

**JOINT EXERCISE OF
POWERS AGREEMENT**

creating the

**INDIAN WELLS VALLEY
GROUNDWATER AUTHORITY**

Draft June 10, 2016

Combined changes in Blue
IWWSD, CITY, KERN COUNTY

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INDIAN WELLS VALLEY GROUNDWATER AUTHORITY

JOINT EXERCISE OF POWERS AGREEMENT

THIS JOINT EXERCISE OF POWERS AGREEMENT (“**Agreement**”) forming the Indian Wells Valley Groundwater Authority (“**Authority**”) is made and entered into as of **July 15, 2016** (“**Effective Date**”), by and among the public agencies listed on the attached Exhibit “A” (collectively “**General Members**” and individually “**General Member**”) for the purpose of forming a Groundwater Sustainable Agency (“**GSA**”) and achieving groundwater sustainability in the Indian Wells Valley Groundwater Basin.

RECITALS

WHEREAS, the comprehensive groundwater legislation collectively enacted and referred to as the “Sustainable Groundwater Management Act” (“**SGMA**”) initially became effective on January 1, 2015.

WHEREAS, the stated purpose of SGMA, as set forth in California Water Code Section 10720.1, is to provide for the sustainable management of groundwater basins at a local level by providing local groundwater agencies with the authority and technical and financial assistance necessary to sustainably manage groundwater.

WHEREAS, SGMA further provides for and anticipates that the local groundwater agencies and federal governmental entities overlying a basin will form Groundwater Sustainable Agencies (“**GSAs**”) for the purpose of achieving groundwater sustainability through the adoption and implementation of Groundwater Sustainability Plans (“**GSPs**”) for the basin.

WHEREAS, each of the General and Associate Members overlie a portion of the Indian Wells Valley Groundwater Basin (“**Basin**”) which is designated basin number 6-54 in Department of Water Resources Bulletin No. 118 and which is included on the list of critically overdrafted basins.

WHEREAS, SGMA requires that the Basin have a designated GSA by no later than June 30, 2017 and an adopted GSP by no later than January 31, 2020.

WHEREAS, the General Members are authorized by the Joint Exercise of Powers Act (Chapter 5 of Division 7 of Title 1 of the California Government Code) (“**Act**”) to create the Authority for the purpose of jointly exercising those powers granted by the Act and any additional powers which are common among them.

WHEREAS, the General and Associate Members, individually and collectively, have the goal of cost effective sustainable groundwater management that considers the interests and concerns of all of the communities and parties that rely upon the Basin for their water supply.

WHEREAS, the General Members hereby enter into this Agreement to establish this Joint Powers Authority to undertake the management of groundwater resources pursuant to SMGA.

AGREEMENT TERMS

NOW THEREFORE, in consideration of the matters recited and the mutual promises, covenants, and conditions set forth in this Agreement, the Associate Members having expressed their intent to enter into a memorandum of understanding with the Joint Powers Authority delineating their participation in the Authority, the General Members hereby agree as follows:

Article I: Definitions

Section 1.01 – Definitions.

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

(a) “Act” shall mean the Joint Exercise of Powers Act, set forth in Chapter 5 of Division 7 of Title 1 of the Government Code, sections 6500, *et seq.*, including all laws supplemental thereto.

(b) “Agreement” means this Indian Wells Valley Ground Water Authority Joint Exercise of Powers Agreement.

(c) “Associate Member” or “Associate Members” shall refer to those federal governmental entities listed in the attached Exhibit “B”. Associate Members shall only consist of those federal governmental entities overlying the Basin who are authorized to participate in a GSA and whose willful participation is necessary because of, and limited by, legal principles such as sovereign immunity and/or the preemption doctrine. To the extent permitted by law and/or federal rules and regulations as they may be amended, “Associate Members” shall be afforded a representative non-Director’s seat on the Authority’s Board of Directors which will entitle them to full participation in the meetings and discussions of the Board. However, Associate Member(s) shall not appoint Directors and they shall not have the power to vote on any action to be taken by the Authority or to become an officer of the Authority.

