

**JOINT POWERS AGREEMENT
BETWEEN
ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT
AND
IRVINE RANCH WATER DISTRICT
CREATING THE GROUNDWATER BANKING JOINT POWERS AUTHORITY
TO DEVELOP AND ADMINISTER
A KERN FAN GROUNDWATER STORAGE PROJECT**

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THIS JOINT POWERS AGREEMENT ("Agreement") is made and entered into as of the Effective Date by and between the ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT ("RRB") and the IRVINE RANCH WATER DISTRICT ("IRWD") to form the GROUNDWATER BANKING JOINT POWERS AUTHORITY ("Authority") pursuant to the Joint Exercise of Powers Act of 1980 (Division 7, commencing with § 6500 of the California Government Code). RRB and IRWD are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. RRB is a public agency organized in accordance with the California Water Storage District Law (Division 14, commencing with § 39000 of the California Water Code) for the purpose of acquiring, storing, distributing, and replenishing water supplies within its boundaries in Kern County, California.

B. IRWD is a public agency organized in accordance with the California Water District Law (Division 13, commencing with § 34000 of the California Water Code) to provide water services and certain other services. IRWD's powers and purposes include the acquisition within or outside the district in the State of all necessary property, water, and water rights for the production, storage, transmission, and distribution of water for irrigation, domestic, industrial, and municipal purposes and to provide and sell such water at wholesale and retail to customers within its boundaries in Orange County, California.

C. In 1959, RRB was formed to develop a groundwater recharge program to offset overdraft. The construction of the initial phases of the recharge program was completed in early 1962, and the facilities placed in operation shortly thereafter. Additional improvements to program recharge facilities have since been made, and RRB has acquired fee title to the properties on which the program facilities are located. The physical features of the recharge program include facilities to divert waters from the Kern River and the Cross Valley Canal facilities ("CVC") and RRB properties into the Goose Lake Slough and adjacent recharge basins.

D. To improve its water supplies, generate increased recharge capability and to provide operational flexibility, RRB has developed a program for the banking, storage, exchange,

and direct delivery of water pursuant to the exercise of its powers ("RRB Conjunctive Use Program"). The RRB Conjunctive Use Program involves the banking of imported water by customers ("RRB Program Participants") in the Kern County Sub-Basin of the San Joaquin Valley Groundwater Basin ("Groundwater Basin") for later delivery to said customers. RRB has developed and approved the RRB Conjunctive Use Program through various agreements and documents including, without limitation, an environmental impact report ("EIR") certified by RRB on July 17, 2001, and subsequent addenda thereto, pursuant to the California Environmental Quality Act ("CEQA"), Public Resource Code section 21000 et seq.

E. In 2004, IRWD acquired 611 acres of real property in Kern County, California, sometimes referred to as the "Strand Ranch property," lying adjacent to the southerly boundary of RRB. On January 13, 2009, RRB and IRWD entered into an "Agreement For A Water Banking and Exchange Program," as amended by Amendment No. 1, entered into on or about February 27, 2015 (collectively, "Strand Ranch Agreement") providing for the development and operation of a groundwater banking program on IRWD's Strand Ranch property, and the operation and integration of such program within the RRB Conjunctive Use Program ("Strand Ranch Integrated Banking Project").

F. Since 2004, RRB acquired an additional 230 acres of real property lying adjacent to the easterly boundary of the Strand Ranch property ("Stockdale East property"), and IRWD acquired an additional 323 acres of real property lying adjacent to the westerly boundary of the Strand Ranch property ("Stockdale West property"). On or about February 4, 2016, RRB and IRWD entered into an "Agreement for A Water Banking, Recovery and Exchange Program," as amended by Amendment No. 1, entered into on or about January 16, 2018 (collectively, "Stockdale Integrated Banking Project").

G. CEQA compliance for the Stockdale Integrated Banking Project has been completed. On December 8, 2015, RRB certified an EIR for the Stockdale Integrated Banking Project ("Stockdale Integrated Banking Project EIR"), and on December 14, 2015, IRWD approved the Stockdale Integrated Banking Project EIR as a responsible agency. The Stockdale Integrated Banking Project EIR provides a project-level effects analysis for the Stockdale Integrated Banking Project and provides a program-level analysis for a third project site of up to 640 acres within a 12,300-acre site radius analyzed in the Stockdale Integrated Banking Project EIR.

H. The up to 640-acre third project site analyzed in the Stockdale Integrated Banking Project EIR would constitute Phase 1 of a proposed Kern Fan Groundwater Storage Project ("Kern Fan Project") for which RRB and IRWD have jointly applied for grant funding through the California Water Commission's ("Commission") Water Storage Investment Program ("WSIP") authorized by California voters' approval of Proposition 1, the Water Quality, Supply, and Infrastructure Improvement Act of 2014. A second up to 640-acre project site would constitute Phase 2 of the Kern Fan Project.

I. Through the Kern Fan Project, the Parties seek to develop a regional water bank in the Kern County Groundwater Sub-basin of the San Joaquin Valley Groundwater Basin in Kern County. The Kern Fan Project would recharge and store up to 100,000 acre-feet of water during periods when surface water is abundant. Water stored by the Kern Fan Project pursuant to

participation in the WSIP would be recovered when needed to provide ecosystem public benefits, water supply public benefits during extended droughts or a Delta levee failure, and other non-public water supply benefits for RRB and IRWD water service customers. The Kern Fan Project proposes to use 25 percent (25%), up to 25,000 acre-feet, of the unallocated State Water Project ("SWP") Article 21 water stored pursuant to participation in the WSIP to provide public ecosystem benefits, with the remainder for use by IRWD and RRB. IRWD and RRB would have access to Kern Fan Project facilities and capacities to store water pursuant to other programs to generate additional water supply benefits as described in article 3(C) of this agreement. Unallocated SWP Article 21 water is an interruptible water supply that the California Department of Water Resources ("DWR") periodically makes available to its long-term water service contractors under Article 21 of their contracts.

J. In July 2018, the Commission conditionally approved \$67,537,315 in conditional WSIP grant funding for the Kern Fan Project, which may be increased by the Commission in the future. The Parties may seek additional state or federal grant funding in the future.

K. The Parties are forming the Authority to achieve the above-described objectives of the Kern Fan Project, and this Agreement helps to define a stable and finite project description that will facilitate completion of CEQA review pursuant to Cal. Pub. Res. Code section 21000 et seq.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. Effective Date, Term and CEQA Compliance

- A. ***Effective Date and Term.*** Upon execution by the Parties, this Agreement shall be effective July 1, 2020 ("Effective Date"), but shall be subject to article 1(B). This Agreement shall remain effective for thirty (30) years from the Effective Date or until expiration of any requirements to operate the Kern Fan Project as part of the WSIP or other grant funding requirements, whichever is longer, or until it is terminated early by either Party providing eighteen (18) months' advance written notice of intent to terminate. Prior to the expiration of the term of the JPA Agreement, the Parties shall work together to mutually extend this Agreement. If this Agreement is not extended, or if it is terminated early, the Parties shall agree to negotiate in good faith to integrate the Kern Fan Project facilities into one or more other existing water storage and recovery programs or projects; provided further that if the Parties fail to reach agreement on such integration, then RRB shall have a first right to acquire IRWD's interest in all Kern Fan Project facilities, capacities and real or personal property held by the Authority. If this Agreement is terminated early, the Parties agree that the legal effectiveness of such termination shall be conditioned upon all then-existing grant obligations being met for the duration of such obligations.
- B. ***Disposition of Kern Fan Project Property, Facilities and Other Assets Upon Termination.*** If this Agreement is terminated for any reason, then RRB's first right to acquire IRWD's interest in the Kern Fan Project facilities, land and easements shall be based upon the then-existing fair market value of the land and easements

and upon the then-existing undepreciated fair market value of all such facilities. For this purpose, IRWD's interest in Kern Fan Project facilities, land and easements shall be 50%, unless a Special Activities Agreement provides otherwise, and depreciation shall be calculated on a straight line basis and, (i) pumps and electrical improvements shall be deemed to have a useful life of twenty (20) years and all other improvements shall be deemed to have a useful life of fifty (50) years, (ii) each improvement's useful life shall be measured from its initial installation or most recent replacement or refurbishment, whichever is later, and (iii) cost shall be based on the amount of the documented cost of installation of the improvement being valued, prorated as necessary if the improvement was constructed with other improvements that are not part of the Kern Fan Project. Land and easements shall be valued at the fair market value at the time of termination. Land and easement valuation shall be "like for like" and shall be based upon comparable properties with consideration given to location, zoning, and land use. If RRB elects not to exercise its first right to acquire IRWD's interest in Kern Fan Project facilities, land and easements, IRWD may hold its interest or sell its interest to a mutually acceptable third party. Upon termination, and consistent with articles 3(C) and 3(F), RRB and IRWD each respectively shall retain their ownership of water stored in their respective shares of the Kern Fan Project's storage capacity, and each shall retain discretion to hold, recover or otherwise dispose of their water, including transferring stored water into another existing water banking project.

- (1) The Authority shall continue to exercise the powers described herein until the Parties terminate this Agreement.
- (2) Upon termination, the Authority shall continue to exercise only such powers as to enable it to pay and discharge all costs, expenses, and charges legally incurred hereunder, and to dispose of, divide, and distribute any property acquired as a result of the Authority's operations.
- (3) Upon termination, the Authority shall continue to be responsible for the payment of any expenses, liabilities, or obligations between the Parties to this Agreement incurred prior to withdrawal. (Solely by way of example, this provision would require payment for rights and obligations incurred pursuant to Government Code section 6504.) This requirement shall survive any withdrawal or termination of this Agreement.
- (4) Upon termination of this Agreement, all costs, expenses, and charges legally incurred by the Authority shall be paid and discharged by the Authority. After the disposition of Kern Fan Project facilities, capacities and real or personal property under this article 1, the Authority shall sell any remaining property as may be necessary and shall distribute to the federal or state government such property and funds as are lawfully required; the balance of such property and any surplus money on hand shall be distributed or returned in proportion to contributions made by the

affected Parties except to the extent otherwise agreed upon by the affected Parties.

- (5) In the event this Agreement is terminated prior to termination of the requirements of the WSIP grant or any other grant used to pay for the Kern Fan Project, the Parties shall be responsible for meeting all of the obligations of the WSIP and any other grants in proportion to their respective ownership of facilities post termination.

- C. **CEQA Compliance.** Formation of this Agreement helps to define a stable and finite project description, which will facilitate completion of CEQA review for the proposed Kern Fan Project. The Authority shall each complete CEQA review for the proposed Kern Fan Project prior to approving, constructing or operating the proposed project. Any real property acquired for the proposed project prior to completion of CEQA review shall be conditioned on completing CEQA review before changing the existing use of the real property. If the performance of CEQA review identifies any significant adverse environmental effects, the Parties each retain their full discretion to terminate this Agreement or to jointly revise this Agreement as necessary to implement any feasible mitigation measures or alternatives that would avoid or reduce such significant effects as provided by CEQA; provided that each Party's discretion to terminate or to jointly revise this Agreement under this article 1(B) shall be limited to responding to any significant adverse environmental effects.

