

**_____ SYSTEM INFRASTRUCTURE INSTALLATION AND CONVEYANCE
AGREEMENT BETWEEN THE CITY OF SAN BERNARDINO, THROUGH THE SAN
BERNARDINO MUNICIPAL WATER DEPARTMENT, AND _____**

This _____ System Infrastructure Installation and Conveyance Agreement (the “Agreement”) is made this ____ day of _____, 2021 by and between the City of San Bernardino, a charter city and municipal corporation organized and operating under the laws of the State of California, through the San Bernardino Municipal Water Department (“City”) and _____ (“Developer”).

RECITALS

A. Developer is the owner and developer of certain real property in the County of San Bernardino described as _____ with a street address of _____ (the “Developer Property”). A legal description of the Developer Property is attached hereto as Exhibit “A” and incorporated herein by reference.

B. Developer desires to obtain a public _____ system connection adequate to serve the Developer Property and integrate into the City’s _____ System (“System”).

C. Developer is required, at its own expenses, to design, construct and install, among other things, _____ mains, _____ service laterals, maintenance hole structures, and all other appurtenant fittings and facilities required for a complete _____ system to adequately serve the Developer Property (the “Public Improvements”) and then convey ownership of the Public Improvements to the City. The Public Improvements are more specifically described in Exhibit “B” attached hereto and incorporated herein by reference.

D. The parties recognize that it is in their best interests to coordinate the design, construction and installation of the Public Improvements. The provisions of this Agreement shall be in addition to all other requirements, fees and charges that Developer is required to fulfill in order to initiate the provision of public services to the Developer Property.

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

TERMS

1. Incorporation of Recitals. The parties hereby agree that the above recitals are true and correct and are therefore incorporated herein by reference.

2. Term. The performance of the Agreement shall commence within thirty (30) days as of the date first set forth above, and the Public Improvements shall be completed within one (1) year from the construction start date. The City may, in its sole and absolute discretion, provide Developer with additional time within which to complete the Public Improvements. Requests for extension of time shall be in writing and shall be delivered to City in the manner hereinafter specified for service of notices. An extension of time, if any, shall be granted only in writing, and an oral extension shall not be valid or binding on City.

3. Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of the design and construction of the Public Improvements, including, but not limited to fees for the checking, filing, and processing of the Public Improvement Plans (as defined herein) and for inspecting the construction of the Public Improvements. These fees must be paid in full prior to approval of the Public Improvement Plans. The fees referred to above are not necessarily the only City fees, charges, or other costs that have been or will be imposed, and this Agreement shall in no way exonerate or relieve Developer from paying such other applicable fees, charges, and/or costs.

4. Award of Contracts. Developer shall be solely responsible for securing appropriate bids and awarding contracts for design, construction and installation of the Public Improvements in compliance with applicable federal, state, and local laws, rules and regulations. Developer shall have a written agreement executed by its contractors and consultants, which shall incorporate and bind the contractors and consultants and any of their subcontractors to the terms of this Agreement. Developer shall furnish its contractors and consultants and all subcontractors with a copy of this Agreement, approved plans, and any other incorporated documents. Nothing contained in this Agreement shall create any contractual relationship between any contractor or subcontractor and the City.

5. Design of Public Improvements.

(a) Developer shall be solely responsible, including all costs and expenses, for the design of the Public Improvement plans and specifications ("Public Improvement Plans") in accordance with all applicable local, state, and federal laws, rules and regulations, including, without limitation, the San Bernardino Water Department's Rules and Regulations, the San Bernardino Water Department's Standards for Water and Sewer System Preparation and Processing, the San Bernardino Water and Sewer Standard Specifications for Furnishing Materials and Standard Drawings, and the City of San Bernardino Municipal Water Department's Standard Specifications and Standard Drawings for Construction of Public Water and Sewer Mainlines (collectively the "SBMWD Standards"). Design shall be by a Professional Engineer registered in the State of California.

