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“Four County MOU”

Memorandum of Understanding Four County (Butte, Colusa, Glenn, and Tehama Counties) Regional Water Resource Coordination, Collaboration, and Communication

1. BACKGROUND

The counties of Butte, Colusa, Glenn, and Tehama share common surface water and groundwater resources. Based on these common resources, local water resource managers understand that regular coordination, collaboration, and communication can result in an improved water resource understanding at both the county and regional level.

2. PURPOSE

The purpose of this document is to establish the mutual understandings of the four counties with respect to their voluntary joint efforts toward regional coordination, collaboration, and communication.

3. GOALS

The goals of the Four County Memorandum of Understanding (MOU) are:

- 2.1. To foster coordination, collaboration and communication between the four counties on water-related issues, to achieve greater efficiencies, and enhance public services.
- 2.2. To provide a framework for the management and disbursement of funding associated with activities pursued jointly under this MOU.
- 2.3. To improve competitiveness for State and Federal grant funding.

4. DEFINITIONS

4.1. Four County. Participants including the counties of Butte, Colusa, Glenn, and Tehama, with representation by the following:

- Butte County: Department of Water and Resource Conservation
- Colusa County: Department of Planning and Building
- Glenn County: Department of Agriculture
- Tehama County: Flood Control and Water Conservation District

4.2. Project Manager. A project manager will be determined by the Counties signatory to this MOU for any given project regardless of funding source to meet the goals set forth in this MOU.

5. MUTUAL UNDERSTANDINGS

5.1. Participation. Signatories to this MOU constitute the current participants. Participation is strictly on a voluntary basis and may be

terminated at any time without recourse. Neighboring counties who share water resources common to the participating counties and who are engaged in similar activities will be invited to be signatory to this MOU. Signatories aspire to work collaboratively with other regional programs and technical outreach efforts.

5.2. Activities. Efforts pursued under this agreement will remain consistent with and will not exceed the current authority for any individual participating county. Efforts will include the study and investigation of water resources common to participants, monitoring and reporting, information dissemination and sharing between counties and with other county departments, public outreach and education, and other activities at the agreement and direction of individual county governing bodies.

5.3. County Funding. Counties are not required to commit funding associated with activities completed under this MOU. It is understood that activities under this MOU may result in the more efficient use of existing and future department funding resulting from improved collaboration and coordination.

5.4. External Funding. Signatories will work collaboratively in pursuit of external funding associated with common interest activities based on voluntary participation and agreement. When required, a mutually agreed upon County representative will serve as the Project Manager for activities completed under a contract with an external funding source. Existing county contracting mechanisms will be utilized where available for contractual and invoicing purposes between participating counties. Nothing in this MOU precludes individual counties from the individual pursuit, contracting and completion of work from an externally funded source regardless of a real or perceived regional interest.

5.5. Decision-making. Consensus will be sought when the need for a decision arises.

5.6. Non-binding nature. This document and participation under this MOU are nonbinding, and in no way suggest that a county may not continue its own activities as each county is expected to continue its own policies and procedures and undertake efforts to secure project funding from any source. A county may withdraw from participation at any time.

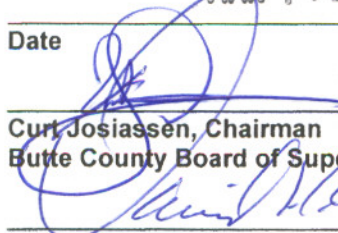
5.7. Termination. Because the MOU will require periodic review and updating for use into the future, it is envisioned that the joint efforts of those involved will be ongoing in maintaining a living document. Thus this document will remain as a reflection of the understandings of the participants. Individual signatories of this MOU may terminate their involvement at any time with no recourse.

6. SIGNATORIES TO THE MEMORANDUM OF UNDERSTANDING

We, the undersigned representatives of our respective counties, acknowledge the above as our understanding of how the Four County Coordination, Collaboration, and Communication MOU will be implemented.

MAR 14 2006 APPROVED JAN 24 2006

Date


Curt Josiassen, Chairman
Butte County Board of Supervisors

 2/28/06
Approved As To Form:
Bruce Alpert, Butte County Counsel

“Army Corps of Engineers MOA”

**MEMORANDUM OF AGREEMENT
BETWEEN
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
AND
U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT**

Metropolitan Water District Agreement Number 142627

THIS MEMORANDUM OF AGREEMENT (“MOA”) is entered into between the Metropolitan Water District of Southern California (hereinafter the “District”) and the United States Army Corps of Engineers, Los Angeles District (hereinafter the “Corps”), collectively referred to as the “Parties.”

RECITALS

WHEREAS, the Corps has jurisdiction over certain activities occurring in waters of the United States pursuant to Section 404 of the Clean Water Act (“CWA”) of 1972, as amended, and navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act of 1899 (“RHA”), as amended; and

WHEREAS, Section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 (“WRDA 2000”), as amended by Public Law 111-315, authorizes the Secretary of the Army, after public notice, to accept and expend funds contributed by a non-Federal public entity to expedite the evaluation of a permit of that entity related to a project or activity for a public purpose under the jurisdiction of the Department of the Army; and

WHEREAS, the authority provided under Section 214 of the WRDA 2000 is presently in effect until December 31, 2016; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out Section 214 of the WRDA 2000 to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers, by memorandum dated March 29, 2004, as modified October 1, 2008, has authorized the District and Division Engineers of the Corps to accept and expend funds contributed by non-Federal entities subject to certain limitations; and

WHEREAS, the Corps has indicated it is not able, without additional resources, to expedite the evaluation of District permit applications that have a public purpose; and

WHEREAS, the District is a non-Federal public entity and believes it is in its best interest to provide funds to the Corps pursuant to this MOA to streamline and expedite Corps’ review under Section 404 of the CWA and/or Section 10 of the RHA for District-designated priority projects, as more fully described in this MOA; and

WHEREAS, the Corps issued an initial public notice dated November 8, 2013, regarding its intent to accept and expend funds contributed by the District; and

WHEREAS, in a memorandum dated December 19, 2013, the Corps' District Engineer determined that expenditure of funds received from the District is appropriate, and an informational public notice dated January 15, 2014, regarding the decision has been issued; and

WHEREAS, it is understood and acknowledged by all Parties that the Corps' review of the District's permit applications for District-designated priority projects will be completely impartial and in accordance with all applicable Federal laws and regulations; and

WHEREAS, this MOA establishes the responsibilities and operating procedures of the Parties with respect to the Corps' priority review of District-designated priority projects requiring a Corps' permit pursuant to Section 404 of the CWA and/or section 10 of the RHA; and

WHEREAS, this MOA is intended to: (1) enable the Parties to fully consider, address, and protect environmental resources early in the development of proposed actions; (2) avoid conflicts late in project development through close coordination during early planning and development stages; (3) provide sufficient information to the Corps for timely analysis of project effects and to assist the District in developing appropriate mitigation measures; (4) maximize the effective use of limited Corps personnel resources by focusing attention on projects that would most affect aquatic resources; (5) provide a mechanism for expediting project coordination when necessary; and (6) provide procedures for resolving disputes in this resource partnering effort.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

Article I. - PURPOSE AND AUTHORITIES

A. This MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the Corps' acceptance and expenditure of funds contributed by the District to provide expedited permit evaluation-related services for District-designated priority projects requiring Corps' approval pursuant to Section 404 of the CWA and/or Section 10 of the RHA, as listed in **Appendix A** to this MOA ("Priority Projects"). This MOA is not intended as the exclusive means of obtaining review of Priority Projects proposed by the District. This MOA is a vehicle by which the District will obtain expedited permit evaluation-related services, outside of the ordinary Corps review process.

B. The District enters into this MOA pursuant to its authority under, inter alia, Section 122 of the Metropolitan Water District Act (California Statutes (1969), ch. 209).

C. The Corps enters into this MOA pursuant to its authority under Section 214 of the WRDA 2000, as amended.

D. This MOA is specific to Section 404 of the CWA and/or Section 10 of the RHA permit reviews only. A separate agreement may be required between District and the Corps to expedite environmental technical assistance, coordination services, review, and concurrence of documentation prepared to comply with Section 14 of the RHA, as amended.

Article II. - SCOPE OF WORK

A. The District will provide funds to the Corps to expedite permit evaluation related services for District-designated Priority Projects under the jurisdiction of the Corps. The Corps' Regulatory Program is funded as a Congressionally appropriated line item in the annual Federal budget. The District will provide the Corps with funds in accordance with the provisions of Section 214 of WRDA 2000, as amended.

B. The Corps will provide staffing resources exclusively dedicated to expediting permit evaluation related services, as described below, for District-designated Priority Projects and/or other programmatic efforts to support efficient decision-making related to the District's CWA Section 404 and/or RHA Section 10 permitting needs.

C. The Corps will establish a separate internal financial account to track receipt and expenditure of the funds associated with its review of permit applications submitted by the District for Priority Projects. Corps Regulatory personnel will charge their time and expenses against the account when they perform work to either expedite permit evaluation related requests for Priority Projects or undertake other programmatic efforts to support efficient decision-making related to the District's permitting needs. The Corps will provide to the District, upon reasonable notice and at the District's expense, access to or copies of the financial records and supporting documentation related to the expenditure of funds pursuant to this MOA.

D. Funds contributed by the District hereunder will be expended by the Corps to defray the costs of Regulatory Division personnel (including salary, associated benefits, overhead and travel expenses) and other costs in order to expedite the evaluation of Priority Project permit applications. The fully-burdened cost per hour for Regulatory personnel will vary from \$51.90 (GS-7/1 Regulatory Project Manager) to \$142.34 (GS-13/10 Senior Regulatory Project Manager). Activities covered by this MOA will include, but not be limited to, the following: application intake review, permit database entry, drawing correction, jurisdictional determinations, site visits, travel, preparing and distributing public notices, preparing and conducting public hearings, preparing correspondence, performing the public interest review, preparing draft permit decision documents, meetings with the District and other agencies, and relevant training.

E. The Corps may expend funds provided by the District to hire contractors to perform select duties, including but not limited to: site visits; preparing and providing technical materials, including environmental documentation; GIS-related services; and meeting coordination for the purpose of augmenting the resources available to the Corps for expediting its review of District-designated Priority Projects. If such expenditures when combined with the costs of the Regulatory Division personnel require funding in excess of the amount available under this MOA, then the Corps, as appropriate, shall not hire said contractors until and unless

additional funds are provided by the District and the Parties execute a written amendment to this MOA.

F. The Corps will not expend funds provided by the District for costs associated with the review of the Corps' work undertaken by supervisors or other persons or elements of the Corps in the decision-making chain of command. However, if a supervisor is performing staff work and not supervisory oversight, funds may be used.

G. The Corps will not expend funds provided by the District to defray the costs of activities related to the Corps' enforcement functions, but may use funds provided by the District to defray costs of activities related to permit compliance functions.

H. If the funds provided by the District are expended and not replenished, any remaining District-designated Priority Projects will be handled like those of any permit applicant.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Parties, each party will appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on specific actions or issues. For the purposes of this MOA, the District's Principal Representative will be Ms. Deirdre West, Environmental Planning Team Manager, Engineering Services Group and the Corps' Principal Representative will be Dr. Aaron Allen, Chief, North Coast Branch, Regulatory Division. Either Principal Representative may be changed upon written notification to the other party.

Article IV. - NOTICES

All notices, statements, or payments specified in this MOA shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class, registered, or certified mail, as follows:

If to District:

Manager, Environmental Planning Team
Metropolitan Water District of Southern California
Engineering Services Group
700 N. Alameda Street
Los Angeles, CA 90012

If to the Corps:

Chief, North Coast Branch
Regulatory Division
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Boulevard, Suite 930

Los Angeles, CA 90017

With a copy in all instances to:

District Counsel
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Boulevard, Suite 930
Los Angeles, CA 90017

B. A party may change the address to which such communications are to be directed by giving written notice to the Corps or to the District in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

Article V. - RESPONSIBILITIES OF THE PARTIES

A. The District will provide adequate resources to fund existing or additional Corps Regulatory personnel for the purpose of expediting the review of District-designated Priority Projects and other identified activities. To facilitate the Corps' reviews and activities, the District will:

1. Provide adequate information regarding District-designated Priority Projects, scheduling requirements, and other specific activities to initiate permit evaluation. Information required for the Corps to deem a permit application complete thereby allowing initiation of the permit review process can be found in Corps regulations at 33 C.F.R. §§ 325.1(d), 325.3(a), and in General Condition 31 of the Nationwide Permit Program. Upon request, the District shall provide supplemental information necessary to complete the permit application. Additional information [33 C.F.R. § 325.1(e)] required to complete the permit evaluation process may exceed what is needed to initiate the process. On a case-by-case basis, if requested by the Corps, the District shall provide such additional information so as to ensure the Corps can effectively accomplish the required review.

2. In consultation with the Corps, establish the specific order of priority of the District-designated Priority Projects as listed in **Appendix A** to this MOA. The District-designated Priority Projects included in Appendix A and the order of priority of those District-designated Priority Projects may be changed by the District's Principal Representative without requiring an amendment to this MOA. Such changes shall be submitted to the Corps' Principal Representative in writing in the manner provided by Article IV and will be effective upon receipt thereof.

3. To the best of its ability, ensure the participation of all essential personnel during the permit evaluation or compliance process.

4. Work closely with the Corps to adjust priorities and schedules in order to optimize available Regulatory Division staff resources. While the District will make every effort not to overlap project schedules, occasional overlaps may occur and the District's Principal Representative will work with the Corps to prioritize such overlaps.

5. Provide funding pursuant to the terms of this MOA.

B. The Corps shall supplement or reassign its existing Regulatory Division personnel, which currently reviews District projects on a routine basis, with qualified personnel within projected funding levels provided by the District. The Corps shall use the funds provided to defray the costs of salaries and associated benefits, relevant training, and to reimburse travel expenses in order to:

1. Expedite review of the District-designated Priority Projects as identified in Appendix A (or any amendments thereto) in accordance with the purpose, terms, and conditions of this MOA or any amendments thereto. The Corps shall not redirect resources from, or otherwise postpone, permit applications related to non-priority projects submitted by the District through the standard Corps review process.

2. Render decisions for non-notifying Nationwide Permit verification applications for Priority Projects submitted by District within 45 calendar days of receipt of a complete application, to the greatest extent possible.

3. Following any pre-application meetings and/or discussions to clarify the scope of anticipated permit application review processes, provide the District with an estimated completion date for the permit evaluation process for each complete application submitted (for projects that require endangered species consultations with the U.S. Fish and Wildlife Service (USFWS) and/or Section 106 consultation with the State Historic Preservation Officer (SHPO), the Corps will only be able to provide an estimated completion date if the USFWS and/or SHPO provide an estimated completion date for the given consultation). The District shall be able to comment on the estimated completion date and adjust the order or list of Priority Projects per Appendix A, or provide additional resources per Article VI below.

4. Consult with the District regarding an adjustment of priorities or amendments to Appendix A if the current and/or projected workload of Priority Projects and activities exceeds the Corps' ability to provide the services specified herein or negotiate additional funding in accordance with Article VI below.

5. Provide the District a brief quarterly summary report of progress made under this MOA and an itemization of the expenditures for each Priority Project to date as stipulated in **Appendix B** within twenty one (21) calendar days of the end of each quarter. Activities covered by this MOA will be itemized for each permit decision rendered for Priority Projects during the quarter and for each permit application for Priority Projects submitted by the District pending at the end of the quarter (see Article II above for a description of the activities covered by this MOA). This report will describe achievements, including any improvements the Corps has documented in coordinating and improving the efficiency of environmental reviews. The report also will identify any recommendations for improving consultation and coordination

among the Parties to this MOA and will provide an estimate of costs expected for the ensuing quarter. The report shall not be in excess of five (5) pages of narrative per report.

6. Designate and identify to the District a Regulatory Project Manager(s) and his/her specific responsibilities for each Priority Project. If possible, the Corps will designate the same Project Manager for all major District-designated Priority Project permit applications to ensure consistency and maintain efficiency of the review process.

7. Meet with District as needed to discuss progress under this MOA.

8. Prior to expiration of the MOA, hold a final meeting with the District to review a summary of permit streamlining and other activities under this MOA, as well as provide recommendations for future coordination between the Parties.

Article VI. - FUNDING

A. Funding Periods.

1. First funding period: May 1, 2014 - September 30, 2014
2. Second funding period: October 1, 2014 - September 30, 2015
3. Third funding period: October 1, 2015 - September 30, 2016

B. Funding amounts.

1. Total estimated costs for the first funding period are \$100,000.00.
2. Total estimated costs for the second funding period are \$240,000.00.
3. Total estimated costs for the third funding period are \$240,000.00.
4. Total funding for this MOA is \$580,000.00.

C. Prior to the Corps incurring any expenditure to expedite permit evaluation-related activities as specified in this MOA, the District will make a lump sum payment to the Corps for each funding period specified in subparagraph A in the total amount specified in subparagraph B, above. Prior to each funding period, the Corps shall send notice to the District in substantially the form attached hereto as **Appendix C** stating the funding amount due as set forth above, and identifying any carry-over in the amounts previously paid by the District. Payments by the District shall be made payable to the Finance and Accounting Officer and submitted to:

U.S. Army Corps of Engineers, Los Angeles District
Finance and Accounting Officer
915 Wilshire Boulevard, Suite 930
Los Angeles, CA 90017
Attn: Carlos M. Tabares

D. The Corps will carry-over any unobligated funds from year to year, or will refund such unobligated funds if this MOA is terminated or expires in accordance with Article X.

E. If the Corps' actual costs for providing the agreed upon level of service will at any time during the term of this MOA exceed the amount of funds available, the Corps will notify the District at least ninety (90) days prior to fund exhaustion of the incremental amount of funds needed to defray the remaining anticipated costs. The District will either initiate an amendment to this MOA to increase the funding amount, or agree to a reduced level of service.

Article VII. - APPLICABLE LAWS

The applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of permit applications undertaken by the Corps will be governed by Corps regulations, policies and procedures.

Article VIII. - DISPUTE RESOLUTION

In the event of a dispute, the Parties agree to use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. The Parties agree that, in the event such measures fail to resolve the dispute, they shall refer the dispute for resolution to an appropriate forum in accordance with Federal law.

Article IX. - PUBLIC INFORMATION

Justification and explanation of the District's programs or projects before other agencies, departments and offices will not be the responsibility of the Corps. The Corps may provide, upon request from the District, any assistance necessary to support justification or explanations of activities conducted under this MOA. In general, the Corps is responsible only for public information regarding Corps regulatory activities. The District will give the Corps, as appropriate, advance notice before making formal, official statements regarding activities funded under this MOA.

Article X. - AMENDMENT, MODIFICATION, AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the Parties.

B. Any party reserves the right to terminate its participation in this MOA without cause upon thirty (30) days' written notice to the other party. In the event of termination, the

District will continue to be responsible for all costs incurred by the Corps in performing expedited environmental permit review services up to the time of notice and for the costs of closing out any ongoing contracts in support of the provision of services by the Corps under this MOA.

C. Within ninety (90) calendar days of termination of the MOA, or the expiration of the MOA, the Corps shall provide the District with a final statement of expenditures. Within sixty (60) calendar days after submittal of the Corps' final statement of expenditures, the Corps, subject to compliance with the Anti-Deficiency Act (31 U.S.C. 1341 et. seq.), shall directly remit to the District the unexpended balance of the advance payments, if any. Funds may be provided to the District either by check or electronic funds transfer.

Article XI. - MISCELLANEOUS

A. This MOA will not affect any pre-existing or independent relationships or obligations between Parties.

B. The Corps' participation in this MOA does not imply endorsement of District projects nor does it diminish, modify, or otherwise affect Corps statutory or regulatory authorities.

C. If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

D. This MOA, including any documents incorporated by reference or attachments thereto, but excluding the pre-existing relationships or obligations between the Parties referenced in subparagraph A above, constitute the entire agreement between the Parties. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

Article XII. - EFFECTIVE DATE AND DURATION

This MOA and any amendments will be effective on the date of execution by the last party. Unless amended or modified, this MOA shall remain in force until whichever of these events occurs first: 1) September 30, 2016 or 2) the MOA is terminated pursuant to Article X.B.

[REMAINDER LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this MOA is executed as of the dates indicated below by the District, acting by and through its Manager of the Engineering Services Group and by the Corps, through its authorized officer.

FOR THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA


By: 

Date: 5/1/14

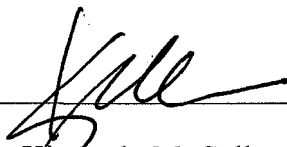
Gordon Johnson
Manager
Engineering Services Group

APPROVED AS TO FORM:

Joseph Vanderhorst
Deputy General Counsel


Deputy

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

By: 

Date: 6/1/14

Kimberly M. Colloton, PMP
Colonel, US Army
Commander and District Engineer

Appendix A: District-designated Priority Projects

(Dated: May 1, 2014)

The list of District-designated Priority Projects under this MOA includes the following proposed projects:

1. Santa Ana River Bridge Seismic Retrofit and Routine Maintenance Project
2. Whitewater River/Colorado River Aqueduct Siphon Scour Protection
3. Distribution System Infrastructure Protection Program
4. Orange County Feeder Blow-off Structure Rehabilitation Project
5. Routine Operations and Maintenance Activities such as, but not limited to:
 - a. Rainbow Creek Arizona Crossings Repairs
 - b. Lake Skinner Spillway Vegetation Removal
 - c. Upper Feeder Blow-offs, Stations 42+06 and 75+38
 - d. Lower Feeder Station 592+00 (WR-33)
 - e. Holland Road ditch maintenance
6. Lake Mathews Outlet Facility
7. Skinner ORP
8. Pre-stressed Concrete Cylinder Pipe Rehabilitation Program

Memorandum of Agreement (No. 142627)
Metropolitan Water District of Southern California
(Appendix B)

Quarterly Itemization of Expenditures will be documented in a spreadsheet that contains the following:

- 1) An individual row for each date during the quarter that WRDA funds were expended; if one project manager (PM) expended funds for multiple projects on a given date than the charges for each project will be documented in an individual row; if more than one PM expended WRDA funds on a given date than the charges by each PM will be documented in an individual row;
- 2) The date the pay period ended (PPE) will be documented in the spreadsheet;
- 3) The date of any expended funds will be documented in the spreadsheet;
- 4) The initials of the PM that expended funds will be documented in the spreadsheet;
- 5) The fully-burdened rate for each PM that expended funds during the quarter will be documented in the spreadsheet;
- 6) The project name from Appendix A will be documented in the spreadsheet;
- 7) The activity that the PM worked on or completed for the given project will be documented in the spreadsheet (some examples of activities include but are not limited to the following: application review, additional information request, JD site visit, public notice documents, section 7 consultation, and permit issuance);
- 8) The hours worked, with the smallest increment being a quarter of an hour, will be documented in the spreadsheet;
- 9) By multiplying the fully-burdened rate and the hours worked, the funds expended will be documented in the spreadsheet;
- 10) The labor charge code (LCC) used by the PM will be documented in the spreadsheet;
- 11) The total funds expended under this MOA for each pay period will be documented in the spreadsheet;
- 12) The total hours worked under this MOA for each pay period will be documented in the spreadsheet.

MEMORANDUM OF AGREEMENT
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
Agreement No. 142627

MOA: U.S. ARMY CORPS OF ENGINEERS,
LOS ANGELES DISTRICT

Date:

ADDRESS: 915 Wilshire Boulevard, Suite 930
Los Angeles, California 90017

Carryover: _____

Funding
Period: _____

Current
Amount: _____

“Coachella Valley MOU”

MEMORANDUM OF UNDERSTANDING
among
CITY OF COACHELLA/COACHELLA WATER AUTHORITY, COACHELLA
VALLEY WATER DISTRICT, DESERT WATER AGENCY, CITY OF
INDIO/INDIO WATER AUTHORITY, AND MISSION SPRINGS WATER
DISTRICT
for
DEVELOPMENT OF AN INTEGRATED
REGIONAL WATER MANAGEMENT PLAN

This Memorandum of Understanding (MOU) dated **September 9, 2008** is entered into among the City of Coachella/Coachella Water Authority, Coachella Valley Water District, Desert Water Agency, City of Indio/Indio Water Authority, and Mission Springs Water District (collectively known as Partners) for the purpose of coordinating water resources planning activities undertaken by the water agencies.

WHEREAS, each Partner has adopted a Resolution of commitment pledging to create an Integrated Regional Water Resources Plan (IRWMP).

WHEREAS, it is in the interests of the signatory Partners and the region served by the Partners that these water resources are responsibly managed and conserved to the extent feasible; and

WHEREAS, the Partners wish to coordinate their long term water supply planning efforts in accordance with Section 10531 of the *Integrated Regional Water Management Planning Act of 2002* and Division 43 of the *Safe Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006* (Acts); and

WHEREAS, the Partners anticipate the potential need for future agreements on specific projects or programs and with other affected agencies to further coordinate long term water supply planning.

NOW, THEREFORE, it is mutually understood and agreed as follows:

SECTION 1:
AUTHORITY OF PARTNERS

- 1.1 The Coachella Water Authority is a joint powers authority formed as a component of the City of Coachella and Redevelopment Agency of the City of Coachella and has statutory authority over water supply.
- 1.2 The Coachella Valley Water District is a public agency of the State of California organized and operating under County Water District Law, California Water Code section 30000, et seq, and Coachella District

MEMORANDUM OF UNDERSTANDING

Merger Law, Water Code section 33100, et seq. Coachella Valley Water District is a State Water Project Contractor and Colorado River Contractor empowered to import water supplies to its service area, and has statutory authority over water supply.

- 1.3 The Desert Water Agency is an independent special district created by a special act of the state legislature contained in chapter 100 of the appendix of the California Water Code. Desert Water Agency is also a State Water Project Contractor empowered to import water supplies to its service area, replenish local groundwater supplies, and collect assessments necessary to support a groundwater replenishment program as provided for in the Desert Water Agency Law and has statutory authority over water supply.
- 1.4 The Indio Water Authority is a joint powers authority formed as a component of the City of Indio and Redevelopment Agency of the City of Indio and has statutory authority over water supply.
- 1.5 Mission Springs Water District is a County Water District formed under Section 30000 et seq of the California Water Code and has statutory authority over water supply.

SECTION 2: DEFINITIONS

The abbreviations and capitalized words and phrases used in this MOU shall have the following meanings:

- 2.1 Acts – mean Section 10531 of the Integrated Regional Water Management Planning Act of 2002 and California Water Code Division 43, known as the *Safe Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006*
- 2.2 Coachella Valley Region – the watershed bounded on the North by the San Bernardino Mountains, Little San Bernardino Mountains and Mecca Hills Area, on the East by Mortmar and Travertine Rock, on the South by the Santa Rosa Mountains and San Jacinto Mountains and on the West by Stubbe Canyon.
- 2.3 CVWD – Coachella Valley Water District
- 2.4 CVRWMG – Coachella Valley Regional Water Management Group
- 2.5 CWA – Coachella Water Authority
- 2.6 DWA – Desert Water Agency

MEMORANDUM OF UNDERSTANDING

- 2.7 IRWMP – Integrated Regional Water Management Plan
- 2.8 IWA – Indio Water Authority
- 2.9 MSWD – Mission Springs Water District

SECTION 3:
PURPOSES AND GOALS OF THIS MOU

3.1 Purpose and Goals:

3.1.1 This MOU is to memorialize the intent of the Partners to coordinate and share information concerning water supply planning programs and projects and other information, and to improve and maintain overall communication among the Partners involved. It is anticipated that coordination and information sharing among the Partners will assist the agencies in achieving their respective missions to the overall well-being of the region. Coordination and information sharing shall focus on issues of common interest in Section 3.2.

3.1.2 The execution of this MOU by the Partners shall constitute the formation of a Regional Water Management Group consisting of the Partners, in accordance with the Acts. The Regional Water Management Group shall be named the Coachella Valley Regional Water Management Group (CVRWMG).

3.1.3 It is the goal of the Partners to prepare and adopt an IRWMP for the Coachella Valley Region and to implement projects and programs individually or jointly in groups that address issues of common interest, as the group so identifies.

3.2 Common Issues and Interest:

3.2.1 Water supply programs and projects that may provide mutual benefits in improving water supply reliability and/or water quality.

3.2.2 Coordination of near-term and long-term water supply planning activities.

3.2.3 Development of regional approaches to problem-solving and issues resolution as well as to further common interest.

3.3 Future Agreements By Partners: The Partners acknowledge that by virtue of commitments and intentions stated within this MOU, the need for

certain other considerations that will facilitate the preparation of an IRWMP for the Coachella Valley Region will likely emerge. These include and are not limited to:

- 3.3.1 Developing a Scope of Work
- 3.3.2 Determining the cost sharing of projects
- 3.3.3 Establishing methods for project management
- 3.3.4 Establishing a project timeline

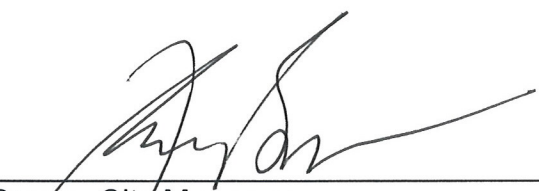
SECTION 4: JOINT PLANNING FOR PROJECTS AND PROGRAMS

- 4.1 **Projects and Programs Covered by this MOU:** it is the intent of the Partners that they coordinate and collaborate to address the common issues identified. The Partners may develop and implement projects and programs individually or jointly in groupings of two or more, or enter into additional agreements in furthering those goals. Applicable projects and programs include, but are not limited to the following:
 - 4.1.1 Water conservation programs and other demand management programs.
 - 4.1.2 Water recycling, desalination, groundwater basin management, and water quality improvement programs and projects.
 - 4.1.3 Water banking, conjunctive use and transfer arrangements.
 - 4.1.4 Storage development to improve system reliability, efficiencies, and flexibility.
 - 4.1.5 Project and program planning and development to solicit external funding.
 - 4.1.6 Other meritorious projects or programs consistent with the purposes of this MOU.
- 4.2 **Communication and Coordination:** It is the intent of the Partners to meet on a monthly basis in order to carry out the purposes and goals of this MOU. The frequency and location of meetings are subject to the discretion of the Partners and may be changed when appropriate.

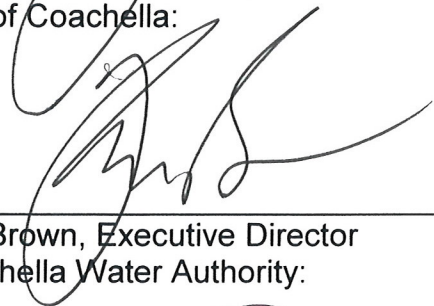
**SECTION 5:
GENERAL PROVISIONS GOVERNING MOU**

- 5.1 **Term:** The term of this MOU is indefinite. Any Partner may withdraw from the MOU by written notice given at least 45 days prior to the effective date.
- 5.2 **Construction of Terms:** This MOU is for the sole benefit of the Partners and shall not be construed as granting rights to any person other than the Partners or imposing obligations on a Partner to any person other than another Partner.
- 5.3 **Good Faith:** Each Partner shall use its best efforts and work wholeheartedly and in good faith for the expeditious completion of the objectives of this MOU and the satisfactory performance of its terms.
- 5.4 **Rights of the Partners and Constituencies:** This MOU does not contemplate the Partners taking any action that would:
- 5.4.1 Adversely affect the rights of any of the Partners; or
 - 5.4.2 Adversely affect the customers or constituencies of any of the Partners.
- 5.5 This document and participation in this IRWMP are nonbinding, and in no way suggest that a Partner may not continue its own planning and undertake efforts to secure project funding from any source.
- 5.6 It is expected that Partners will contribute the personnel and financial resources necessary to develop the IRWMP.

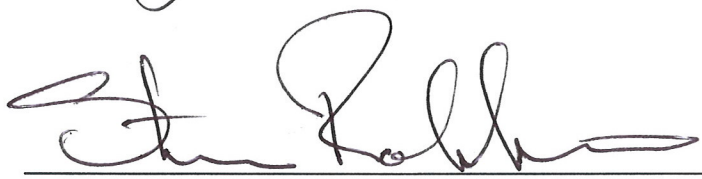
IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the day and year indicated on the first page of this MOU.




Tim Brown, City Manager
City of Coachella:



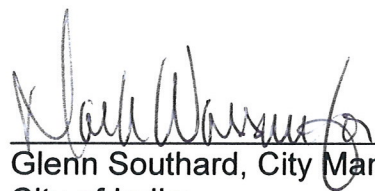
Tim Brown, Executive Director
Coachella Water Authority:



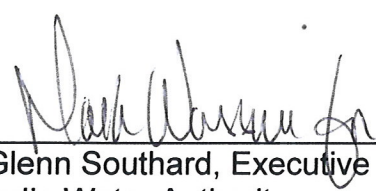
Steve Robbins, General Manager/Chief Engineer
Coachella Valley Water District:



Dave Luker, General Manager
Desert Water Agency:



Glenn Southard, City Manager
City of Indio:



Glenn Southard, Executive Director
Indio Water Authority:



Arden Wallum, General Manager
Mission Springs Water District:

MEMORANDUM OF UNDERSTANDING

“Orange County MOU”

MEMORANDUM OF UNDERSTANDING BETWEEN ORANGE COUNTY WATER DISTRICT AND THE CITY OF ANAHEIM REGARDING COLLABORATION AND IMPLEMENTATION OF ORANGE COUNTY WATER DISTRICT’S CAPITAL INFRASTRUCTURE PROJECTS TO IMPROVE THE EFFICIENCY AND OPERATION OF GROUNDWATER RECHARGE BASINS

THIS MEMORANDUM OF UNDERSTANDING (hereinafter referred to as the "MOU") is entered into as of this _____ day of September 2012, by and between the ORANGE COUNTY WATER DISTRICT, a special governmental district organized and existing pursuant to the Orange County Water District Act, Chapter 924 of the California Statutes of 1933, as amended (hereinafter referred to as "OCWD"), and the CITY OF ANAHEIM, a charter municipal corporation (hereinafter referred to as "Anaheim"). Anaheim and the OCWD are collectively referred to as the “Parties” or individually as a “Party.”

RECITALS

- A. OCWD is the manager of the Orange County Groundwater Basin. The Basin is a vital water supply source for north-central Orange County, and has played a key role in meeting the water needs for a growing population for over 100 years. Two and one-half million residents currently live in the area within OCWD’s boundaries. It is the mission of OCWD to provide local water retailers with a reliable, adequate, high-quality local water supply at the lowest reasonable cost and in an environmentally responsible manner.
- B. The proposed identified projects are incorporated into OCWD’s Capital Improvement Program (CIP). OCWD’s CIP is primarily driven by the following objectives: (1) increasing OCWD’s recharge capacity to allow for increased sustainable production out of the groundwater basin; (2) protecting water quality by removing contaminated groundwater from the basin and providing additional wetlands treatment for Santa Ana river flows; and (3) protecting the coastal portion of the groundwater basin.
- C. Anaheim provides retail water services to 341,034 residents. Groundwater provides approximately 68% of the water used by the City. Most of OCWD’s groundwater recharge basins to spread Santa Ana River water are located in Anaheim.
- D. It is the interests of the Parties to collaborate regarding the implementation of OCWD’s Capital Infrastructure projects which are regional projects to improve water supply reliability and reduce dependence on imported water for Anaheim and north/central Orange County.

- E. Pursuant and subject to all of the terms and provisions of The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (“Proposition 84”) and all amendments thereto, OCWD intends to or will submit an application to the Santa Ana Watershed Project Authority (hereinafter referred to as “SAWPA”) under its One water One watershed 2.0 Integrated Regional Water Management Plan before October 1, 2012.
- F. SAWPA requires that there be collaboration for the projects for which a grant application is to be submitted, and that the applicant and collaborating entity have governing board authority for such collaboration or have budgeted line items to reflect collaboration.

COLLABORATION AGREEMENT

NOW, THEREFORE, in consideration of the matters recited above and the covenants, conditions and promises contained herein, the Parties agree as follows:

SECTION 1: Intent

The Parties believe that the intent of undertaking the Projects identified in this MOU is to collaborate regarding the implementation of OCWD’s Capital Infrastructure projects which are regional projects to improve water supply reliability and reduce dependence on imported water for Anaheim and north/central Orange County.

SECTION 2: Projects

The proposed MOU projects (“Projects”) are:

- A. FIVE COVES AND LINCOLN BASINS BYPASS PIPELINE;
- B. RECHARGE WATER SEDIMENT REMOVAL PROJECT; and
- C. NORTH BASIN GROUNDWATER PROTECTION PROGRAM NITRATE TREATMENT

SECTION 3: Future Projects

In the future, additional Capital Infrastructure projects may be added to the list of Projects in Section 2 upon mutual written agreement of Anaheim’s Public Utilities General Manager and OCWD’s General Manager.

SECTION 4: Responsibilities of Parties

- A. OCWD, at its sole cost and expense, will be responsible for the design, construction, operation and maintenance of the proposed Projects. OCWD, at its sole cost and expense, will also be the lead agency for CEQA compliance and will implement the environmental mitigation program, if applicable, of the proposed Projects.

B. Anaheim, at its sole cost and expense, will serve in the capacity of a project advisor and provide necessary staff time for review and comments to all phases of the proposed Projects.

SECTION 5: Notice

Any notice or other written instrument required or permitted by this MOU to be given to any Party shall be deemed received when personally delivered or seventy-two (72) hours after being deposited in the U.S. Mail, postage prepaid, registered or certified and addressed as follows:

OCWD:
Orange County Water District
18700 Ward Street
P.O. Box 8300
Fountain Valley, California 92728-8300
Attn: General Manager

Anaheim:
City of Anaheim
Public Utilities Department
201 South Anaheim Boulevard, Suite 1101
Anaheim, California 92805
Attn: General Manager

SECTION 6: Termination

Either Party may terminate this MOU on thirty (30) days prior written Notice to the other Party. The Public Utilities General Manager is authorized to terminate the MOU on Anaheim's behalf.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU on the day and year first hereinabove written.

ORANGE COUNTY WATER DISTRICT

Michael R. Markus
General Manager

CITY OF ANAHEIM

Marcie L. Edwards
Public Utilities General Manager

“SJC and EBMUD MOA”

A _____

**MEMORANDUM OF AGREEMENT BETWEEN
SAN JOAQUIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
AND
EAST BAY MUNICIPAL UTILITY DISTRICT
RELATIVE TO A GROUNDWATER BANKING DEMONSTRATION PROJECT**

This Agreement is made and entered into on this ___ day of _____, by and between the San Joaquin County Flood Control and Water Conservation District "County District" and the East Bay Municipal Utility District "EBMUD" jointly referred to hereinafter as the "Parties" in this Agreement; all of the Parties are political subdivisions of the State of California.

Whereas the County District and EBMUD have expressed a desire to work cooperatively to solve regional water supply needs; and,

Whereas groundwater banking has been identified as one possible means to improve water levels in the Eastern San Joaquin Groundwater Basin and improve regional water supply; and,

Whereas, it is agreed by the Parties that operation of a ground water banking project, including a demonstration project, must not negatively impact the Eastern San Joaquin County Groundwater Basin; and,

Whereas, the Parties are interested in developing a demonstration project in Eastern San Joaquin County ("Demonstration Project") that would help determine the potential to in turn develop a large scale conjunctive use project beneficial to the Parties and to determine the operating criteria for a larger scale conjunctive use project if one is to take place; and,

Whereas, the Parties desire that the lead agency for the Demonstration Project would be the County District, and that EBMUD would participate in the Demonstration Project as a Project partner or a Project customer.

Now, therefore, the Parties agree as follows:

ARTICLE 1 – Demonstration Project Development Activities

1.A. The Demonstration Project development activities to be undertaken pursuant to this Agreement, including preliminary engineering, environmental documentation, permitting, and public outreach are those described in Exhibit A attached hereto.

ARTICLE 2 - Project Concept

2.A. The purpose of this Agreement is to perform the Demonstration Project development activities described in ARTICLE 1, consistent with the Demonstration Project Concept described in Exhibit B attached hereto.

ARTICLE 3 - Coordination

3.A. Time Commitments. Time commitments and effective coordination are essential to this Agreement. The County District and EBMUD shall make their respective best good faith efforts and devote adequate resources as specified herein to maintain the following schedule:

September 2013 Memorandum of Agreement acted on by EBMUD Board and Board of Supervisors of the County District.

October 2013 Develop Conceptual Model.

- Agree upon approximate size and return ratio for Demonstration Project.
- Delineate zone of operations.
- Commence consultant selection processes for preliminary engineering and environmental documentation for the Demonstration Project.

October 2013 The Parties commence Demonstration Project preliminary permitting and water rights discussions with staff of the State

Water Resources Control Board, the California Department of Fish and Wildlife, the Department of Public Health, and the Central Valley Regional Water Control Board and the Parties initiate the San Joaquin County Groundwater Ordinance permit application process.

October 2013 The Parties commence discussions of the Demonstration Project concept with member agencies of the Eastern San Joaquin County Groundwater Basin Authority and the Upper Mokelumne River Watershed Authority.

