

CONTRACTUAL ASSESSMENT
(HEALTH & SAFETY CODE §5464 et seq.)
(Septic System Abatement & Private Lateral Installation Project)

THIS CONTRACTUAL ASSESSMENT (HEALTH & SAFETY CODE §5464 *et seq.*) (Septic System Abatement & Private Lateral Installation Project) (“Agreement”) is entered into as of _____, 2019, between _____, (“Participant”) and the **Hi-Desert Water District**, a county water district organized pursuant to California Water Code section 30000 *et seq.* (“District”) (collectively referred to as “Parties”).

RECITALS

A. The District is authorized to provide wastewater collection and treatment services to properties located within the jurisdictional boundaries of the District.

B. In order to receive wastewater collection and treatment services from the District, property owners within the District must decommission their septic system and/or install private sewer laterals to connect to the District’s wastewater system (the “Improvements”). The cost of Improvements are the responsibility of each property owner receiving service from the District.

C. The costs for the Improvements may be significant, and the District has determined to provide financial assistance to property owners, upon request, in the form of amortizing the cost of the Improvements over a period of 30 years (the “Installments”).

D. The District is authorized to enter into voluntary agreements for contractual assessments with property owners for the Improvements pursuant to California Health and Safety Code section 5464 *et seq.* (the “Law”), pursuant to which authority the District may fund the necessary work to complete the Improvements, and collect such costs from the property owner in Installments. The Law further authorizes the District to impose a lien on the property for which the Improvements are provided in order to secure payment of the Installments. The Installments are further authorized to be collected on the property tax roll, pursuant to Health and Safety Code section 5470 *et seq.*, or through a demand for payoff of the entire amount borrowed once a transfer of ownership occurs.

E. The District has previously received a loan and grant (Septic System Abatement and Private Lateral Installation, Wastewater Treatment and Reclamation Project On Lot Improvements), pursuant to Project No. C-06-7860-110, Agreement No. SWRCB000000000180101700) (the “SRF Loan”), to provide the funds necessary for the District to provide such voluntary agreements for contractual assessments, and this Agreement is necessary to guarantee repayment of amounts borrowed or otherwise financed through the SRF Loan, and this Agreement is subject to the terms of such SRF Loan, which SRF Loan is hereby incorporated herein.

F. Property-related fees, charges, and assessments, when imposed by a local agency, are subject to the requirements of article XIII D of the California Constitution (“Article XIII D”). Assessments may only be imposed in accordance with notice, protest, and ballot procedures required under Article XIII D, section 4, and property-related fees and charges may only be imposed in accordance with the notice and protest procedures of Article XIII D, section 6.

Article XIII D also creates substantive requirements applicable to imposition of assessments, and property-related fees and charges (collectively, these requirements are referred to herein as “Article XIII D Requirements”). The Article XIII D requirements are inapplicable to amounts charged as a result of voluntary, arms’ length negotiations, or amounts charged as a part of a voluntary arrangement with the agency, such as the Installments proposed to be charged for financing the costs of the Improvements.

G. Participant is the owner of certain real property within the District requiring the Improvements, as more particularly described in Exhibit A hereto. Participant has requested assistance with financing the costs of the Improvements through entering into this Agreement, and the District has agreed to provide such assistance.

H. In order to allow Participant to finance the Improvements, the District will be required to pay the costs of the Improvements billed by a licensed contractor or licensed engineer excluding any interest accrued during the reimbursement period of sixty (60) days, to be repaid from the Installments. In consideration for providing such assistance to Participant, Participant wishes to acknowledge and agree that this Agreement is voluntary, and the Installments are not “imposed” for purposes of the Article XIII D Requirements, and therefore, the Article XIII D Requirements do not apply. Participant further wishes to enter into this Agreement for establishing the terms for the Installments, including term, interest rate, enforcement mechanisms, and other matters set forth herein.

NOW, THEREFORE, the District and the Participant agree as follows:

Section 1. **Recitals.** The foregoing Recitals are true and correct.

Section 2. **Participant’s Obligations.**

(a). **Conditions of the Contractual Assessment.**

1. **Contractors.** Participant shall choose from a list of pre-approved contractors held by the District. Participants will be responsible for contracting directly with the contractor, and the District will not be a party to any such contract.

2. **Construction Materials .** The Improvements must be constructed with iron and steel products produced in the United States.