2. **Authority for Joint Powers Agreement**

This Agreement is made pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (commencing with section 6500) relating to the joint exercise of power common to the counties and public agencies. The Parties are each empowered by the laws of the State of California to exercise, in their respective jurisdictions, the powers which will be jointly exercised as set forth herein.

3. **Purposes**

- A. **Creation of Separate Entity.** The purpose of this Agreement is to create a joint powers authority called the "Groundwater Banking Authority" to plan, design, construct, operate and otherwise implement the Kern Fan Project. The Authority shall be a separate legal entity from its member agencies. The purpose of the Authority is to implement the Kern Fan Project, as described in the Recitals, above, which are incorporated herein by this reference.
- B. **Project Benefits.** The benefits of the Kern Fan Project include, but are not limited to, benefits to the water levels in the Kern County Groundwater Subbasin, enhanced water supply reliability for RRB's and IRWD's service areas, reduced dependence of RRB's and IRWD's service areas on existing imported water supplies from northern California, endangered species preservation through reduced demands on

such imported water, and the establishment of temporary wetlands through recharge activity.

- C. ***Allocation of Capacities Provided by Kern Fan Project.*** The primary objective of the Kern Fan Project is to provide 100,000 acre-feet per year (“AFY”) of groundwater recharge capacity, 100,000 acre-feet (“AF”) of storage capacity for the Parties to capture and recover unallocated SWP Article 21 water, with up to 50,000 AF per year of recovery capacity and up to 500 cubic feet per second of additional conveyance capacity.

The water storage capacity developed under the Kern Fan Project when fully implemented is planned to be 100,000 AF and shall be allocated as follows:

25% of storage capacity up to 25,000 AF to the WSIP Public Ecosystem Account

50% of remaining storage capacity to RRB

50% of remaining storage capacity to IRWD

The water recharge, recovery, and additional conveyance capacity developed under the Kern Fan Project shall be allocated equally between RRB and IRWD, subject to any Special Activities Agreements governing the Parties' independent choices whether to participate in or to add a component of the Kern Fan Project.

RRB and IRWD shall each have first priority access to their own respective shares of capacities in the Kern Fan Project to recharge, store and recover other water supplies, including SWP water, for the independent benefit of each Party. The Parties shall have second-priority access to use each other's unused recharge and recovery capacities. RRB and IRWD may use their respective capacities to implement other independent operating programs or projects with third parties, so long as such use does not impair the ability to provide the WSIP public ecosystem benefits.

Each Party shall submit to the other Party, prior to use of any unused second priority capacity, a preliminary schedule showing rates and quantities of water for recharge and/or recovery to be delivered in the second priority capacity. The Parties shall coordinate schedules and cooperate to avoid impacts to their respective first priority capacities. To the extent that the use of second priority capacity is deemed by the Parties to have resulted in a reduction of recharge or recovery capacity necessary to fully implement a water management program, the Parties shall meet and confer on the appropriate mitigation, which may include use of other recharge and/or recovery facilities not part of the Kern Fan Project.

Each Party may enter into a Special Activities Agreement with the Authority pursuant to article 3(D) describing and approving an independent operating program or project.

- D. ***Special Activities Agreements.*** A Party may enter into one or more written Special Activities Agreements with the Authority providing for its independent choice

whether to participate in or to add a component of the Kern Fan Project or to allow use of its capacity in the Kern Fan Project to implement an independent operating program or project with a third party. For example, IRWD may enter into a Special Activities Agreement providing for installation of additional Kern Fan Project wells to increase recovery capacity for the benefit of IRWD, or RRB may enter into a Special Activities Agreement providing for RRB to reduce its recovery capacity by foregoing the installation of Kern Fan Project wells. The Authority's Board of Directors shall adopt bylaws providing for Special Activities Agreements.

- E. ***WSIP Water.*** For purposes of participating in the WSIP to provide ecosystem public benefits and water supply public benefits during extended droughts or a Delta levee failure, the Kern Fan Project will be operated by recharging and storing unallocated SWP Article 21 water obtained by the Parties ("WSIP Water"). Unallocated SWP Article 21 water deliveries would be made on behalf of IRWD as a landowner in Dudley Ridge Water District ("DRWD") and on behalf of RRB as a sub-unit of the Kern County Water Agency ("KCWA") or any other SWP contractor acting on behalf of either or both Parties. Consistent with article 3(N) of this Agreement, WSIP Water delivered to the Kern Fan Project by each Party will be proportionately applied to each Party's respective storage account consistent with this Agreement's defined "Allocation of Capacities Provided by Kern Fan Project."
- F. ***Ownership.*** The Authority plans to acquire, own, and use up to approximately 1,280 acres of land within the Kern Fan Project designated project area. The Authority will own all property, facilities and capacities of the Kern Fan Project, subject to each Party's rights to use such capacities according to this Agreement, unless otherwise provided for through a Special Activities Agreement. The Authority may acquire or use property outside of the Kern Fan Project area and designated existing and/or new project areas/recharge to meet the Kern Fan Project objectives. The Authority shall own the water stored in the Kern Fan Project's ecosystem public benefit account for the benefit of the State's WSIP, while RRB and IRWD each shall own the water stored in their respective shares of the Kern Fan Project's remaining storage capacity.
- G. ***Hydrogeologic Evaluations.*** RRB and IRWD will equally fund or reimburse through the Authority hydrogeologic studies needed to determine the recharge, storage and recovery capacities and limitations of the Kern Fan Project designated properties.
- H. ***CEQA Compliance Cost and Roles.*** RRB and IRWD will equally fund or reimburse through the Authority the preparation of an Environmental Impact Report ("EIR") for the construction and operation of the Kern Fan Project, including all technical studies necessary to support the EIR. The Authority shall play the role of lead agency, while RRB and IRWD will each play the role of a

responsible agency with respect to any discretionary decisions each Party makes in connection with implementing the Kern Fan Project.

- I. ***Other Regulatory Permitting Costs.*** RRB and IRWD will equally fund or reimburse through the Authority all regulatory and permitting fees and costs associated with construction of the Kern Fan Project.
- J. ***Project Costs.*** Any and all WSIP or other grant funds awarded for the Kern Fan Project shall be applied to all eligible capital costs, including, but not limited to, the planning, design and construction costs of the Kern Fan Project, and the Authority will fund all remaining associated costs. RRB and IRWD shall each pay through the Authority half of Kern Fan Project planning, design and construction costs that are not paid by awarded WSIP or other grant funds except as otherwise provided by any Special Activities Agreements governing the Parties' mutually agreeable independent choices whether to participate in or to add a component of the Kern Fan Project.
- K. ***Project Construction.*** Board of Directors shall adopt bylaws describing the procedures, team and requirements for any planning, design, construction and construction management associated with the Kern Fan Project.
- L. ***Project Operation.*** RRB shall operate, maintain and repair the Kern Fan Project facilities, subject to approval by the Board of Directors. RRB shall maintain WSIP records accounting for each Party's water recharge, storage and recovery activities pursuant to all applicable WSIP regulations and as further described in bylaws adopted by Board of Directors. The Authority shall be responsible for any and all regulatory and permitting fees applicable to Kern Fan Project operations, including compliance with an anticipated Memorandum of Understanding regarding operation and monitoring of the Kern Fan Project and related Project Recovery Operations Plan, which governs groundwater banking within RRB.
- M. ***Operation Costs.*** RRB and IRWD shall pay operations, maintenance, energy and replacement ("OME&R") costs consistent with their respective proportional use of the Kern Fan Project and any Special Activities Agreements governing the Parties' independent choices whether to participate in or to add a component of the Kern Fan Project as described in bylaws adopted by the Board of Directors.
- N. ***Mutual Obligation to Recharge Ecosystem Public Benefit Account.*** At such times when unallocated SWP Article 21 water is available, the Parties shall equally fund the acquisition and recharge of such water for ecosystem public benefits until up to 25% of Kern Fan Project storage capacity, up to 25,000 acre-feet, is full (when the WSIP ecosystem public benefit account is full). Until the WSIP ecosystem public benefit account is full, all recharge of unallocated SWP Article 21 water shall be apportioned 25% to the WSIP ecosystem public benefit account, 37.5% to RRB's share of the Kern Fan Project's remaining storage capacity, and 37.5% to IRWD's share of the Kern Fan Project's remaining storage capacity. After the WSIP ecosystem public benefit account is full, RRB and IRWD may use their respective

capacities to recharge and store other available water, including Kern River Flood Water, to fill their respective water supply public benefits accounts, so long as such water may be used to provide water supply public benefits within the Parties' respective service areas.

- O. ***Kern River Flood Water.*** During times that Kern River Flood Water is available (i.e., when the Kern River Watermaster offers water to all takers willing to sign a "Notice/Order", or the Kern River Watermaster offers water to the California Aqueduct/Kern River Intertie, such water is expected to flood farmed acreage in Buena Vista Lake or is expected to be delivered into the Kern River Flood Channel for delivery out-of-county), this water would follow delivery of WSIP Water, if simultaneously available. Following any such delivery of WSIP Water, RRB shall have first priority to use all Kern Fan Project facilities for recharge of Kern River Flood Water. The first 25% of Kern River Flood Water recharged into the Kern Fan Project shall be deemed owned by IRWD at no cost and the remainder of such stored water shall be deemed owned by RRB; provided that RRB may exercise its discretion to allow IRWD to acquire an additional 25% of such recharged Kern River Flood Water by paying RRB the average price for Kern River water over the preceding two (2) months or \$25 per AF, whichever is greater.. Beginning on January 1, 2020 and on January 1 of each year thereafter, the \$25 shall be increased in an amount equal to the percentage change, if any (but not less than zero) in the Consumer Price Index (All Urban Consumers, All Items) for Western Cities, Populations Less than 1.5 Million, published by the United States Department of Labor, Bureau of Labor Statistics. water into storage.
- P. ***Water Quality.*** The quality of water to be recharged, stored and recovered at the Kern Fan Project shall be consistent, including through blending with other water, with applicable pump-in requirements specified by DWR for the California Aqueduct, as such requirements may be amended from time to time.

4. **Powers**

The Authority is hereby authorized to perform all powers and functions set out in this Agreement, including all powers granted to California water storage districts pursuant to the California Water Storage District Law (Division 14, commencing with § 39000 of the California Water Code) and California water districts pursuant to the California Water District Law (Division 13, commencing with § 34000 of the California Water Code), as amended, and any applicable regulations.

The Authority shall administer this Agreement. Pursuant to Government Code section 6509 and shall undertake all further actions necessary to carry out the purposes of the Authority, the Authority shall exercise its powers in administering this Agreement subject to the restrictions applicable to IRWD. The Authority is hereby further authorized to:

- A. Negotiate with, apply for, contract for, and receive monies from federal, state, county, city, and special district governments, and other public and private entities and agencies to carry out the purposes of this Agreement, and shall disburse and account for funds so received.