(d) “Authority” shall mean the Indian Wells Valley Groundwater Authority, which is a separate entity created by this Agreement pursuant to the provisions of Government Code section 6500 *et seq.*

(e) “Basin” shall mean the Indian Wells Valley Groundwater Basin which is designated basin number 6-54 in [Department of Water Resources’](#) Bulletin No. 118 and as its boundaries may be modified from time to time through the procedures described in California Water Code Section 10722.2.

(f) “Board of Directors” or “Board” shall mean the governing body of the Authority as established by Section 6.01 of this Agreement.

(g) “Bylaws” shall mean the bylaws adopted by the Board of Directors pursuant to Section 8.5 of this Agreement to govern the day-to-day operations of the Authority.

(h) “Fiscal Year” shall mean that period of 12 months established as the Fiscal Year of the Authority pursuant to Section 9.03 of this Agreement.

(i) “General Member” or “General Members” shall mean the eligible agencies listed in the attached Exhibit “A” which have executed this Agreement, including any new General Members which may subsequently join this Authority with the authorization of the Board, pursuant to Section 5.02 of this Agreement.

(j) “Groundwater Sustainability Agency” or “GSA” shall have the meaning set forth in SGMA Water Code section 10721(j).

(k) “Groundwater Sustainability Plan” or “GSP” shall have the meaning set forth in Water Code section 10721(k).

(l) “Primary Director” and “Alternate Director” shall mean a Primary Director or Alternate Director appointed by a General Member pursuant to Section 6.02 of this Agreement.

(m) “Regular Monthly Receivables” shall mean those costs and bills of the Authority which are routine in nature and which have not been objected to by any Director either at the meeting or in writing prior to the meeting.

(n) “Special Activities” shall mean activities that are consistent with the purpose of this Agreement and which are done in the name of the Authority pursuant to Section 10.01 of this Agreement, but which are undertaken by fewer than all the General Members.

(o) “Sustainable Groundwater Management Act” or “SGMA” shall mean the comprehensive groundwater legislation collectively enacted and referred to as the “Sustainable Groundwater Management Act” (“SGMA”) as codified in Water Code Section 10720 *et seq.* and as may be amended in the future.

Article II: Authority Creation

Section 2.01 – Creation of the Authority.

There is hereby created a joint powers agency known as the Indian Wells Valley Groundwater Authority (“Authority”). The Authority shall be, to the extent provided by law, a public entity separate from the General Members of this Agreement.

Section 2.02 – Purpose of the Authority.

The purpose of this Agreement, and the creation of the Authority, is to provide for the joint exercise of powers common to the General Members, and those additional powers granted by SGMA, for the purpose of cooperatively carrying out the requirements of SGMA, including, but not limited to, serving as the GSA for the Basin and developing, adopting and implementing a GSP which achieves groundwater sustainability in the Basin.

Article III: Term

Section 3.01 – Term.

This Agreement shall become operative on the Effective Date provided that at least two of the General Members listed in Exhibit A have executed this Agreement by said date. If an eligible agency listed in Exhibit A has not executed this Agreement and paid their initial funding contribution called for in Section 9.02 by [August 15, 2016](#), they will lose their right to join through execution of this Agreement and their membership will be subject to the process for inclusion of new General Members set forth in Section 5.02.

This Agreement shall remain in effect until terminated by the unanimous written consent of all then active General Members [or there are less than two General Members remaining in the Authority](#); provided, however, that this Agreement shall remain in effect during the term of any contractual obligation or indebtedness of the Authority that was previously approved by the Board.

Article IV: Powers

Section 4.01 – Powers.

The Authority shall possess the ability to exercise those powers specifically granted by the Act. Additionally, the Authority shall possess the ability to exercise the common powers of its Members related to the purposes of the Authority, including and limited to the following:

- 4.01.1 To designate itself the GSA for the Basin pursuant to SGMA.
- 4.01.2 To develop, adopt and implement a GSP for the Basin pursuant to SGMA.
- 4.01.3 To adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority and the adoption and implementation of the GSP.
- 4.01.4 To contract for the services of engineers, attorneys, planners, financial consultants, and separate and apart therefrom to appoint agents and representatives to employ such other staff persons as necessary.
- 4.01.5 To collect and monitor all data related and beneficial to the development, adoption and implementation of the GSP for the Basin
- 4.01.6 To issue revenue bonds or other appropriate public or private debt and incur debts, liabilities or obligations in connection with the operation,

maintenance, administration and management of any facilities required to carry out these purposes.

