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9 Cross-Defendant
CITY OF PALMDALE

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SANTA CLARA**

13
14 ANTELOPE VALLEY GROUNDWATER
15 CASES.

Judicial Council Coordination Proceeding
No. 4408

16 **CITY OF PALMDALE'S WITNESS AND**
17 **EXHIBIT LIST FOR PHASE 5 TRIAL**

18 Phase 5 Trial Date: February 10, 2014

Hon. Jack Komar

19
20 The City of Palmdale intends to call the following witnesses at the Phase 5 trial:

21 Michael Mischel

22 Gordon Phair

23 Robert Beeby (shared expert witness)

24 Dennis Williams (shared expert witness)

25 The City of Palmdale intends to introduce the following exhibits:

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Cooperative Agreement Between the City of Palmdale, Antelope Valley-East Kern Water Agency, Palmdale Water District, and Los Angeles County Waterworks District No. 40, Antelope Valley to Design, Construct, Operate and Maintain the Upper Amargosa Creek Flood Control, Recharge, and Habitat Restoration Project

Dated: January 23, 2014

RICHARDS, WATSON & GERSHON
A Professional Corporation
JAMES L. MARKMAN
STEVEN R. ORR

By: 
STEVEN R. ORR
Attorneys for Defendant, Cross-Complainant, and Cross-Defendant
CITY OF PALMDALE

IRW RICHARDS | WATSON | GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

**COOPERATIVE AGREEMENT BETWEEN THE CITY OF PALMDALE,
ANTELOPE VALLEY-EAST KERN WATER AGENCY, PALMDALE WATER
DISTRICT, AND LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40,
ANTELOPE VALLEY TO DESIGN, CONSTRUCT, OPERATE AND MAINTAIN
THE UPPER AMARGOSA CREEK FLOOD CONTROL, RECHARGE, AND
HABITAT RESTORATION PROJECT**

This Cooperative Agreement is made and entered into on this 4th day of December, 2013, by and among the City of Palmdale ("City"), Antelope Valley-East Kern Water Agency ("AVEK"), Palmdale Water District ("PWD"), and Los Angeles County Waterworks District No. 40, Antelope Valley, ("Waterworks"), and collectively hereinafter referenced as the "Parties."

RECITALS

WHEREAS, the City is a California charter City, with all of the rights created by the California Constitution, City charter, and the general laws of the State of California;

WHEREAS, the City owns certain real property ("City Property"), more particularly described and depicted on the map attached hereto as Exhibit A and incorporated by reference, that is available for use as a spreading ground for the purpose of banking water and recharging the Antelope Valley Groundwater Basin ("Basin");

WHEREAS, the CITY is authorized to enter into this Cooperative Agreement by its charter, Article 11, section 9 of the California Constitution, and Water Code section 106.5;

WHEREAS, AVEK is a California State Water Project Contractor and authorized to enter into this Cooperative Agreement by Section 98-61 of the California Water Code Appendix;

WHEREAS, PWD is a California irrigation district organized and existing pursuant to Division 11 of the Water Code;

WHEREAS, Waterworks is a county waterworks district, duly authorized pursuant to Division 16 of the Water Code, section 55000, et seq.;

WHEREAS, Waterworks is authorized to enter this Cooperative Agreement pursuant to Water Code sections 55330, 55331 and 55335;

WHEREAS, the Parties are each members of the Antelope Valley Regional Water Management Group ("AVRWGM") and have jointly prepared and adopted the Antelope Valley Integrated Regional Water Management Plan ("AVIRWMP");

WHEREAS, the AVIRWMP provides the framework for water supply, water quality, flood control, environmental resource and land use management for the Antelope Valley Region;

WHEREAS, the Upper Amargosa Creek Flood Control, Recharge, and Habitat Restoration Project ("Project"), is a project identified in the AVIRWMP as a High Priority Project;

WHEREAS, the City intends to plan, design and construct the Project;

WHEREAS, AVEK, PWD and Waterworks desire to cooperate and assist in completing the Project;

