

**AGENDA FOR A MEETING OF THE
ENGINEERING/EQUIPMENT COMMITTEE
OF THE VALLECITOS WATER DISTRICT
MONDAY, OCTOBER 11, 2021 AT 3:00 P.M.
VIA TELECONFERENCE**

CALL TO ORDER - DIRECTOR ELITHARP

NOTICE TO THE PUBLIC

Pursuant to Section 54953 of the California Government Code, in the interest of public health and safety during the proclaimed State of Emergency and due to the fact that State or local officials have imposed or recommended measures to promote social distancing, the Board of Directors of the Vallecitos Water District will be meeting by teleconferencing. During this period of time, Vallecitos Water District will not be making any physical location available for members of the public to observe the meeting or offer in-person public comment.

Means By Which Members of the Public May Access the Teleconferenced Meeting –

Members of the public may access the teleconferenced meeting via computer, smart device, or by dialing in (audio only). If you would like to join the meeting via computer or smart device, go to the District's website: <https://www.vwd.org/departments/board-of-directors/meetings-minutes> and click on the "Watch Live" icon. If you would like to listen to the meeting live on your phone, dial (888) 788-0099 (Toll Free) or (877) 853-5247 (Toll Free). When prompted, enter the meeting ID and Passcode displayed on the District's website.

PUBLIC COMMENT

Means By Which Members of the Public May Offer Public Comment During the Teleconferenced Meeting – Members of the public are **not** required to submit public comments in advance of the meeting and will be given an opportunity to address the Board of Directors and offer comments in real time. Written public comments or questions may be submitted at least 90 minutes before the Meeting to the following email address: PublicComment@vwd.org.

Members of the public attending the meeting via the Zoom videoconferencing platform can express their desire to offer public comment or provide input on an agenda item at the appropriate time by utilizing the "Raise Hand" function. Persons who have dialed into the meeting and would like to make a comment can enter *9 on their phone and will be identified by their phone number when it is their turn to speak. Additional instructions for online participation will be posted on the District's website: www.vwd.org/meetings.

ITEM(S) FOR DISCUSSION

1. DEVELOPMENT CONSTRUCTION AGREEMENT REVIEW (pp. 3-18)
2. TESLA BATTERY STORAGE SYSTEM UPDATE

3. LAND OUTFALL WEST CONDITION ASSESSMENT UPDATE
4. MEADOWLARK RECLAMATION FACILITY ODOR SCRUBBER NO. 1 REPLACEMENT UPDATE
5. SAGE CANYON TANK REFURBISHMENT UPDATE
6. PALOS VISTA PUMP STATION SOFT STARTER REPLACEMENT PROJECT UPDATE
7. CORONADO HILLS PRESSURE RELIEF VALVE (pp. 19-20)

OTHER BUSINESS

If you have any disability which would require accommodation in order to enable you to participate in this meeting, please call the Executive Secretary at 760.744.0460 ext. 264 at least 48 hours prior to the meeting.

AFFIDAVIT OF POSTING

I, Ann Johnson, Administrative Secretary of the Vallecitos Water District, hereby certify that I caused the posting of this Agenda in the outside display case at the District office, 201 Vallecitos de Oro, San Marcos, California by 5:00 p.m., Thursday, October 7, 2021.

Ann Johnson

**AGREEMENT FOR CONSTRUCTION OF FACILITIES TO BE
DEDICATED TO THE VALLECITOS WATER DISTRICT**

THIS AGREEMENT is entered into on this _____ day of _____, 20__ by and between VALLECITOS WATER DISTRICT (“DISTRICT”), a County Water District organized and operating pursuant to the County Water District Law, California Water Code §§ 30000 et seq., and _____ (“DEVELOPER”), a California _____.

RECITALS

4A. DEVELOPER desires to improve certain real property which lies within the boundaries of the DISTRICT consisting of approximately _____ acres commonly described as Tax Assessor's Parcel Nos. _____ (“PROJECT”).

2B. DEVELOPER has requested that DISTRICT provide water and/or sewer service to parts of the PROJECT upon payment of applicable fees, construction and installation by DEVELOPER of the water and/or sewer facilities (“FACILITIES”) necessary to serve the PROJECT and acceptance of the FACILITIES by the DISTRICT.