- B. Allocate all funds, including discretionary and special purpose funds, received by the Authority as equitably as practicable, based upon the applicable terms of the funding application, fund source requirements, Agency policy, or vote of the Board of Directors, as described in article 6 of this Agreement.
- C. Monitor, evaluate, and take corrective action concerning performance specified in any agreement, and contracts or agreements the Authority has entered into.
- D. Establish performance objectives for subcontractors.
- E. Evaluate the effectiveness of programs undertaken by the Authority.
- F. Maintain financial and statistical records to satisfy federal, state, and other laws and regulations, and provide necessary information for effective program management.
- G. Adopt, promulgate, and enforce such bylaws, rules, and regulations as the Board of Directors deems necessary for operation and management of the Authority and implementation of the purposes of this Agreement.
- H. Negotiate and enter into agreements and contracts.
- I. Employ agents and employees.
- J. Acquire, lease, rent, construct, manage, maintain, hold, and dispose of real and personal property with title to such property being held by the Authority.
- K. Acquire property by eminent domain.
- L. Commission the design, permitting, construction, operation, and maintenance of any facilities required for the Kern Fan Project.
- M. Incur debts, liabilities, and other obligations.
- N. Bring suit and be sued in its own name.

Undertake all further actions necessary to carry out the purposes of the Authority.

5. **Governance**

- A. ***Board of Directors.*** The Board of Directors of the Authority shall consist of four (4) members constituting two (2) members appointed by each Party. Of the two members appointed by each Party, one must be a member of that Party's legislative body and neither appointee may serve as an officer of the Authority (*e.g.*, as general manager or treasurer) while also serving on the Authority's Board of Directors. Each Party's legislative body shall designate an alternate to serve on the Authority's Board of Directors to provide continuity in the event one of a Party's representatives cannot participate in one or more meetings of the Authority's Board of Directors. Such alternates shall be members of either RRB's or IRWD's legislative body or

designees and shall not serve as an officer of the Authority while also serving as an alternate on the Authority's Board of Directors.

- B. ***Meetings.*** All meetings of the Board of Directors shall be subject to the provisions of the Ralph M. Brown Act (Chapter 3.5 of Division 7, commencing with § 6250 of the California Government Code) and shall be held at a regularly scheduled time. At its first meeting, the Board of Directors shall, by resolution, determine the schedule for its regular meetings.
- C. ***Quorum.*** A quorum of any meeting of the Board of Directors shall require the attendance of at least one member of the Board of Directors from each of the Parties. In the absence of a quorum, any meeting of the Board of Directors shall be adjourned by the member of the Board of Directors present. In the absence of any members of the Board of Directors, the Clerk of the Board shall adjourn any meeting of the Board of Directors. Vacant positions on the Board of Directors shall not be considered for purposes of determining quorum.
- D. ***Voting and Affirmative Decisions.*** Voting by the Board of Directors shall be conducted on a one-vote-per-Party basis, meaning that the two RRB directors together may cast one vote and the two IRWD directors may together cast one vote. The vote representing each Party may be cast by either of that Party's two members of the Authority's Board of Directors or their alternates. All decisions of the Board of Directors shall require an affirmative and unanimous vote, meaning that the Board of Directors may not make a decision unless both the RRB directors' vote and IRWD directors' vote are in favor of making a decision; provided that voting on actions related to administration of a previously approved Special Activities Agreement shall be weighted as determined by each Special Activities Agreement. In the event the Authority Board of Directors is deadlocked on a proposed action, then RRB and IRWD shall conduct a joint meeting of their legislative bodies to resolve the deadlock. In the event that such a joint meeting does not resolve the deadlock, then the Parties shall participate in mediation to resolve the deadlock. Finally, in the event mediation fails to resolve the deadlock, either Party may initiate litigation to resolve the deadlock subject to any defenses raised in response to such litigation. This process of resolving deadlocks of proposed actions can be further defined in bylaws adopted by Board of Directors; provided, however, that nothing in this Agreement or the bylaws shall limit either Party's discretion to exercise its own independent judgment upon issues before the Authority in any manner.
- E. ***Bylaws.*** The Board of Directors shall adopt bylaws detailing how the Board of Directors' business is to be conducted. Those bylaws shall not conflict with the provisions of this Agreement or any law.

6. **General Manager**

The Authority Board of Directors shall appoint a representative of RRB to serve as General Manager of the Authority, unless the Board of Directors elects to appoint another

individual to serve as the General Manager of the Authority. The General Manager shall not be an employee or independent contractor of the same Party as the Treasurer. An assignment to serve as the General Manager of the Authority shall not be construed to be permanent. The General Manager shall serve at the pleasure of the Board of Directors and may be appointed or removed at a time of choosing of the Board of Directors.

7. **Treasurer**

The Authority Board of Directors shall appoint a representative of IRWD to serve as Treasurer of the Authority, unless the Board of Directors elects to appoint another individual to serve as the Treasurer of the Authority. The Treasurer shall not be an employee or independent contractor of the same Party that employs the General Manager. The Treasurer shall serve at the pleasure of the Board of Directors and may be appointed or removed at a time of choosing of the Board of Directors. IRWD shall be the depository and manage custody of all monies of the Authority and maintain all monies under the oversight and direction of the Treasurer. Furthermore, the Treasurer shall:

- A. Receive and receipt all funds of the Authority and place them in the separate accounts established and maintained for the Authority.
- B. Receive and invest funds and be responsible for the safekeeping of all funds of the Authority.
- C. Pay, when due, out of the Authority's funds, all properly approved disbursements due by the Authority including amounts due on outstanding bonds and coupons.
- D. Verify and report to the Authority and the Parties, in writing, on a monthly basis, the amount of money held for the Authority, the amount of receipts since the last report, and disbursements since the last report.

Treasurer may designate other individuals, as approved by the Board of Directors, necessary to carry out the Treasury function.

8. **Accounting and Financial Reporting**

The Treasurer shall have overall responsibility to maintain the accounting books and records of the Authority. This includes maintenance of the accounting records, monthly report preparation of all receipts and disbursement activities and grant administration and compliance. Such reporting activity shall be provided to each of the Authority parties.

9. **Legal Counsel**

Legal Counsel for the Authority shall be selected by the Board of Directors. Legal Counsel shall also serve as the Secretary of the Authority. The Legal Counsel and Secretary shall serve at the pleasure of the Board of Directors.

10. **Staff**

The staff of the Parties shall serve as the staff of the Authority. The primary responsibility for providing adequate staff support for the operation of the Kern Fan Project shall belong to RRB, unless the Board of Directors appoints a IRWD representative as General Manager pursuant to article 6. The primary responsibility for the treasury function and financial accounting of the Authority shall belong to IRWD, unless the Board of Directors appoints a RRB representative as Treasurer pursuant to article 7. The Authority Board shall negotiate rates of reimbursement and payment schedules with the Parties for staff time and incorporate such requirements into the bylaws of the Authority.

11. **Official Bonds**

The General Manager and the Treasurer are designated as public officers or persons who have charge of, handle, or have access to any property of the Authority, and each such officer or person shall obtain, maintain, and file an official bond. Alternatively, a government crime insurance policy or employee dishonesty insurance policy, including faithful performance, shall be obtained and maintained, with the Authority so long as such insurance policy is in conformance with Government Code section 1463.

12. **Funds and Accounts; Fiscal Year; Annual Budgets**

- A. ***Funds and Accounts.*** The Authority shall establish and maintain such funds and accounts as may be required by the California Government Code, other applicable laws, the Governmental Accounting Standards Board, good accounting practice, this Agreement, and any ordinance, resolution, or policy of the Board of Directors.
- B. ***Funding.*** The Authority's accounts shall be funded with the WSIP grant funding awarded by the Commission or any other grant funding that may be awarded for the Kern Fan Project and with such additional funding that each Party contributes to enable the Authority to successfully implement the Kern Fan Project pursuant to this Agreement; subject to the Parties' respective financial obligations under article 3 of this Agreement.
- C. ***Fiscal Year.*** For the purposes of this Agreement, the Authority shall have such fiscal year from July 1 to and including the following June 30.
- D. ***Annual Budget.*** An annual capital and operating budget shall be prepared or caused to be prepared by the General Manager and presented to the Board of Directors for its adoption or amendment, pursuant to the Authority's article 4 powers, above, not later than May 1 of each fiscal year. The budget shall establish any necessary rates, capital expenditures, and charges to be paid for operation and maintenance activities and such other matters as shall be determined by the Board of Directors.

13. **Records and Reports; Audit**

The Board of Directors shall establish reporting requirements and direct staff to maintain such reports. All books and records of the Authority shall be open to inspection at all

reasonable times by any party to this Agreement or its representatives. Annual audits of the Authority's accounts and records shall be made by an independent certified public accountant or firm of independent certified public accountants selected by the Board of Directors, and reports of such audits shall be filed in the manner provided in section 6505 of the Government Code.

14. **Debts, Liabilities, and Obligations**

The debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities or obligations incurred by any Party under this Agreement.

15. **Privileges and Immunities**

All of the privileges and immunities from liability, exemptions from law, ordinances, and rules, all pension, relief, disability, worker's compensation, and other benefits which apply to the activity of officers, agents or employees of any Party when performing their respective functions within their territorial limits, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially.

16. **Indemnification**

A. ***Authority.*** The Authority Board of Directors, officers, representatives, consultants, contractors and agents shall be entitled to defense and indemnification by the Authority as provided under Government Code sections 825 et seq. and section 995 et seq. The Authority shall at all times indemnify, defend and save the Parties from, and pay in full, any and all claims, demands, losses, damages or expenses, including reasonable attorneys' fees and costs, that the Parties, their Boards of Directors, officers, representatives, consultants, contractors, agents, and/or employees may sustain or incur in any manner relating to the Authority's performance under this Agreement for any action.

B. ***RRB.*** RRB shall at all times indemnify, defend and save IRWD and the Authority, its Board of Directors, officers, representatives, consultants, contractors, agents, and employees free and harmless from, and pay in full, any and all claims, demands, losses, damages or expenses, including reasonable attorneys' fees and costs, that IRWD, its Board of Directors, officers, representatives, consultants, contractors, agents, and/or employees may sustain or incur in any manner arising out of RRB's sole active negligence or willful misconduct in the performance of its responsibilities under this Agreement, excepting any loss, damage or expense and claims for loss, damage or expense resulting in any manner from the negligent or willful act or acts of IRWD, its Board of Directors, officers, representatives, consultants, contractors, agents and employees.

C. ***IRWD.*** IRWD shall at all times indemnify, defend and save RRB and the Authority, its Board of Directors, officers, representatives, consultants, contractors, agents, and employees free and harmless from, and pay in full, any and all claims, demands, losses, damages or expenses, including reasonable attorneys' fees and costs, that RRB, its Board of Directors, officers, representatives, consultants,

contractors, agents, and/or employees may sustain or incur in any manner arising out of IRWD's sole active negligence or willful misconduct in the performance of its responsibilities under this Agreement for any action, excepting any loss, damage or expense and claims for loss, damage or expense resulting in any manner from the negligent or willful act or acts of RRB, its Board of Directors, officers, representatives, consultants, contractors agents and employees.