WHEREAS the construction of the Project will require compliance with the California Environmental Quality Act ("CEQA"), and obtaining regulatory/ environmental permits, including but not limited to permits from the United States Army Corps of Engineers, the California Department of Fish and Wildlife Services, and the Lahontan Regional Water Quality Control Board;

WHEREAS the total estimated cost of the construction of the Project is approximately \$13.5/14.5 million;

WHEREAS, the City, using funds provided by the AVRWMG, prepared a successful grant application that resulted in an award of \$6,500,000 for the Project from Proposition 1E funds administered by the State of California Department of Water Resources, to assist the Antelope Valley region in constructing the Project;

WHEREAS, the City has invested \$2,022,711 as of the effective date of this Cooperative Agreement of Proposition 1E qualifying matching funds after September 30, 2008, into the Project;

WHEREAS, the City has also invested an additional \$816,400, including funds for properties purchased prior to September 30, 2008, into the Project that do not qualify for Proposition 1E matching funds;

WHEREAS, the City has funded a preliminary evaluation of the Project by the U.S. Geological Survey for the feasibility of recharging water at the Project site, groundwater aquifer properties, potential barriers to groundwater flow, water infiltration rates, and the effects of simulated long-term artificial recharge were evaluated; and the average simulated recharge capacity of the Project was determined to be 6,400 acre-feet per year ("Project Capacity");

WHEREAS, not all of the costs associated with the Project are for basin recharge and water banking, but instead relate to benefits to be provided to the City in the form of flood control and a nature park; the Parties have agreed that approximately twenty eight percent (28%) of the total cost of the Project is for the independent benefit of the City;

WHEREAS, the Project needs additional funding of approximately \$5,800,000 for the remaining unmet budget;

WHEREAS, the Parties will each receive direct benefits from the construction and operation of the Project;

WHEREAS, the Parties are each named parties in the presently pending Antelope Valley Groundwater Adjudication (*Antelope Valley Groundwater Cases*, Judicial Council Coordination Proceeding No. 4408) ("Adjudication");

WHEREAS, the Parties intend for the Project to be consistent with the Physical Solution for the Basin to be imposed through the Adjudication;

WHEREAS, any water applied for purposes of recharging the Basin or banking water in the Basin through the Project will be credited to the purchaser of said water for purposes of subsequent recovery pursuant to the judgment to be entered in the Adjudication; and,

WHEREAS, the parties will cooperate with one another to complete the design, construction, operation and maintenance of the Project, and to obtain whatever Court approvals are forthcoming in the Adjudication to implement this Cooperative Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

(1) DEFINITIONS:

In addition to the terms specially defined elsewhere in this Cooperative Agreement, the following terms shall have the following meanings:

Adjudication: Antelope Valley Groundwater Cases, Los Angeles Superior Court Case No. BC 325 201 (Judicial Council Coordination Proceeding No. 4408).

Contract Change Orders: Construction changes approved by the City, after review and consultation with the Parties; accumulative contract change orders greater than 15% of the total construction contract amount must first be approved by the Parties.

Fair Share: A Party's capacity which shall be proportionate to its share of the Total Contribution (defined below). For example, if a Party's contribution is 25 percent of the Total Contribution (i.e., \$1,450,000 of \$5,800,000), the Party's Fair Share is 1,600 acre feet per year.

Groundwater Banking Facility: Those portions of the Project that will be used for water banking operations including the Turnout.

In-Kind Services: Those design and construction management services, provided by a Party (excluding services that were unreasonable), that would otherwise be required to be performed pursuant to a contract. In-Kind Services will be valued at their

actual cost, the amount of which will be agreed by the Parties, and the valuation thereof will not include overhead, profit, or lost profit margins,

Physical Solution: Those components of the judgment and orders in Adjudication wherein water demand and water supply are balanced. A Physical Solution is typically administered by a Watermaster under the jurisdiction of the court, and is expected by the Parties to be so with regard to the Adjudication.

