

JOINT GROUNDWATER RECHARGE AND FACILITIES PLANNING AGREEMENT

This Joint Groundwater Recharge and Facilities Planning Agreement (“**Agreement**”) is entered into and effective as of this ____ day of _____, 2023 (“**Effective Date**”), by and between the San Bernardino County Flood Control District (“**Flood Control District**”) and the San Bernardino Valley Municipal Water District (“**San Bernardino Valley**”). Flood Control District and San Bernardino Valley may be referred to herein individually as a “**Party**” or together, as the “**Parties**.”

RECITALS

WHEREAS, the Flood Control District was created by the San Bernardino County Flood Control Act of 1939 (the “**Act**”), found in Chapter 43 of the Water Code Appendix, with the statutory purpose to “provide for the control of the flood and storm waters of the Flood Control District” and “to conserve such waters for beneficial and useful purposes” by capturing, spreading, storing, retaining, and through percolation; and

WHEREAS, the Act also empowers the Flood Control District to spread, store, retain and percolate such waters into groundwater basins for the common benefit of the Flood Control District; and

WHEREAS, the Flood Control District owns a series of flood control detention basins, drainage channels, and associated appurtenances located within its service area (“**Flood Control District Facilities**”) that are used to temporarily detain water from rain events that could cause flooding (“**Flood Control Activities**”),

WHEREAS, said detention basins, drainage channels, and associated appurtenances can also be used, when they are not needed for flood control, for groundwater water transport, capture, spreading and recharge (“**Recharge Activities**”); and

WHEREAS, San Bernardino Valley was formed in 1954 as a regional agency for the purpose of planning a long-range water supply for the San Bernardino Valley, importing water into its service area from the State Water Project, and managing groundwater storage within its boundaries; and

WHEREAS, both the Flood Control District and San Bernardino Valley rely on revenues collected from property taxes on properties located within the Parties’ common service area for the common and mutual benefit of such properties; and

WHEREAS, San Bernardino Valley estimates that its ratepayers will, over the period from 1960 to 2085, have invested over \$1 billion on State Water Project payments and on facilities constructed to convey supplemental water for direct delivery and for recharge of the groundwater basins in San Bernardino Valley’s service area; and

WHEREAS, the use of the Foothill Pipeline, Devil Canyon-Azusa Pipeline, East Branch Extension Pipeline, as well as other facilities owned or operated by San Bernardino Valley for

the purpose of groundwater recharge, is of benefit to San Bernardino Valley's customers who reside in the San Bernardino Valley and within the Flood Control District's Zones 2 and 3; and

WHEREAS, Flood Control District provided San Bernardino Valley with a temporary construction easement and encroachment permit for a portion of San Bernardino Valley's Foothill Pipeline which was inadvertently not granted to San Bernardino Valley as an easement; and

WHEREAS, Flood Control District and San Bernardino Valley have a long history of cooperation dating back to an agreement dated September 25, 1972 ("**1972 Agreement**"), whereby Flood Control District allowed San Bernardino Valley to use Flood Control District Facilities for groundwater recharge in the San Bernardino Basin and provided San Bernardino Valley with easements for the construction and operation of facilities relating to water transmission, water capture, spreading, and recharge; and

WHEREAS, for approximately 50 years, the Parties have worked cooperatively to utilize the Flood Control District Facilities and certain improvements owned and operated by San Bernardino Valley ("**Existing Recharge Improvements**") for groundwater recharge when Flood Control District Facilities are not needed for flood control and when the use of such basins does not otherwise compromise the District's mission of protecting life and property from the significant risks posed by flooding; and

WHEREAS, during this 50 year period, San Bernardino Valley has paid all of the associated costs for the Existing Recharge Improvements, and the Parties seamlessly coordinated this effort for the benefit of the citizens of the San Bernardino Valley; and

WHEREAS, Recharge Activities, related environmental permits and mitigation, and project funding collaboration will likely reduce Flood Control District's costs due to the reduction or elimination of duplicative Flood Control District's activities thereby generating a Flood Control District benefit; and