January 2014 The Parties develop and execute a Budget and Cost-Share Agreement for purposes of furthering the development of the Demonstration Project.

January 2014 The Parties begin the implementation of a public outreach program.

February 2014 The County District awards consulting contracts for preliminary engineering and environmental documentation on the Demonstration Project.

April 2014 Preliminary engineering completed which includes Basin Operations Criteria and Success Criteria by which to measure success.

April 2014 The County District and other appropriate parties finalize the preparation of and submit a San Joaquin County Groundwater Export Permit application which meets the objectives of conjunctive storage beneficial to the underlying groundwater basin and to EBMUD through an exportable dry year water supply consistent with the Basin Operations Criteria.

July 2014	Draft Environmental Documentation published by the County District.
September 2014	Final Environmental Documentation published and if required adopted by the respective Governing Boards of the Parties.
September 2014	Obtain permit from San Joaquin County pursuant to the San Joaquin County Groundwater Ordinance. Confirm the status of permit processes such that advancing the Demonstration Project to the next stage is warranted.
October 2014	Construction/Operation/Financial Agreement between the Parties completed and executed by the respective Governing bodies. This agreement shall clarify the final role of the Parties in the operation of the Demonstration Project with EBMUD as a partner organization or Project customer.
January 2015	Permits obtained from SWRCB, CVRWQCB, San Joaquin County, Department of Public Health, Cal. Dept. of Fish and Wildlife, and any other Local, State, or Federal Agency as required to enable construction to take place.
April 2015	Final design and property acquisition completed.
June 2015	Begin Demonstration Project construction.
April 2016	Commence Demonstration Project operation.

3.B. Resolution of Delays. Notwithstanding the good faith efforts to achieve the milestones set forth above, the Parties recognize that delays may occur. If significant delays occur in connection with any of the components of the work described in Paragraph 3.A above, the Parties shall meet to determine how to proceed with the project development and make appropriate adjustments in this schedule.

- 3.C. Work Plan Timeline. The Parties shall mutually create a work plan timeline including technical milestones to be determined as the Demonstration Project is developed.
- 3.D. Technical Coordination Team. The Parties designate the following representatives to participate in a Technical Coordination Team. The Technical Coordination Team shall be responsible for coordinating and performing Demonstration Project development activities, selecting project consultants, managing the work of Project consultants, reviewing and approving work products, providing technical input, and responding to the requests of the Negotiating Team.

County District Representatives

Thomas Gau
 Fritz Buchman
 Brandon Nakagawa
 and others as may be designated by
 the County District

EBMUD Representatives

Richard Sykes
 Mike Tognolini
 Tom Francis
 and others as may be designated by
 EBMUD

- 3.E. Consultant Management. While the Consultants will contract directly with County District, consultant management will be the responsibility of the Technical Coordination Team.

ARTICLE 4 - Responsibilities and Costs

- 4.A. General. No commitments for costs other than those described in Paragraphs 4.B, 4.D, and Article 7 are created herein.
- 4.B. Responsibilities. Responsibilities and costs for Demonstration Project development activities, and other ancillary activities are as described in 4.D of this Agreement.
- 4.C. Additional Costs. No additional costs other than those described in this Article, and Article 7 shall be the responsibility of the Parties unless this Agreement is amended. Staff costs are not subject to cost sharing.

4.D. Responsibilities and Costs for Procurement of Professional Services, and Project Development Activities.

4.D.(1) The responsibilities and costs to be borne by the County District shall include:

4.D.(1)(a) A percentage of professional services required for engineering, permitting and environmental documentation for the Demonstration Project to be determined by the subsequent Budget and Cost-Share Agreement referenced in Paragraph 3.A.

4.D.(1)(b) Administration of contracts described in 4.D.(1)(a).

4.D.(1)(c) Obtaining all necessary local, State, and Federal permits for the Demonstration Project (excluding SWRCB permit changes and modifications to EBMUD's Department of Public Health Water Supply Permit).

4.D.(1)(d) The County District is responsible for the cost, development, and implementation of a public outreach program as described in Exhibit A.

4.D.(1)(e) In the event of litigation challenging the project environmental documentation and permit applications referenced in Paragraphs 4.D.(1)(a) and (c), the County District will share in the costs of defense as provided in Article 7.C of this Agreement.

4.D.(1)(f) Obtaining a Permit under the San Joaquin County Groundwater Ordinance.

4.D.(2) The responsibilities and costs to be borne by EBMUD shall include:

4.D.(2)(a) A percentage of professional services required for engineering, permitting and environmental documentation for the Demonstration Project to be determined by the subsequent Budget

and Cost-Share Agreement referenced in Paragraph 3.A.

4.D(2)(b) SWRCB permit changes as required.

4.D(2)(c) Modification to the EBMUD's Department of Public Health water supply permit.

4.D.(2)(d) In the event of litigation challenging the project environmental documentation and permit applications, referenced in Paragraphs 4.D.(1) (a) and (c), EBMUD will share in the costs of defense as provided in Article 7.C of this Agreement.

4.D.(3) The Parties shall mutually develop a Budget and Cost-Share Agreement for various items of work to be undertaken jointly by the Parties. The budget shall be determined prior to initiation of the work effort and said budget will be updated on a biannual basis.

ARTICLE 5 - Term and Final Report

5.A. Term of Agreement. This Agreement shall be effective on the date first set forth above through completion of the Demonstration Project. Upon completion of Demonstration Project, a Final Report as to the effects of the Demonstration shall be prepared and the cost thereof shall be borne by the Parties as set forth in the Budget and Cost-Share Agreement.

5.B. Termination. Either Party may, at their option, terminate this Agreement in the event: (1) the SWRCB proposes terms and conditions on either Party which are unacceptable to that Party; (2) a Permit as required by the San Joaquin County Groundwater Ordinance enabling conjunctive use and exportation is not issued or is issued but in the opinion of EBMUD does not allow sufficient export of water; or (3) within 30 days' notice, either Party may terminate this Agreement but must pay all of its cost obligation as incurred up to the date of termination.

ARTICLE 6 - General Provisions

- 6.A. Amendment. All amendments to this Agreement shall be in writing and shall be effective upon execution by the County District and EBMUD.
- 6.B. Entire Agreement. This Agreement represents the entire understanding of the County District and EBMUD with respect to the Demonstration Project. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.

ARTICLE 7 - Indemnification

- 7.A. Indemnification of EBMUD. The County District expressly agrees to defend, indemnify, and hold harmless EBMUD and its Directors, officers, agents and employees from and against any and all loss, liability, expense, claims, suits, and damages, including attorney fees, arising out of or resulting from the County District's, its associates', employees', subconsultants', or other agents' negligent acts, errors or omissions, or willful misconduct, in the operation and/or performance under this Agreement.
- 7.B. Indemnification of County District. EBMUD expressly agrees to defend, indemnify, and hold harmless the County District and its Supervisors, Directors, officers, agents, and employees, from and against any and all loss, liability, expense, claims, suits, and damages, including attorneys' fees, arising out of or resulting from EBMUD's, its associates', employees', subconsultants', or other agents' negligent acts, errors, or omissions, or willful misconduct, in the operation and/or performance under this Agreement.
- 7.C. Permit Challenge . In the event the environmental documentation and/or permit applications described in Article 4.D of this Agreement are challenged as being in violation of law, the Parties agree to cooperatively defend against such challenge and to share equally the reasonable costs of such defense.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement as of _____, 2013.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____
_____, President

Date: _____

APPROVED AS TO FORM

EBMUD Office of General Counsel

Date: _____

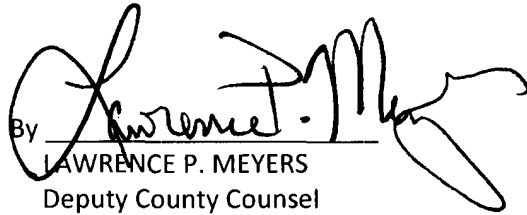
SAN JOAQUIN COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

ATTEST: Clerk of the Board of Supervisors

By _____ (SEAL)
MIMI DUZENSKI, Clerk

By _____
KEN VOGEL, Chairman
Board of Supervisors
"COUNTY DISTRICT"

APPROVED AS TO FORM:

By 
LAWRENCE P. MEYERS
Deputy County Counsel

“RWA and SGA Agreement”

AGREEMENT BETWEEN THE REGIONAL WATER AUTHORITY AND THE SACRAMENTO GROUNDWATER AUTHORITY FOR ADMINISTRATIVE AND MANAGEMENT SERVICES

This Agreement was made and entered into on the 23rd day of May, 2002, and is amended on the 9th day of September, 2004, by and between the Regional Water Authority (“RWA”), a joint exercise of powers authority formed under California Government Code section 6500, *et seq.* (“the Joint Powers Authority Act”), and the Sacramento Groundwater Authority (“SGA”), also a joint exercise of powers authority formed under the Joint Powers Authority Act.

RECITALS

A. RWA is a joint powers authority, formed to serve and represent regional water supply and to assist its members in protecting and enhancing the reliability, availability, affordability and quality of water resources.

B. RWA is a successor in interest to all rights and obligations of the Sacramento Metropolitan Water Authority.

C. SGA is a joint powers authority, created by the City of Citrus Heights, the City of Folsom, the City of Sacramento, and the County of Sacramento for the purpose of managing the North Area Groundwater Basin through regulatory activities and conjunctive use programs.

D. SGA is a successor in interest to all rights and obligations of the Sacramento North Area Groundwater Management Authority.

E. RWA and SGA serve many common constituents and perform numerous common functions and activities, with the objective of preserving and protecting the water supplies for present and future uses in the Sacramento region.

F. RWA and SGA are successors in interest to the *Agreement Between the Sacramento Metropolitan Water Authority and the Sacramento North Area Groundwater Management Authority Regarding Administrative Cost Sharing Arrangements*, dated July 27, 2000 (hereinafter, “2000 Cost Share Agreement”), which obligates SGA and RWA each to pay 50% of all common administrative expenses of the RWA and SGA.

G. The purpose of this agreement is to delineate an efficient and effective arrangement for administration and management of services and for ownership of assets and property common to the RWA and SGA.

AGREEMENT

1. Recitals Incorporated. The foregoing recitals are hereby incorporated by reference.

2. Definitions. Except as otherwise provided in this Article, terms used in this Agreement shall be given their common meaning.

- a. Common Costs.** Common Costs shall include Employee Costs and costs for Goods and Services of benefit to both RWA and SGA. RWA and SGA shall each be responsible for 50% of Common Costs, unless both the RWA and SGA Boards agree in writing to a different allocation for individual Employees or specific Goods and Services. Budgets, budget items, or written agreements duly adopted and approved by the SGA and RWA Boards may be used to authorize or adjust a Common Cost and/or allocation formula.
- b. Employees.** Employees shall include all full-time and part-time personnel and staff hired and retained by RWA to act for the benefit of both RWA and SGA. All Employees shall be employees of RWA and agents of SGA. Unless expressly stated otherwise in a separate agreement, all Employees shall act for the benefit of RWA and SGA.
- c. Employee Costs.** Employee Costs shall include Employee salaries, benefits, allowances, health plans, vacation pay, Public Employees Retirement System participation payments, workers' compensation insurance, and any other employment-related cost, whether set forth in an employment agreement or otherwise.
- d. Goods and Services.** Goods and Services shall include supplies, equipment, furniture, rents, leases, clerical services, or any other goods or services acquired or retained for the benefit of both RWA and SGA. Auditing services shall be included as Goods and Services, but legal and other consultants' services shall not be included as Goods and Services, unless SGA and RWA agree otherwise in writing as to specified services. Goods and Services shall be administered by RWA through contracts and agreements between RWA and Goods and Services providers, provided that the SGA Board, or a committee thereof, is consulted prior to entering into or materially modifying any such agreement or contract.
- e. Ownership of Goods and Other Assets.** Unless otherwise specified in a writing approved by the RWA and SGA Boards,

ownership of Goods and other assets acquired as a common benefit to the RWA and SGA shall be prorated between RWA and SGA in proportion to the allocation of the Common Costs for the specific Goods or assets.

3. Term. This Agreement shall remain in effect until terminated by one of the parties in writing, with thirty days notice.

4. RWA Obligations. RWA shall be responsible for employing Employees, contracting for Goods and Services, and paying Common Costs. RWA shall submit monthly invoices to SGA for payment of SGA's share of Common Costs.

5. SGA Obligations. SGA shall be responsible for paying RWA for SGA's share of Common Costs within 15 days of receiving an invoice from RWA.

6. Separate Financial Accounts. RWA and SGA shall maintain separate bank and financial accounts. Nothing in this Agreement shall be construed to allow either RWA or SGA to draw from or access any account of the other party.

7. Insurance.

- (a) RWA and SGA shall carry separate insurance policies sufficient to cover each entity's potential liabilities and exposures arising from their operations, except that only RWA will procure worker's compensation insurance necessary to cover all Employees as required by Labor Code section 3700 and any authorized volunteers of either party pursuant to Labor Code section 3363.5. RWA's obligation to secure workers' compensation insurance coverage for SGA's employees and authorized volunteers is authorized pursuant to Labor Code section 3602, subdivision (d) and specifically agreed to by the parties herein.
- (b) In accordance with paragraph 2.d., all insurance premiums will be considered Goods and Services, which RWA will purchase as provided in paragraph 4 of this Agreement. All insurance premium payments made by RWA on behalf of both entities will be aggregated and SGA will pay 50% of the aggregate premiums to RWA in accordance with paragraph 5 of this Agreement.
- (c) If either RWA or SGA becomes liable to any third party on a claim, judgment, arbitration award, settlement, administrative order or on any other basis ("Claim"), RWA and SGA shall be responsible for payment of such Claim as follows:
 - (i) For any Claim made, brought, incurred, accepted or assessed against RWA or SGA as its sole and separate liability, the responsible entity shall pay the claim 100% from its own funds to the extent of any deductible or self-insurance, and then to the extent of the liable party's insurance coverage.

- (ii) For any Claim made, brought, incurred, accepted or assessed against both RWA and SGA as their joint and several liability in an amount no greater than the amount of each entity's insurance deductible applicable to the Claim, then RWA shall pay the Claim amount and bill SGA for 50% of that amount in accordance with paragraphs 4 and 5 of this Agreement.
 - (iii) For any Claim made, brought, incurred, accepted or assessed against both RWA and SGA as their joint and several liability in excess of \$50,000, each entity would first tender such Claim to its insurance provider for coverage. If the Claim is subject to some form of adjudication, RWA and SGA will each be responsible for that portion of liability on the Claim that is apportioned to each, up to the deductible amount of any insurance, and then all liability amounts in excess of the deductible amount will be apportioned between the insurance policies as determined by RWA's and SGA's insurer(s). In no case, however, will RWA and SGA be entitled to obtain indemnification from their insurer(s) in excess of the total Claim amount.
 - (iv) In any Claim that is subject to litigation and/or adjudication, RWA and SGA will first tender the Claim to their insurer(s) for a defense. If the Claim is the sole liability of one party, then the liable party shall be solely responsible for all defense costs not paid by or in excess of its insurance coverage. In cases of joint and several liability, RWA and SGA shall each pay 50% of any defense costs not paid by or in excess of their respective insurance coverage.
- (d) If RWA's worker's compensation insurance does not fully cover all liability arising from covered employee or volunteer injuries within the scope of the Worker's Compensation and Insurance Act, then any excess amount of such liability shall be allocated either solely to RWA or SGA, or jointly to RWA and SGA, according to whether the Employee was acting for RWA or SGA or both at the time that the compensable injury occurred.

8. Compliance With Laws. RWA and SGA each shall give all notices required by law and comply with all laws, ordinances, rules and regulations pertaining to the conduct of their respective businesses. RWA shall be responsible for all violations of the law in connection with the acts of RWA, and SGA shall be responsible for all violations of the law in connection with the acts of SGA.

9. Indemnification. To the fullest extent permitted by law, RWA and SGA shall indemnify and hold harmless and defend each other, their directors, officers, employees, agents and/or authorized volunteers from and against all liabilities, claims, demands, losses, damages, and costs, including reasonable attorney's fees and litigation costs of all

persons in any way arising out of the decisions of the respective entities' Boards of Directors and from the performance (or actual or alleged non-performance) of RWA or SGA's duties under this Agreement, for damages to persons or property due to RWA or SGA's negligent or willful acts, errors or omissions committed. RWA and SGA shall not tender such claims to the other entity nor to its directors, officers, employees, agents and/or authorized volunteers, for defense or indemnity, except that RWA and SGA each shall defend the other and pay and satisfy any judgment, award or decree that may be rendered against the other, if any, or its directors, officers, employees, agents or authorized volunteers, in any suits, actions, or other legal or administrative proceedings, in accordance with the provisions of paragraph 7 of this Agreement.

10. 2000 Cost Share Agreement Superseded. This Agreement, as from time to time modified and amended, replaces and supersedes the 2000 Cost Share Agreement.

11. Employment Agreements Not Modified. This Agreement shall not be construed to modify or amend any employment agreement between an Employee and RWA or SGA, including the March 5, 2001 *SMWA-SNAGMA Employment Agreement with Executive Director*.

12. Entire Agreement. This writing constitutes the sole, entire, integrated and exclusive agreement between RWA and SGA regarding administration and management services, and any other contracts, agreements, terms, understandings, promises or representations not expressly set forth or referenced in this writing are null and void and of no force and effect.

13. Notices. Any notice to be given pursuant to this Agreement shall be sufficiently served if delivered personally to the Chair of the RWA or the Chair of the SGA Board of Directors, as appropriate, or if deposited in the United States Mail, regular pre-paid mail, addressed to RWA or SGA offices.

14. Successors and Assigns. This Agreement shall bind, and inure to the benefit of, the successors, assigns, heirs and legal representatives of the parties hereto.

15. Amendments. This Agreement may be amended only by a subsequent writing, approved and signed by all parties. The RWA and SGA Boards of Directors must approve any amendment to this Agreement at a public meeting. Individual RWA and SGA Board members do not have authority, express or implied, to amend, modify, waive or in any way alter this Agreement of the terms and conditions hereof.

16. Waiver. The waiver at any time by either party of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

17. Construction and Interpretation. The parties agree and acknowledge that this Agreement has been arrived at through negotiation, and that each party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule

of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

REGIONAL WATER AUTHORITY

By: _____
Chair, Board of Directors

Date: _____

SACRAMENTO GROUNDWATER AUTHORITY

By: _____
Chair, Board of Directors

Date: _____

“Bay Delta Conservation Plan MOA”

MEMORANDUM OF AGREEMENT REGARDING COLLABORATION ON THE PLANNING, PRELIMINARY DESIGN AND ENVIRONMENTAL COMPLIANCE FOR THE DELTA HABITAT CONSERVATION AND CONVEYANCE PROGRAM IN CONNECTION WITH THE DEVELOPMENT OF THE BAY DELTA CONSERVATION PLAN

This Memorandum Of Agreement (MOA) establishes a joint process among the California Department of Water Resources (DWR), the U.S. Department of the Interior’s Bureau of Reclamation (Reclamation), and certain contractors and representatives of contractors for water from the State Water Project (SWP contractors) and federal Central Valley Project (CVP contractors) listed on the signature page to this MOA (SWP and CVP contractors are sometimes referred to collectively as the Water Agencies). The purpose of this MOA is to enable timely analysis of appropriate habitat conservation and water supply measures, including Delta conveyance options that are developed in the Bay Delta Conservation Planning (BDCP) process. This MOA also addresses certain financial matters related to budgeting, cost sharing, funding sources, and the use of these funds to accomplish the purposes of this MOA. DWR, Reclamation, and the Water Agencies are sometimes referred to herein individually as a “Party” or collectively as “Parties”.

RECITALS

- A. On February 28, 2008, Governor Schwarzenegger, in a letter to State Senators Perata, Machado, and Steinberg, stated his intention to direct DWR to proceed under the California Environmental Quality Act (CEQA) to evaluate at least four alternative Delta conveyance strategies in coordination with the BDCP.
- B. The BDCP is a voluntary effort by multiple State and federal resource agencies, water agencies, and other stakeholder groups (Attached as Exhibit 1) to develop a comprehensive Habitat Conservation Plan under the federal Endangered Species Act and Natural Community Conservation Plan under the State Natural Community Conservation Planning Act to better protect at-risk species in a manner that also recognizes the importance of water supply, seismic and flood durability, ecosystem health and resilience, water quality, schedule, and costs. The BDCP process is guided by principles set forth in the September 2006 Planning Agreement which establishes a Steering Committee, a group of Potentially Regulated Entities, and a decision-making process. DWR, Reclamation, and the Water Agencies are members of the BDCP Steering Committee and are participating in the process to develop the BDCP.
- C. In November 2007, the Steering Committee described in a memorandum entitled “Points of Agreement for Continuing into the Planning Process,” (Attached as Exhibit 2) that it will evaluate a full range of potential facility design and operational parameters for Delta water conveyance options to achieve the BDCP conservation and planning objectives over the near and long term.
- D. In 2008, in close collaboration with the BDCP Steering Committee, DWR issued a Notice of Preparation under the CEQA and U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Reclamation issued a Notice of Intent under the National Environmental Policy Act (NEPA) to commence an environmental review process for the BDCP, which will include measures that incorporate options for improving the Delta water conveyance system.
- E. This MOA will support and complement the activities of the Steering Committee by establishing roles and responsibilities that will facilitate the funding and planning for the Delta water conveyance and habitat conservation studies. The Parties will refer to this effort as the “Planning Phase” of the “Delta Habitat Conservation and Conveyance Program” (“DHCCP” or “Program”). DWR, Reclamation, and the Water Agencies intend to enter into separate agreements related to funding the work necessary or providing mechanisms to transfer funds for the planning,

preliminary design, and environmental compliance documents required by CEQA and NEPA.

- F. Accordingly, to accomplish the stated purpose of the MOA, DWR, Reclamation, and the Water Agencies enter into this MOA to facilitate an efficient and cost effective process that will:
- (a) establish a DWR Program Manager and a Reclamation Program Manager for the DHCCP Planning Phase;
 - (b) analyze potential responses to the multiple threats to the State's economic well being posed by the current conveyance system's vulnerability to seismic risk and climate change;
 - (c) facilitate the assessment, planning and environmental analysis of likely conservation measures or elements of the BDCP, particularly the Delta water conveyance options;
 - (d) coordinate and exchange information among the Parties as the BDCP, CEQA and NEPA, and DHCCP Planning Phase moves forward;
 - (e) support a plan that can adapt to the evolving Delta environmental conditions;
 - (f) consider prudent funding of species conservation and improved Delta water conveyance facilities in order to achieve related benefits to water supply, water supply reliability, and ecosystem health and resiliency.

AGREEMENT

NOW THEREFORE, it is mutually agreed by the Parties as follows:

I. Establishment of Delta Habitat Conservation and Conveyance Program Executive Committee, Core Team, and Related Processes.

- A. Establishment of a DHCCP Executive Committee.
1. The Parties hereby establish the DHCCP Executive Committee (Executive Committee) comprised of the DWR Director, Reclamation Mid-Pacific Regional Director, Executive Director of the San Luis-Delta Mendota Water Authority, Chief Executive Officer of the Santa Clara Valley Water District, and the General Managers of the Westlands Water District, the Metropolitan Water District of Southern California, the Kern County Water Agency, two additional SWP contractor general managers selected through the State Water Project Contractors Authority (SWPCA), and two additional CVP contractor general managers selected through the San Luis-Delta Mendota Water Authority, at least one of which shall be a manager from a member agency of the SLDMWA.
 2. The Executive Committee will meet periodically as needed to carry out the activities described below, but at least quarterly. The Executive Committee will prepare and maintain minutes of its meetings.
 3. The Executive Committee will be provided a detailed update by Program Managers on the status of activities described in this MOA.
 4. The Executive Committee members will provide information and individual advice on the DHCCP Planning Phase, including:
 - a. progress on meeting DHCCP Planning Phase goals and objectives;
 - b. progress in implementing the actions undertaken pursuant to this MOA and resolving any issues related to these actions; and
 - c. measures that may be implemented in the event insufficient progress is being made in completing the DHCCP Planning Phase, or any element thereof.

5. The Executive Committee members will provide direction and oversight regarding activities that should be undertaken by their representatives on the DHCCP Core Team established below in Section I.B.
 6. Any disputes over any of the activities discussed in this MOA shall be resolved by the DWR Director and Reclamation Regional Director as expeditiously as possible, after consultation with other members of the Executive Committee.
 7. Each Party represented on the Executive Committee will act under its independent authority and any determinations or decisions made as a participant on the Executive Committee will be an independent determination or decision, including any determinations or decisions required by CEQA or NEPA. As limited by the foregoing, the Parties will not be obligated to accept or be bound by any determinations or decisions made by other Parties represented on the Executive Committee.
- B. Establishment of DHCCP Core Team.
1. The Parties will establish a DHCCP Core Team (Team) that will provide individual advice regarding the direction and coordination of DHCCP activities, including the planning, financing, environmental review, permitting, and preliminary design of DHCCP Planning Phase options.
 2. The Team will consist of one representative from each member of the Executive Committee. A member may change its designated representative by notifying all other members in writing.
- C. Team Meetings.
1. The Team will establish a biweekly schedule for regular meetings to discuss development of activities, assignments, and ongoing work progress. Meetings may be scheduled more frequently at the discretion of the Team. The Team may establish and schedule meetings of subcommittees to coordinate implementation of this MOA and to specifically address technical, legal, and other matters as needed. Attendance at all meetings may be augmented to include staff or consultants to ensure that the appropriate expertise is available to address pertinent issues.

2. The Team will meet at least quarterly with the Executive Committee, and more frequently when needed, to provide status updates and discuss matters covered in this MOA.
3. Advance notice of Team meetings and agendas will be provided to the Team members and to the Executive Committee members. Notice will be by electronic mail unless notice by mail is requested.
4. The Team will attempt to provide meeting materials in advance of the scheduled meetings to provide Team members and the Executive Committee members with sufficient notice and information to facilitate meaningful participation.
5. Team shall establish a financial management and review coordinating committee that will meet monthly and report to the Team. The purpose of the Committee is to assist the Team in monitoring and managing invoicing, payments, cash flow, and other financial matters as directed by the Team, which are related to the DHCCP Planning Process.

D. Team Activities.

1. The Team members will provide individual advice on specific issues related to implementation of this MOA. The Team will work cooperatively and in an integrated manner with the Program Managers.
2. The Team will provide technical assistance and expertise on the DHCCP Planning Phase.
3. The Team will develop a process to facilitate communication, schedule meetings, distribute information, and other organizational requirements that will help to meet the objectives of this MOA.
 - a. The Parties will share all relevant DHCCP Planning Phase information with the Team in a timely manner.
 - b. The Team may meet with other interested stakeholders or groups, such as the BDCP PRE Committee, the SWC-CVP Water Contractor's Coordination Group, the BDCP Public

Outreach Planning and Scheduling Group, and the BDCP Working Groups, to:

- i. coordinate activities;
- ii. facilitate efficient and effective use of resources and staff; and
- iii. provide consistency with related efforts, such as the BDCP, Delta Vision, and Delta Risk Management Strategy.

II. Roles and Responsibilities of the Parties.

- A. The Parties will work jointly to meet the objectives of this MOA.
- B. The Parties will coordinate all activities related to fulfillment of the objectives of this MOA. The Parties shall cooperate with one another and work as efficiently and effectively as possible in the pursuit of all activities and decisions described in this MOA and those that are not particularly described but which are related to or arise out of the activities that are described.
- C. As requested by the Program Managers, each of the Parties will provide expertise, guidance, and data on those matters for which it has specific expertise or authority, as needed to carry out the work of the Team and meet the objectives of this MOA. DWR and Reclamation will provide actual direction to the Program Managers and consultants, consistent with this MOA.
- D. After execution of this MOA, the Team shall create an Exhibit to this MOA that describes the anticipated tasks to be performed hereunder and a schedule for performance of said tasks. (Exhibit 3 is a placeholder for the Program Tasks and Schedule.) It is recognized that refinement of the tasks and the schedule will be necessary to conform to developing information, permitting and other requirements. Therefore, Exhibit 3 may be revised from time to time upon agreement of the Parties without constituting an amendment to this MOA.
- E. DWR has designated a Program Manager and its representative on the Team. Reclamation will designate a Program Manager and its representative on the Team. The Water Agencies' Executive Committee members will each designate a representative to serve on the Team. All Team members will work collaboratively to meet the purpose of this MOA.
- F. The Parties will ensure that staffing is available to carry out the Program and to assist the Program Managers.

- G. Through the State contracting process, DWR, in collaboration with the other Parties, has retained a consultant with program management experience to assist the Parties in meeting the objectives of the DHCCP Planning Phase and this MOA and in carrying out the activities determined through the BDCP and permitting processes. DWR, in collaboration with the other Parties, may retain other consulting services as necessary to ensure the timely completion of the tasks necessary in these efforts.
- H. DWR, in collaboration with the other Parties, has retained an environmental consultant to prepare necessary documents under CEQA and NEPA. DWR will act as lead agency under the CEQA and Reclamation will act as one of the lead agencies under NEPA. The Parties will coordinate during the preparation of the CEQA and NEPA documents. However, DWR and Reclamation will each remain responsible for making the final decisions regarding their respective environmental documents, as required by Public Resources Code Sections 21100 and 21108; California Code of Regulations, Title 14, Sections 15025, 15089, 15090; and the National Environmental Policy Act (NEPA), Title 42 of the United States Code, section 4321 et seq., and in accordance with Federal NEPA regulations (40 C.F.R. § Chapter V).
- I. The Parties will provide support and leadership to the Executive Committee and Team by contributing staff time, information, and facilities within available resources

III. Program Funding.

- A. Funding pursuant to this MOA addresses only the planning, preliminary design, and environmental compliance actions that do not involve irrevocable commitments of funds for construction or other implementation of the Program. This set of actions is referred to as the “Planning Phase” of the DHCCP. If the Parties determine to proceed with actions beyond the Planning Phase, including the implementation and construction phases of the DHCCP, the Parties may enter into supplemental funding agreements.
- B. DWR has developed an estimated DHCCP Planning Phase Budget with specific DHCCP Planning Phase elements and will work collaboratively with all of the Parties to develop revisions to the budget. Additionally, Reclamation has developed an estimated budget for participating on the tasks of the DHCCP Planning Phase that are consistent with Reclamation’s general planning authority. The total cost for the Planning Phase of the Program is currently estimated by DWR at \$140 million. A copy of the initial budget is attached hereto as Exhibit 4. No DHCCP Planning Phase task order shall exceed Ten Million Dollars.

- C. The Program Managers and the Executive Committee will discuss sources of funds, commitments, obligations, encumbrances, expenditures, projected expenditures to completion, and a comparison of actual to budgeted expenditures no less than once every quarter and whenever actual expenditures for any DHCCP Planning Phase element exceed 80 percent of the budgeted amount for that element.
- D. After the execution of this MOA, before any work is commenced on a DHCCP Planning Phase task order, DWR and Reclamation shall consult with the other members of the Executive Committee, and in the event any member of the Executive Committee objects to a DHCCP Planning Phase task order proceeding, the Executive Committee shall meet on the first date convenient to its members, but not later than 14 days after the expression of the objection, to attempt to resolve the objecting member's concerns. DHCCP Planning Phase budgets for successive fiscal years will be coordinated among the Parties as appropriate.
- E. Participating SWP contractors and CVP contractors have agreed among themselves that the costs of the DHCCP Planning Phase should be shared initially on an equal 50-50 basis. Additionally, participating SWP and CVP contractors have agreed that in-kind services provided by Reclamation will be credited toward the participating CVP contractors' 50 percent contribution. Any funds provided to DWR via a financial assistance agreement with Reclamation will also be credited towards the CVP contractors' portion of the DHCCP Planning Phase costs.
- Upon completion of the Planning Phase, and if the DHCCP proceeds to implementation, a mechanism shall be established between SWP and CVP contractors, or other appropriate entities, and DWR for reapportionment of DHCCP Planning Phase costs based on calculated benefits of the implemented and/or constructed DHCCP conservation measures to each Project. Any funds or in-kind services provided by Reclamation during the DHCCP planning phase are considered sunk costs and are not available for reapportionment as described above.
- F. DWR will sign separate funding agreements with the participating CVP contractors and a financial assistance agreement with Reclamation. DWR will also sign separate funding agreements with SWP contractors that are willing to advance funds for DHCCP Planning Phase costs through billing procedures based upon the Water Supply contracts. The separate funding agreements for both the SWP and CVP contractors will allow contractors to withdraw from this MOA and the separate funding agreement under specified conditions.

- G. Reclamation may sign separate agreement(s) with participating CVP contractors to contribute funds for the DHCCP Planning Phase.
- H. In the event a Water Agency withdraws from this MOA pursuant to Section IV, that Water Agency shall not be responsible for the cost of any DHCCP Planning Phase task orders that are subsequently approved by DWR or that were approved by DWR less than 60 days prior to the date the notice of withdrawal was transmitted to DWR pursuant to Section IV.A. The withdrawal of one or more Parties shall not impair the authority of the remaining Water Agencies to continue with the implementation of this MOA. However, the withdrawn Water Agencies shall remain responsible for the costs of completing any DHCCP Planning Phase task order approved prior to the dates set forth above. Any funding agreement entered into in conjunction with this MOA will include such terms and conditions necessary to effectuate the intent of this provision and the provisions of Section IV.B.
- H. If additional funds from non-parties become available and are appropriated for any action in furtherance of the BDCP, the Parties will determine how the additional money will affect the shared cost allocations and/or contributions by the Parties in the separate funding agreements.

IV. Withdrawal, Substitution and Termination.

- A. Subject to any restrictions established by any DHCCP Planning Phase funding agreement, any Party may withdraw from this MOU upon 30 days written notice to the other Parties. If a Party intends to withdraw it shall, coincident with the providing of notice to the other Parties, provide a detailed written explanation to the other Parties explaining why the Party intends to withdraw.
- B. If DWR withdraws from this MOA, it shall terminate. If Reclamation or any of the Water Agencies withdraw from the MOA, the remaining Parties shall notify DWR within seven days of the effective date of the withdrawal as to whether they intend to continue operating under this MOA. Failure to provide such notice shall be deemed an agreement to continue as a Party to this MOA. In the event of termination, the Parties' liability for reasonable termination costs shall be set forth in the separate funding agreements. In the event of withdrawal by one or more of the Water Agencies, liability for costs incurred in fulfillment of the DHCCP or the objectives of this MOA shall be set forth in the separate funding agreements, in accordance with Section III.H of this MOA. In the event of withdrawal by Reclamation, liability for costs incurred in fulfillment of the

DHCCP or the objectives of this MOA shall be set forth in the financial assistance agreement.

- C. If the Water Agencies become members of a Joint Powers Authority (JPA) which includes among its purposes collaboration on the analysis, development, and implementation of appropriate habitat conservation measures, including Delta Conveyance options, in coordination with the development of the BDCP, the JPA shall execute this MOA and thereafter become the “Water Agencies” for the purposes of this MOA. The JPA will thereafter be responsible for selecting the Water Agencies’ representatives on the Executive Committee, the number of which shall remain unchanged. If the JPA assumes the role of the Water Agencies, withdrawal from this MOA by the Water Agencies shall only occur through notice from the JPA and such notice shall cause this MOA to terminate.

V. Miscellaneous Provisions.

- A. This MOA may be modified by written agreement of all of the Parties.
- B. No Delegation of Authorities.
 - 1. The purpose of this MOA is to establish an agreed-upon cooperative process to provide planning, preliminary design and environmental compliance regarding conservation measures and Delta conveyance options in coordination with the BDCP process.
 - 2. Nothing in this MOU constitutes a delegation by any Party of its existing authority to make any decision it is mandated by law to make, including:
 - a. Making a final determination or commitment, that it is mandated to make independently by CEQA or NEPA,
 - b. Making any other final decision on a project,
 - c. Complying with a court order or regulatory order, or
 - d. Pursuing a project according to individual legal authority.
 - 3. Nothing in this MOA shall amend, abridge, or in any way alter the legal responsibilities or authorities of the Parties. Nothing in the MOA shall amend, abridge, or modify any provisions of the Water Supply Contracts between the DWR and any of its SWP contractors or the water supply contracts between Reclamation and any of its CVP contractors.

4. All provisions of this MOA are intended and will be interpreted to be consistent with all applicable provisions of State and federal law. The undersigned recognize that public agencies signatories to this MOA have specific statutory and regulatory authority and responsibilities, and that actions of these public agencies must be consistent with applicable procedural and substantive requirements of State and federal law. Nothing in this MOA is intended to, nor will have the effect of, constraining or limiting any public entity in carrying out its statutory responsibilities. Nothing in this MOA constitutes an admission by any party as to the proper interpretation of any provision of law, nor is anything in the MOA intended to, nor will it have the effect of, waiving or limiting any public entity's rights and remedies under any applicable law.
 5. Execution of this MOA does not constitute a waiver by any signatory of any right or remedy it may have, nor does execution constitute pre-approval or any project or preferred project alternative, or waive or otherwise abridge responsible trustee duties required, or discretion authorized, under State and federal law.
- C. The expenditure of any money or the performance of any obligation of the United States under this MOA shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States for failure to perform any obligation under this MOA in the event that funds are not appropriated or allotted.
 - D. This MOA shall become effective upon signature and date of the Parties listed below and upon the execution of the funding agreements referenced in Section III above.
 - E. The Parties may execute this MOA in multiple originals each of which will be deemed to be an original official copy, or counterpart.

This MOA is signed and dated:

DWR:

Approved as to legal form
and Sufficiency



Chief Counsel
Department of Water Resources

Date 3/12/09

Reclamation:

Approved as to ~~legal form~~ ^{LA}
~~and Sufficiency~~



Counsel
U.S. Department of the Interior
Bureau of Reclamation

Date 3/12/09

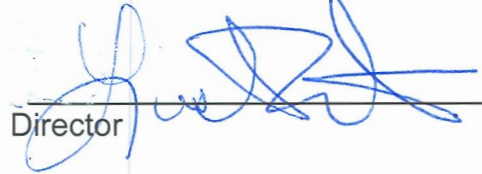
SCVWD:

Approved as to legal form
and Sufficiency

Counsel
Santa Clara Valley Water District

Date _____

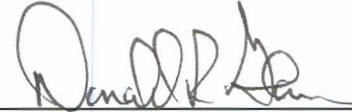
State of California
Department of Water Resources



Director

Date 3/12/09

U.S. Department of the Interior
Bureau of Reclamation



Regional Director

Date 3/12/09

Santa Clara Valley Water District

Chief Executive Officer

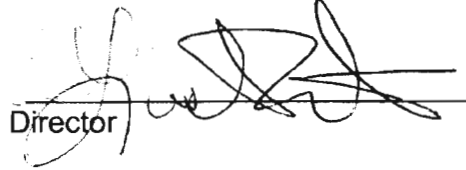
Date _____

This MOA is signed and dated:

DWR:

Approved as to legal form
and Sufficiency

State of California
Department of Water Resources



Chief Counsel
Department of Water Resources

Director

Date 3/12/09

Date 3/12/09

Reclamation:

Approved as to legal form
and Sufficiency

U.S. Department of the Interior
Bureau of Reclamation

Counsel
U.S. Department of the Interior
Bureau of Reclamation

Regional Director


Date _____

Date _____

SCVWD:

Approved as to legal form
and Sufficiency

Santa Clara Valley Water District



Counsel
Santa Clara Valley Water District

Chief Executive Officer

Date 3/13/09

Date 3/13/09

SLDMWA:

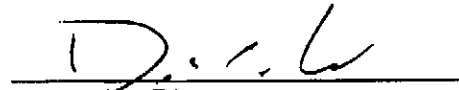
Approved as to legal form
and Sufficiency



Counsel
San Luis Delta Mendota
Water Authority

Date 3-12-09

San Luis Delta Mendota
Water Authority



Executive Director

Date 3/12/09

SWPCA:

Approved as to legal form
and Sufficiency

Counsel
State Water Project
Contractors Authority

Date _____

State Water Project Contractors
Authority

General Manager

Date _____

MWDSC:

Approved as to legal form
and Sufficiency

Counsel
Metropolitan Water District of
Southern California

Date _____

Metropolitan Water District of
Southern California

General Manager

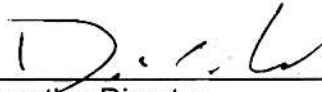
Date _____

SLDMWA:

Approved as to legal form
and Sufficiency

San Luis Delta Mendota
Water Authority

Counsel
San Luis Delta Mendota
Water Authority



Executive Director

Date _____

Date 3/12/09

SWPCA:

Approved as to legal form
and Sufficiency

State Water Project Contractors
Authority

Counsel
State Water Project
Contractors Authority



General Manager

Date _____

Date 3/13/09

MWDSC:

Approved as to legal form
and Sufficiency

Metropolitan Water District of
Southern California

Counsel
Metropolitan Water District of
Southern California

General Manager

Date _____

Date _____

SLDMWA:

Approved as to legal form
and Sufficiency

San Luis Delta Mendota
Water Authority

Counsel
San Luis Delta Mendota
Water Authority



Executive Director

Date _____

Date 3/12/09

SWPCA:

Approved as to legal form
and Sufficiency

State Water Project Contractors
Authority

Counsel
State Water Project
Contractors Authority

General Manager


Date _____

Date _____

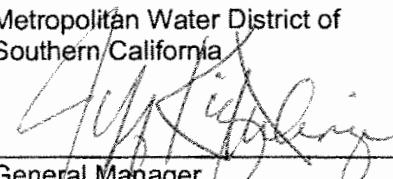
MWDSC:

Approved as to legal form
and Sufficiency

Metropolitan Water District of
Southern California



General Counsel
Metropolitan Water District of
Southern California



General Manager

Date 3/10/09

Date 3/12/09

KCWA:

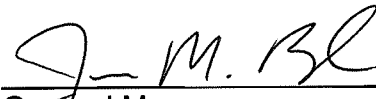
Approved as to legal form
and Sufficiency



Counsel
Kern County Water Agency

Date 3/12/2009

Kern County Water Agency




General Manager

Date 3/12/09

WWD:

Approved as to legal form
and Sufficiency



Counsel
Westlands Water District

Date 3/12/2009

Westlands Water District

General Manager

Date _____

KCWA:

Approved as to legal form
and Sufficiency

Kern County Water Agency

Counsel
Kern County Water Agency

General Manager

Date _____

Date _____

WWD:

Approved as to legal form
and Sufficiency

Westlands Water District

Counsel
Westlands Water District



General Manager

Date _____

Date 3/12/09

“Groundwater Basin Association MOU”

MEMORANDUM OF UNDERSTANDING
RELATING TO THE FORMATION AND OPERATION
OF THE STANISLAUS AND TUOLUMNE RIVERS
GROUNDWATER BASIN ASSOCIATION

ORIGINAL

COPY

1. PARTIES:

The Parties to this Memorandum of Understanding (MOU) are: County of Stanislaus, a political subdivision of the State of California; Oakdale Irrigation District, a California irrigation district; the City of Oakdale, a California public agency; the City of Riverbank, a California public agency; the City of Modesto, a California public agency; and Modesto Irrigation District, a California irrigation district.

