWA Improvement Agreement | |
| <input type="checkbox"/> | <input type="checkbox"/> | Engineer's Opinion of Probable Cost | |
| <input type="checkbox"/> | <input type="checkbox"/> | Payment Bond (Labor and Material) | |
| <input type="checkbox"/> | <input type="checkbox"/> | Performance Bond | |

Pre-Construction

- | | | | |
|--------------------------|--------------------------|------------------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Water Bond Release Procedure Form | |
| <input type="checkbox"/> | <input type="checkbox"/> | Shop Drawing Submittal Review Form | |

Project Completion

- | | | | |
|--------------------------|--------------------------|------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Bill of Sale | |
| <input type="checkbox"/> | <input type="checkbox"/> | IWA Easement Templates | |

Customer Signature: _____ Date: _____



Recording Requested By:

Indio Water Authority

When Recorded Return To:

**Sabdi Sanchez, CMC
City Clerk Administrator
City of Indio
100 Civic Center Mall
Indio, California 92201**

Exempt from recording fees pursuant to Govt. Cod. Sec. 27383

(Space Above this Line for Recorder's Use)

**INDIO WATER AUTHORITY
WATER IMPROVEMENT AGREEMENT**

DATE OF AGREEMENT: _____

NAME OF DEVELOPER: _____
(referred to as "DEVELOPER")

NAME OF PROJECT: _____
(referred to as "PROJECT or SUBDIVISION")

TRACT NO.: _____

TENTATIVE MAP RESOLUTION OF APPROVAL NO.
OR PLANNING APPLICATION NO.: _____
(referred to as "Resolution of Approval")

ESTIMATED TOTAL COST OF IMPROVEMENTS: \$ _____

ESTIMATED COMPLETION DATE: _____

This Agreement is made and entered into by and between the Indio Water Authority, a joint powers authority, hereinafter referred to as IWA, and the DEVELOPER.

RECITALS

A. DEVELOPER desires to construct off-site water improvements for the extension of its water mains as well as guarantee the satisfactory completion of such work for a project

known as the “_____” pursuant to the provisions of the Subdivision Map Act of the State of California (“Subdivision Laws”) and the applicable City of Indio ordinances and IWA requirements.

B. Pursuant to Resolution No. _____ (“Resolution of Approval”), Tentative Parcel Map _____ (PM _____) has been approved, subject to the Subdivision Laws and the requirements and conditions contained in the Resolution of Approval, for property located at Assessor Parcel Numbers _____ through _____ and _____ through _____ (“PROJECT”) and as further described in the legal description attached as **Exhibit “A”**. The Resolution of Approval is on file in the Office of the IWA and is incorporated into this Agreement by reference.

C. The Subdivision Laws establish as a condition precedent to the approval of a final map that DEVELOPER must have complied with the Resolution of Approval and must complete certain water improvements, among others, in compliance with City of Indio (“City”) and IWA standards.

D. In consideration of this Agreement and other good and sufficient consideration, DEVELOPER agrees to enter into this Agreement and promises to install and complete, at DEVELOPER’S own expense, the off-site water improvement work required by IWA in connection with the proposed subdivision. DEVELOPER has secured this Agreement by improvement security required by the Subdivision Laws.

E. Complete improvement plans for the construction, installation and completion of the improvements described herein have been prepared by DEVELOPER and approved by the IWA Engineer. The improvement plans are on file in the Office of the IWA and are incorporated into this Agreement by this reference (“Improvement Plans”). All references in this Agreement to the Improvement Plans shall include reference to any specifications for the improvements as approved by the IWA Engineer.

F. An estimate of the cost of construction of the improvements according to the Improvement Plans has been made and has been approved by the IWA Engineer. The estimated amount is stated on Page 1 of this Agreement.

G. The City and IWA have adopted standards for the construction and installation of said improvements. The Improvement Plans have been prepared in conformance with applicable City and IWA standards in effect on the date of approval of the Resolution of Approval.

H. DEVELOPER recognizes that by approval of the final map for this subdivision, the City has conferred substantial rights upon DEVELOPER, including the right to sell, lease, or finance lots within the subdivision, and has taken the final act necessary to subdivide the property within the subdivision. As a result, the City and IWA will be damaged to the extent of the cost of installation of the improvements by DEVELOPER’S failure to perform its obligations under this Agreement, including, but not limited to, DEVELOPER’S obligation to complete construction of the improvements by the time established in this Agreement. The City and IWA shall be entitled

to all remedies available to it pursuant to this Agreement and the Subdivision Laws in the event of a default by DEVELOPER. It is specifically recognized that the determination of whether a reversion to acreage or rescission of the SUBDIVISION constitutes an adequate remedy for default by the DEVELOPER shall be within the sole discretion of the City.

NOW THEREFORE, in consideration of the recitals set forth above, DEVELOPER and IWA agree as follows:

1. IWA Approval of Application for Extension of Water Mains.

Pursuant to an application made to IWA by DEVELOPER and in consideration of this Agreement, IWA hereby agrees to extend its water mains from the presenting existing mains or allow such an extension by DEVELOPER subject to the terms and conditions set forth in this Agreement.

