

**APPENDIX Y**

**PALMDALE WATER DISTRICT  
AGREEMENT FOR ACQUISITION AND  
CONSTRUCTION OF WATER SYSTEM IMPROVEMENTS  
TRACT NO. \_\_\_\_\_**

THIS AGREEMENT is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2008, by and between PALMDALE WATER DISTRICT, an Irrigation District organized and existing under the provisions of Division 11 of the Water Code of the State of California, ("District") and \_\_\_\_\_, ("Developer").

**RECITALS:**

A. District is engaged in the production, transmission and distribution of water within its service area.

B. Developer is developing a parcel of real property, commonly identified as Tract No. \_\_\_\_\_ ("Development") within the District's service area, as shown on Tract Map No. \_\_\_\_\_ on file in the office of the District and incorporated herein by reference.

C. Developer desires to secure water service to the Development from the District and the District is willing to provide such service on the terms and conditions set forth in this Agreement.

D. Developer has provided to the District the plans for water system improvements for the Development ("Facilities") and Developer has granted to the District the easements required for the operation and maintenance of the improvements. Said plans and specifications include, where applicable, off-site facilities necessary to serve the Development.

E. On \_\_\_\_\_ the District approved said plans designated as Water System Improvements, Tract \_\_\_\_\_, which plans and specifications ("Plans") are attached as Exhibit 1.

F. Developer intends to construct the Facilities in accordance with the approved Plans, which Facilities will be connected to the District's system.

**AGREEMENTS**

1. Construction of Facilities. Within \_\_\_\_ days from the date of this Agreement, Developer shall secure all required permits and commence construction of the Facilities or cause their construction to be commenced in accordance with the Plans and pursuant to the provisions of this Agreement.

District reserves the right to approve all materials used in construction of the Facilities. All work shall be done to the satisfaction of the District and in a good and workmanlike manner.

By entering into this Agreement, Developer represents and warrants that it is familiar with the District's current *Standard Specifications for Water Distribution System Construction*.

2. Qualifications of Contractor and Subcontractors. All work shall be performed by contractors approved by District and possessing that class of contractor's license issued pursuant to Division 3, Chapter 9, of the Business and Professions Code required for construction of the Facilities. Developer proposes to enter into a contract with a licensed general contractor ("Contractor") for construction of the Facilities. Developer shall secure from Contractor the following information for review and approval by the District:

(a) Information regarding its experience, financial condition and business referenced to be set forth on Exhibit 2. Contractor shall have at least five years experience in performing similar work.

(b) The Contractor's Licensing Statement in the form attached as Exhibit 3.

(c) The names and addresses of subcontractors, if any who will perform work under the contract between Developer and the Contractor or who will specially fabricate and install a portion of the work to be set forth on the form attached as Exhibit 4. The Construction contract shall provide that subcontractors may not be substituted without District's prior approval. Contractor may not subcontract for more than 40% of the work to be performed under its contract with Developer.

3. Inspection of Facilities. District shall at all times have access to the Development during construction of the Facilities and shall be provided with every opportunity for ascertaining full knowledge respecting the progress, workmanship, and character of the materials and equipment used and employed in construction of the Facilities. Contractor shall give at least 48 hours notice to District in advance of any work being performed on a Saturday, Sunday or Holiday designated by District, or for more than eight hours in a work day. Contractor shall give at least 24 hours notice to the District in advance of back filling or otherwise covering any part of the Facilities constructed so that the District may, if desired, inspect such work before it is concealed. The observation, if any, by District of the construction of the Facilities shall not relieve Developer or Contractor of any of their obligations under this Agreement. Defective work shall be made good, and materials and equipment furnished and work performed which is not in accordance with the approved Plans, and District's current *Standard Specifications for Water Distribution System Construction*, may be rejected notwithstanding the fact that such materials, equipment and work have been previously inspected by District.

4. Agreement to be Binding on Contractor. Developer shall have a written agreement with Contractor, which agreement shall incorporate by reference the terms and conditions of this Agreement. The form of agreement between Contractor and Developer is attached as Exhibit 5 and made a part hereof. Developer shall furnish Contractor with a copy of this Agreement and shall cause Contractor to acknowledge his agreement to be bound by the terms and conditions of this Agreement by signing the form attached as Exhibit 5. A fully executed copy of the agreement between Developer and Contractor shall be delivered to District prior to commencement of work.

