

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into this 27th day of October, 2018 ("Effective Date"), by and between TALAVERA COMMUNITY ASSOCIATION, a California non-profit mutual benefit corporation ("Association") and COACHELLA VALLEY WATER DISTRICT, a public agency ("CVWD"). Each party hereto may be hereinafter referred to individually as a "Party" or collectively as the "Parties".

RECITALS

- A. The Talavera Community consisting of 782 homes and related common areas ("Talavera Community") has corrosive soils that are damaging CVWD's existing ductile iron water pipelines within the Talavera Community including, but not limited to, the main lines in the streets and the fire hydrant laterals from the streets to the residential lots or the common area lots ("Pipeline"), creating water leaks. CVWD is in the design stages of a Pipeline replacement project to replace the Pipeline and service connections and to then resurface the affected roads;
- B. CVWD is seeking to plan and coordinate with the Association on the common area road paving schedule and to minimize the disruption to the Talavera Community;
- C. A major project goal is to replace the Pipeline before more major leaks occur causing unplanned disruptions to the Talavera Community and its residents;
- D. The Parties desire to enter into an agreement for replacement of the Pipeline by CVWD within the Talavera Community on the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Pipeline Replacement.** The Pipeline replacement project (i.e. demolition, construction and restoration of areas / amenities impacted by the project including, but not limited to, resurfacing the Association roads -- hereinafter, collectively referred to as the "Project") is currently planned to be divided into 5 phases, prioritized based on the quantity of recent Pipeline leaks, which Project shall be facilitated in accordance with the following:
 - a. CVWD's design of the replacement Pipeline is planned to complete in July 2018 and Phase 1 construction is planned to begin the Fall of 2018.
 - b. Design efforts will require onsite field survey and utility potholing within the Talavera Community streets; repairs of the potholing by CVWD's consultants.
 - c. Construction of the Project is anticipated to be done in phases over 6 or more years.
 - d. Tentative phasing shall be in accordance with **Exhibit A** attached hereto and made a part hereof by this reference. The Parties hereto agree that the phasing can be changed based upon agreement between the Parties.

- e. Paving of each phase of the Project may be divided into sub phases in order to minimize inconvenience to the residents of the Talavera Community ("Residents"), as agreed to between the Parties.
 - f. CVWD shall provide the specifications within the Pipeline trench, including asphalt specifications, for review and approval by the Association, which approval shall not be unreasonably withheld.
 - g. CVWD shall repair all trenching (where the Pipeline is to be facilitated) in accordance with approved specifications.
 - h. Following completion of trenching and backfill, CVWD shall facilitate and pay for a 1.2-inch overlay on all roads where the Pipeline replacement has taken place, with said replacement to be facilitated on curb-to-curb basis and consistent with the approved specifications.
 - i. On-site working hours shall be in accordance with the requirements of the County of Riverside, but, generally, between 7 am to dusk, provided that earlier start times will be facilitated during the Summer, as agreed to between the Parties.
 - j. It is hereby acknowledged that CVWD is a public agency with the right to install, operate and maintain facilities within its easements and rights of way, and to provide service to the Talavera Community and Residents.
- 2. Landscape Areas.** As to those landscaped areas impacted by water meter box replacements required as part of the Project, the Parties hereby agree that CVWD will obtain before/after video and pictures of existing landscaping and facilitate restoration of landscaping and other improvements to the same or better condition following completion of work performed within that phase of the Project.
- 3. Notice to Association.** Any and all construction scheduling shall be provided to the Association, in writing, at least thirty (30) days in advance of any such construction activity.
- 4. Resident Relations.** The Parties hereto agree to the following efforts pertaining to Resident relations and communication provided, however, that all costs of printing and dissemination of materials shall be at the sole expense of CVWD and not the Association:
- a. CVWD's initial communication with Residents can be through the Association's existing mail system to ensure every Resident is notified of the impending work on the Project.
 - b. CVWD's additional communications can be through email, mail, Association website, flyers, door hangers, and town hall style meetings.
 - c. Association will post on its website any and all information that both Parties have agreed should be disseminated to the Residents and Association shall also permit CVWD's dissemination of brochures and other information/materials within Talavera Community.
 - d. Depending on quantity of calls and requests for information, CVWD may need to create a direct line to CVWD as determined in CVWD's reasonable discretion.

