Yucaipa Valley Water District

Director Memorandum 12-020

Date: March 7, 2012

Prepared By: Joseph Zoba, General Manager

Subject: Approval of Development Agreement No. 02-2012 for Tract No. 13375, Oakdel Court, Located North of Oak Glen Road Approximately 1,500 Feet East of Fremont Street, Yucaipa

Recommendation: Pending.

At the board meeting held on February 15, 2012, the District staff requested that no action be taken on the proposed development agreement for Tract No. 13375 [Director Memorandum No. 12-019]. Instead of approving a typical development agreement for this project, the District staff has been developing a specific agreement crafted for individual lot sales.

The attached draft development agreement is currently being reviewed by the developer in anticipation of being adopted at the board meeting.

Agreement: 02-2012
Project File: P-65-67

AGREEMENT TO PROVIDE WATER AND SEWER SERVICE TO THE PRIVATE DEVELOPMENT OF TRACT NO. 13375 FOR THE PURPOSE OF INDIVIDUAL LOT SALES

This Agreement is made and effective on March 7, 2012, by and between the YUCAIPA VALLEY WATER DISTRICT, a public agency ("District") and Richard Siegmund, ("Developer"). Each is sometimes referred to herein as a "Party" and jointly as the "Parties".

Contact information for the parties is as follows:

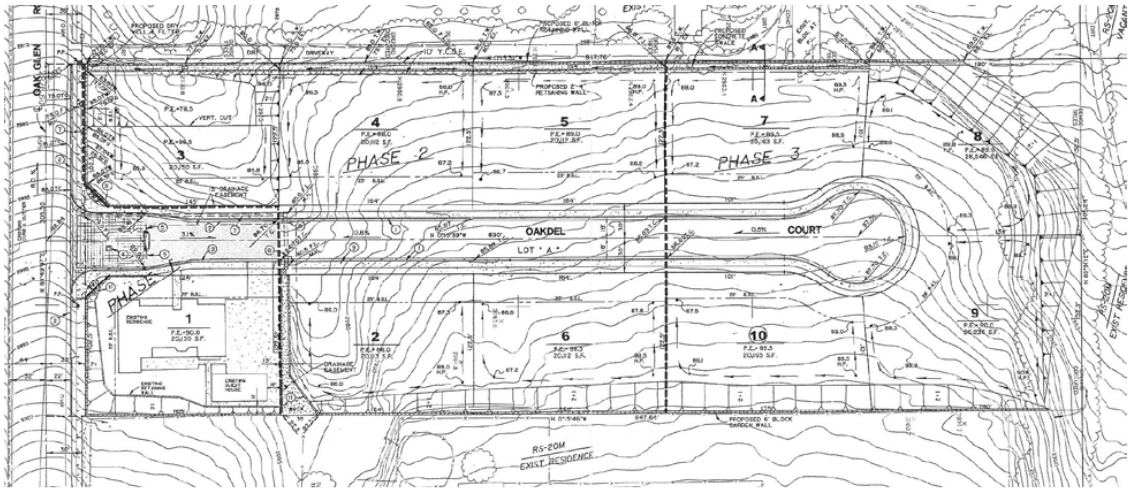
DISTRICT:
Yucaipa Valley Water District
12770 Second Street
Post Office Box 730
Yucaipa, California 92399-0730
Attn: Joseph B. Zoba, General Manager
Telephone: (909) 797-5119
Facsimile: (909) 797-6381

DEVELOPER:
Richard Siegmund
Post Office Box 968

Yucaipa, California 92399
Attn: Richard Siegmund
Telephone: (951) 538-1525
Facsimile: (951) _____

PROJECT DESCRIPTION

This project involves the development of nine residential lots; each lot is greater than 20,000 square feet in size as shown on the following map. Water and sewer infrastructure will be constructed by the Developer to provide service to each of the nine lots on Oakdel Court. The Parties agree that Tract No. 13375 will only be recorded following the issuance of a written release by the Yucaipa Valley Water District indicating the completion of all water and sewer facilities and payment of applicable fees as identified within this Agreement. Only after the Yucaipa Valley Water District approves and accepts all water and sewer infrastructure within the Project Tract No. 13375 and the Tract Map is recorded by the City of Yucaipa, will the Developer conduct a transaction with another party to sell part, portions or individual lots within this development.



