

GROWER AGREEMENT

THIS AGREEMENT is entered into as of ____, 202__ by and between COACHELLA VALLEY WATER DISTRICT (“CVWD”) and _____ (“Grower”), each of which is referred to herein individually as “Party” and collectively as “Parties.”

RECITALS

- A. On, _____, 2024, CVWD’s Board of Directors adopted Resolution No. 24-__ establishing CVWD’s LC Conservation Program (“Program”) to assist in a coordinated effort to protect critical reservoir levels in the Colorado River Basin during the current drought consisting of the voluntary, temporary, and compensated Conservation of Colorado River water used on farmland within CVWD.
- B. CVWD and the United States Bureau of Reclamation have on _____ entered into the System Conservation Implementation Agreement (SCIA) Between the United States Bureau of Reclamation and the Coachella Valley Water District to Implement the Lower Colorado Conservation and Efficiency Program (LC Conservation Program), SCIA No. 23-XX-30-W0821
- C. **[Alt. 1** Grower is the owner of certain real property that is Eligible Land as defined in the Program Rules and Regulations and is more particularly described in Exhibit C-1 attached hereto (“Grower’s Land”), totaling __ acres.] **[Alt. 2** Grower is the lessee of certain real property that is Eligible Land as defined in the Program Rules and Regulations and is more particularly described in Exhibit C-1 attached hereto (“Grower’s Land”), totaling __ acres, and has obtained the consent of the owner to enter into this Agreement.]
- D. CVWD has received an Application from Grower for participation in CVWD’s Program and CVWD desires to contract with Grower to undertake Conservation on Grower’s Land as provided in this Agreement.
- E. CVWD has determined that the Historical Baseline of Water Use on Grower’s Land is as set forth in Exhibit C-2 hereto.

NOW, THEREFORE, in consideration of the mutual promises, covenants and obligations set forth herein, and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The above Recitals are incorporated herein by this reference and

are made a part of this Agreement.

2. Definitions

As used in this Agreement, the following terms shall have the following meanings:

2.1 “AF” means acre-foot

2.2 “Conservation” or “Conserving” means not undertaking or permitting the activities described in Section 4.1 of this Agreement

2.3 “Conservation Commencement Date” means the date on which Grower’s obligations to engage in Conservation begins.

2.3 “Conservation Termination Date” means the date on which Grower’s obligations to engage in Conservation ends under this Agreement.

2.4 “Conserved Water” means the amount of Colorado River water saved by Conservation on the Grower’s Land that is verified by CVWD.

2.5 “Effective Date” is the date set forth in the introductory paragraph of this Agreement.

2.6 “Eligible Land” means land within CVWD that has an established history of irrigation of commercial crops with Colorado River water from CVWD’s irrigation distribution system.

2.7 “Grower” means the owner and/or lessee of the Grower’s Qualified Land.

2.8 “Grower’s Land” means that Eligible Land described in Exhibit C-1 of this Agreement.

2.9 “Reclamation” means The United States Bureau of Reclamation.

2.10 “Participation Period” means that period of time beginning on the Conservation Commencement Date and ending on the Conservation Termination Date

2.11 “Party” means CVWD, or Grower as applicable.

2.11 “SCIA” means the System Conservation Implementation Agreement (SCIA) between the United States Bureau of Reclamation and the Coachella Valley Water District to Implement the Lower Colorado Conservation and Efficiency Program (LC Conservation Program), SCIA No. 23-XX-30-0821

2.13 “Termination Date” means the date this Agreement terminates as more particularly specified in Section 3.1.

3. Term of the Agreement

3.1 This Agreement shall terminate on December 31, 202_.

3.2 Continuing Obligations. The obligations and rights of the Parties under the following provisions shall survive the termination of this Agreement section 7 (Remedies); Section 8 (Dispute Resolution); and section 9 (Miscellaneous Provisions).

4. Obligations of Grower

The Grower shall, throughout the Participation Period, including commencing on the Conservation Commencement Date and through and including the Conservation Termination Date, perform and comply with the following obligations:

4.1 Conservation Obligation. Grower shall, at Grower’s sole cost and expense, comply with its Conservation obligations under this Agreement by not undertaking or permitting the following activities on Grower’s Land: (1) the growing of agricultural crops or any other vegetation (2) the application of water (other than rain that naturally falls on the Grower’s Land); (3) the application, use or extraction of groundwater; and (4) the use or collection of surface water provided, however that water may be utilized for dust control subject to Section 4.2. If a crop or crops already exist on the Grower’s Land, the Grower shall discontinue all further irrigation thereof.]

4.2 Weed and Dust Control. Grower agrees to be responsible for all required weed control and dust control on the Grower’s Land at Grower’s sole cost and expense.