2. DEVELOPER'S Obligations to Construct Improvements. DEVELOPER shall:

- a. At its sole cost and expense, provide construction management, construction staking, design of water plans and construct and install the off-site public water system improvement together with all other appurtenances as set forth in **Exhibit "B"** to this Agreement (the "Improvements") based upon preliminary engineering plans and studies and the Improvement Plans submitted to IWA. This description is intended to roughly outline the scope of the works and improvements to be designed and constructed in connection with this Agreement. The exact works and improvements comprising the Improvements may change as a result of site requirements, changes in construction standards, geologic conditions, ability to locate adequate source of water pressure and supply, engineering constraints, or other factors. The IWA Engineer, in his or her reasonable discretion, may approve substitute works and improvements to replace some or all of the works and improvements set forth in **Exhibit "B"** to this Agreement, if such substitute works and improvements would provide the PROJECT services of a similar nature to those provided by the works and improvements set forth in **Exhibit "B"** to this Agreement.
- b. Complete by the time established in **Exhibit "C"** of this Agreement and at DEVELOPER'S own expense, the Improvements in conformance with the Improvement Plans and the IWA standards.
- c. Construct such Improvements in full compliance with the approved Improvement Plans and the requirements of this Agreement, and in accordance with any other applicable IWA or City of Indio requirements and conditions, subject to inspection and approval by IWA. Such work shall be undertaken by a qualified California licensed contractor.

- d. Furnish the necessary materials for completion of the Improvements in conformity with the Improvement plans and IWA standards.
 - e. **Prevailing Wages.** Pursuant to the requirements of Labor Code Section 1720, DEVELOPER shall pay prevailing wages for all work performed for the construction, alteration, demolition, installation, or repair for the Street Improvement Work required by this Agreement. In accordance with the provisions of Section 1773 of the Labor Code of the State of California, the IWA has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute under this Agreement from the Director of the Department of Industrial Relations. These rates are on file with the Office of the IWA. Copies may be obtained at cost at the Office of the IWA. DEVELOPER shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rate as a minimum. DEVELOPER shall comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6 and 1813 of the Labor Code and other applicable laws and regulations with respect to the payment of prevailing wages. Pursuant to the provisions of 1775 of the Labor Code, DEVELOPER shall forfeit to the IWA, as a penalty, the sum of \$25.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this Agreement, by it or by any subcontractor under it, in violation of the provisions of the Agreement or in violation of any applicable laws or regulations pertaining to the payment of prevailing wages.
 - f. Acquire and dedicate, or pay the cost of acquisition by IWA, of all right-of-way, easements and other interests in real property for construction or installation of the Improvements, free and clear of all liens and encumbrances. The DEVELOPER'S obligations with regard to acquisition by IWA of off-site right-of-way, easements and other interests in real property shall be subject to a separate Agreement between DEVELOPER and IWA. DEVELOPER shall also be responsible for obtaining any public or private drainage easements or authorizations to accommodate the PROJECT.
 - g. Comply with all requirements of the Resolution of Approval and any amendments thereto, and with provisions of the Subdivision Laws.
3. Acquisition and Dedication of Easement of Right-of-Way. If any of the public improvement and land development work contemplated by this Agreement is to be constructed or installed on land not owned by DEVELOPER, no construction or installation shall be commenced before:
- a. The offer of dedication to IWA of appropriate right-of-way, easements or other interest in real property, and appropriate authorization from the property owner to allow construction or installation of the improvements or work, or

- b. The dedication to, and acceptance by, the IWA of appropriate right-of-way, easements or other interests in real property, as determined by the IWA Engineer, or
- c. The issuance by a court of competent jurisdiction pursuant to the State Eminent Domain Law of an order of possession. DEVELOPER shall comply in all respects with the order of possession.

Nothing in this Section 3 shall be construed as authorizing or granting an extension of time to DEVELOPER.

4. Security. DEVELOPER shall at all times guarantee DEVELOPER'S performance of this Agreement by furnishing to IWA, and maintaining, good and sufficient security as required by the Subdivision Laws on forms approved by IWA for the purposes and in the amounts as follows:
 - a. To assure faithful performance of this Agreement in regard to said improvements in an amount of 100% of the estimated cost of the improvements; and
 - b. To secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor materials for the improvements required to be constructed or installed pursuant to this Agreement in the additional amount of 100% of the estimated cost of the improvements; and
 - c. To guarantee or warranty the work done pursuant to this Agreement for a period of one year following acceptance thereof by IWA against any defective work or labor done or defective materials furnished in the additional amount of 10% of the estimated cost of the improvements.

The securities required by this Agreement shall be kept on file with the Office of the IWA. The terms of the security documents referenced herein are incorporated into this Agreement by this reference. If any security is replaced by another approved security, the replacement shall be filed with the Office of the IWA and, upon filing, shall be deemed to have been made a part of and incorporated into this Agreement. Upon filing of a replacement security with the Office of the IWA, the former security may be released.