- D. ***Mutual Indemnification.*** Except as set forth above, each Party shall indemnify, defend and save the other Party, its Board of Directors, officers, representatives, consultants, contractors, agents, and employees free and harmless from, and pay in full, any and all claims, demands, losses, damages or expenses, including reasonable attorneys' fees and costs, that said other Party, its Board of Directors, officers, representatives, consultants, contractors, agents, and/or employees may sustain or incur in any manner arising out of specific Kern Fan Project operations undertaken on behalf of the indemnifying Party under this Agreement for any action. Without limiting the generality of the foregoing, and by way of example, IRWD shall indemnify, defend and save Rosedale free and harmless from claims of damages and expenses to neighboring water wells that result from recovery operations made on the behalf of IRWD, except to the extent caused by the sole active negligence or willful misconduct of Rosedale. Costs for any claim relating to Kern Fan Project operations that is made and administered pursuant to the *Project Recovery Operations Plan Regarding Pioneer Project, Rosedale-Rio Bravo Water Storage District, And Kern Water Bank Authority Projects* shall be allocated between the Parties in the same manner as claims paid by the parties to said *Project Recovery Operations Plan, a copy of which is attached as Exhibit A to this Agreement.*
- E. ***No Right of Contribution; Indemnification Agreement.*** The indemnification and hold-harmless provisions of article 16 shall apply in lieu of the right of contribution provisions at Government Code sections 895-895.8; the provisions of this article 16 are entered into pursuant to Government Code sections 895.4 and 895.6.

17. **Insurance**

- A. ***Authority.*** During the term of this Agreement, the Authority shall maintain general liability insurance coverage in a sum not less than five million dollars (\$5,000,000) per occurrence. The insurance shall also contain a written endorsement to such policy or policies which names each of the Parties as an additional insured. RRB and IRWD will equally fund through the Authority the general liability insurance coverage premium and any deductible.
- B. ***RRB.*** RRB shall name the Authority as an additional insured covered by RRB's general liability insurance policy, premises liability insurance policy, and automobile insurance policy.

- C. **IRWD.** IRWD shall name the Authority as an additional insured covered by IRWD's general liability insurance policy, premises liability insurance policy, and automobile insurance policy.
- D. If a claim is made against one or the other Party's insurance policy as a result of Kern Fan Project operations, the Parties agree to each pay half of the deductible on each such claim.

18. **Modification**

This Agreement may only be amended by the written agreement signed by authorized representatives of the Parties.

19. **Notice**

Notice under this Agreement shall be made by: (1) overnight courier or (2) certified mail, return receipt requested. Additionally, notice under this Agreement shall be made by electronic mail. All such notices shall be deemed delivered upon actual receipt from (1) overnight courier or (2) certified mail, return receipt requested (or upon first attempt at delivery pursuant to either of the two methods specified herein if the intended recipient refuses to accept delivery).

Notice to IRWD shall be made to:

Irvine Ranch Water District
15600 Sand Canyon Avenue
Irvine, California 92618
Attn: General Manager
Telephone: (949) 453-5300
Facsimile: (949) 453-1228
Electronic Mail: cook@irwd.com

Notice to RRB shall be made to:

Rosedale-Rio Bravo Water Storage District
P.O. Box 867
Bakersfield, California 93302-0867
Attn: General Manager
Telephone: (661) 589-6045
Facsimile: (661) 589-1867
Electronic Mail: eaverett@rrbwsd.com

20. **Severability**

Should any part, term, or provision of this Agreement be adjudged by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the remaining portions of this Agreement shall remain in full force and effect.

21. **Representations**

Each Party represents and warrants to the other Party that it is a duly organized or constituted entity, with all requisite power to carry out its obligations under this Agreement, and that the execution, delivery, and performance of this Agreement have been duly authorized by all necessary action of the board of directors or other governing body of such Party, and shall not result in a violation of such Party's organizational documents or any agreement to which it is a party or to which it is otherwise subject or bound. Each Party further represents and warrants to the other Party that, to its knowledge at the time it executed this Agreement, there is no pending or threatened litigation involving such representing Party that will affect this Agreement. The Parties have relied on the forgoing representations as a material inducement to execute this Agreement, and should any representation not be correct or true in any material respect, it shall constitute a material breach of this Agreement.

22. **Choice of Law; Venue**

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue over any and all disputes arising from this Agreement shall be proper in Los Angeles County, California or in the United States District Court for the Central District of California.

23. **Dispute Resolution**

For matters involving a dispute under this Agreement, the following provisions shall apply:

A. **Mediation**

The Parties agree that any and all disputes, claims or controversies arising under this Agreement, whether for breach, enforcement, or interpretation thereof, shall be submitted to mediation in a mutually agreeable venue. Either Party may commence mediation by providing to the other Party a written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties shall cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. The Parties covenant that they shall participate in the mediation in good faith, and that they shall share equally in costs charged by the mediator. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any Party, its agents, employees, experts or attorneys, or by the mediator or any of the mediator's employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. A Party may request arbitration with respect to the matters submitted to mediation by filing a written request for arbitration at any time following the initial mediation session or 45 days after the date of filing the written request for mediation, whichever occurs first; provided, however, the other Party is not required to accept a request for arbitration. The mediation may continue after the commencement of arbitration if the Parties so desire. Unless otherwise agreed by

the Parties, the mediator shall be disqualified from serving as arbitrator in the case. The provisions of this article 23 may be enforced by any Court of competent jurisdiction, and the Party seeking such enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the Party against whom such enforcement is ordered.

B. Selection of Mediator

The Parties shall first attempt to mutually agree to a mediator. If the Parties fail to agree on the mediator, the Parties shall each nominate and exchange with each other the names of three persons to resolve the dispute. From this group of nominated mediators, the Parties shall select the Mediator. If each of the Parties selects the same Mediator, that person shall be the Mediator. In the event two or more same persons are selected by the Parties, the person whose name precedes the other alphabetically shall be the Mediator. If the Parties do not select the same person, then each Party shall eliminate two of the other's selection and the remaining names shall be randomly drawn in order by either Party. The first drawn shall be the Mediator unless there is a conflict of interest or the mediator cannot serve because of scheduling conflicts. In that case, the second name drawn shall be the Mediator. No Mediator shall be nominated or selected if they have any actual or perceived conflict of interest. If necessary, this process can be repeated to nominate or select a mediator if the final two selected Mediators have any actual or perceived conflict of interest.

24. Force Majeure

All obligations of the Parties, other than payment of accrued monetary obligations, shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, compliance with applicable statutes, regulations, ordinances, laws or other events, conditions or causes beyond the control of the nonperforming Party. In no event shall any liability accrue against a non-performing Party, its officers, agents or employees, for any claim of damage arising out of or connected with a suspension of performance pursuant hereto.

25. Assignment; Delegation

A. ***Prior Written Consent.*** Except as otherwise provided in this Agreement, the Authority and the Parties shall not assign any rights or delegate any duties or obligations arising from this Agreement without the written consent of the Parties. Any attempt at such an assignment or delegation shall be null and void. Any assignment or delegation shall be in writing and shall expressly provide that the assignee or delegatee accepts all rights and duties or obligations of the assignor or

delegator, including but not limited to any obligations imposed as a condition of outside funding of the Kern Fan Project.

- B. ***Temporary Use of Kern Fan Project Capacity.*** Each Party's use of its respective Kern Fan Project capacity to implement another independent operating program or project with a third party shall not be deemed an assignment requiring prior written consent pursuant to article 25(A). The Parties agree that any agreement each might enter with a third party to provide recharge, storage or recovery operations for the third party shall be characterized as providing a recharge, storage or recovery service and not as an assignment, unless an assignment proposed by one Party is approved in writing by the other Party under article 25(a).

26. **Hierarchy of Documents**

This Agreement, as may be amended from time to time, shall govern over all other Authority documents and agreements, including the Bylaws of the Board of Directors.

27. **Entire Agreement**

This Agreement contains the entire agreement between the Parties and supersedes all prior understanding between them with respect to the subject matter of this Agreement. There are no promises, terms, conditions or obligations, oral or written, between or among the Parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement. Modifications, changes or supplements shall not be effective unless in conformance with article 18 of this Agreement. Termination of this Agreement shall not be effective unless in conformance with article 1 of this Agreement.

28. **Joint Drafting and Negotiation**

This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed as a whole according to its fair meaning and without regard to or aid of Civil Code section 1654 or similar judicial rules of construction. Each Party acknowledges that it has had the opportunity to seek the advice of experts and legal counsel prior to executing this Agreement and that it is fully aware of and understands all of its terms and the legal consequences thereof.

29. **Counterparts and Effective Date**

This Agreement may be executed in counterparts and be as valid and binding as if each Party signed the same copy. A faxed copy of the executed signature page shall be sufficient to cause the terms of this Agreement to become fully operative.

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30. **Headings**

Article and section headings contained herein are for convenience only. Such headings shall not control or affect the meaning or construction of this Agreement.

IN WITNESS WHEREOF, each Party has executed this Agreement on the date set forth below its signature.

Irvine Ranch Water District

Rosedale-Rio Bravo Water Storage District

By: 

By: 

Name: PAUL COOK

Name: Eric Averett

Title: GENERAL MANAGER

Title: General Manager

Date: 8 APRIL 2020

Date: April 8, 2020

Approved as to Form:

Approved as to Form:







400 Capitol Mall, 27th Floor
Sacramento, CA 95814

T 916.321.4500
F 916.321.4555

Eric N. Robinson
erobinson@kmtg.com

July 30, 2020

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Orange County LAFCO
2677 North Main Street, Suite 1050
Santa Ana, CA 92705

Re: Groundwater Banking Joint Powers Authority

Dear LAFCO:

Pursuant to Government Code section 6503.6, please accept the enclosed Joint Powers Agreement Between Rosedale-Rio Bravo Water Storage District and Irvine Ranch Water District Creating the Groundwater Banking Joint Powers Authority to Develop and Administer A Kern Fan Groundwater Storage Project.

If you have any questions, please contact me at (916) 849-6727.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

ERIC N. ROBINSON

ENR/tw

Enclosure

RECEIVED
AUG 4 2020

LOCAL AGENCY FORMATION COMMISSION

**JOINT POWERS AGREEMENT
BETWEEN
ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT
AND
IRVINE RANCH WATER DISTRICT
CREATING THE GROUNDWATER BANKING JOINT POWERS AUTHORITY
TO DEVELOP AND ADMINISTER
A KERN FAN GROUNDWATER STORAGE PROJECT**

JOINT POWERS AGREEMENT
BETWEEN
ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT
AND
IRVINE RANCH WATER DISTRICT
CREATING THE GROUNDWATER BANKING JOINT POWERS AUTHORITY
TO DEVELOP AND ADMINISTER
A KERN FAN GROUNDWATER STORAGE PROJECT

THIS JOINT POWERS AGREEMENT ("Agreement") is made and entered into as of the Effective Date by and between the ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT ("RRB") and the IRVINE RANCH WATER DISTRICT ("IRWD") to form the GROUNDWATER BANKING JOINT POWERS AUTHORITY ("Authority") pursuant to the Joint Exercise of Powers Act of 1980 (Division 7, commencing with § 6500 of the California Government Code). RRB and IRWD are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. RRB is a public agency organized in accordance with the California Water Storage District Law (Division 14, commencing with § 39000 of the California Water Code) for the purpose of acquiring, storing, distributing, and replenishing water supplies within its boundaries in Kern County, California.

