

No Recording Fees Required Per
Government Code Section 27383

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

COACHELLA VALLEY WATER DISTRICT
Post Office Box 1058
Coachella, California 92236

APN: (Space above this line is for Recorders use) FILE:
TRA:
DTT:

GRANT OF EASEMENT

This Grant of Easement (“Grant of Easement”) is entered into effective as of this _____ day of _____, 20__ for identification purposes only, by and between COACHELLA VALLEY WATER DISTRICT, a public agency of the State of California (“Grantor”) and _____ (“Grantee”).

RECITALS

A. Grantor is the owner of that certain real property located in the County of Riverside, State of California and described in **Exhibit “A”** attached hereto (“Property”).

B. Grantee desires to acquire from Grantor and Grantor desires to grant to Grantee an easement over certain portions of the Property in accordance with the terms and conditions set forth in this Grant of Easement.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, GRANTOR AND GRANTEE HEREBY AGREE AS FOLLOWS:

1. GRANT OF EASEMENT.

(a) Subject to the provisions set forth herein, Grantor grants and conveys to Grantee a non-exclusive easement (“Easement”) for those uses set forth on **Exhibit “B”** attached hereto in, on, over, under, along, through and across that portion of the Property described in **Exhibit “C”** and depicted on **Exhibit “D,”** attached hereto (“Easement Area”).

(b) Grantee is responsible for compliance with all local, state and federal environmental laws and regulations in connection with undertaking the Work (as defined herein), including but not limited to California Department of Fish and Game Streambed Alteration Agreement (Fish and Game Code, section 1600 et seq.) requirements, California Regional Water Quality Control Board, Colorado River Region (“Regional Board”) Section 401 Permit, Waste Discharge Requirements, best management practices, and any other applicable Regional Board requirements, hazardous waste release/discharge requirements, and U.S. Army Corps of Engineers Section 404 Permitting requirement, as applicable.

Grantee is aware that some or all of the Work to be undertaken under this Grant of Easement may take place in regulated Waters of the United States or Waters of the State of California. In addition, to the extent issuance/and or recordation of this Grant of Easement or other action triggers a requirement for Grantor or its affiliates to comply with the California Environmental Quality Act (CEQA) or the National Environmental Policy Act (NEPA), Grantee shall be responsible to reimburse Grantor for all costs of such compliance. Grantee shall be responsible for compliance with all terms and requirements of all local, state and federal environmental laws, including those that require permits to perform operation, maintenance and activities in the Waters of the United States or Waters of the State of California.

(c) The Easement granted herein is subject to Grantee's strict compliance with the terms of this Grant of Easement; provided that Grantee's use of the Property shall not interfere with the use, enjoyment and operation thereof by Grantor or any person claiming through or under Grantor, including successors and assigns. Grantee understands, acknowledges and agrees that the rights granted herein are subordinate to Grantor's use and enjoyment of the Easement Area. Grantor reserves the right to occupy and use the Property for any purpose.

2. COMPLIANCE WITH LAWS.

(a) Grantee shall at all times comply with all, and shall cause all Grantee's contractors, subcontractors, employees, invitees, representatives, agents or any other person directly or indirectly employed by any of the foregoing or reasonably under the control of any of the foregoing, or for whose acts any of the foregoing may be liable (collectively, "Representatives") to comply with all applicable governmental laws, statutes, regulations and other restrictions in connection with the Easement.

(b) Grantee shall obtain, at its sole cost and expense, all government permits and authorizations of whatever nature, required by governmental agencies for Grantee's use of the Easement Area. All who enter upon the Property pursuant to this Grant of Easement shall do so at their own risk and shall at all times comply with all instructions and directions of Grantor.

3. INDEMNITY. Grantee shall indemnify, defend (with legal counsel designated by Grantor) and hold harmless Grantor and Grantor's directors, officers, employees, consultants, agents, representatives, successors and assigns (collectively, "Grantor Related Persons") from and against all claims, actions, causes of action, rights, defenses, demands, allegations, damages, fines, penalties, liabilities, losses, encumbrances, liens, obligations, settlements, judgments, awards, appeals, costs and expenses (including but not limited to reasonable fees and costs of attorneys, expert witnesses and other consultants) of any kind or character in law, equity, or otherwise (individually and collectively, "Claims") regarding, arising out of or in connection with (a) any personal injury or property damage which occurs in or on the Property in connection with entry on the Property by or on behalf of Grantee and its Representatives; (b) any use or misuse of the Property by Grantee or its Representatives; (c) any act or omission by Grantee or its Representatives, in connection with matters contemplated by this Grant of Easement; (d) performance of any work on the Property by Grantee or its Representatives permitted hereunder, including without limitation, any defect in any such work; (e) any violation or alleged violation by Grantee or its Representatives of any law or regulation now or hereafter enacted; (f) the failure of Grantee to maintain any Improvements (as defined herein) or Easement Area in good condition and repair at all times throughout the term of this Grant of Easement; and (g) any breach of Grantee of its obligations under this Grant of Easement. The foregoing indemnity shall not apply to the extent any

