

1                                 **SAN BERNARDINO MUNICIPAL WATER DEPARTMENT**  
2   **WATER SYSTEM INFRASTRUCTURE**  
3                                 **INSTALLATION AND CONVEYANCE AGREEMENT**

4             This Agreement is entered into and effective as of \_\_\_\_\_ by and between  
5 **Insert Company Name**, hereinafter referred to as the "Developer", and the SAN BERNARDINO  
6 MUNICIPAL WATER DEPARTMENT hereinafter referred to as the "Department" who agree as  
7 follows:

8             The Developer is the Owner of certain land described as Parcel Map No. **Insert Tract**  
9 **Number** and as more fully (or further) shown on Exhibit "A" (City of San Bernardino, hereafter  
10 referred to as the "City"), approved and recorded Parcel Map No. **Insert Tract Number** attached  
11 hereto. In developing this land, the Developer is desirous of obtaining a public water supply  
12 adequate for domestic uses and public fire protection purposes and is desirous of integrating that  
13 water system into the Department's public water system.

14             In order to provide facilities for a water supply to said land, it is the intention of the parties to  
15 this Agreement that the Developer shall furnish and install those water mains, fire hydrants,  
16 service laterals, water meters and valves, valve boxes, and all other appurtenant fittings and  
17 facilities required for a complete water system to serve the land shown on Exhibit "B".

18             In order to implement the foregoing and in consideration of the terms and conditions herein  
19 contained, the parties further agree as follows:

20             **1. DESIGN**

21             1.1             Developer shall design and construct, at the Developer's own expense, the water  
22 facilities and appurtenances in accordance with Department-approved final plans, Water  
23 Improvement Plans – Parcel Map No. **Insert Tract Number**, as approved on **Insert Approval Date**  
24 **of Water Improvement Plans** attached herein as Exhibit "B" and in accordance with the  
25 Department-approved design standards and specifications, and the terms and conditions of this  
26 Agreement.

27             1.2             Design shall be by a Professional Engineer registered in the State of California,  
28 hereinafter referred to as the "Design Engineer," in accordance with the Department's Rules and

1 Regulations, the Department's Standards for Water System Preparation and Processing, Standard  
2 Specifications for Furnishing Materials, and Standard Drawings herein included by reference, and  
3 all other applicable City, County of San Bernardino, State of California, and Federal laws,  
4 ordinances, rules, regulations or codes and legal requirements of all government bodies having  
5 jurisdiction over said construction and property.

6 1.3 A copy of the Department's Standards for Water System Preparation and  
7 Processing, Standard Specifications for Furnishing Materials, and Standard Drawings are included  
8 herein as Exhibit "C".

9 1.4 The Department, at the Developer's expense, shall review the Developer's plans  
10 for the purpose of ensuring the adequacy of the design and conformance with the Department's  
11 standards and specifications. The Department reserves the right to add, delete, modify, change, or  
12 amend any or all the plans and specifications.

13 1.5 In the event that the property to be developed includes multiple residential,  
14 condominiums, commercial or industrial uses, all site plans, grading plans, and any available  
15 plumbing plot plans shall be furnished to the Department by the Developer.

16 1.6 The Department makes no warranties as to the correctness, accuracy or  
17 completeness of the plans and specifications. The accuracy, adequacy, suitability, and correctness  
18 of the Water System Design shall be the sole responsibility of the Developer.

19 **2. CONSTRUCTION**

20 2.1 The Developer shall perform, or caused to be performed, all construction of the  
21 water system infrastructure installation pursuant to the approved Water System Plans,  
22 Specifications, and the City of San Bernardino Municipal Water Department's Standard  
23 Specifications and Drawings for Construction of Domestic Water Systems (SBMWD Standards).

24 2.2 The performance of this Agreement shall commence within thirty (30) calendar  
25 days from the date of this Agreement and be completed within one year from the estimated  
26 construction start date.

27 2.3 Time is of the essence in this Agreement; provided that, in the event good cause  
28 is shown therefore, the General Manager of the Department may extend the time for completion of

1 the Water System Installation. Any such extension may be granted without the notice to the  
2 Developer's surety, and extensions so granted shall not relieve the surety's liability on the bond to  
3 secure faithful performance of this Agreement. The General Manager of the Department shall be  
4 the sole and final judge as to whether or not good cause has been shown to entitle the Developer to  
5 an extension.

### 6 **3. LICENSES AND PERMITS**

7 3.1 The Developer, Contractor, and any Subcontractor warrants it possesses, or shall  
8 obtain, and maintain during the term of this Agreement a business registration certificate pursuant  
9 to Title 5 of the City of San Bernardino Municipal Code, and any and all other licenses, permits,  
10 qualifications, insurance and approval of whatever nature that are legally required of Developer,  
11 Contractor, and any Subcontractor to practice its profession, skill or business.

12 Such business registration certificates and receipts of payment shall be submitted with the  
13 execution of this Agreement.

14 3.2 The work to be performed under this Agreement, except meter installations,  
15 shall be performed by the Developer, or a Contractor, or a Subcontractor who is licensed under the  
16 laws of the State of California in the specialty Class of "C-34" Pipeline or Class "A" General  
17 Engineering, meeting the experience criteria stated in Subsections 3.2.1 and 3.2.2.