B. IRWD is a public agency organized in accordance with the California Water District Law (Division 13, commencing with § 34000 of the California Water Code) to provide water services and certain other services. IRWD's powers and purposes include the acquisition within or outside the district in the State of all necessary property, water, and water rights for the production, storage, transmission, and distribution of water for irrigation, domestic, industrial, and municipal purposes and to provide and sell such water at wholesale and retail to customers within its boundaries in Orange County, California.

C. In 1959, RRB was formed to develop a groundwater recharge program to offset overdraft. The construction of the initial phases of the recharge program was completed in early 1962, and the facilities placed in operation shortly thereafter. Additional improvements to program recharge facilities have since been made, and RRB has acquired fee title to the properties on which the program facilities are located. The physical features of the recharge program include facilities to divert waters from the Kern River and the Cross Valley Canal facilities ("CVC") and RRB properties into the Goose Lake Slough and adjacent recharge basins.

D. To improve its water supplies, generate increased recharge capability and to provide operational flexibility, RRB has developed a program for the banking, storage, exchange,

and direct delivery of water pursuant to the exercise of its powers ("RRB Conjunctive Use Program"). The RRB Conjunctive Use Program involves the banking of imported water by customers ("RRB Program Participants") in the Kern County Sub-Basin of the San Joaquin Valley Groundwater Basin ("Groundwater Basin") for later delivery to said customers. RRB has developed and approved the RRB Conjunctive Use Program through various agreements and documents including, without limitation, an environmental impact report ("EIR") certified by RRB on July 17, 2001, and subsequent addenda thereto, pursuant to the California Environmental Quality Act ("CEQA"), Public Resource Code section 21000 et seq.

E. In 2004, IRWD acquired 611 acres of real property in Kern County, California, sometimes referred to as the "Strand Ranch property," lying adjacent to the southerly boundary of RRB. On January 13, 2009, RRB and IRWD entered into an "Agreement For A Water Banking and Exchange Program," as amended by Amendment No. 1, entered into on or about February 27, 2015 (collectively, "Strand Ranch Agreement") providing for the development and operation of a groundwater banking program on IRWD's Strand Ranch property, and the operation and integration of such program within the RRB Conjunctive Use Program ("Strand Ranch Integrated Banking Project").

F. Since 2004, RRB acquired an additional 230 acres of real property lying adjacent to the easterly boundary of the Strand Ranch property ("Stockdale East property"), and IRWD acquired an additional 323 acres of real property lying adjacent to the westerly boundary of the Strand Ranch property ("Stockdale West property"). On or about February 4, 2016, RRB and IRWD entered into an "Agreement for A Water Banking, Recovery and Exchange Program," as amended by Amendment No. 1, entered into on or about January 16, 2018 (collectively, "Stockdale Integrated Banking Project").

G. CEQA compliance for the Stockdale Integrated Banking Project has been completed. On December 8, 2015, RRB certified an EIR for the Stockdale Integrated Banking Project ("Stockdale Integrated Banking Project EIR"), and on December 14, 2015, IRWD approved the Stockdale Integrated Banking Project EIR as a responsible agency. The Stockdale Integrated Banking Project EIR provides a project-level effects analysis for the Stockdale Integrated Banking Project and provides a program-level analysis for a third project site of up to 640 acres within a 12,300-acre site radius analyzed in the Stockdale Integrated Banking Project EIR.

H. The up to 640-acre third project site analyzed in the Stockdale Integrated Banking Project EIR would constitute Phase 1 of a proposed Kern Fan Groundwater Storage Project ("Kern Fan Project") for which RRB and IRWD have jointly applied for grant funding through the California Water Commission's ("Commission") Water Storage Investment Program ("WSIP") authorized by California voters' approval of Proposition 1, the Water Quality, Supply, and Infrastructure Improvement Act of 2014. A second up to 640-acre project site would constitute Phase 2 of the Kern Fan Project.

I. Through the Kern Fan Project, the Parties seek to develop a regional water bank in the Kern County Groundwater Sub-basin of the San Joaquin Valley Groundwater Basin in Kern County. The Kern Fan Project would recharge and store up to 100,000 acre-feet of water during periods when surface water is abundant. Water stored by the Kern Fan Project pursuant to

participation in the WSIP would be recovered when needed to provide ecosystem public benefits, water supply public benefits during extended droughts or a Delta levee failure, and other non-public water supply benefits for RRB and IRWD water service customers. The Kern Fan Project proposes to use 25 percent (25%), up to 25,000 acre-feet, of the unallocated State Water Project ("SWP") Article 21 water stored pursuant to participation in the WSIP to provide public ecosystem benefits, with the remainder for use by IRWD and RRB. IRWD and RRB would have access to Kern Fan Project facilities and capacities to store water pursuant to other programs to generate additional water supply benefits as described in article 3(C) of this agreement. Unallocated SWP Article 21 water is an interruptible water supply that the California Department of Water Resources ("DWR") periodically makes available to its long-term water service contractors under Article 21 of their contracts.

J. In July 2018, the Commission conditionally approved \$67,537,315 in conditional WSIP grant funding for the Kern Fan Project, which may be increased by the Commission in the future. The Parties may seek additional state or federal grant funding in the future.

K. The Parties are forming the Authority to achieve the above-described objectives of the Kern Fan Project, and this Agreement helps to define a stable and finite project description that will facilitate completion of CEQA review pursuant to Cal. Pub. Res. Code section 21000 et seq.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. Effective Date, Term and CEQA Compliance

A. ***Effective Date and Term.*** Upon execution by the Parties, this Agreement shall be effective July 1, 2020 ("Effective Date"), but shall be subject to article 1(B). This Agreement shall remain effective for thirty (30) years from the Effective Date or until expiration of any requirements to operate the Kern Fan Project as part of the WSIP or other grant funding requirements, whichever is longer, or until it is terminated early by either Party providing eighteen (18) months' advance written notice of intent to terminate. Prior to the expiration of the term of the JPA Agreement, the Parties shall work together to mutually extend this Agreement. If this Agreement is not extended, or if it is terminated early, the Parties shall agree to negotiate in good faith to integrate the Kern Fan Project facilities into one or more other existing water storage and recovery programs or projects; provided further that if the Parties fail to reach agreement on such integration, then RRB shall have a first right to acquire IRWD's interest in all Kern Fan Project facilities, capacities and real or personal property held by the Authority. If this Agreement is terminated early, the Parties agree that the legal effectiveness of such termination shall be conditioned upon all then-existing grant obligations being met for the duration of such obligations.

B. ***Disposition of Kern Fan Project Property, Facilities and Other Assets Upon Termination.*** If this Agreement is terminated for any reason, then RRB's first right to acquire IRWD's interest in the Kern Fan Project facilities, land and easements shall be based upon the then-existing fair market value of the land and easements

and upon the then-existing undepreciated fair market value of all such facilities. For this purpose, IRWD's interest in Kern Fan Project facilities, land and easements shall be 50%, unless a Special Activities Agreement provides otherwise, and depreciation shall be calculated on a straight line basis and, (i) pumps and electrical improvements shall be deemed to have a useful life of twenty (20) years and all other improvements shall be deemed to have a useful life of fifty (50) years, (ii) each improvement's useful life shall be measured from its initial installation or most recent replacement or refurbishment, whichever is later, and (iii) cost shall be based on the amount of the documented cost of installation of the improvement being valued, prorated as necessary if the improvement was constructed with other improvements that are not part of the Kern Fan Project. Land and easements shall be valued at the fair market value at the time of termination. Land and easement valuation shall be "like for like" and shall be based upon comparable properties with consideration given to location, zoning, and land use. If RRB elects not to exercise its first right to acquire IRWD's interest in Kern Fan Project facilities, land and easements, IRWD may hold its interest or sell its interest to a mutually acceptable third party. Upon termination, and consistent with articles 3(C) and 3(F), RRB and IRWD each respectively shall retain their ownership of water stored in their respective shares of the Kern Fan Project's storage capacity, and each shall retain discretion to hold, recover or otherwise dispose of their water, including transferring stored water into another existing water banking project.

- (1) The Authority shall continue to exercise the powers described herein until the Parties terminate this Agreement.
- (2) Upon termination, the Authority shall continue to exercise only such powers as to enable it to pay and discharge all costs, expenses, and charges legally incurred hereunder, and to dispose of, divide, and distribute any property acquired as a result of the Authority's operations.
- (3) Upon termination, the Authority shall continue to be responsible for the payment of any expenses, liabilities, or obligations between the Parties to this Agreement incurred prior to withdrawal. (Solely by way of example, this provision would require payment for rights and obligations incurred pursuant to Government Code section 6504.) This requirement shall survive any withdrawal or termination of this Agreement.
- (4) Upon termination of this Agreement, all costs, expenses, and charges legally incurred by the Authority shall be paid and discharged by the Authority. After the disposition of Kern Fan Project facilities, capacities and real or personal property under this article 1, the Authority shall sell any remaining property as may be necessary and shall distribute to the federal or state government such property and funds as are lawfully required; the balance of such property and any surplus money on hand shall be distributed or returned in proportion to contributions made by the

affected Parties except to the extent otherwise agreed upon by the affected Parties.

- (5) In the event this Agreement is terminated prior to termination of the requirements of the WSIP grant or any other grant used to pay for the Kern Fan Project, the Parties shall be responsible for meeting all of the obligations of the WSIP and any other grants in proportion to their respective ownership of facilities post termination.

- C. **CEQA Compliance.** Formation of this Agreement helps to define a stable and finite project description, which will facilitate completion of CEQA review for the proposed Kern Fan Project. The Authority shall each complete CEQA review for the proposed Kern Fan Project prior to approving, constructing or operating the proposed project. Any real property acquired for the proposed project prior to completion of CEQA review shall be conditioned on completing CEQA review before changing the existing use of the real property. If the performance of CEQA review identifies any significant adverse environmental effects, the Parties each retain their full discretion to terminate this Agreement or to jointly revise this Agreement as necessary to implement any feasible mitigation measures or alternatives that would avoid or reduce such significant effects as provided by CEQA; provided that each Party's discretion to terminate or to jointly revise this Agreement under this article 1(B) shall be limited to responding to any significant adverse environmental effects.

2. **Authority for Joint Powers Agreement**

This Agreement is made pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (commencing with section 6500) relating to the joint exercise of power common to the counties and public agencies. The Parties are each empowered by the laws of the State of California to exercise, in their respective jurisdictions, the powers which will be jointly exercised as set forth herein.

3. **Purposes**

- A. **Creation of Separate Entity.** The purpose of this Agreement is to create a joint powers authority called the "Groundwater Banking Authority" to plan, design, construct, operate and otherwise implement the Kern Fan Project. The Authority shall be a separate legal entity from its member agencies. The purpose of the Authority is to implement the Kern Fan Project, as described in the Recitals, above, which are incorporated herein by this reference.
- B. **Project Benefits.** The benefits of the Kern Fan Project include, but are not limited to, benefits to the water levels in the Kern County Groundwater Subbasin, enhanced water supply reliability for RRB's and IRWD's service areas, reduced dependence of RRB's and IRWD's service areas on existing imported water supplies from northern California, endangered species preservation through reduced demands on

such imported water, and the establishment of temporary wetlands through recharge activity.