5. Bonds.

(a) Prior to Contractor's commencement of work, Developer shall furnish and deliver to District a bond with a responsible corporate surety or corporate sureties acceptable to District conditioned upon the faithful performance of Contractor of all covenants and stipulations of this Agreement, and of Contractor's agreement with Developer. Said bond shall be on the mandatory form attached hereto as Exhibit 6, and shall be an amount that is not less than 100% of the total amount payable under Contractor's agreement with Developer for the construction of the Facilities.

(b) Prior to commencement of work, Developer shall also furnish a payment bond. Said payment bond shall be in a sum not less than 100% of the total amount payable under Contractor's agreement with Developer for the construction of the Facilities, and shall be on the mandatory form attached hereto as Exhibit 7.

(c) The surety or sureties on all bonds furnished must be satisfactory to the District. If during the course of construction any of the sureties in the sole discretion of the District are or become insufficient, District may require additional sufficient sureties which the Contractor shall furnish to the satisfaction of the District within fifteen (15) days after written notice thereof.

(d) Notwithstanding the foregoing, if Developer has entered into an agreement with Los Angeles County obligating Developer to provide bonds which include 100% coverage for the Facilities, in lieu of providing the bonds as specified herein, Developer may have District named as an additional obligee on those bonds provided to the County. District shall be entitled to approve the form and content of said bonds and the additional obligee endorsement.

#### 6. Insurance Requirements of Developer.

(a) Prior to the commencement of work, Developer shall cause Contractor to forward to the District a policy or certificate of protective liability insurance in which the District shall be named as additional insured with Contractor. The policy shall insure the District and its directors, officers, employees, agents, consultants and volunteers as additional named insureds as well as the Contractor, its employees and its subcontractors and each of their employees, and their heirs, agents, and employees, while acting within the scope of their duties, against all claims arising out of or in connection with the work to be performed and shall remain in full force and effect until the work is accepted by the District.

(b) The District, its directors, officers, employees, agents, consultants and volunteers are to be covered as insureds with respect to the following: liability arising out of activities performed by or on behalf of the Contractor, products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded the additional insureds.

(c) Developer shall require, in its agreement with Contractor, that the above-referenced insurance policy (or policies) shall be furnished at Contractor's expense, in a form and with insurance companies authorized to do business and have an agent for service of process in California and have an "A-" policyholder's rating and a financial rating of at least Class VII in accordance with the most recent AM Best's Insurance Guide, or if AM Best's is no longer published, comparable ratings from a service acceptable to District. Such insurance, in addition

to the multiple additional named insured endorsements set forth above, shall be broad form commercial general liability insurance in the amounts set forth below, and shall contain additional endorsements as follows: (i) providing blanket contractual liability coverage for Contractor's indemnification obligations to District and others pursuant to this Agreement and the agreement between the Developer and Contractor; (ii) providing coverage for explosion, collapse, underground excavation and removal of lateral support; (iii) providing that the insurance may not be canceled or reduced until 30 days after the District and its Engineer have actually received written notice of such cancellation or reduction; (iv) providing "cross liability" or "severability of interest" coverage for all insureds under the policy or policies; and (v) providing that any other insurance maintained by District, the Engineer or any other named insured is excess insurance, and not contributing insurance with the insurance required herein. The amount of coverage shall be no less than the following:

(1) General bodily injury and property damage -- \$2,000,000 per occurrence.

(2) Automobile bodily injury and property damage --\$2,000,000 per occurrence, including owned, non-owned and hired autos, and providing coverage for loading and unloading.

(d) The Contractor shall also be required to provide and maintain Builder's Risk Insurance covering all risks of direct physical loss, damage or destruction to the work in the minimum amount of the dollar value of the Facilities. Such insurance shall include explosion, collapse, underground excavation and removal of lateral support. The District shall be named as an additional insured on any such policy.