(b) Prior to initiation of construction and installation, Developer shall submit the Public Improvement Plans for review and approval by the City. The City, at the Developer's expense, shall review the Developer's plans for the purpose of ensuring the adequacy of the design and conformance with the SBMWD Standards. The City reserves the right to add, delete, modify, change, or amend any or all the Public Improvement Plans. The City makes no warranties as to the correctness, accuracy or completeness of the reviewed Public Improvement Plans. The accuracy, adequacy, suitability, and correctness of the Public Improvement design shall be the sole responsibility of the Developer. Approval by the City shall not relieve Developer from ensuring that all Public Improvements conform with all other requirements and standards set forth in this Agreement. The City's approval shall be required for any change to the final Public Improvement Plans.

(c) Upon approval by the City of the Public Improvement Plans, the Public Improvement Plans shall automatically be incorporated into this Agreement.

6. Construction and Installation of the Public Improvements.

(a) Developer shall be solely responsible, at its sole expense, for construction and installation of the Public Improvements in accordance with all local, state, and federal laws, rules and regulations including, without limitation, the approved Public Improvement Plans and the SBMWD Standards.

(b) Developer shall be responsible for coordinating with the staff of the City to arrange the required inspection of the Public Improvements including all costs and expenses therefor. The City may, but shall not be legally obligated to, monitor the contracting process, and may, but shall not be obligated to, assist Developer where appropriate.

(c) Not less than seven (7) days prior to the commencement of any work related to the Public Improvements, Developer shall submit a proposed schedule of all work to be performed. Developer will provide at least 24 hours' notice of any changes to the work schedule. At the request of the City, Developer shall reasonably modify the proposed schedule as necessary so as not to interrupt any activities on City property or at City facilities.

(d) The Developer and its contractor shall attend a preconstruction meeting with City's Municipal Water Department no less than five (5) working days prior to commencement of the construction work.

(e) The Developer and its contractor shall not commence the construction work until, among other requirements of this Agreement, completion of the preconstruction meeting, approval of the materials submittal (aka "shop drawings"), and all required permits are obtained.

7. Licenses and Permits.

(a) The Developer warrants it possesses, or shall obtain, and maintain during the term of this Agreement, a business registration certificate pursuant to Title 5 of the City's Municipal Code, and any and all other licenses, permits, qualifications, insurance and approval of whatever nature that are legally required of Developer to practice its profession, skill or business and require the same of its designer, contractor, and any and all of their subconsultants and subcontractors.

(b) Prior to commencing any work, Developer shall, at its sole cost expense and liability, obtain all necessary and required federal, state and local permits, licenses, and approvals and give all necessary and incidental notices required for the lawful construction of the Public Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer. This includes, but is not limited to, the following:

(i) Compliance with the California Environmental Quality Act ("CEQA")

- (ii) Required excavation, encroachment, and resurfacing permit
 - (iii) Permits and easements to install and maintain the Public Improvements in private property.
 - (iv) A National Pollution Discharge Elimination System (NPDES) permit from the Regional Water Quality Board as required for construction.
- (c) The Developer, at its sole expense, shall provide copies of all licenses, permits, approvals, and qualifying experience to the City as part of this Agreement.

8. Pipeline Contractor.

(a) The construction and installation of the Public Improvements shall be performed by a qualified contractor who is licensed under the laws of the State of California in the specialty Class of "C-34" Pipeline or Class "A" General Engineering.

(b) The contractor shall have the technical personnel required to construct and complete the Public Improvements. The contractor installing the pipeline shall submit a statement setting forth their experience and business standing for the immediate past three (3) years and provide at least three (3) references relevant to experience cited below prior to beginning the Public Improvements and subject to approval by the City. Approval by the City shall not relieve Developer from ensuring that its contractor construct and install all Public Improvements in accordance with this Agreement and any and applicable laws, rules and regulations and the City disclaims any and all liability related to the performance of the contractor.

(i) For sewer pipelines, pipeline appurtenances, and service laterals, the pipe contractor shall show that they have constructed at least 5,000 feet of Standard Dimension Ratio (SDR) 26 Polyvinyl Chloride (PVC) or Vitrified Clay Pipe (VCP) pipelines, 8 inches or greater in diameter, installed at least 20 maintenance hole structures, and that they have tapped and installed at least 100 sewer service laterals in such piping material. If required by the Public Improvement Plans, the pipe contractor must show competence in working with sewer pipeline that are over fifty (50) years old. All the above experience shall have been within city streets.