Plans and Specifications: Those plans and specifications for the Project as released for construction, including all Contract Change Orders.

Project: The Upper Amargosa Creek Flood Control, Recharge, and Habitat Restoration Project as prepared by the City for the grant application for Proposition 1E funds administered by the State of California Department of Water Resources.

SWP: California State Water Project.

Total Contribution: Total accumulative value of all Parties' monetary contribution to the groundwater banking basins and the agreed value of In-Kind Services.

Total Contribution Percentage: An individual Party's contribution divided by the total of all Parties' Total Contribution to the Groundwater Banking Facility.

Total Cost: The combined cost for design and construction of the Project and the Turnout. Total Cost includes "soft costs" and "hard costs" as defined by common usage in the construction industry.

Turnout: All facilities related to the physical connection between the California Aqueduct and the groundwater banking basins, including the metering building and connecting piping.

Turnout Costs: The operational, maintenance, repair and replacement costs of operating the Turnout, charged as a rate per acre foot of water delivered.

Water Costs: The cost of raw water delivered at the Turnout, including administration and overhead, charged as a rate per acre foot of water delivered. The water costs are determined by the actual ownership of the raw water at the Turnout, and governed by existing or future operational and ownership contracts.

(2) CITY'S OBLIGATIONS:

- a. To award and administer the contracts for the design and construction of the Project pursuant to Plans and Specifications, and to act, in consultation with the other Parties, with respect to the design of the Project, and on behalf of the Parties in all negotiations pertaining to the Project. Facilities to be owned by AVEK shall be constructed according to AVEK's specifications, and the Plans and Specifications shall be signed by AVEK's engineer prior to

construction. AVEK's Board of Directors will accept such facilities into AVEK's water delivery system upon certification by AVEK's engineer that they have been constructed in accordance with the approved Plans and Specifications.

- b. To have previously contributed \$2,839,111 towards the Total Cost of the Project, as of the date of execution of the Agreement.
- c. To have contributed, as of the date of execution of the Agreement, \$1,950,469 of the aforementioned \$2,839,111 for the City-only benefit portion of the Project referenced in the Recitals above and the remaining \$807,002 designated for the Groundwater Banking Facility.
- d. To make additional contributions, if needed, in the form of In-Kind Services for the Project.
- e. To obtain and maintain all necessary State, local, or other needed regulatory approval, applicable permits, and compliance with CEQA to construct and operate the Project.
- f. To notify the Parties 48 hours in advance of the start of construction of the Project so that the Parties may each furnish an inspector, at no cost to the other Parties, to monitor construction of the Project. City's inspector(s) shall consult with Parties' inspectors with respect to Contract Change Orders for Project, but City's inspector's instructions to City's contractor shall be final upon a mutually agreed upon solution by the Parties to any and all Contract Change Orders.
- g. To pay the Water Costs, if any, for the purchase of imported water supplies to be banked in the Project, in conformity with existing and future AVEK contracts, or if water is acquired from any other source, in accordance with the terms of this Cooperative Agreement.
- h. To pay for the Turnout Costs associated with delivering water purchased by the City to the Project through the Turnout on behalf of the City.
- i. To operate and maintain the non-AVEK Project facilities through its own forces or through contracts with one or more of the Parties or private contractors.
- j. To furnish for approval by the Parties, within 60 days after acceptance of Project by the City, a final accounting ("Final Accounting") of the actual total cost of Project.
- k. To furnish Parties, within 60 days after acceptance of Project by the City, a reproducible set of as-built drawings of Project.

- l. To take all necessary steps to complete the Project pursuant to the approved Plans and Specifications.
- m. To cooperate with and assist the other Parties in obtaining any Court approvals in the Adjudication required to complete and operate the Project. The City agrees that this Agreement shall not be admissible to undermine any Party's position on any issue related to in the Adjudication.