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RECITALS

WHEREAS, Developer desires to develop its property situated within the service area of the District as described above, herein referred to as the "Project"; and

WHEREAS, Developer proposes to develop the Property in the manner generally proposed and in accordance with the currently approved maps and construction drawings reviewed and approved by the Yucaipa Valley Water District; and

WHEREAS, Developer desires to obtain water (as used herein, "water" includes recycled water where applicable) and sewer service from the District for its development in accordance with the District's Rules, Regulations and Policies; and

WHEREAS, it is the purpose of this Agreement to set forth the terms and conditions by which the District will provide water and sewer service to the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Developer and the District agree as follows:

1. General Description. The Developer proposes to develop its Property as provided on the development construction drawings as approved by the District which includes Facilities (the "Facilities") necessary for the District to provide drinking water, sewer service and recycled water to the Project, which Facilities are described in Section 19 below. Once constructed by the Developer and accepted by the District, title to the Facilities (and associated right-of-way) shall be conveyed by the Developer to the District, and the District shall operate and maintain the Facilities and shall provide water and sewer service to the Developer's Project in accordance with the District's rules and regulations and the provisions of this Agreement.

2. Licensed Professionals. All work, labor and services performed and provided in connection with the preparation of real property and right-of-way surveys and descriptions, the preparation of construction specifications, plans and drawings, and the construction of all facilities, shall be performed by, or under the direction of, professionals appropriately licensed by the State of California and in good standing.

3. Plan Acceptance. The District shall review and approve all construction drawings and specifications ("Plans") related to the construction of the facilities necessary to serve the Project. Upon its final review and approval of the plans, the District shall sign the construction drawings ("Plan Acceptance") indicating such approval. Plans are subject to an annual review by the District and modifications may be made by the District to conform to revised construction standards.

The Developer shall not permit, or suffer to permit, the construction of the Facilities without having first obtained Plan Acceptance. In the event the Developer fails or refuses to obtain the Plan Acceptance, the District may refuse, in its sole discretion and without liability to the Developer, to issue its Facility Acceptance when the Facilities are completed.

The Developer shall not deviate from any approved plans and/or specifications without the District's prior written approval.

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4. Construction of Facilities. Prior to proceeding with the construction of the Facilities, the Developer shall schedule and conduct a preconstruction conference with the District's General Manager and the District Engineer and/or their designees or agents.

All construction work shall be inspected by District personnel and/or by District's consultants at the sole cost of the Developer. The Developer acknowledges that the inspector(s) shall have the authority to require that any and all unacceptable materials, workmanship, construction and/or installation not in conformance with either (i) the Plans subject to a Plan Acceptance, or (ii) standard practices, qualities and standards in the industry, as reasonably determined by the District, shall be replaced, repaired or corrected at Developer's sole cost and expense.

In the event the Developer's contractor proposes to work overtime and beyond normal business hours, the Developer shall obtain the District's approval at least 24 hours in advance to coordinate inspection services. The Developer shall be solely responsible for paying all costs and expenses associated with such inspection services.

5. Facility Acceptance. After the testing and disinfection required in Section 9 below, the District shall, upon request of Developer, cause the final inspection of a Facility which developer indicates is completed. If the District finds such Facilities to have been completed in conformance with the Plans for which a Plan Acceptance has been issued, then the District shall promptly issue to Developer a letter ("Facility Acceptance") indicating satisfactory completion of the Facility and District's acceptance thereof. Neither inspection nor issuance of the Facility Acceptance shall constitute a waiver by District of any claims it might have against Developer for any defects in the work performed, the materials provided, or the Facilities constructed.