5. Alterations to Improvement Plans.
 - a. Any changes, alterations or additions to the improvement plans and specifications or to the improvements, not exceeding 10% of the original estimated cost of the improvements, which are mutually agreed upon by the IWA and DEVELOPER, shall not relieve the improvement security given for faithful performance of this Agreement. In the event such changes, alterations, or additions exceed 10% of the original estimated cost of the improvements, DEVELOPER shall provide improvement security for faithful performance as required by Paragraph 4 of this

Agreement for 100% of the total estimated cost of the improvement as changed, altered, or amended, minus any completed partial releases allowed by Paragraph 7 of this Agreement.

- b. The DEVELOPER shall construct improvements in accordance with the IWA standards in effect at the time of adoption of the Resolution of Approval. IWA reserves the right to modify the standards applicable to the PROJECT and this Agreement, when necessary to protect the public health, safety and welfare.

6. Inspection.

- a. DEVELOPER shall at all times maintain proper facilities and safe access for inspection of the Improvements by the IWA inspector and to the businesses or residences wherein any work is in progress. IWA shall have the right to enter any construction site at any time to inspect the work or the progress of construction of the Improvements that are the subject of this Agreement. Upon completion of the work the DEVELOPER may request a final inspection by the IWA Engineer, or the IWA Engineer's authorized representative. If the IWA Engineer, or the designated representative, determines that the work has been completed in accordance with this Agreement, then the IWA Engineer shall certify the completion of the Improvements for acceptance by IWA. No improvements shall be finally accepted unless aspects of the work have been inspected and determined to have been completed in accordance with the Improvement Plans and IWA and if applicable City standards. DEVELOPER shall bear all costs of inspection and certification. The inspection by IWA of the construction for conformance with the Improvement Plans shall not be deemed to confer liability on IWA or the City or otherwise place the responsibility for properly constructing and inspecting the Improvements upon IWA.
- b. IWA is not responsible and does not own the Improvements until they are inspected and approved and accepted by IWA and all fees and charges associated with the construction of the Improvements and/or other fees owed by Developer to the IWA are paid in full. Until such time, DEVELOPER is responsible for the Improvements and is liable for all damage to said facilities. The Developer shall indemnify IWA, its governing board, officers and employees for any and all claims of any kind relating to the construction of the Improvements incurred prior to the IWA's acceptance of said facilities.
- c. At no time during construction or prior to IWA's acceptance of the Improvements constructed by DEVELOPER shall DEVELOPER, its agents or employees, populate or use the Improvements for any unauthorized purpose, or populate the Improvements with non-potable water or any other chemical or substance not authorized in writing by IWA.

7. Release of Securities. Subject to approval by the IWA Board, the securities required by this Agreement shall be released as follows:
- a. Security given for faithful performance of any act, obligation, work or agreement shall be released upon the final completion and acceptance of the act or work, subject to the provisions of subsection (b) hereof.
 - b. The IWA Engineer may release a portion of the security given for faithful performance of improvement work as the improvement progresses upon application therefore by the DEVELOPER; provided, however, that no such release shall be for an amount less than 25% of the total improvement security given for faithful performance of the improvement work and that the security shall not be reduced to an amount less than 10% of the total improvement security given for faithful performance until final completion and acceptance of the improvement work. In no event shall the IWA Engineer authorize a release of the improvement security, which would reduce such security to an amount below that required to guarantee the completion of the improvement work and any other obligation imposed by this Agreement.
 - c. Security given to secure payment to the contractor, his or her subcontractors and to persons furnishing labor, materials or equipment shall, six months after the completion and acceptance of the work, be reduced to an amount equal to the total claimed by all claimants for who lien have been filed and of which notice has been given to the legislative body, plus an amount reasonably determined by the IWA Engineer to be required to assure the performance of any other obligations secured by the Security. The balance of the security shall be released upon the settlement of all claims and obligations for which the security was given.
 - d. No security given for the guarantee or warranty of work shall be released until the expiration of the warranty period and until any claims filed during the warranty period have been settled. As provided in paragraph 12, the warranty period shall not commence until final acceptance of all the work and Improvements by the IWA Board.
 - e. The IWA may retain from any security released an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorney's fees.
 - f. Any statute of limitations with respect to the obligations of DEVELOPER shall not apply to any bonds or other forms of security provided pursuant to this Agreement. The Surety's liability under any bonds or other forms of security provided pursuant to this Agreement shall be released only upon final completion and IWA's acceptance of the work required pursuant to this Agreement. The expiration of any statute of limitations with respect to DEVELOPER shall not bar an action against the Surety under the bond or any other form of security provided pursuant to this Agreement.

