EXEMPT GOVERNMENT AGENCY Per Government Code Sec. 6103

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**District Secretary, San Bernardino Valley Water Conservation District \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Agreement to Develop and Operate Enhanced Recharge Facilities**

This Agreement to Develop and Operate Enhanced Recharge Facilities ("**Agreement**") is entered into and effective this 1st day of October, 2012 by and among the San Bernardino Valley Water Conservation District (the "**Conservation District**"), the San Bernardino Valley Municipal Water District ("**Valley District**") and Western Municipal Water District of Riverside County ("**Western**"). The Conservation District, Valley District and Western are each sometimes referred to as a "**Party**" and are collectively sometimes referred to as the "**Parties.**"

Recitals

A. General Purposes.

(1) The Parties each hold water rights to the waters of the Santa Ana River and each own and operate facilities that serve to divert and/or store the waters of the Santa Ana River. Furthermore, each Party possesses critical assets and unique skills that the other Parties do not possess.

(2) The Parties wish to collaboratively use all of their respective assets and skills, including but not limited to water rights and facilities necessary or useful for the diversion and storage of water, to improve the reliability of local water supplies for their respective constituents by establishing a collaborative partnership to coordinate the use of their separate resources for mutual advantage.

(3) The Parties specifically wish to collaborate by increasing opportunities to recharge local surface water supplies, as well as State Project Water, in the San Bernardino Basin Area (the "**SBBA**"); by reducing the time and cost required to permit and construct essential public infrastructure (such as spreading basins); and by working together to achieve an efficient division of labor in the operation and maintenance of water infrastructure.

(4.) The Parties acknowledge that their water resource management activities in the Santa Ana River wash area proceed in concert with other uses of the lands in that area, including the mining of sand and gravel mineral deposits pursuant to existing leases, and habitat conservation and management, pursuant to a series of multi-agency cooperative initiatives involving local, state, and federal resource management and control agencies. The Parties' goal is to harmonize their water resource activities with these other uses, for the optimization of coordinated use by all.

(5) The Parties wish to memorialize their joint understandings by means of this Agreement.

B. Findings.

(1) The Parties agree that they must increase groundwater storage in the SBBA in order to meet current and future demands for water among their constituents.

(2) In the past, reasonable disagreements among the Parties have added unintentional and undesirable costs and complexity to the planning and permitting of important water resources projects in the region.

(3) The Parties believe that it is in their best interests, and the best interest of the public they serve, to cooperate in increasing the available water supply by establishing a new and more productive working relationship.

(4) In certain years, wet weather conditions and increased availability of State Project Water can create a limited opportunity to improve the reliability of local water supplies by increasing recharge and storage to groundwater. These favorable conditions are temporary and perishable. Therefore, time is of the essence. New inter-agency operating agreements should be established immediately in order to make the most of this and future opportunities because they occur on an irregular and unpredictable basis.

(5) Because of the limited and sporadic opportunities to augment local water supplies, the Parties intend for this Agreement to continue for a long period, thereby allowing the utilization of such limited water supplies.