- C. ***Allocation of Capacities Provided by Kern Fan Project.*** The primary objective of the Kern Fan Project is to provide 100,000 acre-feet per year (“AFY”) of groundwater recharge capacity, 100,000 acre-feet (“AF”) of storage capacity for the Parties to capture and recover unallocated SWP Article 21 water, with up to 50,000 AF per year of recovery capacity and up to 500 cubic feet per second of additional conveyance capacity.

The water storage capacity developed under the Kern Fan Project when fully implemented is planned to be 100,000 AF and shall be allocated as follows:

25% of storage capacity up to 25,000 AF to the WSIP Public Ecosystem Account

50% of remaining storage capacity to RRB

50% of remaining storage capacity to IRWD

The water recharge, recovery, and additional conveyance capacity developed under the Kern Fan Project shall be allocated equally between RRB and IRWD, subject to any Special Activities Agreements governing the Parties' independent choices whether to participate in or to add a component of the Kern Fan Project.

RRB and IRWD shall each have first priority access to their own respective shares of capacities in the Kern Fan Project to recharge, store and recover other water supplies, including SWP water, for the independent benefit of each Party. The Parties shall have second-priority access to use each other's unused recharge and recovery capacities. RRB and IRWD may use their respective capacities to implement other independent operating programs or projects with third parties, so long as such use does not impair the ability to provide the WSIP public ecosystem benefits.

Each Party shall submit to the other Party, prior to use of any unused second priority capacity, a preliminary schedule showing rates and quantities of water for recharge and/or recovery to be delivered in the second priority capacity. The Parties shall coordinate schedules and cooperate to avoid impacts to their respective first priority capacities. To the extent that the use of second priority capacity is deemed by the Parties to have resulted in a reduction of recharge or recovery capacity necessary to fully implement a water management program, the Parties shall meet and confer on the appropriate mitigation, which may include use of other recharge and/or recovery facilities not part of the Kern Fan Project.

Each Party may enter into a Special Activities Agreement with the Authority pursuant to article 3(D) describing and approving an independent operating program or project.

- D. ***Special Activities Agreements.*** A Party may enter into one or more written Special Activities Agreements with the Authority providing for its independent choice

whether to participate in or to add a component of the Kern Fan Project or to allow use of its capacity in the Kern Fan Project to implement an independent operating program or project with a third party. For example, IRWD may enter into a Special Activities Agreement providing for installation of additional Kern Fan Project wells to increase recovery capacity for the benefit of IRWD, or RRB may enter into a Special Activities Agreement providing for RRB to reduce its recovery capacity by foregoing the installation of Kern Fan Project wells. The Authority's Board of Directors shall adopt bylaws providing for Special Activities Agreements.

- E. ***WSIP Water.*** For purposes of participating in the WSIP to provide ecosystem public benefits and water supply public benefits during extended droughts or a Delta levee failure, the Kern Fan Project will be operated by recharging and storing unallocated SWP Article 21 water obtained by the Parties ("WSIP Water"). Unallocated SWP Article 21 water deliveries would be made on behalf of IRWD as a landowner in Dudley Ridge Water District ("DRWD") and on behalf of RRB as a sub-unit of the Kern County Water Agency ("KCWA") or any other SWP contractor acting on behalf of either or both Parties. Consistent with article 3(N) of this Agreement, WSIP Water delivered to the Kern Fan Project by each Party will be proportionately applied to each Party's respective storage account consistent with this Agreement's defined "Allocation of Capacities Provided by Kern Fan Project."
- F. ***Ownership.*** The Authority plans to acquire, own, and use up to approximately 1,280 acres of land within the Kern Fan Project designated project area. The Authority will own all property, facilities and capacities of the Kern Fan Project, subject to each Party's rights to use such capacities according to this Agreement, unless otherwise provided for through a Special Activities Agreement. The Authority may acquire or use property outside of the Kern Fan Project area and designated existing and/or new project areas/recharge to meet the Kern Fan Project objectives. The Authority shall own the water stored in the Kern Fan Project's ecosystem public benefit account for the benefit of the State's WSIP, while RRB and IRWD each shall own the water stored in their respective shares of the Kern Fan Project's remaining storage capacity.
- G. ***Hydrogeologic Evaluations.*** RRB and IRWD will equally fund or reimburse through the Authority hydrogeologic studies needed to determine the recharge, storage and recovery capacities and limitations of the Kern Fan Project designated properties.
- H. ***CEQA Compliance Cost and Roles.*** RRB and IRWD will equally fund or reimburse through the Authority the preparation of an Environmental Impact Report ("EIR") for the construction and operation of the Kern Fan Project, including all technical studies necessary to support the EIR. The Authority shall play the role of lead agency, while RRB and IRWD will each play the role of a

responsible agency with respect to any discretionary decisions each Party makes in connection with implementing the Kern Fan Project.

- I. **Other Regulatory Permitting Costs.** RRB and IRWD will equally fund or reimburse through the Authority all regulatory and permitting fees and costs associated with construction of the Kern Fan Project.
- J. **Project Costs.** Any and all WSIP or other grant funds awarded for the Kern Fan Project shall be applied to all eligible capital costs, including, but not limited to, the planning, design and construction costs of the Kern Fan Project, and the Authority will fund all remaining associated costs. RRB and IRWD shall each pay through the Authority half of Kern Fan Project planning, design and construction costs that are not paid by awarded WSIP or other grant funds except as otherwise provided by any Special Activities Agreements governing the Parties' mutually agreeable independent choices whether to participate in or to add a component of the Kern Fan Project.
- K. **Project Construction.** Board of Directors shall adopt bylaws describing the procedures, team and requirements for any planning, design, construction and construction management associated with the Kern Fan Project.
- L. **Project Operation.** RRB shall operate, maintain and repair the Kern Fan Project facilities, subject to approval by the Board of Directors. RRB shall maintain WSIP records accounting for each Party's water recharge, storage and recovery activities pursuant to all applicable WSIP regulations and as further described in bylaws adopted by Board of Directors. The Authority shall be responsible for any and all regulatory and permitting fees applicable to Kern Fan Project operations, including compliance with an anticipated Memorandum of Understanding regarding operation and monitoring of the Kern Fan Project and related Project Recovery Operations Plan, which governs groundwater banking within RRB.
- M. **Operation Costs.** RRB and IRWD shall pay operations, maintenance, energy and replacement ("OME&R") costs consistent with their respective proportional use of the Kern Fan Project and any Special Activities Agreements governing the Parties' independent choices whether to participate in or to add a component of the Kern Fan Project as described in bylaws adopted by the Board of Directors.
- N. **Mutual Obligation to Recharge Ecosystem Public Benefit Account.** At such times when unallocated SWP Article 21 water is available, the Parties shall equally fund the acquisition and recharge of such water for ecosystem public benefits until up to 25% of Kern Fan Project storage capacity, up to 25,000 acre-feet, is full (when the WSIP ecosystem public benefit account is full). Until the WSIP ecosystem public benefit account is full, all recharge of unallocated SWP Article 21 water shall be apportioned 25% to the WSIP ecosystem public benefit account, 37.5% to RRB's share of the Kern Fan Project's remaining storage capacity, and 37.5% to IRWD's share of the Kern Fan Project's remaining storage capacity. After the WSIP ecosystem public benefit account is full, RRB and IRWD may use their respective

capacities to recharge and store other available water, including Kern River Flood Water, to fill their respective water supply public benefits accounts, so long as such water may be used to provide water supply public benefits within the Parties' respective service areas.

- O. ***Kern River Flood Water.*** During times that Kern River Flood Water is available (i.e., when the Kern River Watermaster offers water to all takers willing to sign a "Notice/Order", or the Kern River Watermaster offers water to the California Aqueduct/Kern River Intertie, such water is expected to flood farmed acreage in Buena Vista Lake or is expected to be delivered into the Kern River Flood Channel for delivery out-of-county), this water would follow delivery of WSIP Water, if simultaneously available. Following any such delivery of WSIP Water, RRB shall have first priority to use all Kern Fan Project facilities for recharge of Kern River Flood Water. The first 25% of Kern River Flood Water recharged into the Kern Fan Project shall be deemed owned by IRWD at no cost and the remainder of such stored water shall be deemed owned by RRB; provided that RRB may exercise its discretion to allow IRWD to acquire an additional 25% of such recharged Kern River Flood Water by paying RRB the average price for Kern River water over the preceding two (2) months or \$25 per AF, whichever is greater.. Beginning on January 1, 2020 and on January 1 of each year thereafter, the \$25 shall be increased in an amount equal to the percentage change, if any (but not less than zero) in the Consumer Price Index (All Urban Consumers, All Items) for Western Cities, Populations Less than 1.5 Million, published by the United States Department of Labor, Bureau of Labor Statistics. water into storage.
- P. ***Water Quality.*** The quality of water to be recharged, stored and recovered at the Kern Fan Project shall be consistent, including through blending with other water, with applicable pump-in requirements specified by DWR for the California Aqueduct, as such requirements may be amended from time to time.

4. **Powers**

The Authority is hereby authorized to perform all powers and functions set out in this Agreement, including all powers granted to California water storage districts pursuant to the California Water Storage District Law (Division 14, commencing with § 39000 of the California Water Code) and California water districts pursuant to the California Water District Law (Division 13, commencing with § 34000 of the California Water Code), as amended, and any applicable regulations.

The Authority shall administer this Agreement. Pursuant to Government Code section 6509 and shall undertake all further actions necessary to carry out the purposes of the Authority, the Authority shall exercise its powers in administering this Agreement subject to the restrictions applicable to IRWD. The Authority is hereby further authorized to:

- A. Negotiate with, apply for, contract for, and receive monies from federal, state, county, city, and special district governments, and other public and private entities and agencies to carry out the purposes of this Agreement, and shall disburse and account for funds so received.

- B. Allocate all funds, including discretionary and special purpose funds, received by the Authority as equitably as practicable, based upon the applicable terms of the funding application, fund source requirements, Agency policy, or vote of the Board of Directors, as described in article 6 of this Agreement.
- C. Monitor, evaluate, and take corrective action concerning performance specified in any agreement, and contracts or agreements the Authority has entered into.
- D. Establish performance objectives for subcontractors.
- E. Evaluate the effectiveness of programs undertaken by the Authority.
- F. Maintain financial and statistical records to satisfy federal, state, and other laws and regulations, and provide necessary information for effective program management.
- G. Adopt, promulgate, and enforce such bylaws, rules, and regulations as the Board of Directors deems necessary for operation and management of the Authority and implementation of the purposes of this Agreement.
- H. Negotiate and enter into agreements and contracts.
- I. Employ agents and employees.
- J. Acquire, lease, rent, construct, manage, maintain, hold, and dispose of real and personal property with title to such property being held by the Authority.
- K. Acquire property by eminent domain.
- L. Commission the design, permitting, construction, operation, and maintenance of any facilities required for the Kern Fan Project.
- M. Incur debts, liabilities, and other obligations.
- N. Bring suit and be sued in its own name.

Undertake all further actions necessary to carry out the purposes of the Authority.