WHEREAS, San Bernardino Valley has obtained permits from necessary regulating agencies to routinely clear and maintain the Waterman Detention Basins; and

WHEREAS, San Bernardino Valley desires to construct certain recharge improvements, as approved by Flood Control District to increase Recharge Activities at Flood Control District Facilities; and

WHEREAS, the Parties are both signatories to the Upper Santa Ana River Watershed Integrated Regional Watershed Management Plan which establishes goals and objectives for water management, including groundwater recharge in various locations which include Flood Control District detention basins; and

WHEREAS, the increased recharge that the Parties desire will help meet current and future demands for water among their shared constituents; and

WHEREAS, water conservation and recharge are part of the Flood Control District's missions, as set forth in the San Bernardino County Flood Control District Act (Cal. Water Code App. § 43-1 *et seq.*); and

WHEREAS, as of the Effective Date of this Agreement, the Flood Control District has determined that the Recharge Activities contemplated under this Agreement are consistent with its secondary missions; and

WHEREAS, as of the Effective Date of this Agreement, the proposed Recharge Activities, in conjunction with the defense, indemnity and other provisions of this Agreement, have been determined by the Flood Control District not to interfere with Flood Control District's statutory objectives and purposes to provide for the control of flood and storm waters and to safeguard the safety of public health and property; and

WHEREAS, in 2013, the Parties entered into a ten year Planning Memorandum of Understanding (Agreement No. 13-608; the "**2013 Agreement**") to outline the cooperative manner in which the Parties would work together to identify and analyze the suitability of Flood Control District Facilities for recharge purposes; and

WHEREAS, the 2013 Agreement expires in 2023 and the Parties wish to terminate and supersede the 2013 Agreement with this Agreement; and

WHEREAS, the Parties desire to continue use of Flood Control District Facilities and Existing Recharge Improvements for Recharge Activities and to collaborate to develop mutually beneficial approaches and potential future facilities for beneficial water replenishment operations, while also prioritizing the use of Flood Control District Facilities to maintain adequate flood protection for the safety and protection of the public; and

WHEREAS, the Parties now wish to enter into this Agreement to allow San Bernardino Valley non-exclusive access to develop, construct, operate, and maintain Flood Control District Facilities, Existing Recharge Improvements, and potential future recharge improvements necessary to conduct Recharge Activities as described herein and as permitted by the Flood Control District; and

WHEREAS, as to Cactus Basins, the Parties acknowledge that San Bernardino County ("**County**") and Flood Control District have identified some risks to the County, Flood Control District, and other unrelated entities arising out of recharge in Cactus Basins such that there will not be recharge at this time, and if recharge were to occur, it will be subject to a separate agreement; and

WHEREAS, San Bernardino Valley agrees to indemnify Flood Control District and County pursuant to indemnification and insurance provisions that adequately protect Flood Control District and County from any and all claims, actions, losses, and damages arising from use of Flood Control District Facilities utilized for Recharge Activities; and

WHEREAS, this Agreement establishes a framework for the joint planning and development of Recharge Activities and future recharge improvements, and allows San Bernardino Valley non-exclusive access to the Flood Control District Facilities for Recharge Activities as permitted by Flood Control District; and

WHEREAS, the Flood Control District and San Bernardino Valley shall enter into separate operations and maintenance agreements (“**O&M Agreements**”) and related permits for the use of Flood Control Facilities for Recharge Activities to further define the roles and responsibilities of the parties in operating and maintaining the Flood Control Facilities and recharge improvements pursuant to this Agreement; and

WHEREAS, as provided herein, this Agreement does not authorize nor guarantee any specific project, and the Parties will comply with the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) (“**CEQA**”) prior to approving any specific project; and

WHEREAS, the Parties wish for this Agreement to terminate and supersede the 1972 Agreement and the 2013 Agreement, with the exception of the easements granted to San Bernardino Valley under the 1972 Agreement; and