- 4.01.7 To levy assessments, charges and fees as provided in SGMA.
- 4.01.8 To regulate and monitor groundwater extractions as permitted by SGMA, [provided that this provision does not extend to a General or Associate Member's operation of its system to distribute water once extracted or otherwise obtained, unless and to the extent required by other laws.](#)
- 4.01.9 To establish and administer water banking programs for the benefit of the Basin.
- 4.01.10 To establish and administer water recycling, recapturing or purifying programs for the benefit of the Basin.
- 4.01.11 To cooperate, act in conjunction and contract with the United States, the State of California, or any agency thereof, counties, municipalities, public and private corporations of any kind (including without limitation, investor-owned utilities), and individuals, or any of them, for any and all purposes necessary or convenient for the full exercise of the powers of [the](#) Authority.
- 4.01.12 To accumulate operating and reserve funds and invest the same as allowed by law for the purposes of the Authority.
- 4.01.13 To apply for and accept grants, contributions, donations and loans under any federal, state or local programs for assistance in developing or implementing any of its projects or programs in connection with any project untaken in the Authority's [name](#) for the purposes of the Authority.
- 4.01.14 To acquire by negotiation or condemnation, lease, purchase, construct, hold, manage, maintain, operate and dispose of any buildings, property, water rights, works or improvements within and without the respective boundaries of the General Members necessary to accomplish the purposes describe herein.
- 4.01.15 To sue or be sued in its own name.
- 4.01.16 To invest funds pursuant to Government Code Section 6509.5 or other applicable State Law.
- 4.01.17 Any power necessary or incidental to the foregoing powers in the manner and according to the procedures provided for under the law applicable to the General Members to this Agreement.

- 4.01.18 Any additional powers conferred under SGMA or the Act or under applicable law, insofar as such powers are needed to accomplish the purposes of SGMA, including all powers granted to the Authority under Article 4 of the Act which are in addition to the common powers of the General Members, including the power to issue bonds or otherwise incur debts, liabilities or obligations to the extent authorized by the Act or any other applicable provision of law and to pledge any property or revenues of the rights thereto as security for such bonds and other indebtedness.

Section 4.02 – Exercise of Powers.

In accordance with California Government Code Section 6509, the foregoing powers shall be subject to the restrictions upon the manner of exercising such powers pertaining to the County of Kern.

Section 4.03 – Water Rights and Consideration of all Beneficial Uses and Users of Groundwater in the Basin.

As set forth in Water Code section 10723.2, and any future amendments to SGMA, the GSA shall consider the interests of all beneficial uses and users of groundwater in the Basin, as well as those responsible for implementing the GSP. Additionally, as set forth in Water Code section 10720.5(a), and any future amendments to SGMA, any GSP adopted pursuant to this Agreement shall be consistent with Section 2 of Article X of the California Constitution and nothing in this Agreement modifies the rights or priorities to use or store groundwater consistent with Section 2 of Article X of the California Constitution, with the exception that no extraction of groundwater between January 1, 2015 and the date the GSP is adopted may be used as evidence of, or to establish or defend against, any claim of prescription. Likewise, as set forth in Water Code section 10720.5(b), and any future amendments to SGMA, nothing in this Agreement or any GSP adopted pursuant to this Agreement determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights.

Section 4.04 – Preservation of Police Powers.

Nothing set forth in this Agreement shall be deemed to modify or otherwise limit a county's or city's police powers in any way or its authority to regulate groundwater under existing law or any amendment thereto. The adopted GSP shall not authorize any water supply augmentation of groundwater extracted from another groundwater basin within the jurisdiction of General Member without the express approval of that General Member.

Article V: Membership

Section 5.01 – General Members.

The General Members of the Authority shall be the public agencies listed on the attached Exhibit “A”, so long as their Membership has not been withdrawn or terminated pursuant to the provisions Article XI of this Agreement.

Section 5.02 – New General Members.

The Board may approve an application for a new General Member to the Authority through a vote of the [Board](#) so long as: 1) the new General Member is a public agency which is qualified to join the Authority under the provisions of SGMA and the Act; and, 2) the new General Member agrees to or has met any other conditions that the Board may establish from time to time.