3C. DEVELOPER is required to submit plans and specifications for construction of the FACILITIES for review and approval by DISTRICT. The plans and specifications have been prepared by _____ and are identified as _____. DEVELOPER shall construct the FACILITIES pursuant to the approved plans and specifications which shall include DISTRICT's standard specifications and applicable special provisions. DEVELOPER shall comply with all terms of this Agreement. All work covered by this Agreement shall be completed on or before _____, **20220**_. In the event work is not completed by that date, this AGREEMENT shall terminate unless DEVELOPER obtains a written extension from DISTRICT.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

COVENANTS

1.

4. CONDITIONS PRECEDENT TO EXECUTION OF AGREEMENT.

Each of the following items is an express condition precedent to the obligation of the DISTRICT to execute this Agreement:

1.1

4.1 FEES AND CHARGES.

DEVELOPER shall pay all fees and charges due as established by the DISTRICT in its discretion from time to time. All Capital Facility and Connection fees are non-refundable.

1.2

4.2 ENVIRONMENTAL REVIEW.

DEVELOPER shall provide the DISTRICT with all environmental documents previously utilized to obtain approvals for the PROJECT. In the event that the DISTRICT determines additional environmental review is necessary, all fees and costs to prepare this additional environmental review shall be borne solely by the DEVELOPER.

1.3

4.3 APPROVED PLANS AND SPECIFICATIONS.

DEVELOPER shall prepare and submit to the DISTRICT a set of plans and specifications for the FACILITIES. The plans and specifications for the FACILITIES include DISTRICT's standard specifications and applicable special provisions and are incorporated herein by reference as if set forth in full. Approval of these plans and specifications by the DISTRICT shall be a condition precedent to the obligations of the DISTRICT to execute this Agreement. Approval of these plans and specifications by the DISTRICT shall not relieve the DEVELOPER of liability for any improper design or construction of the FACILITIES.

1.4

4.4 CHANGES TO PLANS AND SPECIFICATIONS.

DISTRICT, without liability to DISTRICT, DISTRICT's engineer and their consultants, and each of their directors, officers, employees, and agents, may require such changes, alterations, or additions to the plans and specifications which do not exceed ten percent (10%) of the original DISTRICT estimated cost of the work as may be determined necessary or desirable by DISTRICT in its sole discretion, including those necessary due to errors or omissions in the approved plans or specifications. Changes, alterations, or additions without said 10% limitation may be made for

unforeseen conditions such as rock excavation, unstable soil conditions, or high water tables requiring dewatering.

2. ~~5.~~ **COMMERCIAL GENERAL LIABILITY AND AUTOMOBILE LIABILITY INSURANCE.** Prior to construction of FACILITIES under this Agreement, the DEVELOPER shall provide and maintain the following commercial general liability and automobile liability insurance:

2.1 ~~5.4~~ **COVERAGE.** Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

A. ~~A.~~ Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001);

B. ~~—~~ ~~B.~~ Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any auto).

2.2 ~~—~~ ~~5.2~~ **LIMITS.** The DEVELOPER shall maintain limits no less than the following:

A. ~~—~~ ~~A.~~ General Liability - One million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to DISTRICT) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.

B. ~~—~~ ~~B.~~ Automobile Liability - One million dollars (\$1,000,000) per occurrence for bodily injury and property damage each accident limit.

2.3 ~~5.3~~ **REQUIRED PROVISIONS.** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

A. — — — ~~A.~~ DISTRICT, its directors, officers, employees, and authorized volunteers are to be given additional insured status (~~via~~using ISO endorsement forms CG ~~2010, CG-2033, or insurer's equivalent for general liability~~20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage) as respects: liability arising out of activities performed by or on behalf of the DEVELOPER; products and completed operations of the DEVELOPER; premises owned, occupied or used by the DEVELOPER; and automobiles owned, leased, hired or borrowed by the DEVELOPER. The coverage shall contain no special limitations on the scope of protection afforded to DISTRICT, its directors, officers, employees, or authorized volunteers.

B. ~~B.~~ For any claims related to this project, the DEVELOPER's insurance shall be primary insurance as respects DISTRICT, its directors, officers, employees, or authorized volunteers. Any insurance, self-insurance, or other coverage maintained by DISTRICT, its directors, officers, employees, or authorized volunteers shall not contribute to it.

C. ~~C.~~ Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to DISTRICT, its directors, officers, employees, or authorized volunteers.

D. ~~D.~~ The DEVELOPER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

E. ~~E.~~ Each insurance policy required by this agreement shall state, or be endorsed to state, that coverage shall not be canceled by the insurance carrier or the DEVELOPER, except after thirty (30) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to DISTRICT.