2. RECITALS:

This MOU is entered into with regard to the following facts and circumstances, among others:

- 2.1 Groundwater and surface water resources within the Stanislaus and Tuolumne Rivers Groundwater Basin are vitally important resources, in that they provide the foundation to maintain current and fulfill future environmental, agricultural, domestic, municipal and industrial needs, as well as other needs, and to maintain the economic viability and prosperity of the Basin area.
- 2.2 Agriculture has been prominent in making Stanislaus County one of the world's foremost agricultural areas, and has played a major role in the development of the economy of Stanislaus County; in an era of increasing competition for the area's finite water resources, it is important to understand and plan for the utilization of all the area's water resources in order to preserve all elements of the local economy vital to the area's well being.
- 2.3 In 1994, the Parties to this MOU, together with others, created an association known as the Stanislaus and Tuolumne Rivers Groundwater Association (the "former Association").
- 2.4 The former Association ceased to exist as of December 31, 1997, pursuant to the terms of the agreement among the Parties creating it.
- 2.5 During the period following termination of the former Association, the Parties have continued to conduct business that might have been conducted by the former Association.
- 2.6 The Parties desire to form an association, to provide a mechanism for the Parties to cooperate in working toward the purposes and goals established in this MOU.

- 2.7 **Purposes and Goals:** The purposes and goals for the formation of the Association are:
- 2.7.1 To determine and evaluate the Basin's existing groundwater supply.
 - 2.7.2 To promote coordination of groundwater management planning activities developed during the first term of this MOU;
 - 2.7.3 To develop a hydrologic groundwater model of the groundwater supplies;
 - 2.7.4 To determine the Basin's need for additional or improved water extraction, storage, delivery, conservation, and recharge facilities; and
 - 2.7.5 To provide information and guidance for the management, preservation, protection and enhancement of groundwater quality and quantity in the Basin.
- 2.8 The Parties believe that independent and non-coordinated action by water providers and users within the Basin could result in unregulated competition for finite resources resulting in adverse impacts to the groundwater and surface water supplies within the Basin.
- 2.9 The Parties believe that a groundwater management plan or plans, whether developed under the umbrella of the Association or through individual agency efforts coordinated through the Association, for water suppliers and water users within the Basin is necessary to protect the groundwater and surface water resources and to meet the needs of all uses of such resources within the Basin.
- 2.10 A desirable step in the implementation of such a plan is the development and the proper use and application of a hydrologic groundwater model.
- 2.11 Because of the enactment of State legislation that has extended additional authority for local groundwater management pursuant to Water Code section 10750 et seq. (Assembly Bill 3030 adopted in 1992), it is now clear to the Parties that local management of water resources is necessary and desirable in order that local control be maintained over such resources.
- 2.12 The Parties hereto desire to enter into this MOU in order to reauthorize the Association to promote certain goals and provide coordinated planning to make the best use of available water resources to meet the needs of the Parties and respective constituents and service territories in the mutual best interests of the inhabitants and resources of the Basin.
- 2.13 In forming the Association, it is the Parties' desire that the Association not be formed as a separate governmental entity, nor have any enforceable regulatory

authority over any Party's facilities or any Party's respective surface water or groundwater supplies or rights nor duplicate any services, duties or authority of any other agency.

3. AGREEMENT:

The Parties agree as follows:

4. DEFINITIONS:

The following terms, whether in the singular or the plural, and when used herein with initial capitalization, shall have the meanings specified in this Section 4:

- 4.1 **Annual Budget:** A budget will be developed only after the Association's governing body has approved certain project(s) to advance the goals and objectives of this MOU.
- 4.2 **Basin:** The Stanislaus and Tuolumne Rivers Groundwater Basin, which is geographically defined as that area in the State of California bounded on the west by the San Joaquin River; on the north by the Stanislaus River, on the east by the base of the Sierra Nevada foothills; and on the south by the Tuolumne River, and includes the area of land overlying that basin and all tributaries therein.
- 4.3 **Committee:** That body, consisting of one representative from each of the Parties, which governs the Association, as established pursuant to Section 5.2 of this MOU.
- 4.4 **Budget:** Either an Annual Budget or Initial Budget necessary to complete necessary projects pursuant to Section 4.1 of this MOU.
- 4.5 **Coordinator:** The individual appointed by the Committee pursuant to Section 6 is otherwise responsible for coordinating a work plan.
- 4.6 **Governing Bodies:** The legislative bodies of the governmental Parties to this MOU.
- 4.7 **MOU:** This Memorandum of Understanding Relating to the Formation and Operation of the Stanislaus and Tuolumne Rivers Groundwater Basin Association.
- 4.8 **Parties:** Each of those entities named in Section 1 of this MOU, or those Parties added pursuant to section 5.4 of this MOU.

4.9 **Voting Percentage:** A Party's Voting Percentage as set forth in Section 8.3 of this MOU.

5. THE ASSOCIATION

- 5.1 Powers and Purposes: The Parties to this MOU hereby form the Stanislaus and Tuolumne Rivers Groundwater Basin Association.
- 5.1.1 The purpose of the Association is to provide a forum in which the Parties can work cooperatively; to combine the available talent of the Parties' respective staffs; and to accomplish the purposes described in Section 2 of this MOU.
- 5.1.2 This Association shall have no enforceable regulatory authority over any person or entity, including Parties or Parties' facilities or rights.
- 5.1.3 The Association shall have the power to sue or be sued in its own name.
- 5.2 **Committee:** The Association shall be governed by a Committee whose membership and responsibilities are set forth herein.
- 5.2.1 Each Party shall designate one person to serve as a member of the Committee, and one or more alternates. The names of the member and alternates, shall be submitted to the Coordinator. Each member of the Committee and each alternate, shall serve at the pleasure of the Party appointing such member. A Party's alternate may serve in the place of that Party's member in the absence of such member and, in such case, the alternate shall have the powers of the member.
- 5.2.2 The Committee shall elect a chair and vice chair from its members at the first meeting of each calendar year. The chair will be responsible for presiding over meetings of the Committee, and shall notify committee members and the Coordinator of meetings of the Committee. The Committee will establish a date, time and place for its regular meetings, and may hold special meetings when required for the proper transaction of business. All meetings of the Committee shall be held in accordance with the provisions of the Brown Act, California Government Code Section 54950 et seq. The Committee will prescribe such procedures for the conduct of its business as it deems appropriate.
- 5.2.3 A quorum shall consist of a simple majority of the Voting Percentage of the Committee, except that less than a quorum may adjourn meetings of the Committee from time to time. Alternatively, the Coordinator may adjourn a meeting of the Committee to a specified time, date and place if there is less than a quorum of members present for a meeting.

5.2.4 The Committee shall have the following duties and responsibilities:

- a. Develop and implement the activities, including work schedule, designed to achieve the objectives of the Association as set forth in Section 2 of this MOU.
- b. Enter into contracts, and approve all amendments thereto, for and on behalf of the Association, necessary to carry out the powers and duties of the Association.
- c. Establish an Annual Budget for the Association, and approve proposed revisions to such budget, provided that no action of the Association shall be deemed to bind any party to contribute such funds absent approval of Governing Bodies.
- d. Recommend for approval by the Governing Bodies Budget(s) necessary to carry out proposed project(s).
- e. Establish such committees as may be necessary or desirable to carry out the purposes of the Association, and to exercise general supervision over such committees.

5.2.5 Except for actions for which a different approval standard is set forth in this MOU, all actions of the Committee shall be approved by a majority of the members present.

5.3 **Staff:** The Association shall have the authority to hire or retain agents, contractors and consultants as the Committee shall determine necessary and appropriate.

5.4 **New Parties:** New parties may join the Association, provided that they meet the requirements set forth in this Section 5.4.

5.4.1 Any county or local public agency, whose territory or service area includes land located within that portion of Stanislaus County east of the San Joaquin River, which provides water service within its service area, and whose service area includes all or a portion of the Stanislaus and Tuolumne Rivers groundwater basin (as defined in Section 4.2), may apply for membership in the Association.

5.4.2 A water corporation regulated by the California Public utilities Commission, or a mutual water company whose service area includes land located within that portion of Stanislaus County east of the San Joaquin River, which provides water service within its service area, and whose

service area includes all or a portion of a ground water basin, may apply for membership in the Association.

5.4.3 Application for membership shall be subject to approval by the Governing Bodies of the Parties; approval shall require the affirmative vote of the Governing Bodies of a simple majority of the Parties.

5.4.4 Any new Party to this Agreement shall, as a condition of admission to the Association, be required to first pay its proportionate share of back contributions as determined by the Committee.

6. COORDINATOR:

6.1 **Appointment:** The Committee shall appoint a Coordinator, who shall have the duties and responsibilities set forth in this Section 6. The Coordinator shall be an employee of a Party, unless otherwise approved by the Committee.

6.2 **Duties and Responsibilities:** The Coordinator will have the following duties and responsibilities:

6.2.1 Develop and submit for consideration of approval by the Committee a work plan and schedule of activities designed to accomplish the goals of the Association as established in this MOU or as may be directed by the Committee. }

6.2.2 Propose an Annual Budget, and from time to time such revisions as the Coordinator may feel necessary or desirable, to the Committee for its review and approval. }

6.2.3 Submit to the Committee as directed by the Committee, a progress report as to the Association's activities, and a Budget report which compares expenditures with the adopted Budget. }

6.2.4 Execute and administer contracts as directed by the Committee. }

6.2.5 Maintain proper records and accounts of Work performed by the Association and its committees. }

6.2.6 Receive and disburse funds at or under the direction of the Committee. }

6.2.7 Act as secretary/treasurer to the Association, and acting in that capacity, prepare, record and distribute minutes of all Committee meetings. }

6.2.8 Perform such other actions as may be necessary or desirable to promote the work of the Committee and the Association. }

7. ASSOCIATION BUDGET AND COSTS:

- 7.1 **Budget Cycle:** The budget cycle of the Association shall be on a calendar year basis.
- 7.2 **Annual Budget:** The Coordinator shall prepare an annual financial budget for each calendar year that the Committee determines certain projects are necessary. The Coordinator's proposed Annual Budget should be delivered to the Committee members no later than June 1 of each year. The Committee should approve or revise the proposed Annual Budget and distribute the proposed Annual Budget to each Party no later than July 1 of each year. The Committee should meet to review input from the Parties' Governing Bodies no later than August 1, and should approve a final budget no later than September 1. The respective Governing Bodies of the Parties should review the Annual Budget of the Committee no later than October 1 of each year and notify the Coordinator that it has allocated or appropriated its respective contribution to the annual Budget no later than October 15 of each year. The Committee shall then adopt and approve the annual Budget and have it in place and effect by January 1 of that budget year as approved by the Parties.
- 7.3 **Allocation of Funds:** Within the annual financial budget adopted pursuant to Section 7.2, the Committee shall have the authority to make minor adjustments in the allocation of funds between budget categories; provided, however, that the cumulative change in the budget category does not exceed ten percent (10%) of the amount authorized in the Annual Budget and the total amount of the Annual Budget is not increased. Other budget adjustments require approval of the Governing Bodies.
- 7.4 **Budget Increases:** Increases in the total amount of a Budget must be approved by the Governing Bodies of a simple majority of the Parties.
- 7.5 **Failure to Pay:** If any Party fails to pay its respective share of any Budget or Budget increase when due, whether or not that Party's Governing Body approved the Annual Budget or the Budget increase, then that Party shall be ineligible to vote on any subject or issue unless such failure is excused by the Committee. During any period of time during which a Party is ineligible to vote on a matter by reason of the application of this Section 7.5, such Party shall not be counted as a Party in determining a quorum, or in determining a "majority" with regard to the approval of any action. In order to restore its eligibility to vote, a Party must be current on all amounts due, including any expenditures approved by the Association while such Party was ineligible to vote.
- 7.6 **Expenditures:** Association funds may be properly expended for all costs approved by the Committee and properly incurred in the performance of the work

approved by the Committee, or under such authority as may be delegated to the Coordinator by the Committee.

- 7.7 **Non-Reimbursable Costs:** Costs incurred by any Party in connection with any functions of the Association, or any committee established by the Committee, and expenses of a party's personnel including, without limitation, the regular and alternate members appointed by a Party to any committee while performing such functions, shall not be reimbursed by the Association except upon approval of the Committee, provided that a Party shall be reimbursed for the services performed by such Party's employees while serving as staff to the Association as approved through the Budget process.

8. FUNDING AND VOTING PERCENTAGES:

- 8.1 **Funding:** Each Party shall be responsible for its proportionate share of the funding requirements of the Association. The proportionate shares of each Party shall be determined by dividing the funding requirements of the Association by the number of Parties. During Committee approval of certain projects that beneficially affect one Party over another, equitable project funding shall be determined by the Committee.

The Parties shall provide funding consistent with the Budgets adopted by the Committee at times set forth in such Budgets, or on call of the Coordinator. Funding needs of the Association payable by the Parties shall be determined by the Committee, and such funds shall be transmitted by the Party to the Coordinator within sixty (60) days of project approval.

Upon receipt, the Coordinator will immediately deposit funds in an interest-bearing bank account. The funds in such account shall remain the property of each Party and interest earned thereon shall belong to each Party.

- 8.2 **Payment Reduction:** Each Party agrees that the Parties' respective obligations to make payments hereunder shall not be subject to any reduction, whether by offset, counter claim, recoupment or otherwise. A Party's funding contributions to this Association or a portion thereof may be reimbursed upon termination of that Party's participation in the Association and approval by a simple majority vote of the Committee.
- 8.3 **Voting Rights:** Each Party's representative on the Committee shall be entitled to one vote; provided, however, that if a matter being decided by the Committee will have a disproportionate effect on the financial obligations of the Parties as contemplated in Section 8.1, each Party shall be entitled to vote weighted in proportion to the financial obligation or benefit of the Parties.

8.4 **Modification by Party:** Funding Percentages and/or Voting Percentages may be changed only upon the approval of the Governing Bodies of a simple majority of the Parties.

9. RELATIONSHIP OF PARTICIPANTS:

9.1 **Each Party's Action is Independent of the Other:** The obligation of each Party to make payments under Section 8.1 of this MOU is an individual and several obligation and not a joint obligation of the Parties. Each Party shall be individually responsible for its own covenants, obligations and liabilities under this MOU. No Party shall be under the control of or shall be deemed to control any other Party or the Parties collectively. No Party shall be the agent of or have the right or power to bind any other Party without such Party's express written consent, except as expressly provided in this MOU.

9.2 **Indemnity:** No Party, nor any officer or employee of a Party, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by another Party under or in connection with this MOU. The Parties further agree, pursuant to Government Code section 895.4, that each Party shall fully indemnify and hold harmless each other Party and its agents, officers, employees and contractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any work delegated to or action taken or omitted to be taken by such Party under this MOU.

In no event, except for any claim, demand, liability, loss or damage arising out of or resulting from any action taken or not taken by one Party at the direction of its directors, officers, or employees of management or administrative responsibility, which is knowingly or intentionally taken or not taken with conscience indifference to the consequences thereof or with the intent that injury or damage would result or would probably result therefrom, shall a Party be liable to any other Party for any indirect or consequential damage claim, demand, liability, loss, expense (including attorney's fees), or damage arising out of or in any way connected with this Agreement, including any negligence in connection therewith.

9.3 **No Creation of a Joint Powers Agency:** The Parties agree that by this MOU they do not intend to provide for the creation of an agency or entity which is separate from the Parties pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, relating to the joint exercise of powers.

10. TERM OF THIS MOU: The term of this MOU shall commence on November 1, 2001 and shall terminate on December 31, 2006, or unless approved by letter of extension by each individual Party to this MOU. Any substantive change to this MOU will require a full evaluation prior to extension of the MOU.

Upon termination of this MOU, the Committee shall determine the assets and liabilities of the Association; make every effort to satisfy all obligations within sixty (60) days of the termination of the agreement; and distribute the remaining fund balance equitably to each Party in proportion to each Party's funding contribution to the Association.

Any work following the development of a groundwater management plan, or beyond the scope of developing such a plan, shall be done, if at all, pursuant to a separate agreement, among the entities desiring to pursue such work.

11. GENERAL PROVISIONS GOVERNING MOU:

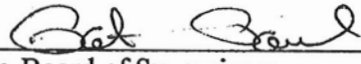
- 11.1 **Invalidity of any Term not to Invalidate the Entire Memorandum:** In the event that any of the terms, covenants or conditions of this MOU or the application of any such term, covenant or condition shall be held invalid as to any Party, person or circumstance by any court of competent jurisdiction, all other terms, covenants or conditions of this MOU and their application shall not be affected thereby, but shall remain in full force and effect unless any such court holds that those provisions are not separable from all other provisions of this MOU.
- 11.2 **Construction of Terms:** This MOU is for the sole benefit of the Parties and shall not be construed as granting rights to any person other than the Parties or imposing obligations on a party to any person other than another party.
- 11.3 **Good Faith:** Subject to the right of a Party to withdraw or terminate its membership in the Association, each Party shall use its best efforts and work wholeheartedly and in good faith for the expeditious completion of the objectives of this MOU and the satisfactory performance of the terms and provisions contained herein.
- 11.4 **Withdrawal or Termination of Membership:** Except in the event of the termination of this MOU pursuant to Section 10, a Party who withdraws or terminates its membership in the Association shall not be entitled to a refund of its funding contributions. Any Party may terminate membership and withdraw from this Association upon thirty (30) days written notice of termination to the Association. If a Party withdraws from the Association when the Party is in arrears as to its funding contributions to the Association, that Party's entitlement to use any groundwater model or other work product of the Association as provided for herein shall be determined by the Committee.
- 11.5 **Amendment:** This MOU may be amended by first receiving the affirmative vote of the Governing Body of a simple majority of the Parties.

- 11.6 **Counterpart Execution:** This MOU may be executed in counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- 11.7 **Governance:** This MOU is made under and shall be governed by the laws of the State of California.
- 11.8 **Reasonable Delivery of Documents:** The Parties agree to act in good faith to promptly execute any documents that are necessary, or may become necessary, to implement activities approved by the Governing Bodies in the Annual Budget subject to the authority and the right of the Governing Bodies to terminate participation in this MOU.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed, each signatory hereto represents that he has been appropriately authorized to enter into this MOU on behalf of the Party for whom he/she signs.

Date: OCT 15 2001

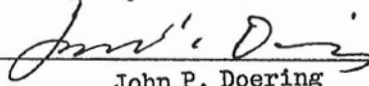
COUNTY OF STANISLAUS, a political subdivision of the State of California


Chair, Board of Supervisors

Attest: 
Secretary *Clk of the Board*

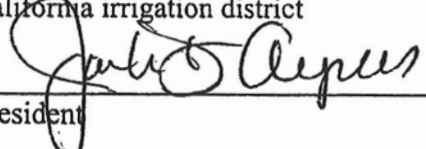
Director, Dept. of Environmental Resources

Approved as to Legal Form:


John P. Doering
Deputy County Counsel

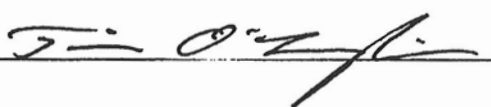
Date: September 3, 2002

OAKDALE IRRIGATION DISTRICT, a California irrigation district


President

Attest: 
Secretary

Approved as to Legal Form:



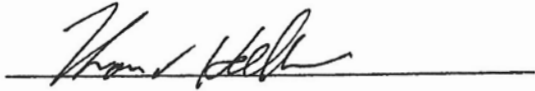
Date: 10/23/01

CITY OF OAKDALE, a California public agency


City Manager

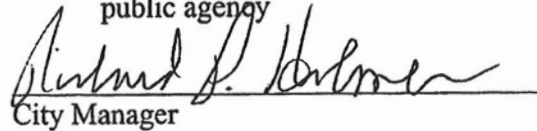
Attest: Rebecca A. Peluso
City Clerk

Approved as to Legal Form:



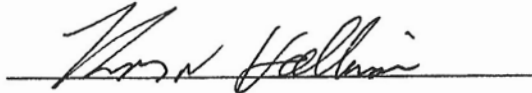
Date: 10-23-01

CITY OF RIVERBANK, a California public agency


City Manager

Attest: Lori Drigley
City Clerk

Approved as to Legal Form:



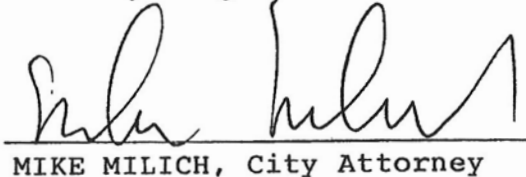
Date: October 9, 2001

CITY OF MODESTO, a California public agency


City Manager, JACK R. CRIST

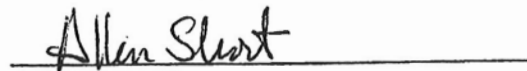
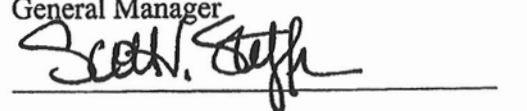
Attest: Jean Zahr
City Clerk, JEAN ZAHR

Approved as to Legal Form:


MIKE MILICH, City Attorney

Date: 10-17-01

MODESTO IRRIGATION DISTRICT, a California irrigation district


Allen Short
General Manager


Approved as to Legal Form:

“City of Palo Alto et al. Cable Franchise Fees JPA”

**AMENDED AND RESTATED
JOINT EXERCISE OF POWERS AGREEMENT
BY AND BETWEEN
THE CITY OF PALO ALTO,
THE CITY OF MENLO PARK,
THE CITY OF EAST PALO ALTO,
THE TOWN OF ATHERTON,
THE COUNTY OF SAN MATEO
AND
THE COUNTY OF SANTA CLARA**

Dated as of _____, 2008

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**AMENDED AND RESTATED JOINT EXERCISE OF POWERS
AGREEMENT BY AND BETWEEN THE CITY OF PALO ALTO,
THE CITY OF MENLO PARK, THE CITY OF EAST PALO ALTO,
THE TOWN OF ATHERTON, THE COUNTY OF SAN MATEO
AND THE COUNTY OF SANTA CLARA**

This Amended and Restated Joint Exercise of Powers Agreement (the “Agreement”), dated _____, 2008 (the “Effective Date”), is made by the City of Palo Alto, the City of Menlo Park, the City of East Palo Alto, the Town of Atherton, the County of San Mateo and the County of Santa Clara (individually, a “Party” and, collectively, the “Parties” or the “Cable Joint Powers”), in reference to the following facts and circumstances:

RECITALS:

A. Title 1, Division 7, Chapter 5 of the California Government Code (the “Joint Exercise of Powers Act” or the “Act”), Section 6500 et seq., authorizes two or more public agencies by agreement to jointly exercise any power common to the contracting agencies. Each of the Parties is a “public agency” within the meaning of the Act, Section 6500.

B. In July 1983, the Parties executed a Joint Exercise of Power Agreement (the “JPA Agreement”), authorizing the City of Palo Alto (“Palo Alto”), on behalf of the Cable Joint Powers, to administer a cable television franchising process within a common geographical area or franchise area (the “Franchise Area”), described in Exhibit A, to award one or more franchises to render state-of-the-art cable television services in that area.

C. In October 1983, the Parties executed a Joint Operating Agreement (the “JOA Agreement”), authorizing Palo Alto on behalf of the Cable Joint Powers to administer and otherwise oversee and implement the cable television franchise that was awarded to Cable Communications Cooperative of Palo Alto, Inc. (the “Co-op”), in March 1986. In July 2000, the City Council of Palo Alto (the “Council”) approved the assignment and transfer of the Co-op franchise to TCI Cablevision of California, Inc. (“TCI”). In October 2003, Comcast Cable Communications, Inc. acquired TCI’s assets, while Comcast of California IX, Inc. (“Comcast”) held the franchise under the JPA Agreement (the “Comcast franchise”).

D. Under the JPA Agreement, Palo Alto on behalf of the Cable Joint Powers is granted the power and authority to award and administer a cable franchise for the Franchise Area, and a joint cable working group is (and to the extent there is created by the Cable Joint Powers a franchise review board) established to deal with any cable issues that may arise. Palo Alto intends to continue as the administrator of the Comcast franchise, to the extent obligations under that franchise will continue to be performed until July 24, 2010, in accordance with DIVCA, referred to in Recital F, and the Comcast

State Franchise (as defined in Section 2.2) and the AT&T State Franchise (as defined in Section 2.2), on behalf of the Cable Joint Powers.

E. Under the JOA Agreement, Palo Alto on behalf of the Cable Joint Powers is required to, among matters, account for franchise fee payments and administration expenses related to administration and enforcement of the Comcast franchise, and to administer the community access process on behalf of the Parties.

F. In September 2006, the Digital Infrastructure and Video Competition Act, Assembly Bill 2987, Stat. 2006, Chapter 700 (“DIVCA”), changed the laws and regulations governing video franchises. The California Public Utilities Commission now has the sole authority to issue video franchises, and local agencies are permitted only to regulate current local cable franchises until the earlier of the expiration date of such franchises or a date on which it is determined that there exists effective competition following the entry of a holder of a state franchise into the Franchise Area. Under DIVCA, a local agency retains its right to impose and collect a franchise fee, to require a franchise to abide by certain public, education and government (“PEG”) channel access (“PEG Access”) obligations, and to exercise due authority over management of its public rights-of-way.

G. Palo Alto, Menlo Park, East Palo Alto, and Atherton have adopted, and the Counties of San Mateo and Santa Clara are in the process of adopting, ordinances to conform their applicable ordinances, resolutions, laws, rules and regulations to DIVCA. In furtherance thereof, the Cable Joint Powers intend to amend and restate the selected provisions of the JPA Agreement and the JOA Agreement in order to address, among other matters, the rights and obligations of the Parties and the role of Palo Alto with respect to current and future cable and video franchise issues arising in connection with the Comcast franchise obligations, to the extent outstanding, and, in particular, the provision of PEG Access by Comcast and any other holder of a state video franchise (“State Franchise”) which operates within the Franchise Area (“State Franchisee”). Both Comcast and Pacific Bell Telephone Company dba AT&T California (“AT&T”) have been awarded State Franchises to operate within the Franchise Area as of the Effective Date.

H. The Parties intend to substitute this Agreement for the JPA Agreement and JOA Agreement. It is the intention of the Parties to give to the California Secretary of State written notice of the amendment to the Joint Exercise of Powers Agreement in accordance with California Government Code section 6503.5.

AGREEMENT:

NOW, THEREFORE, in consideration of the following covenants, terms and conditions, the Parties agree:

SECTION 1. TERM; PURPOSE OF AGREEMENT

1.1 The term of this Agreement will commence on its execution by the Parties and continue on a year-to-year basis until the Parties agree to terminate this Agreement or a majority of the Parties have withdrawn from the Cable Joint Powers pursuant to Section 6.

1.2 Pursuant to the Joint Exercise of Powers Act, the purpose of this Agreement is to provide for the administration of the cable television and video franchising and franchise administration and enforcement processes relating to the State Franchises separately granted to Comcast and AT&T (and any other State Franchisee) to provide cable and related video services within the Franchise Area until the respective expiration dates of their State Franchises and any renewals thereof that result in the provision of cable or related video services within the Franchise Area at any time during the term of this Agreement. The purpose of this Agreement is also to make efficient use of the common powers of each Party and develop all other reasonably necessary or appropriate powers to provide greater individual and group coordination and collaboration among the Parties to secure state-of-the-art video services to the extent permitted by the laws and regulations governing such services and operations.

SECTION 2. ORGANIZATION, POWERS, FUNCTIONS

2.1 There will not be established pursuant to the Act an agency which will be a public entity separate from the Parties. The Parties, acting in their capacity as a joint action agency, are referred to in this Agreement as the Cable Joint Powers.

2.2 Palo Alto is empowered and authorized to administer and enforce the State Franchises awarded to Comcast (the "Comcast State Franchise") and AT&T (the "AT&T State Franchise") and any other State Franchisee seeking to provide video service under DIVCA within the Franchise Area, except as (a) provided in Sections 2.3 or 2.4, or (b) as may be expressly disapproved by the Parties and expressly reserved to any Party other than Palo Alto. Nothing in this Agreement will be construed to limit the right of any Party to administer a cable or video franchise that operates wholly and exclusively within that Party's jurisdictional boundary or to take such actions as are necessary to effectuate the purpose of this Agreement.

2.3 Notwithstanding the provisions of Sections 1.2 and 2.2, the Parties empower and authorize Palo Alto to administer the Comcast State Franchise and the AT&T State Franchise on behalf of the Cable Joint Powers and to the extent it is permitted by DIVCA, including, but not limited to, collecting and remitting the franchise fee and any PEG support fee after accounting for reasonable and necessary expenses, enforcing customer service standards, and managing PEG Access for the Franchise Area. A Party may at any time give notice to Palo Alto and the other Parties that, in accordance with Section 6, it wishes to withdraw from this Agreement and assume all rights and obligations with respect to the administration and management of the Comcast State

Franchise, the AT&T State Franchise and any other State Franchise operating within its jurisdictional boundary.

2.4 Notwithstanding the provisions of Sections 1.2 and 2.2, if any entity other than Comcast or AT&T is granted a State Franchise and it elects to provide video service within the Franchise Area, then the Cable Joint Powers empower and authorize Palo Alto to administer that State Franchise on behalf of the Cable Joint Powers and to the extent it is permitted by DIVCA, including, but not limited to, collecting and remitting the franchise fee and any PEG support fee after accounting for reasonable and necessary expenses, enforcing customer service standards, and managing PEG Access for the Franchise Area. A Party may at any time give notice to Palo Alto and the other Parties that, in accordance with Section 6, it wishes to withdraw from this Agreement and assume all rights and obligations with respect to the administration and management of such State Franchise operating within its jurisdictional boundaries.

2.5 The right of Palo Alto to acquire an ownership interest in the cable or video system of Comcast pursuant to Sections 1.2.01 and 1.2.02 of the JOA Agreement is hereby terminated. The right of any Party or some, but not all, Parties to acquire an ownership interest in the cable or video system of Comcast, AT&T or any other State Franchisee will be determined by agreement of the Parties at a mutually convenient time.

SECTION 3. WORKING GROUP, REVIEW BOARD

3.1 Palo Alto's city manager (the "City Manager") will establish a joint cable working group (the "Working Group") to consider any and all cable and video service-related issues relating to the Comcast State Franchise, the AT&T State Franchise and any other State Franchise operating within the Franchise Area pursuant to Section 2.4, and to make recommendations to be presented to the Council. The City Manager or designee will chair the Working Group meetings and proceedings and otherwise provide staff services to the Working Group. These meetings will not be subject to compliance with the Ralph M. Brown Act, California Government Code Section 54950 *et seq.*

3.1.1 Each Party has the right to designate an individual to become a voting member of the Working Group. A representative of Stanford University may be designated the representative of the County of Santa Clara.

3.1.2 The Working Group will continue to function during the Comcast State Franchise, the AT&T State Franchise and any other State Franchise operating within the Franchise Area pursuant to Section 2.4, for the purpose of oversight, review and enforcement of all requirements of the operation and management of the cable or video system over which DIVCA confers authority to local agencies.

3.2 Upon Palo Alto's receipt of a request, in writing, of a majority of the Parties, Palo Alto by its City Manager or designee will inform the Parties of the request to appoint a franchise review board (the "Review Board") to address any issue that cannot or has not been resolved by the Working Group to the complete satisfaction of all

Parties. Palo Alto then will arrange for a meeting to consider the creation of the Review Board. The governing body of each Party will each appoint an individual to serve on the Review Board. The Review Board, if appointed, will consist of seven (7) members, appointed by the governing body or the delegate of each Party; provided, however, two (2) members will be appointed by Palo Alto and one (1) member each will be appointed by the other five (5) Parties. The County of San Mateo member will represent the interests of residents of unincorporated San Mateo County, comprising Ladera, Menlo Oaks and University Heights. The County of Santa Clara will represent the interests of residents of unincorporated Santa Clara County, comprising the Leland Stanford Junior University. These meetings will be subject to compliance with the Ralph M. Brown Act, California Government Code Section 54950 *et seq.* The Parties acknowledge that the Review Board has not been appointed as of the Effective Date.

3.2.1 The Review Board, if appointed, will review and resolve issues formally raised by any Party in accordance with Section 3.2 in regard to the administration, enforcement and execution of responsibilities relating to State Franchises operating within the Franchise Area assigned to local agencies by DIVCA that are issues not delegated to Palo Alto to handle under the terms of this Agreement. The processes and procedures for formally presenting issues to and resolving issues by the Review Board will be established at the time the Review Board is appointed. The Review Board, if appointed, will convene only when a majority of the members of the Cable Joint Powers requests, in writing, the convening of such meeting and notice is directed to Palo Alto, as the administrator, that all Cable Joint Powers members shall be given notice of the convening of such meeting in order to resolve any issue that is presented by one or more members of the Cable Joint Powers.

3.2.2 Palo Alto, as administrator of the JPA Agreement and continuing as the administrator of this Agreement in accordance with Section 2.2, will be responsible for the oversight, enforcement and regulation of the Comcast State Franchise, the AT&T State Franchise and any other State Franchise, consistent with DIVCA. Palo Alto will follow the determinations of the Review Board, if appointed, in matters under the Review Board's jurisdiction. In its role of administrator, Palo Alto will provide the Review Board members on a regular basis at the frequency as may be determined by the Review Board information on its activities and substantial changes in the Comcast State Franchise, the AT&T State Franchise and any other State Franchise, including, but not limited to, rates, services, PEG Access and other matters. The City Manager or designee with the assistance of the Working Group members will provide staff services to the Review Board, if appointed, and such services are requested and approved by the Cable Joint Powers.

SECTION 4. FRANCHISE-RELATED REVENUES AND EXPENSES

4.1 Palo Alto will receive and account for any and all franchise fees due and payable by Comcast, AT&T and any other State Franchisee, to the Cable Joint Powers. The franchise fees will be made payable to Palo Alto. After Palo Alto accounts for the reimbursement of all costs and expenses contemplated in Section 4.2, Palo Alto will

distribute the franchise fees to the other Parties on the basis of the percentage of franchise revenue derived from cable or video customers in each jurisdiction.

4.2 Palo Alto will be reimbursed for all out-of-pocket costs and expenses incurred in connection with its administration of the Comcast State Franchise, the AT&T State Franchise and any other State Franchise, operating within the Franchise Area. The franchise fees received will be allocated according to the following priority:

A. To reimburse Palo Alto for any out-of-pocket costs that Palo Alto may incur in the administration of any and all State Franchises, including, but not limited to, reasonable attorneys' fees and the fees of consultants with expertise in cable and video franchising and the costs associated with PEG Access and programming for any Cable Joint Powers member other than Palo Alto or otherwise reasonably attributable to such member;

B. To cover the costs of the regulatory and oversight functions; and

C. To pay for other cable- or video-related activities benefiting the area in which the revenue was generated, as allocated by Palo Alto among all of the Parties on the basis of the percentage of revenues derived from the cable or video customers located in each jurisdiction.

4.3 The Working Group will review Palo Alto's reimbursement requests on a quarterly basis or other frequency as may be determined by the Working Group. The Review Board, if appointed and so authorized, will review Palo Alto's reimbursement claims to the extent such claims are not approved by the Working Group. The determination of the Review Board will be final.

4.4 Palo Alto will submit an accounting of franchise-related revenues and expenses to the Cable Joint Powers on a quarterly basis or other frequency as may be determined by the Working Group. Palo Alto's accounting of franchise-related revenues and expenses will be audited annually by an independent auditor and included in the audit of Palo Alto's books and accounts, which will be conducted annually. The audit of the independent auditor will be made available to all other Parties within thirty (30) days of its issuance.

SECTION 5. PUBLIC, EDUCATION AND GOVERNMENT ACCESS

5.1 The Parties have appointed the public benefit corporation and not-for-profit entity, the Midpeninsula Community Media Center, Inc. ("Media Center"), as the community access organization to administer the PEG channels and manage PEG Access support on the cable or video systems that are required to be provided under the Comcast State Franchise, the AT&T State Franchise and any other State Franchise in the provision of PEG Access in the Franchise Area, including, but not limited to, the development of rules for the administration of bandwidth of the institutional network to be made available to public institutions and non-commercial users of the cable or video service

system(s) in the Franchise Area. Each Party will reasonably cooperate with the Media Center or other community access organization for the purpose of implementing PEG Access.

5.2 Any revocation of the designation of the Media Center or other entity as the community access organization may be referred to the Review Board, if appointed, whose decision on revocation will be final.

5.3 Palo Alto will ensure that the Media Center or other community access organization performs the following primary responsibilities:

- A. The adoption of rules governing the use of PEG channel time and facilities;
- B. The scheduling and use of PEG channel time and facilities;
- C. The provision of training to PEG channel access users;
- D. The raising and uses of funds for PEG Access purposes consistent with the Comcast State Franchise, the AT&T State Franchise and any other State Franchise;
- E. The maintenance of PEG Access channels and facilities and coordination of the use of institutional network access facilities;
- F. The promotion of PEG Access; and
- G. The development of new PEG Access uses and the determination of the need for additional PEG Access channels and facilities.

5.4 Palo Alto will require the Media Center or other community access organization to provide reports annually or at other established frequency to the Council and the Review Board, if appointed, on its budget and activities, including, but not limited to, its accomplishments during the annual reporting period or any other reporting period.

5.5 Each Party will be responsible for administering the government access channel(s) and that portion of the institutional network available for local government use within its jurisdictional boundary lying within the Franchise Area.

5.6 Palo Alto will receive and account for any and all PEG support fees paid and to be paid by Comcast, AT&T and any other State Franchisee serving the Franchise Area and remit the appropriate amounts to the Media Center or other community access organization. The PEG support fees will be made payable to Palo Alto.

SECTION 6. WITHDRAWAL OF MEMBER

6.1 Any Party may withdraw from participation in the Cable Joint Powers or the Review Board, if appointed, or the Working Group, on terms and conditions mutually acceptable to the Parties or, if no agreement can be reached by the Parties, as determined by an arbitrator acceptable to the Parties or in accordance with applicable law.

6.2 A Party seeking to withdraw will provide no less than six (6) months' prior written notice to the other Parties of its intention to withdraw. A Party which seeks to withdraw from the Cable Joint Powers will perform all of its outstanding obligations under this Agreement through the effective date of its withdrawal. A Party's obligation to pay for its allocable portion of administrative costs and expenses incurred to the effective date of withdrawal will survive the withdrawal of a Party from the Cable Joint Powers, and such obligation will also survive the termination of this Agreement.

SECTION 7. NOTICES

7.1 All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder given by a Party to any other Party or Parties, will be provided, in writing, and will be deemed sufficiently given and served upon the other Party if (1) personally served, (2) sent by United States Postal Service certified mail, postage, prepaid, (3) sent by express delivery service, or (4) in the case of a facsimile, if sent to the telephone number(s) set forth below during normal business hours of the receiving party and followed within 48 hours by delivery of hard copy of the material sent by facsimile, in accordance with (1), (2) or (3) above. Personal service will include, but not be limited to, service by express delivery service and service by facsimile transmission. Delivery of notices properly addressed will be deemed complete when the notice is physically delivered to the Party's designated representative. All notices provided pursuant to this Agreement will be addressed as set forth below or as a Party may subsequently designate by written notice.