3. **Permitting.** Participant shall obtain a permit from the Town of Yucca Valley to abandon their septic system and install the private lateral, after inspection by the Town. Participant shall provide proof of such permit and inspection as a condition of this Agreement upon request. Nothing contained herein shall create liability for the District for Participant’s failure to obtain such permit.

4. **Right of Entry.** Participant hereby grants a right of entry to provide access to the Property for inspections by State, Federal, and District employees.

5. **Connection within __ Days.** Participant shall connect the Property to the District's wastewater system within _____ () days of completion of construction of the Improvements and connection to the sewer system.

6. **Compliance with Prevailing Wage Laws.** Participant is aware of the requirements of Labor Code Sections 1720 *et seq.* and 1770 *et seq.*, as well as California Code of Regulations, Title 8, Section 16000 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Participant is solely responsible for determining the applicability of Prevailing Wage Law requirements. If the Prevailing Wage Law requirements are applicable, Participant agrees to fully comply with such Prevailing Wage Laws. Participant shall defend, indemnify and hold the District, its Board, members of the Board, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with applicable Prevailing Wage Laws.

(b). **Advances to the District for Agreement Expenses.** Participant shall, immediately upon execution of this Agreement, advance the initial sum of \$_____ (the "Advance") to the District to reimburse the District for costs associated with preparing, entering, and implementing this Agreement and the Installments, including any costs associated with recording and enforcement of this Agreement, and placement of the Installments on the tax roll. If additional funds are necessary for such purposes, the District shall from time to time make written demand upon Participant and Participant shall immediately thereafter, within five (5) working days, deposit said monies with the District to pay for such additional expenses. If any such additional monies are not timely received, all actions taken for the implementation of this Agreement shall, at the option of the District and after providing written notice of such suspension to Participant, be suspended until such monies are received or canceled.

(c). **Payment of Installments.** Participant further agrees to pay the Installments required under this agreement, subject to the terms set forth herein.

1. **Term.** Participant agrees to pay the Installments for a term of 30 years. [Prior to transfer of ownership of the Property, Participant agrees to pay to the District all unpaid principal and any accrued interest, in addition to any amounts owed or that the District will be required to pay under the SRF Loan with respect to this Agreement. Specifically, Section 3.2(d) of the SRF Loan provides that the District may not prepay any portion of the SRF Loan without written consent of the Deputy Director of the Division of Financial Assistance of the State Water Board or any other segment of the State Water Board authorized to administer the SRF Loan. Therefore, to the extent the District is unable to receive such consent from the Deputy Director, the District will be required to continue making interest payments on the SRF Loan with relation to this Agreement, and such costs shall be included in the price to prepay the Installments.]

2. **Interest Rate.** Participant agrees to pay interest on the outstanding amount due for the Improvements at the rate of 1.8% per annum, and agrees that such interest rate represents fair market value.

3. **Total Cost of Improvements.** The total cost of the Improvements will not exceed \$_____. The total amount of interest to be paid will not exceed \$_____. To the extent that actual cost of Improvements and associated interest is less than the amount set forth herein, the Installments will either be pro-rated, and/or the term reduced, to account for the lower cost.

4. **Payment Schedule.** The Improvements shall be paid in 60 semi-annual Installments, as set forth in Exhibit B hereto, which amounts shall include both the principle and interest component for each Installment. Each Installment shall be due on the dates set forth on Exhibit B hereto, and shall be the responsibility of Participant. However, should the Installments be submitted to the County for collection with other taxes and assessments, the Installments shall be due with such other taxes and assessments.

5. **Collection on Property Tax Roll.** The District may take action in any year, subject to approval by the District's Board of Directors, to provide for collection of the Installments on the property tax roll in the same manner and at the same time as property taxes, pursuant to the authority granted in Health and Safety Code section 5465, and 5470 *et seq.*. In such event, Participant agrees not to submit a written protest or otherwise take any action to prevent the District from placing the Installments on the property tax roll.

6. **Deposit into Debt Service Fund.** The District shall deposit all Installments received into a debt service fund established pursuant to Section 3.7(a) of the _____ and shall keep such funds segregated and shall use such funds for the purpose of repaying the _____.