such Claims are ultimately established by a court of competent jurisdiction to have been caused by the gross negligence or willful misconduct of the Grantor Related Persons or any of their Representatives. Except as set forth in the immediately preceding sentence, Grantee, as a material part of the consideration of this Grant of Easement, waives all claims or demands against Grantor and the Grantor Related Persons for any such Claims.

4. **INSURANCE.** As a condition precedent to the recording of this Grant of Easement, Grantee shall provide and thereafter maintain in effect the insurance coverage described in **Exhibit “E”** attached hereto.

5. **APPROVAL.** *Notwithstanding anything contained to the contrary herein, prior to construction of any improvements within the Easement Area (“Improvements”), Grantee shall submit to Grantor the plans and specifications for such Improvements (“Plans”) for approval, which approval may be granted or withheld in Grantor’s reasonable discretion. In the event Grantor disapproves the Plans, Grantee shall cause the Plans to be modified in accordance with the reasons given for disapproval and shall resubmit the Plans to Grantor for approval. The foregoing procedure shall be continued until the Plans have been approved by Grantor, unless Grantor indicates that it will not approve the Plans. The Improvements shall be constructed in strict compliance with the approved Plans. No Improvements other than the approved Improvements may be constructed and maintained within the Easement Area. Approval of Plans by Grantor will not be deemed approval or certification of the structural safety of Improvements or conformance with building or other codes and neither Grantor nor Grantor Related Persons shall be liable for any loss, damage, injury or liability associated therewith.*

6. **AS-IS ACCEPTANCE.** Grantee accepts the Property and the Easement Area in its “as is” condition, with all faults. Grantor makes no warranty or representation, express or implied, regarding the Property, its fitness for use, design or condition for any particular use or purpose or as to the nature or quality of the material or workmanship therein, or the existence of any hazardous substance. Grantor shall have no duty to inspect the Property and shall have no duty to warn any person of any latent or patent defect, condition, or risk that may exist in or around the Property or that might be incurred in the exercise of the rights granted herein. In no way limiting the generality of the foregoing, Grantee hereby waives any claim against Grantor in respect of the condition of the Property, including any defects or adverse conditions not discovered or otherwise known by Grantee as of the date hereof.

7. **PERFORMANCE OF WORK.** This Grant of Easement includes the right to enter the Easement Area to survey, construct, reconstruct, lay, relay, maintain, operate, control, use and remove the Improvements (“Work”). *Any Work by Grantee, or anyone working through or under Grantee pursuant to the terms of this Easement, shall be performed only after giving written notice by first class mail, postage prepaid, addressed to the Grantor as described in Section 12(c) hereof, at least five (5) business days prior to entering the Easement Area. Notwithstanding the foregoing, Grantee shall have the right to enter upon the Easement Area for the purposes set forth herein (i) immediately, in the event of an emergency to eliminate any threat to public health, safety or welfare or; (ii) upon twenty-four (24) hours telephonic notice, with the approval of Grantor, which approval shall not be unreasonably withheld.* Grantee shall use due care in the construction, operation and maintenance of the Improvements.

8. MAINTENANCE AND CONDITION OF LAND. Grantee shall be responsible for any damage done to the Property by Grantee and its Representatives. Grantee shall maintain the Improvements in good condition and repair.

9. LIENS. Grantee shall not suffer or permit to be enforced against the Property any mechanics', materialmen's, contractors' or subcontractors' liens or claims for any damage arising from any survey, tests, grading, repair, restoration, replacement, or any other work, performed by Grantee or its Representatives. Grantee shall pay or cause to be paid all of said liens, claims or demands before any action is brought to enforce the same against the Property. Grantee shall indemnify, defend (with legal counsel designated by Grantor), and hold harmless Grantor and the Property against all liabilities for liens, for labor performed or materials used or furnished in connection with the use of the Property. Notwithstanding the foregoing, Grantee may in good faith and at Grantee's cost, contest the validity of any asserted claim, lien or demand, provided Grantee has furnished the bond required under *California Civil Code § 3143* (or any comparable statute hereafter enacted).