(3) WATERWORKS' OBLIGATIONS:

- a. To pay to the City the sum of \$1,250,000 as its share of the Total Contribution as required to complete the Project.
- b. Provide inspection consultation for the Project on an as-needed basis.
- c. To pay the Water Costs, if any, for the purchase of imported water supplies to be banked in the Project, in conformity with existing and future AVEK contracts, or if water is acquired from any other source, in accordance with the terms of this Cooperative Agreement..
- d. To pay for the Turnout Costs associated with delivering water purchased by Waterworks to the Project through the Turnout on behalf of Waterworks.
- e. To cooperate with and assist the other Parties in obtaining any Court approvals in the Adjudication required to complete and operate the Project. Waterworks agrees that this Agreement shall not be admissible to undermine any Party's position in the Adjudication, on any issue.
- f. To use its existing groundwater extraction system to recover water AVEK banked in the Project, in lieu of contractual supply, per a mutually agreed annual schedule, subject to AVEK's payment of a banked water recovery fee established by Waterworks to recover costs incurred

(4) AVEK'S OBLIGATIONS:

- a. To pay to the City the sum of \$2,500,000 as its share of the Total Contribution as required to complete the Project. If project costs increase from initial estimate, AVEK's Fair Share of Project Capacity shall be adjusted to correspond to AVEK's maximum \$2,500,000 contribution.

- b. To maintain and operate the Turnout to serve the Project to the satisfaction of the Parties and the State Department of Water Resources.
- c. To assist the City in obtaining all the required approvals from the State Department of Water Resources for the design and construction of the Turnout.
- d. To assist in the design and construction, and to own, operate and maintain approximately 5,100 feet of 48-inch pipeline to deliver SWP Water from the metering vault at the Turnout to the Project.
- e. To furnish, install, own, operate and maintain a sufficient facility to measure the amount of water delivered to the Project. AVEK agrees to *consider oversizing such meter for possible excess volume for future expansion of the subject recharge facilities.*
- f. To provide SWP Water and other water from the California Aqueduct, subject to availability and capacity, to the Parties to this Cooperative Agreement, including AVEK, for purposes of water banking in the Project, at the Amargosa Banking Rate, and consistent with any requirements that may be imposed as a result of the Adjudication, including the anticipated Physical Solution therein. AVEK shall also wheel non-SWP water purchased by Parties through a separate agreement with AVEK to bank in the Project, subject to AVEK's system capacity.
- g. To maintain an accounting of the volume of water delivered to the Project through the Turnout on behalf of each of the Parties. Delivered amounts will be based on monthly reporting from the State Department of Water Resources.
- h. To bill the City, PWD, and Waterworks, respectively, for the costs associated with the purchase and delivery of SWP Water or other outside water to the Project through the Turnout for banking in the Project on behalf of these Parties, consistent with the terms of this Cooperative Agreement.
- i. To cooperate with and assist the other Parties in obtaining any Court approvals in the Adjudication required for completing and operating the Project. AVEK agrees this Agreement shall not be admissible to undermine any Party's position on any issue related to the Adjudication.

(5) PWD'S OBLIGATIONS:

- a. To pay to the City the sum of \$1,250,000 as its share in the Total Contribution required to complete the Project. That amount shall be

held by the City in a segregated account, to be used only for expenses related to the design, construction and operation of the Project.

- b. Provide inspection consultation for the Project on an as-needed basis.
- c. To pay the Water Costs, if any, for the purchase of imported water supplies to be banked in the Project, and in conformity with existing or future PWD contracts, or water acquired from any other source, at the sole discretion of PWD, in accordance with the terms of this Cooperative Agreement.
- d. To pay for the Turnout Costs associated with delivering water purchased by PWD to the Project through the Turnout on behalf of PWD.
- e. To cooperate with and assist the other Parties in obtaining any Court approvals in the Adjudication required to complete and operate the Project. PWD agrees this Agreement shall not be admissible to undermine any Party's position on any issue related to the Adjudication.
- f. PWD agrees to use its groundwater extraction system to recover AVEK water banked in the Project for the benefit of AVEK per a mutually agreed annual schedule, subject to AVEK's payment of a banked water recovery fee established by PWD to recover costs incurred.