Once an application is approved by the [Board of Directors](#), the governing bodies for each of the General Members shall be sent the application for consideration and possible approval. For a new General Member to be admitted, the application must be approved by each of the governing bodies for the General Members. Upon final approval, the attached Exhibit “A” shall be amended to reflect the new General Member.

Section 5.03 – Associate Members.

The Associate Members of the Authority shall be those Federal Governmental Entities listed on the attached Exhibit “B” so long as their Membership has not been withdrawn or terminated pursuant to the provisions Article XI of this Agreement. Associate Members shall be afforded a representative non-voting seat on the Authority’s Board of Directors which will entitle the representative to full participation in the meetings and discussions of the Board. However, Representatives of Associate Member(s) shall not be Directors, nor shall they become officers of the Authority and they shall not have the power to vote on any action and or proposal before the Board of Directors.

Article VI: Directors and Officers

Section 6.01 – Board of Directors.

The Authority shall be governed and administered by a Board of Directors (“Board”) which is hereby established and which shall be composed of one voting seat per General Member. To the extent permitted by law and/or federal rules and regulations as they may be amended, “Associate Members” shall not be allowed to vote on any [matter](#) before the Board but they shall be afforded a representative non-voting seat on the Board which will entitle them to full participation in the meetings and discussions of the Board and any Committees established by the Board.

Section 6.02 – Directors and Alternates.

Each General Member’s governing body shall appoint one Primary Director and one

Alternate Director. The Alternate Director shall serve and assume the rights and duties of the Primary Director when the Primary Director is unable to attend a Board meeting. The Primary and Alternate Directors for the County of Kern, Indian Wells Valley Water District and the City of Ridgecrest shall be elected members of their governing bodies. Primary Directors and Alternate Directors shall serve at the pleasure of the governing body appointing them and they may be removed at any time, with or without cause, in the sole discretion of their governing body. Each Primary Director and Alternate Director shall hold office until their successor is selected by their governing body and the Authority has been notified of the succession.

Section 6.03 – Officers of the Board.

Officers of the Authority's Board shall consist of a Chairperson and Vice-Chairperson. The Vice-Chairperson shall exercise the powers of the Chairperson if the Chairperson is absent or unable to act.

Section 6.04 – Appointment of Officers of the Board.

The Board shall annually elect its own officers who shall include a Chairperson, and Vice-Chairperson both of whom shall be Primary Directors. The Chair shall preside at all meetings of the Board, and shall exercise and perform such other powers and duties as may be assigned by the Board. The Vice-Chair shall perform the duties of the Chair in the absence or disability of the Chair and shall have such other powers as the Board may prescribe. The Chair and Vice-Chair shall hold office for a term of one year commencing on January 1 of each and every calendar year and may serve for multiple consecutive terms. They may be removed and replaced at any time, with or without cause by a vote of the Board.

Article VII: Board Meetings and Actions

Section 7.01 – Initial Meeting.

The initial meeting of the Board shall be held at a location overlying the Basin within forty five days (45) days of the Effective Date of this Agreement.

Section 7.02 – Regular Meeting Schedule.

The Board shall establish a regular meeting time and place at the initial meeting of the Board. The Board may vote to change the regular meeting time and place provided that the new location remains at a place overlying the Basin.

Section 7.03 – Special Meetings.

Special meetings of the Board shall be conducted pursuant to Government Code section 54956 and they may be called by the Chairperson, or by the concurrence of any two Primary Directors.

Section 7.04 – Committees of the Board.

The Board may from time to time establish advisory committees for the purpose of making recommendations to the Board on the various activities of the Authority. The establishment of any committee and its duties shall require the vote of the Board of Directors and the activities of the committee shall be subject to the provisions of the Ralph M. Brown Act (Government Code sections 54950, *et seq.*). Committees shall exist for the term specified in the action creating the committee and the Board may dissolve a committee at any time through a vote of the Board of Directors.