Agreements

1. *Term.* The term of this Agreement shall commence on the Effective Date first written above and shall continue for a term of twenty five (25) years (“Initial Term”) , unless terminated earlier as provided in this Agreement. This Agreement may be extended by written agreement among all parties for up to five additional, consecutive five year terms (“Extension Terms”), on the same terms and conditions stated herein, provided that prior to the expiration of the term then in effect, all parties agree in writing to the applicable extension, by action of their legislative bodies, to extend the Agreement for another term.
2. *Duties of the Conservation District.*
   1. *Lease of Facilities for the Purpose of Groundwater Recharge to Valley District and Western.* The Conservation District hereby leases to Valley District and Western, for the term of this Agreement and on the terms specified herein, the surface of the lands shown on Exhibit 1 during the term of this Agreement ("**Leased Property**"). Exhibit 1A provides the legal description for the lands owned in fee by the Conservation District and Exhibit 1B provides the legal description of lands made available under existing easements under ownership by the Bureau of Land Management. Exhibit 1 is attached hereto and incorporated herein by reference. Valley District and Western shall have the right to enter upon and use the Leased Property, and any reasonably necessary subsurface areas incident thereto. Such entry and use shall be only for the purpose of recharging, storing or conveying water from any source (collectively "**recharging of water**" herein) into or through the percolation basins and other facilities owned or controlled by the Conservation District, whether existing as of the effective date of this Agreement, or as may be constructed pursuant to the terms of this Agreement, as such existing and contemplated future facilities are depicted in Exhibit 2, which is attached hereto and incorporated herein by reference). The Conservation District reserves all rights in and to the Leased Property not expressly conveyed as a part of this lease. Specific terms of this lease are as follows:
      1. Valley District and Western may construct, operate, maintain, repair, reconstruct and rehabilitate diversion facilities, recharge basins, pumps and other ancillary facilities or equipment located within the Leased Property as Valley District and Western may reasonably deem necessary for the recharging of water on the Leased Property, recognizing that the Parties intend that the Conservation District shall be responsible for the operation and maintenance of such facilities.
      2. Included within this lease are all rights of reasonable ingress and egress as may be useful or necessary, in Valley District and/or Western's sole discretion, for the purpose of the recharging of water on the Leased Property, provided that such activities shall not interfere with: (i) any conservation easements that may now exist, or may be established consistent with the Conservation District's Upper Santa Ana River Wash Land Management and Habitat Conservation Plan, on said lands, or (ii) other easements existing as of the effective date of this Agreement.
      3. The designs for any such facilities or other tenant improvements must be approved, in advance by the Conservation District, which approval shall not be unreasonably withheld or delayed, and are subject to any limitations on the Conservation's District's holding of the Leased Property. The Conservation District shall cooperate reasonably with Valley District and Western to obtain local, state, or federal permits that may be required to construct or operate such facilities approved by the Conservation District.
      4. The Conservation District will utilize its best efforts under all existing and future lease agreements and easements with other individuals, organizations or entities operating on the Leased Property to harmonize the objective of Valley District and Western making full use of the facilities on the Leased Property for the recharge of water, consistent with the hydrological design limitations of these facilities, with any competing uses of the properties on which such facilities are or may be located.
      5. The Parties recognize that the Conservation District has negotiated lease agreements with mining companies that allow the Conservation District to engage in recharge of water that may periodically interfere with or prevent mining, without liability on the part of the Conservation District, which agreements are attached hereto as Exhibits 3 and 4. The Conservation District represents and warrants that these are the only current agreements that authorize mining on the Leased Property, and represents and warrants that the copies of these agreements attached as Exhibits 3 and 4 are true and correct copies of those agreements. Based on those representations, the Parties believe that they can collaboratively manage the recharge of water to avoid liability arising from any incompatibility between the recharging of water and any activities otherwise authorized under the mining leases. Toward this end, the Parties agree as follows:
         1. During the winter season (from October 1 to March 31), the Parties will consult with each other on a regular basis to determine the quantity of water that may be recharged without interfering with mining operations.
         2. In the event that the recharging of water threatens to substantially limit or interfere with mining operations, the Parties shall immediately confer to determine how to maximize the recharge without unduly interfering with mining activity. Towards this end, the parties acknowledge that the Conservation District has the right, from time to time and as it deems necessary in the exercise of its reasonable discretion, to utilize all or any portion of the areas subject to the mining leases for its water recharge, conservation, spreading, and other operations, provided such activities are undertaken utilizing best efforts to avoid storing water so as to require temporary use of the mining lease areas. In connection with the exercise of their activities on the Leased Property hereunder, Valley District and Western shall assist the Conservation District to make every effort to minimize the time of any interruption of the mining lessees’ activities on the Leased Property, to permit sufficient time for the Conservation District to observe all requirements for notice to mining lessees required under the applicable leases in the event of conflicts, and to harmonize their recharge of water with the then-current and anticipated immediate future excavation and other activities of the mining lessees, with the overall goal that the mining activity and the water conservation activity can harmoniously exist, without interruption to either.
         3. Any decisions about the proper scope, location, or amount of recharging of water after such consultation with appropriate agencies shall be made solely by the Conservation District in the exercise of its reasonable discretion, consistent with paragraph 4(d) (2) below, and consistent with the principle of ensuring that the optimum quantity of water possible is replenished within the San Bernardino Basin Area.