- e. FAQ and similar fact brochures shall be prepared and disseminated by CVWD to Residents prior to beginning any Project work, including surveying and pot holing, with schedule details.
 - f. Door hangers shall be created and disseminated by CVWD to notify Residents at least 24-hours prior to commencement of any construction work that will take place in proximity to the applicable Residents' homes and/or impact any access to Resident's home and/or cause any driveway blockages or water shut off.
 - g. The Parties understand and agree that Residents respond more positively to efficient, well-coordinated work that does not have the appearance of prolonged disruption or incomplete work in a particular area or street and, as such, the Parties hereby agree to facilitate same.
 - h. Unless otherwise agreed to by the Association, CVWD agrees to make reasonable, good faith efforts so that Individual service connections of Residents and Talavera Community facilities shall be disconnected for no more than four (4) hours.
- 5. Staging and Access Areas.** Association will provide a staging area, the location of which shall be communicated to CVWD prior to commencement of each phase of the Project. The primary Project entrance shall also be communicated to CVWD prior to commencement of each phase of the Project. Exiting and/or using gates not identified as the primary Project entrance will require written approval from Association's Construction Manager or another Designated Representative.
- 6. Insurance.**
- a. CVWD shall require that any business entity or person performing work for CVWD for the Project within the Talavera Community shall furnish certificates of insurance for each of the insurance policies enumerated below to the Association before commencement of work under this MOU. CVWD shall require that all policies for liability protection, bodily injury or property damage shall specifically include the Association including, but not limited to, Association's Designated Representatives, as additional insureds with respect to operations under this MOU, as well as from claims which may arise out of or result from CVWD's operations on the Project, and for which the CVWD may be legally liable, whether such operations be by the CVWD, by a subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Commercial General Liability - CVWD's consultants and contractors shall provide Commercial General Liability insurance covering claims for Bodily, Injury, Personal and Advertising Injury, and Property Damage on a policy form that provides coverage at least as broad as coverage provided under the Insurance Services Office (ISO) form CG 00 01, and that includes, but is not limited to, the coverage limits and coverage provisions outlined below.

- b. The required coverage limits shall be the greater of the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, including applicable Umbrella or Excess Limits, or the following:

\$1,000,000 per Occurrence	Bodily Injury or Property Damage Liability;
\$1,000,000 per Occurrence	Personal and Advertising Injury Liability;
\$2,000,000	General Aggregate;
\$2,000,000	Products - Completed Operations Aggregate.

- i. Coverage must be on an “occurrence” basis.
 - ii. Coverage must be included for “products-completed operations” without any “prior work” coverage limitation or exclusion applicable to any Services to be performed under this Agreement.
 - iii. Contractual Liability coverage at least as broad as coverage provided by the ISO CG 00 01 policy form must be included.
 - iv. To the fullest extent permitted by law, the Association and its directors, officers, officials, agents, volunteers, and employees must be covered as Additional Insureds on a primary and noncontributory basis. The additional insureds must be covered for:
 - 1) Liability arising out of any premises or property utilized for any Services performed under this Agreement, and
 - 2) Liability arising out of or related to this Agreement, including any Services performed hereunder by or on behalf of CVWD’s consultants and contractors, and
 - 3) Products and completed operations of CVWD’s consultants and contractors.
- c. Workers’ Compensation and Employer’s Liability - Workers’ Compensation coverage shall be on a state-approved policy form providing statutory benefits as required by law, and Employer’s Liability coverage with limits no less than \$1,000,000 per accident or disease for all covered losses.
- d. Business Auto Liability. CVWD’s consultants and contractors shall provide Business Auto Liability coverage on a policy form that provides coverage at least as broad as coverage provided under ISO Business Auto Coverage form CA 00 01, and that includes, but is not limited to, the coverage limits and coverage provisions outlined below.
- i. Coverage must be provided for “Bodily Injury” and “Property Damage” Liability caused by an accident and resulting from the ownership, maintenance or use of covered autos.
 - ii. The required coverage limits shall be the greater of the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, including applicable Umbrella or Excess Limits, or the minimum limits specified below:
 - iii. \$1,000,000 per Occurrence/Accident for Bodily Injury and Property Damage Liability.