The Board shall ensure that the development of the GSP includes the meaningful participation of all water users in the Basin including but not limited to the General Members, Associate Members, regulated public water utilities, mutual water companies and other private well pumpers. The Board shall ensure this meaningful participation through the establishment of one or more committees which will contain members from the above groups so long as their participation does not violate the State ethics and conflict of interest laws, including Government Code sections 1090 *et seq.*, or any other law.

Section 7.05 – Conduct of Board and Committees of the Board Meetings.

All meetings of the Board of Directors, including special meetings and Board committee meetings, shall be noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code sections 54950, *et seq.*). The Board may use teleconferencing in connection with any meeting in conformance with, and to the extent authorized by, applicable law. The Board may further establish rules of conduct for its meetings provided that said rules do not conflict with the Ralph M. Brown Act or other applicable law.

All meetings of Committees of the Board which are formed in accordance with Section 7.04 shall be noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code sections 54950, *et seq.*). A Committee may use teleconferencing in connection with any meeting in conformance with, and to the extent authorized by, applicable law. The Board may further establish rules of conduct for Committees of the Board meetings provided that said rules do not conflict with the Ralph M. Brown Act or other applicable law.

Section 7.06 – Quorum.

A quorum of the Board shall consist of majority of the Directors representing the then active General Members. In the absence of a quorum, no business may be transacted beyond the adjournment of a meeting by the remaining Directors. A Director shall be deemed present for the determination of a quorum if the Director is present at the meeting in person or if they participate in the meeting telephonically as provided for by Ralph M. Brown Act.

Section 7.07 – Voting.

The affirmative vote of a majority of the Board shall be required for the approval of any Board action. In addition, no action may be approved by the Board unless it receives the affirmative vote from no less than two of the then voting Directors representing the County of Kern, the City of Ridgecrest and/or the Indian Wells Valley Water District.

Notwithstanding the foregoing, the Board may approve the Regular Monthly Receivables by a simple majority vote so long as the routine costs and bills making up the Regular Monthly Receivables have not been objected to by any Director. While a Director may voice an oral objection at the meeting, a Director's presence is not required and they may also file an objection in writing prior to the meeting. Likewise, any meeting of the Board may be adjourned by a simple majority vote of the then present Directors.

Section 7.08 – GSP Adoption, Modification or Alteration.

The final adoption of a GSP and the modification and/or alteration of any adopted GSP shall require the affirmative vote of at least 4/5ths of the General Members, unless a General Member abstains or recuses themselves from the matter. In the event a General Member abstains or recuses themselves, the voting requirement shall become 3/4ths. In the event that two General Members abstains and/or recuses themselves, the voting requirement shall become 2/3rds.

Section 7.09 – Minutes.

The Board shall cause minutes to be kept of all public meetings of the Board and any Board appointed Committees. The Board shall further cause a copy of draft minutes to be forwarded to each Director and to each General Member Agency.

Article VIII: Operations and Management

Section 8.01 Administrator.

The Authority may appoint an Administrator, from time-to-time as and when it deems appropriate. If appointed, the Administrator shall serve at the pleasure of the Board of Directors and their duties and responsibilities shall be set forth via a vote of the Board.

Section 8.02 Legal Counsel and Other Officers.

The Authority may appoint General Legal Counsel who shall serve at the pleasure of the Board via a vote of the Board. Subject to the limits of the Authority's approved budget, the Board shall also have the power to appoint and contract via a vote of the Board for the services of other officers, consultants, advisers and independent contractors as it may deem necessary or convenient for the business of the Authority, all of whom shall serve at the pleasure of the Board.

Section 8.03 – Employees and Management.

In addition to, or in lieu of, hiring employees, the Authority may engage one or more General Members to manage any or all of the business of the Authority on terms and conditions acceptable to the Board of Directors. Any General Member so engaged shall have such responsibilities as are set forth in the contract for such General Member's services which shall be approved by a majority vote of the Directors representing the non-contracting Members.

Section 8.04 – Principal Office.

At the initial meeting of Board, the Board shall establish a principal office for the Authority which shall be located at a place overlying the Basin. The Board may change the principal office from time to time as the Board sees fit so long as that principal office remains at a location overlying the Basin.

Section 8.05 – Bylaws.

The Board shall adopt Bylaws governing the conduct of meetings and the day-to-day operations of the Authority on or before the first anniversary of the Effective Date. The Bylaws may be amended from time to time as the Board deems necessary.