TO: Palo Alto

City Manager
City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto, CA 94303
FAX: (650) 329-2468

with a copy to:

City Clerk
City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto, CA 94303
FAX: (650) 323-631

And
City Attorney
City of Palo Alto
P.O. Box 10250
250 Hamilton Avenue
Palo Alto CA 94303
FAX: (650) 329-2646

TO: Menlo Park
City Manager
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
FAX: (650) 328-7935

with a copy to:
City Clerk
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025
FAX: (650) 328-7935

And
City Attorney
City of Menlo Park
1100 Alma Street, Suite 210
Menlo Park, CA 94025
FAX: (650) 324-0227

TO: East Palo Alto
City Manager
City of East Palo Alto
2415 University Avenue
East Palo Alto, CA 94303
FAX: (650) 853-3115

with a copy to:
City Clerk
City of East Palo Alto
2415 University Avenue
East Palo Alto, CA 94303
FAX: (650) 853-3115

And
City Attorney
City of East Palo Alto
2415 University Avenue
East Palo Alto CA 94303
FAX: (650) 853-5923

TO: Atherton
Town Manager
Town of Atherton
91 Ashfield Road
Atherton, CA 94027
FAX: (650) 614-1212

with a copy to:
Town Clerk
Town of Atherton
91 Ashfield Road
Atherton, CA 94027
FAX: (650)

And
Town Attorney
Town of Atherton
P. O. Box 279
Mountain View, CA 94042
FAX: (650) 967-1395

TO: San Mateo
County Manager
County of San Mateo
400 County Center
Redwood City, CA 94063
FAX: (650) 363-1916

with a copy to:
County Clerk
County of San Mateo
400 County Center
San Mateo, CA 94063
FAX: (650) 363-1916

And
County Counsel
County of San Mateo
400 County Center
Redwood City, CA 94063
FAX: (650) 363-4034

TO: Santa Clara
County Executive
County of Santa Clara
70 West Hedding, 11th Floor
San Jose, CA 95110
FAX: (408) 293-5649

with a copy to:
Office of the County Counsel
County of Santa Clara
70 West Hedding, 9th Floor
San Jose, CA 95110
FAX: (650) 292-7240

SECTION 8. MISCELLANEOUS

8.1 This Agreement will be governed by and construed in accordance with the laws of the State of California. The Parties will comply with all applicable federal, state and local laws in the exercise of their rights and the performance of their obligations under this Agreement.

8.2 All provisions of this Agreement, whether covenants or conditions, will be deemed to be both covenants and conditions.

8.3 This Agreement represents the entire agreement and understanding between the Parties and it supersedes all prior negotiations, representations and contracts, written or oral. This Agreement may be amended by an instrument, in writing, signed by the Parties. This Agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

8.4 Any and all exhibits that may be referred to in this Agreement are by such references incorporated in this Agreement and made a part hereof.

8.5 The Parties agree that the normal rule of construction to the effect that any ambiguity is to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any amendment or exhibit hereto.

8.6 As used in this Agreement, the special terms will have the same meaning as those words are defined in the Comcast franchise or in DIVCA, including California Public Utilities Code section 5830. In the event of a conflict, the definitions in section 5830 will take precedence, unless the context otherwise requires the Comcast franchise definition to apply.

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IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement as of the Effective Date.

ATTEST

CITY OF PALO ALTO

City Clerk

Mayor

APPROVED AS TO FORM:

Senior Asst. City Attorney

APPROVED:

City Manager

Director of Administrative Services

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement on the Effective Date.

ATTEST

CITY OF MENLO PARK

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement on the Effective Date.

ATTEST

CITY OF EAST PALO ALTO

City Clerk

Mayor

APPROVED AS TO FORM:

City Attorney

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement on the Effective Date.

ATTEST

TOWN OF ATHERTON

Town Clerk

Mayor

APPROVED AS TO FORM:

Town Attorney

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement on the Effective Date.

ATTEST

COUNTY OF SAN MATEO

County Clerk

Chair

APPROVED AS TO FORM:

County Counsel

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement on the Effective Date.

ATTEST

COUNTY OF SANTA CLARA

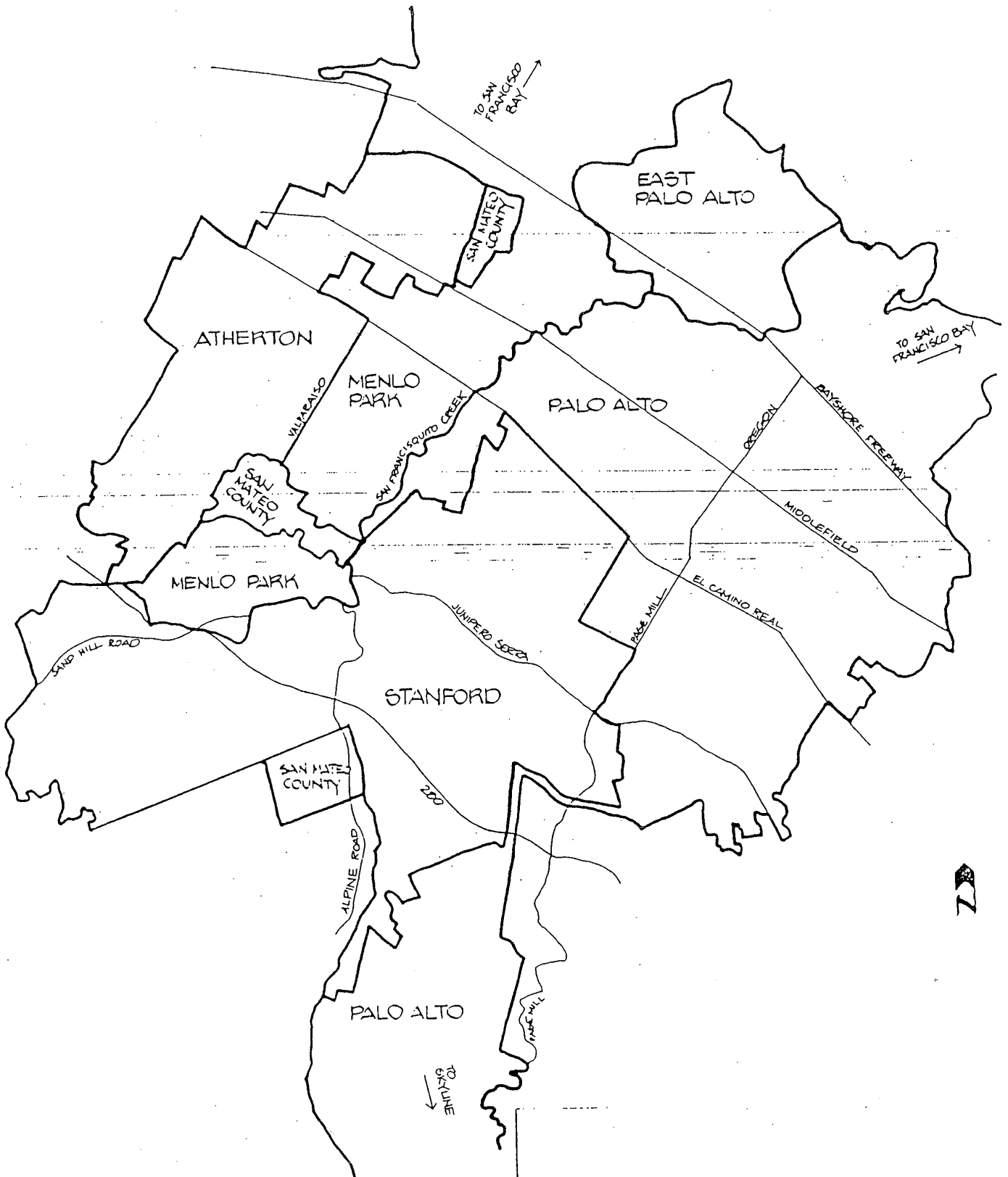
County Clerk

Chair

APPROVED AS TO FORM:

County Counsel

EXHIBIT A



“Eastern San Joaquin County JPA”

JOINT EXERCISE OF POWERS AGREEMENT EASTERN SAN JOAQUIN COUNTY GROUNDWATER BASIN AUTHORITY

THIS AGREEMENT is made by and among the San Joaquin County Flood Control and Water Conservation District (“County District”), the City of Stockton (“Stockton”), the City of Lodi (“Lodi”), Stockton-East Water District (“SEWD”), Central San Joaquin Water Conservation District (“Central”), Woodbridge Irrigation District (“Woodbridge”), North San Joaquin Water Conservation District (“NSJWCD”), City of Manteca (Manteca), South San Joaquin Irrigation District (SSJID), Central Delta Water Agency (“Central Delta”) and South Delta Water Agency (“South Delta”) collectively called the “Members”. The Members hereby agree as follows:

ARTICLE I GENERAL PROVISIONS

Section 1.01. Creation of Authority. Pursuant to California Government Code Section 6500 et seq. there is hereby created a public entity to be known as the “Eastern San Joaquin County Groundwater Basin Authority” which shall be a public entity separate and apart from the Members, and shall administer this Agreement.

Section 1.02. Purpose. The purpose of this Agreement is to provide a consensus-based forum of public water interests concerning Eastern San Joaquin County that will work cooperatively with unanimity toward achieving the goal as defined in Section 1.03 and speak on behalf of the Members with one voice.

Section 1.03. Goal. The long-term goal of the Authority is to facilitate the development of locally supported projects that improve water supply reliability and/or improve groundwater level in Eastern San Joaquin County and to provide benefits to project participants and San Joaquin County as a whole. The Authority’s short-term goals are as follows:

(a) To develop and maintain the Eastern San Joaquin County Integrated Regional Water Management Plan (IRWMP).

(b) To facilitate the financing and construction of specific projects contained in the adopted IRWMP.

(c) To apply for grant funding to support the activities of the Authority, its member agencies, and San Joaquin County as a whole

ARTICLE II
POWERS

Section 2.01. Powers. The Authority is hereby authorized, in its own name, to do all acts necessary for the exercise of the foregoing powers including, but not limited to the making and entering into contracts.

Section 2.02. Restrictions on Exercise of Powers. The powers of the Authority shall be exercised in the manner provided in Government Code Section 6509 et seq., and to the restrictions upon the manner of exercising such powers that are imposed upon the County District in the exercise of similar powers.

ARTICLE III
GOVERNING BODY

Section 3.01. Governing Board. The Authority shall be administered by a Board of Directors (“Board”), one appointed by each of the Member entities with a designation of two alternative Directors to serve as a replacement for the appointed Director as needed, to serve at the pleasure of their appointive governing body. The Board shall be called the “Eastern San Joaquin County Groundwater Basin Authority Board”. All voting power of the Authority shall reside in the Board.

- A. The governing body of the Authority shall be a Board of Directors (“Board”) which shall consist of Directors who shall be appointed as follows:
 - (1) A representative of the governing body of each Member as appointed by the Member entities.
 - (2) A representative of the following private water purveyors or investor owned utilities, as appointed by the City of Stockton:

California Water Service Company

- B. Prior to the appointment to the Board of the Directors described in subsection (A)(2) above, those represented entities shall submit a recommendation for appointment to the appointing authority. The appointing authority shall give consideration to such recommendations, but shall retain the absolute discretion to appoint any person satisfying the criteria for appointment.
- C. The Members shall appoint one or more persons with the required qualifications to serve as alternate Directors of the Board in the same manner as the Director is appointed by the Members. Any such alternates shall be empowered to cast votes in the absence of the regular Directors

or, in the event of a conflict of interest preventing the regular Director from voting, to vote because of such a conflict of interest.

Section 3.02. Meetings of the Board. The Board shall provide for calling and conducting its regular meetings and special meetings, in accordance with Government Code Section 54950 et seq.

Section 3.03. Minutes. The Secretary shall cause to be kept summary minutes of the meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the summary minutes to be forwarded to each Director and to each of the Members.

Section 3.04. Voting. Each Director shall have one vote.

Section 3.05. Quorum; Required Votes; Approval. A quorum of the Board for the convening of any meeting shall consist of a majority of all Directors, or designated alternative Director. An affirmative vote of at least a majority of all Directors present in a quorum of the Board, or designated alternative Director shall be required for any action of the Board. Directors from member agencies who are delinquent in any past or present monetary contributions will be asked to voluntarily abstain from voting on all matters.

Section 3.06. Bylaws. The Board shall adopt bylaws and governing regulations consistent with this agreement, which may be amended from time to time, for the conduct of its meetings as are necessary for the purposes hereof.

ARTICLE IV OFFICERS AND EMPLOYEES

Section 4.01. Chair, Vice-Chair, and Secretary. The Board member from the County District shall be the Chair and in the Board member's absence the alternate member from County District shall act as Chair. The Board shall elect a Vice-chair from among the Directors. The Vice-chair shall serve at the pleasure of the board, shall perform the duties normal to said office, and

- A. The Chair shall represent the Board as directed by the Board and perform such other duties as may be imposed by said Board;
- B. The Vice-chair shall act and perform all of the Chair's duties in the absence of the Chair; and
- C. The San Joaquin County Director of Public Works shall be the Secretary and provide staff to the Authority. The Secretary shall act on behalf of the Authority and perform such other duties as may be imposed by the Board.
- D. The Chair, Vice-chair, or Secretary or his designee may sign all contracts and agreements as approved by the Board.

Section 4.02. Treasurer and Auditor.

A. The County Treasurer shall be the depository, shall have custody of all the money of the Authority from whatever source, and shall have the duties and obligations of the Treasurer as set forth in Government Code Sections 6505 and 6505.5. The County Treasurer shall be responsible for receiving quarterly reports from the Secretary and verifying the balance of this report with respect to the balance as maintained by the records of the County Auditor.

B. The County Auditor shall have the duties and obligations of the Auditor set forth in Government Code Sections 6505 and 6505.5. The County Auditor shall assure strict accountability of all receipts and disbursements of the Authority and shall make arrangements with a certified public accountant or firm of certified public accountants for the annual audit of accounts and records of the Authority.

Section 4.03. Officers in Charge of Records; Funds; and Accounts. Pursuant to Government Code Section 6505.1, the County Treasurer shall have charge of, handle and have access to all accounts, funds and money of the Authority and all records of the Authority relating thereto; and the Secretary shall have charge of, handle and have access to all other records of the Authority.

Section 4.04. Employees and Consultants. The Board may make recommendations to the County District for the employment of employees or consultants to provide services to the Authority to accomplish the purposes of the Authority. The County District may employ employees and consultants and may execute contracts, supervise and direct, and provide payment for such employees and consultants.

ARTICLE V
ACCOUNTS AND REPORTS: FUNDS

Section 5.01. Accounts and Reports. The County Auditor shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Authority shall be open to inspection at all reasonable times by the public and representatives of the Members. The Auditor, within 120 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such Fiscal Year to the Members.

Section 5.02. Funds. The County Treasurer shall receive, have the custody of and disburse Authority funds on warrants drawn by the County Auditor as nearly as possible in accordance with generally accepted accounting practices, shall make the disbursements required by this Agreement, or to carry out any of the provisions or purposes of this Agreement.

Section 5.03. Annual Budget. The Board shall adopt a budget for the Authority. The County District shall provide funds as set forth in the adopted budget which shall be limited to planning activities when using Zone 2 funds. Other member agencies shall make contributions

which shall be included in the budget adopted by the Board. A Member's affirmative vote to approve a budget does not constitute consent to finance or otherwise participate in any project or projects within that budget.

Section 5.04. Intention for Reimbursement for Expenditures From Bond Proceeds. It is the intention of the Members that the advancement of monies by any Members for the expenses of the operational needs of the Authority may be reimbursed from the proceeds of bonds, if issued, for the water development projects undertaken by the Authority or by its successor organization, by vote of the Board.

ARTICLE VI ASSOCIATE MEMBERSHIP

Section 6.01. The San Joaquin County Farm Bureau may be an associate member of the Authority with a representative serving as an associate member on the Board of the Authority. Associate members shall be entitled to participate in the meetings and discussions of the Board but associate members shall not have the power to vote on any action to be taken by the Authority or to become an officer or Director of the Authority.

ARTICLE VII CONTEMPLATED PROJECT

It is contemplated that some or all of the Members will enter into subsequent agreements for the construction, operation, and maintenance of a project. Participation in this Agreement is not a firm commitment by any individual Member to enter into a project. This Agreement shall not prohibit independent projects by Members.

ARTICLE VIII TERM; WITHDRAWAL; TERMINATION

Section 7.01. Term. The Members hereby agree to establish the Eastern San Joaquin County Groundwater Basin Authority, through June 30, 2015. The term may be automatically extended to coincide with the fulfillment of any outstanding agreements or contracts. The Board may also take action to extend the term of this agreement.

Section 7.02. Withdrawal of Member. A Member may terminate its Membership in the Authority at any time upon giving written notice of the withdrawal to the Authority.

Section 7.03. Disposition of Assets. Upon termination of this Agreement, all remaining net assets of the Authority, both real and personal, shall be transferred to the County District.

ARTICLE IX MISCELLANEOUS PROVISIONS

Section 8.01. Amendments. This Agreement may be amended by the Board at any time, or from time to time.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year set opposite the name of the parties.

ATTEST: MIMI DUZENSKI
Clerk of the Board of Supervisors
of the San Joaquin County Flood
Control and Water Conservation District

By _____(SEAL)
Deputy Clerk

SAN JOAQUIN COUNTY FLOOD
CONTROL AND WATER CONSERVATION
DISTRICT

By _____
KEN VOGEL, Chairman
Board of Supervisors
“COUNTY DISTRICT”

ATTEST:

CLERK

CITY OF STOCKTON, a municipal
corporation of the State of California

By: _____
Title: _____
“STOCKTON”

ATTEST:

CLERK

CITY OF LODI, a municipal corporation
of the State of California

By: _____
Title _____
“LODI”

ATTEST:

CLERK

STOCKTON-EAST WATER DISTRICT

By: _____
Title: _____

ATTEST:

“SEWD”
CENTRAL SAN JOAQUIN WATER
CONSERVATION DISTRICT

CLERK

By : _____

Title: _____

“CENTRAL”

ATTEST:

WOODBIDGE IRRIGATION DISTRICT

CLERK

By: _____

Title: _____

“WOODBIDGE”

ATTEST:

NORTH SAN JOAQUIN WATER
CONSERVATION DISTRICT

CLERK

By: _____

Title: _____

“NSJWCD”

ATTEST:

CITY OF MANTECA, a municipal
corporation of the State of California

CLERK

By: _____

Title: _____

“MANTECA”

ATTEST:

SOUTH SAN JOAQUIN
IRRIGATION DISTRICT

CLERK

By: _____

Title: _____

“SSJID”

ATTEST:

CENTRAL DELTA WATER AGENCY

CLERK

By: _____

Title: _____

“CENTRAL DELTA”

ATTEST:

SOUTH DELTA WATER AGENCY

CLERK

By: _____

Title: _____

“SOUTH DELTA”

APPROVED AS TO FORM:

By _____
LAWRENCE P. MEYERS
Deputy County Counsel

“SGA JPA”

JOINT POWERS AGREEMENT BETWEEN THE CITY OF CITRUS HEIGHTS, THE CITY OF FOLSOM, THE CITY OF SACRAMENTO AND THE COUNTY OF SACRAMENTO CREATING THE SACRAMENTO-GROUNDWATER AUTHORITY

This Agreement is made and entered into this ___ day of _____, 2002, by and between the City of Citrus Heights, a municipal corporation, the City of Folsom, a municipal corporation, the City of Sacramento, a municipal corporation, and the County of Sacramento, a political subdivision of the State of California (“County”).

RECITALS

WHEREAS, each of the parties to this Agreement is a local government entity functioning within the County of Sacramento; and

WHEREAS, pursuant to the Joint Exercise of Powers Act (Chapter 5 of Division 7 of Title 1 of the California Government Code), two or more public agencies may by agreement jointly exercise any power held in common by the agencies entering into such an agreement; and

WHEREAS, each of the parties hereto has under its police power the authority to regulate groundwater; and

WHEREAS, the parties hereto have each been either directly or indirectly involved in the process commonly referred to as the Sacramento Area Water Forum (“Water Forum”); and

WHEREAS, the Water Forum process has resulted in the development of a Groundwater Management Element, dated August, 1998 (“Groundwater Management Element”), which provides for the formation of a groundwater management authority for the north area of the County of Sacramento pursuant to a joint powers agreement between the City of Citrus Heights, the City of Folsom, the City of Sacramento and the County; and

WHEREAS, a true and correct copy of the Groundwater Management Element is attached hereto and incorporated herein as Exhibit “A”; and

WHEREAS, the completion of the Water Forum process and the approval of the final Water Plan by the Water Forum stakeholders has been delayed for reasons unrelated to groundwater management issues; and

WHEREAS, the parties hereto and the Water Forum stakeholders who have been involved in the development of the Groundwater Management Element believe that it is in the public interest to move forward with the development of the institutional framework necessary to implement the Groundwater Management Element within the North Area Basin, rather than suspending those efforts until such time as the Water Forum process is finalized; and

WHEREAS, the formation of the joint powers authority contemplated by this Agreement is not legally dependent upon the finalization of the Water Forum process, but is independently authorized by state law; and

WHEREAS, the parties hereto find that it is to their mutual advantage and benefit to establish such a groundwater management authority pursuant to this Agreement in order to implement the groundwater management policies embodied in the Groundwater Management Element; and

WHEREAS, the parties hereto find and declare that the conservation of groundwater resources within the North Area Basin for agricultural and municipal and industrial uses is in the public interest and for the common benefit of all water users within the County of Sacramento; and

WHEREAS, the overriding purpose of the joint powers authority established pursuant to this Agreement is to maintain the sustainable yield of the North Area Basin as set forth in the Groundwater Management Element; and

WHEREAS, it is the desire of the parties hereto to use the groundwater management powers which they have in common that are necessary and appropriate to further the purposes for which the joint powers authority is being established; and

WHEREAS, the parties hereto are receptive to amending this Agreement in the future to include public agencies outside the County of Sacramento who have a specific and relevant interest in the North Area Basin.

NOW, THEREFORE, in consideration of the promises, terms, conditions, and covenants contained herein, the City of Citrus Heights, the City of Folsom, the City of Sacramento and the County hereby agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference.

2. **Definitions.** As used in this Agreement, the following words and phrases shall have the meanings set forth below unless the context clearly indicates otherwise.

(a) “Conjunctive use” shall mean the planned management and use of both groundwater and surface water in order to maintain the sustainable yield of the North Area Basin.

(b) “North Area Basin” shall mean the groundwater basin underlying the area within the boundaries of the Authority.

(c) “Sustainable yield” shall mean the amount of groundwater which can be safely extracted from the North Area Basin on an estimated average annual basis while maintaining groundwater elevations and groundwater quality at acceptable levels as set forth in the Groundwater Management Element. Sustainable yield requires a balance between extraction and basin recharge and is expressed as the number of acre feet of

groundwater per year which can be extracted from the North Area Basin on an average annual basis as set forth in the Groundwater Management Element.

(d) “Water Production,” for purposes of determining assessments, fees or charges to support Water Costs of the Authority, means the total amount of groundwater produced within the boundaries of the Authority by each retail provider, by Agricultural Interests, and by Commercial/Industrial Self-Supplied Water Users for use within the boundaries of the Authority or other areas approved by the Board.

3. Purpose. This Agreement is being entered into in order to establish a joint powers authority for the following purposes:

- (a) to maintain the long-term sustainable yield of the North Area Basin;
- (b) to manage the use of groundwater in the North Area Basin and facilitate implementation of an appropriate conjunctive use program by water purveyors;
- (c) to coordinate efforts among those entities represented on the governing body of the joint powers authority to devise and implement strategies to safeguard groundwater quality; and
- (d) to work collaboratively with other entities, including groundwater management authorities that may be formed in other areas of the County of Sacramento and adjacent political jurisdictions, to promote coordination of policies and activities throughout the region.

4. Establishment Of The Authority. There is hereby established pursuant to the Joint Exercise of Powers Act a joint powers authority which shall be a public entity separate from the parties to this Agreement. The name of such entity shall be the Sacramento Groundwater Authority (“Authority”). The boundaries of the Authority shall be as follows: north of the American River to the Sacramento County line; bounded on the south by the

American River; on the west by the Sacramento River; on the north and east by the Sacramento County line; and including the City of Folsom. A map depicting the boundaries of the Authority is attached hereto and incorporated herein as Exhibit “B”.

5. Membership Of The Governing Board. The governing body of the Authority shall be a Board of Directors of sixteen (16) members consisting of the following representatives who shall be appointed in the manner set forth in Section 7 of this Agreement:

- (a) An elected member of the governing board or designated employee of each of the following public agencies: the City of Folsom, the City of Sacramento and the Sacramento County Water Agency.
- (b) An elected member of the governing board of each of the following public agencies: the Carmichael Water District, the Citrus Heights Water District, the Del Paso Manor Water District, the Fair Oaks Water District, the Rio Linda/Elverta Community Water District, the Sacramento Suburban Water District, and the San Juan Water District.
- (c) A member of the board of directors, or designee thereof, of each of the following private water purveyors or investor owned utilities: the Arden Cordova Water Company-California-American Water Company, the Natomas Central Mutual Water Company and the Orange Vale Water Company.
- (d) One representative of Agricultural Interests within the boundaries of the Authority.
- (e) One representative of Commercial/Industrial Self-Supplied Water Users within the boundaries of the Authority.

6. Adjustment To Composition Of Governing Board. Should circumstances change in the future, any person or entity may petition the parties hereto to amend this Agreement so as to add or delete representatives to the governing board to accurately reflect groundwater production within the boundaries of the Authority.

7. Appointment Of Members Of Governing Board.

(a) The members of the governing board of the Authority shall be appointed as follows:

(i) The City of Folsom representative shall be appointed by the Folsom City Council.

(ii) The Agricultural Interests representative shall be appointed by the County Board of Supervisors.

(iii) The representative of Commercial/Industrial Self-Supplied Water Users shall be appointed by the Sacramento City Council.

(iv) The Citrus Heights City Council shall appoint the representative of the Citrus Heights Water District.

(v) The Sacramento City Council shall appoint the representatives of the following entities: Arden Cordova Water Company, California-American Water Company, the City of Sacramento, Del Paso Manor Water District, the Natomas Central Mutual Water Company, and Sacramento Suburban Water District.

(vi) The County Board of Supervisors shall appoint the representatives of the following entities: Carmichael Water District, Fair Oaks Water District, Orange Vale Water Company, Rio Linda/Elverta Community Water District, San Juan Water District and the Sacramento County Water Agency.

(b) Prior to the appointment of the representatives of the entities described in subsections (a)(v) and (vi) above, those entities shall submit a recommended appointment for their respective representatives to the appointing authority. The appointing authority shall give consideration to such recommendations, but shall retain the absolute discretion to appoint any person satisfying the criteria for appointment set forth in Section 5 hereof.

8. Governing Board Voting Requirements.

(a) Each member of the governing board of the Authority shall have one vote. With the exception of fiscal items as set forth in subsections (b) and (c) below, a majority vote of all members of the governing board is required to approve any item.

(b) Fiscal items related to the **Administrative Costs** of the Authority shall require approval by a double majority consisting of the following: a majority vote of all members of the governing board and a majority vote weighted according to the financial contribution of each Retail Provider, of Agricultural Interests, or of Commercial/Industrial Self-Supplied Water Users to the total administrative budget for the last complete fiscal year. The weighted vote of each member of the governing board shall be established and fixed annually at the time the Financing Plan for the administrative budget is adopted, and shall remain in effect throughout the succeeding fiscal year and shall apply to all votes on fiscal items related to the Administrative Costs of the Authority.

(c) Fiscal items related to **Water Costs** shall require approval by a double majority consisting of the following: a majority of all members of the governing board and a majority vote weighted on the basis of Water Production as defined in Section 2(d) hereof.

(d) For purposes of subsection (c) hereof, the weighted vote of the representative of Agricultural Interests and the Commercial/Industrial Self-Supplied Water Users representative shall be weighted on the basis of groundwater production by all such interests and users within the boundaries of the Authority, adjusted to reflect any differential rate which may be paid by a particular classification of water users; e.g., if each acre-foot of water pumped equals one vote and Agricultural Interests pump 100,000

acre feet, but pay only 20% of the per acre-foot assessment, fee or charge levied on other types of pumpers, the vote of the Agricultural Interests representative would be calculated at 20,000 votes.

(e) Water Production, as defined in Section 2(d) hereof, shall be based on an annual determination by the governing body of the Authority during the previous calendar year. Until such time as the governing board of the Authority makes its annual determination of Water Production, the last complete yearly calculation shall be controlling for purposes of the double majority requirement set forth in subsection (c) above.

9. **Quorum.** A majority of the members of the governing board shall constitute a quorum for purposes of transacting business, except less than a quorum may vote to adjourn a meeting.

10. **Terms Of Office.** With the exception of the initial term of the representatives appointed by the City of Folsom and the City of Sacramento, the term of office of each member of the governing board the Authority shall be for a period of four (4) years. For the purpose of providing staggered terms of office, the term of the initial representatives appointed by the City of Folsom and the City of Sacramento shall be for a period of two (2) years. Thereafter, the term of office of each representative appointed by the City of Folsom and the City of Sacramento shall be for a period of four (4) years. Each member of the governing board shall serve at the pleasure of the appointing body and may be removed as a member of the governing board by the appointing body at any time. If at any time a vacancy occurs on the governing board, a replacement shall be appointed to fill the unexpired term of the previous representative pursuant to the provisions of Section 7 hereof within ninety (90) days of the date that such position becomes vacant.

11. Alternates. The City of Citrus Heights, the City of Folsom, the City of Sacramento and the County, in addition to their regular appointments, shall appoint one or more persons with the required qualifications to serve as alternate members of the governing board of the Authority. Any such alternates shall be empowered to cast votes in the absence of the regular members or, in the event of a conflict of interest preventing the regular member from voting, to vote because of such a conflict of interest.

12. Organization Of The Authority. The governing board of the Authority shall elect a chair, a vice chair and such other officers as the governing board shall find appropriate. Such officers shall serve for a term of one (1) year unless sooner terminated at the pleasure of the governing board.

13. Treasurer, Controller, Clerk and Legal Counsel. The governing board of the Authority shall appoint a treasurer, controller, clerk and legal counsel as it deems appropriate. The controller of the Authority shall cause an independent annual audit of the Authority's finances to be made by a certified public accountant in compliance with Government Code Section 6505. The treasurer of the Authority shall be the depositor and shall have custody of all money of the Authority from whatever source. The controller of the Authority shall draw warrants to pay demands against the Authority when the demands have been approved by the Authority or by its authorized representative pursuant to any delegation of authority adopted by the Authority. The treasurer and controller shall comply strictly with the provisions of statutes relating to their duties found in Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

14. Executive Director. The governing board of the Authority shall appoint an Executive Director who shall be responsible to the governing board for the proper and efficient administration of the Authority as directed by the governing board pursuant to the provisions of

this Agreement or of any ordinance, resolution or order of the governing board. In addition to any other duties which may be assigned, the Executive Director shall have the following authority:

- (a) under the policy direction of the governing board, to plan, organize and direct all Authority activities;
- (b) to authorize expenditures within the designations and limitations of the budget approved by the governing board;
- (c) to make recommendations to and requests of the governing board concerning any matter which is to be performed, done or carried out by the governing board;
- (d) to have the authority to appoint, discipline, assign and otherwise supervise and control the activities of any employees or contractors which may be hired or retained by the Authority; and
- (e) to have charge of, handle and have access to any property of the Authority.

15. Meetings. The Authority shall provide for regular and special meetings in accordance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) or with any successor provision.

16. Powers and Functions.

- (a) The Authority shall have no power to regulate land use or to engage in the retail sale of water and shall be prohibited from restricting or otherwise limiting the extraction of groundwater within the boundaries of the Authority except by means of economic incentives and disincentives. The Authority shall further be prohibited from funding any capital construction projects. In addition, prior to October 13, 2003, the Authority shall be prohibited from levying annual fees or assessments to fund Water Cost payments that exceed an annual average charge during such five (5) year period of \$5.00 for each acre

foot (minimum \$0.00-maximum \$10.00) of groundwater pumped from the North Area Basin during such five (5) year period. Further, during any individual year of such five (5) year period, the Authority shall be prohibited from levying annual fees or assessments to fund Water Cost payments that exceed a charge of \$10.00 for each acre foot of groundwater pumped from the North Area Basin during any such year. For purposes of this section, Water Costs shall include the cost of water, pumping and treatment costs, and other costs related to any Conjunctive Use program administered by the Authority.

(b) Subject to the limitations set forth in subsection (a), the Authority shall have any and all powers commonly held by the parties hereto necessary or appropriate to regulate groundwater within the boundaries of the Authority including, but not limited to, the following powers:

- (i) Collect and monitor data on the extraction of groundwater from, and the quality of groundwater in, the North Area Basin;
- (ii) Establish and administer a Conjunctive Use program for the purpose of maintaining Sustainable yields in the North Area Basin consistent with the Groundwater Management Element;
- (iii) Buy and sell water on other than a retail basis;
- (iv) Exchange water;
- (v) Distribute water in exchange for ceasing or reducing groundwater extractions;
- (vi) Spread, sink and inject water into the North Area Basin;
- (vii) Store, transport, recapture, recycle, purify, treat or otherwise manage and control water for the beneficial use of persons and property within the Authority;

- (viii) To implement any Conjunctive Use program which the Authority deems necessary to maintain Sustainable yields in the North Area Basin consistent with the Groundwater Management Element; and
 - (ix) Study and plan ways and means to implement any or all of the foregoing powers.
- (c) For purposes of exercising the authority set forth in subsection (b), and subject to the limitations set forth in subsection (a), the Authority shall have the following corporate and political powers:
- (i) To sue and be sued in all actions and proceedings in all courts and tribunals.
 - (ii) To adopt a seal and alter it at its discretion.
 - (iii) To take by grant, purchase, gift, devise or lease, to hold, use and enjoy, and to lease, convey or dispose of, real and personal property of every kind, within or without the boundaries of the Authority, necessary or convenient to the full exercise of its power.
 - (iv) For the common benefit of the Authority, to store water in underground water basins or reservoirs within and outside the Authority, to appropriate water and acquire water rights within or outside the Authority, to import water into the Authority, and to conserve, or cause the conservation of, water within or outside the Authority.
 - (v) To exercise the right of eminent domain to take any property necessary to supply the Authority or any portion of it with replenishment water; provided that the right of eminent domain may not be exercised with respect to water and water rights, and may not be exercised with respect to any property owned or occupied

by any of the parties hereto or the entities represented on the governing board of the Authority.

(vi) To act jointly, or cooperate, with the United States or any agency thereof, the state, or any county or agency thereof, or any political subdivision or district therein, including flood control districts, private and public corporations, and any person, so that the powers of the Authority may be fully and economically exercised.

(vii) To cause taxes, assessments, fees or charges to be levied in accordance with applicable State law, and in a manner consistent with the Groundwater Management Element, to accomplish the purposes of the Authority.

(viii) To require the permitting of groundwater extraction facilities within the boundaries of the Authority, to maintain a record of extraction with respect to any such facilities, and to require the installation of meters on groundwater extraction facilities for the purpose of determining the amount of groundwater being extracted from the North Area Basin.

(ix) To make contracts, employ labor and to do all acts necessary for the full exercise of the Authority's powers.

(x) To carry on technical and other investigations of all kinds necessary to further the purposes of the Authority.

(xi) To fix rates at which water acquired by the Authority shall be sold for replenishment purposes, and to establish different rates for different classes of service or conditions of service, provided that the rates shall be uniform for like classes and conditions of service.

(xii) To participate in any contract under which producers may voluntarily agree to use surface water in lieu of groundwater, and to that end the Authority may become a party to the contract and pay from Authority funds that portion of the cost of the surface water as will encourage the purchase and use of that water in lieu of pumping so long as persons or property within the boundaries of the Authority are directly or indirectly benefitted by the resulting replenishment of the North Area Basin.

(xiii) To apply for, accept and receive state, federal or local licenses, permits, grants, loans or other aid from any agency of the United States, the State of California, or other public or private entity necessary or appropriate for the Authority's full exercise of its powers.

17. Budgets. Within ninety days after the first meeting of the governing board of the Authority, and thereafter prior to the commencement of each fiscal year (defined as July 1 through June 30), the governing board shall adopt a budget for the Authority for the ensuing fiscal year.

18. Termination. This Agreement shall remain in effect until terminated by one of the parties hereto pursuant to this section. This Agreement may be terminated by any of the parties hereto at any time and for any reason by providing ninety (90) days written notice of termination to the other parties. Except as provided in Section 19(b) hereof, the Authority shall automatically terminate upon the effective date of the termination of this Agreement.

19. Disposition Of Authority Assets Upon Termination.

(a) In the event of the termination of the Authority where there will be a successor public entity which will carry on the functions of the Authority and assume its assets, the assets of the Authority shall be transferred to the successor public entity.

(b) If there is no successor public entity which will carry on the functions of the Authority and assume its assets, the assets shall be returned to the parties hereto in proportion to the contribution of each party during the term of this Agreement.

(c) If there is a successor public entity which will carry on some of the functions of the Authority and assume some of its assets, the assets of the Authority shall be allocated by the governing board of the Authority between the successor public entity and the parties hereto.

20. Liabilities. The debts, liabilities and obligations of the Authority shall be the debts, liabilities and obligations of the Authority alone, and not of the parties to this Agreement.

21. Rules. The governing board of the Authority may adopt from time to time such rules and regulations for the conduct of its affairs as it deems necessary and appropriate.

22. Minutes. The clerk appointed by the governing board of the Authority shall cause to be kept minutes of all meetings of the governing board, and shall cause a copy of the minutes to be forwarded to each member of the governing board and to each of the parties hereto.

23. Effective Date. The Authority was created on October 13, 1998. This Agreement, which replaces and supercedes all prior Agreements and Amendments to the Joint Powers Agreement creating the Authority, shall become when the governing bodies of all the parties shall have authorized its execution.

24. Amendments. This Agreement may only be amended by the affirmative vote of the governing bodies of all of the parties hereto.

IN WITNESS WHEREOF, the parties hereto execute this Agreement on the date first

written above.

CITY OF CITRUS HEIGHTS

Dated: _____

By _____
Mayor

Attest:

Approved As To Form:

City Clerk

City Attorney

CITY OF FOLSOM

Dated: _____

By _____
Mayor

Attest:

Approved As To Form:

City Clerk

City Attorney

CITY OF SACRAMENTO

Dated: _____

By _____
Mayor

Attest:

Approved As To Form:

City Clerk

City Attorney

COUNTY OF SACRAMENTO

Dated: _____
Chairperson, Board of Supervisors

By _____

Attest:

Approved As To Form:

Clerk of the Board

County Counsel

"SCGA JPA"

JOINT POWERS AGREEMENT BETWEEN THE CITY OF ELK GROVE, THE CITY OF FOLSOM, THE CITY OF RANCHO CORDOVA, THE CITY OF SACRAMENTO AND THE COUNTY OF SACRAMENTO CREATING THE SACRAMENTO CENTRAL GROUNDWATER AUTHORITY

This Agreement is made and entered into this 29TH day of AUGUST, 2006, by and between the City of Elk Grove, a municipal corporation, the City of Folsom, a municipal corporation, the City of Rancho Cordova, a municipal corporation, the City of Sacramento, a municipal corporation, and the County of Sacramento, a political subdivision of the State of California.

RECITALS

WHEREAS, each of the parties to this Agreement is a local government entity functioning within the County of Sacramento; and

WHEREAS, pursuant to the Joint Exercise of Powers Act (Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the California Government Code), two or more public agencies may by agreement jointly exercise any power held in common by the agencies entering into such an agreement; and

WHEREAS, each of the parties hereto has under its police power the authority to regulate groundwater; and

WHEREAS, the parties are cognizant of the process commonly referred to as the Sacramento Area Water Forum (Water Forum) and of the Water Forum Agreement (WFA); and

WHEREAS, the WFA provided for the creation of a collaborative process composed of stakeholders in the Central Sacramento County Groundwater Basin (then known as the South Basin) to develop a groundwater management plan (GMP) for the basin and make recommendations on how and by whom the basin should be managed and the GMP implemented; and

WHEREAS, in accordance with the provisions of the WFA, the Sacramento Area Water Forum Successor Effort convened such a collaborative process, known as the Central Sacramento County Groundwater Forum (CSCGF); and

CITY _____ 2006-0972
AGREEMENT NO. _____

CITY
AGREEMENT NO. _____
2006-0972

WHEREAS, the CSCGF has completed its work on the GMP and recommended the establishment of a joint powers authority to manage the basin and implement the plan; and

WHEREAS, the parties hereto find that it is to their mutual advantage and benefit, and in the public interest, to establish such an authority pursuant to this Agreement in order to implement the GMP developed by the CSCGF; and

WHEREAS, the parties hereto find and declare that the conservation of groundwater resources within the Central Basin for agricultural and municipal and industrial uses is in the public interest and for the common benefit of all water users within the County of Sacramento; and

WHEREAS, one of the primary purposes of the joint powers authority established pursuant to this Agreement is to maintain the sustainable yield of the Central Basin as set forth in the GMP; and

WHEREAS, it is the desire of the parties hereto to use the groundwater management powers which they have in common that are necessary and appropriate to further the purposes for which the joint powers authority is being established; and

WHEREAS, the parties hereto may amend this Agreement in the future to incorporate changes that may be the result of discussions with other public agencies both inside and outside the County of Sacramento which have a specific and relevant interest in the Central Basin.