In the event the Conservation District determines, in the exercise of its reasonable discretion, that portions of the Leased Property cannot be made available to Valley District and Western, and such determination is made at a time when water supplies are otherwise immediately available to Valley District and Western for recharge into facilities on the leased land:, Conservation District will not object, directly or indirectly, to efforts by Valley District and/or Western to deliver water supplies that cannot be spread on the Leased Property to other locations, *provided that* in determining where to deliver such water supplies, Valley District and Western act consistent with the priority of first delivering water for direct delivery or spreading within the SBBA, then delivering water for direct delivery or spreading within the boundaries of Valley District, then delivering water for direct delivery, spreading or storage within Western, and then delivering water for direct delivery, spreading or storage outside of Western.

In such event, the parties shall meet and confer in good faith, under the auspices of the Joint Operations Committee provided for in paragraph 4(b) below, regarding whether some proportional refund to Valley District, Western, or both of a portion the gross lease fee paid for the given year in which the Leased Premises were unavailable for the recharge of water may be appropriate, and if so, in what amount.

* 1. *Operation and Maintenance of Spreading Basins.* The Conservation District shall operate and maintain all new and existing facilities, located on the areas depicted in Exhibit 2 hereto, in good working condition, to ensure that the recharge of water continues efficiently, in accordance with a mutually-agreed schedule of regular maintenance and any supplemental agreements governing special or emergency maintenance responsibilities. The Conservation District shall set aside a portion of the gross lease fee provided for in Paragraph 3(a) below received from Valley and Western, in accordance with the Conservation District's Reserve Policy, to ensure sufficient funds are available to meet the agreed maintenance obligations.
  2. *Ownership of New Facilities* Upon expiration or other proper termination of this Agreement, however, improvements made on land owned or controlled by the Conservation District shall become Conservation District property, to be used by the Conservation District for water management and the recharge of water.

d. *Groundwater Charge*. All parties producing water in the Conservation District’s jurisdictional boundaries shall be subject to all then-applicable groundwater charges, and this Agreement shall not exempt nor excuse any party, including Valley District and Western, from the levy or payment thereof. Notwithstanding, the parties recognize that they do not intend that groundwater charges would be required to be paid on production of water pursuant to measures taken for the emergency alleviation of high groundwater conditions, or the implementation of other basin management objectives as may be approved by the Basin Technical Advisory Commission (“**BTAC**”) or other similar organization including all of the parties hereto that may perform a substantially similar role under any Conjunctive Use Plan that may be implemented for the SBBA. The Conservation District agrees to consider implementing reasonable measures to reduce or eliminate groundwater charges for groundwater production devoted to such agreed purposes, whether by exemption, or refund of charges otherwise paid, as may be consistent with applicable law.