Section 8.06 – Authority, Seal and Letterhead.

The Board may adopt, and/or amended, an official seal and letterhead for the Authority by a vote of the Directors.

Section 8.07 – Conflict of Interest Code.

At the initial meeting of Board, the Board shall begin the process for the adoption and filing of a Conflict of Interest Code pursuant to the provisions of the Political Reform Act of 1974.

Article IX: Financial Provisions

Section 9.01 – Establishment of Funds.

The Board shall establish and maintain such funds and accounts as may be required by generally accepted public agency accounting practices. The Authority shall maintain strict accountability of all funds and report of all receipts and disbursements of the Authority.

Section 9.02 – Initial Funding Payments.

In order to provide the needed capital to initially fund the Authority, the General Members shall each provide an initial contribution of \$15,000 due upon their execution of this Agreement. To the extent the Authority is able to secure other funding sources in the future, and to the extent permitted by law, the Authority shall reimburse the initial contributions on a proportionate basis.

Notwithstanding the equal amount of initial funds contributed by each of the General Members, the parties intend for future funding contributions to be allocated on a fair, proportional basis (e.g., irrigated acreage, groundwater pumping, population, and/or number of wells).

Section 9.03 – Fiscal Year.

The Fiscal Year of the Authority shall be from January 1 through December 31 of each year. If the Board so desires, it may change the Fiscal Year.

Section 9.04 – Fiscal Agent and Treasurer.

The County of Kern shall serve as the Fiscal Agent and Treasurer for the Authority unless otherwise directed by a vote of the Board of Directors. The Fiscal Agent shall be responsible for all money of the Authority from whatever source. All funds of the Authority shall be strictly and separately accounted for and regular reports shall be rendered of all receipts and disbursements at least **MONTHLY OR QUARTERLY** during the Fiscal Year. The books and records of the Authority shall be open to inspection by the General Members.

Section 9.05 – Funds; Property; Bonds.

The Board shall from time to time designate the officers and persons, in addition to those specified in Section 9.04 above, who shall have charge of, handle, or have access to any property of the Authority. Each such officer and person shall file a bond in an amount designated by the Board.

Section 9.06 – Audit Duties.

The Board shall contract with a certified public accountant to audit the accounts and records of the Authority as required by applicable accounting practices and the Act.

Section 9.07 – Budget.

By a date no later than January 1, 2017, and sixty (60) days before the end of each Fiscal Year thereafter, the Board shall adopt a budget for the Authority for the ensuing Fiscal Year. The Board may authorize mid-year budget adjustments, as needed.

Notwithstanding Section 11.04, a General Member shall not be fiscally liable for any adopted or modified budget or budget item(s) provided that the General Member's Director provides written notice within ten (10) days of the adoption or modification of the budget or a budget item that the Director intends to recommend to their board that the General Member withdraw from this Agreement. The notice provided in this section shall serve to limit the General Member's fiscal liability for the contested budget or budget item(s) so long as the General Member's board formally votes to withdraw from this Agreement within sixty (60) days of the adoption or modification of the budget or budget item(s).

Section 9.08 – Payments To The Authority.

(a) All fees, costs and expenses incurred by the Authority shall be funded from: (i) voluntary contributions from third parties, such as grants; (ii) assessments on the General Members, levied from time to time by the Board to carry out the activities of the Authority generally applicable to all Members; and, (iii) assessments, fees and/or charges levied by the Authority under the provisions of SGMA.

(b) No General Member shall be bound, financially or otherwise, by any obligation, contract or activity undertaken by the Authority unless and except to the extent agreed upon by the General Member, except that each General Member shall be obligated to fund its then current annual share of the general basic budget of the Authority, provided such budgets are otherwise

approved as provided herein. Funding of other matters shall be through Special Activity agreements or as otherwise agreed to by the General and Associate Members.

(c) The Associate Members cannot contribute direct funding to the Authority however they will assist in project development technical support, and information sharing including field studies/data, as appropriate.

Article X: Special Activities

Section 10.01 – Special Activities.