4.3 Cultivation on Other Lands. Grower agrees not change land maintenance and crop cultivation practices on other lands in CVWD owned or cultivated by Grower in such a manner that the consumption of surface water or groundwater

is increased over the amount that would have been consumed on such land absent this Agreement.

4.4 Payment of taxes and assessments. Grower shall pay all real and personal property taxes, assessments or other charges assessed against the Grower's Land or improvements to Grower's Land. All tax payments shall be made directly to the charging authority prior to the delinquency date thereof.

4.5 Irrigation Water Availability Assessment (IWAA)

For purposes of satisfying the Irrigation Water Availability Assessment assessed for the Grower, the Grower shall be presumed to have paid irrigation water service charges each month during the Participation Period as if the Grower had used irrigation service in the amount of specified for that month in Exhibit C-2.

4.6 Entry for Inspection. Grower shall, upon twenty-four (24) hours prior written notice, allow CVWD and/or the Bureau of Reclamation to enter onto and inspect the Grower's Land during the Participation Period. Such entry shall be for the purpose of inspection to confirm Grower's performance of its Conservation Obligations under this Agreement. In addition, Reclamation may without notice visually inspect the lands from county roads and use satellite imagery in conjunction with its *Remotely Sensed Data Acquisition Program* to determine that Grower's lands are being fallowed and that conservation measures have been implemented and are being operated/used to create System Conservation Water.

5. Payments by CVWD to Grower

5.1 CVWD's Obligation. All payments to Grower for Conserved Water as provided in this Agreement shall be made by CVWD on the dates set forth in Exhibit C-3 hereto.

5.2 Payment for Conserved Water. CVWD will pay \$340/af of Conserved Water as verified by CVWD. CVWD will determine the amount of verified Conserved Water by using the schedule of Historical Baseline of Water Use set forth in Exhibit C-2 and subtracting from that the amount of water applied to the Grower's Land during each month.

5.3 Installment Payments. The payments shall be made in two installments as described in Exhibit C-3.

5.4 Repayment to CVWD of Excess Payments. If Reclamation determines that water was not conserved by the Grower for which payment was made by Reclamation to CVWD, the grower shall reimburse CVWD for any payments made by CVWD to grower for the water not conserved.

6. Representation and Warranties

6.1 Representations and Warranties of Grower

As a material condition for CVWD to enter into this Agreement, Grower represents, warrants and covenants as follows:

6.1.1 Ownership/Tenancy

Grower is the fee owner and/or lessee of the Grower's Land shown in Exhibit C-1

6.1.2 No Litigation or Impediment

No legal impediment exists to prevent Grower from entering into and performing under this Agreement.

7. Remedies.

In the event Grower defaults in its obligations, warranties or obligations as set forth in this Agreement, CVWD shall have the right to terminate this Agreement. On the occurrence of an event of default by Grower with regards to Grower's Conservation obligations under subsections 4.1 (Conservation Obligation), 4.2 (Entry for Inspection), 4.3 (Cultivation of Other Lands), or 4.7 (Land Management Measures), in addition to CVWD's right to terminate this Agreement, CVWD may elect to suspend any payment obligation it may have under this Agreement until Grower complies with the terms of this Agreement and cures such failure to perform Grower's obligations under subsections 4.1 (Conservation Obligation), 4.2 (Entry for Inspection), or 4.3 (Cultivation of Other Lands) (if this Agreement is not terminated prior to such cure). Notwithstanding such suspension of CVWD's payment obligations, this Agreement shall remain in effect unless and until CVWD elects to terminate this Agreement as set forth above. If CVWD has suspended payment to Grower under this section but this Agreement has not been terminated, CVWD shall promptly pay Grower any monies withheld and then due Grower for Conserved Water verified by CVWD, without interest, when Grower again fully

complies with its obligations and has cured its breach or default under this Agreement.

8. Dispute Resolution

8.1 Delegation of Authority to Resolve Disputes

Any dispute between the Parties, including any dispute as to the existence of an Event of Default or whether an Event of Default has been cured, or any dispute by the Grower over the amount of Conserved Water determined, shall be resolved pursuant to sections 14.4 (Appeals) and 14.5 (Exhaustion of Administrative Remedies) of Part 14 of the Canal Irrigation and Drainage System Rules and Regulations. After a decision by the General Manager or his designee, any Party may bring an action in a court of competent jurisdiction to resolve the dispute.

9. Miscellaneous Provisions

9.1 Governing Law. This Agreement is entered into in Riverside County, California and shall be interpreted, governed by and construed under the laws of the State of California and any applicable federal laws.

9.2 No Third-Party Rights. This Agreement does not create rights in or to grant remedies to any third party or to others as a beneficiary of this Agreement or of any duty, covenant, obligation or undertaking established hereunder.