F. Such liability insurance shall indemnify the DEVELOPER and ~~his/her~~ sub-DEVELOPER'sits sub-developers against loss from liability imposed by law upon, or assumed under contract by, the DEVELOPER or ~~his/her sub-DEVELOPER's~~its sub-developers for

damages on account of such bodily injury (including death), property damage, personal injury, completed operations, and products liability.

G. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, underground excavation, and removal of lateral support. Additionally, the automobile liability policy shall cover all owned, non-owned, and hired automobiles.

H. All of the insurance shall be provided on policy forms and through companies satisfactory to DISTRICT.

3. ~~6.~~ **DEDUCTIBLES AND SELF-INSURED RETENTIONS.** Any deductible or self-insured retention must be declared to and approved by DISTRICT. At the option of DISTRICT, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.

4. ~~7.~~ **ACCEPTABILITY OF INSURANCE.** ~~Insurance~~All insurance required hereunder is to be placed with insurers having a current A.M. Best rating of no less than A-:VII or equivalent or as otherwise approved by DISTRICT.

5. ~~8.~~ **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE.** The DEVELOPER and all ~~sub-DEVELOPERs~~sub-developers shall insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the construction site, in accordance with the "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof. The DEVELOPER shall provide employer's liability insurance with limits of no less than \$1,000,000 each accident, \$1,000,000 disease policy limit, and \$1,000,000 disease each employee.

5.1 **Labor Certification.** By its signature hereunder, DEVELOPER certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code. DEVELOPER agrees to comply with such provisions and to require its consultants and contractors to comply with such provisions before commencing any work on the FACILITIES

6. ~~9.~~ **RESPONSIBILITY FOR WORK.** Until the completion and final acceptance by DISTRICT of all the work under and implied by this agreement, the work shall be under the DEVELOPER's responsible care and charge. The DEVELOPER shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by causes of any nature whatsoever.

~~10.~~ **EVIDENCE OF INSURANCE.** Prior to construction of FACILITIES under this Agreement, the DEVELOPER shall file with DISTRICT a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this agreement. Such evidence shall include an additional insured endorsement ~~signed by the insurer's representative~~ and evidence of waiver of rights of subrogation against DISTRICT ~~(if builder's risk insurance is applicable)~~. If umbrella or excess liability coverage is used to meet any required limit(s) specified herein, DEVELOPER shall provide a "follow form" endorsement satisfactory to DISTRICT indicating that such coverage is subject to the same terms and conditions as the underlying liability policy. Such evidence shall also include confirmation that coverage includes or has been modified to include **Required Provisions**, A-E.

7. The DEVELOPER shall, upon demand of DISTRICT, deliver to DISTRICT such policy or policies of insurance and the receipts for payment of premiums thereon.

8. ~~11.~~ **CONTINUATION OF COVERAGE.** If any of the required coverage expires during the term of this agreement, the DEVELOPER shall deliver the renewal certificate(s) including the general liability additional insured endorsement and evidence of waiver of rights of subrogation against DISTRICT (if builder's risk insurance is applicable) to DISTRICT at least ten (10) days prior to the expiration date.

9. ~~12.~~ **SUB-DEVELOPERS.** In the event that the DEVELOPER employs other ~~DEVELOPERS (sub-DEVELOPERS)~~ developers (sub-developers) as part of the work covered by this agreement, it shall be the DEVELOPER's responsibility to require and confirm that each ~~sub-DEVELOPER~~ sub-developer meets the minimum insurance requirements specified above.

10. ~~13.~~ **SECURITY.** Upon execution of this Agreement and prior to Board approval, DEVELOPER shall provide the DISTRICT with a payment bond and a performance bond, each in the amount of \$ _____. Each payment and performance bond shall represent 100% of the estimated construction costs of the FACILITIES. Bonds shall be furnished by ~~surety companies satisfactory to the DISTRICT. Surety companies, to be acceptable to the DISTRICT, must have an acceptable rating from Best's Key Rating Guide~~ an admitted surety insurer, as

defined in Code of Civil Procedure section 995.120, authorized to do business ~~and have an agent for service of process in~~ in the State of California and satisfactory to the DISTRICT.

