

**AGREEMENT FOR THE COOPERATIVE USE OF UNUSED WELL CAPACITY, THE TEXAS GROVE RESERVOIR AND THE CENTRAL FEEDER**

This Agreement for the Cooperative Use of Unused Well Capacity, the Texas Grove Reservoir and the Central Feeder (“Agreement”) is entered into and effective this 2nd day of April, 2013 (“Effective Date”) by and between the City of Redlands (“City”) and San Bernardino Valley Municipal Water District (“Valley District”). City and Valley District are sometimes individually referred to herein as a “Party” and, together, as the “Parties.”

Recitals

- A. City owns the 3.9 million gallon Texas Grove Reservoir, which is shown on the map attached hereto as Exhibit “A” and incorporated herein by reference. The Texas Grove Reservoir is located adjacent to the Valley District Redlands Pump Station.
- B. Valley District desires to purchase 2.3 million gallons of capacity in the existing City of Redlands' Texas Grove Reservoir and to intertie the Reservoir into the Central Feeder system.
- C. City is willing to sell Valley District 2.3 million gallons of capacity in the Texas Grove Reservoir.
- D. City owns various water wells that deliver water to the Texas Grove Reservoir.
- E. Valley District has constructed the Central Feeder Project Phase 1, which includes the Redlands Pump Station and a 78-inch pipeline (the “**Central Feeder**”) that connects to the Metropolitan Water District of Southern California’s Inland Feeder Pipeline and the East Branch Extension of the State Water Project. The Central Feeder is shown on the map attached hereto as Exhibit “A.” Valley District further intends to construct new wells in the San Bernardino Basin Area (the “**SBBA**”), in, or upstream of, the Area of Historic High Groundwater (the “**AHHG**” or the “**Pressure Zone**”) that could deliver water to the Central Feeder.
- F. From time to time, Valley District intends to use its proposed wells to dewater the AHHG during periods when the Boards of Directors for Valley District and Western Municipal Water District (“**Western**”) agree additional extractions are needed to mitigate the risks associated with high groundwater which include the flooding of basements and the increased risk of property damage and personal injury from soil liquefaction during an earthquake. These Valley District wells may also be used to extract: (i) State Water Project water that has been “banked” in the SBBA, (ii) Western’s portion of Santa Ana River water diverted and stored in the SBBA under State Water Resources Control Board permits 21264 and 21265, or (iii) “new conservation water,” as defined in the *Western Judgment (Western Municipal Water District et al. v. East San Bernardino County Water District et al., Riverside County Superior Court Case No. 78426, April 17, 1969)* and determined by the Western-San Bernardino Watermaster that is banked in the SBBA. Additionally, Valley District intends to consult with other water agencies with interests in the SBBA, by working

with the Basin Technical Advisory Committee, in order to ensure Valley District and Western Boards of Directors are provided with the most up-to-date technical information upon which to base decisions.

- G. To postpone the need to construct its own wells and related transmission pipelines, Valley District desires to utilize the City's water wells when the City is not using such well's (unused capacity) to pump and deliver water to the Central Feeder via the Texas Grove Reservoir and Redlands Pump Station.
- H. City wishes to make its unused water well capacity available to Valley District provided that it does not cause lower water levels and, thereby, increase pumping costs for City's own customers nor cause water quality degradation for Total Dissolved Solids ("**TDS**") in the SBBA that causes Redlands Wastewater Treatment Plant discharges to exceed permitted concentrations.
- I. City and Valley District, in addition to other parties, entered into the "Settlement Agreement Relating to the Diversion of Water From the Santa Ana River System (the "**Seven Oaks Accord**")" on July 21, 2004. One of the provisions of the Seven Oaks Accord provides for participation in a "groundwater spreading program" that would, among other things, maintain groundwater levels at relatively constant levels in the SBBA.
- J. Valley District and the Santa Ana Regional Water Quality Control Board entered into the "Cooperative Agreement to Protect Water Quality and Encourage the Conjunctive Uses of Imported Water in the Santa Ana River Basin" (the "**RWQCB Agreement**") on January 16, 2008, which requires preparation of a report on water quality conditions in the SBBA every three years.
- K. City and Valley District wish to cooperate in the operation of facilities for the mutual benefit of the Parties.