10. PAYMENT OF CLAIMS. In addition to any other rights and remedies hereunder, should Grantee fail within ten (10) calendar days following written request from Grantor to either (a) pay and discharge any lien or claim arising out of Grantee's use of the Property, or to have bonded around such liens or claims, as provided above in Section 8, or (b) indemnify and defend the Grantor Related Persons from and against any Claims as provided above in Section 3, then Grantor may, at its option pay any such lien or Claim or settle or discharge any action therefor or satisfy any judgment thereon, and all costs, expenses and other sums incurred by Grantor in connection therewith (including but not limited to, attorneys' fees) shall be paid to Grantor by Grantee, upon written demand, together with interest thereon at the maximum contract rate permitted by law from the date incurred or paid until repaid. Any default either in such failure to pay or subsequent repayment to Grantor shall, at Grantor's option, constitute a breach under this Grant of Easement.

11. TERMINATION. In the event of the termination of this Easement, whether by agreement of Grantor or Grantee or as a result of an uncured breach by Grantee, Grantee shall, upon receipt of written notice from Grantor, restore the Easement Area and any other portion of the Property that may have been affected by this Easement, to the same condition that it was in prior to the granting of this Easement and prior to the construction of any Improvements by Grantee. Failure by Grantee to complete such required removal and restoration within sixty (60) calendar days following receipt of such notice from Grantor shall give Grantor the right, but not the obligation, to effect such removal and restoration at Grantee's cost, which cost Grantee will reimburse to Grantor within fifteen (15) calendar days following receipt by Grantee of an invoice from Grantor for the cost of such removal and restoration.

12. GENERAL PROVISIONS.

(a) In any action, judicial reference, arbitration, mediation or other dispute resolution proceeding involving this Grant of Easement, the prevailing party shall be entitled to recover from the other party, in addition to damages, injunctive or other relief, if any, all costs and expenses actually incurred at, before and after a hearing, session, trial or appeal, or in any bankruptcy proceedings, including without limitation, reasonable attorneys' fees, witness fees (expert and otherwise), deposition costs, copying charges and other reasonable expenses.

(b) This Grant of Easement shall be interpreted, enforced and governed under the laws of the State of California

(c) All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and personally delivered, sent by United States registered or certified mail (return receipt requested), or sent by nationally recognized courier service such as Fed Ex, duly addressed to the parties as follows:

GRANTOR: Coachella Valley Water District
51-501 Tyler Street
Post Office Box 1058
Coachella, California 92236
Attention: General Manager
Facsimile: (760) 398-3711

GRANTEE:

Delivery of any notice or other communication hereunder shall be deemed made on the date of actual delivery to the address of the addressee if personally delivered, and on the date indicated in the return receipt or courier's records as the date of delivery to the address of the addressee set forth above. Notice may also be given by telecopier to any party having a telecopier machine compatible with the telecopier machine of the party sending the notice. Any notice given by telecopier shall be deemed delivered when received by the telecopier machine of the receiving party if received before 5:00 p.m. (Pacific Time) on the business day received, or if received after 5:00 p.m. (Pacific Time) or on a day other than a business day (i.e. a Saturday, Sunday or legal holiday), then such notice shall be deemed delivered on the next following business day. The transmittal confirmation receipt produced by the telecopier machine of the sending party shall be prima facie evidence of such receipt. Any party may change its address for purposes of this section by giving notice to the other party as provided in this section. Notwithstanding the prescribed method of delivery set forth above, actual receipt of written notice by the natural persons designated above shall constitute notice given in accordance with this Grant of Easement on the date received, unless deemed earlier given pursuant to the foregoing section.

(d) Each person signing this Grant of Easement represents and warrants that he or she has the proper authority to bind the party on whose behalf he or she signs this Grant of Easement.

(e) This Grant of Easement shall inure to the benefit of the parties hereto and their respective successors and assigns and shall run with the Property in accordance with the provisions of Section 1468 of the California Civil Code.

(f) This Grant of Easement constitutes the entire agreement between the parties pertaining to the subject matter herein and all prior and contemporaneous agreements, representations and understandings of the parties are hereby superseded and merged herein. No supplement, modification or amendment of this Grant of Easement shall be binding unless in writing and executed by the parties. No waiver of any of the provisions of this Grant of Easement shall be deemed or shall constitute a waiver of

any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. In the event of any dispute hereunder, the sole and exclusive venue shall be in a court of competent jurisdiction in Riverside County, California and the parties submit to the jurisdiction of such court. This Grant of Easement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Grant of Easement as of the date and year first written above.