18 Meter installation may be performed by a Class "C-34" or "C-36" licensed contractor or by a  
19 Class "A" meeting the criteria in Subsection 3.2.3. The Department may accept other qualifying  
20 experience listed below at the discretion of the Department's Engineer.

21 3.2.1 The installer of the pipeline (Developer's Contractor or Subcontractor) shall  
22 submit a statement setting forth his experience and business standing for the immediate past three  
23 (3) years and provide at least three (3) references relevant to experience cited above.

24 3.2.2 For pipelines, pipeline appurtenances, and service laterals, the Developer,  
25 Contractor, or Subcontractor shall show that he has constructed at least 15,000 feet of ductile iron  
26 pipelines, 8 inches or greater in diameter and that he has tapped and installed at least 200 copper  
27 service laterals in ductile iron pipe. If required by the project plans and specifications, the

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1 Developer, Contractor, or Subcontractor must show competence in working with cast iron and  
2 steel pipelines that are over fifty (50) years old. All the above shall have been in city streets.

3 3.2.3 For meter installations the Developer, Contractor, or Subcontractor shall show  
4 that he has installed at least 200 meters for domestic water services 5/8" to 1" in diameter.

5 3.3 Excavation/resurfacing permits shall be secured by the Developer at the  
6 Developer's expense. Permits/easements to install, maintain and operate water system facilities in  
7 private property shall be secured by the Developer at the Developer's own expense prior to  
8 construction.

9 3.4 The Developer shall, at the Developer's own expense, be responsible for  
10 obtaining and adhering to a National Pollution Discharge Elimination System (NPDES) permit  
11 from the Regional Water Quality Board as required for construction or pipeline flushing and  
12 disinfection.

13 3.5 The Developer, at the Developer's own expense, pursuant to SBMWD standards  
14 shall provide copies of all licenses, permits, and qualifying experience to the Department as part of  
15 this Agreement.

16 **4. INSURANCE REQUIREMENTS**

17 4.1 The following insurance requirements have been adopted by the Department and  
18 shall be applicable to this Contract. These requirements supersede the insurance requirements set  
19 forth in any other reference of the Department, and to the extent of any conflict, the specified  
20 requirements herein shall prevail.

21 **Insurance Requirement Summary**

22 It will be the responsibility of the Developer to ensure that the Pipeline Contractor conforms  
23 to the following insurance requirements and all required documents are submitted to the San  
24 Bernardino Municipal Water Department at the time of Agreement submittal: The Developer shall  
25 ensure that the Pipeline Contractor, and any Subcontractor shall purchase and maintain insurance  
26 in amounts equal to the requirements set forth in (A) through (D) below, and shall not commence  
27 work under this contract until all insurance required under this heading is obtained in a form  
28 acceptable to the Department, nor shall the Developer allow any pipeline Contractor, or

1 Subcontractor to commence construction pursuant to a contract or subcontract until all insurance  
2 required of the pipeline Contractor and any Subcontractor has been obtained.

3 A. GENERAL LIABILITY: The Developer shall ensure that the pipeline Contractor shall  
4 maintain during the life of this Contract, a standard form of either Comprehensive General  
5 Liability insurance or Commercial General Liability insurance providing the following  
6 minimum limits of liability:

7 Combined single limit of \$1.0 million per occurrence for bodily injury, including death,  
8 personal injury, and property damage with \$2.0 million minimum aggregate, separate for this  
9 project as evidenced by endorsement. The insurance shall include coverage for each of the  
10 following hazards:

11 Premises-Operations

12 Owners and Contractors Protective

13 Broad Form Property Damage contractual for Specific Contract

14 Severability of Interest or Cross-Liability

15 XCU Hazards

16 Personal Injury – With the "Employee" Exclusive Deleted

17 B. AUTOMOTIVE/VEHICLE LIABILITY INSURANCE: The Developer shall ensure that  
18 the Pipeline Contractor, and any Subcontractor shall maintain a policy of automotive/vehicle  
19 liability insurance on a commercial auto liability form covering owned, non-owned and hired  
20 automobiles providing the following minimum limits of liability: Combined single limit of  
21 liability of \$1.0 million per accident for Bodily Injury, Death and Property Damage.

22 C. WORKERS' COMPENSATION INSURANCE: The Developer shall ensure that the  
23 Pipeline Contractor, and any Subcontractor shall provide such workers' compensation  
24 insurance with statutory minimum amounts of coverage, as required by the Labor Code of  
25 the State of California, and including employer's liability insurance with a minimum limit of  
26 \$1,000,000.00. Such workers' compensation insurance shall be endorsed to provide for a  
27 waiver of subrogation against the Department.