5. **Governance**

- A. ***Board of Directors.*** The Board of Directors of the Authority shall consist of four (4) members constituting two (2) members appointed by each Party. Of the two members appointed by each Party, one must be a member of that Party's legislative body and neither appointee may serve as an officer of the Authority (*e.g.*, as general manager or treasurer) while also serving on the Authority's Board of Directors. Each Party's legislative body shall designate an alternate to serve on the Authority's Board of Directors to provide continuity in the event one of a Party's representatives cannot participate in one or more meetings of the Authority's Board of Directors. Such alternates shall be members of either RRB's or IRWD's legislative body or

designees and shall not serve as an officer of the Authority while also serving as an alternate on the Authority's Board of Directors.

- B. **Meetings.** All meetings of the Board of Directors shall be subject to the provisions of the Ralph M. Brown Act (Chapter 3.5 of Division 7, commencing with § 6250 of the California Government Code) and shall be held at a regularly scheduled time. At its first meeting, the Board of Directors shall, by resolution, determine the schedule for its regular meetings.
- C. **Quorum.** A quorum of any meeting of the Board of Directors shall require the attendance of at least one member of the Board of Directors from each of the Parties. In the absence of a quorum, any meeting of the Board of Directors shall be adjourned by the member of the Board of Directors present. In the absence of any members of the Board of Directors, the Clerk of the Board shall adjourn any meeting of the Board of Directors. Vacant positions on the Board of Directors shall not be considered for purposes of determining quorum.
- D. **Voting and Affirmative Decisions.** Voting by the Board of Directors shall be conducted on a one-vote-per-Party basis, meaning that the two RRB directors together may cast one vote and the two IRWD directors may together cast one vote. The vote representing each Party may be cast by either of that Party's two members of the Authority's Board of Directors or their alternates. All decisions of the Board of Directors shall require an affirmative and unanimous vote, meaning that the Board of Directors may not make a decision unless both the RRB directors' vote and IRWD directors' vote are in favor of making a decision; provided that voting on actions related to administration of a previously approved Special Activities Agreement shall be weighted as determined by each Special Activities Agreement. In the event the Authority Board of Directors is deadlocked on a proposed action, then RRB and IRWD shall conduct a joint meeting of their legislative bodies to resolve the deadlock. In the event that such a joint meeting does not resolve the deadlock, then the Parties shall participate in mediation to resolve the deadlock. Finally, in the event mediation fails to resolve the deadlock, either Party may initiate litigation to resolve the deadlock subject to any defenses raised in response to such litigation. This process of resolving deadlocks of proposed actions can be further defined in bylaws adopted by Board of Directors; provided, however, that nothing in this Agreement or the bylaws shall limit either Party's discretion to exercise its own independent judgment upon issues before the Authority in any manner.
- E. **Bylaws.** The Board of Directors shall adopt bylaws detailing how the Board of Directors' business is to be conducted. Those bylaws shall not conflict with the provisions of this Agreement or any law.

6. **General Manager**

The Authority Board of Directors shall appoint a representative of RRB to serve as General Manager of the Authority, unless the Board of Directors elects to appoint another

individual to serve as the General Manager of the Authority. The General Manager shall not be an employee or independent contractor of the same Party as the Treasurer. An assignment to serve as the General Manager of the Authority shall not be construed to be permanent. The General Manager shall serve at the pleasure of the Board of Directors and may be appointed or removed at a time of choosing of the Board of Directors.

7. **Treasurer**

The Authority Board of Directors shall appoint a representative of IRWD to serve as Treasurer of the Authority, unless the Board of Directors elects to appoint another individual to serve as the Treasurer of the Authority. The Treasurer shall not be an employee or independent contractor of the same Party that employs the General Manager. The Treasurer shall serve at the pleasure of the Board of Directors and may be appointed or removed at a time of choosing of the Board of Directors. IRWD shall be the depository and manage custody of all monies of the Authority and maintain all monies under the oversight and direction of the Treasurer. Furthermore, the Treasurer shall:

- A. Receive and receipt all funds of the Authority and place them in the separate accounts established and maintained for the Authority.
- B. Receive and invest funds and be responsible for the safekeeping of all funds of the Authority.
- C. Pay, when due, out of the Authority's funds, all properly approved disbursements due by the Authority including amounts due on outstanding bonds and coupons.
- D. Verify and report to the Authority and the Parties, in writing, on a monthly basis, the amount of money held for the Authority, the amount of receipts since the last report, and disbursements since the last report.

Treasurer may designate other individuals, as approved by the Board of Directors, necessary to carry out the Treasury function.

8. **Accounting and Financial Reporting**

The Treasurer shall have overall responsibility to maintain the accounting books and records of the Authority. This includes maintenance of the accounting records, monthly report preparation of all receipts and disbursement activities and grant administration and compliance. Such reporting activity shall be provided to each of the Authority parties.

9. **Legal Counsel**

Legal Counsel for the Authority shall be selected by the Board of Directors. Legal Counsel shall also serve as the Secretary of the Authority. The Legal Counsel and Secretary shall serve at the pleasure of the Board of Directors.

10. **Staff**

The staff of the Parties shall serve as the staff of the Authority. The primary responsibility for providing adequate staff support for the operation of the Kern Fan Project shall belong to RRB, unless the Board of Directors appoints a IRWD representative as General Manager pursuant to article 6. The primary responsibility for the treasury function and financial accounting of the Authority shall belong to IRWD, unless the Board of Directors appoints a RRB representative as Treasurer pursuant to article 7. The Authority Board shall negotiate rates of reimbursement and payment schedules with the Parties for staff time and incorporate such requirements into the bylaws of the Authority.

11. **Official Bonds**

The General Manager and the Treasurer are designated as public officers or persons who have charge of, handle, or have access to any property of the Authority, and each such officer or person shall obtain, maintain, and file an official bond. Alternatively, a government crime insurance policy or employee dishonesty insurance policy, including faithful performance, shall be obtained and maintained, with the Authority so long as such insurance policy is in conformance with Government Code section 1463.

12. **Funds and Accounts; Fiscal Year; Annual Budgets**

- A. ***Funds and Accounts.*** The Authority shall establish and maintain such funds and accounts as may be required by the California Government Code, other applicable laws, the Governmental Accounting Standards Board, good accounting practice, this Agreement, and any ordinance, resolution, or policy of the Board of Directors.
- B. ***Funding.*** The Authority's accounts shall be funded with the WSIP grant funding awarded by the Commission or any other grant funding that may be awarded for the Kern Fan Project and with such additional funding that each Party contributes to enable the Authority to successfully implement the Kern Fan Project pursuant to this Agreement; subject to the Parties' respective financial obligations under article 3 of this Agreement.
- C. ***Fiscal Year.*** For the purposes of this Agreement, the Authority shall have such fiscal year from July 1 to and including the following June 30.
- D. ***Annual Budget.*** An annual capital and operating budget shall be prepared or caused to be prepared by the General Manager and presented to the Board of Directors for its adoption or amendment, pursuant to the Authority's article 4 powers, above, not later than May 1 of each fiscal year. The budget shall establish any necessary rates, capital expenditures, and charges to be paid for operation and maintenance activities and such other matters as shall be determined by the Board of Directors.

13. **Records and Reports; Audit**

The Board of Directors shall establish reporting requirements and direct staff to maintain such reports. All books and records of the Authority shall be open to inspection at all

reasonable times by any party to this Agreement or its representatives. Annual audits of the Authority's accounts and records shall be made by an independent certified public accountant or firm of independent certified public accountants selected by the Board of Directors, and reports of such audits shall be filed in the manner provided in section 6505 of the Government Code.

14. **Debts, Liabilities, and Obligations**

The debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities or obligations incurred by any Party under this Agreement.

15. **Privileges and Immunities**

All of the privileges and immunities from liability, exemptions from law, ordinances, and rules, all pension, relief, disability, worker's compensation, and other benefits which apply to the activity of officers, agents or employees of any Party when performing their respective functions within their territorial limits, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially.

16. **Indemnification**

A. ***Authority.*** The Authority Board of Directors, officers, representatives, consultants, contractors and agents shall be entitled to defense and indemnification by the Authority as provided under Government Code sections 825 et seq. and section 995 et seq. The Authority shall at all times indemnify, defend and save the Parties from, and pay in full, any and all claims, demands, losses, damages or expenses, including reasonable attorneys' fees and costs, that the Parties, their Boards of Directors, officers, representatives, consultants, contractors, agents, and/or employees may sustain or incur in any manner relating to the Authority's performance under this Agreement for any action.

B. ***RRB.*** RRB shall at all times indemnify, defend and save IRWD and the Authority, its Board of Directors, officers, representatives, consultants, contractors, agents, and employees free and harmless from, and pay in full, any and all claims, demands, losses, damages or expenses, including reasonable attorneys' fees and costs, that IRWD, its Board of Directors, officers, representatives, consultants, contractors, agents, and/or employees may sustain or incur in any manner arising out of RRB's sole active negligence or willful misconduct in the performance of its responsibilities under this Agreement, excepting any loss, damage or expense and claims for loss, damage or expense resulting in any manner from the negligent or willful act or acts of IRWD, its Board of Directors, officers, representatives, consultants, contractors, agents and employees.

C. ***IRWD.*** IRWD shall at all times indemnify, defend and save RRB and the Authority, its Board of Directors, officers, representatives, consultants, contractors, agents, and employees free and harmless from, and pay in full, any and all claims, demands, losses, damages or expenses, including reasonable attorneys' fees and costs, that RRB, its Board of Directors, officers, representatives, consultants,

contractors, agents, and/or employees may sustain or incur in any manner arising out of IRWD's sole active negligence or willful misconduct in the performance of its responsibilities under this Agreement for any action, excepting any loss, damage or expense and claims for loss, damage or expense resulting in any manner from the negligent or willful act or acts of RRB, its Board of Directors, officers, representatives, consultants, contractors agents and employees.

- D. ***Mutual Indemnification.*** Except as set forth above, each Party shall indemnify, defend and save the other Party, its Board of Directors, officers, representatives, consultants, contractors, agents, and employees free and harmless from, and pay in full, any and all claims, demands, losses, damages or expenses, including reasonable attorneys' fees and costs, that said other Party, its Board of Directors, officers, representatives, consultants, contractors, agents, and/or employees may sustain or incur in any manner arising out of specific Kern Fan Project operations undertaken on behalf of the indemnifying Party under this Agreement for any action. Without limiting the generality of the foregoing, and by way of example, IRWD shall indemnify, defend and save Rosedale free and harmless from claims of damages and expenses to neighboring water wells that result from recovery operations made on the behalf of IRWD, except to the extent caused by the sole active negligence or willful misconduct of Rosedale. Costs for any claim relating to Kern Fan Project operations that is made and administered pursuant to the *Project Recovery Operations Plan Regarding Pioneer Project, Rosedale-Rio Bravo Water Storage District, And Kern Water Bank Authority Projects* shall be allocated between the Parties in the same manner as claims paid by the parties to said *Project Recovery Operations Plan, a copy of which is attached as Exhibit A to this Agreement.*
- E. ***No Right of Contribution; Indemnification Agreement.*** The indemnification and hold-harmless provisions of article 16 shall apply in lieu of the right of contribution provisions at Government Code sections 895-895.8; the provisions of this article 16 are entered into pursuant to Government Code sections 895.4 and 895.6.