9. Bonds. Prior to the commencement of construction of the Public Improvements, Developer shall provide the City with a faithful performance bond and a payment bond substantially in the form set forth in Exhibit "C", in an amount equal to no less than 100% of the total cost of the Public Improvements (the "Security"). The Security must be provided by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business in the State of California and reasonably satisfactory to the City. The total cost of the Public Improvements shall be based on the City's approximation of the cost to construct the Public Improvements or the based on the total bid amount provided by the Developer's contractor to construct the Public Improvements, at the discretion of the City. Developer and its surety stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Public Improvements, or the Public Improvement Plans shall in any way affect its obligation on the Security.

10. Records. Developer shall be responsible for paying all charges within the time required by state law. Developer shall maintain complete and accurate records with respect to all costs and expenses pursuant to this Agreement. All such records shall be clearly identifiable. Developer shall allow a representative of the City, during normal business hours to examine, to audit and make transcripts or copies of such records and any other documents, proceedings, and activities related to the Agreement for a period of three (3) years from the termination of this Agreement.

11. Inspection/Testing.

(a) Without modifying or limiting Developer's obligations under this Agreement, all work and materials of the Public Improvements shall be subject to inspection, testing, and acceptance by the City at the Developer's expense. It is understood that the sole purpose and intent of the City's inspection and testing is to validate that the materials, workmanship, and construction of the Public Improvements are in compliance with the City-approved Public Improvements Plans and SBMWD Standards. In the event the Developer arranges to have materials fabricated for the Public Improvements, the Developer may be required to arrange for the City to inspect that material during fabrication at the Developer's expense.

(b) All _____ systems constructed pursuant to this Agreement shall adhere to all requirements for testing and flowing pursuant to SBMWD Standards.

(c) The City shall have full and unlimited access to the work site at all times to conduct any tests or inspections. Developer shall require its employees, contractors and agents to comply with all instructions given by the City during inspection or construction of the Public Improvements. The Developer shall provide the City twenty-four (24 hours) advance notice of request for inspection or testing.

(d) The City shall have the authority to stop work at any time, by written notice, without any liability whatsoever to the City, if, in the inspectors' judgment, the Public Improvements are not being installed or performed in a satisfactory and workmanlike and/or in the event the materials do not comply with this Agreement, including, but not limited to, the Public Improvements Plans and the SBMWD Standards.

(e) Any deficiencies in the Public Improvements shall be corrected by Developer at its sole cost and expense.

12. Liability for Public Improvements Prior to Public Improvements Acceptance. Until the Public Improvements Acceptance, Developer shall be solely responsible for all damage to the Public Improvements, regardless of cause, and for all damages or injuries to any person or property at the work site, except damage or injury due to the sole or active negligence or willful misconduct of the City, its agents or employees.

13. Guarantee. Developer shall guarantee all work and materials for the Public Improvements to be free from all defects due to faulty materials or workmanship for a period of one (1) year after the date of the Public Improvements Acceptance.

Developer shall repair or remove and replace any and all such work, together with any other work which may be displaced in so doing, that is found to be defective in workmanship or materials within the one-year period, without any expense whatsoever to the City. In the event Developer fails to comply with the above

14. -mentioned provisions within thirty (30) days after being notified in writing (or in cases of emergency, immediately), the City shall be authorized to proceed to have the defects remedied and made good at the sole cost and expense of Developer, who is hereby contractually bound to pay the costs and charges therefor immediately upon demand. Such action by the City will not relieve Developer of the guarantee required by this section. This section shall not, in any way, limit the liability of Developer or any other party for any latent and patent design or construction defects in the work subsequently discovered by the City.

15. Conveyance of Public Improvements. Upon completion of the Public Improvements to the satisfaction of the City, the Public Improvements shall be presented to the City for dedication and acceptance. The City shall accept the Public Improvements ("Public Improvements Acceptance") if it determines that they were constructed in accordance with the approved Public Improvement Plans and the SBMWD Standards, that it operates satisfactorily, all unconditional waivers and releases of mechanics' liens have been provided, and that all other requirements of this Agreement have been satisfied. Upon acceptance of the Public Improvements, Developer shall assign to the City all of Developer's rights and remedies, including warranties. Developer will be required to convey title to ownership of the Public Improvements to the City. The form of said title shall be determined by the City.