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- 1 D. EXCESS LIABILITY: The Developer shall ensure that the Pipeline Contractor, and any  
2 Subcontractor shall provide a policy providing excess coverage in a face amount necessary  
3 when combined with the primary insurance, to equal the minimum requirements for General  
4 Liability and Automobile Liability. The insurance provided for in paragraphs (A), (B), (C),  
5 and (D) above are subject to the following conditions:
- 6 1. The insurance shall be issued and underwritten by insurance companies acceptable to  
7 the Department, and shall be licensed by the State of California to do business on the  
8 lines of insurance specified.
  - 9 2. The Pipeline Contractor may satisfy the limit requirements in a single policy or  
10 multiple policies. Any such additional policies written as excess insurance shall not  
11 provide any less coverage than that provided by the first or primary policy.
  - 12 3. Any costs associated with a self-insured program, deductibles, or premium rating  
13 programs that determine premium based on loss experience shall be for the account of  
14 the Developer, Contractor, and any Subcontractor and the Department shall not be  
15 required to participate in any such loss. If any such programs exist, Developer,  
16 Contractor, and any Subcontractor agree to protect and defend the Department in the  
17 same manner as if such cost provisions were not applicable.
  - 18 4. Developer shall ensure that the Pipeline Contractor and any Subcontractor shall have  
19 presented at the time of execution of the Contract, the original policies of insurance  
20 and a certificate of insurance in the form as attached hereto evidencing such  
21 coverage as in force and complies with the terms and conditions outlined herein.
  - 22 5. If an insurance policy contains a general policy aggregate of less than the minimum  
23 limits specified, then the policy coverage shall be written with limits applicable  
24 solely to this Contract, as specified, and shall not be reduced by or impaired by any  
25 other claims arising against Developer. These policy limits shall be set forth by  
26 separate endorsement to the policy.
  - 27 6. Each such policy of General Liability and Automotive/Vehicle Liability Insurance  
28 shall contain endorsements providing the following:

- 1 a. The City of San Bernardino, the City of San Bernardino Municipal Water  
2 Department, their Council members, Commissioners, Officers, Agents,  
3 Employees, Consultants, and Engineers, and all public agencies from whom  
4 permits will be obtained and their Directors, Officers, Agents, and Employees  
5 are hereby declared to be additional insureds under the terms of this policy, but  
6 only with respect to the operations of the Developer at or upon any of the  
7 premises of the Department in connection with the Contract with the  
8 Department, or acts or omissions of the additional insureds in connection with,  
9 but limited to its general supervision or inspection of said operations and save  
10 for any claims arising from the sole negligence or sole willful misconduct of the  
11 Department's Engineer or the Department.
- 12 b. No policy shall be canceled, limited, materially altered, or nonrenewed by the  
13 insurer until thirty (30) days after receipt by the Department of a written notice  
14 of such cancellation or reduction in coverage.
- 15 c. This insurance policy is primary insurance and no insurance held or owned by  
16 the designated additional insureds shall be called upon to cover a loss under this  
17 policy. The endorsements shall be on the forms supplied by the Authority.
- 18 7. Insurers must be licensed to do business in the State of California. The insurers must  
19 also have an "A-" Policyholder's rating" and a "financial rating" of at least Class VII in  
20 accordance with the most current Best's Guide Rating.

21 **5. BONDING REQUIREMENTS**

22 5.1 The Department's Engineer shall generate an engineer's cost estimate based on  
23 the water system plans provided to the Department. The Department's estimated costs, attached  
24 herein as Exhibit "D", shall be used as the basis for bonding requirements for the water system  
25 described in the water system plans provided to the Department by the Developer and approved  
26 for construction by the Department.

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1           5.1.1           The sole intent and purpose of the engineer's estimate is to establish a cost  
2 valuation for bonding purposes only.

3           5.1.2           Performance Bond: The engineer's estimate for water system improvements for  
4 Parcel Map No. **Insert Tract Number** is **INSERT 100% OF THE ENGINEER'S ESTIMATE**  
5 **SPELLED OUT** AND NO/100 DOLLARS (\$**Insert Dollar Figure for 100% of Engineer's**  
6 **Estimate**).

7           5.1.3           The Developer shall and by this Agreement does guarantee the Developer's  
8 faithful performance of this Agreement and all of its terms and conditions by providing the  
9 following:

10          5.1.4           The Developer shall provide the Department with either an Irrevocable Letter of  
11 Credit from a recognized financial institution acceptable to the Department or a Performance  
12 Bond, from a surety institution licensed by the State of California and authorized to do and doing  
13 business in said State, valid and renewable until such improvements are accepted by the  
14 Department.

15          5.1.5           The Irrevocable Letter of Credit or Performance Bond shall be in the amount of  
16 **INSERT 100% OF ENGINEER'S ESTIMATE SPELLED OUT AND NO/100 DOLLARS**  
17 (**\$Insert Dollar figure for 100% of Engineer's Estimate**) equal to 100 percent of the Department's  
18 Engineer's Estimate.

19          5.2           Warranty Bond: The Developer shall, in addition, and by this Agreement does  
20 guarantee to the Department that, for one year after the Department's acceptance of the Developer-  
21 installed and completed water facilities and appurtenances, they shall be free from any and all  
22 liens and encumbrances and free from any and all defects in the materials or construction thereof.