AGREEMENT

NOW, THEREFORE, in consideration of the matters recited and the mutual promises, covenants, and conditions set forth in this Agreement, the Parties hereby agree as follows:

1. **Recitals.** The above recitals are hereby incorporated into this Agreement as if fully set forth herein.
2. **Prior Agreements.** This Agreement supersedes the 1972 Agreement and the 2013 Agreement between the Parties, which shall be mutually terminated as of the Effective Date of this Agreement. The easements granted under the 1972 Agreement are attached hereto as Attachment 1 and shall not be terminated.
 - a. In 1972, Flood Control District provided San Bernardino Valley with a temporary construction easement and encroachment permit for a portion of San Bernardino Valley’s Foothill Pipeline which was inadvertently not granted to San Bernardino Valley as a permanent easement. Flood Control District and San Bernardino Valley agree to work together on a permanent easement. Additionally, in 1972, the Parties entered into a Common Use Agreement (“**CUA**”), attached hereto as Exhibit C to Attachment 1, which references the 1972 Agreement in Section 2 of the CUA. The Parties hereby amend Section 2 of the CUA to delete the reference to the 1972 Agreement and replace the reference to this Agreement.
3. **Term.** The initial term of this Agreement shall commence on _____, 2023 and expire on _____, 2043 (“**Initial Term**”). Thereafter, beginning on _____, 2043, and on each anniversary date thereafter, the term of this Agreement will be extended automatically for one (1) additional year (“**Extended Term**”), so as to

have a rolling term of ten (10) additional years. At least four (4) months prior to the expiration of the Initial Term or any Extended Term, the Parties shall meet and confer to review this Agreement and determine whether any provision of the Agreement has been breached or violated or otherwise requires amendment. The Parties shall make a good faith effort to resolve any potential disagreements before taking action to terminate this Agreement. Either Party may terminate any automatic renewal and extension so long as such termination action is undertaken by the governing board of the terminating Party and is not arbitrary or unreasonable. The terminating Party shall give the other party written notice of nonrenewal no later than sixty (60) days prior to the automatic one (1) year renewal date. Any such notice, properly given, shall serve to terminate the automatic one (1) year renewal and extension provision only, and this Agreement shall remain in effect for the balance of the term then outstanding to allow for the winding down of Water Recharge Activities. In the event that either Party exercises its right to terminate the automatic renewal and extension provision under this paragraph, the Parties may subsequently reinstate the automatic renewal and extension provision by mutual written agreement.

4. **Flood Control Priority.**

- a. **Priorities.** San Bernardino Valley's access to and use of the Flood Control District Facilities for Recharge Activities is, and shall be, subordinate to the flood control and protection purposes of Flood Control District, and shall in no way impair or conflict with Flood Control District's Flood Control Activities. Any and all Recharge Activities at Flood Control Facilities shall be consistent with the Flood Control District's systemwide maintenance permit and all other applicable regulatory permits issued to the Flood Control District.
- b. **Flood Control District Control.** To protect property and public safety and to maintain the full flood control capacity of the Flood Control District Facilities, Flood Control District shall have sole discretionary authority to reduce, suspend or terminate Recharge Activities upon a determination by the Flood Control District's Chief Flood Control Engineer, or his or her designee, that Recharge Activities at Flood Control District Facilities are incompatible with the Flood Control District's Flood Control Activities.
- c. **No Known Present Conflict.** As of the Effective Date of this Agreement, the Parties do not anticipate that Recharge Activities will conflict with District's flood control activities or the operation of any Flood Control District Facilities.