- iv. Covered "autos" must include all owned, non-owned and hired vehicles.
 - e. Notice of Cancellation/Non-Renewal/Material Reduction:

CVWD's consultants and contractors agrees to provide written notice to the Association thirty (30) days prior to cancellation of coverage required under this Agreement, or of any material reduction or non-renewal of such coverage, other than for non-payment of premium which shall require a 10-day prior written notification. Replacement of coverage with another policy or insurer, without any lapse in coverage or any reduction below these requirements does not require notice beyond submission to the Association of an updated Certificate of Insurance and related additional insured endorsements.
 - f. A true and complete copy of each Subcontractor's Additional Insured Endorsement naming the Association as an Additional Insured on each Subcontractor's Liability Policy must be provided to the Association prior to said Subcontractor's commencement of work on the Project.
- 7. Indemnification.** CVWD will indemnify and hold harmless Association, its officers, directors, employees, agents, and all owners of units within the Talavera Community from all claims, demands, liability and/or expense, including without limitation attorneys' fees, arising out of or encountered in connection with this MOU and with the prosecution of work under it, to the extent and in the proportion that such claims, demands, liability and/or expense are caused by CVWD, its officers, agents or employees, subcontractors or sub-subcontractors employed on the Project, their officers, agents or employees, or by products installed on the Project by CVWD. In addition, CVWD will cause the following indemnification clause to be added to each contract that results in any construction within the Project (and provide a copy of same to the Association).
- a. To the fullest extent allowed by law, Contractor shall defend (with counsel of CVWD's and Association's choosing, indemnify and hold CVWD and Association and their respective officials, officers, agents, employees, and representatives and all owners of units within the Talavera Community free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, regardless of whether the allegations are false, fraudulent, or groundless, arising out of, related to, or in connection with the Work or this Contract, including claims made by subcontractors for nonpayment, and including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense, and risk, with counsel of CVWD's and Talavera Community's choosing, any and all such suits, actions or other legal proceedings of every kind that may be brought or instituted against CVWD and Association, and their respective officials, officers, agents, employees, and representatives. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against CVWD and Association and their respective officials, officers, agents, employees, and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse CVWD and Association and their respective officials, officers, agents, employees, and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

- b. Contractor agrees to pay, or reimburse CVWD and CVWD's Representative, for regulatory agency or court-imposed fees, fines, or penalties imposed on CVWD and CVWD's Representative arising from Contractor's failure to complete the Work in a timely manner and/or in accordance with the Contract Documents and any applicable permits or Applicable Laws. Contractor's responsibility and obligation to pay, or reimburse CVWD and CVWD's Representative, for these fees, fines, or penalties shall be in addition to the assessment of liquidated damages for late completion of the Work.
- 8. Board Involvement.** CVWD agrees to attend any and all necessary meetings with the Association's Construction Manager or other Designated Representative and/or Association's Board of Directors to plan and discuss the progress of the Project.
- 9. Notice.** Each notice and other communication required or permitted to be given under this MOU ("Notice") must be in writing. Notice is duly given to another Party upon:
- a. Hand delivery to the other Party;
 - b. Receipt by the other Party when sent by facsimile to the address and number for such Party set forth below (provided, however, that the Notice is not effective unless and until a duplicate copy of the facsimile Notice is promptly given by one of the other methods permitted under this paragraph);
 - c. Three (3) business days after the Notice has been deposited with the United States Postal Service as first-class, certified mail, return-receipt requested, postage prepaid and addressed to the Party as set forth below; or
 - d. The next business day after the Notice has been deposited with a reputable over-night delivery service, prepaid, addressed to the Party as set forth below with next-business-day delivery guaranteed, provided that the sending Party receives a confirmation of delivery from the delivery service provider.