#### Agreements

- 1. *Valley District Purchase of Storage Rights in the Texas Grove Reservoir*
  - a. *Storage Rights.* City hereby sells, and Valley District hereby purchases, all rights to the use of the upper 2.3 million gallons of usable storage capacity in the existing Texas Grove Reservoir, for the life of the reservoir, which capacity is understood by the Parties to be at, or above, elevation 1338.9 feet MSL NGVD. City shall retain all storage rights to the use of that portion of the Texas Grove Reservoir below elevation 1338.9 feet MSL NGVD. Neither Party shall interfere with the other Party's use of its share of the storage capacity of the Texas Grove Reservoir, unless such storage capacity is needed to meet fire fighting demands by City. In such instances, City shall have the right to use all water available in the Texas Grove Reservoir. City shall cooperate with Valley District and allow Valley District to construct City-approved facilities necessary to utilize Valley District's full storage rights in the Texas Grove Reservoir.

- b. *Payment by Valley District for Storage Rights.* Valley District shall pay City the sum of \$2,168,426 for the rights described in paragraph 1a within 30 calendar days after the Effective Date of this Agreement. Valley District will make such payment by electronic funds transfer into a fund approved by City. City shall provide Valley District with a written receipt, acknowledging payment in full, within 7 calendar days of the electronic funds transfer.
- c. *Operation and Maintenance.* City shall be responsible for the day to day operation and maintenance of the Texas Grove Reservoir, except for the 42-inch nozzle connecting the Texas Grove Reservoir to Valley District's Redlands Pump Station which shall be the responsibility of Valley District.
- (1) *Ordinary Operation and Maintenance.* City shall operate the Texas Grove Reservoir in accordance with the terms of this Agreement and in accordance with good engineering practices, including normal maintenance of the reservoir.
  - (2) *Substantial Work.* In the event City determines, in its reasonable engineering judgment, that substantial work (i.e., more than \$50,000 in a calendar year) is needed to properly maintain the Texas Grove Reservoir, City shall promptly consult with Valley District and, before commencing any work, City shall give written notice to Valley District of: (i) the work to be performed, (ii) the estimated cost of the proposed work, and (iii) the contractor(s) that will perform work. City may only commence such work upon receipt of written approval from Valley District, which approval shall not be unreasonably withheld or delayed.
  - (3) *Emergency Circumstances.* Nothing in paragraph 1c(2) shall be construed to prevent City from taking any action it reasonably believes necessary in the event of an emergency. City shall notify Valley District of the existence of an emergency as soon as reasonably possible and shall, to the extent feasible under the circumstances, coordinate a response with Valley District.
  - (4) *Reimbursement by Valley District.* Valley District shall reimburse City for 63% of the costs to operate and maintain the Texas Grove Reservoir, as determined based on the calculations attached hereto as Exhibit "B" and entitled "City of Redlands Reservoir #1 (Texas Grove Reservoir)." Reimbursable costs shall include, but not be limited to, actual and reasonable costs of City staff, consultants and contractors for operating and maintaining the Texas Grove Reservoir.
  - (5) *Invoices to Valley District.* City shall invoice Valley District for such operation and maintenance costs quarterly in arrears and Valley District shall pay such invoices within 30 calendar days of the date of the invoice. Invoices shall indicate, in reasonable detail, the cost of each action undertaken by City to operate and maintain the Texas Grove Reservoir,

including the date of the service, the individuals performing the service, the hourly rate of such individuals, and the costs of any materials. In the event Valley District objects to any costs identified on an invoice, Valley District shall pay the undisputed costs and shall invoke the dispute resolution process described in paragraph 10c below for the objectionable costs.