With the prior approval of the Board, General Members may undertake Special Activities in the name of the Authority. Prior to undertaking a Special Activity, the General Members electing to participate in the Special Activity shall enter into an activity agreement. Such activity agreement shall provide that: (i) no Special Activity undertaken pursuant to such agreement shall conflict with the terms of this Agreement; and, (ii) the General Members to the activity agreement shall indemnify, defend and hold the other parties to this Agreement and the Authority harmless from and against any liabilities, costs or expenses of any kind arising as a result of the Special Activity described in the activity agreement. All assets, rights, benefits, debts, liabilities and obligations attributable to a Special Activity shall be assets, rights, benefits debts, liabilities and obligations solely of the General Members that have entered into the activity agreement for that Special Activity, in accordance with the terms of the activity agreement, and shall not be the assets, rights, benefits, debts, liabilities and obligations of those General and Associate Members that have not executed the activity agreement. General and Associate Members not electing to participate in the Special Activity shall have no rights, benefits, debts, liabilities or obligations attributable to such Special Activity.

Article XI: Relationship of Authority And Its Members

Section 11.01 – Separate Entity.

In accordance with California Government Code Sections 6506 and 6507, the Authority shall be a public entity separate and apart from the parties to this Agreement.

Section 11.02 – Liabilities.

The General Members do not intend hereby to be obligated either jointly or severally for the debts, liabilities or obligations of the Authority, except as may be specifically provided for in California Government Code Section 895.2 as amended or supplemented. Therefore unless, and to the extent otherwise required by law or agreed to herein by the General Members, the debts, liabilities and obligations of the Authority shall not be debts, liabilities or obligations of the General Member entities. The Authority shall own and hold title to all funds, property and works acquired by it during the term of this Agreement.

Section 11.03 – Indemnity.

Funds of the Authority may be used to defend, indemnify, and hold harmless the Authority, each General Member, each Director, and any officers, agents and employees of the

Authority for their actions taken within the course and scope of their duties while acting on behalf of the Authority. Other than for gross negligence or intentional acts, to the fullest extent permitted by law, the Authority agrees to save, indemnify, defend and hold harmless each General Member from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees, where the same arise out of, or are attributable in whole or in part, to negligent acts or omissions of the Authority or its employees, officers or agents or the employees, officers or agents of any General Member, while acting within the course and scope of an General Member relationship with the Authority.

Section 11.04 – Withdrawal of Members.

Any General and/or Associate Member shall have the ability to withdraw by providing 45 days written notice of its intention to withdraw. Said notice shall be given to the Board and to each of the other General and Associate Members. In the event of a withdrawal, this Agreement shall continue in full force and effect among the remaining members as set forth in Section 11.06 below.

Section 11.05 – Termination of Members.

The Board may vote to terminate any Member for cause including, but not limited to, the failure to meet its funding obligations set forth in this Agreement or future actions of the Board. In the event of a termination, this Agreement shall continue in full force and effect among the remaining members as set forth in Section 11.06 below.

Section 11.06 – Continuing Obligations upon Withdrawal or Termination.

Except as provided for in Section 9.07, any withdrawal or termination as General Member, shall not relieve the General Member of its financial obligations (including, but not limited to, indemnity obligations, capital costs, debt obligations, CalPERS unfunded Liability, or any net operations and maintenance costs resulting from such withdrawal) arising under this Agreement prior to the effective date of the withdrawal or termination.

The withdrawal or termination of one or more General Members, shall not terminate this Agreement or result in the dissolution of the Authority. This Agreement shall remain in full force and effect among the remaining members, following the withdrawal or termination of any General Member, and the Authority shall remain in operation provided that there are at least two General Members remaining in this Agreement.

Section 11.07 – Dissolution

The Authority may be dissolved at any time upon the unanimous vote of the Board and approval of the General Members' governing boards. However, the Authority shall not be dissolved until all debts and liabilities of the Authority have been eliminated. Upon Dissolution of the Authority, each General Member shall receive its proportionate share of any remaining assets after all Authority liabilities and obligations have been paid in full. The distribution of remaining assets may be made "in kind" or assets may be sold and the proceeds thereof

distributed to the General Members. This distribution shall occur within a reasonable time after dissolution. No former member which previously withdrew or was terminated shall be entitled to a distribution upon dissolution.

Section 11.08 – Disposition of Property Upon Termination of Authority or Board Determination of Surplus.