Association: Talavera Community Association
 77-772 Flora Road, Suite A
 Palm Desert, CA 92211
 Attn: Community Association Manager
 Facsimile: 800-996-3051

With copy to: Tinnelly Law Group
 27101 Puerta Real, Suite 250
 Mission Viejo, CA 92691
 Attn: Terri A. Morris, Esq.
 Facsimile: 949-588-0866

CVWD: Coachella Valley Water District
 51-501 Tyler Street
 Post Office Box 1058
 Coachella, CA 92236-1058
 Attn: General Manager, Domestic Water & General District
 Facsimile: 760-398-3711

10. Dispute Resolution. In the event that a dispute arises between the Parties regarding either Party's performance under this Agreement, the Parties shall first conduct an informal conference to meet and confer for settlement of the issues in dispute prior to initiating any formal dispute resolution process. Following conclusion of the meet and confer conference, if the dispute has not been resolved, the dispute shall be submitted to nonbinding mediation, with the Parties sharing the associated costs equally. **Unless otherwise agreed upon by the parties, the mediator must be a retired Superior or Appellate Court Judge.** If the Parties cannot agree upon a mediator, each Party shall select a mediator and those mediators shall select a qualified neutral third party to mediate the dispute. Each Party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If the dispute is not resolved in mediation, if mutually agreed upon, the Parties may then elect to participate in binding arbitration.

11. Miscellaneous Provisions.

- a. This MOU shall not be construed against the Party preparing it but shall be construed as if all Parties prepared this MOU and in accordance with the laws of the State of California.
- b. If any term or provision of this MOU, or application of any term or provision, is held invalid or unenforceable as to any Party, the balance of the MOU shall not be affected, and each remaining term and provision of this MOU shall be valid and enforceable to the fullest extent permitted by law.
- c. Time is of the essence of this MOU.
- d. **Venue.** Venue for any mediation, arbitration or litigation relating to this MOU or the performance thereunder shall be Riverside County, California.
- e. **Integration/Conflict.** This MOU contains the entire understanding between CVWD and the Association relating to the transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, or statements, oral or written, are merged herein and shall be of no further force or effect. This MOU may not be amended or added to except by an instrument in writing signed by the Parties. All other provisions, conditions and requirements of the MOU shall remain in full force and effect.
- f. **No Partnership.** This MOU shall not constitute nor be deemed to constitute a partnership or joint venture between CVWD and Association.
- g. **Exhibits and Recitals.** All exhibits and recitals mentioned and included in this MOU are incorporated into this MOU by this reference and made an operative part hereof.
- h. **Authority to Bind.** Each Party signing this MOU represents that it has full legal power, authority and right to execute, deliver and perform its obligations under this MOU and each Party's performance hereunder and the transaction contemplated hereby have been duly authorized by all requisite actions on the part of such Party and no remaining action is required to make this MOU binding.
- i. **Successors and Assigns.** This MOU shall bind and inure to the benefit of the Parties and their respective successors, assigns and legal representatives.

- j. **Interpretation.** This MOU shall be construed according to its fair meaning and as if prepared by all Parties hereto. This MOU shall be construed in accordance with the laws of the State of California in effect at the time of the execution of the MOU. Titles and captions are for convenience only and shall not constitute a portion of this MOU. As used in this MOU, masculine, feminine or neuter genders and singular or plural numbers shall each be deemed to include the others wherever and whenever the context so dictates.

- k. **Counterparts.** This MOU may be executed in counterparts and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and all counterparts taken together shall constitute one and the same MOU, which shall be binding and effective on all Parties.

The undersigned have subscribed their names on the day and year as written above.