23          5.2.1           The one-year guarantee shall be either an Irrevocable Letter of Credit from a  
24 recognized financial institution acceptable to the Department or a Warranty Bond in the amount of  
25 **INSERT 25% OF ENGINEER'S ESTIMATE SPELLED OUT** AND NO/100 DOLLARS (\$**Insert**  
26 **Dollar figure for 25% of Engineer's Estimate**) equal to 25 percent of the Department's Engineer's  
27 Estimate of **INSERT 100% OF ENGINEER'S ESTIMATE SPELLED OUT** AND NO/100

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1 DOLLARS (\$Insert Dollar figure for 100% of Engineer's Estimate), beginning at the date of the  
2 acceptance of the water facilities by the Department.

3 **6. MATERIALS**

4 6.1 The water system facilities to be installed pursuant to this Agreement shall  
5 become an extension of the distribution system of the Department. All materials used must  
6 conform to Department specifications for such materials pursuant to all applicable SBMWD  
7 Standards.

8 **7. NOTICES**

9 7.1 All notices herein required shall be in writing, and delivered in person or sent by  
10 registered mail, postage prepaid.

11 7.2 Notices required shall be given to the **DEPARTMENT** addressed as follows:  
12 Stacey R. Aldstadt  
13 General Manager  
14 San Bernardino Municipal Water Department  
15 Post Office Box 710  
16 San Bernardino, CA 92402-0710  
17 RE: Developer Installed Water Facilities

18 7.3 Notices required shall be given to **DEVELOPER** addressed as follows:  
19 Insert Name of Person Signing Agreement  
20 Insert Title  
21 Insert Company Name  
22 Insert Company Address  
23 Insert City/State/Zip  
24 Telephone No.: Insert Telephone Number  
25 RE: Parcel Map No. Insert Tract Number Developer Installed Water Facilities

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28 7.4 Notices required shall be given to **SURETY** addressed as follows:

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RE: Parcel Map No. **Insert Tract Number** Water System

7.5 Provided that any party or surety may change such address by notice in writing to the other party, and thereafter, notices shall be addressed and transmitted to the new address.

7.6 The Developer and Contractor shall attend a preconstruction meeting with the Department at the SBMWD'S Engineering office no less than five (5) working days prior to commencement of work.

7.7 No work on water facilities shall commence prior to the completion of all required curbs and gutters.

7.8 The Developer or Contractor shall provide the Department twenty-four (24 hours) advance notice of request for inspection or testing.

7.9 The Department is closed on the holidays listed in Exhibit "E".

**8. NOTICE TO PROCEED TO CONSTRUCT WATER SYSTEM FACILITIES**

8.1 Upon acceptance of the insurance and aforementioned bonds and/or Irrevocable Letters of Credit in the amounts provided herein and approval by the Department and upon payment of all applicable charges. The Agreement shall be signed by the Developer and the Department. The Department shall return an original copy of the signed Agreement with a letter to the Developer giving Notice to Proceed to Construct the Water System Facilities (Exhibit "G").

**9. TEMPORARY WATER CONNECTION**

9.1 The SBMWD will allow a temporary water service connection through a master metered backflow device to be installed by Developer's Contractor after execution of the Developer-Installed Agreement, in accordance with Standard Drawings W3.5 and W4.6 if all fees and contract obligations are met. The temporary water service connection will allow for fire

1 protection and construction water use only, through the private mains after a “Letter of Substantial  
2 Completion” has been issued to the Applicant and the Fire Marshal.

3 9.2 In no event shall temporary water service, as described in the Department's rules  
4 and regulations, be provided to the Developer-installed system until the Department has issued the  
5 Letter of Substantial Completion. Substantial completion shall be declared by the Water  
6 Department Engineer in writing. Substantial completions shall consist of, but not limited to, the  
7 following:

- 8 a) Water facility functions as designed.
- 9 b) All tests specified by Water Department Standards and/or this Agreement  
10 have been conducted with favorable, accepted results.
- 11 c) There is no physical connection between Developer's water system and the  
12 public water system without a metered backflow prevention device in  
13 accordance with Water Department standards.
- 14 d) All fire hydrants have been flow tested by a qualified licensed contractor  
15 to ensure minimum fire flow requirements are met @ 20 psi residual  
16 pressure.

## 17 **10. INSPECTION**

18 10.1 It is understood that the sole purpose and intent of the Department's inspection  
19 and testing is to validate that the materials, workmanship, and construction of the water facilities  
20 are in compliance with the Department-approved final plans, the Department's Rules and  
21 Regulations, the Department's Standards for Water System Preparation and Processing, Standard  
22 Specifications for Furnishing Materials, and Standard Drawings. The Developer acknowledges  
23 and represents that it assumes full and sole responsibility for the safety and management of the  
24 project.

25 10.2 The Developer shall at all times maintain proper facilities and provide safe  
26 access for inspection by the Department to all parts of the work and to the shops wherein the work  
27 is in preparation. Additionally, "In connection with the performance of this contract, the  
28 Department shall have the authority to enter the work site at any time for the purpose of

1 identifying the existence of conditions, either actual or threatened, that may present a danger of  
2 hazard to any and all employees. The Developer agrees that the Department, in its sole authority  
3 and discretion, may order the immediate abatement of any and all conditions that may present an  
4 actual or threatened danger or hazard to any and all employees at the work site. Furthermore, the  
5 Developer acknowledges the provisions of Section 6400 of the Labor Code, which requires that  
6 employers shall furnish employment and a place of employment that is safe and healthful for all  
7 employees working therein. In the event the Department identifies the existence of any condition  
8 that presents an actual or threatened danger or hazard to any or all employees at the work site, the  
9 Department is hereby authorized to order an immediate abatement of that condition."