If at any time a surety on any such bond is declared as bankrupt or loses its right to do business in the state of California for any reason, DEVELOPER shall, within ten (10) days after notice from the DISTRICT, substitute acceptable bonds in such form and sum and signed by such other surety or sureties as may be satisfactory to the DISTRICT in its sole discretion. The premium on such bonds shall be paid by the DEVELOPER.

In the event the PROJECT is sold, transferred or assigned the performance and payment bonds shall remain in effect unless new bonds acceptable to the DISTRICT have been provided.

The performance and the payment bonds must remain in effect throughout the period for performance of the work until the work is accepted by formal action of the Board of Directors of the DISTRICT.

In lieu of providing these performance and payment bonds and subject to the DISTRICT's approval, DEVELOPER may provide the DISTRICT with a cash deposit to replace either or both of these bonds, or may provide the DISTRICT with an Instrument of Credit, or Irrevocable Letter of Credit on a form acceptable to the DISTRICT. No substitution or modification of the DISTRICT's standard Instrument of Credit or Irrevocable Letter of Credit shall be accepted without approval of the DISTRICT.

11. ~~14.~~ DEVELOPER'S FAILURE TO PROVIDE INSURANCE OR BONDS. In the event any insurance or security provided to the DISTRICT in accordance with this Agreement is terminated or canceled for any reason, or is limited in the scope of coverage required by this Agreement, DEVELOPER shall have thirty (30) consecutive days from written notice from DISTRICT to procure the required insurance or security. The failure of DEVELOPER to present alternative insurance or security acceptable to DISTRICT within this thirty- (30-) day period shall constitute a material breach of this Agreement entitling the DISTRICT to unilaterally terminate this Agreement or sue DEVELOPER for damages at the election of the DISTRICT.

12. ~~15.~~ EASEMENTS. Prior to execution of this Agreement, DEVELOPER shall provide DISTRICT with a current preliminary title report issued within the last 90 days covering all properties in which easements are to be granted to the DISTRICT. The cost of the preliminary title report shall be borne solely by DEVELOPER. DEVELOPER shall provide the DISTRICT with such easements as the DISTRICT may require, as determined by the DISTRICT in its sole discretion. All easements to be conveyed to the DISTRICT shall be prepared on the

DISTRICT's standard form easements. All easements shall: (1) be of a width satisfactory to DISTRICT, in no case less than twenty (20) feet without specified approval of the Board of Directors; (2) be free and clear of all liens and/or encumbrances which could affect title to the easement; and (3) have recorded subordination agreements for all trust deeds or other liens to insure that the DISTRICT has prior rights in any easements being conveyed to the DISTRICT. DEVELOPER shall procure a policy of title insurance in favor of the DISTRICT covering easements to be granted in amounts determined by the DISTRICT subject only to those conditions of record acceptable to the DISTRICT. All fees and costs to procure easements required by the DISTRICT shall be borne solely by DEVELOPER. Nothing in this Agreement shall obligate the DISTRICT to exercise its condemnation authorities to acquire any easement determined necessary by the DISTRICT. All easements being conveyed to the DISTRICT must be in a recordable form acceptable to the DISTRICT prior to approval of plans and specifications by the DISTRICT.

13. ~~16.~~ **QUALIFIED SERVICE COMMITMENT.** Nothing in this Agreement is intended to limit the power of the DISTRICT to restrict the use of water as provided by California Water Code §§ 350 et seq., and §§ 31026 et seq. DEVELOPER is advised and understands that the ability of the DISTRICT to provide water service to the PROJECT is dependent upon the continuing availability of water imported to the DISTRICT from other agencies. In the event of a water shortage, threatened water shortage, or an emergency, water service to DEVELOPER's project may not be available or may be curtailed or restricted. Consequently, the DISTRICT cannot guarantee that water will be available at the time service is requested. The declaration of a water shortage, threatened water shortage or emergency shall be exercised in the sole discretion of the DISTRICT. DEVELOPER agrees that the DISTRICT shall not be liable for any damages, costs, fees, or expenses of any kind, caused by any curtailment, restriction, or termination of potable water service determined necessary by the DISTRICT.