8. Injury to Public Improvements, Public Property or Public Utility Facilities.
DEVELOPER shall replace or have replaced, or repair or have repaired, as the case may be, all public improvements, public utility facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work under this Agreement. DEVELOPER shall bear the entire cost of replacement or repairs of any and all public or public utility property damaged or destroyed by reason of any work done under this Agreement, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by the IWA or any public or private utility corporation or by any combination of such owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the IWA Engineer.
9. Limitations of Damages. Until such time as all Improvements required by this Agreement are fully completed and accepted by IWA, and IWA authorizes connection of all or any part of the PROJECT to IWA's water system, DEVELOPER shall not allow or request permits for occupancy of the PROJECT or any portion thereof. IWA shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of the cause, happening or occurring to any third parties in privity with the DEVELOPER prior to the authorization by IWA to connect the PROJECT or any unit or portion thereof to IWA's public water system, in accordance with IWA's rules and regulations. All such risks shall be the responsibility of and are hereby assumed by DEVELOPER.
10. Permits. DEVELOPER shall, at DEVELOPER'S expense, obtain all necessary permits and licenses for the construction and installation of the improvements, give all necessary notices and pay all fees and taxes required by law.
11. Default of DEVELOPER.
 - a. Default of DEVELOPER shall include, but not limited to, DEVELOPER'S failure to timely commence construction of this Agreement; DEVELOPER'S failure to timely complete construction of the Improvements; DEVELOPER'S failure to timely cure any defect in the Improvements; DEVELOPER'S failure to perform substantial construction work for a period of twenty (20) calendar days after commencement of the work; DEVELOPER'S insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which DEVELOPER fails to discharge within thirty (30) days; the commencement of a foreclosure action against the PROJECT or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or DEVELOPER'S failure to perform any other obligation under this Agreement.
 - b. The IWA reserves to itself all remedies available to it at law or in equity for breach of DEVELOPER'S obligations under this Agreement. The IWA shall have the right, subject to this section, to draw upon or utilize the appropriate security to mitigate IWA damages in event of default by DEVELOPER. The right of IWA to

draw upon or utilize the security is additional to and not in lieu of any other remedy available to IWA. It is specifically recognized that the estimated costs and security amounts may not reflect the actual cost of construction or installation of the improvements and, therefore, IWA damages for DEVELOPER'S default shall be measured by the cost of completing the required improvements. The sums provided by the improvement security may be used by IWA for the completion of the Improvements in accordance with the Improvement Plans and specifications contained therein.

- c. In the event of DEVELOPER'S default under this Agreement, DEVELOPER authorizes IWA to perform such obligation twenty (20) days after mailing written notice of default to DEVELOPER and to DEVELOPER'S Surety, and agrees to pay the entire cost of such performance by IWA.
 - d. At the sole discretion of IWA, IWA may take over the work and prosecute the same to completion, by contract or by any other method IWA may deem advisable, for the account and at the expense of DEVELOPER, and DEVELOPER'S Surety shall be liable to IWA for any excess cost or damages occasioned IWA thereby; and, in such event, IWA, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to DEVELOPER as may be on the site of the work and necessary for performance of the work.
 - e. Failure of DEVELOPER to comply with the terms of this Agreement shall constitute consent to the filing by IWA of a notice of violation against all the lots in the PROJECT, or to request that the City rescind the approval or otherwise revert the SUBDIVISION to acreage. The remedy provided by this Subsection c is in addition to and not in lieu of other remedies available to IWA. DEVELOPER agrees that the choice of remedy or remedies for DEVELOPER'S breach shall be in the discretion of IWA.
 - f. In the event that DEVELOPER fails to perform any obligation, hereunder, DEVELOPER agrees to pay all costs and expenses incurred by IWA in securing performance of such obligations, including costs of suit and reasonable attorney's fees.
 - g. The failure of IWA to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of DEVELOPER.
12. Warranty. DEVELOPER shall guarantee or warranty the work done pursuant to this Agreement for a period of one year after final acceptance by the IWA Board of the work and Improvements against any defective work or labor done or defective materials furnished. Where certain improvements are to be constructed in phases or sections, the one year warranty period shall commence after IWA acceptance of the last completed

improvement, If within the warranty period any work or improvement or part of any work or Improvement done, furnished, installed, constructed or caused to be done, furnished, installed or constructed by DEVELOPER fails to fulfill any of the requirements of this Agreement or the Improvement Plans and specifications referred to herein, DEVELOPER shall without delay and without any cost to IWA, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should DEVELOPER fail to act promptly or in accordance with this requirement, DEVELOPER hereby authorizes IWA at IWA's option, to perform the work twenty (20) days after mailing written notice of default to DEVELOPER and to DEVELOPER'S and agrees to pay the cost of such work by IWA. Should the IWA determine that urgency requires repairs or replacements to be made before DEVELOPER can be notified, IWA may, in its sole discretion, make the necessary repairs or replacement or perform the necessary work and DEVELOPER shall pay to IWA the cost of such repairs.

13. DEVELOPER Not Agent of IWA. Neither DEVELOPER nor any of DEVELOPER'S agents or contractors are or shall be considered to be agents of IWA in connection with the performance of DEVELOPER'S obligations under this Agreement.
14. Injury to Work. Until such time as the improvements are accepted by IWA, DEVELOPER shall be responsible for and bear the risk of loss to any of the improvements constructed or installed. Until such time as all improvements required by this Agreement are fully completed and accepted by IWA, DEVELOPER will be responsible for the care, maintenance of, and any damage to such improvement. IWA shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the work or Improvements specified in this Agreement prior to the completion and acceptance of the work or improvements. All such risks shall be the responsibility of and are hereby assumed by DEVELOPER.
15. Other Agreements. Nothing contained in this Agreement shall preclude IWA from expending monies pursuant to Agreements concurrently or previously executed between the parties, or from entering into Agreements with other DEVELOPERs for the apportionment of costs of water and sewer mains, or other improvements, pursuant to the provisions of the IWA ordinance providing therefore, nor shall anything in this Agreement commit IWA of any such apportionment.
16. DEVELOPER'S OBLIGATION TO WARN PUBLIC DURING CONSTRUCTION. Until final acceptance of the Improvements, DEVELOPER shall give good and adequate warning to the public of each and every dangerous condition existent in said improvements, and will take all reasonable actions to protect the public from such dangerous condition.
17. Vesting of Ownership. DEVELOPER shall promptly dedicate or grant to IWA, without charge, any and all rights, rights-of-way or other property interests necessary to IWAs