5. **Facilities and Sources of Water.**

- a. **Flood Control District Facilities.** The Flood Control District Facilities subject to this Agreement are real and personal property owned by in the vicinity of the following facilities:
- i. East Twin Basins
 - ii. Lynwood Basins
 - iii. Oak Glen Basins
 - iv. Sweetwater Basins
 - v. Waterman Basins
 - vi. Wildwood Basins
 - vii. Wilson Basins
 - viii. Natural and improved channels, streams, and rivers, as identified in an O&M Agreement(s) and Flood Control District permit.
- b. **Flood Control District Facilities – Cactus Basins.** The Parties acknowledge the County and Flood Control District have identified some risks to the County, Flood Control District, and other unrelated entities arising out of recharge in Cactus Basins. At this time, there will not be recharge in Cactus Basins. The risks identified by the County and Flood Control District are not exhaustive, some are unknown, and could fluctuate over time. The County, Flood Control District and San Bernardino Valley will continue to consider strategies and alternatives to address the risks and that if recharge were to occur, it will be subject to a separate agreement mutually agreed upon by the Parties, that may include an implementation and adaptive management plan, or other conditions. Nothing in this section shall be deemed a waiver of the County or Flood Control District's rights, nor agreement, acknowledgement, or consent to recharge in Cactus Basins.
- c. **Existing Recharge Improvements.** Existing Recharge Improvements are the existing equipment, facilities, and/or appurtenances that have been installed on or within Flood Control District Facilities that are owned and operated by San Bernardino Valley and described in Attachment 2.
- d. **Recharge Water Sources.** Water sources to be applied for Recharge Activities may include imported State Water Project water, recycled or reclaimed water, and/or diverted stormwater. All water made available for Recharge Activities shall be referred to herein as "Recharge Water."

6. **Mutual Use of Flood Control District Facilities and Existing Recharge Improvements for Recharge Activities.**

- a. **Mutual Use.** San Bernardino Valley and Flood Control District understand and consent to the mutual use of Flood Control District Facilities and Existing Recharge Improvements for Flood Control

Activities and Recharge Activities consistent with the priorities set forth in Section 4.

- i. Flood Control District will work cooperatively with San Bernardino Valley to maximize the quantity of water that can be used for Recharge Activities at Flood Control District Facilities, while maintaining or improving the protection of the public from the dangers of flooding.
 - ii. San Bernardino Valley shall provide to the Flood Control District all of the details associated with the proposed use of a Flood Control District Facility for Recharge Activities, including, but not limited to, any proposed operational plan and estimated amount and quality of Recharge Water.
 - iii. Flood Control District agrees to operate Flood Control District Facilities consistent with the applicable O&M Agreement and Flood Control District permit.
- b. **Operation & Maintenance.** The Parties shall enter into a separate agreement on the operation and maintenance of Flood Control District Facilities for Recharge Activities. Any such agreement shall be consistent with the priorities set forth in Section 4.
- i. San Bernardino Valley shall be responsible for obtaining, paying for and complying with all necessary encroachment permits, easements, water rights, and any other applicable permits, authorizations or approvals associated with the use of Flood Control District Facilities and Existing Recharge Improvements for Recharge Activities to the extent such activities are not covered by existing permits held or obtained by the Flood Control District. Any such permits or other approvals required by Flood Control District shall be consistent with and not additive of the terms of this Agreement.
 - ii. The Parties agree to cooperate to obtain any necessary regulatory permits and/or easements to facilitate the construction, operation, and maintenance required for conducting Recharge Activities at Flood Control District Facilities and Existing Recharge Improvements to the extent such activities are not covered by existing permits held or obtained by the Flood Control District. The Parties shall include each other as an agency that can perform work under regulatory permits or other approvals required for conducting Recharge Activities at Flood Control District Facilities and Existing Recharge Improvements. The Parties agree to cooperate in the shared pursuit and use of regulatory permits for

the mutual benefit of the Parties, to the extent possible, and without cost to each other.