(e) The evidence of insurance required to be provided to the District shall include original copies of the ISO CG 2010 (or insurer's equivalent) signed by the insurer's representative and certificate(s) of insurance (Accord Form 25-S or equivalent) reflecting the existence of the required insurance. If required by the District, Developer shall furnish a complete copy of the policy or policies, and all endorsements thereto. Commercial general liability insurance must include District's and Contractor's Protective Coverage, Products - Completed Operations Coverage, Premises - Operations Coverage, and must provide for coverage of District's facilities during the course of construction.

(f) Developer shall insure that the Contractor is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and that contractor will comply with such provisions before commencing the performance of the work under the agreement with developer. Developer shall insure that the contractor and sub-contractors will keep workers' compensation insurance for their employees in the effect during all work covered or contemplated by this Agreement.

7. Schedules and Notice. Developer shall provide District with a schedule for construction of the Facilities and shall keep District advised of the schedule and progress of work. No work shall be performed unless (a) there has been a pre-construction meeting with representatives of District, Developer and Contractor in attendance; (b) District has been given written notice of the name and telephone number of Contractor's job superintendent who shall be Contractor's representative at the job site and shall have authority to act on behalf of Contractor, and the name and telephone number of Contractor's alternate in the event the job superintendent

is unavailable; and (c) District has been give at least five (5) business days written notice of the commencement of work. Construction of the Facilities shall be completed in accordance with the Schedule of Facilities Construction, Exhibit 8.

8. Inspection, Contract Administration and Connection Fees. Upon execution of this Agreement, Developer shall pay the inspection fee and all related connection fees. Should the prevailing charges be increased subsequent to the execution of this Agreement and prior to water service being provided to the Development, the Developer shall pay the difference between the amounts set forth below and the current amounts as a condition of receiving service.

9. Payment for Work. All work related to the development and construction of the Facilities is for the convenience of and at the request of Developer, who shall be solely responsible for all costs and expenses in connection therewith. District shall not be responsible to Contractor or its subcontractors, suppliers or materialmen for such work. Developer shall not permit any claim to be enforced against the Facilities, however it may arise. Regardless of the merits of any claim, Developer shall, within five (5) business days of the assertion thereof, cause said claim to be discharged or provide a bond releasing such claim, in a form satisfactory to District.

10. No Agency. Neither Developer nor Contractor are the agents or representative of District. Neither has any authority to in any way commit or bind District.

11. Indemnification. To the fullest extent permitted by law, Contractor and Developer shall jointly and severally indemnify and hold harmless District, its directors, officers, agents, employees, consultants and volunteers from and against all claims, damages, losses, expenses, and other costs, including, but not limited to, costs of defense and attorneys' fees, arising out of or resulting from or in connection with the construction of the Facilities or the Development, both on and off the job site, provided that any such liability (1) is attributable to personal injury, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (2) is caused in whole or in part by an act or omission of Developer, Contractor, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be liable, regardless of whether or not it is caused in part by any act or omission (active, passive, or comparative negligence included), of a party indemnified hereunder. The obligation hereunder shall not be abridged, reduced or discharged by the maintenance of insurance by the Contractor or Developer. Developer and Contractor shall also jointly and severally indemnify and hold harmless District, and its consultants, and each of their directors, officers, employees, agents, consultants and volunteers from and against all losses, expenses, damages (including damages to the Development or Facilities), attorneys' fees, and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of Developer or Contractor to faithfully perform the work and/or any of either of their obligations under this Agreement or under the agreement between Developer and Contractor.

12. Compliance with Laws. The agreement between Developer and Contractor shall require that: (a) Contractor shall conduct its operations so as to avoid injury or damage to any person or property, and to minimize any obstruction and inconvenience to the public; (b) Contractor shall comply with all applicable laws or regulations relating to the work including safety measures applicable in particular operations or kinds of work; (c) Contractor shall provide and maintain such fences, barriers, directional signs, lights, and flag men as are necessary to give

adequate warning to the public at all times of any dangerous conditions to be encountered as the result of the construction work and to give directions to the public; and (d) Contractor shall be solely and completely responsible for conditions of the job site, including safety of all persons and property during construction of the Facilities.