10 10.3 All work and materials shall be subject to inspection, testing, and acceptance by  
11 the Department at the Developer's expense. In the event the Developer arranges to have materials  
12 fabricated for the project, the Developer may be required to arrange for the Department to inspect  
13 that material during fabrication at the Developer's expense.

14 10.4 All material fabrications shall be preapproved by the Department and must  
15 conform to Department standards and specifications.

16 10.5 The Department's inspectors shall have full unlimited access to perform  
17 continuous inspection and have the authority to stop work at any time, by written notice, without  
18 any liability whatsoever to the Department or the City of San Bernardino, if, in the inspectors'  
19 judgment, the work called for by this Agreement, or the Department approved plans, or the  
20 specifications is not being installed or performed in a satisfactory and workmanlike manner  
21 according to Department's standards and specifications and/or in the event the materials do not  
22 comply with the Department's standards and specifications.

23 10.6 Final acceptance of all material to be purchased or fabricated by the Developer  
24 under this Agreement shall be made only with the prior approval of the Department. Approval by  
25 the Department, however, shall not operate to relieve the material supplier or the Developer of any  
26 guarantees, warranties, or the duty of compliance with any of the requirements of the approved  
27 plans and specifications or of this Agreement. All construction pursuant to this Agreement shall  
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1 be inspected pursuant to SBMWD standards. The Developer shall pay actual costs for  
2 inspections.

3 **11. TESTING AND DISINFECTION**

4 11.1 All water systems constructed pursuant to this Agreement shall adhere to all  
5 requirements for testing, disinfection, and flushing pursuant to SBMWD standards.

6 **12. RELOCATIONS, RECONSTRUCTIONS, AND DAMAGES**

7 12.1 The Developer accepts the responsibility for and the costs occasioned by any  
8 reconstruction, relocation, damages to, or changes of water services or facilities caused or  
9 contributed to directly or indirectly by any subsequent changes in the location of any of said  
10 facilities or water meters or water services.

11 **13. AS-CONSTRUCTED DOCUMENTATION**

12 13.1 In order for the Department to accept the facilities, the Developer shall provide  
13 all required documentation as specified in the SBMWD Standards for Design and Construction for  
14 Water System Improvements.

15 **14. INDEMNIFICATION**

16 14.1 The Developer hereby agrees to and shall protect, defend, indemnify and hold  
17 the San Bernardino Municipal Water Department and its Commissioners, Officers, Agents,  
18 Employees, and Engineers, and the City of San Bernardino and its Council Members,  
19 Commissioners, Officers, Agents, Employees, and Engineers free and harmless from any and all  
20 liability losses, damages, claims, liens, demands and cause of action of every kind and character  
21 including, but not limited to, the amounts of judgments, penalties, interests, court costs,  
22 attorney's/legal fees, and all other expenses incurred by the Department or City arising in favor of  
23 any party, including claims, liens, debts, demands for lost wages or compensation, personal  
24 injuries, including employees or the Department or City, death or damages to property (including  
25 property of the Department or of the City) and without limitation by enumeration, all other claims  
26 or demands of every character occurring or in any way incident to, in connection with or arising  
27 directly or indirectly out of the obligations herein undertaken or out of the operations conducted  
28 by the Developer save and except claims or litigation arising through the sole negligence or sole

1 willful misconduct of the Department or the Department's agents and employees. Developer shall  
2 investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at  
3 the sole expense of the Developer even if the claim or claims alleged are groundless, false or  
4 fraudulent. Developer agrees to, and shall defend the San Bernardino Municipal Water  
5 Department and its Commissioners, Officers, Agents, Employees, and Engineers, and the City of  
6 San Bernardino and its Council Members, Commissioners, Officers, Agents, Employees, and  
7 Engineers from any suits or actions at law or in equity for damages caused, or alleged to have been  
8 caused, by reason of any of the aforesaid operations, provided as follows:

9 (a) That the Department or City does not, and shall not waive any rights against  
10 Developer which it may have by reason of the aforesaid hold harmless  
11 agreement, because of the acceptance by the Department, or the deposit with  
12 Department by Developer, or any of the insurance policies described in Section  
13 4 hereof.

14 (b) That the aforesaid hold harmless agreement by Developer shall apply to all  
15 damages and claims for damages of every kind suffered, or alleged to have been  
16 suffered, by reason of any or the aforesaid operations referred to in this  
17 subsection, regardless of whether or not Department has prepared, supplied  
18 Water System Installation, or regardless of whether or not such insurance  
19 policies shall have been determined to be applicable to any such damages or  
20 claims for damages.

21 This provision is not intended to create any cause of action in favor of any third party  
22 against Developer or the Department or City or to enlarge in any way the Developer's liability but  
23 is intended solely to provide for indemnification of the Department and the City from liability for  
24 damage or injuries to third persons or property arising from the Developer's performance  
25 hereunder.