- c. **Costs.** Within thirty (30) days of receipt of an invoice (which will be issued at least quarterly by the Flood Control District), San Bernardino Valley agrees to pay all costs that arise out of Recharge Activities at Flood Control District Facilities, including but not limited to regulatory costs and maintenance such as vector control, weed control, routine scarification and trash removal as agreed to by the Joint Implementation Committee described in Section 8 herein. Such San Bernardino Valley costs may include, but are not limited to, regulatory permitting costs, compliance costs, and enforcement costs imposed by third parties. Subject to availability and Flood Control District approval, San Bernardino Valley may contract and pay for Flood Control District staff to perform planned maintenance and/or construction activities.
 - d. **Insurance.** San Bernardino Valley shall secure and maintain throughout the term of the Agreement, including any extensions of the term of the Agreement, general liability insurance, workers' compensation, automobile insurance, and environmental impairment liability insurance to adequately cover the use of Flood Control District Facilities for Recharge Activities. All such insurance policies shall name the Flood Control District and County and their directors, managers, officers, employees, agents, and volunteers as additional named insured with respect to liabilities arising out of the performance of this Agreement.
7. **Joint Project Planning.** The Parties may jointly or separately explore, propose, or develop capital improvement projects for new facilities or major upgrades to Flood Control District Facilities and/or Existing Recharge Improvements that provide both new or enhanced opportunities for Flood Control Activities and/or Recharge Activities. Any projects to enhance Recharge Activities at Flood Control District Facilities shall be subject to review and approval by the Flood Control District.
- a. **Cost Sharing.** Subject to future review and approval, costs of any jointly planned capital improvement project shall be shared proportionally based on relative benefit to the Flood Control District and San Bernardino Valley; provided that the Parties together or separately may seek outside funding sources. The Parties agree to cooperate to obtain any necessary regulatory permits and/or easements to facilitate the construction, operation, and maintenance of improvement projects. All costs associated with improvements to Flood Control District Facilities to conduct Recharge Activities, including but not limited to design, engineering, and modeling costs, environmental permitting and compliance costs, and construction costs, shall be the responsibility of San Bernardino Valley.

8. **Joint Implementation Committee.** The Parties shall work cooperatively to maximize the benefits of ongoing and proposed Recharge Activities, while maintaining or improving the protection of the public from the dangers of flooding, through a Joint Implementation Committee (“**Committee**”) comprised of representatives and technical experts selected by each Party.
- a. The Committee will meet annually, or more frequently as needed, to:
 - i. Consider potential Recharge Activities and determine priorities to maximize Recharge Activities for the following year, consistent with Flood Control District purposes and approval;
 - ii. Plan long-term maintenance and improvements of Flood Control District Facilities and Existing Recharge Improvements to maximize Recharge Activities, and assess compliance requirements of the Flood Control District’s systemwide permit and other applicable regulatory permits, and a timeline to implement planning activities;
 - iii. Review proposed capital improvement project proposals to improve and enhance Recharge Activities; and
 - iv. Identify opportunities for increased Flood Control Activities or Recharge Activities, and/or specific potential joint projects that utilize Flood Control District Facilities and/or Existing Recharge Improvements.
 - b. The Committee shall consider the potential environmental effects of the proposed Recharge Activities, including but not limited to, an evaluation of the sources and quality of Recharge Water to be applied, and whether Recharge Activities will affect Flood Control Activity, introduce water quality pollutants or mobilize existing groundwater contamination, or will cause land subsidence, liquefaction, or seepage to low lying lands in any basin to be impacted by the recharge activities. The Parties acknowledge that San Bernardino Valley will be the agency primarily leading this evaluation, given its experience with groundwater storage and knowledge of the quality and sources of Recharge Water available for recharge. Flood Control District will independently review San Bernardino Valley’s evaluation. The Parties will act in good faith to evaluate the Recharge Activities. Nothing in this paragraph shall limit San Bernardino Valley’s defense and indemnity obligations contained in this Agreement.
 - c. Considering Flood Control District’s statutory purposes and San Bernardino Valley’s goals, the Committee will determine, on a case by case basis, which Party will be in charge of seeking permits for projects and which agency will be the “Lead Agency” for purposes of complying with CEQA.