13. One Year Guarantee. Developer and Contractor jointly and severally guarantee all work against defects in workmanship or materials for a period of one year after District's acceptance of the Facilities. Developer and Contractor, or either of them, 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 and/or materials within said one year period, without expense whatsoever to District. In the event of a failure to comply with the above-mentioned conditions within seven (7) business days after being notified in writing, District shall be entitled to have the defects remedied and the work repaired or replaced at the expense of Contractor and Developer. Developer and Contractor agree to pay all such expenses immediately on demand therefor by District. The performance bond and the payment bond shall continue in full force and effect for the guarantee period. Additionally, Developer and Contractor shall provide the District with any manufacturer warranties that may be applicable to materials or equipment included in the Facilities.

14. Maintenance and Repair of Facilities. Developer shall protect and maintain the Facilities through completion of the Development. In the event all or any part of the Facilities are damaged or destroyed, Developer shall repair or replace said Facilities without cost to District.

15. Donation and Acceptance of Facilities. Upon completion of construction, all Facilities shall be donated by the Developer to the District free and clear of all liens, claims and encumbrances and shall become the property of District upon acceptance of the Facilities for operation, maintenance, and repair by the District. District may require Developer to provide a deed, bill of sale, or other instrument of conveyance, conveying the Facilities from the Developer to the District.

16. Water Quality. District makes no guarantees regarding the quality of water to be supplied to the Development. In addition, Developer acknowledges that District's water supply may be a varying blend from local wells and State Project Water. Due to variable system demands and circumstances beyond District's control, the percentage of water supplied concurrently from each source fluctuates from time to time which may result in a change, more or less, in certain minerals and chemical concentrations of District's water supply. Developer acknowledges that it may be the nature of water to be corrosive, and it may have corrosive effects on certain water facilities, i.e., pipes, valves, materials, appliances and appurtenances. Developer further acknowledges that certain materials utilized for the conveyance of water may be more susceptible than others to corrosion and its related effects. The selection and installation of all piping, valves, materials, appliances, fittings and appurtenances required to receive and convey water from the discharge outlet of the meter to serve a particular lot, home, building, structure or parcel of land, within a subdivision or otherwise, is the sole responsibility of Developer. Any and all piping, valves, materials, appliances, fittings and appurtenances connected to the discharge outlet of the meter shall be designated as "on-site". District submits reports on the mineral and chemical analysis of water samples to the State of California Department of Public Health. Said reports are available to Developer upon request. Should Developer require any additional information or further mineral and chemical water analysis

reports, Developer shall bear the expenses of such reports. Developer assumes responsibility for obtaining copies of District mineral and chemical water analysis reports for evaluation of potential corrosive tendencies and possible adverse effects to on-site water facilities. In selecting piping, valves, materials, appliances, fittings and appurtenances to be used for receipt of water from the discharge outlet of the meter, Developer shall consider the mineral and chemical content, and potential corrosive effects of any blend and/or percentage thereof, of water which may be supplied by District. Developer further acknowledges and agrees to indemnify and hold harmless District, and its officers, agents and employees from any and all adverse effects or damages that result from corrosion of on-site facilities, and in particular within any residence, commercial building or industrial building caused by Developer.

17. Flow Requirements. It is Developer's responsibility to ascertain fire flow requirements for the Development. District neither guarantees nor agrees to supply water in any specific quantities or pressures for fire flow, domestic use or for any other purpose whatsoever, and no such obligation shall be implied.

18. Construction Water. Developer and/or Contractor shall pay for the use of construction water in accordance with District's rules and regulations.

19. Irrigation Water. Should the Development require irrigation water, Developer shall apply for service in accordance with District rules and regulations. District reserves the right to limit irrigation water and to deny the use of water for irrigation purposes except during the off peak hours between 10:00 p.m. and 3:00 a.m. Developer shall cause its landscaping to be planted over a reasonable period of time so that portions of the landscaping will be watered in sequence rather than all at one time. District will not be liable for any losses or damages to the landscaping due to the lack of water.