Association

TALAVERA COMMUNITY ASSOCIATION
A California Nonprofit Mutual Benefit Corporation

By: Stephanie Jackson
Stephanie Jackson, Vice President

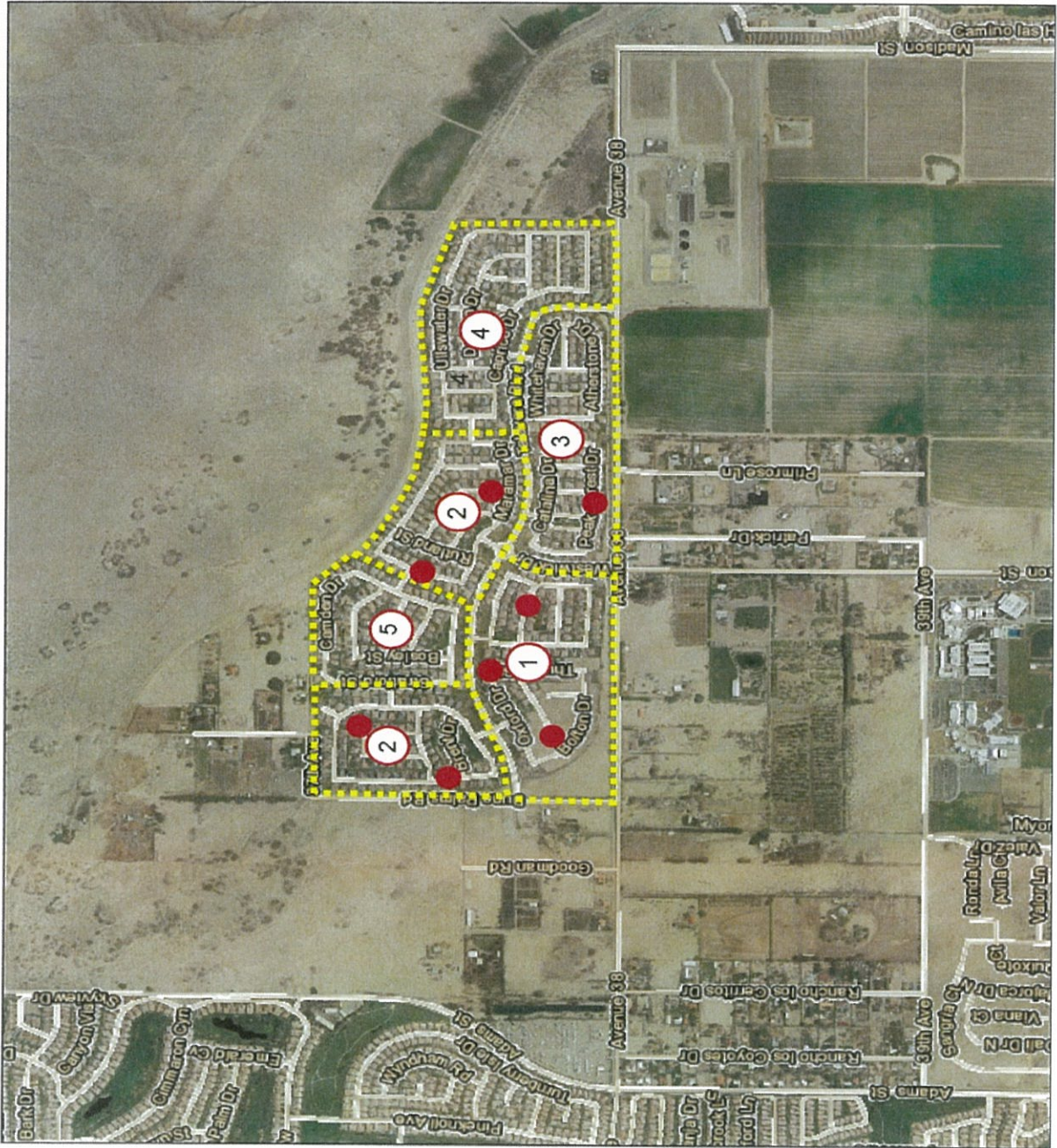
CVWD

COACHELLA VALLEY WATER DISTRICT
A Public Agency

By: _____
J. M. Barret, General Manager

EXHIBIT A
PROJECT PHASING SCHEDULE
(See Attached)

TALAVERA COMMUNITY TENTATIVE PHASING "EXHIBIT A"



Legend

- PREVIOUS LEAKS
- ③ PHASE
- - - PHASE LIMITS

Location

Notes

Coachella Valley Water District
 P.O. Box 1058
 Coachella, CA 92236
 www.cvwtd.org