9. **Indemnification.**

- a. **San Bernardino Valley's Duty.** To the fullest extent permitted by law, San Bernardino Valley shall indemnify, defend (at San Bernardino Valley's sole cost and expense and with legal counsel approved by Flood Control District, which approval shall not be unreasonably withheld), protect, and hold harmless Flood Control District, San Bernardino County, and all of their authorized representatives, designees, officers, employees, consultants, agents, volunteers, successors, and assigns, (collectively, the "Indemnified Parties"), from and against any and all claims, demands, obligations, damages, actions, losses, liabilities, costs, and expenses of every kind and nature whatsoever (individually, a "Claim," collectively, "Claims") which may arise from or in any manner related (directly or indirectly) to this Agreement (including, without limitation, a release or threatened release of any hazardous substance or hazardous waste into the environment, land subsidence, liquefaction, seepage to low lying lands, and introduction and/or mobilization of contamination or pollutants in groundwater) or San Bernardino Valley's presence or activities conducted in Flood Control District Facilities regardless of any active or passive negligence or strict liability of an Indemnified Party. As used herein, the phrases "contamination," "pollutants," "hazardous substance," and "hazardous waste" shall coincide with the broadest definition thereof contained in any applicable federal or state laws. Notwithstanding the foregoing, nothing herein shall be construed to require San Bernardino Valley to indemnify any Indemnified Party from any Claim arising from the sole or gross negligence, intentional acts, or willful misconduct of the Indemnified Parties with respect to the operation and maintenance of the Flood Control District Facilities.
- b. **Separate Liability/No Limitation.** San Bernardino Valley's liability for indemnification hereunder is in addition to any liability San Bernardino Valley may have to Flood Control District and County for a breach by San Bernardino Valley of any of the provisions of this Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit San Bernardino Valley's indemnification and defense obligations or other liability hereunder.
- c. **Survival.** This provision shall survive the termination of any other agreement between San Bernardino Valley and Flood Control District. San Bernardino Valley's obligations to indemnify and to defend Indemnified Parties pursuant to this Agreement shall survive the expiration or earlier termination of this Agreement until such time as any action against the Indemnified Parties for such matter indemnified hereunder is fully and finally resolved or barred by the applicable statute of limitations or statute of repose.

- d. **Separate Agreement.** Notwithstanding anything to the contrary herein, including but not limited to, the indemnity obligations set forth in Section 9(a) above, the Parties may adopt different, superseding indemnity provisions in a separate agreement to address the specific risks and liabilities applicable to recharge in a particular basin, such as the Cactus Basins as set forth in Section 5(b).

10. General Provisions

- a. **Early Termination.** Either Party may terminate this Agreement prior to its expiration date for cause, *provided* that it has issued 60-day written notice pursuant to Section 10.o, and opportunity to cure to the other Party prior to termination.
- b. **Non-Exclusive Agreement.** Nothing in this Agreement shall prevent either Party from working cooperatively with other individuals, public agencies, or private organizations to improve flood protection or groundwater recharge within that Party's respective jurisdiction. San Bernardino Valley may enter into separate agreements with other water agencies under which such agencies shall utilize the Recharge Improvements for recharge into the Recharge Area within the Flood Control District Facilities. District shall not be a party to such agreements and shall not be liable to any third parties, such as the water agencies, in the event that the District exercises its options to reduce, suspend, or terminate under this Agreement.
- c. **Authority.** Each signatory of this Agreement represents that he/she is authorized to execute this Agreement on behalf of the Party for which he/she signs. Each Party represents that it has legal authority to enter into this Agreement and to perform all obligations under the Agreement.
- d. **Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, except for its conflicts of law rules. Any suit, action, or proceeding brought under the scope of this Agreement shall be brought and maintained to the extent allowed by law in the County of San Bernardino, California.
- e. **Construction and Interpretation.** This Agreement may not be construed for or against any Party by reason of the authorship or alleged authorship of any provision. The paragraph headings are for ease of reference only and shall not be used in constructing or interpreting this Agreement. As used in this Agreement, the phrase "including but not limited to" and similar language is meant to signal the Parties' intent that the listed item(s) should not be construed as limiting under the principle of *ejusdem generis* or otherwise.
- f. **Entire Agreement.** This Agreement contains the entire understanding between the Parties relating to the rights created herein. All prior or contemporaneous drafts, agreements, understandings, representations, statements, oral or written, are merged into this Agreement and shall be of no further force or effect.