26 14.2 Neither Developer nor any of Developer's agents or contractors are, or shall be,  
27 considered to be agents of the Department or City in connection with the performance of  
28 Developer's obligations under this Agreement.

1 **15. REPAIR OR RECONSTRUCTION OF DEFECTIVE WORK**

2 15.1 If, within a period of one year after final acceptance of the work performed  
3 under this Agreement, any structure or part of any structure furnished and/or installed or  
4 constructed, or caused to be installed or constructed by the Developer, or any of the work done  
5 under this Agreement, fails to fulfill any of the requirement of this Agreement or the specifications  
6 referred to herein, Developer shall, without delay and without any cost to Department, repair or  
7 replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work structure.  
8 Should Developer fail to act promptly or in accordance with this requirement, or should the  
9 exigencies of the situation as determined by the Department in the exercise of its sole discretion  
10 require repair, replacement or reconstruction before the Developer can be notified, Department  
11 may, at its option, make the necessary repairs or replacements or perform the necessary work, and  
12 Developer shall pay to the Department the actual cost of such repairs.

13 **16. COSTS AND FEES**

14 16.1 Developer shall pay actual costs for inspection and plan check. All costs and  
15 fees required, as outlined in the cost letter, shall be paid in full prior to the execution of the  
16 Developer-Installed Agreement.

17 16.2 Any additional costs and fees shall be paid in full prior to conveyance and  
18 acceptance of the water system.

19 **17. CONVEYANCE AND ACCEPTANCE OF WATER SYSTEM**

20 17.1 Upon completion of the water system in accordance with the approved water  
21 plans and submission of the required documentation, the Developer shall convey the water system  
22 to the Water Department.

23 17.2 The Developer shall furnish an Irrevocable Letter of Credit from a recognized  
24 financial institution acceptable to the Department or a Warranty Bond (Twenty-Five Percent  
25 (25%) of Engineer's Estimate) for a period of one year as stated in Bonding Requirements  
26 subsections 5.2 and 5.2.1, As-Built Drawings with Contractor Redlines and AutoCAD Files,  
27 Materials List With Quantities, Labor, Equipment, and Materials, Water System Cost Breakouts,  
28 Compaction Test Report signed and sealed by a Registered Engineer, Notice of Completion filed

1 with San Bernardino County Recorder, Fire Flow Tests of all Hydrants, Proof of payment of all  
2 required fees and charges, and Unconditional Financial Release from Subcontractors and Material  
3 Providers. Upon compliance with all the terms and conditions of this Agreement, the Department  
4 shall prepare the Conveyance Agreement accepting the water facilities and forward same to the  
5 address provided herein. Title to the Ownership of said facilities and appurtenances shall thereby  
6 be conveyed to the San Bernardino Municipal Water Department. The Department shall thereafter  
7 operate and maintain said facilities so as to furnish water service to the development (Exhibit "A")  
8 in accordance with the Department's rules and regulations.

9 **18. PERMANENT WATER SERVICE**

10 18.1 In no event shall permanent water services (beneficial use) be provided to the  
11 Developer's installed system until all applicable charges and fees have been paid by the Developer  
12 and all facilities have been conveyed, free of all encumbrances, to the Department, including any  
13 easements which may be required. Such conveyance shall occur in a timely manner in accordance  
14 with the terms of Section 17.

15 **19. BREACH OR DEFAULT OF AGREEMENT**

16 19.1 If Developer refuses or fails to obtain prosecution of the work, or any severable  
17 part thereof, with such diligence as will insure its completion within the time specified, or any  
18 extension thereof, or fails to obtain completion of said work within such time, or if the Developer  
19 should be adjudged as bankrupt, or Developer should make a general assignment for the benefit of  
20 Developer's creditors, or if a receiver should be appointed in the event of Developer's insolvency,  
21 or if Developer, or any of Developer's Contractors, Subcontractors, agents or employees, should  
22 violate any of the provisions of this Agreement, Department General Manager or Board of Water  
23 Commissioners may serve written notice upon Developer and Developer's surety of breach of this  
24 Agreement, or of any portion thereof, and default of Developer.

25 19.2 In the event of any such notice, Developer's surety shall have the duty to take  
26 over and complete the work and the improvement herein specified; provided, however, that if the  
27 surety, within five (5) days after the serving upon of such notice of breach, does not give the  
28 Department written notice of its intention to take over the performance of the contract, and does



1 not commence performance thereof within five days after notice to the Department of such  
2 election, Department may take over the work and prosecute the same to completion, by contract or  
3 by any other method Department may deem advisable, for the account and at the expense of the  
4 Developer, and Developer's surety shall be liable to the Department for any excess cost or  
5 damages occasioned Department thereby; and, in such event, Department, without liability for so  
6 doing, may take possession of, and utilize in completing the work, such materials, appliances,  
7 plant and other property belonging to Developer as may be on the site of the work and necessary  
8 therefore.

9 **20. SUCCESSORS BOUND**

10 20.1 This Agreement shall be binding upon and inure to the benefit of each of the  
11 parties and their respective legal representatives, successors, heirs, and assigns.