6. Construction of Connections to DISTRICT Facilities. Unless otherwise agreed to in writing by the District, the District shall furnish all labor, materials and equipment necessary to construct and install connections between the Facilities and the District's drinking water, recycled water, and sewer systems. All costs and expenses associated therewith shall be paid by the Developer.

7. Compliance with Law and DISTRICT Regulations. The Developer hereby agrees that all Facilities shall be planned, designed and constructed in accordance with all applicable laws, rules, regulations and policies in effect at the time of construction. The Developer shall strictly comply with all applicable law, rules and regulations, concerning the provision of services, materials and the payment of wages. The Developer shall keep fully informed of and obey all laws, rules and regulations, and shall indemnify the District against any liability arising from Developer's violation of any such law, rule or regulation.

8. Developer's Warranties. The Developer shall unconditionally guaranty, for a period of one year following the District's Facility Acceptance thereof, any and all materials and workmanship, at the Developer's sole cost and expense. The provision of temporary water service through any of the Developer's Facilities, prior to District's acceptance of same, shall not nullify nor diminish the Developer's warranty obligation, nor shall the Developer's warranty obligation be voided if the District determines, in its sole discretion, to make any emergency repairs necessary to protect the public's health, safety or welfare or to ensure continuity of water or sewer service.

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9. Testing and Disinfection. Prior to Facility Acceptance, the Developer, at its sole cost and expense, shall undertake and satisfactorily complete a testing program for all Facilities and shall disinfect all Facilities in accordance with the District's procedures and other applicable laws, rules and regulations.

10. Bond Requirements. The Developer shall provide to the District, in a form satisfactory to the District, the following bonds:

a. Warranty Bond. A warranty bond issued by a corporate surety or sureties licensed and permitted to do business by and within the State of California in an amount not less than one hundred percent (100%) of the total cost of any and all construction performed hereunder, insuring against any and all defects in the Facilities constructed hereunder, for a period of not less than one full year after the date of Facility Acceptance.

b. A Labor and Materials Payment Bond issued by a corporate surety or sureties licensed and permitted to do business by and within the State of California in an amount not less than one hundred percent (100%) of the total cost of any and all construction performed hereunder per California Civil Code Sections 3247 and 3248(a).

c. Miscellaneous Bond Requirements. All bonds required by this Section shall be provided to the District within sixty (60) days of the date that this Agreement was approved by the District's Board of Directors. All bonds required by this section are subject to the approval as to form and content by the General Manager and District's Legal Counsel. All bonds required by this section shall be provided by a surety that is an "admitted" surety insurer authorized to transact surety insurance in California, with assets exceeding its liabilities in the amount equal to or in excess of the amount of the bonds, and each bond shall not be in excess of ten percent (10%) of the surety insurer's assets. The bond shall be duly executed and shall meet all of the requirements of Section 995.660 of the Code of Civil Procedure.

11. Title to Facilities and Right-of-Way. Provided that the Developer's Facilities are designed and constructed as required hereunder and the District proposes to issue its Facility Acceptance, the Developer shall, concurrently with the District's Facility Acceptance, convey ownership title to all Facilities (and right-of-way, if applicable) to the District, free and clear of any and all liens and encumbrances except those that are expressly agreed to by the District. The District may require fee title or an easement, depending upon the location of the Facility through action by the Board of Directors. Upon conveyance of title, the District shall assume the responsibility of operating and maintaining the Facilities, subject to the Developer's warranty as provided herein. The Developer acknowledges and agrees that the District shall not be obligated to operate and maintain the Facilities and to provide service to and through them until all applicable conditions hereunder are satisfied and title to the Facilities has been conveyed and delivered to the District in recordable form.

12. Risk of Loss. Until such time as acceptance thereof by the District and until good and marketable title to the easements, rights-of-way and Facilities are conveyed and delivered to the District in recordable form, the Developer shall be solely and completely responsible for any and all losses and/or damage of every kind or nature to the easements, rights-of-way and Facilities.