2. *Term of Agreement.* This Agreement shall have an initial term of five years from its Effective Date and shall automatically renew for subsequent five-year terms thereafter unless terminated as provided for in paragraph 8 below.
3. *Cooperative Operation of City Wells and the Central Feeder*
  - a. *Delivery of Water by City to Valley District.*
    - (1) *Estimate of unused capacity by City.* No later than each November 1, City shall provide Valley District with a written estimate of the availability of water during the following calendar year, up to a maximum of 20,000 acre-feet. City shall make this estimate in its sole and reasonable discretion. City may base its estimate on hydrologic conditions, groundwater levels, facility limitations, demand for water within City, or any other reasonable factor.
    - (2) *Valley District Water Order.* No later than each December 1 of each year, Valley District shall provide City with a written order for water for the following calendar year, up to a maximum amount equal to City's estimate of unused capacity.
    - (3) *Water delivery to Texas Grove Reservoir.* City shall operate its water production and distribution systems to provide Valley District with the amount of water ordered by Valley District at the Texas Grove Reservoir. Valley District shall install or cause to be installed a meter to measure deliveries by City to Valley District. City shall have the right to read the meter on a monthly basis and inspect the meter at least annually in order to ensure the accurate calculation of water delivered to Valley District.
    - (4) *Modification of City's Estimate.* The Parties understand and acknowledge that a number of factors, including but not limited to greater/lesser precipitation or changes in customer demand for water, may modify City's ability to supply Valley District with ordered water. It is the intent of the Parties that this Agreement not interfere with City's obligation to serve its customers.
      - (a) City may increase or decrease its estimate of water available to Valley District at any time during a calendar year as may be reasonable to provide water service to City's customers. City will use reasonable, good faith efforts to meet Valley District's water demands.

- (b) In the event of an emergency, as defined in California Public Contract Code Section 1102, City may take any actions it deems reasonably necessary to respond to the emergency and provide water service to its customers. City shall promptly consult with Valley District and jointly develop a plan that will provide Valley District water as soon as practicable after the conclusion of the emergency.
- b. *Payment by Valley District for Water.* Valley District shall pay City the actual production cost, as determined pursuant to paragraph 3b(1) below, and the Operations, Maintenance and Repair (“**OMR**”) cost, as determined pursuant to paragraph 3b(2) below, for water delivered to Valley District at the Texas Grove Reservoir.
- (1) *Payment for Production Cost.* Valley District shall pay City for City’s actual cost of producing water pursuant to this Agreement. Such actual costs may be determined by using either: (i) energy and treatment costs for the water production facilities that City specifically operates to meet Valley District’s water order or (ii) a weighted average cost of energy and treatment for all City facilities producing water during a period in which City delivers water to Valley District. City shall determine, and notify Valley District in writing, which method will be used to determine the actual cost of producing water for Valley District prior to delivery of water to Valley District. Absent notification, the Parties shall use method (ii) above until notice is given.
- (2) *Payment for OMR Cost.* Valley District shall pay City’s actual costs to operate, maintain and repair its water production and distribution facilities (including, without limitation, production wells, booster pumps, treatment facilities, etc.) for the benefit of Valley District. Specifically, Valley District shall pay all costs, including staff time, associated with City’s operation of its water production and distribution facilities to deliver water to Valley District. In addition, Valley District shall pay its fair share of City’s costs to maintain and repair its water production and distribution facilities. This cost shall be equal to the City’s actual per acre-foot cost for maintenance and repair of its water production and distribution facilities over the preceding three calendar years, multiplied by the number of acre-feet ordered by Valley District.
- (3) *Invoices to Valley District.*
- (a) *Production Cost Invoices.* City shall invoice Valley District for production costs at least quarterly in arrears and Valley District shall pay such invoices within 30 calendar days of the date of the invoice. Invoices shall indicate, method used to determine production costs as described in paragraph 3b(1), facilities used to provide Valley District water, and cost for chemicals and power

used. In the event Valley District objects to any costs identified on an invoice, Valley District shall pay the undisputed costs and shall invoke the dispute resolution process described in paragraph 10c below for the objectionable costs.

(b) *OMR Cost Invoices.* City shall invoice Valley District for OMR costs at least quarterly in arrears and Valley District shall pay such invoices within 30 calendar days of the date of the invoice. Invoices shall indicate, in reasonable detail, the information necessary to calculate costs as described in paragraph 3b(2). For expenses and work outside of what should normally be expected, City shall identify expenses and/or work performed and include date expense was made or work was performed, facilities involved, the individuals or company performing the service, hourly rate of such individuals or company, and costs of any materials or service using the methodology provided on Exhibit "C." In the event Valley District objects to any costs identified on an invoice, Valley District shall pay the undisputed costs and shall invoke the dispute resolution process described in paragraph 10c below for the objectionable costs.

c. *Water Quality Reporting.* The City shall provide Valley District with copies of all reports submitted to the Santa Ana Regional Quality Control Board.

d. *Future Actions.* The Parties understand and acknowledge that this Agreement is intended not only to serve as the basis for cooperative operations beginning in 2013, but is also intended to serve as the basis for long-term cooperation. The Parties agree they will consider amending this Agreement at appropriate times to reflect additional facilities and new opportunities to improve the conjunctive management of the SBBA and/or water supply reliability for the San Bernardino Valley.