Developer shall provide District with an accurate estimate of the amount of water required for irrigation including irrigation of slopes, green belts, parkways and open space. The estimate shall include the daily water demand. Developer shall also provide District with a written statement showing the types of sprinklers and controllers it proposes to use. Developer's irrigation system shall include sensors for moisture, temperature and wind, and devices which will turn off water when there is adequate moisture in the ground, when the temperature is excessively warm and when there is excessive wind. When Developer provides District with its estimated irrigation needs, Developer's report shall include the period commencing with initial planting through the period when the landscaping is established.

20. Rules and Regulations of Water District. Developer shall comply with all applicable District rules and regulations.

21. Notice to Purchasers. Developer shall give written notification to the purchasers of its lots and the purchasers of its homes of the location of District's easements and Facilities on or adjacent to their property so that said purchasers will not interfere with access to the Facilities (for example by installing interfering walls, fences, gates or shrubbery).

22. Street Plans, Surveys, As-Built Drawings, Compaction Tests and Bacteriological Tests. Not less than fifteen (15) days prior to commencement of construction, Developer shall provide to District and Contractor the final approved tract map and a complete set of final approved plans and profile drawings for the Facilities which are prepared, approved and signed

by a registered civil engineer and approved and signed by all applicable regulatory agencies. Prior to commencement of construction, Developer shall provide accurate field staking, i.e., cut stakes, field stakes and final grade stakes based on final approved street plans. Developer shall provide District with compaction tests in accordance with County, City and District requirements. Upon completion of construction, Developer shall provide District with legible as-built drawings showing all water facilities; said as-built drawings shall include a written narrative statement which clearly describes all modifications, changes or deviations from the approved plans. Upon completion of construction, Developer shall provide District with a minimum of two (2) consecutive bacteriological test results on all water facilities, the samples for which are collected in accordance with all applicable standards and regulations. Samples for bacteriological analysis shall be submitted to a laboratory approved by Water District. Samples shall be taken at least twenty-four (24) hours apart from one another. Should any tests fail or not be acceptable Developer shall take additional samples at such sampling points in accordance with all standards and regulations and the requirements of District and all regulatory agencies. Developer understands and agrees that water service cannot be provided to Developer's project unless and until all Facilities are completed in accordance with plans and specifications, transferred to District and accepted in writing by District.

23. Attorneys' Fees. In any action, at law or in equity, including an action for declaratory relief, seeking to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover a reasonable amount as attorneys' fees and costs incurred in prosecuting or defending such action, including a dispute submitted to arbitration, in addition to any other relief to which such party is entitled.

24. Not Assignable. The rights and obligations of Developer and Contractor under this Agreement shall not be assignable without the prior written consent of District, which shall not be unreasonably withheld.

25. Entire Agreement. This Agreement constitutes the entire Agreement of the parties with respect to the subject matter, and no amendment, modification or alteration of the terms hereof shall be binding unless the same is in writing, dated subsequent to the date hereof and duly approved and executed by each of the parties.

26. Choice of Law. This Agreement, and the application or interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of California. Venue for all purposes shall be deemed to lie within Los Angeles County, California, and any action to enforce this Agreement or for any remedies, damages, or other relief shall only be brought in either the State courts of the State of California in and for the County of Los Angeles or in the United States District Court, Central District of California.

27. CEQA Indemnification. Developer hereby agrees to indemnify, defend and hold harmless the District from all claims, liabilities, causes of action, liens, expenses, or damages of any type, including reasonable attorneys' fees and expenses, incurred by the District arising from any claim, action or proceeding under the California Environmental Quality Act (California Public Resources Code §21000, et seq.) or from any challenges to this Agreement or the District's right and authority to enter into this Agreement. With respect to any claim for which the District has requested indemnification under this Section, Developer shall assume the defense of any related litigation, arbitration or other proceeding, provided that the District may at its election and expense, participate in such defense. At Developer's reasonable request, the District



will cooperate with developer in the preparation of any defense to any such claim, and Developer will reimburse the District for any reasonable expenses incurred in connection with such request.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the day and year first above written.

**"DISTRICT"**

**"DEVELOPER"**

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

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