12 **21. ENFORCEMENT OF PROVISIONS**

13 21.1 The Department's failure to enforce any provisions of this Agreement or the  
14 waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its  
15 part of any such provision, but the same shall nevertheless be and remain in full force and effect.

16 IN WITNESS WHEREOF, the parties hereto execute this Agreement.

17  
18 **SAN BERNARDINO MUNICIPAL WATER DEPARTMENT**

19  
20 By: \_\_\_\_\_ Date: \_\_\_\_\_  
21 STACEY R. ALDSTADT, General Manager

22 **DEVELOPER - INSERT COMPANY NAME**

23  
24 By: \_\_\_\_\_ Date: \_\_\_\_\_  
25 INSERT NAME OF PERSON SIGNING AGREEMENT  
26 Insert Title

27 ////  
28 ////

BOND NO. \_\_\_\_\_

**FAITHFUL PERFORMANCE BOND**

To San Bernardino Municipal Water Department for Water System Installation in Accordance with Water Improvement Plans for Parcel Map No. **Insert Tract Number**, dated **Insert Approval Date of Water Improvement Plans**. This premium charged on this bond is \$ \_\_\_\_\_ being at the rate of \$ \_\_\_\_\_ per thousand of the contract price.

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, the San Bernardino Municipal Water Department has awarded to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

as the "Principal", an agreement for the work described as follows:

**Water System Installation in Accordance with Approved Water Improvement Plans for Parcel Map No. **Insert Tract Number**, Dated **Insert Approval Date of Water Improvement Plans**.**

WHEREAS, the said Principal is required under the terms of said agreement to furnish a bond for the faithful performance of labor and materials of said contract:

NOW, THEREFORE, WE the undersigned Developer, as Principal, and

\_\_\_\_\_  
\_\_\_\_\_ (Name of Surety)  
\_\_\_\_\_ (Address of Surety) duly authorized to

transact business under the laws of the State of California, as Surety, are held and firmly bound unto the San Bernardino Municipal Water Department in the sum of **INSERT 100% OF ENGINEER'S ESTIMATE SPELLED OUT** AND NO/100 DOLLARS (\$**Insert Dollar Figure for 100% of Engineer's Estimate**), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the above bounded Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand

1 to and abide by, and well and truly keep and perform all the undertakings, terms, covenants,  
2 conditions and agreements in the said agreement and any alteration thereof made as therein  
3 provided, on his or their part, to be kept and performed, at the time and in the manner therein  
4 specified, and in all respects according to their true intent and meaning, and shall indemnify and  
5 save harmless the San Bernardino Municipal Water Department, its officers, agents, and as therein  
6 stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full  
7 force and effect. In case suit is brought on this bond, Surety further agrees to pay all court costs  
8 and reasonable attorney's fees as shall be fixed by the court.

9 And the said Surety, for value received, hereby stipulates and agrees that no change,  
10 extension of time, alteration, or addition to the terms of the agreement or to the work to be  
11 performed thereunder or the specifications accompanying the same shall in any way affect its  
12 obligation on this bond, and it does hereby waive notice of any such change, extension of time,  
13 alteration, or addition to the terms of the contract or to the work or to the specifications.

14 IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_\_ day of  
15 \_\_\_\_\_, 2009.

16 ALL SIGNATURES MUST BE NOTARIZED

17 DEVELOPER: \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_  
Principal

20 ////  
21 ////  
22 ////  
23 ////  
24 ////  
25 ////  
26 ////  
27 ////  
28 ////

1 BOND NO. \_\_\_\_\_

2 **WARRANTY BOND**

3 Warranty Guarantee Bond to the San Bernardino Municipal Water Department for Water System  
4 Installation in accordance with the Approved Water Improvement Plans for Parcel Map No. **Insert**  
5 **Tract Number**, dated **Insert Approval Date of Water Improvement Plans** KNOW ALL MEN BY  
6 THESE PRESENTS; THAT WHEREAS, THE SAN BERNARDINO MUNICIPAL WATER  
7 DEPARTMENT, (sometimes referred to hereinafter as "Obligee"), has an agreement with the  
8 "Developer" to install a water system within Developer's development at **Insert location of project**,  
9 San Bernardino County, California.

10 WHEREAS, the water system is more particularly set forth in that certain design  
11 plan and specifications dated **Insert Approval date of Water Improvement Plans**, and identified as  
12 Water Improvement Plans for Parcel Map No. **Insert Tract Number**, Dated **Insert Approval Date of**  
13 **Water Improvement Plans** which is incorporated herein by this reference.

14 WHEREAS, the Developer is required by said SAN BERNARDINO MUNICIPAL  
15 WATER DEPARTMENT to warrant the completed water system against defective labor or  
16 workmanship and materials for a period of one (1) year, and to provide a bond for guarantee of  
17 cost of repairs due to defective labor, workmanship, or materials.