7. **Prepayment.** [Except as provided in Section 2(c)1 hereof, Participants shall not be authorized to prepay the Installments]

Section 3. **District's Obligations.**

(a). **Implementation of Agreement.** The District shall take all actions necessary to collect the Installments as set in Exhibit B hereto, following (i) execution of this Agreement by the Parties, and (ii) payment by Participant of the Advance to the District.

(b). **Use and Administration of the Participant Advances.** The District shall use the Advance solely for the payment of expenses relating to implementation and enforcement of this Agreement and the Installments. The District agrees to keep records consistent with its regular accounting practices of the amount of monies advanced by the Participant and the expenditure of such monies. Additionally, the District shall enter into and maintain contracts with all consultants and contractors providing services related to construction of the Improvements, implementation of this Agreement and the Installments that shall specify the scope of services and compensation to be paid to all such consultants. Such records and contracts shall be available for copying by the Participant at Participant's expense, and review during normal business hours upon reasonable notice to the District. If the proceedings to construct the Improvements are not completed and are abandoned by either Party hereto for any

reason at any time prior to the completion thereof, there will be no obligation on the part of the District to reimburse Participant for any monies previously advanced pursuant to this Agreement; provided, however, the District does agree to return to Participant any monies previously advanced which remain on deposit with the District and which the District determines are in excess of the amount necessary to pay for any outstanding expenses previously incurred by the District for the purposes of implementing and/or enforcement this Agreement or constructing the Improvements.

(c). **Construction of Improvements.** With the execution of this Agreement and with payment by Participant of the Advance, the District shall commence or contract for the construction of the Improvements, in accordance with the requirements of the SRF Loan.

Section 4. **Participant's Representations.**

(a). Participant understands and acknowledges that:

1. California Constitution, Article XIII D, section 4 establishes certain procedural and substantive requirements which apply when any local agency, such as the District, imposes a new or increases an existing property-related assessment.

2. The procedural requirements of Article XIII D, section 4 include:

A. The local agency shall identify the parcels upon which the assessment shall be imposed and provide written notice by mail of the proposed assessment to the record owner of each identified parcel.

B. The notice shall identify (i) the amount of the assessment; (ii) the basis upon which the amount was calculated; (iii) the reason for the assessment; and the (iv) date, time, and location of a public hearing on the proposed assessment.

C. The local agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the public hearing and the proposed assessment, accompanied by an assessment ballot whereby the owner of property proposed to be assessed may express such owner's support for or opposition to such assessment. After the public hearing has been closed, the public agency shall tabulate all assessment ballots received prior to the closure of the public hearing. The agency shall not impose the assessment, if there is a majority protest. A majority protest exists if the assessment ballots submitted in opposition to the levy of assessments outweighs the assessment ballots submitted in support to the levy of the assessments. Each assessment ballot is weighted according to the amount of the assessment proposed to be levied on the parcel for which such assessment ballot has been submitted.

3. The substantive requirements of Article XIII D, section 4, include, among other things, the following:

A. Revenues derived from any assessment shall not exceed the special benefit provided to the property and improvements.

B. Revenues derived from the assessment shall not be used for any purpose other than that for which the assessment was imposed.

C. The amount of the assessment levied on a parcel shall not exceed the special benefit received by such parcel from the improvements being financed by such assessment.

4. California Constitution Article XIII D, section 6 also sets forth certain procedural and substantive requirements any time a local agency imposes a new or increases an existing property-related fee or charge. Procedural requirements include holding a public hearing, with notice provided at least 45 days in advance, at which public hearing a majority of affected property owners or customers of record may protest the property-related fee or charge. Additional substantive requirements apply, including requirements that the property-related fee or charge not exceed the proportional cost of service, and be used only for the services for which the fee or charge is imposed.

5. The description of the procedural and substantive requirements established by and contained in Article XIII D set forth above are intended only to summarize certain of such procedural and substantive requirements, and were previously defined as the Article XIII D Requirements.

6. Participant has had a reasonable opportunity to thoroughly read and review the Article XIII D Requirements in their entirety and has further had a reasonable opportunity to consult with Participant's attorney regarding the Article XIII D Requirements.