ownership and control of the Improvements to be constructed pursuant to this Agreement, which are on property owned or controlled by DEVELOPER. Upon acceptance of the work on behalf of IWA and recordation of the Notice of Completion, ownership of the improvements constructed pursuant to this Agreement shall vest in IWA. DEVELOPER shall execute any documents to effectuate this provision.

18. Final Acceptance of Work. Acceptance of the work on behalf of IWA shall be made by the IWA Board upon recommendation of the IWA Engineer after final completion and inspection of all improvements. The IWA Board shall act upon the Engineer's recommendation within thirty (30) days from the date the IWA Engineer certifies that the work has been finally completed, as provided herein, or at such other time deemed reasonable. Such acceptance shall not constitute a waiver of defects by IWA.

19. Indemnity/Hold Harmless. IWA or any officer or employee thereof shall not be liable for injury to persons or property occasioned by reason of the acts or omissions of DEVELOPER, its agents or employees in the performance of this Agreement. DEVELOPER agrees to defend, indemnify and hold harmless IWA, its officials and employees from any and all claims, demands, causes or action, liability or loss of any sort, because of, or arising out of, acts or omissions of DEVELOPER, its agents or employees in the performance of this Agreement, including all claims, demands, causes of action, liability, or loss because of, or arising out of, in whole or in part, the design or construction of the Improvements. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said SUBDIVISION, and the Improvements as provided herein, and in addition, to adjacent property owners as a consequence of the diversion of waters from the design or construction of public drainage systems, streets and other public improvements. Acceptance by the IWA of the Improvements shall not constitute an assumption by the IWA of any responsibility for the design or construction of the SUBDIVISION or the Improvements pursuant to the approved Improvement Plans or map, regardless of any negligent action or inaction taken by the IWA in approving the plans, unless the particular improvement design was specifically required by IWA over written objection by DEVELOPER submitted to the IWA Engineer before approval of the particular improvement design, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternative safe and feasible design. After acceptance of the Improvements, the DEVELOPER shall remain obligated to eliminate any defect in design or dangerous condition causes by the design or construction defect, however DEVELOPER shall not be responsible for routine maintenance. The provisions of this paragraph shall remain in full force and effect for ten years following the acceptance by the IWA of Improvements. It is the intent of this action that DEVELOPER shall be responsible for all liability for design and construction of the Improvements installed or work done pursuant to this Agreement and that IWA shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving, reviewing, checking, or correcting any plans or specifications or in approving, reviewing or inspecting any work or

construction. The improvement of security shall not be required to cover the provisions of this paragraph.

20. Sale or Disposition of Project. Sale or other disposition of this property will not relieve DEVELOPER from the obligations set forth herein. If DEVELOPER sells the property or any portion of the property within the PROJECT to any other person, the DEVELOPER may request a novation of this Agreement and a substitution of security. Upon approval of the novation and substitution of securities, the DEVELOPER may request a release or reduction of the securities required by this Agreement. Nothing in the novation shall relieve the DEVELOPER of the obligations under this Agreement for the work or improvement done by DEVELOPER.
21. Time of the Essence. Time is of the essence of this Agreement.
22. Time for Completion of Work/Time Extension. DEVELOPER shall complete construction of the improvements required by this Agreement in accordance with the schedule of performance attached as Exhibit C hereto and incorporated herein (“Schedule of Performance”). The IWA, in his or her sole discretion, may authorize acceptance of individual Improvements to accommodate phasing of PROJECT development; provided, however, that production, storage and transmission needs must be complete and adequate for each phase of PROJECT development before they are considered for acceptance. In no instance will water service be provide by IWA to the PROJECT, or any part or phase thereof, without corresponding sewer service. IWA will not approve or accept any on-site improvement, or permit any connection to the Improvements, until all related improvements have been completed and accepted by IWA. In the event good cause exists as determined by the IWA Engineer, the time for completion of the improvements hereunder may be extended. The extension shall be made by writing executed by the IWA Engineer. Any such extension may be granted without notice to DEVELOPER’S Surety and shall not affect the validity of this Agreement or release the Surety or Sureties on any security given for this Agreement. The IWA Engineer shall be the sole and final judge as to whether or not good cause has been shown to entitle DEVELOPER to an extension. Delay, other than delay in the commencement of work, resulting from an act of IWA, or ‘by an act of God’, which DEVELOPER, could not have reasonable foreseen, or by storm or inclement weather which prevent the conducting of work, and which were not caused by or contributed to by DEVELOPER, shall constitute good cause for an extension of time for completion. As a condition of such extension, the IWA Engineer may require DEVELOPER to furnish new security guaranteeing performance of this Agreement as extended in an increased amount as necessary to compensate for any increase in construction costs as determined by the IWA Engineer.
23. Legal Responsibilities. The DEVELOPER shall keep itself informed of all local, State and Federal Laws and regulations which in any manner affect those employed by it or in any way affect the performance of its obligations pursuant to this Agreement. The DEVELOPER shall at all times observe and comply with all such laws and regulations.