4. *Water Level and Water Quality Monitoring.* The Parties shall cooperate in monitoring water levels and water quality to ensure that the terms of this Agreement do not have an adverse impact on water levels or water quality in the SBBA.

a. The Parties shall monitor water levels using the Basin Technical Advisory Committee annual Regional Water Management Plan and/or, independently, to ensure compliance with the water level requirements of the Seven Oaks Accord.

b. The Parties agree to monitor any water quality impacts to Total Dissolved Solids ("TDS") using data provided in the triennial report prepared for the Santa Ana Regional Water Quality Control Board pursuant to the Santa Ana Regional Water Quality Control Board Agreement.

5. *Impacts to Water Levels.* If it is determined by the Parties that the water level requirements in the Seven Oaks Accord are not being met, Valley District will take one of the following actions:
- a. *Stop taking deliveries.* Valley District will cease to water through City facilities until water levels are in compliance with the requirements of the Seven Oaks Accord.
  - b. *Deliver Exchange Water to City.* To offset the pumping costs associated with lower water levels, Valley District will provide water to City, on a 1:1 basis (“**Exchange Water**”), for deliveries made to Valley District after water levels are determined to be out of compliance with the Seven Oaks Accord and up until the point water levels are determined to be in compliance with the Seven Oaks Accord.
    - (1) *Sources of Exchange Water.* Valley District may obtain such Exchange Water from the State Water Project, from the Santa Ana River, from Mill Creek, from sources outside the SBBA or from “new conservation” as that term is defined in the *Western Judgment (Western Municipal Water District et al. v. East San Bernardino County Water District et al.* (Riverside County Superior Court No. 78426, April 17, 1969). The selection of sources of Exchange Water shall be within the sole discretion of Valley District but water diverted from the Santa Ana River shall not comprise more than 50% of the Exchange Water delivered to City during any three-year reporting period, as defined in paragraph 4a below.
    - (2) *Delivery of Exchange Water.* Valley District shall deliver Exchange Water to City as soon as feasible but no later than three calendar years after the calendar year in which City delivered water to Valley District. Valley District shall deliver Exchange Water to one or more of the following agreed upon locations:
      - (a) San Bernardino Valley Water Conservation District Mill Creek Spreading Grounds;
      - (b) San Bernardino Valley Water Conservation District Santa Ana River Spreading Grounds;
      - (c) Bear Valley Mutual Water Company Airport Spreading Grounds;
      - (d) City’s San Bernardino Avenue Spreading Grounds (formerly Bear Valley Mutual Water Company Judson Ponds);
      - (e) Such other spreading grounds that directly benefit City’s wells and other wells in the surrounding area, as the Parties may determine through mutual consent in the future.

Valley District shall calculate and document deliveries of Exchange Water to City at the above locations in a manner that both Parties agree to be reasonable, recognizing that several of the above locations are owned by non-parties to this Agreement.

In the event Valley District is unable to deliver Exchange Water to City within a three consecutive calendar year time period, Valley District shall increase the amount of Exchange Water delivered to City by 5% of the overdue balance for every calendar year beyond the three calendar years allowed until the Exchange Water is delivered. The Parties shall use a “first-in, first-out” accounting to track Exchange Water for multiple years.