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13. Conditions Precedent to the Provision of Water and Sewer Service. Unless the District otherwise agrees in writing, the District shall not be obligated to provide any water and/or sewer service to the Developer's project or any part thereof, including model homes, until after all of the appropriate obligations imposed upon the Developer have been completed including, without limitation, conveyance to the District of the right-of-way and Facilities associated with the requested service. Upon acceptance of the right-of-way and the Facilities and upon such other terms and conditions as may be reasonable, the District shall provide the service requested and assume the responsibility for operating and maintaining the affected Facilities. Service provided by the District shall be in accordance with its rules and regulations and shall be comparable in quality of service to that provided all similarly situated customers.

14. Developer's Fees, Charges, Costs and Expenses. The Developer shall be solely responsible for the payment to the District of all fees, charges, costs and expenses related to the Facilities. The Developer shall deposit with the District, to be held in a trust account administered by the District, the sum of 10% of the construction costs as a deposit 30 days prior to the start of any construction at the Project.

The Developer acknowledges and hereby agrees that the District is authorized, from time-to-time, to reimburse itself from the funds on deposit. The District shall provide a monthly accounting of how funds were disbursed. The Developer further agrees to periodically and promptly replenish, upon a billing issued therefore by the District, the trust fund in order to maintain a minimum amount as specified by the District. Should any unexpended funds remain in the trust account upon termination of this Agreement, then such funds shall be reimbursed to the Developer.

16. Permits, Licenses and CEQA Documentation. The Developer shall be solely responsible for securing and paying for all permits and licenses necessary to develop its project. The Developer shall be solely responsible for complying with the California Environmental Quality Act under the auspices of the City and/or County within which the Project is situated. However, upon request, the Developer shall furnish to the District all relevant environmental documentation and information. The Developer, at its sole cost and expense, shall be solely responsible for defending against any and all legal challenges to the Developer's entitlements including permits, licenses and CEQA documents.

17. Indemnification and Hold Harmless. The Developer and the District agree that the District should, to the extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, defense costs, court costs or any other costs arising out of or in any way related to the performance by Developer of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the fullest protection possible to the District, except for liability attributable to the District's active negligence.

Developer acknowledges that the District would not enter into this Agreement in the absence of this commitment from the Developer to indemnify and protect the District as set forth here. Therefore, the Developer shall defend, indemnify and hold harmless the District, its employees, agents and officials, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, actual attorneys' fees incurred by the District, court costs, interest, defense costs including expert witness fees and any other costs or expenses of any kind whatsoever without restriction or limitation incurred in relation to, as a consequence of or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part in the

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performance by Developer of this Agreement. All obligations under this provision are to be paid by the Developer as incurred by the District.

18. **Insurance**. The Developer agrees to provide insurance in accordance with the requirements set forth here throughout the term of this Agreement. If the Developer uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, the Developer agrees to amend, supplement or endorse the existing coverage to do so. The following coverage's will be provided by the Developer and maintained on behalf of the District and in accordance with the requirements set forth herein.

a. Commercial General Liability Insurance (Primary) shall be provided on ISO-CGL Form No. CG 00 01 10 93. Policy limits shall be no less than $1,000,000 per occurrence for all coverages and $2,000,000 general aggregate. The District and its officials, employees and agents shall be added as additional insureds using ISO Form CG 20 10 10 93. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to the District or any employee or agent of the District. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall contain no contractors' limitation endorsement. There shall be no endorsement or modification limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

b. Umbrella Liability Insurance (over Primary) shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and shall include a "drop down" provision providing primary coverage above a maximum $25,000 self-insured retention for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be following form to any underlying coverage. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion and no contractor's limitation endorsement. Policy limits shall be not less than $2,000,000 per occurrence and in the aggregate, above any limits required in the underlying policies. The policy shall have starting and ending dates concurrent with the underlying coverages.