NOW, THEREFORE, in consideration of the promises, terms, conditions, and covenants contained herein, the City of Elk Grove, the City of Folsom, the City of Rancho Cordova, and the City of Sacramento and the County of Sacramento hereby agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference.

2. **Definitions.** As used in this Agreement, the following words and phrases shall have the meanings set forth below unless the context clearly indicates otherwise.

- (a) “Authority” shall mean the Sacramento Central Groundwater Authority that is established pursuant to the Joint Powers Act and this Agreement.
- (b) “Conjunctive use” shall mean the planned management and use of both groundwater and surface water in order to maintain the sustainable yield of the Central Basin.
- (c) “Central Basin” shall mean the groundwater basin underlying the area within the boundaries of the Authority.
- (d) “Sustainable yield” shall mean the amount of groundwater which can be safely extracted from the Central Basin on an estimated average annual basis while maintaining groundwater elevations and groundwater quality at acceptable levels as set forth in the Groundwater Management Plan. Sustainable yield requires a balance between extraction and basin recharge and is expressed as the number of acre feet of groundwater per year which can be extracted from the Central Basin on an average annual basis as set forth in the GMP.
- (e) “Conservation land owner” shall mean a non-profit land trust holding a fee or easement interest in two thousand five hundred (2500) acres or more of land located within the boundaries of the Authority, as defined in Section 4 below.
- (f) “Annual pumping” for purposes of determining assessments, fees or charges for management and operations of the Authority shall mean the total amount of groundwater produced within the boundaries of the Authority by each retail provider, by agricultural interests, by agricultural-residential groundwater users, by commercial/industrial self-supplied groundwater users and by public agency self-supplied groundwater users, for

use within the boundaries of the Authority and other areas approved by the Authority's Board of Directors excluding the first five thousand (5000) acre-feet of groundwater pumping by each such user.

(g) "GMP" means the Central Sacramento Groundwater Management Plan produced by the Central Sacramento County Groundwater Forum and dated February 2006.

3. **Purpose.** This Agreement is being entered into in order to establish a joint powers authority for the following purposes:

- (a) to maintain the long-term sustainable yield of the Central Basin;
- (b) to ensure implementation of the Basin Management Objectives that are prescribed by the GMP;
- (c) to oversee the operation of any Well Protection Program that may be prescribed by the GMP;
- (d) to manage the use of groundwater in the Central Basin and facilitate implementation of an appropriate conjunctive use program by water purveyors;
- (e) to coordinate efforts among those entities represented on the governing body of the joint powers authority to devise and implement strategies to safeguard groundwater quality; and
- (f) to work collaboratively with other entities, including the Sacramento Groundwater Authority, the Southeast Sacramento County Agriculture Water Authority and other groundwater management authorities that may be formed in the County of Sacramento and adjacent political jurisdictions, in order to promote coordination of policies and activities throughout the region.

4. **Establishment Of The Authority.** There is hereby established pursuant to the Joint Exercise of Powers Act a joint powers authority which shall be a public entity separate

from the parties to this Agreement. The name of such entity shall be the Sacramento Central Groundwater Authority. The boundaries of the Authority shall be as follows: on the north, the boundary shall be the American River; bounded on the south by the southern boundary of the Omochumne-Hartnell Water District; on the west by the Sacramento River and Interstate 5 and on the east by the Sacramento – El Dorado County line, as further and more precisely depicted in the boundary map, attached hereto and incorporated herein as Exhibit A.

5. Membership Of The Governing Board. The governing body of the Authority shall be a Board of Directors of sixteen (16) members consisting of the following representatives who shall be appointed in the manner set forth in Section 7 of this Agreement:

- (a) An elected member of the governing board or designated employee of each of the following public agencies: the City of Elk Grove, the City of Folsom, the City of Rancho Cordova, the City of Sacramento, the County of Sacramento and the Sacramento Regional County Sanitation District.
- (b) An elected member of the governing board of each of the following public agencies: the Florin Resource Conservation District/Elk Grove Water Service, the Omochumne-Hartnell Water District, and the Rancho Murieta Community Services District.
- (c) A member of the board of directors, or designee thereof, of each of the following private water purveyors or investor owned utilities: the California-American Water Company, and the Golden State Water Company.
- (d) One representative of agricultural interests within the boundaries of the Authority.
- (e) One representative of agriculture-residential groundwater users within the boundaries of the Authority.
- (f) One representative of commercial/industrial self-supplied groundwater users within the boundaries of the Authority.

- (g) One representative of conservation landowners within the boundaries of the Authority.
- (h) One representative of public agencies that are self-supplied groundwater users within the boundaries of the Authority.

6. **Adjustment To Composition Of Governing Board.** Should circumstances change in the future, any person or entity may petition the parties hereto to amend this Agreement so as to add or delete representatives to the governing board to accurately reflect groundwater production within the boundaries of the Authority.

7. **Appointment Of Members Of Governing Board.**

- (a) The members of the governing board of the Authority shall be appointed as follows:
 - (i) The City of Elk Grove representative shall be appointed by the Elk Grove City Council.
 - (ii) The City of Folsom representative shall be appointed by the Folsom City Council.
 - (iii) The City of Rancho Cordova representative shall be appointed by the Rancho Cordova City Council.
 - (iv) The City of Sacramento representative shall be appointed by the Sacramento City Council.
 - (v) The County of Sacramento representative shall be appointed by the Sacramento County Board of Supervisors (“Board”).
 - (vi) The Florin Resource Conservation District/Elk Grove Water Service representative shall be appointed by the Elk Grove City Council.
 - (vii) The Golden State Water Company representative shall be appointed by the Rancho Cordova City Council.

(viii) The California-American Water Company representative shall be appointed by the Sacramento County Board of Supervisors.

(ix) In addition to the representative of the County of Sacramento provided for in Section 7 (a)(v), the following representatives shall be appointed by the Board:

1. Agricultural interests. After considering the nomination by the Sacramento County Farm Bureau, as required by sub-section (b) of this Section, the Board shall appoint the representative of agricultural interests.
2. Agriculture-residential groundwater users. After considering the nomination by the Vineyard Community Advisory Council in consultation with adjacent Councils within the Central Basin, as required by sub-section (b) of this Section, the Board shall appoint the representative of agricultural/ residential groundwater users.
3. Commercial/industrial self-supplied groundwater users. After considering the joint nomination by the Sacramento Metropolitan Chamber of Commerce and the Building Industry Association in consultation with commercial/industrial self-supplied groundwater users and business organizations that are signatories to the Water Forum Agreement, as required by sub-section (b) of this Section, the Board shall appoint the representative of commercial/industrial self-supplied groundwater users.
4. Conservation landowners. After considering the nomination by conservation landowners holding a fee or easement interest in two

thousand five hundred (2500) acres or more within the Central Basin in consultation with environmental and community organizations that are signatories to the Water Forum Agreement, as required by sub-section (b) of this Section, the Board shall appoint the representative of conservation land owners.

5. Omochumne-Hartnell Water District. After considering the nomination by the Omochumne-Hartnell Board of Directors, as required by sub-section (b) of this Section, the Board shall appoint the representative of the Omochumne-Hartnell Water District.
6. Public agencies that are self-supplied groundwater users. After considering the nomination by the Southgate Recreation and Park District in consultation with other public agencies which are self-supplied groundwater users, as required by sub-section (b) of this Section, the Board shall appoint the representative of public agencies that are self-supplied groundwater users.
7. Rancho Murieta Community Services District. After considering the nomination by the Rancho Murieta Community Services District, as required by sub-section (b) of this Section 7, the Board shall appoint the representative of the Rancho Murieta Community Services District.
8. Sacramento Regional County Sanitation District. After considering the nomination by the Sacramento Regional County Sanitation District, as required by sub-section (b) of this Section, the Board

shall appoint the representative of the Sacramento Regional
County Sanitation District.

(b) Prior to the appointment of the representatives of the entities described in subsections (a)(vi) through (a)(ix) above, those entities shall submit a recommended appointment for their respective representatives to the appointing authority identified in subsections (a)(vi) through (a)(ix) of this Section 7. The appointing authority shall give consideration to such recommendations, but shall retain the absolute discretion to appoint any person satisfying the criteria for appointment set forth in Section 5 of this Agreement.

8. Governing Board Voting Requirements.

(a) Each member of the governing board of the Authority shall have one vote. With the exception of fiscal items as set forth in subsections (b) and (c) below, an affirmative vote by a majority of all members of the governing board is required to approve any item related to implementation of the Groundwater Management Plan.

(b) Fiscal items, including, but not limited to, approval of the annual budget of the Authority and any expenditures, shall require an affirmative vote by a majority of all the members of the governing board that includes affirmative votes by all of the representatives of the Cities of Elk Grove, Folsom, Rancho Cordova and Sacramento and the County of Sacramento.

(c) Any change in annual contributions necessary to support the work of the Authority as set forth in subsection (d) below, shall require an affirmative vote of eleven of the sixteen members of the governing board that includes affirmative votes by all of the representatives of the Cities of Elk Grove, Folsom, Rancho Cordova and Sacramento and the County of Sacramento.

- (d) The Authority shall initially be funded as follows:
- (i) An annual contribution by the Cities of Elk Grove, Folsom, Rancho Cordova and Sacramento and the County of Sacramento in the amount of ten thousand dollars (\$10,000.00) each. (These entities shall not be required to pay any additional fee or assessment, such as that described in subsection (d)(ii) below.)
 - (ii) An annual contribution by each of those water purveyors represented on the Governing Board, other than the entities listed in subsection (d)(i) above, that purvey surface water in the amount of six thousand dollars (\$6,000.00).
 - (iii) An annual contribution by each of those water purveyors represented on the Governing Board, other than the entities listed in subsection (d)(i) above, that utilize groundwater, calculated at the rate of two dollars and seven cents (\$2.07) per acre foot of groundwater pumped from the basin, averaged over the three previous years and excluding the first five thousand (5000) acre feet pumped in each of those years.
 - (iv) An annual contribution by agriculture computed at twenty five percent (25%) of the estimated annual pumping (as determined by the Sacramento County Water Agency) at the rate of two dollars and seven cents (\$2.07) per acre foot and paid out of SCWA Zone 13 funds.
 - (v) An annual contribution by agriculture/residential groundwater users computed at twenty five percent (25%) of the estimated annual pumping (as determined by the Sacramento County Water Agency) at the rate of

two dollars and seven cents (\$2.07) per acre foot and paid out of SCWA Zone 13 funds.

- (vi) All annual funds shall be paid by July 1 of each year, commencing on July 1, 2006. The annual fee for the first year after the effective date of this Agreement shall be prorated from the date of the last signatory approval establishing the Authority.

(e) The governing board of the Authority may, at its discretion, adjust the funding contributions set forth in sub-section (d) above, subject to compliance with the voting requirements prescribed in sub-section (c) above.

9. Quorum. A majority of the members of the governing board shall constitute a quorum for purposes of transacting business, except less than a quorum may vote to adjourn a meeting.

10. Terms Of Office. With the exception of the initial term of the representatives appointed by the County of Sacramento as described in Section 7 (a)(ix), the term of office of each member of the governing board the Authority shall be for a period of four (4) years. For the purpose of providing staggered terms of office, the term of the initial representatives appointed by the County of Sacramento as described in Section 7 (a)(ix) shall be for a period of two (2) years. Thereafter, the term of office of each representative appointed by the County of Sacramento as described in Section 7 (a)(ix) shall be for a period of four (4) years. Each member of the governing board shall serve at the pleasure of the appointing body and may be removed as a member of the governing board by the appointing body at any time. If at any time a vacancy occurs on the governing board, a replacement shall be appointed to fill the unexpired term of the previous representative pursuant to the provisions of Section 7 of this Agreement within ninety (90) days of the date that such position becomes vacant.

11. Alternates. The City of Elk Grove, the City of Folsom, the City of Rancho Cordova, the City of Sacramento and the County of Sacramento, in addition to their regular appointments, shall appoint one or more persons with the required qualifications to serve as alternate members of the governing board of the Authority. The other entities described in Section 7 (a) (vi) through (a) (ix), which may nominate their respective representatives, may also nominate one or more persons with the required qualifications to serve as alternate members of the governing board of the Authority and such alternates shall be appointed pursuant to the procedure for regular appointments set forth in Section 7(b) of this Agreement. Any such alternates who are appointed as alternates by the appointing authorities specified in Section 7(a)(vi) through (a)(ix) shall be empowered to cast votes in the absence of the regular members or, in the event of a conflict of interest preventing the regular member from voting, to vote because of such a conflict of interest.

12. Organization Of The Authority. The governing board of the Authority shall elect a chair, a vice chair and such other officers as the governing board shall find appropriate. Such officers shall serve for a term of one (1) year unless sooner terminated at the pleasure of the governing board.

13. Treasurer, Controller, Clerk and Legal Counsel.

(a) The County of Sacramento Director of Finance shall act as treasurer and controller for the Authority. The controller of the Authority shall cause an independent annual audit of the Authority's finances to be made by a certified public accountant in compliance with Government Code Section 6505. The treasurer of the Authority shall be the depositor and shall have custody of all money of the Authority from whatever source. The controller of the Authority shall draw warrants to pay demands against the Authority when the demands have been approved by the Authority or by its authorized representative pursuant to any delegation of authority adopted by

the Authority. The treasurer and controller shall comply strictly with the provisions of statutes relating to their duties found in Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

(b) The governing board of the Authority shall appoint a clerk and legal counsel as it deems appropriate.

14. Executive Director. The governing board of the Authority, with the concurrence of the Sacramento County Water Agency, shall appoint an Executive Director who shall be responsible to the governing board for the proper and efficient administration of the Authority as directed by the governing board pursuant to the provisions of this Agreement or of any ordinance, resolution or order of the governing board. In addition to any other duties which may be assigned, the Executive Director shall have the following authority:

- (a) under the policy direction of the governing board, to plan, organize and direct all Authority activities;
- (b) to authorize expenditures within the designations and limitations of the budget approved by the governing board;
- (c) to make recommendations to and requests of the governing board concerning any matter which is to be performed, done or carried out by the governing board;
- (d) to have the authority to appoint, discipline, assign and otherwise supervise and control the activities of any employees or contractors which may be hired or retained by the Authority; and
- (e) to have charge of, handle and have access to any property of the Authority.

15. Meetings. The Authority shall provide for regular and special meetings in accordance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) or with any successor provision.

16. **Minutes.** The clerk appointed by the governing body of the Authority shall cause to be kept minutes of all meetings of the governing board, and shall cause a copy of such minutes to be forwarded to each member of the governing board, alternates and to the chief administrative officer of each of the signatory agencies.

17. **Powers and Functions.**

(a) The Authority shall have no power to regulate land use or to engage in the retail sale of water.

(b) Subject to the limitations set forth in subsection (a), the Authority shall have any and all powers commonly held by the parties hereto necessary or appropriate to regulate groundwater within the boundaries of the Authority including, but not limited to, the following powers:

- (i) Collect and monitor data on the extraction of groundwater from, and the quality of groundwater in, the Central Basin;
- (ii) Facilitate any Conjunctive Use program the purpose of which is to maintain the sustainable yield in the Central Basin consistent with the GMP;
- (iii) Distribute water in exchange for ceasing or reducing groundwater extractions;
- (iv) Spread, sink and inject water into the Central Basin;
- (v) Store, transport, recapture, recycle, purify, treat or otherwise manage and control water for the beneficial use of persons and property within the Authority;
- (vi) Study and plan ways and means to implement any or all of the foregoing powers.

(c) For purposes of exercising the authority set forth in subsection (b), and subject to the limitations set forth in subsection (a), the Authority shall have the following corporate and political powers:

- (i) To sue and be sued in all actions and proceedings in all courts and tribunals.
- (ii) To adopt a seal and alter it at its discretion.
- (iii) For the common benefit of the Authority, to store water in underground water basins or reservoirs within and outside the Authority, to appropriate water and acquire water rights within or outside the Authority, to import water into the Authority, and to conserve, or cause the conservation of, water within or outside the Authority.
- (iv) To act jointly, or cooperate, with the Federal government or any agency thereof, the state, or any county or agency thereof, or any political subdivision or district therein, including flood control districts, private and public corporations, and any person, so that the powers of the Authority may be fully and economically exercised.
- (v) To cause taxes, assessments, fees or charges to be levied in accordance with applicable State law, and in a manner consistent with the GMP to accomplish the purposes of the Authority.
- (vi) To require the permitting of groundwater extraction facilities within the boundaries of the Authority, to maintain a record of extraction with respect to any such facilities, and to require the installation of meters on groundwater extraction facilities for the purpose of determining the amount of groundwater being extracted from the Central Basin.

(vii) To make contracts, employ labor and to do all acts necessary for the full exercise of the Authority's powers.

(viii) To carry on technical and other investigations of all kinds necessary to further the purposes of the Authority.

(ix) To fix rates at which water acquired by the Authority shall be sold for replenishment purposes, and to establish different rates for different classes of service or conditions of service, provided that the rates shall be uniform for like classes and conditions of service.

(x) To participate in any contract under which producers may voluntarily agree to use surface water in lieu of groundwater, and to that end the Authority may become a party to the contract and pay from Authority funds that portion of the cost of the surface water as will encourage the purchase and use of that water in lieu of pumping so long as persons or property within the boundaries of the Authority are directly or indirectly benefitted by the resulting replenishment of the Central Basin.

(xi) To apply for, accept and receive state, federal or local licenses, permits, grants, loans or other aid from any agency of the United States, the State of California, or other public or private entity necessary or appropriate for the Authority's full exercise of its powers.

18. Budgets. Within ninety (90) days after the first meeting of the governing board of the Authority, and thereafter prior to the commencement of each fiscal year (defined as July 1 through June 30), the governing board shall adopt a budget for the Authority for the ensuing fiscal year.

19. Adoption of the Central Sacramento County Groundwater Management Plan. Within sixty (60) days after the first meeting of the governing board of the Authority, the governing board shall consider for adoption the Central Sacramento County Groundwater Management Plan (CSCGMP) negotiated by the Central Sacramento County Groundwater Forum and dated February, 2006. The governing board of the Authority may revise the CSCGMP subsequent to its adoption as it deems appropriate.

20. Implementation of the Well Protection Program. In order to facilitate the implementation of the Well Protection Program described in the Central Sacramento County Groundwater Management Plan, within sixty (60) days after the first meeting of the governing board of the Authority, the governing board shall submit to each of the entities who are signatories to this Agreement, and who have land use authority for areas within the boundaries of the Authority where new development will or may be served by groundwater, a draft Well Protection Plan ordinance to consider for adoption.

21. Termination. This Agreement shall remain in effect until terminated by one of the parties hereto pursuant to this section. This Agreement may be terminated by any of the parties hereto at any time and for any reason by providing ninety (90) days written notice of termination to the other parties.

22. Disposition Of Authority Assets Upon Termination.

(a) In the event of the termination of the Authority where there will be a successor public entity which will carry on the functions of the Authority and assume its assets, the assets of the Authority shall be transferred to the successor public entity.

(b) If there is no successor public entity which will carry on the functions of the Authority and assume its assets, the assets shall be returned to the parties hereto in proportion to the contribution of each party during the term of this Agreement.

(c) If there is a successor public entity which will carry on some of the functions of the Authority and assume some of its assets, the assets of the Authority shall be allocated by the governing board of the Authority between the successor public entity and the parties hereto.

23. Liabilities. The debts, liabilities and obligations of the Authority shall be the debts, liabilities and obligations of the Authority alone, and not of the parties to this Agreement.

24. Rules. The governing board of the Authority may adopt from time to time such rules and regulations for the conduct of its affairs as it deems necessary and appropriate.

25. Effective Date. This agreement and the Authority created under it shall become effective when the governing bodies of all of the parties shall have authorized its execution.

26. Amendments. This Agreement may only be amended by the affirmative vote of the governing bodies of all of the parties hereto.

28. Liberal Construction. The provisions of this Agreement shall be liberally construed as necessary or reasonably convenient to achieve the purposes of the Authority.

29. Liability of Board, Officers and Employees.

(a) The members of the Board, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers, and in the performance of their duties pursuant to this Agreement. They shall not be liable to the parties to this Agreement for any mistake of judgment or other action made, taken, or omitted by them in good faith, nor for any action made, taken, or omitted by any agent, employee, or independent contractor selected with reasonable care, nor for loss incurred through the investment of the Authority's funds, or failure to invest the same.

(b) To the extent authorized by California law, no member of the Board, officer, or employee of the Authority shall be responsible for any action made, taken, or omitted, by

any other member of the Board, officer, or employee. No member of the Board, officer, or employee of the Authority shall be required to give a bond or other security to guarantee the faithful performance of his or her duties pursuant to this Agreement.

(c) The funds of the Authority shall be used to defend, indemnify, and hold harmless the Authority and any member of the Board, officer, or employee of the Authority for actions taken in good faith and within the scope of his or her authority. Nothing herein shall limit the right of the Authority to purchase insurance or to create a self-insurance mechanism to provide coverage for the foregoing indemnity.

30. Notices. Any notices to the parties required by this Agreement shall be delivered or mailed, United States Mail first class, postage prepaid, addressed as follows:

CITY OF ELK GROVE
8380 Laguna Palms Way
Elk Grove, CA 95758
Att: City Engineer

CITY OF FOLSOM
50 Natoma Street
Folsom, CA 95630
Att: Director of Utilities

CITY OF RANCHO CORDOVA
2729 Prospect Park Drive
Rancho Cordova, CA 95670
Att: Public Works Director

CITY OF SACRAMENTO
1395 35th Avenue,
Sacramento, CA 95822
Att: Director, Department of Utilities

COUNTY OF SACRAMENTO
827 7th St. Rm 301
Sacramento, CA 95814
Att; Director, Department of Water Resources

Notices given under this Agreement shall be deemed to have been received at the earlier of actual receipt, or the second business day following deposit in the United States mail, as required above. Any party may amend its address for notice by notifying the other parties pursuant to this Section.

IN WITNESS WHEREOF, the parties hereto execute this Agreement on the date first written above.

Dated: August 9, 2006

CITY OF ELK GROVE

By *Rick Soares*
Rick Soares,
Mayor

Attest:
Peggy E. Jackson
Peggy E. Jackson,
City Clerk

Approved As To Form:
[Signature]
Anthony B. Manzanetti,
City Attorney

Dated: 8-25-06

CITY OF FOLSOM

By *Andy Morin*
Andy Morin,
Mayor

Attest:
Christa Schmidt
Christa Schmidt,
City Clerk

Approved As To Form:
Bruce C. Cline 8/24/06
Bruce C. Cline,
City Attorney

Dated: August 24, 2006

CITY OF RANCHO CORDOVA

By *Robert J. McGarvey*
Robert J. McGarvey,
Mayor

Attest:
Lillian Hare
Lillian Hare,
City Clerk

Approved As To Form:
[Signature]
Steve Myers,
City Attorney



CITY AGREEMENT NO. 2006-0972

CITY AGREEMENT NO. 2006-0972

CITY OF SACRAMENTO

Dated: 9-5-06

By Heather Fargo
Heather Fargo,
Mayor

Attest:

Shirley Concolino
Shirley Concolino,
City Clerk

Approved As To Form:

Eileen Teichert
Eileen Teichert,
City Attorney



8 2006

COUNTY OF SACRAMENTO

By Roberta MacGlashan
Roberta MacGlashan
Chairperson, Board of Supervisors

Attest:

Cindy H. Turner
Cindy H. Turner,
Clerk of the Board

Approved As To Form:

John F. Whisenhunt
John Whisenhunt
Assistant County Counsel

CITY
AGREEMENT NO. 2006-0972

RESOLUTION NO. 2006-635

Adopted by the Sacramento City Council

August 29, 2006

JOINT POWERS AGREEMENT CREATING THE CENTRAL SACRAMENTO GROUNDWATER AUTHORITY AND APPOINTING REPRESENTATIVES TO THE AUTHORITY

BACKGROUND

- A. In April 2000, the City signed the Water Forum Agreement.
- B. The Central Sacramento County Groundwater Forum (CSCGF) was initiated in 2002 by the Water Forum to, among other things, recommend a governance structure for the central Sacramento County groundwater basin.
- C. Stakeholders in the CSCGF have recommended the formulation of a joint powers agreement to create an independent board of directors to manage the basin. Signatories to the JPA are recommended to be the cities of Sacramento, Elk Grove, Folsom, Rancho Cordova and the County of Sacramento.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The Joint Powers Agreement creating the Central Sacramento Groundwater Authority (CSGA) is hereby approved.
- Section 2. The City Manager, or his authorized designee, is hereby appointed as the representative to the CSGA.
- Section 3. The City Manager's authorized designee is hereby appointed as the alternate representative to the CSGA.

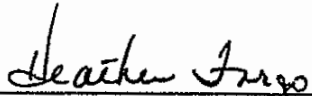
Adopted by the City of Sacramento City Council on August 29, 2006 by the following vote:

Ayes: Councilmembers, Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Fargo.

Noes: None.

Abstain: None.

Absent: None.



Mayor, Heather Fargo

Attest:


Shirley Concolino, City Clerk

“SJTA JPA”

JOINT POWERS AGREEMENT FORMING THE SAN JOAQUIN TRIBUTARIES AUTHORITY

This Joint Powers Agreement (“Agreement”) is made and entered into by and among the MERCED IRRIGATION DISTRICT, MODESTO IRRIGATION DISTRICT, OAKDALE IRRIGATION DISTRICT, SOUTH SAN JOAQUIN IRRIGATION DISTRICT, TURLOCK IRRIGATION DISTRICT, all of which are California irrigation districts, and the CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation acting by and through its PUBLIC UTILITIES COMMISSION, which are referred to herein individually as a “Party” and collectively as “Parties”, for the purposes of forming a joint powers authority hereinafter known as the San Joaquin Tributaries Authority (“SJTA”).

RECITALS

WHEREAS, each of the Parties are political subdivisions of the State of California who hold various water rights, including pre-1914 rights of appropriation, riparian, senior appropriative and/or contractual water rights on rivers and streams tributary to the San Joaquin River.

WHEREAS, each of the Parties share the common purpose of protecting, defending, and enhancing its water rights.

WHEREAS, the Parties desire to protect and defend against regulation which threatens to adversely affect the cost, reliability, efficiency, and/or operations of their respective organizations.

WHEREAS, the Parties have a common interest in protecting against potentially adverse regulation which may come from the State Water Resources Control Board (“State Water Board”), the Central Valley Regional Water Quality Control Board (“Regional Water Board”), the California Department of Fish & Game (“CDFG”), the United States Fish & Wildlife Service (“USFWS”), the National Marine Fisheries Service (“NMFS”), the Delta Stewardship Council, the Central Valley Salinity Coalition (“CV-SALTS”), and the United States Environmental Protection Agency (“EPA”), among other agencies.

WHEREAS, the Parties have a common interest in the development of the Bay-Delta Conservation Plan (“BDCP”) and ensuring the BDCP provides Delta solutions that do not adversely impact the Parties.

WHEREAS, the Parties have a common interest in the development of the San Joaquin River Restoration Program (“SJRRP”), which seeks to reintroduce Spring-run Chinook salmon to the San Joaquin River Basin, and ensuring the SJRRP does not adversely impact the interests of the Parties.

WHEREAS, the Parties desire to develop a proactive and responsive public relations approach to address the foregoing issues over the long term.

WHEREAS, the Parties have a compelling and mutual interest in developing and coordinating investigations, strategies, plans, contracts, and projects, now and in the future, relating to Delta issues and required and/or contracted San Joaquin river and tributary flow issues.

WHEREAS, the aforementioned activities may best be achieved through the cooperative action of the Parties operating through a joint powers authority.

WHEREAS, each of the Parties is authorized by Government Code Section 6500, et seq., (Act”) to jointly exercise their common powers to achieve the objectives set forth in this Agreement.

NOW, THEREFORE, the Parties, in consideration of the mutual promises and agreements herein contained, do agree as follows:

ARTICLE 1. DEFINITIONS

As used in this Agreement, unless context requires otherwise, the meanings of the terms set forth below shall be as follows:

1.1. “Agreement” means this Joint Powers Agreement, which creates the SJTA.

1.2. “Commission” means the governing body of the SJTA as established by Article 6 (Governing Body-Commission) of this Agreement.

1.3. “Commissioner” or “Commissioners” means members of the Commission as established by

1.4. “Effective Date” means the date on which the last Party executes this Agreement.

1.5. “Member’s Governing Body” means the Board of Directors or other voting body that controls the individual public agencies that are Members of the SJTA.

1.6. “Member” means a public entity, including each of the Parties, that satisfies the requirements of Article 5 (Membership) of this Agreement.

1.7. “Specific Project” means a project undertaken by some, but not all Members of the SJTA.

1.8. “SJTA” means the San Joaquin Tributaries Authority.

1.9. “State” means the State of California.

1.10. “State Board” means the State Water Resources Control Board.

ARTICLE 2. FORMATION

2.1. Upon the effective date of this Agreement, there is hereby established the SJTA. Pursuant to the provisions of Article I, Chapter 5, Division 7 of Title 1 of the California Government Code, commencing with Section 6500, the SJTA shall be a public agency separate from any of its Members. The principal offices shall be located at the Modesto Irrigation District, in Modesto, California, or at such other place as the Commission shall determine.

ARTICLE 3. TERM

3.1. This Agreement shall become effective upon execution by each of the Parties and shall continue in full force and effect until terminated pursuant to the provisions of Article 13 (Termination and Withdrawal).

ARTICLE 4. PURPOSE AND POWERS

4.1. The purpose of this Agreement is to establish a Joint Powers Authority separate from its Members to develop and facilitate an environment in which Members are able to provide water in an efficient manner at a reasonable cost, ensure long term reliability of the systems, and work with other governmental and public agencies to promote the common welfare of the landowners and water users served by SJTA Members. More specifically, the purposes of the SJTA include, but are not limited to:

4.1.2 Develop a long-term multidisciplinary program of scientific investigation to obtain knowledge of the social, economic, hydrological and environmental (specifically fish biology) impacts of the Parties and others on the Delta.

4.1.3 Develop and propose San Joaquin River and/or tributary flow objectives that are scientifically sound, sustainable, and provide reasonable and balanced protection of all beneficial uses.

4.1.4 Investigate and develop plans for conservation, conjunctive use, off-stream storage and other means of insuring that any ultimate San Joaquin River and/or tributary flow requirements placed on the Members or any of them can be met.

4.1.5 Develop strategies to market water on a voluntary basis to meet San Joaquin River flow and other water objectives common to the Parties.

4.1.6 Secure funds from federal, state, or local agencies, including but not limited to, funds available under the Central Valley Project Improvement Act (“CVPIA”), and including both restoration funds, State Water Project (“SWP”) funds, Four Pumps Mitigation funds, Integrated Regional Water Management (“IRWM”) grant funds from the Department of Water Resources (“DWR”), and other funds.

4.1.7 Monitor and ensure water, if any, released by the Members for San Joaquin

River and/or tributary flow requirements achieve its intended purpose.

4.1.8 Function as the regional focal point for funding and grant/aid applications related to San Joaquin River water flow and non-flow fish habitat issues.

4.1.9 Develop the procedures for establishing and conducting the SJTA's coordination functions; and establish a funding basis for initial and sustained operations.

4.1.10 Participate as necessary in Bay/Delta issues affecting the Members.

4.2. The SJTA shall have the power in the name of the SJTA to exercise the common powers of the Members, including, but not limited to, the following:

4.2.1 Employ agents, consultants, advisors, independent contractors, and employees.

4.2.2 Make and enter into contracts with public or private entities, including the State of California and the United States, and one another.

4.2.3 Acquire, hold and convey real and personal property.

4.2.4 Incur operating debts, obligations and liabilities; and by unanimous vote of the Commission to issue bonds, notes or similar evidence of debt.

4.2.5 To borrow money.

4.2.6 Accept contributions, grants, or loans from any public or private agency or individual or the United States or any department, instrumentality, or agency thereof for the purpose of financing its activities.

4.2.7 Invest money that is not needed for immediate necessities, as the Commission determines advisable, in the same manner and upon the same conditions as other local entities in accordance with Section 53601 of the Government Code.

4.2.8 Reimburse SJTA members for the actual amounts of the reasonable and necessary expenses incurred in attending the meetings of the SJTA or any committee of the SJTA in performing the duties of their office, subject to Commission policy and budget authorization.

4.2.9 Sue and be sued; provided that a member agency may determine not to participate in affirmative litigation.

4.2.10 Undertake all other acts reasonable and necessary to carry out the Purpose of this Agreement.

4.2.11 With its consent, to represent the interests of any Member before any

court, administrative agency, or other body with legislative, administrative, adjudicative or regulatory powers.

4.2.12 Fix and collect levies or assessments subject to repayment from operations or future revenues.

4.2.13 Develop strategies, where possible, that lead to a negotiated settlement between all Parties of interest to the State Water Board Bay-Delta Water Quality Control Plan.

4.2.14 Develop scientific monitoring and mitigation plans to address issues relating to the Delta or Water Quality Control Plan.

4.2.15 Develop broad based regional committees to gather the ideas and data necessary for decision making and implementation of the SJTA's plans.

4.2.16 Employ or retain a full time supporting staff.

4.3. The SJTA shall not have the power to bind any of the Members to any monetary obligation whatsoever by this Agreement other than that unanimously authorized by the mutual written consent of the Members.

4.4. The SJTA and all of its Members confirm that nothing contained herein shall grant to the SJTA any power to alter any water right, contract right, or any similar right held by its Members, or amend Member's water delivery practice, course of dealing, or conduct without the express consent of the holder thereof.

ARTICLE 5. MEMBERSHIP

5.1. Members. Each Party which possess the powers described in the recitals and in Article 4 (Purposes and Powers) of this Agreement that executes this Agreement and any addenda, amendments or supplements thereto, and which has not, pursuant to the provisions hereof, withdrawn from this Agreement, shall be a Member.

5.2. New Members. Any public entity that is not a Member on the effective date of this Agreement shall be a Member upon (a) the approval of the Commission, (b) payment of all previously incurred costs that the Commission determines have resulted in benefit to the public entity, (c) payment of applicable fees and charges, and (d) written agreement to the terms and conditions of this Agreement.

ARTICLE 6. GOVERNING BODY-COMMISSION

6.1. Membership of Commission. The SJTA shall be governed by a Commission consisting of one (1) Commissioner representing each Member.

6.2. Requirements. Each Commissioner must be appointed by one of the Members and

sit on the Governing Board of the appointing Member. Each Commissioner shall certify to the Secretary in writing that he or she has been appointed to be a Commissioner by the Member and that he or she meets the qualifications established by this section 6.2.

6.3. Alternate Commissioners. Each Member shall appoint one Alternate Commissioner. The Alternate Commissioner must meet the requirements set forth in section 6.2. Alternate Commissioners shall have no vote at Commission meetings if the Commissioner is present. If the Commissioner is not present, the Alternate Commissioner shall be entitled to participate in all respects as a regular Commissioner.

6.4. Removal of Commissioners. Commissioners and Alternate Commissioners shall serve at the pleasure of their appointing Member's Governing Board and may be removed or replaced at any time. A Commissioner that no longer meets the qualifications set forth in section 6.2 is automatically removed from the SJTA Commission. Upon removal of a Commissioner, the Alternate Commissioner shall serve as Commissioner until a new Commissioner is appointed by the Member. Members must submit any changes in Commissioner or Alternate Commissioner positions to the Secretary in writing and signed by the Member.

6.5. Officers. The Commission shall select a Chairman, Vice-Chairman, Secretary, Treasurer and any other officers as determined necessary by the Commission.

6.5.1 The Chairman shall preside at all Commission meetings.

6.5.2 The Vice-Chairman shall act in place of the Chairman at meetings should the Chairman be absent.

6.5.3 The Treasurer shall be the Treasurer or Chief Financial officer of any Member of the SJTA. The Treasurer shall act as Auditor-Controller for the SJTA.

6.5.4 The Secretary shall keep minutes of all meetings of the Commission and shall, as soon as possible after each meeting, forward a copy of the minutes to each member and alternate of the Commission.

6.5.5 All Officers shall be chosen at the first Commission meeting and serve for a term of two (2) years. An Officer may serve for multiple consecutive terms. Any Officer may resign at any time upon written notice to the Commission.

6.5.6 Officers or other persons who have charge of or who handle or have access to any property of the SJTA shall file an official bond in an amount determined from time to time by the Commission in accordance with Government Code Section 6505.1.

6.6. Counsel. The Commission may retain counsel that serves at its pleasure. Counsel shall represent the Members as the Commission determines. In the event a conflict of interest between the Members, an independent attorney shall be retained as special counsel to the

extent necessary.

ARTICLE 7. COMMISSION MEETINGS

7.1. Initial Meeting. The initial meeting of the Commission shall be called by the Modesto Irrigation District and held in Modesto, California within thirty (30) days of the effective date of this Agreement. The Commissioners shall, at the first meeting, elect all officers. Unless changes by the Commissioners, Stanislaus County shall be the domicile of the Agency.

7.2. Required Meetings. The Commission shall hold at least one regular meeting each calendar quarter at a time and place set by the Commission, and such other times as may be determined by the Commission.

7.3. Conduct. All Commission meetings shall be scheduled and conducted pursuant to the provisions of the Ralph M. Brown Act (Government Code Section 54950 et seq.), to the extent applicable.

ARTICLE 8. COMMISSION VOTING

8.1. Quorum. A majority of Commissioners shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of the Commissioners may be adjourned from time to time by a majority present, but no other business may be transacted.

8.2. Commissioner Votes. Each Commissioner shall have one (1) vote. Except as otherwise specified in this Agreement, all decisions, including the decision whether or not to initiate litigation, shall be made by the affirmative vote of a majority of Commissioners. Unless there is an abstention for a conflict of interest, all abstentions shall be counted as an affirmative vote in support of the majority vote.

ARTICLE 9. SPECIFIC PROJECTS

9.1. Projects. The SJTA intends to carry out activities in furtherance of its purposes and consistent with the powers established by this Agreement with the participation of all Members.

9.2. Member Specific Projects. In addition to the general activities undertaken by all Members of the SJTA, the SJTA may initiate specific projects or litigation that involve less than all Members. No Member shall be required to be involved in a Project that involves less than all the Members.

9.3. Project Agreement. Prior to undertaking any project or litigation that does not involve all Member Agencies, the Members electing to participate in the Project shall enter into a Project Agreement. A Member may elect not to participate in a specific project or litigation matter by providing notice and not entering into the Project Agreement specific to the matter in which the Member has elected not to participate. Each Project Agreement shall

provide the terms and conditions by which the Members that enter into the Project Agreement will participate in the Project. All assets, rights, benefits, and obligations attributable to the Project shall be assets, rights, benefits, and obligations of those Members which have entered into the Project Agreement. Any debts liabilities, obligations, or indebtedness incurred by the Agency in regard to a particular Project shall be the debts, liabilities, obligations, or indebtedness of the Members who have executed the Project Agreement in accordance with the terms thereof and shall not be the debts, liabilities, obligations and indebtedness of those Members who have not executed the Project Agreement. Further, to the extent the Project is litigation, the Members who have not entered into the Project Agreement shall not be named or otherwise listed in pleadings and/or appear on litigation materials.

9.4. Commission Approval. The Commission shall have the authority to disapprove any Project Agreement upon a determination that the Project Agreement has specific, substantial adverse impacts upon Members that have not executed the Project Agreement.

ARTICLE 10. ACCOUNTING PRACTICES

10.1. General. The Commission shall establish and maintain funds, accounts and practices as may be required by State law and generally accepted accounting practice.

10.2. Fiscal Year. Unless the Commission decides otherwise, the fiscal year for the SJTA shall be January 1 through the last day of December of the same year.

10.3. Duties of the Treasurer. Subject to the provisions of this Agreement and any applicable law, the Treasurer shall receive, have custody and disburse SJTA funds pursuant to the duties specified in Government Code section 6505.5. In accordance with the normal procedures of the Member by which the Treasurer, controller or chief financial officer is employed, the Treasurer shall:

10.4.1 Audit and allow or reject claims in lieu of, and with the same effect as allowance or rejection by the Commission when expenditures have been authorized by the Commission pursuant to the budget.