1. *Duties of Valley District and Western*.
   1. *Gross Lease Fee.* Valley District and Western shall together pay to the Conservation District a gross lease fee of $350,000/year for the right to the recharge of water through the existing percolation basins and other facilities owned by the Conservation District, and the right to construct and have operated additional recharge and conveyance facilities on the Leased Property. The parties acknowledge and affirm that the gross lease fee is a lease payment for access to and use of the Leased Property, only, and for partial offset to the costs of operation and maintenance of facilities thereon same by the Conservation District. The gross lease fee does not include, and is not intended to replace or offset, any charges for the acquisition, conveyance, storage, or production of water, that may otherwise apply by or among the parties, or third parties, whether now or in the future.
   2. Valley District and Western, or either of them, shall pay the gross lease fee, in advance, by October 1st of each year, which sum may be apportioned by the Conservation District to its Groundwater Enterprise and other funds.
      1. Valley District and Western shall annually adjust the gross lease fee to account for inflation using the U.S. Bureau of Labor Statistics Consumer Price Index (CPI-U) for the Los Angeles District. The base year for such payments will be 2012.
      2. In the event that Valley District and/or Western construct new percolation basins or other facilities useful or necessary for the recharge of water, the Parties shall adjust the gross lease fee proportionally to reflect the additional operation and maintenance costs that will be incurred by the Conservation District in operating and maintaining those new facilities, as may be agreeable to the Parties.
   3. *Permitting for New or Augmented Spreading Basins*. Valley District and Western shall be responsible for obtaining all federal, state and local permits (including conducting environmental review under the California Environmental Quality Act or the National Environmental Policy Act) that may be required to construct additional facilities for the recharge of water supplied by Valley and Western. If, after 10 years, Valley and Western have been unable to obtain the necessary permits, either or both may terminate this lease agreement subject to the provisions of paragraph 9.c. below. Valley District and Western shall bear all costs associated with protecting, repairing or replacing the material infrastructure improvements (including pipelines, gates, valves, weirs, fencing, gauges, etc.) installed by Valley District and Western on lands owed by the Conservation District.
   4. *Resource Management*.
      1. Valley District and Western shall coordinate their operations to harmonize with mineral resource extractions, to avoid any potential liability under mineral leases, or other uses authorized by the Conservation District on the Leased Property.
      2. Valley District and Western shall negotiate supplemental payments to the Conservation District where unusual and unforeseen circumstances necessitate extraordinary maintenance expenses that are in excess of the budget prepared and approved by the Joint Operations Committee.
      3. Valley District and Western shall cooperate with the Conservation District in developing a long-term resource management plan to govern multiple-use activities in Reach 5 of the Santa Ana River wash (i.e., the Upper Santa Ana River Wash Land Management and Habitat Conservation Plan).
2. *Duties of All Parties*
   1. *No Rights to Other Party(ies)' Water or Facilities.* Except as provided for in paragraph 2(c) above, the Conservation District will not assert any claim to own or control the new facilities constructed, or the additional water recharged by, Valley District and Western under the terms of this Agreement, provided that these activities occur in conformance with this Agreement. Valley District and Western will not assert any claim to own or control any water that is percolated in the new or existing recharge basins that is not supplied by Valley District or Western, nor make any attempt to acquire or control land or facilities owned by the Conservation District.. Valley District and Western acknowledge and represent to Conservation District that this Agreement provides for and constitutes "compatible use" of the Conservation District's property and facilities, as that term is utilized in California Code of Civil Procedure sections 1240.510 et seq., thereby eliminating any need for any exercise of eminent domain by any party to acquire any additional interest in the Leased Property from any other party.
   2. *Establishment of Joint Operations Committee.* The Parties shall establish and participate in a Joint Operations Committee (the "**JOC**") to serve in an advisory capacity to the Conservation District, which shall assist the Conservation District to develop a schedule and budget for planned operation and maintenance activities relating to the recharge of water on the Leased Property, and perform other functions as otherwise specified herein, under such rules and procedures as it shall formulate and unanimously approve. The JOC shall meet at least twice a year to plan water recharge, review financial and water accounting matters implicated hereunder, and review performance.
   3. *Joint Reporting.* The Parties shall jointly provide planning documents, monitoring reports, and other records that may be requested by authorized agencies to demonstrate compliance with federal, state or local laws and regulations. Specifically, the Parties shall continue to cooperate in the preparation and submission of annual reports to the California State Water Resources Control Board, which reports will follow the format used by the Parties in reporting the use of water for calendar year 2010. A copy of the report filed with the California State Water Resources Control Board is attached hereto as Exhibit 5 and incorporated herein by reference.