(6) IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

- a. Water banked through the Project will be credited to the Party that purchased the imported water, whether the purchased water was from AVEK or some other source, as between the Parties to this Cooperative Agreement, less a ten (10) percent downward adjustment for a leave behind and normal losses for all purposes, subject to such further adjustments or conditions as may be required by the Adjudication, including the anticipated Physical Solution therein. Nothing herein shall prevent AVEK from storing water in the Project for its own account at its own expense.
- b. No Party will assert before the court in the Adjudication, the Watermaster to be appointed pursuant to the Physical Solution to be imposed in the Adjudication, or in an administrative hearing that any other Party lacks the legal right to bank and recover banked water in the Project, consistent with the terms of this Cooperative Agreement. The substantive legal and practical details of the extent

of such asserted banked water right, such as the amount, cost, the priority of recovery, etc., are excluded from this prohibition.

- c. The Parties will be responsible for the annual costs incurred by the City in operating and maintaining the Groundwater Banking Facility of the Project in the following manner: In the first year following the completion of the Groundwater Banking Facility, the proportion of operational costs is equal to the Fair Share Percentage of each Party. In the second and subsequent years, an individual Party's operational costs shall be equal to the proportionate share of the volume of water imported and banked in the Project in that given year. In any year in which water is not delivered for banking to the Project,, the Parties will pay their Fair Share Percentage of operation and maintenance costs of the Groundwater Banking Facility.
- d. The Parties agree to maintain a cost effective and prudent maintenance budget. The parties agree to meet annually to review and approve the maintenance budget. It is agreed that the initial maintenance budget is estimated to be \$250,000, which will be reviewed annually after a review of the actual cost by the Parties. The parties agree to work cooperatively to modify the Cooperative Agreement if necessary to maintain a cost effective and prudent operating and maintenance budget.
- e. The Project Capacity is based upon the preliminary investigative work performed by the United States Geological Survey (USGS) and shall be used as the base amount by which the initial Fair Share determination is made.
- f. If a Party's funds deposited with the City exceed that Party's share of the Total Contribution, based upon the Final Accounting, such excess funds shall be refunded to that Party within sixty (60) days of the Parties' acceptance of the Final Accounting.
- g. If a Party's share of the Project costs exceeds funds deposited with the City, based upon the Final Accounting, each Party will pay its Fair Share within sixty (60) days of the City's submission of, and Parties' acceptance of the Final Accounting, and the ratification of a Final Fair Share Agreement Amendment by the Parties.
- h. Upon Final Accounting of the Project, each Party's Fair Share shall be determined by each individual Party's contribution to the Project and such determinations will be ratified by an amendment to this agreement ("Final Fair Share Agreement Amendment")

- i. Each Party is solely responsible for its own groundwater pumping costs of recovering its banked water, and associated costs, including construction, maintenance, and operational cost of wells and pumps, etc., which are expressly excluded from this Agreement.
- j. As against all non-Parties, the City shall have a first priority right to recharge, store and maintain a minimum Project Capacity of 889 acre-feet in the Project. As between the Parties, the City's rights are *pari passu*.
- k. As against all non-Parties, Waterworks shall have a first priority right to a minimum Project Capacity of 1,378 acre-feet in the Project. As between the Parties, Waterworks' rights are *pari passu*.
- l. As against all non-Parties, AVEK shall have a first priority right to a minimum Project Capacity of 2,755 acre-feet in the Project. As between the Parties, AVEK's rights are *pari passu*.
- m. As against all non-Parties, PWD shall have a first priority right to a minimum Project Capacity of 1,378 acre-feet in the Project. As between the Parties, PWD's rights are *pari passu*.
- n. At a minimum, the Parties shall meet annually during the third quarter of the calendar year to establish an operational strategy for the Project for the following calendar year.
- o. The Parties may assign any or all of their first priority Project Capacity in the Project for fair market value, subject to ongoing maintenance costs of section 6(c) and 6(d) attributed to the increase in Project Capacity. The remaining Parties are to have first right of refusal on the sale of any of the other Parties' shares in proportion to their Fair Share Percentage. If any Party refuses its Fair Share Percentage, that percentage shall be available to the other Parties with a right of first refusal on the same Fair Share Percentage basis. If all Parties invoke their first refusal rights declining to purchase the priority Project Capacity, the Project Capacity right may be sold to a governmental agency, or remain unused. However, such sale must also include the assignment of the proportionate maintenance costs of section 6(c) and 6(d).
- p. The Parties may lease their unused first priority recharge capacity in the Project for fair market value, in one year increments. The remaining Parties shall have first right of refusal on the lease of any of the other Parties' shares in proportion to the Fair Share percentage. If any Party refuses its percentage, that percentage shall then be available to the other Parties with a right of first refusal on the same Fair Share Percentage basis. If all Parties invoke their