10.4.2 Prepare an annual audit of the accounts and records of the SJTA. A report shall be filed as a public record with the Auditor of the county where the SJTA is domiciled consistent with Government Code section 6505, and with each Member. The report shall also be filed with the Secretary of State within twelve (12) months of the end of the fiscal year under examination.

10.4. Purchasing Agent. The Purchasing Agent of the SJTA shall be the Purchasing Agent of the Member employing the Treasurer and all purchases of the SJTA shall be made pursuant to the laws applicable to Irrigation District Members to this Agreement.

10.5. Inspection. The books and records of the SJTA shall be open to inspection at all reasonable times by representatives of the Parties to the Agreement.

ARTICLE 11. BUDGET AND EXPENSES

11.1. The Commission shall approve a budget at its initial meeting and before the beginning of each fiscal year thereafter. Funding for the budget shall be provided in equal proportion by each Party, except as to specific projects or litigation matters in which a Member has elected not to participate. Each Member's Governing Board shall authorize its funding contribution before the beginning of the fiscal year.

11.2. Each of the Parties may, but are not required to, contribute additional money, office space, furnishings, equipment, supplies or services as their respective Governing Boards may deem appropriate.

11.3. Funds may also be derived through State or Federal grants, or other available sources. The SJTA may also apply for available State or Federal funds and shall make new and additional applications from time to time as appropriate. The SJTA may also establish and collect various fees, leases or rents as may be authorized by law under the common powers of all the Parties.

11.4. The SJTA may accept and expend funds from public or private sources subject to the legal restrictions which are set forth in the common powers of the Parties for the purpose of carrying out its powers, duties, responsibilities, and obligations specified in this Agreement.

11.5. The SJTA shall be limited to the making of expenditures or incurring of liabilities in the amount of the appropriations allowed by the budget as adopted and revised by the Commission.

ARTICLE 12. LIABILITIES AND INDEMNIFICATION

12.1. Pursuant to Government Code Section 6508.1, the debts, liabilities, and obligations of the SJTA shall be those of the SJTA and not of the Members of the SJTA. Provided the SJTA shall specify in all contracts for the purchase of goods and services that the responsibility for payment is that of the SJTA and not of any of its Members.

12.2. All claims against the SJTA including but not limited to claims by public entities or public officers and employees for fees, salaries, wages, mileage or other expenses, shall be filed within the time and in the manner specified in Chapter 2 (commencing with Section 910) of Part 3, Division 3.6 of Title 1 of the Government Code or in accordance with claims procedures approved by the Treasurer and established by the Commission pursuant to Chapter 5 (commencing with Section 930) or Chapter 6 (commencing with Section 935) of said Part 3 of the Government Code.

12.3. The SJTA shall at all times maintain with responsible insurers or one of its Members, Worker's Compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the SJTA, its employees, agents, and/or Members.

12.4. The SJTA shall indemnify, defend, and save harmless the Members, their officers, agents and employees, from and against any and all claims, demands, liability, or damage whatsoever occurring or resulting to persons, firms or corporations furnishing or supplying work, services, materials or supplies to the SJTA in connection with the performance of the Agreement, and, except as expressly provided by law, from any and all claims, demands, liability, or damage accruing or resulting to any persons, firm or corporation, for damage, injury or death arising out of or connected with the SJTA's performance of its duties under this Agreement. The SJTA may also acquire such policies of directors and officers liability insurance and in such amounts as the Commission shall deem prudent.

ARTICLE 13. TERMINATION AND WITHDRAWAL

13.1. This Agreement may be rescinded and the SJTA terminated by unanimous written consent of all Members.

13.2. Upon termination of this Agreement, all funds on hand shall be returned to Members in proportion to their contribution. Any equipment, furniture or furnishing which can be identified as having been contributed by any Party to this Agreement shall be transferred to and become the property of the Party contributing such equipment, furniture or furnishings. Any other property of the SJTA shall be sold and the net proceeds from such sale shall be returned to Members that contributed to the acquisition of the property in proportion to their contribution.

13.3. A Member may unilaterally withdraw from this Agreement without causing or requiring termination of this Agreement, effective upon ninety (90) days written notice to the Secretary of the Commission. A Member that has withdrawn shall remain obligated to pay its share of all debts, liabilities, and obligations incurred or accrued as a Member of the SJTA up to the date the Member provided notice of withdrawal.

ARTICLE 14. MISCELLANEOUS

14.1. Notices. Notices hereunder shall be sufficient if delivered via electronic mail, First-Class mail or facsimile transmission to the addresses following the Party signature blocks hereafter.

14.2. Headings. The article headings herein are for convenience only and are not to be construed as modifying or governing the language of the article referred to.

14.3. Choice of Law. This Agreement is made in the State of California, under the Constitution and laws of such State and is to be so construed.

14.4. Bylaws. At, or as soon as practicable after the first Commission meeting the Commission shall draft and approve Bylaws of the SJTA to govern day-to-day operations of the SJTA.

14.5. Amendment. This Agreement may be amended at any time, by mutual agreement

of the Parties provided that before any amendments shall be operative or valid, it shall be reduced to writing and signed by all Parties hereto.

14.6. Water Operations and Marketing: Nothing in this Agreement shall restrict the operations or water marketing of any Party.

14.7. Severability. If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

14.8. Assignment. No Party to this Agreement may assign or otherwise delegate any right or responsibility in the performance of this Agreement without the express written consent of all other Members.

14.9. CEQA. The Parties hereto declare that the execution of this Joint Powers Agreement is not subject to the provisions of the California Environmental Quality Act, California Public Resources Code Sections 21000 et seq.

14.10. Filing with Secretary of State. The SJTA shall file a notice of the Agreement, consistent with the requirements of Government Code Section 6503.5, with the Secretary of State within thirty (30) days of the effective date of the Agreement. The SJTA shall also furnish a copy of the notice to the State Controller, in addition to the full text of the Agreement.

14.11. Counterparts. The Parties intend to execute this Agreement in counterparts. It is the intent of the Parties to hold one (1) counterpart with single original signatures to evidence the SJTA formation and to thereafter forward seven other original counterparts on a rotating basis for all signatures. Thereafter, each Party shall be delivered an originally executed counterpart with all Party signatures.

IN WITNESS WHEREOF, the Parties to the Agreement have caused their names to be affixed hereto by the proper officers thereof. This Agreement shall be effective as of the date and year first written above.

MERCED IRRIGATION DISTRICT

Executed pursuant to its Resolution _____

Suzy Hultgren
President, Board of Directors

APPROVED AS TO FORM

Phillip R. McMurray
General Counsel

MODESTO IRRIGATION DISTRICT

Executed pursuant to its Resolution _____

Tom Van Groningen
President, Board of Directors

APPROVED AS TO FORM

Tim O’Laughlin
General Counsel

OAKDALE IRRIGATION DISTRICT

Executed pursuant to its Resolution _____

Frank B. Clark
President, Board of Directors

APPROVED AS TO FORM

Roger Schrimp
General Counsel

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

Executed pursuant to its Resolution _____

John Holbrook
President, Board of Directors

APPROVED AS TO FORM

Steve Emrick
General Counsel

TURLOCK IRRIGATION DISTRICT

Executed pursuant to its Resolution _____

Michael Frantz
President, Board of Directors

APPROVED AS TO FORM

Roger Masuda
General Counsel

CITY AND COUNTY OF SAN FRANCISCO

Executed pursuant to its Resolution _____

Anson Moran
President,
Public Utilities Commission

APPROVED AS TO FORM

Donn Furman
Deputy City Attorney

“SJRG JPA”

SAN JOAQUIN RIVER GROUP AUTHORITY

-cOo-

JOINT EXERCISE OF POWERS AGREEMENT
BETWEEN THE SIGNATORY PUBLIC AGENCIES
FOR THE PURPOSE OF CREATING A JOINT POWERS AUTHORITY
RESPONSIBLE FOR CONDITIONAL AND CONTRACTUAL
COMPLIANCE OF WATER FLOW STANDARDS AT
VERNALIS ON THE SAN JOAQUIN RIVER, FOR
COLLECTIVE ENVIRONMENTAL INVESTIGATION, PLANNING,
MONITORING, CONTROL, REGULATION AND
MITIGATION OF THEIR COLLECTIVE IMPACT, IF ANY,
ON THE SAN FRANCISCO BAY/SACRAMENTO,
SAN JOAQUIN RIVERS BAY DELTA ESTUARY (DELTA),
AND FOR OTHER COMMON PURPOSES.

This Agreement, dated for convenience as of the 27th day of
September, 1996, is executed by and between:

- . MERCED IRRIGATION DISTRICT,
- . MODESTO IRRIGATION DISTRICT,
- . OAKDALE IRRIGATION DISTRICT,
- . SOUTH SAN JOAQUIN IRRIGATION DISTRICT, and
- . TURLOCK IRRIGATION DISTRICT,

all California irrigation districts and sometimes collectively referred to as the San Joaquin Tributaries Association (SJTA) all of which are political subdivisions of the State of California)

. FRIANT WATER USERS AUTHORITY, a California Joint Powers Authority consisting of twenty-five (25) public water agencies, and itself duly organized as a separate public agency (California Government Code §~6500 et seq. Spec. §6503.5); and

. SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY, a California Joint Powers Authority consisting of two (2) public water agencies and two (2) mutual water companies, and itself duly organized as a separate public agency (California Government Code §~6500 et. seq. Spec. §6525)

In this Agreement, MERGED, MODESTO, OAKDALE, SOUTH SAN JOAQUIN and TURLOCK shall be referred to as such without reference to their status as irrigation districts. When appropriate, they may be collectively referred to as the “SJTA.” FRIANT WATER USERS AUTHORITY shall be referred to as “FRIANT” and the SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY shall be referred to as “EXCHANGE CONTRACTORS.” All of the signatories hereto may be collectively referred to as the “Parties.”

1 RECITALS

- A. Members of the SJTA hold what are termed “Pre-1914”, Riparian, senior

appropriative and/or contractual water rights on rivers and streams tributary to the San Joaquin River.

B. The EXCHANGE CONTRACTORS, hold Pre-1914 and Riparian water rights on the San Joaquin River. The EXCHANGE CONTRACTORS and the United States are parties to the “SECOND AMENDED CONTRACT FOR EXCHANGE OF WATERS” originally executed in 1939, as amended, pursuant to which the EXCHANGE CONTRACTORS agree not to exercise their water rights on the San Joaquin River so long as the United States, through the Bureau of Reclamation (“Bureau”) of the Department of the Interior, delivers to the EXCHANGE CONTRACTORS, substitute water from the Delta-Mendota Canal or other sources.

C. FRIANT is comprised of districts which rely on water service from the Friant Division of the Central Valley Project made possible by virtue of the above-described arrangements between the Bureau and the EXCHANGE CONTRACTORS.

D. Each Party hereto has as a principal purpose the protection, defense, and enhancement of its water rights supply and/or that of its members.

E. The State Water Resources Control Board, hereafter “State Board,” has, on various occasions undertaken to regulate water flows, discharges, diversions and habitat conditions in the waters of the Delta, assertedly to assist fish and wildlife utilizing the

- Delta.

F. On May __, 1995, the State Board issued an order pursuant to its authority under the Porter Cologne Act (W.C. §L.

setting Clean Water Act standards which require among other regulations certain water flows at Vernalis where the San Joaquin River enters the Delta, which flows, depending on the levels of implementation and methods of allocations, could seriously reduce the quantity of water available for operations to some or all of the Parties and jeopardize the remainder.

G. The Parties recognize, without admission regarding the authority of State Board or the validity of the evidence giving rise to its recent order, that certain actions can be undertaken to reduce the impact of future proceedings and orders on the Parties and on the economic well being of its citizens; and these actions include but are not limited to:

.1. Investigating, Planning, monitoring, Controlling, regulating, and mitigating the impacts on fish and Wildlife of:

a. The operations of signatory Parties hereto; and

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b. Other diverters from the Delta specifically the Central Valley Project, State Water Project, and delta diverters.

c. Other impacts on the Delta unrelated to water diversions.

2. Investigating, monitoring and mitigating of non-flow impacts on fish including, but not limited to:

a. Low oxygen levels in certain Delta channels;

b. Predation by exotic species on native species;

c. Habitat seizure by non-native species;

- d. Residential and industrial development in the Delta;
- e. Ocean fishing;
- f. Pollution, and others; and

3. Investigating, planning, funding and construction of additional water supplies such as off-stream and ground water storage, conjunctive use, conservation, and water marketing to meet water flows from the Parties required for the Delta pursuant to any final order of the State Board or voluntary contract of the Parties.

H. The Parties recognize that although they may have express or implied powers to conduct all activities suggested herein, none can unilaterally perform all of the various tasks required; and the Parties therefore have a compelling and mutual interest in developing and coordinating investigations, plans, contracts, and projects, now and in the future, relating to Delta habitat issues and required and/or contracted Vernalis flow issues.

I. To that end the Parties hereto contemplate the execution of an agreement with other Parties for the enhancement of Delta conditions which will, from time to time require the provision of water and the distribution of funds which will require coordination and management. The Parties are authorized by Government Code Section 6500, et seq., (Act”) to jointly exercise their common powers to achieve the objectives set forth in this Agreement.

NOW, THEREFORE, the Parties, for an in consideration of the mutual promises and agreements herein contained, do agree as follows:

ARTICLE 1. PURPOSE

1.1 The purpose of this Agreement is to establish a Joint Powers Agency responsible for non-exclusively representing the Parties as necessary in proceedings relating to the investigation, monitoring, planning, control, mitigation of water flow and nonf low issues, and to enhance the environmental conditions in the Delta which impact the Parties. In that regard the recitals are hereby incorporated into the body of this Agreement.

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1.2 The authority created by this Agreement has the following objectives to accomplish its purpose:

A. Develop a long term multidisciplinary program of scientific investigation to obtain secure knowledge of the social, economic, hydrological and environmental (specifically fish biology) impacts of the Parties and others on the Delta.

B. Develop proposed San Joaquin River flows at Vernalis consistent with a balanced use of such water.

C. Investigate and develop plans for conservation, conjunctive use, offstream storage and other means of insuring that any ultimate Vernalis flow requirements placed on the Parties or any of them can be met.

D. Develop strategies to market water on a voluntary basis to meet Vernalis and other water objectives common to the Parties.

E. Secure funds from federal, state, or local agencies, including but not limited to, CVP Improvement Act Funds (CVPIA), and including both restoration funds and FRIANT surcharge funds, State Water Project (SWP) funds, Four Pumps Mitigation funds and others.

F. Monitor and insure waters, if any, released by the Parties for Vernalis flow requirements reach Vernalis.

G. Function as the regional focal point for funding and grant/aid applications related to San Joaquin River water flows and non-flow fish habitat issues.

H. Develop the procedures for establishing and conducting this Authority's coordination functions; and establish JPA funding basis for initial and sustained operations.

I. Provide participation as required in Bay/Delta issues affecting the Parties.

ARTICLE 2. FORMATION

2.1 Upon the effective date of this Agreement, there is hereby established the San Joaquin River Group Authority ("Authority"). Pursuant to the provisions of Article I, Chapter 5, Division 7 of Title 1 of the California Government Code, commencing with Section 6500 (hereinafter the "Act"), the Authority shall be a public agency separate from any of its members. The principal offices shall be located in Turlock, California, or at such other place as the Board of Directors shall determine.

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ARTICLE 3. TERM

3.1 This Agreement shall become effective as of the date hereof and shall continue in full force and effect for a term of forty (40) years, that is until December 31, 2036. This Agreement may be extended by the Parties for such other term as may be agreed Upon. A Party may withdraw from the Authority by giving written notice of its intention to terminate to all other Parties at least one year prior to such withdrawal. This Agreement may be terminated any time by mutual agreement of all Parties thereto. However, no termination shall have the effect of terminating the Division Agreement as hereafter referenced unless the requirements of such Division Agreement are otherwise satisfied.

ARTICLE 4. GOVERNING BODY-COMMISSION

4.1 Membership of Commission: The Commission of the Authority shall consist of seven (7) members and shall be comprised of: one member of the Governing Board of each Party. The Commission shall be the Governing Body of the Authority.

4.2 Term: Each member of the Commission of this Authority shall be appointed by their respective Party Governing Board and shall serve at the pleasure of such appointing Board. Termination of a member's status as a member of the Governing Board of a Party shall constitute automatic termination of that person's membership on the Authority's Commission. The Party

Governing Board may appoint a new member or alternate members of the Authority Commission immediately upon the occurrence of any vacancy in that Party's representation.

4.3 Alternates: The Governing Board of each Party shall appoint an alternate member to the Authority Commission. During the absence of any regular member from any meeting of the Authority, that member's alternate shall be entitled to participate in all respects as a regular member of the Authority's Commission. An alternate may be either a member of the Governing Board of a Party or the General Manager or similar officer of such Party.

4.4 Meetings: The Authority Commission shall hold at least one regular meeting each calendar quarter. All meetings, including those of the Management Committee set forth in Section 4.6 hereafter, shall be scheduled and conducted pursuant to the provisions of the Ralph M. Brown Act (Government Code Section 54950, et seq.). A minimum of four members shall constitute a quorum for the transaction of business and the affirmative vote of at least four members shall be required for the approval of any action taken by the Commission, except as may otherwise be required by this Agreement or the Division Agreement. The Secretary of the Authority shall keep minutes of all meetings of the Commission and shall, as soon as possible after each meeting, forward a copy of the minutes to each member and alternate of the Commission.

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4.5 Officers: The Commission shall select a Chairman, Vice-Chairman, Secretary, Treasurer and any other officers as determined necessary by the Commission. The Treasurer of the Authority shall be a person who shall from time to time, be acting as a treasurer or chief financial officer of a member of the SJTA. The Chairman shall preside at all Commission meetings. The Vice-Chairman shall act in place of the Chairman at meetings should the Chairman be absent. All officers shall serve for a term of two (2) years and shall assume their offices at the first meeting of each calendar year. Officers or other persons who have charge of or who handle or have access to any property of the Authority shall file an official bond in an amount determined from time to time by the Commission in accordance with Government Code Section 6505.1. The Authority shall have the power to appoint such other officers as may be deemed necessary.

4.6 Delegation of Authority: Because many of the purposes and objectives of the Authority will require nearly daily attention, and because the general managers or similar officers of the Parties are instructed by their respective governing boards regarding policy positions of such Parties, the Parties to this Agreement deem it advisable to create an administrative entity for the Authority to be known as the Management Committee. Pursuant to Government Code 56508, the Management Committee is delegated the authority and responsibility for program development, and program implementation. However, the Commission reserves all authority to approve the annual budget of the authority and to otherwise invest or regulate funds, debt or to issue bonds, if any.

4.7 Management Committee: The Management Committee shall consist of the General Manager or similar managing officer of each Party. Should any member of the Committee no longer serve as general manager of a Party, he or she shall thereafter no longer serve on the Committee. In the event a member of the Management Committee is unable to attend any meeting of the Committee such manager shall appoint an alternate who shall be entitled to full voting privileges of such agency. A quorum of the Committee shall be four (4) managers or alternates and the affirmative vote of four (4) managers or alternates shall be required to approve any action delegated to such Committee.

4.8 Division Agreement: The Parties anticipate that they may supply from various sources certain waters to meet flow objectives at Vernalis in exchange for certain funds necessary to provide such flows. While it is a purpose of this Agreement to monitor and enforce that Division Agreement and to ensure its effectiveness, neither the Commission nor the Management Committee shall have authority to alter or amend the Division Agreement which may be amended only by its terms. When executed, it shall be incorporated herein by this reference as Exhibit "A". It is the purpose of the Division Agreement to divide among the Parties the Vernalis flow

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requirements contracted by the Parties and to divide the consideration and capital investment therefore.

4.9 Water Market: Nothing in this Agreement or the Division Agreement shall otherwise restrict the operations or water marketing of any Party.

ARTICLE 5. POWERS OF THE AUTHORITY

5.1 The Authority shall have and shall exercise powers common to the Parties, except as herein prohibited or otherwise prohibited by law. The Authority is hereby authorized, in its own name acting through the Commission, or Management Committee (subject to the authorized Budget) as set forth above, to do all acts necessary for the exercise of the said common power for said purposes, including, but not limited to, the following:

A. Employ agents, consultants, advisors, independent contractors, and employees;

B. Make and enter into contracts with public or private entities, including the State of California and the United States, and one another;

C. Acquire, hold and convey real and personal property;

D. Incur operating debts, obligations and liabilities; and by unanimous vote of the Commission to issue bonds, notes or similar evidence of debt.

E. Accept contributions, grants, or loans from any public or private agency or individual or the United States or any department, instrumentality, or agency thereof for the purpose of financing its activities;

F. Invest money that is not needed for immediate necessities, as the Commission determines advisable, in the same manner and upon the same conditions as other local entities in accordance with Section 53601 of the Government Code;

G. Reimburse Authority members for the actual amounts of the reasonable and necessary expenses incurred in attending the meetings of the Authority or any committee of the Authority in performing the duties of their office, subject to Commission policy and budget authorization;

H. *Sue and be sued;*

I. Do all other acts reasonable and necessary to carry out the Purpose of this Agreement

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J. To fix and collect levies or assessments subject to repayment from operations or future revenues.

5.2 Such powers shall be exercised in the manner provided by the provisions of California law governing Irrigation Districts (Water Code 520510 et seq.) and except as expressly set forth herein, subject only to the restriction of exercising said powers, as is imposed upon the Parties in the exercise of similar powers.

5.3 Notwithstanding the generality of the foregoing, the Authority shall have no power to bind any of the Parties to any monetary obligation whatsoever by this Agreement other than that unanimously authorized by the mutual written consent of the Parties. The authority shall be strictly accountable for all funds received, held, and disbursed by it.

Furthermore, the Authority and all of its members confirm that nothing contained herein shall grant to the Authority any power to alter any water right, contract right, or any similar right, or amend water delivery practice, course of dealing or conduct without the consent of the holder thereof.

ARTICLE 6. DUTIES AND RESPONSIBILITIES OF THE AUTHORITY

6.1 The duties of the Authority include:

A. The Parties contemplate entering into an agreement with other parties which is designed to implement a settlement between such parties regarding issues before the State Water Resources Control Board relating to the Delta. On implementation the agreement will be executed among the Parties, the management of which shall be a primary duty of this Authority. The Authority shall develop a Division Agreement among the Parties to allocate responsibility for water releases, if any, necessary to meet agreed Vernalis water flow standards and further dividing the compensation and/or capital advances for the same.

B. The Authority shall develop strategies, if possible, leading to a negotiated settlement between all Parties of interest to the State Board Water Quality Control Plan 1995 Standards.

C. The Authority shall develop scientific monitoring and mitigation plans to address issues of the Water Quality Control Plan including but not limited to the status of the fall run Chinook salmon and all Delta issues relevant thereto.

D. The Authority shall develop or coordinate as requested, alternative water supply plans for its members including conservation, conjunctive use, groundwater storage, offstream storage, and others.

E. The Authority shall administer the Division Agreement to ensure the Vernalis standards agreed to by the Parties, or imposed on them, are met and compensation and capital are appropriately distributed.

F. The Authority shall function as a regional focal point for grant/aid applications in regard to San Joaquin River issues of water supply and fish and wildlife habitat improvement.

G. The Authority shall develop broad based regional committees to gather the ideas and data necessary for decision making and implementation of the Authority's plans.

H. The Authority may employ or retain a full time supporting staff.

I. The Authority shall develop the procedures for establishing and conducting the Authority's functions.

J. The Authority shall establish a funding basis for initial and sustained operations.

K. The Authority shall perform various functions that are necessary to fulfill its objectives and goals and the carry out the purpose of the Authority.

ARTICLE 7. FISCAL YEAR

7.1 For the purposes of this Agreement, the term "Fiscal Year" shall mean the period from January 1 to and including the following December 31.

ARTICLE 8. FUNDS DEPOSITED IN THE TREASURY

8.1 The Authority may accept and expend funds from public or private sources subject to the legal restrictions which are set forth in the common powers of the Parties for the purpose of carrying out its powers, duties, responsibilities, and obligations specified in this Agreement.

8.2 Subject to the provisions of this Agreement and any applicable law, the Treasurer shall receive, have custody and disburse Authority funds pursuant to the procedures established pursuant to Article 13 of this Agreement and as nearly as possible in accordance with normal procedures of the agency for which the Authority treasurer is also treasurer, controller or chief financial officer.

ARTICLE 9. EXPENDITURES AND OBLIGATIONS

9.1 The Commission, the Management Committee and every other official or employee of the Authority shall be limited to the

making of expenditures or incurring of liabilities in the amount of the appropriations allowed by the budget as adopted by the Commission or thereafter revised by said Board, in accordance with procedural rules for expenditures and obligations of funds as adopted by the Commission.

9.2 Except as otherwise provided by law, warrants or checks issued, expenditures made or liabilities incurred in excess of any budget appropriation are not a liability of the Authority or a liability of any Party to this Agreement.

9.3 Pursuant to Section 6508.1 of the California Government Code, the debts, liabilities, and obligations of the Authority shall be those of the Authority and not of the Parties to this Joint Powers Agreement. Provided, however, if the members of the Authority are, under applicable law, held liable for the acts or omissions of the Authority caused in the performance of this Agreement which arise from a negligent act or omission occurring in the performance of this Agreement, the members shall be entitled to contribution from each of the other members so that after said contribution each member shall bear an equal share of such liability.

ARTICLE 10. PURCHASES

10.1 The Purchasing Agent of the agency supporting the Treasurer, a Party to this Agreement, shall be the ex-officio purchasing agent of the Authority and all purchases of the Authority shall be made pursuant to the laws applicable to the purchases by an Irrigation District Party to this Agreement.

ARTICLE 11, RECORDS AND ACCOUNTS .CHARGES FOR SERVICES OF AUDITOR/CONTROLLER AND TREASURER

11.1 The Authority shall be strictly accountable for all funds.

11.2 The Commission of the Authority shall cause to be kept proper books of records and accounts in which a complete and detailed entry shall be made of all of the transactions including all receipts and disbursements. Said books and records shall be kept in accordance with State law and rules and regulations of the State Controller and as required by the Auditor-Controller to be appointed by the Commission (see §19.1). Said books shall be subject to inspection at any reasonable time by the duly authorized representative of each of the Parties to this Agreement.

11.3 The Commission of the Authority shall cause to be prepared an annual financial and operational report, including a report of all receipts and disbursements of funds which shall be available at the office of the Clerk of the Authority and a copy thereof shall be delivered to each Party to this Agreement. The

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report shall be filed within 30 days of the close of each fiscal year. Additionally, all of the requirements set forth in Government Code Section 6505 shall be accomplished.

ARTICLE 12, CLAIMS

12.1 All claims against the Authority including but not limited to claims by public entities or public officers and employees for fees, salaries, wages, mileage or other expenses, shall be filed within the time and in the manner specified in Chapter 2 (commencing with Section 910) of Part 3, Division 3.6 of Title 1 of the Government code or in accordance with claims

procedures approved by the Auditor-Controller of the Authority and established by the Commission of the Authority pursuant to Chapter 5 (commencing with Section 930) or Chapter 6 (commencing with Section 935) of said Part 3 of the Government Code.

ARTICLE 13. ALLOWANCE OF CLAIMS BY AUDITOR-CONTROLLER

13.1 The Auditor-Controller of Authority shall audit and allow or reject claims in lieu of, and with the same effect as, allowance or rejection by the Commission of the Authority in any of the following cases:

A. Expenditures which have been authorized by purchase orders issued by an officer of the Authority authorized by the Management Committee to make purchases consistent with the budget adopted by the Commission.

B. Expenditures which have been authorized by contract, resolution or order of the Commission or Management Committee of the Authority acting within the scope of its authority, and the budget.

13.2 The Auditor-Controller shall require the certificate of the requisitioning or receiving officer that the articles or services have been received or contracted for.

ARTICLE 14. INSURANCE/BONDS

14.1 The Authority shall at all times maintain with responsible insurers or one of the Parties, Worker's Compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the Authority, its employees or agents and the Parties to this Agreement.

ARTICLE 15. FINANCING

15.1 It is the intent of the Parties that the Joint Powers Authority shall become financially self-sufficient. In the interim, each of the Parties shall contribute agreed services or

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property as approved by such Parties and by the Commission of the Authority.

15.2 Each of the Parties to this Agreement may, but are not required to, contribute additional money, office space, furnishings, equipment, supplies or services as their respective Governing Boards may deem appropriate.

15.3 Funds may also be derived through State or Federal grants, or other available sources. The Authority may also apply for available State or Federal funds and shall make new and additional applications from time to time as appropriate. The Authority may also establish and collect various fees, leases or rents as may be authorized by law under the common powers of all the Parties.

ARTICLE 16. DISPOSITION OF ASSETS ON TERMINATION OF AGREEMENT

16.1 At the termination of this Agreement, all funds on hand shall be returned to the respective Parties to this Agreement as nearly as possible in the proportion to the contribution the

Party made to the funds then on hand. Any equipment, furniture or furnishing which can be identified as having been contributed by any Party to this Agreement shall be transferred to and become the property of the Party contributing such equipment, furniture or furnishings. Any other property of the Authority shall be converted to cash and distributed equally among the Parties to this Agreement.

ARTICLE 17. ACCOUNTS AND REPORTS

17.1 The books and records of the Authority shall be open to inspection at all reasonable times by representatives of the Parties to the Agreement. The Auditor-Controller of the Authority, within 120 days after the close of each fiscal year, shall give a complete written report based upon an annual audit, of all financial activities for such fiscal year to the Parties to this Agreement.

ARTICLE 18. NOTICES

18.1 Notices hereunder shall be sufficient if delivered via First-Class mail or facsimile transmission to the addresses following the Party signature blocks hereafter. A copy of the annual audit shall be lodged with each Party, each county in which a Party is present, and with the State of California as required by law.

ARTICLE 19. OTHER OFFICERS

19.1 The Commission shall appoint a Secretary which shall serve as the clerk of the Management Committee as well. The

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auditor of the Authority shall be the Auditor/Controller of a Party to this Agreement. The attorney for the Authority shall be the respective attorneys for the Parties as the Management Committee and Commission determine. In the event a conflict of interest between the Parties, an independent attorney shall be retained as special counsel for such issues.

ARTICLE 20. MISCELLANEOUS

20.1 The article headings herein are for convenience only and are not to be construed as modifying or governing the language of the article referred to.

20.2 Whenever in this Agreement, any consent or approval is required, the same shall not be unreasonably withheld.

20.3 This Agreement is made in the State of California, under the Constitution and laws of such State and is to be so construed.

20.4 To preserve a reasonable degree of flexibility, many parts of this Agreement are stated in general terms. It is understood that there may be operating memoranda executed and amended from time to time which will further define the rights and obligations of the Parties. The Division Agreement is one such document.

20.5 This Agreement may be amended at any time, by mutual agreement of the Parties provided that before any amendments shall be operative or valid, it shall be reduced to writing and signed by all Parties hereto.

ARTICLE 21. PARTIAL INVALIDITY

21.1 If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 22. INCORPORATION OF THE ACT

22.1 Notwithstanding any other provision of this Agreement, it is the intent of the Parties to this Agreement that all actions of the Authority, the Commission and the Management Committee shall be in conformance with the Act or regulations adopted pursuant thereto. The provisions of the Act and regulations adopted pursuant thereto, as they exist on the effective date of this Agreement or as they may be subsequently amended, are incorporated by reference.

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ARTICLE 23. LIMITATION ON FISCAL OBLIGATIONS AND PARTIES' LIABILITY

23.1 Notwithstanding the general powers of the Authority set forth in this Agreement, the Authority shall not incur any financial or contractual obligations unless it has already obtained sufficient funds or a binding commitment for funds to pay for the full cost of said obligations.

23.2 The Authority shall specify in all contracts for the purchase of goods and services that the responsibility for payment is that of the Authority and not of any of the Parties to this Agreement.

23.3 The debts, liabilities and obligations of the Authority shall not be the debts, liabilities or obligations of the Parties to this Agreement or any of them.

ARTICLE 24. INDEMNIFICATION

24.1 The Authority shall indemnify, defend, and save harmless the Parties, their officers, agents and employees, from and against any and all claims and losses whatsoever occurring or resulting to persons, firms or corporations furnishing or supplying work, services, materials or supplies to the Authority in connection with the performance of the Agreement, and, except as expressly provided by law, from any and all claims and losses accruing or resulting to any persons, firm or corporation, for damage, injury or death arising out of or connected with the Authority's performance of its obligations under this Agreement. The Authority may also acquire such policies of directors and officers liability insurance and in such amounts as the Commission shall deem prudent.

ARTICLE 25. ASSIGNMENT

25.1 No Party to this Agreement may assign or otherwise delegate any right or responsibility in the performance of this Agreement without the express written consent of all other Parties.

ARTICLE 26, CEOA

26.1 The Parties hereto declare that the execution of this Joint Powers Agreement is not subject to the provisions of the California Environmental Quality Act, California Public Resources Code Sections 21000 et seq.

ARTICLE 27, AMENDMENTS

27.1 This Agreement may be amended only by the unanimous agreement of the members of the Commission and ratification of the Governing Boards of each member.

ARTICLE 28. COUNTERPART EXECUTION

28.1 The Parties intend to execute this Agreement in eight (8) counterparts. It is the intent of the Parties to hold One counterpart with single original signature to evidence the Authority formation and to thereafter forward seven other original counterparts on a rotating basis for all signatures. Thereafter, each Party shall be delivered an originally executed counterpart with all Party signatures.

IN WITNESS WHEREOF, the Parties to the Agreement have caused their names to be affixed hereto by the proper officers thereof. This Agreement shall be effective as of the date and year first written above.

MERCED IRRIGATION DISTRICT

Executed pursuant to its Resolution _____
APPROVED AS TO FORM:

~11~912, \$ /-C-Q)
~ACK~ F. HOOPER, P~'esident
oard of Directors

Attest:

KENNETH M. ~OBB INS
General Counsel

TIMOTHY. ~' PELLISSIER, Secretary
Board of Directors

--coO 0cc--

MODESTO IRRIGATION DISTRICT

Executed pursuant to its Resolution _____
APPROVED AS TO FORM:

President
Board of Directors

Attest:

General Counsel

Board of Directors
Secretary

--000000--

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“Fenner Valley Water Authority JPA”

JOINT EXERCISE OF POWERS AGREEMENT

by and among

SANTA MARGARITA WATER DISTRICT

and

FENNER VALLEY MUTUAL WATER COMPANY

creating the

FENNER VALLEY WATER AUTHORITY

_____, 2014

**JOINT EXERCISE OF POWERS AGREEMENT
FENNER VALLEY WATER AUTHORITY**

This Joint Exercise of Powers Agreement (“Agreement”) is made and entered into as of _____, 2014, by and among Santa Margarita Water District, a California water district (“SMWD”) and Fenner Valley Mutual Water Company, a California nonprofit mutual benefit corporation (“FVMWC”) (each individually a “Member” and collectively the “Members”), to provide for the formation and governance of the Fenner Valley Water Authority (“Authority”).

RECITALS

A. SMWD is a California Water District, a local agency of the State of California with broad powers under the California Water District Act, Cal. Water Code Sections 34000 *et seq.*

B. SMWD is a participant in the Cadiz Valley Water Conservation, Recovery and Storage Project (“Project”), a public private partnership designed to appropriate groundwater from wells on certain property overlying the Orange Blossom Wash, Cadiz, Bristol and Fenner Valley aquifers (collectively, such aquifers being the “Fenner Valley Aquifer System”), and to deliver that groundwater for reasonable and beneficial uses via the Colorado River Aqueduct (“CRA”) and other facilities necessary to deliver the groundwater to Project participants. The Project includes the opportunity to carry-over up to one hundred fifty thousand (150,000) acre feet of water in authorized carry-over storage accounts, of which SMWD owns the right to fifteen thousand (15,000) acre feet (of presently stored groundwater held within a carry-over storage account, but does not include any future imported water storage component).

C. SMWD is the lead public agency for the Project and on July 31, 2012, SMWD certified the Project EIR and made the required CEQA findings for the Project to move forward. The Project EIR and CEQA findings for the Project adopted by SMWD anticipated that SMWD would consider approval of further implementing documents, including the creation of the Authority to provide Project oversight and control the use of the Project Facilities.

D. FVMWC is a California mutual water company and is duly organized as a nonprofit mutual benefit corporation under the laws of the State of California. FVMWC was formed for the purpose of operating the Project and making water available from the Project to the Project participants at cost, all of whom are required to become members of FVMWC as a condition of receiving water. Pursuant to California Government Code Section 6525, a mutual water company may enter into a joint powers agreement with one or more public agencies.

E. The developer of the Project is Cadiz, Inc., a Delaware corporation, and its affiliate, Cadiz Real Estate LLC (collectively referred to herein as “Cadiz”). Cadiz has agreed to develop, finance and construct the Project in accordance with the terms of that certain Water Purchase and Sale Agreement between Cadiz, SMWD and FVMWC dated July 31, 2012 (“Project Agreement”).

F. Cadiz has agreed to enter into a long-term lease (“Water Lease”) of Project Water to FVMWC taken from the Fenner Valley Aquifer System to make water available for the use of Project participants. FVMWC will collect a water supply payment negotiated between Cadiz and each Project participant as consideration for the delivery of Project Water and forward such payment to Cadiz as required under the lease.

G. Cadiz has further agreed to enter into a long term lease with the Authority for use and control of the Project Facilities (“Facilities Lease”) which will be used to extract, treat and transport Project Water, pursuant to which the Authority will become the owner of the Project Facilities upon the expiration of the Facilities Lease term. The Authority will collect a Capital Recovery Charge from the Project participants as consideration for the Facilities Lease.

H. The delivery of Project Water and operation of the Project Facilities is subject to the terms of that certain Groundwater Management, Monitoring, and Mitigation Plan (“GMMMP”) approved by and between SMWD, FVMWC and the County of San Bernardino.

I. SMWD and FVMWC have a common interest in the timely development of the the Project, the lease, and making available Project Water and the lease and operation of the Project Facilities. SMWD has a further interest in providing a mechanism for the proper oversight of the permitting, design, construction, operation and maintenance of the Project, as well as the Project’s compliance with the GMMMP.

J. In order to facilitate the Project and carry out the purposes described above, SMWD and FVMWC desire to form the Authority as a joint powers authority on the terms and conditions set forth herein, with SMWD serving as the Managing Member and the “designated entity” of the authority pursuant to Government Code Section 6509.

TERMS OF AGREEMENT

In consideration of the mutual promises and covenants herein contained, the Members agree as follows:

ARTICLE 1 DEFINITIONS

Unless defined elsewhere in this Agreement, all defined terms used herein, shall have the meanings specified as follows:

“Act” means the Joint Exercise of Powers Act, set forth in Chapter 5 of Division 7 of Title 1 of the California Government Code Sections 6500 et seq., including all laws supplemental thereto.

“Administrative Costs” means the administrative costs associated with the operation and management of the Project by the Authority and FVMWC following the Commencement Date, calculated in accordance with generally accepted accounting principles, which shall include costs related to insurance, taxes (if any), and professional service providers such as accountants, attorneys and engineers.

“Director” and “Alternate Director” mean a director or alternate director appointed by a Member pursuant to Section 6.3 of this Agreement.

“Board of Directors” or “Board” means the governing body of the Authority as established by Article 6 of this Agreement.

“Capital Investment” means any and all capital costs incurred by Cadiz to develop and build the Project, including design, permitting, construction and financing costs related to Project Facilities. For the purposes of this definition, construction costs shall include the costs of inspecting and performance testing the Project Facilities and preparing them for operation.

“Capital Recovery Charge” means the charge payable in connection with the purchase of Project Water as described in Section 9.2.2 of the Project Agreement to allow for the recovery of the Capital Investment by Cadiz and to permit Cadiz to make timely payment of all Debt Service.

“CEQA” means the California Environmental Quality Act.

“Commencement Date” means the date on which water is first made available to the Project Participants by it being delivered from the Project Facilities to the CRA.

“County” means the County of San Bernardino.

“County MOU” means that certain Memorandum of Understanding By and Among SMWD, Cadiz, Inc., FVMWC, and the County of San Bernardino (Related to County Ordinance for Desert Groundwater Management) dated May 11, 2012.

“CRA” means the Colorado River Aqueduct.

“Executive Director” has the meaning set forth in Section 9.1.

“Facility Operation Agreement” means that agreement to be executed between FVMWC and the Authority pursuant to which the actual extraction, conveyance and delivery of water from the Project Facilities shall be governed. The terms of the Facility Operation Agreement shall include: (i) the responsibility of FVMWC for paying or reimbursing costs incurred by the Authority, County and SMWD for overseeing compliance with the GMMMP on a time and materials basis; (ii) permitting the Authority and FVMWC to contract with third parties, including another Project participant, another local public agency, other person or entity, to provide for the day-to-day operation and maintenance of the Project, as well as bookkeeping and administration duties; (iii) the responsibility of FVMWC for actual day-to-day operations; (iv) the responsibility of FVMWC for the collection of proceeds from the sale of water to Project Participants; and (v) the proper allocation and payment of all costs and charges related to the operation of the Project, including payments due and payable to Cadiz.