16. Permanent Sewer Service. In no event shall permanent sewer service (beneficial use) be provided to the Developer's installed system until all applicable charges and fees have been paid by the Developer, a Notice of Completion has been filed with the San Bernardino County Recorder, and all facilities have been conveyed, free of all encumbrances, to the City, including any easements which may be required, in accordance with this Agreement.

17. Standard of Care. Developer shall ensure that all work on the Public Improvements is performed in strict compliance with the approved Public Improvement Plans, the SBMWD Standards, and this Agreement. Developer shall also ensure that all work is performed in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals and contractors in the same discipline in the State of California. Developer shall procure the services of professionals and contractors skilled in the professional calling necessary to design and construct the Public Improvements. All employees and subcontractors working on the Public Improvements shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform such work on the Public Improvements, and all such licenses and approvals shall be maintained throughout the term of their work on the Public Improvements. Developer shall, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees.

18. Safety. Developer shall ensure that it and its consultants and contractors execute and maintain their work so as to avoid injury or damage to any person or property. In carrying out their work, they shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Any employee who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Public Improvements, a threat to the safety of persons or property, or any employee who fails or refuses to perform his or her work in a manner acceptable to the City, shall be promptly removed from the Public Improvements. The City shall have the authority to enter the work site at any time for the purpose of identifying the existence of conditions, either actual or threatened, that may present a danger of hazard to any and all employees. The Developer agrees that the City, in its sole authority and discretion, may order the immediate abatement of any and all conditions that may present an actual or threatened danger or hazard to any and all employees at the work site.

19. City Property and Facilities. For any and all work on City property and/or at City facilities ("City Property"):

(a) Developer's work on City Property permitted hereunder shall not interfere with the reasonable use and enjoyment thereof by the City or any tenants, occupants or persons claiming through or under the City and provided further that all persons who enter upon the property pursuant to this Agreement do so at their own risk and shall comply with any and all instructions and directions of City.

(b) Developer agrees, represents, and warrants that it will require each contractor and consultant to sign a hold harmless agreement, as provided by City, waiving any liability from City which may arise out of or in any way relate to said participant's participation in the construction and installation of the Public Improvements on City Property.

(c) Developer shall not permit to be placed against City Property, or any part thereof, any design professionals', mechanics', materialmen's contractors' or subcontractors' liens with regard to any actions pursuant to this Agreement.

(d) Developer agrees to maintain City Property in good condition at all times keeping it free of trash and other debris and shall maintain a neat and orderly condition. Developer shall be responsible for any damage done to City Property by Developer or its contractors and consultants and, upon departing from City Property, Developer will repair and restore all portions of City Property used or occupied by Developer in all material respects to substantially the same condition as existed prior to Developer's entry onto City Property, subject to City's approval.

(e) Developer accepts City Property in its "as is" condition, with all faults. Developer acknowledges and agrees that Developer is entering City Property under this Agreement based on Developer's own investigations and knowledge of City Property and that, except as otherwise specifically stated in this Agreement, neither City nor any agent of City, has made any

representation or warranty whatsoever, express or implied, with regard to the physical condition of City Property or the suitability of City Property for any particular purpose or use, including, without limitation, any representations or warranties regarding the applicability or non-applicability of any laws, the soil or subsoil, surface or subsurface conditions, topography, possible hazardous substances contamination, fill, drainage, access to public roads, availability of utilities, existence of underground storage tanks, applicability of or compliance with any environmental laws or any other matter of any nature whatsoever. The City is not responsible for damage to or loss by theft of Developer's Property located in or on City Property.