(3) *In-Lieu Recharge.*

- (a) In the event spreading of Exchange Water is not prudent: (i) due to high groundwater conditions in the pressure zone, (ii) because such spreading would have adverse impacts on groundwater contaminants, or (iii) because City determines it would be beneficial for City to take deliveries of Exchange Water at a water treatment plant in lieu of the spreading grounds identified in paragraph 5b(2), City may take deliveries of up to 50% of Exchange Water at its Horace Hinckley Surface Water Treatment Plant or Henry Tate Surface Water Treatment Plant, at its sole discretion. Valley District shall deliver the remaining Exchange Water to such locations that Valley District, in its sole discretion, determines appropriate for sound management of the SBBA.
- (b) If City chooses to take delivery of Exchange Water at the Henry Tate Surface Water Treatment Plant, City shall pay the energy cost to lift the water from the Greenspot Pumping Plant to the Henry Tate Surface Water Treatment Plant for any deliveries of Exchange Water to the Henry Tate Surface Water Treatment Plant in excess of 10% of the total Exchange Water delivered in a calendar year. The total energy cost shall include the energy cost at Greenspot Pumping Plant and the energy cost at Tate Pump Station. The energy cost at Greenspot Pumping Plant shall be equal to the total energy consumed by the pumping plant divided by the total number of acre-feet delivered by Greenspot Pumping Plant (GSE, \$/af). The energy cost at Tate Pump Station shall be equal to the total energy consumed by the pumping plant divided by the total number of acre-feet delivered by Tate Pumping Plant (TPE, \$/af). The energy paid by the City shall be:

$$\text{Energy (\$)} = 0.90 \times \text{Delivery to Tate Pump Station (af)} \times [\text{GSE} + \text{TPE, \$/af}]$$

6. *Impacts to Water Quality.* If it is determined by the Parties that pumping by City for delivery to Valley District, under the terms of this Agreement, is the sole cause for the



City violating one or more of its permits from the Santa Ana Regional Water Quality Control Board, Valley District will take one of the following actions:

- a. *Stop taking deliveries.* Valley District will cease to water through City facilities until water levels are in compliance with the Seven Oaks Accord.
  - b. *Recharge high quality water.* Valley District will recharge lower TDS water in a mutually agreeable locations until TDS has returned to acceptable levels.
  - c. *Any combination.* Valley District may use one, or both, of the above, at its discretion, to reduce the TDS level until the TDS has returned to mutually agreed upon acceptable levels.
  - d. *Violation of Santa Ana Regional Water Quality Control Board TDS discharge limit on Redlands wastewater plant.* In the event the Santa Ana Regional Water Quality Control Board orders City to remedy an increase in the TDS limit for City's wastewater treatment plant that the Parties agree has been caused by conditions derived by the activities associated with this Agreement, Valley District shall take any or all of the actions identified in subparagraphs a-c above until water quality has returned to acceptable levels. Additionally, Valley District and City will work together to resolve the condition with the Santa Ana Regional Water Quality Control Board identify a solution to the condition, and fund an appropriate solution.
7. *Natural Disaster or Civil Unrest.* In the event that the Texas Grove Reservoir suffers from substantial damage due to natural disaster (e.g., earthquake, flooding or otherwise) or due to civil unrest (e.g., rioting, terrorist attack, or otherwise), neither Party shall be obliged to rebuild/reconstruct the Texas Grove Reservoir in its current configuration or to its current capacity. Instead, the Parties shall promptly meet and confer, determine a rebuilding plan/configuration that is reasonable and financially feasible under the circumstances at the time, and then rebuild/reconstruct the Texas Grove Reservoir as quickly as practicable.
8. *Termination of Agreement.* Either Party may terminate this Agreement, with or without cause, by providing written notice of termination to the other Party at least one year prior to the conclusion of the then-current term of this Agreement. Valley District's purchase of storage rights at, or above, elevation 1338.9 feet MSL NGVD shall survive termination of this Agreement and, after termination, Valley District may use its storage rights by supplying water available to Valley District from any source. In the event that Valley District has not completed its delivery of Exchange Water to City as required by paragraph 5b above, that obligation shall survive any termination of this Agreement.
9. *Indemnification.* Each Party shall defend and indemnify the other Party and the other Party's elected officials, officers, employees, agents and authorized volunteers from and against all claims, demands, or liability for damages arising out of the Party's performance of the terms of this Agreement where such liability is caused or claimed or

alleged to be caused by the willful misconduct, sole negligence or active negligence of the Party or any person or organization for whom or which the Party is legally liable.