The IWA, and its officers and employees, shall not be liable at law or in equity caused by failure of the DEVELOPER to comply with this section.

- 24. No Vesting of Rights. Performance by DEVELOPER of this Agreement shall not be construed to vest DEVELOPER’S rights with respect to any change in any capacity or service fee or regulation of IWA.
- 25. Non-disturbance of Maps and Obligations. This Agreement does not rescind, replace, or otherwise affect any obligation that the DEVELOPER may have under any map recorded pursuant to the Subdivision Laws to complete the design and construction of any improvements, nor does it alter any obligation to the DEVELOPER may have under any such map to dedicate or otherwise transfer any real property or improvements to IWA or to any other public entity. Performance by DEVELOPER of this Agreement shall not be construed to vest DEVELOPER’S rights with respect to any change in any capacity or service fee or regulation of IWA.
- 26. Assignment. This Agreement may not be assigned by DEVELOPER in whole or in part without the prior written consent of the IWA. If assigned by DEVELOPER pursuant hereto, this Agreement shall apply to, bind and inure to the benefit of the Parties and their respective successors and assigns.
- 27. Non-Liability of Officials and Employees of IWA. No official, representative, agent, attorney, consultant or employee of IWA shall personally be liable to the DEVELOPER in the event of any default by IWA under the terms of this Agreement.
- 28. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this Section. Notice shall be effective on the date it is delivered in person, or, if mailed, on the date of deposit in the United States Mail. Notices shall be addressed as follows unless a written change of address is filed with the IWA:

Notice to IWA:

 Indio Water Authority
 83-101 Avenue 45
 Indio, California 92201

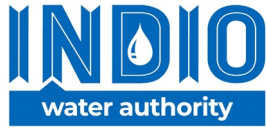
Notice to (Name of Developer)
 DEVELOPER:

- 29. Severability. The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the

Agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

30. Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction or meaning of any provisions of this Agreement.
31. Litigation or Arbitration. In the event that suit, or arbitration is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to litigation costs and reasonable attorney's fees.
32. Governing Law; Venue. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California, with venue in Riverside County Superior Court.
33. Amendment. This Agreement may be amended or modified only by a written instrument approved and signed by the Parties.
34. No Third-Party Beneficiaries. No person or entity shall be deemed to be a third-party beneficiary hereof and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than IWA and the DEVELOPER, any rights, remedies, obligations or liabilities under or by reason of this Agreement.
35. Severability. The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, and the intent, rights and obligations of the Parties hereunder remain intact without substantial change, the remainder of the Agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.
36. Incorporation of Recitals. The Recitals to this Agreement are hereby incorporated into the terms of this Agreement.
37. Entire Agreement. This Agreement constitutes the entire Agreement of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and signed by the appropriate representatives of the parties. In the case of the IWA, the appropriate party shall be the IWA Manager.

[Signatures continued on next page]



IN WITNESS WHEREOF, this Agreement is executed by IWA, by and through its Mayor

DEVELOPER

INDIO WATER AUTHORITY

Name of Organization

President of Indio Water Authority

Type of Organization

ATTEST:

Secretary

Notarized Signature

APPROVED AS TO FORM

Print Name

General Counsel

Title

Notarized Signature

Print Name

Title

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B

SCOPE OF WORK FOR IMPROVEMENTS

EXHIBIT C
SCHEDULE OF PERFORMANCE



Engineer's Opinion of Probable Cost WATER IMPROVEMENTS

Project Name: _____

Tract No.: _____

Project Address: _____

Date: _____

WATER IMPROVEMENTS

DESCRIPTION	UNIT	QUANTITY	UNIT COST (LABOR & EQUIPMENT)	TOTAL COST
<i>Including the following:</i>				
Mobilization & Demobilization				
Construction Survey				
Traffic Control				
NPDES – BMP's				
Trench Shoring <i>(for pipes 5' or deeper)</i>				
Trench Repair				
Water Main				
Fitting				
Hydrant				
DCDA				
Fire Service				
<i>List Other Items as Applicable</i>				
Total of Water Improvements:				
Contingency: (15% of Total Water Improvements)				
Total Estimate:				

Prepared By: _____ (Include seal)

Address: _____



Bond No. _____

**PAYMENT BOND
(LABOR AND MATERIALS)**

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the Indio Water Authority (“Public Agency”), has awarded to (“Principal”),

(Name and address of Contractor)

a contract (the “Contract”), which is incorporated herein by this reference, for the work described as follows:

WHEREAS Principal is required under the terms of the Contract and the California Civil Code to file a good and sufficient payment bond with the Public Agency to secure the payment of claims of laborers, mechanics, material persons, and other persons as provided by law.