20. Indemnification. Developer shall defend (with counsel of City's choice), indemnify and hold the City, the City of San Bernardino Municipal Water Department and their officials, officers, consultants employees and agents free and harmless from any and all claims, liabilities, losses, costs, expenses, damages or injuries to property or persons, including wrongful death, in any manner arising out of or incident to any acts, omissions or willful misconduct of Developer, its members, officials, officers, employees, agents, consultants and contractors arising out of or in connection with this Agreement or the design, construction or installation of the Public Improvements, including without limitation, the payment of all attorneys' fees and other related costs and expenses however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the City, the City of San Bernardino Municipal Water Department or their officers, employees, or authorized volunteers (including passive negligence), except the active or sole negligence or willful misconduct of the City, the City of San Bernardino Municipal Water Department or their officials, officers, employees, or authorized volunteers.. At a minimum, this indemnification provision shall apply to the fullest extent of any warranty or guarantee implied by law or fact, or otherwise given to Developer by Developer's design consultant(s) or contractor(s) for the Public Improvements. In addition, this indemnity provision and any such warranties or guarantees shall not limit any liability under law of such consultants or contractors. Without limiting the foregoing, this indemnity shall extend to any claims arising because Developer has failed to properly secure any necessary easements, land rights, contracts or approvals. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, the City of San Bernardino Municipal Water Department or their elected officials, officers, employees, or agents.

21. Insurance.

(a) Requirement. Developer shall procure and maintain, and shall require all persons performing work on the Public Improvements, including its consultants, contractors, and subcontractors, to procure and maintain, at their expense, until full and adequate completion of the Public Improvements, insurance against claims for injuries to persons or damages to property which may arise out of or in connection with the performance of the work or that of their agents, representatives, employees or subcontractors.

(b) Minimum Scope and Limits of Coverage. Such insurance shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto);

and (3) *Workers' Compensation and Employers' Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(c) Such insurance shall have limits no less than: (1) *General Liability*: \$1,000,000 per occurrence for bodily injury, personal injury and property damage (if Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Public Improvements/location or the general aggregate limit shall be twice the required occurrence limit); (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' compensation limits as required by the Labor Code of the State of California. Employers Liability limits of \$1,000,000 per accident for bodily injury or disease.

(d) Insurance Endorsements. The insurance policies shall contain the following provisions, or Developer or the primary insured, shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(i) General Liability. The general liability policy shall be endorsed to state that: (A) the City, the City of San Bernardino Municipal Water Department and their directors, officials, officers, employees and agents shall be covered as additional insureds with respect to this Agreement or operations performed by or on behalf of the Developer, including materials, parts or equipment furnished in connection with such work; and (B) the insurance coverage shall be primary insurance as respects the City, the City of San Bernardino Municipal Water Department and their directors, officials, officers, employees and agents or, if excess, shall stand in an unbroken chain of coverage excess of the primary insured's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees or agents shall be excess of the primary insured's insurance and shall not be called upon to contribute with it in any way.

(ii) Automobile Liability. The automobile liability policy shall be endorsed to state that: (A) the City, the City of San Bernardino Municipal Water Department and their directors, officials, officers, employees and agents shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the primary insured or for which the primary insured is responsible; and (B) the insurance coverage shall be primary insurance as respects the City, the City of San Bernardino Municipal Water Department and their directors, officials, officers, employees and agents or, if excess, shall stand in an unbroken chain of coverage excess of the primary insured's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, the City of San Bernardino Municipal Water Department and their directors, officials, officers, employees or agents shall be excess of the primary insured's insurance and shall not be called upon to contribute with it in any way.

(iii) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, the City of San Bernardino Municipal Water Department and their directors, officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from work performed by the primary insured.

(iv) Excess Liability Insurance. A policy providing excess coverage in a face amount necessary when combined with the primary insurance to equal the minimum requirements for General Liability and Automobile Liability may be utilized.

(v) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after forty five (45) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, the City of San Bernardino Municipal Water Department and their directors, officials, officers, employees or agents.

(e) Professional Liability Insurance. All architects, engineers, consultants or design professionals working on the Public Improvements shall procure and maintain, for a period of five (5) years following completion of the Public Improvements, errors and omissions liability insurance with a limit of not less than \$1,000,000 and shall specifically include all work to be performed under the Agreement.

(f) Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, the City of San Bernardino Municipal Water Department and their directors, officials, officers, employees and agents.