first refusal rights declining to lease the priority recharge, the recharge right may be leased to a public agency, or remain unused. However, in all lease situations, the Party remains responsible for the proportionate maintenance costs of section 6(c) and 6(d).

- q. This Cooperative Agreement is intended as a funding mechanism to assist the City in financing the Project. Nothing in this Cooperative Agreement is intended to transfer any authority or responsibility to the City for operation of Waterworks, AVEK or PWD facilities, or impose any liability on any Party other than to perform as set forth in this Cooperative Agreement.
- r. This Cooperative Agreement contains the full and complete understanding of the Parties regarding the subject matter of this Cooperative Agreement and shall not be construed against either Party as the drafter of the Cooperative Agreement which shall be deemed to have been drafted by all Parties.
- s. If any term, clause or provision of the Cooperative Agreement is held to be illegal, invalid, or unenforceable, the remainder of the Cooperative Agreement shall not be affected, but shall remain in full force and effect in accordance with the terms thereof.
- t. This Cooperative Agreement shall be governed by the local laws of the State of California. The venue for any legal action on the Cooperative Agreement shall be in the County of Los Angeles.
- u. No waiver of any breach or default by any Party shall constitute a waiver of any other breach or default, nor shall any waiver constitute a continuing waiver.
- v. No Party shall assign this Cooperative Agreement or any of such Party's rights, or obligations, other than as set forth in section 6(a) and 6(v) without the prior written consent of all other Parties, and any attempt at such assignment shall be void, notwithstanding that any Party may assign this Cooperative Agreement or any part thereof to any successor public agency legally performing the functions of the assigning Party as its successor.
- w. This Agreement may be amended or modified only by mutual written consent of all of the Parties.

(7) TERMINATION

CONSTRUCTION TERM

The Construction Term of this Cooperative Agreement is five (5) years from the date of the approval of the Parties. If ALL the Parties have not

completed ALL of their respective duties by that date, this Cooperative Agreement is terminated, unless ALL Parties agree in writing to a later date of completion. If the Cooperative Agreement is terminated for failure to complete construction pursuant to this section, the Project Groundwater Banking Facility shall be sold at fair market value. All Parties at the time of termination shall receive a pro rata share of the proceeds based on their Fair Share Percentage at the time of termination, up to the value of the Party's total investment. However, the City of Palmdale shall retain ownership of the City-only section of the Project, exclusive of the sale of the remaining Project Groundwater Banking Facility, subject to a diminution of Palmdale's Fair Share Percentage of the value of the City-owned section of the Project.