14. ~~17.~~ **CONSTRUCTION OF FACILITIES.** DEVELOPER shall not commence construction of any FACILITIES required by this Agreement until DEVELOPER has received written authorization from the DISTRICT to proceed. All work performed on the FACILITIES shall be: (1) done in strict compliance with the approved plans and specifications ~~and;~~ (2) in a good and workmanlike manner as determined by the DISTRICT in its sole discretion; and (3) in accordance with DISTRICT's current published standards and criteria for projects and standards and criteria which may be required by DISTRICT at any time, whether published or not, in the District's sole discretion. All work performed on the FACILITIES by DEVELOPER shall be

subject to inspection by the DISTRICT's designated representatives and DEVELOPER shall comply with all instructions given by the DISTRICT's representative during construction of the work. All fees and costs to construct the FACILITIES shall be borne by DEVELOPER.

15. ~~18.~~ **COMPLIANCE WITH APPLICABLE LAW.** DEVELOPER shall insure that all work performed on the project is performed in a manner which complies with all applicable federal and state laws and all county and local government rules and regulations, including all rules and regulations of DISTRICT, as these rules and regulations may be modified or changed from time to time. DEVELOPER shall be solely responsible for obtaining and paying for all permits, licenses and approvals necessary to construct the FACILITIES. DEVELOPER shall provide verification that permits, licenses and approvals have been obtained promptly upon demand from DISTRICT. As a material part of this Agreement, DEVELOPER agrees to assume all risk of liability arising from non-compliance with applicable federal, state, county, and local government rules and regulations, including all rules and regulations of the DISTRICT

~~19. **PREVAILING WAGES.** DEVELOPER is aware of the provisions of California Labor Code §§ 1770 et seq., which requires the payment of prevailing wage rates and the performance of other requirements if it is determined that DEVELOPER's contract with its contractor to construct the FACILITIES is a public works contract. DEVELOPER agrees to hold the DISTRICT and its officers, employees and agents harmless from any claim of liability, including costs of defense and attorney's fees, arising from any alleged failure to comply with these provisions of the Labor Code.~~

~~DEVELOPER, and not the DISTRICT, shall be liable for insuring that prevailing wages, as set by the Director of the Department of Industrial Relations, have been paid for all work performed in accordance with this contract. In the event of any claim, DEVELOPER shall provide the DISTRICT with all information in DEVELOPER's possession concerning the claim within ten (10) consecutive days following written demand from the DISTRICT.~~

16. CALIFORNIA LABOR CODE REQUIREMENTS.

16.1 DEVELOPER is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" projects. If the requirements of this Agreement are performed as part of an applicable "public works" project, as defined by the Prevailing Wage Laws, DEVELOPER agrees to fully comply with such Prevailing Wage Laws, if applicable. DEVELOPER shall

defend, indemnify and hold the DISTRICT and its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising from any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the DEVELOPER and DEVELOPER's contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

16.2 If the work is being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code Sections 1725.5 and 1771.1, DEVELOPER's contractor and all subcontractors must be registered with the Department of Industrial Relations ("DIR"). DEVELOPER's contractor shall maintain registration for the duration of the project and require the same of any subcontractors. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be DEVELOPER's sole responsibility to comply with all applicable registration and labor compliance requirements including the submission of payroll records directly to the DIR.

17. ~~20.~~ **UTILIZATION OF A PORTION OF WORK.** DISTRICT shall have the right upon written notification to the DEVELOPER to utilize such portions of the work DISTRICT deems sufficiently complete to be utilized or placed into service.

18. ~~21.~~ **ACCEPTANCE OF WORK.** Upon completion of the FACILITIES required by this Agreement to the satisfaction of the DISTRICT, the FACILITIES which have been constructed shall be presented to the Board of Directors of the DISTRICT for dedication and the filing of a Notice of Completion. The DISTRICT shall have no obligation to accept the FACILITIES or file a Notice of Completion if the design and/or construction of the work is not satisfactory to the DISTRICT in its sole discretion. Upon recordation of a Notice of Completion, all right, title, ownership and interest in the FACILITIES shall be deemed to have been transferred to the DISTRICT. DEVELOPER shall not allow any part of PROJECT to be occupied prior to acceptance of FACILITIES by DISTRICT.

19. ~~22.~~ **WATER SERVICE MAINTENANCE AFTER ACCEPTANCE OF WORK.** Due to the uncertainty of prompt sale/construction/occupancy of the project's lots and based on the need to provide adequate flow to residences, DEVELOPER shall be responsible for

periodic flushing of the services within the subdivision until such time as the subdivision is sold. The DISTRICT and DEVELOPER will cooperate to provide manpower and schedule work.

20. ~~23.~~ LIABILITY FOR WORK PRIOR TO FORMAL ACCEPTANCE.