(g) Deductibles and Self-Insurance Retentions. City may require that any deductibles or self-insured retentions must be declared to and approved by the City. Developer shall ensure that, at the option of the City, either: (A) the primary insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, the City of San Bernardino Municipal Water Department and their directors, officials, officers, employees and agents; or (B) the primary insured shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

(h) Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

(i) Verification of Coverage. Developer shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences on the Public Improvements. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

22. Control and Payment of Subordinates; Independent Contractor. All work on the Public Improvements shall be performed by Developer or under its supervision. Developer and its contractors and consultants will determine the means, methods and details of performing the work subject to the requirements of this Agreement. City retains Developer on an independent contractor basis and not as an employee.

23. Developer retains the right to perform similar or different work for others during the term of this Agreement. Any additional personnel performing the work under this Agreement on behalf of Developer shall also not be employees of City, and shall at all times be under the exclusive direction and control of Developer or its consultants. All wages, salaries and other amounts due such personnel in connection with their performance of work under this Agreement and as required by law shall be paid by Developer or its consultants and contractors. Such entities shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

24. Default; Notice; Remedies.

(a) Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if City determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("Notice"). Developer shall substantially commence the work required to remedy the default or violation within ten (10) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon City's issuance of the Notice, Developer and its surety shall be liable to City for all costs of construction and installation of the Public Improvements and all other administrative costs and expenses.

(b) Failure to Remedy; City Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to City within the time frame contained in the Notice, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any, or none, of the required or agreed upon Public Improvements at the time of City's demand for performance. In the event City elects to complete or arrange for completion of the remaining work and improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City.

(c) Other Remedies. No action by City pursuant to this Section of this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law.

City may exercise its rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

(d) Administrative Costs. If Developer fails to construct and install all or any part of the Public Improvements within the time required by this Agreement, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to City for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

(e) Continuing Obligations, Liability. No termination of this Agreement shall release Developer from any liability or obligation hereunder resulting from any acts, omissions or events happening prior the termination of this Agreement.

25. Record Drawings. Prior to acceptance of the Public Improvements by the City, Developer shall provide the City with one copy of record drawings certified by a licensed engineer in the State of California as to accuracy and completeness. Developer shall also provide all required documentation as specified in the SBMWD Standards. Developer shall be solely responsible and liable for insuring completeness and accuracy of the record drawings and all required documentation.

26. Acquisition and Dedication of Easements or Rights-of-Way. If any of the Public Improvements required by this Agreement are to be constructed on land not within an already-existing public right-of-way, no construction or installation shall be commenced before the irrevocable offer of dedication or conveyance to City of appropriate rights-of-way, easements, or other interests in real property, and appropriate authorization from the property owner to allow construction or installation of the Public Improvements or work

27. Labor/Prevailing Wages. Developer is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., and the implementing regulations promulgated thereunder (collectively, "Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements if it is determined that the Developer's contract(s) with its contractor(s) to construct the Public Improvements are "public works" contracts under the Prevailing Wage Laws. It is the responsibility of the Developer to ensure that each contractor and subcontractor hired to construct the Public Improvements comply with all applicable requirements of the Prevailing Wage Laws. Developer agrees to defend, indemnify and hold the City and its officials, officers, employees and agents free and harmless from any claim or liability including, without limitation, damages, penalties, attorneys' fees and court costs, arising from any failure or alleged failure to comply with these provisions of the Labor Code, including the Prevailing Wage Laws.

28. Attorneys' Fees. In the event any action is commenced to enforce or interpret any term or condition of this Agreement, in addition to costs and any other relief, the prevailing party shall be entitled to its reasonable attorneys' fees, expert fees and other reasonable costs of defense.

29. Developer Assignment. In no event shall the Developer assign or transfer any portion of this Agreement without the prior express written consent of City, which consent may be given or withheld in City's sole discretion.

30. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

31. Invalidity and Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

32. Cooperation; Further Acts. The parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

33. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

34. Labor Certification. By its signature hereunder, Developer certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code. Developer agrees to comply with such provisions and to require its consultants to comply with such provisions before commencing any work on the Plans.

35. Time of Essence. Time is of the essence for each and every provision of this Agreement.

36. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the parties.