NOW, THEREFORE, we, the undersigned Principal, and

(Name and address of Surety)

(“Surety”) a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto the Public Agency and all subcontractors, laborers, material persons, and other persons employed in the performance of the Contract in the penal sum of _____ Dollars (\$) (the “Penal Sum”), this amount being not less than one hundred percent (100%) of the total Contract price, in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bounded Principal, his, her or its heirs, executors, administrators, successors or assigns, or subcontractors shall fail to pay any of the persons named in Section 3181 of the California Civil Code, or any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to work or labor performed under the Contract, the Surety will pay for the same in an amount not exceeding the Penal Sum specified in this bond; otherwise, this obligation shall become null and void.



This bond shall ensure the benefit of any of the people named in Section 3181 of the California Civil Code to give a right of action to such persons or their assigns in any suit brought upon the bond. In case a suit is brought upon this bond, Surety further agrees to pay, in addition to the Penal Sum, all costs and reasonable expenses and fees, including reasonable attorneys’ fees, incurred by the Public Agency in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Further, the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, addition or modification to the terms of the Contract, or of the work to be performed there under, or the specifications for the same, shall in any way affect its obligations under this bond, and it does hereby waive notice of any such change, extension of time, alteration, addition, or modification to the terms of the Contract or to the work or to the specifications there under. Surety hereby waives the provisions of California Civil Code 2845 and 2849.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

“Principal”

“Surety”

By: _____

By: _____

(Signature)

(Signature)

(Title)

(Title)

(Seal)

(Seal)

Note: This bond must be executed duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.



Bond No. _____

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

WHEREAS the Indio Water Authority (“Public Agency”), has awarded to (“Principal”),

(Name and address of Contractor)

a contract (the “Contract”), which is incorporated herein by this reference, for the work described as follows:

WHEREAS Principal is required under the terms of the Contract to file a good and sufficient performance bond with the Public Agency for the faithful performance of the Contract.

NOW, THEREFORE, we, the undersigned Principal, and

(Name and address of Surety)

(“Surety”) a duly admitted surety insurer under the laws of the State of California, as Surety, are held and firmly bound unto the Public Agency in the penal sum of _____ Dollars (\$ _____) (the “Penal Sum”), this amount being not less than one hundred percent (100%) of the total Contract price, in lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bounded Principal, his, her or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform all the undertakings, terms, covenants, conditions and provisions in the Contract and any alteration thereof made as therein provided, on the Principal's part to be kept and performed, all within the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and hold harmless the Public Agency, its officers, agents, employees, and others as therein provided, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

In case suit is brought upon this bond, Surety further agrees to pay, in addition to the Penal Sum, all costs and reasonable expenses and fees, including reasonable attorneys’ fees, incurred by the Public Agency in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.



FURTHER, the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, addition or modification to the terms of the Contract, or of the work to be performed thereunder, or the specifications for the same, shall in any way affect its obligations under this bond, and it does hereby waive notice of any such change, extension of time, alteration, addition or modification to the terms of the Contract or to the work or to the specifications thereunder. Surety hereby waives the provisions of California Civil Code 2845 and 2849. The City is the principal beneficiary of this bond and has all rights of a party hereto.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

“Principal”

“Surety”

By: _____
(Signature)

By: _____
(Signature)

(Title)

(Title)

(Seal)

(Seal)

Note: This bond must be executed duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.



WATER BOND RELEASE INSPECTION FORM

Tract No.: _____

Developer/Contractor: _____

The following items must be completed and signed off by the Indio Water Authority Inspector to allow for the release of the Water Bond on a Tract (please call 760-391-4044 to arrange for an inspection):

Description	Received Date:	Approved Date: (Inspector)
All meters must be installed and connected to the receiving facility. Any outstanding meter cards must be accounted for.		
All valves must be properly raised and concrete rings installed.		
Fire Hydrants must be newly painted safety yellow.		
Valve covers must be painted blue.		
Valve risers must be clean from street elevation to the valve. Risers cans shall be newly vacuumed and valves shall operate smoothly.		
A set of as-builts shall be submitted. Field notes regarding plan changes shall be scanned and submitted in PDF format. Revised plans shall be submitted in AutoCAD format.		
All water boxes shall be in good condition without any caving of the surrounding soil and level to finish surface.		
Copies of the bacteria tests results shall be provided.		
All concrete pads around break-away valves shall be placed.		
Site improvements for dedicated well sites shall be completed as outlined in the IWA's Development Procedural Guidelines.		
A stamped "W", "V" including distance on the curb face shall identify each service location and valve with distance.		
All necessary backflow prevention devices shall be installed and tested.		

The water system in Tract No. _____ Tract Name _____ has been installed and inspected to my satisfaction. Any known deficiencies have been corrected. Based on my observations, I recommend the release of Water Bond No. _____.

IWA Inspector Approval: _____

Print Name: _____

Date: _____



SHOP DRAWING SUBMITTAL REVIEW FORM

Instructions to Contractor/ Developer:

Each submittal item and/or product should be submitted with this *Shop Drawing Submittal Review Form* and be listed in numerical order for IWA approval.