   4. *Water Resources Management.* 
      1. The Parties will continue to coordinate all recharge of water with one another to protect and enhance the safe yield in the SBBA. Specifically, the Parties will: (i) jointly develop the Regional Conjunctive Use Plan (or its equivalent) through the Basin Technical Advisory Committee, (ii) seek additional opportunities to increase safe yield in the SBBA by engaging in cooperative joint development of new water supply projects or conservation programs in the region, and (iii) cooperate with one another to document the water resource management benefits accrued by establishing and implementing this Agreement.
      2. The parties agree to dedicate and use the water made available pursuant to their respective water rights in and to the Santa Ana River to give priority to preserving the safe yield of the SBBA, as part of the reasonable and prudent management of their entire portfolio of water resources. All parties shall refrain from contesting any water rights claimed or held by one another at any time during the term of this Agreement, so long as such water rights are exercised in the manner consistent with this Agreement.
      3. The Parties will not export native water from the SBBA, or recharge water on behalf of agencies located outside the SBBA, except as provided for by the 1969 *Western* Judgment and/or by the Regional Conjunctive Use Plan (or its equivalent).
3. *Amendments.* The Parties will negotiate amendments, including but not limited to areal expansion of the scope of activities, to this Agreement in good faith and not unreasonably withhold consent.
4. *Liberal Construction.* The Parties shall construe all terms and conditions in this Agreement in a manner which most favors increasing available water supplies by encouraging greater recharge of water in the area.
5. *Indemnification*
   1. *Generally.* Each Party shall indemnify, defend and hold harmless the other Parties, their directors, officers, employees and agents from and against all damages, liabilities, claims, actions, demands, costs and expenses (including, but not limited to, costs of investigations, lawsuits and any other proceedings whether in law or in equity, settlement costs, attorneys' fees and costs), and penalties or violations of any kind, which arise out of, result from, or are related to a Party's performance of its obligations under this Agreement. In extending such indemnification, however, no party hereto waives any sovereign or governmental immunities, privileges, or rights that they may have or enjoy under any applicable law, including but not limited to California Government Code sections 810 et seq., and except as otherwise specifically provided for hereunder, and each party reserves all such immunities, privileges and rights , and any claims or other procedures applicable to same, that may presently exist or hereafter be created, to themselves, as against each of the other parties, and as against any third party.
   2. *Indemnification Procedures*. Any Party that is an indemnified party (the "**Indemnified Party**") that has a claim for indemnification against the other Party (the "**Indemnifying Party**") under this Agreement, shall promptly notify the Indemnifying Party in writing, specifying the nature of the claim, the grounds upon which the Indemnified Party believes the Indemnifying Party is liable in whole or in part for the liability or other obligation asserted under the claim, and including any appropriate demand for defense or indemnification, or both. No delay on the part of the Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party from any obligation unless (and then solely to the extent) the Indemnifying Party is prejudiced. Further, the Indemnified Party shall promptly notify the Indemnifying Party of the existence of any claim, demand, or other matter to which the indemnification obligations apply, and shall give the Indemnifying Party a reasonable opportunity to defend the same at its own expense and with counsel of its own selection, *provided* that the Indemnified Party shall at all times also have the right to fully participate in the disputed matter at its own expense. If the Indemnifying Party refuses to provide the indemnity, or within a reasonable time after written notice from the Indemnified Party, fails to defend a claim, demand or other matter to which the indemnification obligations apply, the Indemnified Party shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle (exercising reasonable business judgment), the claim or other matter, on behalf, or for the account, and at the risk, of the Indemnifying Party. If the claim is one that cannot by its nature be defended solely by the Indemnifying Party, then the Indemnified Party shall make available all information and assistance to the Indemnifying Party that the Indemnifying Party may reasonably request. In the event of any dispute between the Indemnified party and the Indemnifying Party as to whether the claim is one to which the indemnification obligations apply, the matter shall be resolved in the manner of resolution of disputes, as provided in paragraph 9 hereunder. Except as specifically provided otherwise in Paragraph 9(b) (4) below with respect to tolling of limitations periods, the notice provided for hereunder shall be in addition to, and not in place of, any other notice that may be provided for or otherwise required under law.