In particular, Valley District shall defend and indemnify City's elected officials, officers, employees, agents and authorized volunteers for any and all claims, demands or liability arising from: (i) Valley District or its contractors' construction of the Central Feeder; (ii) the movement of groundwater contaminants due to the spreading of Exchange Water by Valley District and increased pumping; or (iii) a reduction in static groundwater levels due to extraction of water by City for delivery to Valley District.

The provisions of this Section 9 shall survive any termination of this Agreement.

10. *Administration of Agreement*

- a. *Workers' Compensation.* Each Party certifies that it is aware of the provisions of section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code and each Party shall comply with such provisions before commencing the performance of any work under this Agreement. Each Party and any contractors or subcontractors shall keep workers' compensation insurance for their employees in effect during all work covered by this Agreement. Upon request, each Party shall provide the other with the certificate required by Labor Code section 3700.
- b. *Books and Records.* Each Party shall have access to and the right to examine 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. The Parties shall each retain all such books, documents, papers or other records to facilitate such review. 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.
- c. *Disputes.* The Parties recognize there may be disputes regarding the obligations of the Parties or the interpretation of this Agreement. The Parties agree they may attempt to resolve disputes as follows:
  - (1) *Statement Describing Alleged Violation of Agreement.* A Party alleging a violation of this Agreement (the "**Initiating Party**") shall provide a written statement describing all facts it believes constitute a violation of this Agreement to the Party alleged to have violated the terms of this Agreement (the "**Responding Party**").
  - (2) *Response to Statement of Alleged Violation.* The Responding Party shall have sixty calendar 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 or to cure the alleged violation to the reasonable satisfaction of the Initiating Party. The Initiating Party

and the Responding Party shall then meet within thirty calendar days of the date of the response to attempt to resolve the dispute amicably.

- (3) *Mediation of Dispute.* If the Initiating Party and the Responding Party cannot resolve the dispute within ninety calendar 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 an employee of such Party. These representatives of the Initiating Party and the Responding Party 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 borne by the unsuccessful Party.
- (4) *Reservation of Rights.* Nothing in this paragraph 10c shall require a Party to comply with the dispute resolution process contained herein, and each Party retains and may exercise at any time all legal and equitable rights and remedies it may have to enforce the terms of this Agreement.

#### 11. *CEQA Compliance.*

The Parties have determined that, because the activities contemplated under the terms of this Agreement involve the cooperative use of existing facilities within the capacity of those facilities and within the limits established by existing regulations, the implementation of this Agreement is exempt from environmental review pursuant to Title 14, section 15301 of the Code of California Regulations. Within five business days of the Effective Date of this Agreement, the Parties will file a Notice of Exemption with the County Clerk for the County of San Bernardino, which Notice is attached hereto as Exhibit "D" and incorporated herein by reference.

#### 12. *General Provisions.*

- a. *Authority.* Each signatory of this Agreement represents that he is authorized to execute this Agreement on behalf of the Party for which he signs. Each Party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement.
- b. *Amendment.* This Agreement may be amended or modified only by a written instrument executed by each of the Parties to this Agreement.
- c. *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.

- d. *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.
- e. *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.
- f. *Entire Agreement.* This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement.
- g. *Partial Invalidity.* If, after the Effective Date 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.
- h. *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 Party, which consent shall not be unreasonably withheld or delayed.
- i. *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 remedies provided in this Agreement shall not be deemed to be a waiver of that remedy.
- j. *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 (including fees for use of in-house counsel by a Party), expert witnesses' fees, costs of suit, and other necessary disbursements in addition to any other relief deemed appropriate by a court of competent jurisdiction.
- k. *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.
- l. *Representations and Warranties.* Each representation and warranty contained herein or made pursuant hereto shall be deemed to be material and to have been relied upon and shall survive the execution, delivery and termination of this Agreement.

- m. *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.
- n. *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.
- o. *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.
- p. *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, addressed as follows:

CITY OF REDLANDS:

City of Redlands  
35 Cajon Street  
Redlands, CA 92373  
(909) 798-7533  
(909) 798-7535 (FAX)  
Attn: Municipal Utilities and Engineering Director

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT:

San Bernardino Valley Municipal Water District  
380 East Vanderbilt Way  
San Bernardino, CA 92408  
(909) 387-9211  
(909) 387-9247 (FAX)  
Attn: General Manager

A Party may change its address for the receipt of notices by providing the other Party with notice of the same pursuant to this paragraph 12p.