If requested for resubmittal, the contractor/developer shall resubmit items using a new form and original number associated with the submittal followed by an alphanumeric (A, B, C).

Project Name: _____
Contractor: _____
Date Submitted: _____
Submittal No.: _____
Description: _____

For IWA office use only:

- | | |
|--|--|
| <input type="checkbox"/> Approved as submitted | <input type="checkbox"/> Approved as noted |
| <input type="checkbox"/> Rejected | <input type="checkbox"/> Revise and resubmit |
| <input type="checkbox"/> Submit specified item | <input type="checkbox"/> Other _____ |

Checking is only for general conformance with the design concept of the project and general compliance with the information given in the contract documents. Any action shown is subject to the requirements of the plans and specifications. Contractor is responsible for dimensions, fabrication process, and modifications necessary to accommodate equipment submitted and techniques of construction; coordination of this work with that of all other trades and satisfactory performance of his work.

Comments: _____

Signed: _____ Date: _____



Recording Requested By:

Indio Water Authority

When Recorded Return To:

**Sabdi Sanchez, CMC
City Clerk Administrator
City of Indio
100 Civic Center Mall
Indio, California 92201**

(Space Above this Line for Recorder's Use)

Grantor declares that this Bill of Sale is exempt from Recording Fees pursuant to California Government Code Section 6103.

Bill of Sale for Water Systems Facilities

For good and valuable consideration, receipt of which is hereby acknowledged, the undersigned does hereby transfer and convey to the **INDIO WATER AUTHORITY**, a California Joint Powers Agency organized under the Joint Exercise of Powers Act (commencing with Section 6500 of the California Government Code), and its successors and assigns, all right, title, and interest in and to the water installation, including pipelines, valves, service connections, fire hydrants, meters, and other appurtenances to said water installation, constructed, installed, and located in the property described below and further warrants that the same is free and clear of any encumbrances.

Said property is described as follows: **Insert Tract Name}**

(Please attach detailed description of property and water facilities being transferred as Exhibit A)

Executed this _____ day of _____, 20____.

Company or Corporation

Name: _____

By: _____
Corporate Officer/Authorized Signatory Date

All signatures must be notarized



CALIFORNIA ALL-PURPOSE 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 _____ (Date), before me, _____, Notary Public,
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 State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE _____

PLACE NOTARY SEAL ABOVE

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

Description of attached document

Title or type of document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other than Named Above: _____

EXHIBIT A
LEGAL DESCRIPTION



Recording Requested By:
Indio Water Authority

When Recorded Return To:

**Sabdi Sanchez, CMC
City Clerk Administrator
City of Indio
100 Civic Center Mall
Indio, California 92201**

(Space Above this Line for Recorder's Use)

APN: {APN Required}
DTT: \$0.00

GRANT OF EASEMENT

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

(Name of Organization)

_____ (“Grantor”),

(Type of Organization)

hereby grants to

INDIO WATER AUTHORITY OF THE CITY OF INDIO,
a public body, corporate and politic of the State of California (“Grantee”),

A non-exclusive permanent easement to establish, construct and maintain for all time an easement in, over, under, upon and across all that certain real property situated in the City of Indio, County of Riverside, State of California (the “Easement Area”), as more fully described in the attached Exhibit A and as depicted in the Exhibit B, both of which are incorporated by reference, together with reasonable access to and from the Easement Area to the extent necessary for the exercise of the rights of the Grantee hereunder. This easement shall provide the City of Indio with the right to establish, construct and maintain, for all time, public water pipelines and appurtenances in the Easement Area.

Grantee shall have the right to: (1) use the Easement Area to temporarily store and utilize tools, equipment, materials and related incidentals thereon to the extent necessary for the exercise of the rights of the Grantee within the Easement Area; and (2) make any and all excavations within the Easement Area necessary for the construction and maintenance of water lines and appurtenances.

This grant of easement is made by the Grantor with the full understanding and condition that the Grantee, by accepting this grant, has the right to permanently remove all things in or on the Easement Area that materially interfere with the purposes for which this easement is granted. It is agreed by Grantor that any



structure, tree, plant, or shrub, on the Easement Area, which materially interferes with the maintenance and use thereof, may be removed by Grantee within five days' notice to Grantor of Grantee's intent to do so.

If during the exercise of its rights under this Grant of Easement the Grantee disturbs any of the Easement Area or land adjoining the Easement Area, the disturbed real property shall be restored, filled, leveled and graded by Grantee in a manner reasonably acceptable to both Grantor and Grantee.

The Grant of Easement and the rights, covenants and conditions set forth in this document shall run with the land and shall bind, insure to and be for the benefit of the Grantee and its successors and assigns as well as its agents, servants, suppliers and contractors.

IN WITNESS WHEREOF, the GRANTOR has caused this Grant of Easement to be executed effective as of _____, 20_____.

GRANTOR:

By: _____

Name: _____

Title: _____

Date: _____

All signatures must be notarized



CALIFORNIA ALL-PURPOSE 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 _____ (Date), before me, _____, Notary Public, 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 State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE _____

PLACE NOTARY SEAL ABOVE

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

Description of attached document

Title or type of document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other than Named Above: _____

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B