6. *Force Majeure.* In addition to any other specific provisions of this Agreement, a Party hereto shall not be deemed to be in default under this Agreement where failure or delay in performance of any of such Party's obligations under this Agreement is caused by floods, earthquakes, winds, other Acts of God, power outages, equipment failure, acts of vandalism, fires or other casualties, wars, riots or similar hostilities, strikes and other labor difficulties beyond the Party's control, (including the Party's employment force), enactment of new or conflicting, laws or regulations, including any new listing of endangered species or designation of critical habitat for endangered species, court actions (such as restraining orders or injunctions), judicial actions such as issuance of restraining orders and injunctions, or other causes beyond such Party's control. If any one or more of such events occur, the term of this Agreement and the time for performance by any Party of any of its obligations hereunder shall be extended by the period of time that such one or more events prevented or delayed such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years. In the event that said period of time must be extended by more than five years, this Agreement shall automatically terminate.
7. *Administration of Agreement*
   1. *Books and Records.* Each Party shall have access to and the right to examine any of the other Party's pertinent books, documents, papers or other records (including, without limitation, records contained on electronic media) relating to the performance of that Party's obligations pursuant to this Agreement. Each Party shall retain all such books, documents, papers or other records to facilitate such review in accordance with that Party's record retention policy. Access to each Party's books and records shall be during normal business hours only. Nothing in this paragraph shall be construed to operate as a waiver of any applicable privileges.
   2. *Disputes*. The Parties recognize that there may be disputes regarding the obligations of the Parties or the interpretation of this Agreement. The Parties agree that they may attempt to resolve disputes as follows:
      1. *Statement Describing Alleged Violation of Agreement.* A Party or Parties alleging a violation of this Agreement (the "**Initiating Party(ies)**") shall provide a written statement describing all facts that it believes constitute a violation of this Agreement to the Party(ies) alleged to have violated the terms of this Agreement (the "**Responding Party(ies)**").
      2. *Response to Statement of Alleged Violation.* The Responding Party(ies) shall have sixty days from the date of the written statement to prepare a written response to the allegation of a violation of this Agreement and serve that response on the Initiating Party(ies) or to cure the alleged violation to the reasonable satisfaction of the Initiating Party(ies). The Initiating Party(ies) and the Responding Party(ies) shall then meet within thirty days of the date of the response to attempt to resolve the dispute amicably.
      3. *Mediation of Dispute.* If the Initiating Party(ies) and the Responding Party(ies) cannot resolve the dispute within ninety days of the date of the written response, they shall engage a mediator, experienced in water-related disputes, to attempt to resolve the dispute. Each Party shall ensure that it is represented at the mediation by a Director or Councilperson. These representatives of the Initiating Party(ies) and the Responding Party(ies) may consult with staff and/or technical consultants during the mediation and such staff and/or technical consultants may be present during the mediation. The costs of the mediator shall be divided evenly between the Initiating Party(ies) and the Responding Party(ies).
      4. *Prior to Claims Under California Tort Claims Act.* The Parties agree that the procedure described in this paragraph represents an effort to resolve disputes without the need for a formal claim under the California Tort Claims Act or other applicable law. The period of time for the presentation of a claim by one Party against another shall be tolled for the period from the date on which the Initiating Party(ies) file a written statement until the date upon which the mediator renders a decision.
      5. *Reservation of Rights.* Nothing in this paragraph shall require a Party to comply with a decision of the mediator and, after the completion of the mediation process described above, each Party shall retain and may exercise at any time all legal and equitable rights and remedies it may have to enforce the terms of this Agreement; provided, that prior to commencing litigation, a Party shall provide at least five calendar days' written notice of its intent to sue to all Parties.
   3. *Termination of Agreement*
      1. *Failure to Obtain Permits.* The Parties recognize and acknowledge that the implementation of this Agreement may require one or more Parties to obtain permits or other regulatory approvals from one or more local, state or federal regulatory agencies, including but not limited to the Regional Water Quality Control Board, the California Department of Fish & Game and the U.S. Fish & Wildlife Service or the U.S. Army Corps of Engineers. Because of the significant regulatory uncertainties associated with obtaining these permits or regulatory approvals, the Parties agree that, if Valley District and Western have not received all regulatory permits or approvals required or useful for groundwater replenishment on the Leased Property within ten years from the effective date of this Agreement, Valley District and/or Western may terminate this Agreement at any time by providing the Conservation District with one-year's written notice of such termination. In the event that Valley District or Western, but not both wish to terminate this Agreement, the Party wishing to terminate this Agreement shall be allowed to terminate the Agreement as to itself and the remaining two Parties may continue the Agreement on such terms as they deem to be equitable.