9.3 Assignment. Grower may not assign, delegate, or otherwise transfer this Agreement, any interest therein, or the Party's disputes or obligations under this Agreement without the prior written consent of CVWD, which consent may not be unreasonably withheld.

9.4 Amendment. Neither this Agreement nor any provision herein may be waived, modified, amended, or discharged, except by an instrument in writing signed by both Parties, and then only to the extent set forth in such writing.

9.5 Severability. In the event that a court of competent jurisdiction determines that a provision included in this Agreement is legally invalid, illegal or unenforceable, and such decision becomes final, such provision shall be deemed to be severed and deleted from this Agreement and the balance of this Agreement shall be reasonably interpreted so as to affect the intent of the Parties hereto. The Parties further agree to replace such void or unenforceable

provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provision.

- 9.6 Subject Headings.** Subject headings are for convenience and not for interpreting this Agreement.
- 9.7 Time is of the Essence.** Time is of the essence of this Agreement and each of its provisions.
- 9.8 No Fiduciary Relationship.** Nothing in this Agreement shall be deemed to create a trust relationship between CVWD and Grower, it being expressly understood and agreed that CVWD's obligations hereunder are not fiduciary in nature.
- 9.9 Opinions, Determinations and Consents.** Where the terms of this Agreement provide for an action or decision to be based upon the approval, review, or determination of a Party, such terms are not intended to be and shall not be construed as permitting such opinion, judgment, approval, review or determination to be arbitrary, capricious, or unreasonable. If this Agreement provides that a consent or approval shall not be unreasonably withheld, such consent or approval shall be granted or withheld without unreasonable delay, and, if consent is withheld or approval not granted, the reasons for withholding consent or approval shall be stated with reasonable detail.
- 9.10 Entire Agreement.** This Grower Agreement constitutes the entire understanding of the Parties hereto and supersedes any previous or contemporaneous agreements or understandings among the Parties with respect to the subject matter hereof, whether oral or written. It may not be modified or amended except in writing executed by the Parties.
- 9.11 Notice Procedures and Designation of Mailing Address.** All notices, requests, demands and other communications under this Grower Agreement must be (1) in writing; (2) delivered in person (by hand or by courier) or sent by regular or certified return receipt requested U.S. mail with postage prepaid, or sent by overnight delivery with a nationally recognized carrier, with charges prepaid or charged to sender's account; and (3) properly addressed as follows:

If to CVWD:

General Manager
Coachella Valley Water District
P O Box 1058
Coachella, CA 92236

If to Grower:

- 9.12 Joint and Several Liability.** If more than one individual or entity comprises Grower, the obligations imposed on each individual or entity that comprises Grower under this Agreement shall be joint and several
- 9.13 Binding Effect.** Subject to the provisions otherwise contained in this Agreement, this Agreement shall inure to the benefit of and be binding on the heirs, executors, administrators, successors and permitted assigns of the respective Parties thereto.
- 9.14 Exhibits.** The Exhibit “C-1” (Legal Description of Grower’s Land), Exhibit “C-2” Historical Baseline of Water Use for Grower’s Land), and Exhibit “C-3” (Payment Schedule), attached to this Grower Agreement are a part of this Agreement and incorporated herein by this reference.
- 9.15 Counterparts.** This Agreement and any amendment thereto may be executed in two or more counterparts, and by each Party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document. Any signature page of this Agreement or of such an amendment, may be detached from any counterpart without impairing the legal effect of any signatures thereon, and may be attached to another counterpart identical

inform thereto but having attached to it one or more additional signature pages. In proving this Agreement or any such amendment, it shall not be necessary to produce or account for more than one counterpart thereof signed by the Party against whom enforcement is sought.

9.16 Further Assurances. Each Party hereto, upon the request of another Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

9.17 Consultation with Legal Counsel. Grower has had the opportunity to consult with its legal counsel regarding this Agreement.

IN WITENESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first written above.

EXHIBIT C-1

LEGAL DESCRIPTION OF GROWER'S LAND

EXHIBIT C-2

HISTORICAL BASELINE OF WATER USER FOR GROWER'S LAND

CVWD has determined the Historical Baseline of Water Use for Grower's Land described in Exhibit C-1 for each month is as follows:

January: AF

February: AF

March: AF

April: AF

May: AF

June: AF

July: AF

August: AF

September: AF

October: AF

November: AF

December: AF

EXHIBIT C-3
PAYMENT SCHEDULE

First Period: xx, 1, 202x – yy,31, 202x

End of First Verification Period:

Payment Date:

Second Period: xx, 1, 202x – yy,31, 202x

End of Second Verification Period:

Payment Date:

**COACHELLA VALLY WATER DISTRICT
LC CONSERVATION PROGRAM
GROWER AGREEMENT**

THE COACHELLA VALLEY WATER DISTRICT (“CVWD”)

AND

_____ **“(GROWER”)**

_____, **202**_____