“Fixed O&M Costs” means all Project Operation and Maintenance Expenses which do not vary with the amount of water extracted, conveyed and delivered during the applicable time period.

“Managing Member” has the meaning set forth in Section 4.1 of this Agreement.

“Member” means each party to this Agreement that satisfies the requirements of Article 5 of this Agreement, including any new members as may be authorized by the Board, pursuant to Section 5.2 of this Agreement.

“MWD” means The Metropolitan Water District of Southern California.

“MWD Fees” means any fees charged by MWD and MWD member agencies (if any) in connection with the delivery of Project Water to the Project participants, as set forth in Section 9.3.4 of the Project Agreement.

“MWDOC” means the Municipal Water District of Orange County.

“Project EIR” means the Environmental Impact Report for the Project which was certified by SMWD is the lead agency on July 31, 2012, pursuant to SMWD’s Resolution No. 2012-07-02.

“Project Facilities” means any and all facilities deemed necessary, advisable or appropriate to extract, convey or deliver Project water to Project participants, including facilities associated with the Groundwater Conservation and Recovery Component phase of the Project, as described in the Project EIR, viz., a wellfield located on the Property, manifold, 43-mile conveyance pipeline between the wellfield and the CRA, and interconnection between the conveyance pipeline and the CRA. Project Facilities may include, without limitation, wells, diversion infrastructure, conduits, pipes, reservoirs, tanks, pumping plants, treatment plants, water conveyance and storage facilities, buildings, and other structures and infrastructure utilized for the diversion, pumping, conveyance, treatment, control, storage, groundwater recharge and delivery of waters for beneficial use within the Project’s intended boundaries.

“Project Operation and Maintenance Expenses” means:

(a) Following the Commencement Date, the actual costs spent or incurred for labor, materials, services or utilities related to the operation, maintenance and repair of the Project and Project Facilities (including costs incurred by the Authority under the Facility Operation Agreement), calculated in accordance with generally accepted accounting principles and Section 9 of the Project Agreement, including: (i) the cost of all scheduled and unscheduled maintenance of the Project Facilities as necessary to preserve the Project in good repair and working order; (ii) following the Commencement Date, the cost of providing field staff, data collection and reporting as necessary for compliance with the GMMMP; and (iii) all costs payable to the Authority, SMWD and the County to oversee compliance with the GMMMP; and

(b) The current cost of funding adequate reserves for: (i) operations; and (ii) capital repairs, replacements or improvements which are necessary to keep the Project Facilities in good repair and working order over the term of the Project (excluding any capital improvements related to the Imported Water Storage Component phase of the Project);

(c) But excluding in all cases: (i) depreciation, replacement and obsolescence charges or reserves therefor; (ii) amortization of intangibles or other bookkeeping entries of a similar nature; and (iii) Administrative Costs.

“Project Storage” means the right to carry-over and store up to one hundred fifty thousand (150,000) acre-feet of Project Water.

“Project Water” means the right to produce and deliver fifty thousand (50,000) acre-feet per year of groundwater from the Fenner Valley Aquifer System over the Initial Term, aggregating two million, five hundred thousand (2,500,000) acre feet of such groundwater cumulatively over the fifty (50) year life of the Project. The parties acknowledge that the right to Project Water is a contractual right pursuant to the Water Lease and that no transfer, loss, severance, forfeiture, abandonment, estoppel or non-use of the water rights of Cadiz in the Property or the Fenner Valley Aquifer System is intended by the Water Lease or this Agreement.

“Total Project Costs” means the budget of costs and expenses for the Project as set forth in Section 12.1 of this Agreement.

“Variable O&M Costs” means all Project Operation and Maintenance Expenses which vary with the amount of water extracted, conveyed and delivered during the applicable time period.

ARTICLE 2 CREATION OF THE AUTHORITY

2.1 Creation of the Authority. There is hereby created pursuant to the Act a joint powers agency which will be a public entity separate from the parties to this Agreement and shall be known as the “Fenner Valley Water Authority.”

2.2 Purpose. The purpose of this Agreement is to provide for the joint exercise of powers common to the Members through the Authority under the supervision of the Managing Member in order to implement the Project in a public private partnership with Cadiz and to accomplish the following objectives in connection with the Project (collectively, the “Project Objectives”):

2.2.1 To undertake the review and approval of the design, permitting and construction of the Project Facilities by Cadiz in accordance with the Project Agreement, Project EIR, the GMMMP, SMWD construction standards and specifications, and such other requirements as may be adopted by the Authority;

2.2.2 To negotiate, secure and hold a possessory interest in the Project Facilities pursuant to a long term lease with Cadiz as contemplated in the Project Agreement (“Facilities Lease”) and upon the termination or expiration of such Facilities Lease, to thereafter own the Project Facilities;

2.2.3 To operate and maintain the Project Facilities, either directly or through a Facility Operation Agreement with FVMWC;

2.2.4 To ensure that the extraction, conveyance and delivery of water for the Project via the Project Facilities is undertaken in accordance with: (i) the requirements of the GMMMP, including oversight of the monitoring of safe yield and other legal and environmental standards applicable to the Project as identified in the Project EIR; (ii) the conditions applicable to any permits and governmental approvals obtained in connection with the Project, including any requirements contained in the County MOU; and (iii) all other federal, state and local rules and regulations applicable to the Project; and

2.2.5 To engage in such other activities as may be necessary or appropriate for the purpose of supplying water to Project participants, including any expansion of the Project and/or the Project Facilities that is unanimously approved by the Members.

2.3 Limitations on Purpose. It is not intended by the Members that the Authority will provide capital funding for the Project or participate in any financing of the development and construction of the Project Facilities, it being understood that all Capital Investment is to be obtained by Cadiz and repaid solely from the Capital Recovery Charge that will be payable to Cadiz pursuant to the Facilities Lease. The foregoing limitation shall not prevent the Authority and the Members from advancing costs and expenses on a short term basis, subject to reimbursement by Cadiz and the Project participants or from funding reserve accounts for the operation and maintenance of the Project Facilities from the fees received in connection with the operation of the Project as described in Article 12. The Authority and the Members may participate in the funding of any future expansion or use of the Project Facilities subject to the requirements of Section 4.5.

2.4 Designated Agency. SMWD shall be the designated party pursuant to California Government Code Section 6509 and all powers exercised by the Authority pursuant to Article 4 shall be carried out in accordance with the restrictions and limitations that are placed on the exercise of such powers by SMWD.

2.5 Term. This Agreement shall become effective upon execution by each of the Members and shall remain in effect until terminated pursuant to the provisions of Article 14 (Withdrawal of Members) of this Agreement.

2.6 Separate Entity. The Authority shall be a public entity separate from the Members. All property, equipment, supplies, funds and records of the Authority shall be owned by the Authority, except as otherwise provided in this Agreement or any agreement by which such property or other asset is contributed or conveyed to the Authority. The Members do not intend hereby to be, and shall not be, obligated either jointly or severally for the debts, liabilities or obligations of the Authority, except as may be specifically provided for in California Government Code Section 895.2.

ARTICLE 3 POWERS OF THE AUTHORITY

3.1 Enumerated Powers. The Authority shall possess the power in its own name to exercise any and all common powers of its Members reasonably related to the purposes of the

Authority, including but not limited to the following powers, together with such other powers as are expressly set forth in the Act, but subject to the limitations contained in Section 2.3:

3.1.1 To take all acts as are necessary and appropriate to carry out the Project Objectives.

3.1.2 To perform other ancillary tasks relating to the Project and the implementation of the Project Objectives.

3.1.3 To obtain rights, permits and other authorizations for, or pertaining to, the Project and the Project Facilities, either directly or in cooperation with the Members and/or Cadiz.

3.1.4 To implement the terms of the GMMMP and the County MOU and coordinate with the County with respect to the County's continuing authority under the GMMMP to modify Project operations, including the right to suspend or limit the amount of Project Water that is extracted using the Project Facilities and made available to FVMWC for delivery to the Project participants.

3.1.5 To prioritize the storage and delivery of Project Water extracted using the Project Facilities in accordance with the rights of SMWD, the County and FVMWC as set forth in the Project Agreement and the County MOU.

3.1.6 In the Authority's own right, or as agent and on behalf of Members, to obtain access to third-party conveyance capacity pursuant to California Water Code Section 1810 or otherwise consistent with applicable law.

3.1.7 To exercise the common powers of its Members to develop, collect, provide and disseminate information concerning the Project to the Members and others, including but not limited to legislative, administrative and judicial bodies and the public generally.

3.1.8 To make and enter into and perform contracts and agreements as necessary for the full exercise of its powers.

3.1.9 To take possession of, lease and own the Project Facilities and to acquire such ancillary real and personal property assets as may be necessary to carry out the Project Objectives by lease, purchase or dedication, and to hold, enjoy, lease or sell, or otherwise dispose of, such assets.

3.1.10 Receive gifts, contributions and donations or property, funds, services and other forms of financial or other assistance from any persons, firms, corporations or governmental entities, or any other source.

3.1.11 To collect fees and assessments from the Project participants: (i) to pay those Project Operation and Maintenance Expenses that are incurred by the Authority; (ii) to pay the Capital Recovery Charge payable to Cadiz; and (iii) to accumulate operating and reserve funds for the purposes herein stated.

3.1.12 To invest money that is not required for the immediate necessities of the Authority, as the Authority determines is advisable, in the same manner and upon the same conditions as local Members, pursuant to California Government Code Section 53601, as it now exists or may hereafter be amended.

3.1.13 To apply for, accept and receive state, federal or local licenses, permits, grants, loans or other aid and assistance from the United States, the State or other public agencies or private entities necessary for the Authority's full exercise of its powers.

3.1.14 To employ, or otherwise contract for the services of, agents, officers, employees, attorneys, engineers, planners, financial consultants, technical specialists, advisors and independent contractors.

3.1.15 To sue and to be sued in its own name.

3.1.16 To undertake any investigations, studies and matters of general administration.

3.1.17 To adopt rules, policies, regulations and procedures governing the operation of the Authority consistent with this Agreement.

3.1.18 To perform all other acts necessary or proper to carry out fully the purposes of this Agreement.

ARTICLE 4 MANAGEMENT

4.1 Managing Member. The Authority shall have a single "Managing Member" which shall be responsible for the day-to-day operation of the Authority and shall have general authority to carry out the powers of the Authority enumerated in Article 3 consistent with the Project Objectives. The Managing Member shall act through the Executive Director of the Authority, who shall be appointed by the Managing Member pursuant to Section 9.1. The Managing Member will also be the designated agency of the Authority pursuant to Section 2.4. The Executive Director will regularly report to the Board of Directors on the activities of the Authority and shall respond to inquiries or questions from the Board regarding Authority operations. The Authority may contract with third parties, including FVMWC pursuant to the Facility Operation Agreement, to carry out the actual operation and maintenance of the Project Facilities and certain other administrative and accounting functions under the supervision of the Managing Member. SMWD shall be the Managing Member of the Authority and shall serve in that capacity unless and until it withdraws as a Member of the Authority pursuant to Article 14 or there is unanimous agreement of the Members to transition the role of Managing Member to a successor public agency. The Managing Member shall not take any action on behalf of the Authority that is not authorized under this Agreement or is inconsistent with the Project Objectives.

4.2 Compensation of Managing Member. The Managing Member shall be entitled to reimbursement for all actual costs and expenses incurred by the Managing Member in carrying out its duties and obligations pursuant to Section 4.1, including a reasonable allocation of the

salary and benefits of Managing Member's staff who provide services on behalf of the Authority. An estimate of all such actual costs and expenses shall be included in the annual budget of the Authority which is submitted by the Managing Member for approval of the Board. Such costs and expenses shall be treated as Project Operation and Maintenance Expenses. The Managing Member may further receive reasonable compensation for acting in such capacity in the form of a management fee or allocation of general administrative overhead as mutually agreed between the Managing Member and the other Members of the Authority from time to time.~~The Managing Member shall not be entitled to any compensation or management fee for acting as Managing Member, nor shall Managing Member be entitled to reimbursement for any allocation of general administrative overhead.~~

4.3 Actions Requiring Board Approval. Notwithstanding the authority granted pursuant to Section 4.1, the following actions shall require the approval of the Board of Directors: (a) the adoption and any change in the rules and regulations of the Authority; (b) the adoption of an annual budget for the operation of the Authority, including the authorization to hire employees and set salary and benefits for employees of the Authority; (c) the adoption of any supplemental fees and assessments necessary to address shortfalls or unanticipated expenses for which reserves are unavailable; (d) the adoption of funding targets for operational and maintenance reserves; and (e) any contract or agreement which delegates the duties of the Authority or the Managing Member to any third party operator, including any change in the Facility Operation Agreement.

4.4 Actions Requiring Unanimous Board Approval. Notwithstanding any other provision of this Agreement, the following actions shall require the unanimous approval of the Board of Directors: (a) the termination or amendment of the Facilities Lease and/or the Facility Operation Agreement; (b) the payment of any compensation to the Managing Member other than as expressly set forth herein; (c) the issuance of any indebtedness by the Authority to fund construction, operation, or maintenance of the Project or the Project Facilities; and (d) any other amendment to the terms of this Agreement.

4.5 Project Expansion. The Managing Member will evaluate and consult with the Members concerning any proposal for the expansion of the Project, the Project Facilities and/or the Project Objectives. Prior to such proposal being submitted to the Board of Directors for approval, a detailed report will be prepared concerning the feasibility of the expansion, the financing options, the regulatory requirements, permits and approvals which are necessary for the proposal to be implemented and the proposed participants in such expansion. Within sixty (60) days of the approval of any expansion proposal by the Board of Directors, each Member shall have the option to accept or decline to participate in the expansion and the proposed financing thereof. Following the completion of such elections by the Members, the Managing Member shall prepare an amendment to this Agreement setting forth the rights and obligations of each Member that is participating in such expansion, which amendment shall not impose any additional burdens or limit any existing rights of those Members who do not participate in the expansion. Such amendment shall be subject to approval pursuant to Section 4.4(d), provided, however, that no non-participating Member shall unreasonably withhold such approval.

ARTICLE 5 MEMBERSHIP

5.1 Initial Members. The initial Members of the Authority shall be SMWD and FVMWC, as long as they have not, pursuant to the provisions hereof, withdrawn from this Agreement in accordance with the terms hereof.

5.2 New Members. Any Member of the Authority must be a public agency (as defined by the Act) or a mutual water company (as defined by California Government Code Section 6525), each having powers common to all other Members. Additional Members may join in this Agreement and become a Member upon: (a) the recommendation of the Managing Member to admit the new Member and approval of the Board of Directors by at least seventy (70) percent of the votes held among all Directors as specified in Article 8 (Voting); (b) the admission of the new Member as a Project participant and member of FVMWC; (c) payment of a pro rata share of all previously incurred costs that the Board of Directors determines have resulted in a benefit to the proposed new Member, and are appropriate for assessment on the proposed new Member; and (d) execution of a written agreement subjecting the proposed new Member to the terms and conditions of this Agreement.

ARTICLE 6 BOARD OF DIRECTORS AND OFFICERS

6.1 Formation of the Board of Directors. The Members of the Authority shall be represented by a Board of Directors.

6.2 Duties of the Board of Directors. Subject to the provisions of the Act, the Board shall be the policymaking body of the Authority. The Board shall have oversight over the business and affairs of the Authority as carried out by the Managing Member and shall have the exclusive authority to approve such items as are reserved to the Board pursuant to Article 4.

6.3 Directors. The initial Board shall consist of three (3) Directors and three (3) Alternate Directors, each of which shall be a member of the governing board of the appointing Member. Each Member shall appoint one Director and one Alternate Director to the Board. The Managing Member shall appoint one additional Director and one additional Alternate Director. Alternate Directors shall have no vote, and shall not participate in any discussions or deliberations of the Board, if the Director is present. If a Director is not present, or if a Director has a conflict of interest which precludes participation by the Director in any decision-making process of the Board, the Alternate Director appointed to act in his or her place shall assume all rights of the Director, and shall have the authority to act in his or her absence, including casting votes on matters before the Board. Each Director and Alternate Director shall be appointed prior to the initial meeting of the Board, as set forth in Section 7.1, and reappointed at the first Board meeting following December 1 of each year.

6.4 Removal. A Director may be removed during his or her term or reappointed for multiple terms at the pleasure of the Member that appointed him or her. No individual Director may be removed in any other manner, including by the affirmative vote of the other Directors.

6.5 Vacancies. A vacancy shall occur when a Director resigns, or is removed by his or her appointing Member, or when he or she ceases to hold office within the Member that appointed him or her. Upon the vacancy of a Director, the Alternate Director shall serve as Director until a new Director is appointed by the Member. Members shall submit any changes in Director or Alternate Director positions to the Board and other Members in writing and signed by an authorized representative of the Member.

6.6 Officers. The executive officers of the Authority shall include the Executive Director, a Secretary and a Treasurer. The Treasurer will be the treasurer of the Managing Member in accordance with the requirements of California Government Code section 6505.5.

6.7 Appointment of Officers. The Secretary shall be appointed annually by, and serve at the pleasure of, the Board. The Executive Director and Treasurer shall be appointed annually in accordance with the terms of this Agreement. Officers shall be elected or appointed, as applicable, at the first Board meeting, and thereafter at the first Board meeting following December 1 of each year. An Officer may serve for multiple consecutive terms. Any Officer may resign at any time upon written notice to the Board. The Secretary may be removed and replaced by an affirmative decision of the Board and the Executive Director and Treasurer may be removed and replaced by an affirmative decision of the Managing Member.

6.8 Principal Office. The principal office of the Authority shall be established by the Board, and may thereafter be changed by the affirmative vote of the Board.

ARTICLE 7 DIRECTOR MEETINGS

7.1 Initial Meeting. The initial meeting of the Board shall be held at such place and time as is determined by the Members.

7.2 Time and Place. The Board shall meet at least once per year, at a date, time and place set by the Board, and at such other times as may be determined by the Board.

7.3 Special Meetings. Special meetings of the Board may be called by the Executive Director or by any Director in accordance with the provisions of California Government Code Section 54956.

7.4 Conduct. All meetings of the Board, including special meetings, shall be noticed, held and conducted in accordance with the Ralph M. Brown Act, California Government Code Sections 54950 *et seq.* The Board may use teleconferencing in connection with any meeting in conformance with and to the extent authorized by applicable law.

7.5 Local Conflict of Interest Code. The Board shall adopt a local conflict of interest code pursuant to the provisions of the Political Reform Act of 1974, California Government Code Sections 81000-91014.

ARTICLE 8 VOTING

8.1 Quorum. A quorum of any meeting of the Board shall consist of at least three (3) Directors or such larger number as constitutes a majority of the Directors appointed. In the absence of a quorum, any meeting of the Directors may be adjourned by a vote of a majority of Directors present, but no other business may be transacted. For purposes of this Article, a Director shall be deemed present if the Director appears at the meeting in person or telephonically, provided the telephone appearance is consistent with the requirements of the Ralph M. Brown Act.

8.2 Director Votes. Voting by the Board shall be made on the basis of one vote for each Director. A Director, or an Alternate Director when acting in the absence of his or her Director, may vote on all matters of Authority business unless disqualified because of a conflict of interest pursuant to California law or the local conflict of interest code adopted by the Board.

8.3 Affirmative Decisions of the Board of Directors. Except as otherwise specified in this Agreement, all affirmative decisions of the Board shall require the affirmative vote of the majority of all appointed Directors (whether present or not); provided, that if a Director is disqualified from voting on a matter before the Board because of a conflict of interest, the Alternate Director appointed by the applicable Member shall be entitled to vote on the matter, but if the Alternate Director is disqualified from voting on the matter because of a conflict of interest, that Director and Alternate Director shall be excluded from the calculation of the total number of Directors that constitute a majority.

ARTICLE 9 EXECUTIVE DIRECTOR AND STAFF

9.1 Appointment. The Executive Director of the Authority shall be the General Manager of the Managing Member or his or her appointee, [subject to the prior approval of the Managing Member's governing board](#). The Executive Director's compensation, if any, shall be determined by the Board.

9.2 Duties. The Executive Director shall be the chief executive officer of the Authority and shall act as the representative of the Managing Member to carry out the duties and obligations of the Managing Member pursuant to Article 4.

9.3 Staff. The Executive Director may employ, on behalf of the Authority, such full- or part-time employees, assistants and independent contractors who may be necessary from time to time to accomplish the purposes of the Authority, subject to the approval of the Board. A written agreement shall be entered between the Authority and a Member or other public agency or private entity contracting to provide such service, and that agreement shall specify the terms on which such services shall be provided, including without limitation the compensation, if any, that shall be made for the provision of such services. All of the (a) privileges and immunities from liability, (b) exemptions from laws, ordinances and rules, (c) pension, relief, disability, workers' compensation and other benefits which apply to officers, agents or employees of any of the Members when performing functions for their respective Members, shall apply to such

persons to the same degree and extent while they are engaged in the performance of any of the functions and duties under this Agreement. None of the officers, agents or employees appointed by the Authority shall be deemed, by reason of their employment by the Authority, to be employed by any of the Members, or by reason of their employment by the Authority, to be subject to any of the requirements of such Members.

9.4 Term and Termination. The Executive Director shall serve until he or she resigns or is removed by the Managing Member.

ARTICLE 10 RULES AND REGULATIONS

If deemed appropriate and necessary, the Board may cause to be drafted, approved and amended rules and regulations to govern the day-to-day operations of the Authority.

ARTICLE 11 ACCOUNTING PRACTICES

11.1 General. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted public agency accounting practices. The Authority shall maintain strict accountability of all funds and report of all receipts and disbursements of the Authority. Subject to the oversight of the Authority, FVMWC will provide certain collection and accounting services to the Authority under the terms of the Facility Operation Agreement.

11.2 Fiscal Year. The fiscal year for the Authority shall run concurrent with the fiscal year of the Managing Member.

11.3 Appointment of Auditor; Duties. The Auditor of the Authority shall be appointed in the manner, and shall perform such duties and responsibilities, as specified in the Act.

ARTICLE 12 GENERAL FINANCIAL MATTERS

12.1 Annual Budget. The Managing Member, in cooperation with FVMWC, shall prepare an annual budget of the expected costs and expenses related to the operation and maintenance of the Project Facilities and the Administrative Costs of the Authority. Such budget shall specify those costs and expenses that will be: (i) incurred by FVMWC pursuant to the Facility Operation Agreement; (ii) incurred directly by the Authority; or (iii) incurred by SMWD, the County or any other third party entitled to reimbursement. The budget will further break down the costs and expenses into the following categories: Fixed O&M Costs, Variable O&M Costs, Administrative Costs, MWD Fees, Capital Recovery Charges, and to the extent not covered in the foregoing categories, all costs and expenses related to GMMMP oversight and compliance by the Authority, SMWD and the County ("Total Project Costs"). The budget shall include detail on the calculation of Fixed O&M Costs and Variable O&M Costs, as well as any reserves included in those categories.

12.2 Revenue Collection. FVMWC will be responsible for the billing and collection of the Total Project Costs from the Project participants using the information provided in the annual

budget. To the extent that any of the foregoing amounts is payable directly by Cadiz pursuant to the Project Agreement, then FVMWC shall further be responsible for the billing and collection of such amounts from Cadiz. Pursuant to the terms of the Facility Operation Agreement, FVMWC will pay the sums collected to the appropriate party, with Cadiz receiving the Capital Recovery Charges, MWD and MWDOC receiving the MWD Fees, the Authority receiving that portion of the costs and expenses incurred directly by the Authority, SMWD and the County receiving reimbursement for GMMMP compliance and enforcement costs incurred separate from the Authority, and FVMWC retaining the amount applicable to costs incurred by FVMWC.

12.3 Annual Reconciliation. The Authority shall perform an annual reconciliation of the Total Project Costs within sixty (60) days of the end of each fiscal year. To the extent that the payments made by the Project participants exceed the actual costs incurred during the fiscal year, then such excess shall be applied to the reserves and used to reduce the costs payable by the Project participants in the next fiscal year. To the extent that the payments made by the Project participants are insufficient to meet the actual costs incurred during the fiscal year, then the Authority and FVMWC shall cooperate to undertake a supplemental assessment of the Project participants to fund such deficiency.

12.4 No Member Funding Required. Except for amounts properly payable by a Member in connection with their participation in the Project as invoiced by FVMWC, no Member shall be required to fund any portion of the costs and expenses of the Authority or the Project Operation and Maintenance Expenses.

12.5 Member Advances. In the event that a Member advances funds on behalf of the Authority to cover short term working capital requirements, such Member advances shall be promptly repaid upon the receipt of revenue from the Project participants in accordance with Section 12.2. Such Member advances shall accrue interest at the then current annual rate paid by the Local Agency Investment Fund (California Government Code Section 16429.1 et seq.). All Member advances shall be subject to prior approval of the Board.

ARTICLE 13 LIABILITIES

13.1 Liability. In accordance with California Government Code Section 6507, the debt, liabilities and obligations of the Authority shall be the debts, liabilities and obligations of the Authority alone, and not the Members.

13.2 Indemnity. Funds of the Authority may be used to defend, indemnify and hold harmless the Authority, each Member (including the Managing Member), each Director and any officers, agents and employees of the Authority for their actions taken within the course and scope of their duties while acting on behalf of the Authority. Other than for gross negligence or intentional acts or omissions, to the fullest extent permitted by law, the Authority agrees to save, indemnify, defend and hold harmless each Member, any Director and any officers, agents and employees of the Authority from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney fees and costs, court costs, interest, defense costs and expert witness fees, where the same arise out of, or are in any way attributable

in whole or in part, to negligent acts or omissions of the Authority or its employees, officers or agents or the employees, officers or agents of any Member, while acting within the course and scope of such indemnitee's relationship with the Authority.

ARTICLE 14 WITHDRAWAL OF MEMBERS; TERMINATION

14.1 Withdrawal of SMWD. SMWD shall have the right to withdraw from this Agreement in the event that the Project Agreement is terminated for any reason. SMWD shall further have the right to withdraw from this Agreement in the event that SMWD assigns its rights to participate in the Project to another public agency, which has become a Member of the Authority, or identifies a successor public agency that is willing to serve as the Managing Member; provided, however, that such successor meets the requirements of a new Member pursuant to Section 5.2. In the event of a withdrawal by SMWD, SMWD will reasonably cooperate with FVMWC and any other Members of the Authority at the time of such withdrawal to transition the responsibility of SMWD as the Managing Member to a successor entity and thereby avoid any unnecessary disruption to the day to day operations of the Project Facilities. Notwithstanding the foregoing, any successor to SMWD must be qualified and agree to assume all obligations of SMWD with respect to the oversight of GMMMP compliance.

14.2 Withdrawal of Members. Except as set forth in Section 14.1, no Member shall have the right to withdraw from the Authority without the consent of the other Members.

14.3 Rescission or Termination of the Authority. This Agreement may be rescinded and the Authority terminated by unanimous written consent of all Members, except during the outstanding term of any indebtedness of the Authority that has been approved by the Members in accordance with Section 4.3. Any such decision to terminate the Authority shall include a written plan for the payment of all outstanding debts, liabilities and obligations of the Authority and the distribution of all assets of the Authority, including the Project Facilities.

14.4 Distribution of Assets Following Termination. Upon termination of this Agreement, any reserves or surplus money on-hand shall be returned by FVMWC to the Project participants in the same proportion as such Project participants have funded such reserves or surplus, in accordance with California Government Code § 6512. The Board shall first offer any assets of the Authority for sale to the Members on terms and conditions determined by the Board. If no such sale to Members is consummated, the Board shall offer the assets of the Authority for sale to any non-member for good and adequate consideration. Any sale or disposition of the Project Facilities shall be subject to the terms and limitations of the Facilities Lease and the rights of Cadiz and its secured lenders thereunder. The net proceeds from any sale of the Project Facilities shall be distributed among the Project participants.

ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 SMWD Priority Rights. Nothing contained in this Agreement shall prevent SMWD from enforcing and exercising its priority right to take delivery of Project Water and make use of the Project Facilities as set forth in the Project Agreement.

15.2 No Predetermination or Irretrievable Commitment of Resources. Nothing herein shall constitute a determination by the Authority or any of its Members that any action, including without limitation actions relating to the Project, shall be undertaken or that any unconditional or irretrievable commitment of resources shall be made, until such time as any required compliance with all local, state, or federal laws, including without limitation the CEQA, or permit requirements, as applicable, has been completed.

15.3 Notices. Notices to a Director or Member hereunder shall be sufficient if delivered to the official business address of the Member. Delivery may be accomplished by U.S. Postal Service, private mail service or electronic mail (provided that if by electronic mail, a confirmation of receipt is provided by the recipient).

15.4 Amendments to Agreement. This Agreement may be amended or modified at any time only by subsequent written agreement approved and executed by all of the Members.

15.5 Agreement Complete. The foregoing constitutes the full and complete Agreement of the Members. Except for the Project Agreement, the Facility Operation Agreement, the County MOU, the Facilities Lease, the Water Lease, and any other documents described in the Project Agreement, there are no oral understandings or agreements related to the subject matter of this Agreement that are not set forth in writing herein.

15.6 Severability. Should any part, term or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any applicable Federal law or any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, or provisions hereof shall not be affected thereby, provided however, that if the remaining parts, terms, or provisions do not comply with the Act, this Agreement shall terminate.

15.7 Reorganization of the Authority. Should the participation of any Member be determined to be or become invalid, contrary to law, or in excess of that Member's authority by final decision of a court, by subsequent act of the Legislature or opinion of the Attorney General of California, specifically applicable to the Member, or otherwise as all Members determine to be sufficient, the Members shall cooperate in good faith and make every reasonable effort to reorganize or formulate another entity in which all the Members may participate and carry out the Project and the purpose of the Authority in a manner similar to that herein provided for; provided, however, if such effort is unsuccessful, or pending such reorganization, the validity of this Agreement as to the remaining Members shall be not be affected thereby.

15.8 Assignment. Except as otherwise provided in this Agreement, the rights and duties of the Members related to the subject matter of this Agreement may not be assigned or delegated without the written consent of all other Members. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void.

15.9 Binding on Successors. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Members.

15.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

15.11 Singular Includes Plural. Whenever used in this Agreement, the singular form of any term includes the plural form and the plural form includes the singular form.

15.12 Member Authorization. The governing bodies of the Members have each authorized execution of this Agreement, as evidenced by their respective signatures below.

[signature page follows]

IN WITNESS WHEREOF, the Members hereto have executed this Agreement by authorized officials thereof on the dates indicated below.

SANTA MARGARITA WATER DISTRICT

DATED: _____

APPROVED AS TO FORM:

By: _____
Title: _____

By: _____
Title: _____

Address: _____

FENNER VALLEY MUTUAL WATER
COMPANY

DATED: _____

APPROVED AS TO FORM:

By: _____
Title: _____

By: _____
Title: _____

Address: _____

“Kern Groundwater Authority JPA”

KERN GROUNDWATER AUTHORITY

for the Tulare Lake Basin portions of KERN COUNTY

JOINT POWERS AGREEMENT

THIS AGREEMENT (“Agreement”) is made and effective as of _____, 2014, pursuant to the Joint Exercise of Powers Act (Government Code Sections 6500, *et seq.*) by and between the public agencies listed on the attached Exhibit A in order to form the Kern Groundwater Authority.

This Agreement is made with reference to the following facts.

A. Each of the parties to this Agreement provide water service to landowners and/or residents and/or provide water to retail water entities within their respective service areas and the County of Kern has various oversight and active roles relative to water resources within the County, including, but not limited to, flood control and water service.

B. Part 2.75 of Division 6 (commencing at section 10750) of the California Water Code (herein “Groundwater Management Act”, sometimes referred to as “AB 3030”) authorizes the development, adoption and implementation of Groundwater Management Plans by local agencies, including the parties to this Agreement. In adopting AB30303, the Legislature intended to “encourage local agencies to work cooperatively to management groundwater resources within their jurisdictions.” (Section 10750(a)).

C. The Groundwater Management Act further provides that joint powers authorities of local public agencies that provide water service are “local agencies” (section 10752(g)) that in turn may develop Groundwater Management Plans.

D. The parties to this Agreement (General Members) wish to cooperate to carry out the purposes of the Groundwater Management Act cited above and develop, adopt and implement a Groundwater Management Plan that is available to those lands within the Members boundaries and within the Tulare Lake Groundwater Basin (“Plan Area”). The parties agree that the Kern Groundwater Authority will not have the authority to limit the respective Members’ rights and authorities over their own internal matters, including, but not limited to, a Member’s surface water supplies, groundwater supplies, facilities, operations, water management, and water supply projects.

THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth, it is agreed by and among the parties hereto as follows:

Article I: Definitions

As used in this Agreement, unless the context requires otherwise, the meaning of the terms hereinafter set forth shall be as follows:

(a) “Associate Members” shall mean those Members of the Authority admitted in accordance with the terms and provisions of this Agreement that are not General Members. The Board of Directors may from time to time admit Associate Members on terms and conditions determined by the Board. Representatives of Associate Members may not serve on the Board and/or Board Committees. Likewise, while the Board of Directors welcomes their input, the Representatives of Associate Members shall be non-voting and their presence shall not be counted in determining whether a quorum is present.

(b) “Authority” shall mean the Kern Groundwater Authority, being the separate entity created pursuant to the provisions of Government Code sections 6500 *et seq.* by this Agreement.

(c) “Board of Directors” or “Board” shall mean the governing body of the Authority as established by Section 3.01 of this Agreement.

(d) “Committee” shall mean any committee established pursuant to Section 3.03 of this Agreement.

(e) “Fiscal Year” shall mean that period of 12 months established as the Fiscal Year of the Authority pursuant to Section 4.01 of this Agreement.

(f) “General Members” shall mean those Members of the Authority more particularly identified as General Members on Exhibit A, and any parties which shall hereafter become General Members in accordance with the terms and provisions of this Agreement. A public agency may participate as a General Member on its own behalf or join with one or more agencies as a single General Member. Multiple agencies which elect to coordinate their representation as one General Member shall, for purposes of this Agreement, be treated as one General Member.

(g) “Members” shall mean the General Members and Associate Members.

(h) “Parties” or “party” shall mean the public agencies which are General Members of the Authority and have executed this Agreement and any subsequent General Members joined in accordance with this Agreement.

(i) “Special Activities” shall mean activities that are consistent with the purpose of this Agreement, but which are undertaken by fewer than all the parties in the name of the Authority pursuant to Section 3.07.

(j) “Plan Area” shall mean those lands located within the Member boundaries that are within the Tulare Lake Groundwater Basin, as defined in the 2003 Department of Water Resources Bulletin 118 as shown on Map 1.

Article II: Creation of Authority

Section 2.01 – Creation.

The parties, pursuant to their joint exercise of powers under the provisions of Government Code sections 6500 *et seq.*, hereby create a public entity to be known as the “Kern Groundwater Authority.”

Section 2.02 – Term.

This Agreement shall become effective upon 12 General Members executing same. This Agreement shall remain in effect until terminated by agreement of a majority of then participating General Members. Unless it is terminated, this Agreement shall remain in effect and be binding upon the parties hereto and upon all subsequent parties joined herein for such a period as the Authority engages in any activities under this Agreement. Except as specifically provided in this Agreement, the foregoing provision shall not apply to any party which withdraws or is terminated from its participation in the Authority in accordance with this Agreement. This Agreement shall supersede the Interim Funding Agreement effective 2013. Any monies collected pursuant to the Interim Funding Agreement which have not been expended as of the date of this Agreement shall be credited towards each Member’s financial commitment as identified herein.

Section 2.03 – Purpose.

The purpose of this Agreement is to provide for the joint exercise of powers common to each of the General Members, through the Authority, to cooperatively carry out the purposes of the Groundwater Management Act and develop, adopt and implement a legally sufficient Groundwater Management Plan that encompasses the Plan Area in a manner that does not additionally limit, or empower, a respective Members’ rights and authorities over their own water supply matters, including, but not limited to, a Member’s surface water supplies, groundwater supplies, facilities, operations, water management, and water supply projects. The Authority is formed solely to coordinate and carry out such activities related to groundwater management. Activities unrelated to such activities concerning groundwater management shall not be undertaken by the Authority.

Section 2.04 – Powers.

(a) The Authority shall have the power to take any action to carry out the purposes of this Agreement. Notwithstanding the foregoing, the Authority shall not have the power to control, limit or empower a Members rights and authorities over their own water supply matters, including but not limited to surface water supplies, groundwater supplies, facilities, operations, water management, and water supply projects. Likewise, the Authority shall have no power to interfere with a Member’s rights, use or management of the Member’s water or water supply, so long as such use is consistent with applicable law. Furthermore, the Authority shall have no right to interfere with individual landowner’s rights to utilize, apply, store, or otherwise use surface or groundwater, so long as such use is consistent with applicable law. The Authority is authorized, in its own name, to do all acts necessary for the exercise of said powers provided that said acts are duly adopted by the then seated Board of Directors and are consistent with this

Agreement. Except as provided in Section 4.05, the Authority may not levy assessments on its Members. In accordance with California Government Code Section 6509, the foregoing powers shall be subject to the restrictions upon the manner of exercising such powers pertaining to the Cawelo Water District.

(b) Notwithstanding anything to the contrary in this Agreement, the Authority shall not undertake any activities within the geographic or service area boundaries of any of its Members pursuant to the Groundwater Management Act or any Groundwater Management Plan developed or adopted by the Authority, unless (a) the Member has formally adopted the Groundwater Management Plan, or (b) the Member has formally and expressly consented and agreed to the activity proposed.

Article III: Internal Organization

Section 3.01 – Governing Body.

Except to the extent certain powers are delegated to a Committee pursuant to Section 3.03, the Authority shall be governed by a Board of Directors which is hereby established and which shall be initially composed of the General Members, as shown on Exhibit A. Without amending this Agreement, the Board of Directors composition shall be altered from time to time to reflect the termination and/or admission of any new General Members. The Board of Directors may also designate one board member at large who will serve a term determined by the Board at the time of appointment.

Each General Member shall select a representative from its governing body or the governing body of one of the agencies within the General Member to serve as their Board member.

Any board member at large shall be selected by an action of the other members of the Board, shall not be a member of the governing body of any of the General Members..

A General Member may designate from their governing body or the governing body of one of the agencies within the General Member to serve as their alternative Director. The role of each alternate Director shall be to assume the duties of the Director appointed by his/her member entity in case of the absence or unavailability of such Director, including without limitation such Director's duties as a member of any Committee established pursuant to Section 3.03. The Directors and alternates so named shall continue to serve until their respective successors are appointed.

Section 3.02 – Officers.

The Board shall select a Chair from among the Board of Directors who shall be the presiding officer of the Board meetings. The Board shall select a Vice Chair from among the Board of Directors who shall serve as the presiding officer in the absence of the Chair. The Board shall also select a Secretary, who need not be a member of the Board of Directors. The terms of such Officers shall be established by the Board of Directors from time to time and as necessary.

Section 3.03 – Committees.

There shall be established such Committees as the Board of Directors shall determine from time to time. Each such Committee shall be comprised of representatives of General Members, shall exist for the term specified in the action establishing the Committee, shall meet as directed by the Board of Directors, and shall be make recommendations to the Board of Directors on the various activities of the Authority. The Board of Directors may delegate authority to the Committee to administer and implement the various activities of the Authority.

Section 3.04 – Seal; Bylaws.

The Board may (but need not) adopt an official seal for the Authority and adopt such bylaws as it may deem necessary to regulate the affairs of the Authority in accordance with this Agreement. The bylaws may be amended from time to time by the Board of Directors as it may deem necessary.

Section 3.05 –Voting; Quorum.

(a) Two-thirds of the representatives on the Board of Directors shall constitute a quorum for the transaction of Authority Business. Each Board Director (or in his/her absence alternate Director) shall be entitled to one vote. Any Board member abstaining from a vote shall be counted for purposes of determining the existence of a quorum, but shall not be deemed to be voting.

(b) Any action by the Board of Directors shall require a two-thirds vote of all the General Members. Any amendment of this Agreement shall be governed by Section 7.01.

(c) Two-thirds of the members of a Committee shall constitute a quorum. All questions and matters of any nature whatsoever coming before any Committee shall be determined, provided a quorum is present, by the concurrence of 75% of the members of such Committee (as applicable) present and voting on such matter. Any Committee member abstaining from a vote shall be counted for purposes of determining the existence of a quorum, but shall not be deemed to be voting.

Section 3.06 – Meetings.

Meetings of the Board of Directors and any Committee (to the extent applicable) shall be conducted in accordance with the Ralph M. Brown Act, California Government Code Sections 54950, *et seq.*

Section 3.07 - Special Activities.