**CITY OF REDLANDS**

**SAN BERNARDINO VALLEY  
MUNICIPAL WATER DISTRICT**

By: \_\_\_\_\_  
Pete Aguilar, Mayor

By: \_\_\_\_\_  
C. Patrick Milligan,  
President, Board of Directors

ATTEST:

\_\_\_\_\_  
Sam Irwin, City Clerk



## Exhibit "B" Reimbursement Cost Calculations

### CITY OF REDLANDS RESERVOIR #1 (TEXAS ST. RESERVOIR) CAPACITIES

#### AREA OF TANK

RADIUS	90.0 Ft.
PI	3.1416
TOTAL AREA (AT) RAD*PI	25446.9 SoFT.

#### HEIGHT OF WATER STORED IN TANK.

HIGH WATER SURFACE (H.W.S.)	1351.0 Ft.	
BOTTOM OF TANK ELEVATION (Tb)	1330.7 Ft.	ELEVATION OF RING FOOTING
WATER HEIGHT (Wc)	20.3 Ft.	
VOLUME OF CONE (Vc) $Vc=(PI*R^2*H)/3$ R=90', H=1.0	8482.3 CUFT.	ACCOUNTS FOR VOLUME LOST DUE TO SLOPING TANK BOTTOM
MAX. WATER STORAGE CAPACITY ((AT*Wc)-Vc)	508853.2 CUFT.	
MAX. WATER STORAGE IN GALLONS	3806730.7 GAL.	7.481 GAL./CUFT.
MAX. USABLE STORAGE ((Wc-1.0')*AT)	491888.6 CUFT	BOTTOM FOOT OF MAX. STORAGE IS NOT USABLE
<b>MAX. USABLE STORAGE IN GALLONS (Wsu)</b>	<b>3679818.5 GAL.</b>	7.481 GAL./CUFT.

#### USABLE STORAGE FOR SBVMWD

H.W.S.	1351.0 Ft.	
INVERT AT OUTLET OF STANDPIPE	1338.9 Ft.	
MAXIMUM USABLE HEIGHT OF WATER (Wu)	12.1 Ft.	
SBVMWD USABLE STORAGE (AT*Wu)	307907.5 CUFT.	
<b>SBVMWD USABLE STORAGE IN GALLONS (Wsv)</b>	<b>2303456.0 GAL.</b>	7.481 GAL./CUFT.

#### CoR USABLE STORAGE BELOW SBVMWD STORAGE

INVERT AT OUTLET OF STANDPIPE	1338.9 Ft.	
HIGH POINT IN TANK = Tb+1.0'	1331.7 Ft.	
MAXIMUM USABLE HEIGHT OF WATER (Wr)	7.2 Ft.	
CoR USABLE STORAGE (AT*Wr)	183981.1 CUFT.	
<b>CoR USABLE STORAGE IN GALLONS (Wsr)</b>	<b>1376362.5 GAL.</b>	7.481 GAL./CUFT.

#### PERCENTAGE OF USABLE WATER STORAGE CALCULATED BY AGENCY

CITY OF REDLANDS	$((Wsr/Wsu)*100\%)$	37.4%
<b>SBVMWD</b>	$((Wsv/Wsu)*100\%)$	<b>62.6%</b>



Exhibit "C"

Operation Maintenance and Repair (OMR) shall be calculated as follows: total actual expenditures listed below (Expenditures), multiplied by the percent shown, divided by AF produced in City system multiplied by percent delivered to Valley District.

$$\frac{\text{Total Actual City Expenditures (\$)}}{\text{Total Production (acre-ft)}} \times (\% \text{ Sold to Valley District}) = \$\_\_/AF$$

where,

*Total Actual City Expenditures* = 50% (4000\* Salaries) + (4010 Overtime Salaries) + (4012 Stand By) + (5317 Service for Function Facility) + (5590 Street Repair) + 50% (5710\_Special Contractual Services)

\*Codes are from the City of Redlands Water Fund 501403

Exhibit "D"  
Notice of Exemption

To be completed once  
agreement has been  
approved by both agencies