c. Workers' Compensation/Employer's Liability shall provide workers' compensation statutory benefits as required by law. Employer's liability limits shall be no less than $1,000,000 per accident or disease. Employer's liability coverage shall be scheduled under any umbrella policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects the District, its employees or agents.

d. The Developer and the District further agree as follows:

i. All insurance coverage provided pursuant to this Agreement shall not prohibit the Developer, and the Developer's employees or agents, from waiving the right of subrogation prior to a loss. The Developer waives its right of subrogation against the District.

ii. Unless otherwise approved by the District in writing, the Developer's insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best's" Insurance Guide rating of "A:VII". Self-insurance will not be considered to comply with these insurance specifications.

iii. The Developer agrees to provide evidence of the insurance required herein, satisfactory to the District, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional insured endorsement to the Developer's general liability and umbrella liability policies. Certificate(s) are to reflect that the insurer will provide 30 days notice of any cancellation of coverage. The Developer agrees to require its insurer to modify such certificate(s) to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. The Developer agrees to provide complete certified copies of policies to the District within 10 days of the District's request for such copies.

iv. In the event of any loss that is not insured due to the failure of the Developer to comply with these requirements, the Developer agrees to be responsible for any all losses, claims, suits, damages, defense obligations and liability of any kind attributed to the District, or the District's officials, employees and agents as a result of such failure.

v. The Developer agrees not to attempt to avoid its defense and indemnity obligations to the District and its employees, agents and officials by using as defense the Developer's statutory immunity under workers' compensation and similar statutes.

19 **Special Conditions**. The following conditions, being contained herein, will be required by the District in order to receive water, recycled water and sewer service for the Project.

a. Potable Water Related Facilities. An existing potable water pipeline currently exist within the southerly boundary of Tract No. 13375 and shall be extended north within the development to serve the individual lots pursuant to Yucaipa Valley Water District rules and regulations as well as all current applicable standards for dual plumbed homes and fire sprinkler service.

b. Sewer Related Facilities. An existing sewer mainline currently exists within the southerly boundary of Tract No. 13375 and shall be extended north within the development to serve the individual lots pursuant to Yucaipa Valley Water District rules and regulations.

c. Recycled Water Related Facilities. The existing home on Lot 1 and entrance feature for the development was constructed prior to the installation of any recycled water infrastructure. Due to the current progress of the development, a recycled water pipeline will not be required to be installed to provide service to lots within Tract No. 13375. However, Lots 2, 4, 5, 6, 7, 8, 9, and 10 will be required to have a second water meter for irrigation purposes and dedicated for the use of recycled water in the future. The recycled water meter shall be identified as such in accordance with local and state laws and connected to the potable water mainline until a recycled water pipeline is constructed within the Project in the future.

d. Individual Lot Sale Requirements. This project involves the development of nine residential lots (lots 2, 3, 4, 5, 6, 7, 8, 9, and 10), each lot being greater than 20,000 square feet in size. Water and sewer infrastructure will be constructed by the Developer

to provide service to each of the nine lots on Oakdel Court. The Parties agree that Tract No. 13375 will only be recorded by the City of Yucaipa following the issuance of a written release and approval by the Yucaipa Valley Water District indicating the completion of all water and sewer facilities and payment of applicable fees as identified within this Agreement. Only after the Yucaipa Valley Water District approves and accepts all water and sewer infrastructure within the Project Tract No. 13375 and the Tract Map is recorded by the City of Yucaipa, will the Developer conduct a transaction with a third party to sell part, portions or individual lots within this Project or obtain a building permit for the construction of a home on any lot identified in this Agreement.

e. Irrigation with Recycled Water. The Developer shall provide written notification to any buyer, with copies to the District, summarizing: (1) the securitization of water supplies in advance of construction pursuant to the District's latest sustainability requirements; (2) facility capacity charges required prior to building permits; and (3) the anticipated use of recycled water for irrigation purposes.

f. The Developer shall be responsible for the payment of all invoices related to the Project. Any outstanding invoice amount is required to be paid prior to starting service to any lot within the Project.