GRANTOR:

GRANTEE:

Coachella Valley Water District, a public
agency of the State of California

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Doc. No. _____

ENG RW-027
(Rev. 7/27/15)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss

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)

EXHIBIT LIST

EXHIBIT "A"	LEGAL DESCRIPTION OF PROPERTY
EXHIBIT "B"	PERMITTED USES
EXHIBIT "C"	LEGAL DESCRIPTION OF EASEMENT AREA
EXHIBIT "D"	DEPICTION OF EASEMENT AREA
EXHIBIT "E"	INSURANCE REQUIREMENTS

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT "B"

PERMITTED USES

EXHIBIT "C"

LEGAL DESCRIPTION OF EASEMENT AREA

EXHIBIT "D"

DEPICTION OF EASEMENT AREA

EXHIBIT "E"

INSURANCE REQUIREMENTS

MINIMUM SCOPE AND LIMIT OF COVERAGE. Prior to and at all times after executing the Grant of Easement, Grantee shall procure and maintain, at its sole cost, for the duration of Grantee's obligations hereunder, not less than the following coverage and limits of insurance, with insurers and under policy forms satisfactory to Grantor.

(a) **Commercial General Liability Insurance** written on an occurrence basis of at least \$1,000,000 per occurrence/\$2,000,000 aggregate including ongoing operations, products and completed operations, property damage, bodily injury, personal and advertising injury, and premises/operations liability.

(i) Coverage for Commercial General Liability insurance shall be at least as broad as Insurance Services Office Commercial General Liability coverage form (Occurrence Form CG 00 01) or exact equivalent.

(ii) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products and completed operations liability; or (4) contain any other exclusion contrary to the Grant of Easement.

(iii) The policy shall be endorsed to name Coachella Valley Water District, its employees, directors, officers, agents, and volunteers as additional insureds using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(b) **Commercial Automobile Liability Insurance** written on a per occurrence basis of at least \$1,000,000 per occurrence for bodily injury and property damage.

(i) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto)

(ii) The policy shall be endorsed to name Coachella Valley Water District, its employees, directors, officers, agents, and volunteers as additional insureds.

(c) **Workers' Compensation Insurance/Employers Liability** as required by the State of California with statutory limits or be legally self-insured pursuant to Labor Code section 3700 *et seq.* along with Employer's Liability limits of no less than \$1,000,000 per occurrence for bodily injury or disease. The workers compensation insurer shall agree, using form WC 00 03 13 or the exact equivalent to waive all rights of subrogation against Coachella Valley Water District, its employees, directors, officers, and agents.

OTHER INSURANCE PROVISIONS. All of Grantee's policies shall meet the following requirements and contain all specified provisions/endorsements noted hereunder.

(a) Insurers shall provide Grantor at least thirty (30) days prior written notice of cancellation of any policy required by this Grant of Easement, except that insurers shall provide at least ten (10) days prior

EXHIBIT "E"

INSURANCE REQUIREMENTS - CONTINUED

written notice of cancellation of any such policy due to non-payment of premium. In the event any insurer issuing coverage hereunder does not agree to provide notice of cancellation to Grantor, Grantee shall assume such obligation and provide written notice of cancellation in accordance with the above. If any of the required coverage is cancelled or expires during the term of this Grant of Easement, Grantee shall deliver renewal certificate(s) including endorsements to Grantor at least ten (10) days prior to the effective date of cancellation or expiration.

(b) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Grantee's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by Grantor or any additional insureds shall not be called upon to contribute to any loss.

(c) All required insurance coverages shall contain a provision, or be endorsed, to waive subrogation in favor of Coachella Valley Water District, its employees, directors, officers, and agents or shall specifically allow Grantee to waive its right of recovery prior to a loss. Grantee hereby waives its own right of recovery against Coachella Valley Water District, its employees, directors, officers, and agents.

(d) If at any time during the life of the Easement, any policy of insurance required under this Grant of Easement does not comply with these specifications or is canceled and not replaced, Grantor has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Grantor will be promptly reimbursed by Grantee. In the alternative, Grantee may terminate this Grant of Easement.

(e) Grantor may require Grantee to provide complete copies of all insurance policies and endorsements in effect for the duration of the Easement.

(f) The general liability and automobile liability programs may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by Grantor, and provided that such deductibles shall not apply to Grantor as an additional insured.

(g) Claims made policies are not acceptable

Grantee shall not allow any of its contractors, consultants, subcontractors or subconsultants to commence work under this Grant of Easement until Grantee has verified that contractors, subcontractors, consultants, or subconsultants have secured all insurance required under this Section, including waivers of subrogation and other endorsements. Policies of commercial general liability insurance provided by such contractors, consultants, subcontractors or subconsultants shall be endorsed to name Coachella Valley Water District, its employees, directors, officers, and agents as additional insureds using ISO form CG 20 10 11 85, CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Grantee, Grantor may approve different scopes or minimum limits of insurance for particular contractors, consultants, subcontractors or subconsultants.