37. Construction; Captions. Since the parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

38. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

39. Notices. All notices permitted or required under this Agreement shall be deemed made when delivered to the applicable party's representative as provided in this Agreement. Such notices shall be mailed or otherwise delivered to the addresses set forth below, or at such other addresses as the respective parties may provide in writing for this purpose:

NOTICES:

CITY:

City of San Bernardino
Municipal Water Department
1350 S. "E" Street
P.O. Box 710
Attn: General Manager

DEVELOPER:

Attn: _____

With Copy To:

City of San Bernardino
Vanir Tower, 290 North D Street
San Bernardino, CA 92401
Attn: City Attorney

Such notice shall be deemed made when personally delivered, upon fax confirmation of the sender, or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, certified mail, return receipt requested, to the party at its applicable address.

40. Authority to Enter into Agreement. City and Developer warrant that they have all requisite power and authority to execute and perform this Agreement. Each person executing this Agreement on behalf of their party warrants that he or she has the legal power, right, and authority to make this Agreement and bind his or her respective party.

41. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

42. Integration. This Agreement represents the entire understanding of City and Developer as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises, or representations with respect to those matters covered hereunder. This integrated Agreement may not be modified or altered except in writing signed by both parties hereto.

43. Severability and Waiver. The unenforceability, invalidity, illegality, or unconstitutionality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid, illegal, or unconstitutional. Waiver by any party of any portion of this Agreement shall not constitute a waiver of any other portion thereof.

[Signatures on following pages]

**SIGNATURE PAGE TO
_____ SYSTEM INFRASTRUCTURE INSTALLATION AND CONVEYANCE
AGREEMENT BETWEEN THE CITY OF SAN BERNARDINO, THROUGH THE SAN
BERNARDINO MUNICIPAL WATER DEPARTMENT, AND _____**

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

THE CITY OF SAN BERNARDINO, a
California municipal corporation

By: _____

Name: _____

Its: _____

By: _____

Miguel J. Guerrero
General Manager

APPROVED AS TO FORM:
Best Best & Krieger LLP

By: _____

Best Best & Krieger
City Attorney

EXHIBIT A
Legal Description of Developer Property

EXHIBIT B
Description of Public Improvements

EXHIBIT C
FORM OF PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of San Bernardino (hereinafter referred to as "City") has awarded to _____, (hereinafter referred to as the "Contractor") an agreement for _____ System Infrastructure Installation and Conveyance Project (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the _____ System Infrastructure Installation and Conveyance Agreement for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by the Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of the Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ (\$_____.00), the sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in the Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Project, unless otherwise provided for in the Contract Documents, the guarantee obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect City from loss or damage resulting from or caused by defective materials or faulty workmanship, twenty-five percent (25%) of the above obligation in penal sum thereof shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by City in enforcing such obligation.

Whenever Contractor shall be, and is declared by City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at City's option:

1. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

2. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by City under the Contract and any modification thereto, less any amount previously paid by City to the Contractor and any other set offs pursuant to the Contract Documents.

3. Permit City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by City under the Contract and any modification thereto, less any amount previously paid by City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if City, when declaring the Contractor in default, notifies Surety of City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract. including but not limited to the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20____.

CONTRACTOR/PRINCIPAL

Name

By _____

SURETY:

By: _____
Attorney-In-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or Representative for service of process in California, if different from above)

(Telephone number of Surety and Agent or Representative for service of process in California)

Notary Acknowledgment

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 _____, 20____, 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 the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

☐ Partner(s) ☐ Limited
 ☐ General

☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:
Signer is representing:
Name Of Person(s) Or Entity(ies)

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

FORM OF PAYMENT BOND (LABOR AND MATERIALS)

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of San Bernardino (hereinafter referred to as "City") has awarded _____ (hereinafter referred to as the "Principal") an agreement for _____ System Infrastructure Installation and Conveyance Project (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the _____ System Infrastructure Installation and Conveyance Agreement for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the City in the penal sum of _____, (\$_____.00), 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 said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code Section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or 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 or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any

terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or the City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract to be performed thereunder, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of Contract, including but not limited to, the provisions of Sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

Notary Acknowledgment

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 _____, 20____, 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 the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

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.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ Individual
☐ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above