(b). Participant and District acknowledge, understand, and agree that this Agreement is entered into for the benefit of Participant, in order to accommodate Participant's request to finance the Improvements. Participant and District further acknowledge, understand and agree that the Installments represents the reasonable estimate of the cost of the Improvements, plus interest as authorized by law. Participant further acknowledges, understands and agrees that District is entering into this Agreement with Participant in reliance on Participant's acceptance of and agreement with the amount calculated for the Installments, and that District would not have entered into this Agreement had Participant not agreed to such amounts. Participant further acknowledges, understands, and agrees that this Agreement is voluntary in nature, and is the result of an arms' length negotiation in which Participant had the opportunity to consult with independent counsel. As such, the Installments are not "imposed" for purposes of article XIII C or article XIII D of the California Constitution, and the Article XIII D Requirements do not apply and are otherwise waived. Such understanding, acknowledgement, and waiver are granted knowingly and in consideration for the District's willingness to finance Participant's Improvements through the Installments, and in order that the District may be assured of its ability to be repaid for the Improvements with the Installments.

(c). Participant acknowledges and agrees that this Agreement is subject to the terms of the SRF Loan, and the requirements contained in the SRF Loan are binding upon the

District and Participant as such requirements apply to the Improvements. Participant shall assist District in complying with the terms of the SRF Loan as applicable to the Improvements.

Section 5. **Effect of Agreement.** Nothing contained herein shall be construed as releasing Participant from any condition of or requirement imposed by the District, including payment of any other fee, charge, tax, or assessment of District, or any other agreement with the District or by any law rule, or regulation of the District, the County of San Bernardino, the State of California, or the federal government respecting the Property.

Section 6. **Lien; Recordation.** Upon execution of this Agreement by the parties hereto, District shall cause a Notice of Assessment to be recorded in the office of the County Recorder of the County of San Bernardino. The Parties agree that the Agreement, and the obligation of Participant created herein, shall constitute a lien on the Property.

Section 7. **Events of Default.** The following events shall each constitute an Event of Default hereunder:

(a) Failure to make any Installment due hereunder, provided the District shall provide a grace period of thirty (30) business days from the due date of each Installment in the event the Installments are not collected on the property tax roll.

(b) Failure to comply with any other provision hereunder.

(c) In the event the District's Board of Directors determines to place the Installments on the property tax roll, submission by Participant of a protest against placement of the Installments on the property tax roll.

Section 8. **Remedies.** If an Event of Default occurs, Participant agrees and acknowledges that such a default shall be treated in the same way as a violation of any of the District's ordinances, rules, or regulations, as they exist on the date of such Event of Default, and all remedies existing thereunder shall be available to the District in the enforcement of this Agreement. In addition, upon occurrence of an Event of Default, the District shall have any of the following additional remedies:

(a) The District may terminate this Agreement and declare all amounts remaining of the Installments immediately due and payable on the date thereof, and may charge interest at the highest legally available rate on all amounts due.

(b) The District may exercise any and all other remedies available to the District under law. To the extent the Installments are collected by the County of San Bernardino on the property tax roll, the Installments shall be subject to the same remedies and enforcement mechanisms applicable to property taxes.

(c) In addition, if an Event of Default under Section 7(c) occurs, the District, in its sole discretion, may opt not to terminate this Agreement, but shall be entitled to charge an additional 12% of the amount of each Installment not collected on the property tax roll, in order to compensate the District for the costs of manually collecting the Installments.

Section 9. **Agreement to Collect Installments on the Property Tax Roll.** Participant agrees to allow the District to collect the Installments on the property tax roll, and waives all procedural requirements (including any requirements set forth in Health and Safety Code section 5470 *et seq.*) for such purpose.

Section 10. **Indemnification.** To the fullest extent permitted by law, Participant shall defend (with counsel of the District's choosing), indemnify and hold the District, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, in any manner arising out of, pertaining to, or incident to the construction or installation of the Improvements, or the subject matter of this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Participant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Participant, the District, its officials, officers, employees, agents, or volunteers. This section shall survive any expiration or termination of this Agreement.

Section 11. **Miscellaneous Provisions.**

(a) **Applicable Law.** This Agreement and any disputes relating to this Agreement shall be construed under the laws of the State of California.

(b) **Venue.** In the event of any legal or equitable proceeding to enforce or interpret the terms or conditions of this Agreement, the parties agree that venue shall lie in San Bernardino County.

(c) **Mediation.** If a dispute arises among the Parties relating to or arising from a Party's obligations under this Agreement that cannot be resolved through informal discussions and meetings, the Parties involved in the dispute shall first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of JAMS, AAA, or any other neutral organization agreed upon by the Parties before having recourse in a court of law. Mediation shall be commenced by sending a notice of demand for mediation to the other Party or Parties to the dispute. A copy of the notice shall be sent to all of the Parties.