OPERATIONAL TERM

The Operational Term of this Cooperative Agreement is twenty (20) years, inclusive of the Construction Term, terminating on June 30, 2032 with two (2) optional ten (10) year extension periods, unless the Parties provide mutual written consent to modify or extend the Operational Term. The optional ten (10) year extensions are automatic unless a Party objects in writing to the extension a minimum of one (1) year in advance of the scheduled termination. At the termination of the Cooperative Agreement, all water banked in the Project shall be removed from the Project by the Parties or abandoned in place, and the Project Groundwater Banking Facility shall be sold at fair market value. All Parties at the time of termination shall receive a pro rata share of the proceeds in a percentage of their cumulative Fair Share value at the time of termination, up to the value of the Party's total investment, plus the cost of inflation pursuant to the Los Angeles Region Consumer Price Index of Los Angeles-Riverside-Orange County. However, the City of Palmdale shall retain ownership of the City-only section of the Project, exclusive of the sale of the remaining Project Groundwater Banking Facility, subject to a diminution of Palmdale's Fair Share Percentage of the value of the City-owned section of the Project. The City hereby disclaims, and shall not have any interest in any abandoned banked water on the Project site, notwithstanding that the abandoned water may be on or under the City's Project real property.

FINANCIAL TERM

If the Project is not completed, or cannot be completed for the fiscal amounts/ In-Kind Service amounts that are expressly stated in this Cooperative Agreement, then the Cooperative Agreement is terminated, unless ALL the Parties agree to a modification of the fiscal amounts, in writing. If the Cooperative Agreement is terminated for failure to complete within the fiscal amounts/ In Kind Service amounts stated, pursuant to this section, the Project Groundwater Banking Facility are to be sold at fair market value. All Parties at the time of termination shall receive a pro rata share of the proceeds based on their Fair Share Percentage at the time of termination. However, the City of Palmdale shall retain ownership of the City-only section of the Project, exclusive

of the sale of the remaining Project Groundwater Banking Facility, subject to a diminution of Palmdale's Fair Share for the value of the City-owned section of the Project.

(8) INDEMNITY

Each Party agrees to indemnify, defend, and hold harmless each other Party, including their officers, employees, and agents, from and against any and all claims, demands, liability, damages (including but not limited to, bodily injury, death, personal injury, or property damage), costs and expenses (including, but not limited to attorney fees and other litigation expenses), arising from or caused by any negligent act or omission, or any reckless or willful misconduct, of the indemnifying Party or any of its officers, agents employees, and/or contractors in the performance of any work undertaken and/or obligation assumed pursuant to this Cooperative Agreement. This indemnification will not apply to the extent that the claims, demands, liability or damages arise from the negligence, recklessness or willful misconduct of the Party or any of its officers, employees, agents or contractors seeking indemnification. This indemnity will survive termination or expiration of the Cooperative Agreement.

(9) NOTICES

Any notice demand or document from one Party to another shall be delivered in writing via First Class United States Mail or overnight courier (United States Mail Express overnight delivery, Federal Express, or equivalent overnight delivery service), or via facsimile with written confirmation as proof of delivery), or delivered in person to the below identified persons, their designees, or their successors:

Adam Arika
Assistant Deputy Director
County of Los Angeles
Department of Public Works
P.O. Box 1460
Alhambra California 91802-1460
(626) 300-3300
Email: aariki@dpw.lacounty.gov

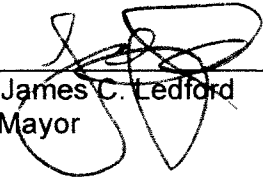
Dan Flory
General Manager
Antelope Valley East-Kern Water Agency
6500 W. Avenue N
Palmdale, California 93551
Telephone (661) 943-3201
Facsimile (661) 943-3204
Email: info@avek.org

Dennis LaMoreaux
General Manager
Palmdale Water District
2029 East Avenue Q
Palmdale, California 93590
Telephone (661) 456-1017
Facsimile (661) 947-8604
Email: dlamoreaux@palmdalewater.org

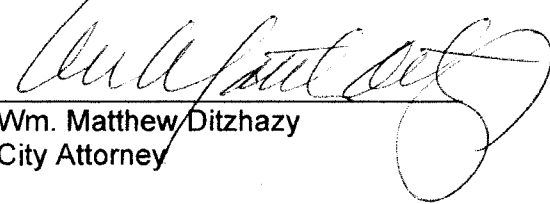
James C. Ledford
Mayor
City of Palmdale
38300 Sierra Highway
Palmdale, California 93550
Telephone (661) 267-5100
Facsimile (661) 267-5122
Email: jledford@cityofpalmdale.org