Until the Board of Directors of the DISTRICT has formally accepted all work performed in accordance with this Agreement, DEVELOPER shall be solely responsible for all damage to the work regardless of cause and for all damages or injuries to any person or property from any cause excepting injury or damage caused by the sole or active negligence of DISTRICT, its agents, ~~servants~~ or employees.

21. ~~24.~~ LIABILITY AFTER ACCEPTANCE OF WORK.

After the Board of Directors of the DISTRICT has accepted the FACILITIES by formal action of the Board, DEVELOPER and DEVELOPER's successors in interest shall remain liable for all injuries or damage to persons or property including damage to the work itself, arising from or related to design or construction of the FACILITIES ~~for ten (10) years, pursuant to~~ to the fullest extent permitted by California ~~Code of Civil Procedure, § 337~~ law.

22. ~~25.~~ RELEASE OF SECURITY.

Forty (40) days after the Notice of Completion has been filed by the DISTRICT, the DISTRICT shall release any security previously provided by DEVELOPER, as long as no claims have been filed. The security shall not be released until the DISTRICT has received a warranty bond or alternative security acceptable to the DISTRICT covering 25% of the original performance bond or alternative security amount. DISTRICT must have a warranty bond prior to Board acceptance of the project. This new security shall remain in effect ~~until the~~ for the full duration of the one-year warranty period ~~has expired One (1) year from,~~ which commences upon final Board Acceptance, and until DEVELOPER has corrected all defects noted by the DISTRICT during the warranty period.

23. ~~26.~~ WARRANTY.

DEVELOPER shall and hereby does guarantee all work and materials for the FACILITIES to be free from all defects due to faulty materials or workmanship for a period of one (1) year after the date of acceptance of the work by the DISTRICT. The DEVELOPER shall repair or remove and replace any and all such work, together with any other work which may be displaced in so doing, that is found to be defective in workmanship and/or materials within said one-year period without expense whatsoever to the DISTRICT, ordinary wear and tear and unusual abuse or neglect excepted. In the event DEVELOPER fails to comply with the above-mentioned conditions within one (1) week after being notified in writing, the DISTRICT is authorized to proceed to have the defects remedied and made good at the expense of DEVELOPER who agrees to pay the cost and charges therefore

immediately upon demand. Such action by the DISTRICT will not relieve the DEVELOPER of the guarantee required by this section. This section does not in any way limit liability of the DEVELOPER for any design defects or defects in the work subsequently discovered by the DISTRICT.

24. ~~27.~~ **INDEMNITY.** DEVELOPER shall be solely responsible and liable for design defects or defects in work performed to construct the FACILITIES required by this Agreement. This shall include liability and responsibility for injury or damage to the work itself. To the fullest extent permitted by law, DEVELOPER ~~hereby agrees to hold harmless~~shall defend, indemnify and ~~defend~~hold the DISTRICT, the DISTRICT's representatives and each of the DISTRICT's officers, employees and agents free and harmless from any and all claims, ~~suits or action of every name, kind and description brought for or on account of injuries to or death of any person or damage to any property~~liabilities, losses, costs, expenses, damages, or injuries to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of or incident to any acts, omissions or willful misconduct of DEVELOPER, its officials, officers, employees, agents, consultants and contractors resulting from the design or construction of the FACILITIES, except where the ~~injury or damage~~Claim has been caused by the sole and active negligence of the DISTRICT, ~~its agents, servants or employees.~~ In the event that any suit is instituted naming the DISTRICT as a party, the DISTRICT shall be entitled to appoint its own independent counsel to represent the DISTRICT; and DEVELOPER agrees to pay all attorney's fees and litigation costs associated with this defense. This indemnity shall extend to any claims arising because DEVELOPER has failed to properly secure any necessary easement, land right, contract or approval.

25. ~~28.~~ **AS-BUILT DRAWINGS.** Prior to acceptance of the work by ~~the Board of Directors of the~~ DISTRICT, DEVELOPER shall provide the DISTRICT with two (2) blueprint copies of "as-built" drawings. Upon approval of the ~~blueprint~~mylar copies the DISTRICT will require a bonded mylar or original drawing, disk and certification by a licensed engineer in the state of California as to the accuracy and completeness of the "as-built" drawings. DEVELOPER shall be solely responsible and liable for insuring the completeness and accuracy of these as-built drawings.