18 NOW THEREFORE, we \_\_\_\_\_ the undersigned  
19 Developer as Principal and \_\_\_\_\_, a corporation organized and existing  
20 under the laws of the State of California, and duly authorized to transact business under the laws  
21 of the State of California, as Surety, are held and firmly bound unto the SAN BERNARDINO  
22 MUNICIPAL WATER DEPARTMENT in the sum of **INSERT 25% OF ENGINEER'S**  
23 **ESTIMATE SPELLED OUT** AND NO/100 DOLLARS (**Insert Dollar Figure for 25% of**  
24 **Engineer's Estimate**), said sum being not less than 25 percent of the total cost for installation  
25 (including labor and materials) of the water system, we find ourselves, our heirs, executors and  
26 administrators, successors and assigns, jointly and severally, firmly by these presents.

27 THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden  
28 principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand

1 to and abide by, and well and truly keep and perform the covenants, conditions and agreements to  
2 make all repairs to said water system necessitated by defective labor, workmanship or materials,  
3 and shall faithfully fulfill this one (1) year Guarantee of all materials, labor and workmanship and  
4 indemnify and save harmless the SAN BERNARDINO MUNICIPAL WATER  
5 DEPARTMENT'S, its officers and agents, as stipulated herein, then this obligation shall become  
6 null and void one (1) year from the date of SAN BERNARDINO MUNICIPAL WATER  
7 DEPARTMENT formal acceptance of the water system (Conveyance of Water System Agreement  
8 - Exhibit "F").

9 In case suit is brought upon this bond or letter of credit, the said Surety shall pay to the SAN  
10 BERNARDINO MUNICIPAL WATER DEPARTMENT a reasonable attorney's fee to be fixed  
11 by the Court in addition to the principal amount of this bond. The said Surety, for value received,  
12 hereby stipulates and agrees that no change, extension of time, alteration or addition to the  
13 agreement between SAN BERNARDINO MUNICIPAL WATER DEPARTMENT and  
14 Developer, or the work to be performed by the Developer or to the specifications of water system,  
15 shall in any way affect its obligations on this bond, and it does hereby waive notice of any such  
16 change, extension of time, alteration or addition to the terms of the agreement or to the work or to  
17 specifications.

18 IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_\_, day of  
19 \_\_\_\_\_, 2009.

20 ALL SIGNATURES MUST BE NOTARIZED

21 \_\_\_\_\_ (Principal)

22 \_\_\_\_\_ (Surety)

23 \_\_\_\_\_ (Attorney-In-Fact)

24 This rate of premium on this bond is \_\_\_\_\_ per thousand. The total amount of premium  
25 charged: \_\_\_\_\_ (The above must be filled in by corporate surety).

26 Note: Copy of the power of attorney to local representatives of the bonding company may be  
27 attached hereto.

28 ////

**BANK LETTERHEAD**

.....LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 2009

City of San Bernardino

Municipal Water Department

300 North "D" Street

P.O. Box 710

San Bernardino, CA 92402-0710

RE: Irrevocable Letter of Credit  
Water Service Installation - \_\_\_\_\_  
For Faithful Performance

This Letter of Credit is given to fulfill the requirements of the City of San Bernardino Municipal Water Department, hereinafter called "Water Department" and \_\_\_\_\_, herein called "Principal", covering certain works of improvement designated in the Water System Infrastructure Installation and Conveyance Agreement for \_\_\_\_\_, City of San Bernardino, County of San Bernardino, California, and shall remain in effect until such improvements are accepted by the Water Department.

As required by said contract, \_\_\_\_\_ Bank, hereinafter called "Bank" does hereby establish in favor of Water Department, for the account of our Principal, our Irrevocable Letter of Credit in the amount of \$ \_\_\_\_\_ Thousand Dollars, to be paid by drafts upon sight of the Bank if accompanied by the following documents:

The Water Department written statement, signed by the General Manager, certifying that there has been nonperformance or loss, damage, or liability resulting from the performance of the duties or obligations of the principal and with respect to said contract or from negligence, act or omission of said principal, its agents, servants and employees (such statement to be sustained by an attached statement of specifications) in the amount accompanying a draft on us and that the amount of this is therefore now due and payable.

////

1 Any moneys received pursuant to this letter shall be used solely for the water system  
2 facilities for \_\_\_\_\_, and for no other purposes.

3 It is agreed that the stated funds are on hand and guaranteed for payment as required by  
4 Section 66499 through 66499.10 of the Government Code of the State of California.

5 All drafts under this Letter of Credit shall be marked:

6 "Drawn under account of \_\_\_\_\_ Bank Irrevocable Letter of Credit  
7 Developer. Faithful Performance and Payment." The bank expressly agrees with you that all  
8 drafts drawn under and in compliance with the terms of the Letter of Credit shall meet with honor  
9 upon presentation.

10 This irrevocable authority to pay expires on

11 \_\_\_\_\_

12 Breakdown of funds:

13 Water System Facilities \$

14 **Tract Number** **Insert Tract Number** \_\_\_\_\_

15 \_\_\_\_\_ BANK

16 \_\_\_\_\_ Date: \_\_\_\_\_

17 \_\_\_\_\_ Date: \_\_\_\_\_

18 Stacey R. Aldstadt, General Manager

19 City of San Bernardino

20 Municipal Water Department

21 ////

22 ////

23 ////

24 ////

25 ////

26 ////

27 ////

28 ////