      2. *Material Breach*. If one Party deems that another Party has materially breached one of the provisions of this Agreement, the Parties shall use the dispute resolution procedures set forth in paragraph 9. b. above in an effort to resolve the dispute amicably. If, the dispute resolution process described in paragraph 9. b. above is not successful in resolving the dispute, any Party may terminate this Agreement for material breach thereof, and may seek any remedy that it would otherwise be entitled to in a court of law.
   4. *Recordation of Agreement*. All Parties agree that this Agreement constitutes a lease of certain lands by the Conservation District to Valley District and Western for the purpose of constructing, operating, maintaining, repairing and rehabilitating percolation basins and ancillary facilities on the Leased Property, and consequently, all Parties agree that this Agreement should be recorded in the Official Records of the County of San Bernardino. Valley District shall, within ten days of the effective date of this Agreement, cause this agreement to be recorded in the Official Records of the County of San Bernardino and shall promptly provide the Conservation District and Western with recorded copies of this Agreement upon receipt of such copies from the County of San Bernardino.
8. *General Provisions*.
   1. *Authority*. Each signatory of this Agreement represents that s/he is authorized to execute this Agreement on behalf of the Party for which s/he signs. Each Party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement.
   2. *Amendment*. This Agreement may be amended or modified only by a written instrument executed by each of the Parties to this Agreement.
   3. *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.
   4. *Headings*. The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Parties to this Agreement.
   5. *Construction and Interpretation*. This Agreement has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this Agreement.
   6. *Entire Agreement*. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and, save as expressly provided in this Agreement, supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement.
   7. *Partial Invalidity*. If, after the date of execution of this Agreement, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable. However, in lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
   8. *Successors and Assigns*. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this Agreement. No Party may assign its interests in or obligations under this Agreement without the written consent of the other Parties, which consent shall not be unreasonably withheld or delayed.
   9. *Waivers*. Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement and forbearance to enforce one or more of the rights or remedies provided in this Agreement shall not be deemed to be a waiver of that right or remedy.
   10. *Attorneys' Fees and Costs*. The prevailing Party in any litigation or other action to enforce or interpret this Agreement shall be entitled to reasonable attorneys' fees, expert witnesses' fees, costs of suit, and other and necessary disbursements in addition to any other relief deemed appropriate by a court of competent jurisdiction.
   11. *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.
   12. *Compliance with Law*. In performing their respective obligations under this Agreement, the Parties shall comply with and conform to all applicable laws, rules, regulations and ordinances.
   13. *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.
   14. *Counterparts*. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
   15. *Notices*. All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing unless provided otherwise in this Agreement and shall be deemed to have been duly given and received on: (i) the date of service if served personally or served by facsimile transmission on the Party to whom notice is to be given at the address(es) provided below, (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other similar overnight courier service, postage prepaid, and addressed as provided below, or (iii) on the third day after mailing if mailed to the Party to whom notice is to be given by first class mail, registered or certified, postage prepaid

**Table of Exhibits**

Exhibit 1 Leased Property including Exhibit 1A and 1B

Exhibit 2 Existing and Future Facilities

Exhibit 3 CEMEX Lease

Exhibit 4 Robertson’s Ready Mix Lease

Exhibit 5 2010 State Water Rights Filing

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| WESTERN MUNICIPAL WATER DISTRICT  “Western”  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Donald D. Galleano  President  Board of Directors | Approved as to form only:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Jeff Ferre  Best, Best & Krieger |
| SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT  “Valley District”  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  C. Patrick Milligan  President  Board of Directors | Approved as to form only:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  David R.E. Aladjem  Special District Counsel |

|  |  |
| --- | --- |
| SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT  “Conservation District”  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Richard W. Corneille  President  Board of Directors | Approved as to form only:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  David B. Cosgrove  General Counsel |

State of California )

County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, ,

(insert name and title of the officer)

Notary Public, personally appeared , who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

State of California )

County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, ,

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