- g. **Amendment.** No amendment to this Agreement will be effective unless it is in writing and is signed by each of the Parties to this Agreement.
- h. **Attorney's Fees and Costs.** Regardless of whether it is the prevailing party in any litigation or other action to enforce or interpret this Agreement, each Party shall bear its own attorneys' fees, costs of suit, and other necessary disbursements. This paragraph shall not apply to the costs or attorneys' fees relative to the indemnification provisions of Section 9.
- i. **Necessary Actions.** Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this Agreement.
- j. **Force Majeure.** The failure of either party to perform any obligation otherwise due solely as a result of (a) governmental action, laws, orders, regulations, directions or requests, or (b) as a result of events, such as war, acts of public enemies, strikes or other labor disturbances, fires, floods, acts of God or any causes of like kind beyond the reasonable control of such party and not otherwise contemplated in this Agreement (collectively referred to as "Force Majeure"), is excused for so long as such Force Majeure exists or until the parties agree to terminate this Agreement.
- k. **Third Party Beneficiaries.** This Agreement shall not create any right or interest in any non-party or in any member of the public as a third-party beneficiary.
- l. **No Employment Relationship Created.** It is agreed that in the performance of the services by each Party to this Agreement, each Party and their officials, employees, and agents, shall act and be independent contractors of the other Party, and shall not become or act as an agent or employee of the other Party, and shall obtain no rights to any benefits which may accrue to employees of the other Party.
- m. **Severability.** No waiver by either Party of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement or of any subsequent breach by the other Party of the same provision. If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.
- n. **Counterparts.** The Parties agree that this Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which together shall constitute one and the same instrument, and that a photocopy or facsimile may serve as an original. If this Agreement is executed in counterparts, no signatory hereto shall be bound until both the parties have fully executed a counterpart of this Agreement. The Parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF, or other email transmission), which signature shall be binding on the party whose name is contained therein. Each Party providing an electronic

signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

- o. **Notices.** All notices, requests, demands, or other communications required or permitted under this Agreement shall be in writing and, except as otherwise provided herein, shall be effective upon personal delivery or three days after deposit in the United States mail, registered or certified, with first class postage fully prepaid, addressed as follows:

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

Chief Flood Control Engineer
San Bernardino County Flood Control District
825 East Third Street
San Bernardino, California 92415
Telephone: (909) 387-7906
Facsimile: (909) 387-7911

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

General Manager
San Bernardino Valley Municipal Water District
380 East Vanderbilt Way
San Bernardino, California 92408
Telephone: (909) 387-9200
Facsimile: (909) 387-9247

- p. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers or representatives as of the last day and year appearing below.

----Signatures on Following Page ----

**SAN BERNARDINO VALLEY
MUNICIPAL WATER DISTRICT**

**SAN BERNARDINO FLOOD CONTROL
DISTRICT**

By: _____
Paul R. Kielhold,
President, Board of Directors

By: _____
Dawn Rose, Chair of the Board of
Supervisors of the San Bernardino
County Flood Control District

Date: _____

Date: _____

ATTEST:

SIGNED AND CERTIFIED THAT A COPY
OF THIS CONTRACT HAS BEEN
DELIVERED TO THE CHAIRMAN OF
THE BOARD

By: _____
Jose Macedo,
Clerk of the Board

By: _____
Lynna Monell,
Clerk of the Board of Supervisors of the
County Flood Control District

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Meredith E. Nikkel,
San Bernardino Valley Municipal
Water District Special Counsel

By: _____
Sophie A. Curtis,
San Bernardino Deputy County
Counsel

Date: _____

Date: _____