(a) With the prior approval of the Board of Directors, Members may undertake Special Activities in the name of the Authority. Prior to undertaking a Special Activity, the Members electing to participate in the Special Activity shall enter into an activity agreement. Such activity agreement shall provide that (i) no Special Activity undertaken pursuant to such agreement shall conflict with the terms of this Agreement and (ii) the Members to the activity agreement shall indemnify, defend and hold the Authority, and the Authority's other Members, harmless from and against any liabilities, costs or expenses of any kind arising as a result of the Special Activity described in the activity agreement. All assets, rights, benefits, debts, liabilities and obligations attributable to a Special Activity shall be assets, rights, benefits, debts, liabilities and obligations solely of the Members that have entered into the activity agreement for that Special Activity, in accordance with the terms of the activity agreement, and shall not be the assets, rights, benefits, debts, liabilities and obligations of those Members that have not executed the activity agreement. Members not electing to participate in the Special Activity shall have no rights, benefits, debts, liabilities or obligations attributable to such Special Activity.

(b) If and to the extent a Groundwater Management Plan is developed, the Members shall consider the adoption and implementation thereof as a Special Activity.

Article IV: Financial Provisions

Section 4.01 – Fiscal Year.

The Fiscal Year of the Authority shall be from January 1 through December 31 of each year.

Section 4.02 – Funds; Accounts.

(a) The North Kern Water Storage District shall serve as the Fiscal Agent and Treasurer for the Authority unless otherwise directed by the Board. The Fiscal Agent shall be responsible for all money of the Authority from whatever source.

(b) All funds of the Authority shall be strictly and separately accounted for and regular reports shall be rendered of all receipts and disbursements at least quarterly during the Fiscal Year. The books and records of the Authority shall be open to inspection by the Members.

(c) The Authority shall contract with a certified public accountant to make an audit or review of the accounts and records of the Authority which shall be conducted in compliance with Section 6505 of the California Government Code. The Fiscal Agent shall have the right to reject any proposed certified public accountant. All costs associated with this Audit will be the full responsibility of the Authority.

Section 4.03 – Property; Bonds.

The Board of Directors shall from time to time designate the officers and persons, in addition to those specified in Section 4.02 above, who shall have charge of, handle, or have access to any property of the Authority. Each such officer and person shall file a bond in an amount designated by the Board of Directors.

Section 4.04 – Budget.

By a date set by the Board of Directors each Fiscal Year, the Board of Directors shall adopt a budget for the Authority for the ensuing Fiscal Year; provided, that except as provided in Section 4.05, the Authority shall not impose assessments or other charges on Members.

Section 4.05 – Payments To The Authority.

(a) All fees, costs and expenses incurred by the Authority shall be funded (i) from voluntary contributions from third parties, (ii) assessments on the General Members, levied from time to time by the Board of Directors to carry out the activities of the Authority generally applicable to all General Members, which shall be equal per General Member, as initially shown on Exhibit A.

(b) No Member shall be bound, financially or otherwise, by any obligation, contract or activity undertaken by the Authority unless and except to the extent agreed upon by the Member, except that each Member shall be obligated to fund its then current annual share of the general basic budget of the Authority, provided such budgets are otherwise approved as provided herein. Funding of other matters shall be through Special Activity agreements or as otherwise agreed to by the Members in writing.

Article V: Management

Section 5.01 – Management.

In addition to, or in lieu of, hiring employees, the Authority may engage one or more parties to manage any or all of the business of the Authority on terms and conditions acceptable to the Board of Directors. A party so engaged may, but need not, be a Member. Any party so engaged shall have such responsibilities as are set forth in the contract for such party's services.

Article VI: Relationship of Authority And Its Members

Section 6.01 – Separate Entity; Property.

In accordance with California Government Code Sections 6506 and 6507, the Authority shall be a public entity separate and apart from the parties to this Agreement. Unless, and to the extent otherwise agreed herein, the debts, liabilities and obligations of the Authority shall not be debts, liabilities or obligations of the Member entities. The Authority shall own and hold title to all funds, property and works acquired by it during the term of this Agreement.

Section 6.02 – Admission, Withdrawal and Termination of Members.

(a) Additional qualified parties may join in this Agreement and become General Members upon the approval of the Board of Directors, subject to terms and conditions as may be established by the Board of Directors. Associate Members may be admitted on terms and conditions established by the Board of Directors. Prior to being admitted as a new Member, an entity shall execute an agreement to be bound by the terms of this Agreement as if such entity had been an original signatory hereto.

(b) Notwithstanding anything herein to the contrary, any Member may withdraw from this Agreement by giving 30 days written notice of its election to do so, which notice shall be given to the Board of Directors and to each of the other parties.

(c) Upon withdrawal, the Member shall not be relieved of all obligations for assessments to pay costs or liabilities of the Authority which were incurred prior to the date of withdrawal.

(d) Any Member may be terminated by a three-fourths vote of the Board of Directors representing the General Members not subject to the termination vote, and upon termination they shall no longer be a member of the Authority.

(e) Upon termination, the Member shall be entitled to a reimbursement for all assessments collected within 12 months prior to the termination vote and they shall be relieved of all ongoing obligations for assessments to pay costs or liabilities of the Authority which were incurred prior to the date of the termination.

(f) Upon withdrawal or termination as a Member, the provisions of Section 2.04(b) shall remain applicable to any such withdrawing or terminated Member.

Section 6.03 – Disposition Of Property Upon Termination Or Determination By Board Of Directors Of Surplus.

(a) Upon termination of this Agreement or upon determination by the Board of Directors that any surplus money is on hand, such surplus money shall be returned to the Members of the Authority which contributed such monies in proportion to their contributions. The distribution of said surplus shall be proportionate to the current year percentages as shown in Exhibit A, or as modified after the inclusion of new Members.

(b) The Board of Directors shall first offer any surplus properties, works, rights and interests of the Authority for sale to the Member entities and the sale shall be based on the highest bid. If no such sale is consummated, then the Board of Directors shall offer the surplus properties, works, rights and interests of the Authority for sale in accordance with applicable law to any governmental agency, private entity or persons for good and adequate consideration.

Section 6.04 – Liability For Debts.

The Members do not intend hereby to be obligated either jointly or severally for the debts, liabilities or obligations of the Authority, except as may be specifically provided for in California Government Code Section 895.2 as amended or supplemented. Provided, however, if any General Member(s) of the Authority are, under such applicable law, held liable for the acts or omissions of the Authority caused by negligent or wrongful act or omission occurring in the performance of this Agreement, such parties shall be entitled to contribution from the other Members so that after said contributions each General Member shall bear an equal share of such liability, as initially shown on Exhibit A.

Article VII: Miscellaneous Provisions

Section 7.01 – Amendment.

This Agreement may be amended from time to time by the concurrence of 75% of all of the General Members. To provide non-concurring parties an opportunity to withdraw from the Authority as provided herein, an amendment shall be binding on all parties 45 days after the required concurrence has been obtained.

Section 7.02 – Severability And Validity Of Agreement.

Should the participation of any party to this Agreement, or any part, term or provision of this Agreement be decided by the courts or the legislature to be illegal, in excess of that party's authority, in conflict with any law of the State of California, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms or provisions of this Agreement shall not be affected thereby and each party hereby agrees it would have entered into this Agreement upon the remaining terms and provisions.

Section 7.03 – Assignment.

Except as otherwise provided in this Agreement, the rights and duties of the parties to this Agreement may not be assigned or delegated without the advance written consent of the Authority, and any attempt to assign or delegate such rights or duties in contravention of this section shall be null and void. Any assignment or delegation permitted under the terms of this Agreement shall be consistent with the terms of any contracts, resolutions or indentures of the Authority then in effect. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. This section does not prohibit a party from entering into an independent agreement with another agency regarding the financing of that party's contributions to the Authority or the disposition of proceeds which that party receives under this Agreement so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the parties under this Agreement.

Section 7.04 – Execution In Parts Or Counterparts.

This Agreement may be executed in parts or counterparts, each part or counterpart being an exact duplicate of all other parts or counterparts, and all parts or counterparts shall be considered as constituting one complete original and may be attached together when executed by the parties hereto. Facsimile or electronic signatures shall be binding.

Section 7.05 – Notices.

Notices authorized or required to be given pursuant to this Agreement shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours to the addresses set forth for each of the parties hereto on Exhibit "A" of this Agreement, or to such other changed addresses communicated to the Authority and the Member entities in writing, and to such other entities that become Members.

Section 7.06 – Dispute Resolution.

In the event there are disputes and/or controversies relating to the interpretation, construction, performance, termination, breach of, or withdrawal from this Agreement, the parties involved shall in good faith meet and confer amongst themselves in an attempt to informally resolve such matter(s). If the parties are unsuccessful in resolving such matter(s) through an informal meeting process within sixty (60) days, they shall attempt to resolve such matter(s) through mediation. If they are unable to resolve such matter(s) through mediation within ninety (90) days, they may attempt to settle such issue(s) by arbitration under the rules and regulations of the American Arbitration Association. Any party requesting arbitration under this Agreement must make a request on the other parties by registered or certified mail with a copy to the American Arbitration Association.

Section 7.07 – Integration.

All revenues and expenses authorized by and pursuant to the Interim Funding Agreement, effective 2013, shall be assumed by the JPA and shall be reconciled and allocated pursuant to Article IV herein. Any contract entered into on behalf of the parties to the Interim Funding Agreement shall be assigned to the JPA and administered pursuant to this JPA.

IN WITNESS WHEREOF, the parties hereto, pursuant to resolutions duly and regularly adopted by their respective Board of Directors or governing board, have caused their names to be affixed by their proper and respective officers as of the day and year first above-written.

NAME OF MEMBER: _____

By:

Its: _____

Dated: _____

(address)

“State and Federal Water Contractors Agency JPA”

JOINT POWERS AGREEMENT FORMING THE STATE AND FEDERAL WATER CONTRACTORS AGENCY

Effective August 19, 2009

Joint Powers Agreement – State and Federal Contractors Water Agency

This AGREEMENT is made and entered into by and among the Metropolitan Water District of Southern California, a public agency formed pursuant to the Metropolitan Water District Act, [Statutes 1969, ch. 209, as amended; West’s California Water Code Appendix Chapter 109], the Kern County Water Agency, a public agency formed pursuant to the Kern County Water Agency Act [Statutes 1961, ch. 1003, as amended, West’s Water Code Appendix, Chapter 99], the State Water Project Contractors Authority, a joint powers agency formed pursuant to Government Code section 6500 et seq., acting through its Delta Specific Project Committee, the San Luis & Delta-Mendota Water Authority, a joint powers agency formed pursuant to California Government Code section 6500 et seq., the Westlands Water District, a public agency of the State of California formed pursuant to California Water Code section 37823, and the Santa Clara Valley Water District, a public agency formed pursuant to Santa Clara Valley Water District Act [Statutes 1951, ch. 56, as amended; West California Water Code Appendix, Chapter 60], which are referred to herein individually as a “Party” and collectively as “Parties”.

RECITALS

WHEREAS, each of the Parties is a public entity organized and operating under the laws of the State of California; and

WHEREAS, each of the Parties recognizes the close connection between the ecosystem health of the Sacramento-San Joaquin Delta (“Delta”) and the ability to provide crucial water supplies from the Delta and its tributaries to water users throughout the State; and

WHEREAS, the Parties desire to protect both the Delta ecosystem and the more than 25 million people and 3,000,000 acres of highly productive farm land that currently depend upon water conveyed through the Delta; and

WHEREAS, the Parties desire to provide such protection directly through improvements in the manner water is put to beneficial use, including method of diversion, demand side management programs, and integrated regional water management; and

WHEREAS, the Parties desire to provide such protection directly through the implementation of additional measures that are intended to provide for the conservation of protected species dependent on the Delta; and

WHEREAS, the Parties desire to ensure that key habitat areas are identified, secured, and protected as essential elements of a comprehensive approach to Delta management; and

WHEREAS, the Parties have a common interest in improving Delta habitat in an expeditious manner; and

WHEREAS, the Parties have a common interest in timely completion and efficient implementation of the Bay Delta Conservation Plan (“BDCP”); and

WHEREAS, the Parties have common interests in jointly cooperating on research and studies concerning the State Water Project and the Central Valley Project, and

WHEREAS, the aforementioned activities may best be achieved through the cooperative action of the Parties operating through a joint powers authority; and

WHEREAS, each of the Parties is authorized to contract with each other for the joint exercise of common powers under Article 1, Chapter 5, Division 7, Title 1 of the Government Code (commencing with Section 6500); and

WHEREAS, the Parties desire to create a joint powers authority that is named **State and Federal Contractors Water Agency (“Agency”)**.

Now, therefore, it is agreed by and between the Parties hereto as follows.

ARTICLE I: DEFINITIONS

As used in this Agreement, unless the context requires otherwise, the meanings of the terms set forth below shall be as follows:

- 1.1 “Agreement” means this Joint Powers Agreement, which creates the Agency.
- 1.2 “Board” or “Board of Directors” means the governing body of the Agency as established by Article II (**Creation of the Agency**) of this Agreement.
- 1.3 “Central Valley Project” or “CVP” means the federal reclamation project operated by Reclamation pursuant to federal reclamation law (Act of June 17, 1902 (32 Stat. 388)) and acts amendatory or supplementary thereto.
- 1.4 “Conservation Measures” are actions to protect species dependent upon the Sacramento-San Joaquin River Delta and/or to protect water supplies for the more than 25 million people and 3,000,000 acres of highly productive farm land that currently depend upon water conveyed through the Delta. Conservation Measures may include, but are not limited to, actions that provide for the conservation of protected species, improve habitat (quality or quantity), improve the water supply and conveyance system, limit effects of toxics, limit effects of non-native species, and/or limit the adverse effects of water diversions.
- 1.5 “Member” means a public entity, including each of the Parties, that satisfies the requirements of Article V (Membership) of this Agreement.
- 1.6 “Reclamation” means the United States Bureau of Reclamation.
- 1.7 “San Luis & Delta-Mendota Water Authority” means the joint powers authority formed pursuant to California Government Code section 6500 *et seq.* that consists of member public agencies that contract with the United States Bureau of Reclamation for water supply from the Central Valley Project for distribution and use within areas of California.

- 1.8 “State” means the State of California.
- 1.9 “State Water Project Contractors Authority” or “SWPCA” means the joint powers authority formed pursuant to California Government Code section 6500 *et seq.* that consists of member public agencies that contract with the California Department of Water Resources for water supply from the State Water Project for distribution and use within areas of California.
- 1.10 “Delta Specific Project Committee” or “DSPC” means the committee of the SWPCA formed, among other functions, to act for SWPCA in entering into and carrying out the terms and conditions of this Agreement.
- 1.11 “State Water Project” or “SWP” means the State Water Facilities, as defined in California Water Code section 12934(d).

ARTICLE II: CREATION OF THE AGENCY

There is hereby created pursuant to the Joint Exercise of Powers Act, California Government Code section 6500 *et seq.*, a public entity to be known as the State and Federal Contractors Water Agency, which shall be an agency that is separate from the Members.

ARTICLE III: TERM

This Agreement shall become effective upon execution by each of the Parties and shall remain in effect until terminated pursuant to the provisions of Article XV (**Withdrawal of Members**) of this Agreement.

ARTICLE IV: PURPOSES AND POWERS

4.1 Purpose. The purpose of this Agreement is to establish a public entity separate from its Members to pursue Conservation Measures, to carry out research and studies concerning the State Water Project and the Central Valley Project, and to pursue any and all activities related or incidental thereto.

4.2 Powers. The Agency, and more specifically those Members that elect to participate in the particular Project pursuant to a Project Agreement in accordance with Article X (Specific Projects) of this Agreement, shall have the power in the name of the Agency to exercise common powers of its Members, including, but not limited to, the following:

4.2.1 To make and enter into contracts necessary for the full exercise of its powers;

4.2.2 To perform environmental review, engineering, and design for, and, if appropriate, to permit, construct or develop Conservation Measures or other facilities consistent with the purposes of the Agency;

4.2.3 To obtain and hold rights, permits and other authorizations for or pertaining to Conservation Measures or other facilities either by the Agency alone or in cooperation with the State, the United States, or other non-member entities;

4.2.4 To contract for the services of engineers, scientists, attorneys, planners, technical specialists, financial consultants, and separate and apart therefrom, to employ such persons as it deems necessary;

4.2.5 To enter into agreements with the United States of America, the State, or any other public or private entity, including for the provision of all or a portion of the local contribution which may be required for the promotion, planning, construction, ownership, financing, operation, maintenance, and, if necessary, repair of any Conservation Measures or other facilities;

4.2.6 To act as and for the “Water Agencies” in a manner consistent with the “Memorandum of Agreement Regarding Collaboration on the Planning, Preliminary Design and Environmental Compliance for the Delta Habitat Conservation Program in Connection with the Development of the Bay Delta Conservation Plan,” a copy of which is attached hereto as Exhibit 1.

4.2.7 To incur debts, liabilities, or obligations subject to the limitation herein set forth;

4.2.8 To acquire, hold, and dispose of property necessary for the full exercise of its powers;

4.2.9 To issue bonds, notes, and other indebtedness, to enter into leases, installment sales, and installment purchase contracts;

4.2.10 To apply for, accept, and receive state, federal or local licenses, permits, grants, loans, or other aid from any agency of the United States, the State or other public or private entities necessary for the Agency’s full exercise of its powers;

4.2.11 To undertake any investigations, studies, and matters of general administration;

4.2.12 To develop, collect, provide, and disseminate to the Members and others information that furthers the purposes of the Agency;

4.2.13 To sue and be sued in its own name;

4.2.14 To perform all acts necessary or proper to carry out fully the purposes of this Agreement; and

4.2.15 To the extent not hereinafter specifically provided for, to exercise any powers in the manner and according to the methods provided under the laws applicable to the State Water Project Contractors Authority.

ARTICLE V: MEMBERSHIP

5.1 Members. Each Party which possesses the powers described in the recitals and in Article IV (**Purposes and Powers**) of this Agreement that executes this Agreement and any addenda, amendments or supplements thereto, and which has not, pursuant to the provisions hereof, withdrawn from this Agreement, shall be a Member.

5.2 New Members. Any public entity that is not a Member on the effective date of this Agreement shall be a Member upon (a) the approval of the Board of Directors, (b) payment of all previously incurred costs that the Board determines have resulted in benefit to the public entity, (c) payment of applicable fees and charges, and (c) written agreement to the terms and conditions of this Agreement.

ARTICLE VI: DIRECTORS AND OFFICERS

6.1 Formation of Board of Directors. The Agency shall be governed by a Board of Directors.

6.1.1 Westlands Water District, Metropolitan Water District of Southern California, Kern County Water Agency, and Santa Clara Valley Water District will each appoint one Director to the Board of Directors;

6.1.2 The San Luis & Delta-Mendota Water Authority will appoint three members to the Board of Directors; and

6.1.3 The DSPC will appoint two Directors to the Board of Directors.

6.1.4 Each Director shall be appointed prior to the initial meeting, as set forth in Article VII (**Director Meetings**) of this Agreement.

6.2 Requirements. The Directors shall be directors, officers, or employees of the Members. For Members that are joint powers agencies, the Directors appointed by those Members may be directors, officers or employees of the joint powers agency or of any public agency that is a member of the joint powers agency. Each Director shall certify to the Secretary in writing that he or she has been appointed to be a Director by the Member and that he or she meets the qualifications established by this section 6.2.

6.3 Alternate Directors. Each Member shall appoint one Alternate Director for each Director it appoints. Alternate Directors shall have no vote if the Director is present. If the Director is not present, the Alternate Director appointed by the Director to act in his/her place may cast a vote.

6.4 Removal of Directors. Directors and Alternate Directors serve at the pleasure of their respective Members and may be removed or replaced at any time. Upon removal of a Director, the Alternate Director shall serve as Director until a new Director is appointed by the Member. Members must submit any changes in Director or Alternate Director positions to the Secretary in writing and signed by the Member.

6.5 Officers. Officers of the Agency shall be a President, Vice President, Secretary, and Treasurer. Any number of offices may be held by the same person provided that the President shall not also serve as the Vice President, Secretary, or Treasurer. The Vice President, or in the Vice President's absence, the Secretary shall exercise all powers of the President in the President's absence or inability to act. The President, the Vice President, and the Secretary must be members of the Board of Directors. The Board, or its designated representative, shall contract either with an independent certified public accountant or the Treasurer or Chief Financial Officer of any Member, to serve as Treasurer of the Agency and to be the depository of and have custody of funds, subject to the requirements of Government Code sections 6505-6505.6. If the Treasurer for the Agency also serves as the Treasurer for one of the Members, the funds of the Agency shall be kept in accounts separate from those of the Member.

6.6 Appointment of Officers. Officers shall be chosen annually by, and serve at the pleasure of the Board. As provided for in Article VII (**Director Meetings**) of this Agreement, Officers shall be chosen at the first Board meeting following July 1st of each year. An Officer may serve for multiple consecutive terms. Any Officer may resign at any time upon written notice to the Board.

6.7 Legal Counsel. The Board may retain legal counsel, who shall report to the Board.

ARTICLE VII: DIRECTOR MEETINGS

7.1 Initial Meeting. The initial meeting of the Board of Directors shall be called by the State Water Project Contractors Authority, through the DSPC, and held in Sacramento, California within thirty (30) days of the effective date of this Agreement. The Directors shall, at their first meeting, elect all officers and select an Auditor. Unless changed by the Directors, Sacramento County shall be the domicile of the Agency.

7.2 Time and Place. The Directors shall meet at least twice per year at a time and place set by the Board, and at such other times as may be determined by the Board.

7.3 Special Meetings. Special meetings of the Directors may be called by the President or three (3) or more Directors and held at such times and places within California as may be ordered by the President or the Directors.

7.4 Conduct. All meetings of the Board, including special meetings, shall be noticed, held, and conducted in accordance with the Ralph M. Brown Act or the Bagley-Keene Open Meeting Act, to the extent applicable. The Board and Alternate Directors may use teleconferencing in connection with any meeting in conformance with and to the extent authorized by the applicable laws.

ARTICLE VIII: MEMBER VOTING

8.1 Quorum. A quorum of any meeting of the Board shall consist of a majority of the Directors. In the absence of a quorum, any meeting of the Directors may be adjourned from time to time by a vote of a majority present, but no other business may be transacted. For purposes of

this Article, a Director shall be deemed present if the Director appears at the meeting in person or telephonically.

8.2 Director Votes. Each Director shall have one (1) vote. Except as otherwise specified in this Agreement, all decisions shall be made by a majority vote of all the Directors.

8.3 Application to Specific Projects. The rights and obligations set forth in this Article shall apply to each Project, unless the Project Agreement states otherwise.

ARTICLE IX: EXECUTIVE DIRECTOR

9.1 Appointment. The Board shall hire an Executive Director who shall be compensated for his/her services, as determined by the Board.

9.2 Duties. The Executive Director shall be the chief administrative officer of the Agency, shall serve at the pleasure of the Board of Directors, and shall be responsible to the Board for the proper and efficient administration of the Agency. The Executive Director shall have the powers designated in the Bylaws.

9.3 Staff. The Executive Director shall employ such additional full-time and/or part-time employees, assistants and independent contractors that may be necessary from time to time to accomplish the purposes of the Agency, subject to the approval of the Board for any contract in excess of \$ 100,000.00.

9.4 Term and Termination. The Executive Director will serve until he/she resigns or the Board decides to terminate his/her employment.

ARTICLE X: SPECIFIC PROJECTS

10.1 Project(s). The Agency intends to carry out Conservation Measures and other activities in furtherance of the purposes of and consistent with the powers established by this Agreement. Each of the Conservation Measures or related activities is considered for purposes of this Agreement as a "Project." The Agency may undertake all or any portion of each such Project on its own or in conjunction and cooperation with the United States, the State, or any other public or private entity.

10.2 Member Participation. A Project may involve all or less than all the Members, and no Member shall be required to be involved in a Project, as a Member of the Agency, involving less than all of the Members.

10.3 Project Agreement. Prior to undertaking any Project, the Members electing to participate in the Project shall enter into a Project Agreement. Except as may be explicitly provided in this Agreement, each Project Agreement shall provide the terms and conditions by which the Members that enter into the Project Agreement will participate in the Project. All assets, rights, benefits and obligations attributable to the Project shall be assets, rights, benefits and obligations of those Members which have entered into the Project Agreement. Any debts, liabilities, obligations or indebtedness incurred by the Agency in regard to a particular Project shall be the debts, liabilities, obligations or indebtedness of the Members who have executed the

respective Project Agreement in accordance with the terms of such Project Agreement and shall not be the debts, liabilities, obligations and indebtedness of those Members who have not executed the Project Agreement. If a Project is to be undertaken by less than all of the Members of the Agency, the Members intending to participate in that Project shall each appoint a representative to a Project committee for that Project.

10.4 Board Approval. The Board of Directors shall have the authority to disapprove any Project Agreement upon a determination that the Project Agreement has specific, substantial adverse impacts upon Members that have not executed the Project Agreement.

ARTICLE XI: COMMITTEES

The Board may from time to time appoint one or more advisory committees or establish standing committees to assist in carrying out the objectives of the Agency. The Board shall determine the purpose and need for such committees and the necessary qualifications for individuals appointed to them. Each advisory or standing committee shall include at least one representative of a Member and a representative of a Member shall act as the chair thereof. However, no committee or participant on such committee shall have any authority to act on behalf of the Agency.

ARTICLE XII: ACCOUNTING PRACTICES

12.1 General. The Board shall establish and maintain such funds and accounts as may be required by generally accepted utility accounting practice.

12.2 Fiscal Year. Unless the Directors decide otherwise, the fiscal year for the Agency shall be March 1 through the last day of February of the following year.

12.3 Auditor.

12.3.1 An Auditor shall be chosen annually by, and serve at the pleasure of the Board. As provided for in Article VII (Director Meetings) of this Agreement, the Auditor shall be chosen at the first Board meeting. An Auditor may serve for multiple consecutive terms. The Auditor may resign at any time upon written notice to the Board.

12.3.2. The Auditor shall make an annual audit of the accounts and records of the Agency. A report shall be filed as a public record with the Auditor of the county where the Agency is domiciled consistent with Government Code section 6505, and with each agency that is a Member. Such report also shall be filed with the Secretary of State within twelve (12) months of the end of the fiscal year under examination.

12.4 Duties of the Treasurer. The Treasurer shall be the depository and have custody of all money of the Agency from whatever source and shall perform the duties specified in Government Code section 6505.5. The Treasurer shall be bound in accordance with Government Code section 6505.1 and shall pay demands against the Agency that have been approved by the Board. All funds of the Agency shall be strictly and separately accounted for, and regular reports shall be rendered to the Board of all receipts and disbursements at least quarterly during the

fiscal year. The books and records of the Agency shall be open to inspection by a Director at all reasonable times upon reasonable notice.

ARTICLE XIII: BUDGET AND EXPENSES

13.1 General Expense Accounts. For the purpose of funding general expenses for the ongoing operations of the Agency, there shall be established by the Board and approved in connection with the annual budget process a General Expense Account. Contributions to this General Expense Account shall be allocated fifty (50) percent to the State Water Project Contractors Authority and fifty (50) percent to the San Luis & Delta-Mendota Water Authority. The other Parties shall not be required to contribute to this General Expense Account, other than indirectly as a member of the State Water Project Contractors Authority and/or the San Luis & Delta-Mendota Water Authority.

13.2 Project Expense. Expenses associated with each Project shall be allocated among those Members participating in the Project. The method of allocation shall be established by the participating Members through the Project Agreement.

13.3 Return of Contributions. In accordance with Government Code section 6512.1, repayment or return to the Members of all or any part of any contributions made by Members and any revenues by the Agency may be directed by the Board at such time and upon such terms as the Board may decide. The Agency shall hold title to all funds and property acquired by the Agency during the term of this Agreement.

13.4 Issuance of Bonds. The issuance of bonds, notes or other forms of indebtedness, including entering into leases for real property or equipment, shall be approved at a meeting of the Directors by a supermajority of at least seventy (70) percent of all Directors. In the event of approval of indebtedness for a Project, bonds, notes, or other forms of indebtedness or leases of property for the Project must be approved by a supermajority of at least seventy (70) percent of the Directors who represent the Members that are parties to the Project Agreement for that Project.

ARTICLE XIV: LIABILITIES

14.1 No Member Liability. The debt, liabilities and obligations of the Agency shall be the debts, liabilities and obligations of the Agency alone, and not the Members.

14.2 Indemnity. Funds of the Agency may be used to defend, indemnify and hold harmless the Agency, each Member, each Director, and any officers, agents and employees of the Agency for their actions taken within the course and scope of their duties while acting on behalf of the Agency, including pursuant to a Project Agreement. Other than for gross negligence or intentional acts, the Agency shall indemnify and hold harmless each Member, its officers, agents and employees from and against all claims, demands, or liability, including legal costs, arising out of or are encountered in connection with this Agreement and the activities conducted hereunder and shall defend each of them against any claim, cause of action, liability, or damage resulting therefrom. Should funds of the Agency be used pursuant to this paragraph as a result of actions taken under a Project Agreement, the provisions of paragraph 10.3

regarding responsibility for costs and other obligations related to a Project Agreement shall apply.

ARTICLE XV: WITHDRAWAL OF MEMBERS

15.1 Termination of Membership. The Board of Directors may terminate the membership of any Member upon good cause and a two-thirds majority vote. Good cause includes, but is not limited to, Members not possessing powers common to the other Members.

15.2 Unilateral Withdrawal. A Member may unilaterally withdraw from this Agreement without causing or requiring termination of this Agreement, effective upon sixty (60) days' written notice to the Executive Director.

15.3 Effect of Withdrawal or Termination.

15.3.1 A Party whose membership has been terminated or who withdraws shall remain obligated to pay its share of all debts, liabilities and obligations of the Agency incurred or accrued prior to the effective date of such termination or withdrawal other than debts, liabilities and obligations incurred pursuant to any Project Agreement to which the withdrawing or terminating Member is not a participant.

15.3.2 In the event the Party whose membership has been terminated or who withdraws has any rights in any Conservation Measures or obligations to the Agency, the Party cannot sell, lease, or transfer such rights or be relieved of its obligations, except in accordance with a written agreement executed between it and the Agency.

15.3.3 No refund or repayment of the initial commitment of funds shall be made to a Party whose membership has been terminated or who withdraws whether pursuant to this Article or any other Article of this Agreement. The refund or repayment of any other contribution shall be made in accordance with the terms and conditions upon which the contribution was made, or other agreement of the Agency and withdrawing Member.

15.4 Rescission or Termination of Agency. This Agreement may be rescinded and the Agency terminated by unanimous written consent of all Members, except during the outstanding term of any Agency indebtedness. Nothing in this Agreement shall prevent the Members from entering into other joint exercise of power agreements.

15.5 Return of Contribution. Upon termination of this Agreement, any surplus money on-hand shall be returned to the Members in proportion to their contributions made. The Board of Directors shall first offer any property, works, rights and interests of the Agency for sale to the Members on terms and conditions determined by the Board. If no such sale to Members is consummated, the Board shall offer the property, works, rights, and interest of the Agency for sale to any governmental agency, private party or persons for good and adequate consideration. The net proceeds from any sale shall be distributed among the Members in proportion to their contributions made. If no such sale is consummated, then all property, works, rights, and interests of the Agency shall be given equally to all of the Members that financed the property, works, rights and interests.

ARTICLE XVI: BYLAWS

At, or as soon as practicable after, the first meeting of the Board of Directors, the Board shall draft and approve Bylaws of the Agency to govern the day-to-day operations of the Agency.

ARTICLE XVII: MISCELLANEOUS PROVISIONS

17.1 Non-Waiver of Sovereign Authority. Nothing herein shall constitute a waiver or relinquishment of sovereign authority of any Member with respect to any decision related hereto, including, but not limited to, the decision to participate in any action hereunder or to participate in an action separate and apart herefrom.

17.2 No Predetermination or Irretrievable Commitment of Resources. Nothing herein shall constitute a determination that any action, including Conservation Measures, shall be undertaken or that any irretrievable commitment of resources shall be made, until such time as the required compliance with the California Environmental Quality Act, National Environmental Policy Act, or permit requirements, as applicable, has been completed.

17.3 Notices. Notices to a Director or Member hereunder shall be sufficient if delivered to the principal office of the respective Director or Member and addressed to the Director or Member. Delivery may be accomplished by U.S. Postal Service, private mail service, or electronic mail.

17.4 Amendments To Agreement. This Agreement may be amended or modified at any time only by subsequent written agreement approved and executed by each of the Members.

17.5 Agreement Complete. The foregoing constitutes the full and complete Agreement of the Members. There are no oral understandings or agreements not set forth in writing herein.

17.6 Severability. Should any part, term or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any applicable Federal law or any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, or provisions hereof shall not be affected thereby, provided however, that if the remaining parts, terms, or provisions do not comply with Government Code sections 6500 *et seq.*, this Agreement shall terminate.

17.7 Withdrawal by Operation of Law. Should the participation of any Member to this Agreement be decided by the courts to be illegal or in excess of that Member's authority or in conflict with any law, the validity of the Agreement as to the remaining Members shall not be affected thereby.

17.8 Assignment. Except as otherwise provided in this Agreement, the rights and duties of the Members may not be assigned or delegated without the written consent of all other Members. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void.

17.9 Binding on Successors. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Members hereto. No creditor, assignee, or third-party beneficiary of any Member shall have any right, claim or title to any part, share interest, fund, or asset of the Agency.

17.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

17.11 Singular Includes Plural. Whenever used in this Agreement, the singular form of any term includes the plural form and the plural form includes the singular form.

17.12 Limitations on Liability. Section 14.2 of this Agreement defines the scope of the Agency's duty to defend, indemnify and hold harmless any Director, officer, agent or employee. The Agency may purchase such insurance as the Board may deem appropriate for this purpose. Notwithstanding Government Code section 6507, if, despite the separate nature of the Agency from its Members, and if the Members elect to be responsible for the liabilities imposed on the Agency, then, in contemplation of section 895.2 of the Government Code, and pursuant to the authority contained in sections 895.4 and 895.6 of that Code, each of the Members assumes that portion of the liability imposed upon the Agency or any of its Members, officers, agents or employees by law for injury caused by any negligent or wrongful act or omission occurring during the performance of any Project Agreement entered into by that Member pursuant to Article X (**Special Projects**) of this Agreement that is not covered by insurance, in accordance with the provisions of the Project Agreement. As to any other injury caused by any negligent or wrongful act or omission occurring during the performance of this Agreement, the State Water Project Contractors Authority and the San Luis & Delta-Mendota Water Authority assume the liability imposed upon the Agency or any of its Members, officers, agents or employees by law that is not covered by insurance, in the same proportions as their respective contributions to the General Expense Account provided for under Article XIII (**Budget and Expenses**) of this Agreement. Each Member shall, to the extent provided herein, indemnify and hold harmless the other Members for any loss, costs or expenses that may be imposed on such other Members solely by virtue of Government Code section 895.2. The provisions of section 2778 of the Civil Code are made a part of this Agreement as though fully set forth in this Agreement.

17.13 Official Bonds. The Executive Director and the Auditor are designated as officers required having and filing official bonds pursuant to Government Code section 6505.1 in amounts to be fixed by the Board.

IN WITNESS WHEREOF, the Members hereto have executed this Agreement by authorized officials thereof on the dates indicated below, which Agreement may be executed in counterparts.

Dated: _____

The Metropolitan Water District of Southern California

By: _____
Jeffery Kightlinger, General Manager

17.9 Binding on Successors. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Members hereto. No creditor, assignee, or third-party beneficiary of any Member shall have any right, claim or title to any part, share interest, fund, or asset of the Agency.

17.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

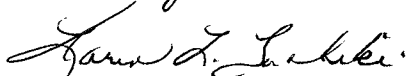
17.11 Singular Includes Plural. Whenever used in this Agreement, the singular form of any term includes the plural form and the plural form includes the singular form.

17.12 Limitations on Liability. Section 14.2 of this Agreement defines the scope of the Agency's duty to defend, indemnify and hold harmless any Director, officer, agent or employee. The Agency may purchase such insurance as the Board may deem appropriate for this purpose. Notwithstanding Government Code section 6507, if, despite the separate nature of the Agency from its Members, and if the Members elect to be responsible for the liabilities imposed on the Agency, then, in contemplation of section 895.2 of the Government Code, and pursuant to the authority contained in sections 895.4 and 895.6 of that Code, each of the Members assumes that portion of the liability imposed upon the Agency or any of its Members, officers, agents or employees by law for injury caused by any negligent or wrongful act or omission occurring during the performance of any Project Agreement entered into by that Member pursuant to Article X (**Special Projects**) of this Agreement that is not covered by insurance, in accordance with the provisions of the Project Agreement. As to any other injury caused by any negligent or wrongful act or omission occurring during the performance of this Agreement, the State Water Project Contractors Authority and the San Luis & Delta-Mendota Water Authority assume the liability imposed upon the Agency or any of its Members, officers, agents or employees by law that is not covered by insurance, in the same proportions as their respective contributions to the General Expense Account provided for under Article XIII (**Budget and Expenses**) of this Agreement. Each Member shall, to the extent provided herein, indemnify and hold harmless the other Members for any loss, costs or expenses that may be imposed on such other Members solely by virtue of Government Code section 895.2. The provisions of section 2778 of the Civil Code are made a part of this Agreement as though fully set forth in this Agreement.

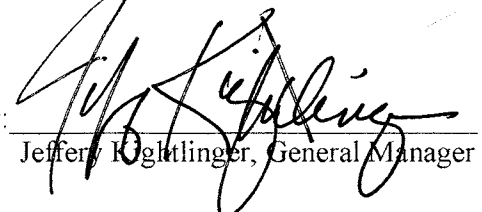
17.13 Official Bonds. The Executive Director and the Auditor are designated as officers required having and filing official bonds pursuant to Government Code section 6505.1 in amounts to be fixed by the Board.

IN WITNESS WHEREOF, the Members hereto have executed this Agreement by authorized officials thereof on the dates indicated below, which Agreement may be executed in counterparts.

Dated: August 11, 2009



APPROVED AS TO FORM
Karen L. Tachiki
General Counsel

The Metropolitan Water District of Southern California

By: 
Jeffrey Kogutlinger, General Manager

Dated: _____

Kern County Water Agency

By:  _____
James M. Beck, General Manager

Dated: _____

State Water Project Contractors Authority

By: _____
William J. Brennan, President

Dated: _____

San Luis & Delta-Mendota Water Authority

By: _____
Daniel G. Nelson, Executive Director

Dated: _____

Westlands Water District

By: _____
Thomas W. Birmingham, General
Manager/General Counsel

Dated: _____

Santa Clara Valley Water District

By: _____
Beau Goldie, Chief Executive Officer

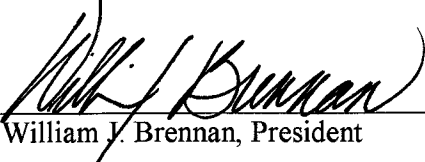
Dated: _____

Kern County Water Agency

By: _____
James M. Beck, General Manager

Dated: 8/13/09

State Water Project Contractors Authority

By: 
William J. Brennan, President

Dated: _____

San Luis & Delta-Mendota Water Authority

By: _____
Daniel G. Nelson, Executive Director

Dated: _____

Westlands Water District

By: _____
Thomas W. Birmingham, General
Manager/General Counsel

Dated: _____

Santa Clara Valley Water District

By: _____
Beau Goldie, Chief Executive Officer

Dated: _____

Kern County Water Agency

By: _____
James M. Beck, General Manager

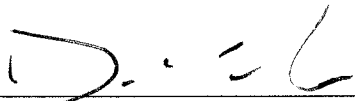
Dated: _____

State Water Project Contractors Authority

By: _____
William J. Brennan, President

Dated: August 14, 2009

San Luis & Delta-Mendota Water Authority

By: 
Daniel G. Nelson, Executive Director

Dated: _____

Westlands Water District

By: _____
Thomas W. Birmingham, General
Manager/General Counsel

Dated: _____

Santa Clara Valley Water District

By: _____
Beau Goldie, Chief Executive Officer

Dated: _____

Kern County Water Agency

By: _____
James M. Beck, General Manager

Dated: _____

State Water Project Contractors Authority

By: _____
William J. Brennan, President

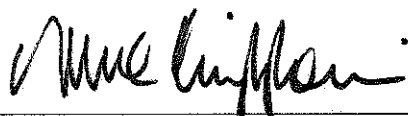
Dated: _____

San Luis & Delta-Mendota Water Authority

By: _____
Daniel G. Nelson, Executive Director

Dated: 8.18.09

Westlands Water District

By: 
for Thomas W. Birmingham, General
Manager/General Counsel

Dated: _____

Santa Clara Valley Water District

By: _____
Beau Goldie, Chief Executive Officer

Dated: _____

Kern County Water Agency

By: _____
James M. Beck, General Manager

Dated: _____

State Water Project Contractors Authority

By: _____
William J. Brennan, President

Dated: _____

San Luis & Delta-Mendota Water Authority

By: _____
Daniel G. Nelson, Executive Director

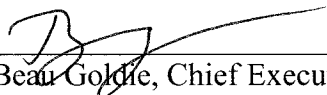
Dated: _____

Westlands Water District

By: _____
Thomas W. Birmingham, General
Manager/General Counsel

Dated: 8-14-09

Santa Clara Valley Water District

By:  _____
Beau Goldie, Chief Executive Officer