20. Term and Termination of Agreement. Unless extended by mutual agreement of the parties in writing, this Agreement shall terminate at 5:00 p.m., on the day before the sixth (6th) anniversary date of this Agreement; provided, however, that this Agreement shall automatically terminate, without further liability to either party, as follows:

a. If the Project related trust account maintains a negative fund balance for greater than 60 days, or if the Developer fails or refuses to make a trust account deposit sufficient to cure a negative account balance;

b. Within 6 months of the effective date of this Agreement, if the initial construction contemplated hereunder has not commenced within such time;

c. Immediately, upon abandonment or bankruptcy by the Developer of the Project and/or the work hereunder;

d. Within 15 days of the date of the issuance of a Notice of Default by the District to the Developer in the event the Developer fails or refuses to perform, keep or observe any of the terms, conditions or covenants set forth in this Agreement.

Any termination of this Agreement shall not be construed as a waiver of any claim the District may have against the Developer or that the Developer may have against the District.

In the event of termination, and in order to counteract any threat to the public's health, safety or welfare, the District shall have the right, without liability to the Developer, to complete, at the Developer's non-reimbursable expense, all or a portion of the Facilities constructed pursuant to this Agreement.

Notwithstanding the foregoing, the Indemnification clauses contained herein shall survive the termination of this Agreement:

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21. Status of the Parties. This Agreement is not intended to create, and nothing herein contained shall be construed to create, an association, a trust, a joint venture, a partnership or other entity of any kind, or to constitute either party as the agent, employee or partner of the other.

22. Amendment; Assignment.

a. Amendment. This Agreement may be amended, from time-to-time, by mutual agreement of the District and the Developer, in writing signed by both parties. The District and the Developer further agree that to the extent this Agreement does not address all aspects of the Project, the Parties shall meet, confer and negotiate in good faith, and execute a written amendment or supplement to this Agreement.

b. Assignment. This Agreement shall not be assigned, whether in whole or in part, by the Developer without the prior written consent of the DISTRICT.

23. Force Majeure. If either the District or the Developer is delayed, hindered or prevented from performing any term of this Agreement by any cause beyond either party's control including, without limitation, any strike, walkout, prohibitions imposed by law, rules or regulations, riot, war, act of God or the default of the other party, then such performance may be excused or the time of performance tolled during the period of delay.

24. Incorporation of Prior Agreements. This Agreement contains all of the agreements of the parties with respect to any matter covered or mentioned in this Agreement, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

25. Waiver. No waiver by either party of any provisions of this Agreement shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by either party of the same or any other provisions.

26. Severance. If any provision of this Agreement is determined to be void by any court of competent jurisdiction then such determination shall not affect any other provision of this Agreement provided that the purpose of this Agreement is not frustrated.

27. District's Disclaimer. Utilizing fees and facilities provided to the District by the Developer, the District will supply potable water, recycled water, and wastewater collection and treatment services to the Developer's Property and development thereon. However, the District shall not be obligated to utilize public funds to subsidize the Developer's Project. The District shall not be obligated to provide water service to the Project prior to the purchase of sustainability sources in a manner consistent with the latest rules and regulations as set forth by the District.

28. Preparation of This Agreement. This Agreement shall not be construed against the party preparing it, but shall be construed as if both parties prepared it.

29. Dispute Resolution. Unless the parties enter into a written stipulation to the contrary, all disputes shall first be submitted to non-binding mediation, conducted by the Judicial Arbitration and Mediation Services, Inc./Endispute, or its successor, or any other neutral, impartial mediation service that the parties mutually agree upon in accordance with its rules for such mediation.

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IN WITNESS WHEREOF, the parties have executed is Agreement to be effective on the day and year first above written.

YUCAIPA VALLEY WATER DISTRICT

Dated: _____ By: _____

_____
Print Name

_____
Print Title

DEVELOPER

Dated: _____ By: _____

_____
Print Name

_____
Print Title