IN WITNESS WHEREOF, the parties hereto have caused this Cooperative Agreement to be executed by their respective officers, duly authorized, by City of Palmdale; and

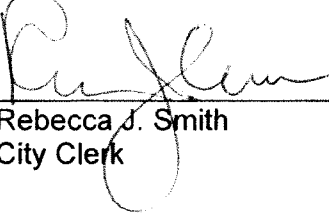
City of Palmdale:

By  _____
James C. Ledford
Mayor

APPROVED AS TO FORM:


By  _____
Wm. Matthew Ditzhazy
City Attorney

ATTEST:


By:  _____
Rebecca J. Smith
City Clerk

IN WITNESS WHEREOF, the parties hereto have caused this Cooperative Agreement to be executed by their respective officers, duly authorized, by Palmdale Water District; and

Palmdale Water District:

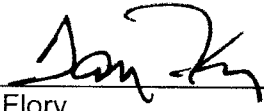
By 
Dennis LaMoreaux
General Manager
Palmdale Water District

APPROVED AS TO FORM:

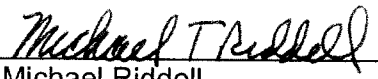
By 
Thomas S. Bunn III
District Counsel

IN WITNESS WHEREOF, the parties hereto have caused this Cooperative Agreement to be executed by their respective officers, duly authorized, by Antelope Valley-East Kern Water Agency; and

Antelope Valley-East Kern Water Agency:


By  _____
Dan Flory
General Manager
Antelope Valley – East Kern Water Agency

APPROVED AS TO FORM:

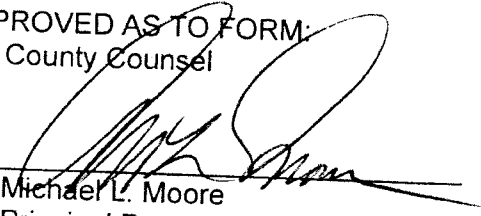
By  _____
Michael Riddell
Agency Counsel

IN WITNESS WHEREOF, the parties hereto have caused this Cooperative Agreement to be executed by their respective officers, duly authorized, by Los Angeles County Waterworks District No. 40.

Los Angeles County Waterworks District No. 40:

By 
Gail Farber
for Director of Public Works, Los Angeles County

APPROVED AS TO FORM:
County Counsel

By 
Michael L. Moore
Principal Deputy County Counsel

PROOF OF SERVICE

I, Kelley Herrington, declare:

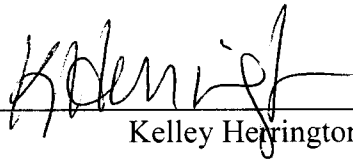
I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is Richards, Watson & Gershon, 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071. On January 23, 2014, I served the within documents:

CITY OF PALMDALE'S WITNESS AND EXHIBIT LIST FOR PHASE 5 TRIAL

- by causing facsimile transmission of the document(s) listed above from (213) 626-0078 to the person(s) and facsimile number(s) set forth below on this date before 5:00 P.M. This transmission was reported as complete and without error. A copy of the transmission report(s), which was properly issued by the transmitting facsimile machine, is attached. Service by facsimile has been made pursuant to a prior written agreement between the parties.
- by posting the document(s) listed above to the Santa Clara County Superior Court website in regard to the Antelope Valley Groundwater matter.
- by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to an agent for delivery, or deposited in a box or other facility regularly maintained by , in an envelope or package designated by the express service carrier, with delivery fees paid or provided for, addressed to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by causing personal delivery by First Legal Support Services, 1511 West Beverly Boulevard, Los Angeles, California 90026 of the document(s) listed above to the person(s) at the address(es) set forth below.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 23, 2014.



Kelley Herrington