26. ~~29.~~ **CASH DEPOSITS.** DEVELOPER shall provide the DISTRICT with an initial cash deposit in the amount of \$ _____ to cover all DISTRICT fees and costs associated with the FACILITIES. When this deposit has been drawn down to \$ _____, DEVELOPER agrees to deposit such additional sums as the DISTRICT may determine from time

to time to cover all fees and costs of the DISTRICT. Prior to final acceptance of the project, a final accounting will be forwarded to the ~~developer~~ DEVELOPER for payment. Additional deposits for additional inspections after acceptance of the project may be requested.

27. **30. MISCELLANEOUS PROVISIONS.**

27.1 NOTICES. All notices required pursuant to this Agreement shall be deemed effective upon receipt when personally served or when sent certified mail, return receipt requested to the following addresses:

DISTRICT:

DEVELOPER:

[INSERT ADDRESS & CONTACT]

[INSERT ADDRESS & CONTACT]

27.2 **30.1 VENUE.** GOVERNING LAW AND VENUE. This Agreement shall be governed by the laws of the State of California. 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 only in the federal or state courts in or nearest to the North County Judicial District, County of San Diego, State of California.

27.3 **30.2 MODIFICATION.** This Agreement may not be altered in whole or in part except by a modification, in writing, executed by all the parties to this Agreement.

27.4 **30.3 ATTORNEY'S FEES.** In the event of any legal or equitable proceeding to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to all reasonable attorney's fees and costs in addition to any other relief granted by law. This provision shall apply to the entire Agreement.

27.5 **30.4 ENTIRE AGREEMENT.** This Agreement, together with all the exhibits attached to this Agreement, contains all representations and the entire understanding between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda or agreements are in conflict with this Agreement are intended to be replaced in total by this Agreement and its exhibits.

27.6 **30.5 ASSIGNMENTS.** DEVELOPER shall not be entitled to assign all or any portion of its rights or obligations contained in this

Agreement without obtaining the prior consent of the DISTRICT, which consent shall not be unreasonably withheld. Any purported assignment without the DISTRICT's prior written consent shall be void.

27.7 **30.6 BINDING EFFECT.** This Agreement shall inure to the benefit of and be binding upon the parties and their respective purchasers, successors, heirs and assigns.

27.8 **30.7 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.

27.9 **30.8 REPRESENTATION OF CAPACITY TO CONTRACT.** Each of the parties to this Agreement represents and warrants that he has the authority to execute this Agreement on behalf of the entity represented by that individual.

27.10 **30.9 OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT COUNSEL.** DEVELOPER warrants and represents that DEVELOPER has been advised to consult independent legal counsel of its own choosing and has had a reasonable opportunity to do so prior to executing this Agreement.

27.11 **30.10 NO WAIVER.** The failure of either party to enforce any term, covenant or condition of this Agreement on the date it is to be performed shall not be construed as a waiver of that party's right to enforce this, or any other, term, covenant or condition of this Agreement at any later date or as a waiver of any term, covenant or condition of this Agreement.

~~30.11 NOTICES. All letters, statements or notices required pursuant to this Agreement shall be deemed effective upon receipt when personally served or when sent certified mail, return receipt requested to the following addresses:~~

27.12 COUNTERPARTS. This Agreement may be signed in counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

[SIGNATURES ON FOLLOWING PAGE]

~~30.12 EFFECTIVE DATE. The effective date of this Agreement, executed in counterparts in the North County Judicial District, County of San Diego, State of California, is _____.~~

AGREEMENT FOR CONSTRUCTION OF FACILITIES TO BE DEDICATED TO THE VALLECITOS WATER DISTRICT

SIGNATURE PAGE

“DISTRICT” VALLECITOS WATER DISTRICT	
By: _____ Glenn Pruiam, Secretary Board of Directors Vallecitos Water District	Dated: _____

“DEVELOPER”	
Name: _____	
Title: _____	
Company: _____	
Signature*: _____	Dated: _____

*Acknowledgment of the signature(s) of authorized representative(s) of DEVELOPER executing this Construction Agreement, by a Notary Public, is required. Attach acknowledgment to this page.

Summary report:	
Litera® Change-Pro for Word 10.8.2.11 Document comparison done on 10/7/2021 10:29:09 AM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://image/iManage/34420247/1	
Modified DMS: iw://image/iManage/34420247/2	
Changes:	
<u>Add</u>	122
Delete	93
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	215