1. **Selection of Mediator.** A single mediator that is acceptable to the Parties involved in the dispute shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Agreement, if possible, and chosen from lists furnished by JAMS, AAA, or any other agreed upon mediator.

2. The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All mediation costs, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be equally shared by the Parties.

3. Mediation will be conducted in an informal manner. Discovery shall not be allowed. The discussions, statements, writings and admissions and any offers to compromise during the proceedings will be confidential to the proceedings (Evidence Code §§ 1115 – 1128; 1152) and will not be used for any other purpose unless otherwise

agreed by the Parties in writing. The Parties may agree to exchange any information they deem necessary. The Parties involved in the dispute shall have representatives attend the mediation who are authorized to settle the dispute, though a recommendation of settlement may be subject to the approval of each agency's boards or legislative bodies. Either Party may have attorneys, witnesses or experts present.

4. Any resultant agreements from mediation shall be documented in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

5. Nothing in this Article shall relieve any Party from performing its obligations under this Agreement. The Parties shall be required to comply with this Agreement, including the performance of all disputed activity and disputed payments, pending the resolution of any dispute under this Agreement.

6. Any offers to compromise before or after mediation proceedings will not be used to prove a Party's liability for loss or damage unless otherwise agreed by the Parties in writing (pursuant to Evidence Code Section 1152.)

(d) **Modification.** This Agreement may not be altered in whole or in part except by a modification, in writing, signed by the parties hereto.

(e) **Entire Agreement.** This Agreement, together with all the exhibits attached hereto and thereto and terms and conditions incorporated herein (including those terms and conditions made applicable to the Improvements under the SRF Loan), contains all the representations and the entire understanding between the parties. The parties mutually declare that there have not been any oral promises or agreements not contained in this Agreement. Participant further expressly agrees that Participant has not relied upon any oral promises or oral agreements of anyone connected with the District in executing this Agreement.

(f) **Binding Effect.** This Agreement shall inure to the benefit of a binding upon the parties and their respective purchasers, successors, heirs, and assigns.

(g) **Unenforceable Provisions.** The terms, conditions, and covenants of this Agreement shall be construed whenever possible as consistent with all applicable laws and regulations. To the extent that any provision of this Agreement, as so interpreted, is held to violate any applicable law or regulation, the remaining provisions shall nevertheless be carried into full force and effect and remain enforceable.

(h) **Representation of Capacity to Contract.** The party signing this Agreement on behalf of Participant hereby expressly warrants and represents that he/she has the authority to execute this Agreement on behalf of the Participant.

(i) **Opportunity to be Represented by Independent Counsel.** Participant warrants and represents they have been advised to consult independent legal counsel of Participant's own choosing and has had a reasonable opportunity to do so prior to executing this Agreement. Participant further warrants and represents that they have carefully read all of this

Agreement and has executed this Agreement voluntarily and with full understanding of all terms and conditions herein.

(j) **Notices.** All letters, statements, or notices required pursuant to this Agreement shall be deemed effective upon receipt when personally served or sent certified mail, return receipt requested, to the following addresses:

To Participant:

[Insert contact information]

To District:

Hi-Desert Water District
ATTN: General Manager
55439 29 Palms Hwy
Yucca Valley, CA 92284

(k) **Attorney's Fees.** In the event any action or proceeding is filed by anyone to challenge, invalidate, interpret or enforce this Agreement, the prevailing party between the District and the Participant shall be entitled to recover all attorney's fees and litigation expenses in addition to all other relief afforded by applicable law.

HI-DESERT WATER DISTRICT

PARTICIPANT

By:

General Manager

By:

[INSERT NAME OF PARTICIPANT]

ATTEST:

STATE OF CALIFORNIA)
)
COUNTY OF SAN BERNARDINO)

ON _____, before me,
_____, Notary Public,
personally appeared _____

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____(SEAL)

STATE OF CALIFORNIA)
)
COUNTY OF SAN BERNARDINO)

ON _____, before me,
_____, Notary Public,
personally appeared _____

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____(SEAL)

ATTACHMENT A

DESCRIPTION OF PROPERTY

[insert legal description of Property]

ATTACHMENT B

INSTALLMENTS

[insert payment schedule]