Upon termination of this Agreement or upon determination by the Board that any surplus money is on hand, such surplus money shall be returned to the then General Members of the Authority which contributed such monies in proportion to their contributions. The Board shall first offer any surplus properties, works, rights and interests of the Authority for sale to the individual General Member and the sale shall be based on highest bid. If no such sale is consummated, the Board shall offer the surplus properties, works, rights and interests of the Authority for sale in accordance with applicable law to any governmental agency, private entity or persons for good and adequate consideration.

Article XII: Miscellaneous Provisions

Section 12.01 – Agreement Complete.

The foregoing constitutes the full and complete Agreement of the General Members. This Agreement supersedes all prior agreements and understandings, whether in writing or oral, related to the subject matter of this Agreement that are not set forth in writing herein.

Section 12.02 – Amendment.

This Agreement may be amended from time to time by the unanimous consent of the governing bodies of the General Members.

Section 12.03 – Assignment.

Except as otherwise provided in this Agreement, the rights and duties of the General Members may not be assigned or delegated without the advance written consent of all the other General Members, and any attempt to assign or delegate such rights or duties in contravention of this section shall be null and void. Any assignment or delegation permitted under the terms of this Agreement shall be consistent with the terms of any contracts, resolutions or indentures of the Authority then in effect. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the General Members hereto. This section does not prohibit a General Member from entering into an independent agreement with another agency regarding the financing of that General Member's contributions to the Authority or the disposition of proceeds which that General Member receives under this Agreement so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the General Members under this Agreement.

Section 12.04 – Dispute Resolution.

In the event there are disputes and/or controversies relating to the interpretation, construction, performance, termination, breach of, or withdrawal from this Agreement, the

General Members involved shall in good faith meet and confer amongst themselves in an attempt to informally resolve such matter(s). If the General Members are unsuccessful in resolving such matter(s) through an informal meeting process, they shall attempt to resolve such matter(s) through mediation. If they are unable to resolve such matter(s) through mediation, they may attempt to settle such issue(s) by arbitration under the rules and regulations of the American Arbitration Association or they may exercise whatever other legal rights and remedies they may have in court. Any party requesting arbitration under this Agreement must make a request on the other General Members by registered or certified mail with a copy to the American Arbitration Association.

Section 12.05 – Execution In Parts Or Counterparts.

This Agreement may be executed in parts or counterparts, each part or counterpart being an exact duplicate of all other parts or counterparts, and all parts or counterparts shall be considered as constituting one complete original and may be attached together when executed by the General Members hereto. Facsimile or electronic signatures shall be binding.

Section 12.06 – Member Authorization.

The governing bodies of the General Members have each authorized execution of this Agreement, as evidenced by their respective signatures below.

Section 12.07 – No Predetermination or Irretrievable Commitment of Resources.

Nothing herein shall constitute a determination by the Authority or any of its General and Associate Members that any action shall be undertaken or that any unconditional or irretrievable commitment of resources shall be made, until such time as the required compliance with all local, state, or federal laws, including without limitation the California Environmental Quality Act, National Environmental Policy Act, or permit requirements, as applicable, have been completed.

Section 12.08 – Notices.

Notices authorized or required to be given pursuant to this Agreement shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours to the addresses set forth for each of the Members hereto on Exhibit “A” of this Agreement, or to such other changed addresses communicated to the Authority and the General and Associate Members in writing.

Section 12.09 – Severability And Validity Of Agreement.

Should the participation of any General and/or Associate Member to this Agreement, or any part, term or provision of this Agreement be decided by the courts or the legislature to be illegal, in excess of that Member’s authority, in conflict with any law of the State of California, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms or provisions of this Agreement shall not be affected thereby and each Member hereby agrees it would have entered into this Agreement upon the same remaining terms as provided herein.

Section 12.10 – Singular Includes Plural.

Whenever used in this Agreement, the singular form of any term includes the plural form and the plural form includes the singular form.

IN WITNESS WHEREOF, the Members hereto, pursuant to resolutions duly and regularly adopted by their respective Board of Directors or governing board, have caused their names to be affixed by their proper and respective officers as of the day and year first above-written.

[Signatures on Following Pages]

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