17. **Insurance**

- A. ***Authority.*** During the term of this Agreement, the Authority shall maintain general liability insurance coverage in a sum not less than five million dollars (\$5,000,000) per occurrence. The insurance shall also contain a written endorsement to such policy or policies which names each of the Parties as an additional insured. RRB and IRWD will equally fund through the Authority the general liability insurance coverage premium and any deductible.
- B. ***RRB.*** RRB shall name the Authority as an additional insured covered by RRB's general liability insurance policy, premises liability insurance policy, and automobile insurance policy.

- C. **IRWD.** IRWD shall name the Authority as an additional insured covered by IRWD's general liability insurance policy, premises liability insurance policy, and automobile insurance policy.
- D. If a claim is made against one or the other Party's insurance policy as a result of Kern Fan Project operations, the Parties agree to each pay half of the deductible on each such claim.

18. **Modification**

This Agreement may only be amended by the written agreement signed by authorized representatives of the Parties.

19. **Notice**

Notice under this Agreement shall be made by: (1) overnight courier or (2) certified mail, return receipt requested. Additionally, notice under this Agreement shall be made by electronic mail. All such notices shall be deemed delivered upon actual receipt from (1) overnight courier or (2) certified mail, return receipt requested (or upon first attempt at delivery pursuant to either of the two methods specified herein if the intended recipient refuses to accept delivery).

Notice to IRWD shall be made to:

Irvine Ranch Water District
15600 Sand Canyon Avenue
Irvine, California 92618
Attn: General Manager
Telephone: (940) 453-5300
Facsimile: (949) 453-1228
Electronic Mail: cook@irwd.com

Notice to RRB shall be made to:

Rosedale-Rio Bravo Water Storage District
P.O. Box 867
Bakersfield, California 93302-0867
Attn: General Manager
Telephone: (661) 589-6045
Facsimile: (661) 589-1867
Electronic Mail: eaverett@rrbwsd.com

20. **Severability**

Should any part, term, or provision of this Agreement be adjudged by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the remaining portions of this Agreement shall remain in full force and effect.

21. **Representations**

Each Party represents and warrants to the other Party that it is a duly organized or constituted entity, with all requisite power to carry out its obligations under this Agreement, and that the execution, delivery, and performance of this Agreement have been duly authorized by all necessary action of the board of directors or other governing body of such Party, and shall not result in a violation of such Party's organizational documents or any agreement to which it is a party or to which it is otherwise subject or bound. Each Party further represents and warrants to the other Party that, to its knowledge at the time it executed this Agreement, there is no pending or threatened litigation involving such representing Party that will affect this Agreement. The Parties have relied on the forgoing representations as a material inducement to execute this Agreement, and should any representation not be correct or true in any material respect, it shall constitute a material breach of this Agreement.

22. **Choice of Law; Venue**

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue over any and all disputes arising from this Agreement shall be proper in Los Angeles County, California or in the United States District Court for the Central District of California.

23. **Dispute Resolution**

For matters involving a dispute under this Agreement, the following provisions shall apply:

A. **Mediation**

The Parties agree that any and all disputes, claims or controversies arising under this Agreement, whether for breach, enforcement, or interpretation thereof, shall be submitted to mediation in a mutually agreeable venue. Either Party may commence mediation by providing to the other Party a written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties shall cooperate with one another in selecting a mediator and in scheduling the mediation proceedings. The Parties covenant that they shall participate in the mediation in good faith, and that they shall share equally in costs charged by the mediator. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any Party, its agents, employees, experts or attorneys, or by the mediator or any of the mediator's employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. A Party may request arbitration with respect to the matters submitted to mediation by filing a written request for arbitration at any time following the initial mediation session or 45 days after the date of filing the written request for mediation, whichever occurs first; provided, however, the other Party is not required to accept a request for arbitration. The mediation may continue after the commencement of arbitration if the Parties so desire. Unless otherwise agreed by

the Parties, the mediator shall be disqualified from serving as arbitrator in the case. The provisions of this article 23 may be enforced by any Court of competent jurisdiction, and the Party seeking such enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the Party against whom such enforcement is ordered.

B. Selection of Mediator

The Parties shall first attempt to mutually agree to a mediator. If the Parties fail to agree on the mediator, the Parties shall each nominate and exchange with each other the names of three persons to resolve the dispute. From this group of nominated mediators, the Parties shall select the Mediator. If each of the Parties selects the same Mediator, that person shall be the Mediator. In the event two or more same persons are selected by the Parties, the person whose name precedes the other alphabetically shall be the Mediator. If the Parties do not select the same person, then each Party shall eliminate two of the other's selection and the remaining names shall be randomly drawn in order by either Party. The first drawn shall be the Mediator unless there is a conflict of interest or the mediator cannot serve because of scheduling conflicts. In that case, the second name drawn shall be the Mediator. No Mediator shall be nominated or selected if they have any actual or perceived conflict of interest. If necessary, this process can be repeated to nominate or select a mediator if the final two selected Mediators have any actual or perceived conflict of interest.

24. Force Majeure

All obligations of the Parties, other than payment of accrued monetary obligations, shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, compliance with applicable statutes, regulations, ordinances, laws or other events, conditions or causes beyond the control of the nonperforming Party. In no event shall any liability accrue against a non-performing Party, its officers, agents or employees, for any claim of damage arising out of or connected with a suspension of performance pursuant hereto.

25. Assignment; Delegation

A. ***Prior Written Consent.*** Except as otherwise provided in this Agreement, the Authority and the Parties shall not assign any rights or delegate any duties or obligations arising from this Agreement without the written consent of the Parties. Any attempt at such an assignment or delegation shall be null and void. Any assignment or delegation shall be in writing and shall expressly provide that the assignee or delegatee accepts all rights and duties or obligations of the assignor or

delegator, including but not limited to any obligations imposed as a condition of outside funding of the Kern Fan Project.

- B. ***Temporary Use of Kern Fan Project Capacity.*** Each Party's use of its respective Kern Fan Project capacity to implement another independent operating program or project with a third party shall not be deemed an assignment requiring prior written consent pursuant to article 25(A). The Parties agree that any agreement each might enter with a third party to provide recharge, storage or recovery operations for the third party shall be characterized as providing a recharge, storage or recovery service and not as an assignment, unless an assignment proposed by one Party is approved in writing by the other Party under article 25(a).

26. **Hierarchy of Documents**

This Agreement, as may be amended from time to time, shall govern over all other Authority documents and agreements, including the Bylaws of the Board of Directors.

27. **Entire Agreement**

This Agreement contains the entire agreement between the Parties and supersedes all prior understanding between them with respect to the subject matter of this Agreement. There are no promises, terms, conditions or obligations, oral or written, between or among the Parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement. Modifications, changes or supplements shall not be effective unless in conformance with article 18 of this Agreement. Termination of this Agreement shall not be effective unless in conformance with article 1 of this Agreement.

28. **Joint Drafting and Negotiation**

This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed as a whole according to its fair meaning and without regard to or aid of Civil Code section 1654 or similar judicial rules of construction. Each Party acknowledges that it has had the opportunity to seek the advice of experts and legal counsel prior to executing this Agreement and that it is fully aware of and understands all of its terms and the legal consequences thereof.

29. **Counterparts and Effective Date**

This Agreement may be executed in counterparts and be as valid and binding as if each Party signed the same copy. A faxed copy of the executed signature page shall be sufficient to cause the terms of this Agreement to become fully operative.

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30. **Headings**

Article and section headings contained herein are for convenience only. Such headings shall not control or affect the meaning or construction of this Agreement.

IN WITNESS WHEREOF, each Party has executed this Agreement on the date set forth below its signature.

Irvine Ranch Water District

Rosedale-Rio Bravo Water Storage District

By: 

By: 

Name: PAUL COOK

Name: Eric Averett

Title: GENERAL MANAGER

Title: General Manager

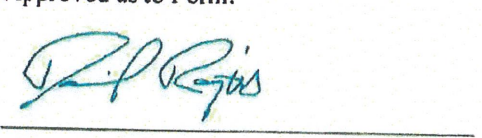
Date: 8 April 2020

Date: April 8, 2020

Approved as to Form:

Approved as to Form:





JOINT EXERCISE OF POWERS AGREEMENT

THIS AGREEMENT, dated as of March 19, 2020, by and between the **CITY OF ORANGE**, a municipal corporation duly organized and existing under and by virtue of the laws of the State of California (the “**City**”), and **CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY**, a joint exercise of powers authority organized and existing under and by virtue of the laws of the State of California (“**CSCDA**”).

DECLARATION OF PURPOSE

A. Chapter 5 of Division 7 of Title 1 of the California Government Code (the “**Act**”) authorizes the City and CSCDA to create a joint exercise of powers entity which has the power to exercise any powers common to the City and CSCDA and to exercise additional powers granted to it under the Act. This Agreement creates such an agency, which shall be known as the “**Orange City Public Facilities Financing Authority**” (the “**Authority**”) for the purposes and to exercise the powers described herein.

B. The City is authorized to exercise all powers granted to a city, including the powers to buy, lease and use property pursuant to the law of the State of California.

C. CSCDA is authorized to buy, sell and lease property and to issue bonds, expend bond proceeds, and borrow and loan money for any of its corporate purposes pursuant to the Act and an Amended and Restated Joint Exercise of Powers Agreement forming the California Statewide Communities Development Authority, dated as of June 1, 1998, as amended, by and among the cities, counties, districts and other political subdivisions that are parties to that agreement.

D. Article 4 of the Act (known as the “**Marks-Roos Local Bond Pooling Act of 1985**”) authorizes and empowers the Authority to issue bonds and to purchase bonds issued by, or to make loans to, the City or CSCDA for financing public capital improvements, working capital, liability and other insurance needs, or projects whenever there are significant public benefits, as determined by the City or CSCDA. The Marks-Roos Local Bond Pooling Act of 1985 further authorizes and empowers the Authority to sell bonds so issued or purchased to public or private purchasers at public or negotiated sale.

TERMS OF AGREEMENT

Section 1. Definitions. Unless the context otherwise requires, the terms defined in this Section 1 shall for all purposes of this Agreement have the meanings herein specified.

“**Act**” shall mean Articles 1, 2 and 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code, as amended.

“**Agreement**” shall mean this Joint Exercise of Powers Agreement, as it may be amended from time to time, creating the Authority.

“*Authority*” shall mean the Orange City Public Facilities Financing Authority created by this Agreement.

“*Board*” or “Board of Directors” shall mean the governing board of the Authority.

“*Brown Act*” means the Ralph M. Brown Act (Chapter 9 of Part 1 of Division 2 of Title 5 of the California Government Code), or any successor legislation hereafter enacted.

“*City*” shall mean the City of Orange, California.

“*CSCDA*” shall mean California Statewide Communities Development Authority, a joint exercise of powers authority, duly organized and existing under and by virtue of the laws of the State.

“*Indenture*” shall mean each indenture, trust agreement, fiscal agent agreement, lease, sublease, loan agreement, or other instrument pursuant to which Obligations are issued or incurred.

“*Member*” or “*Members*” means the members of the Authority from time to time as may be modified in accordance with this Agreement. As of the date of this Agreement, the Members are the City and CSCDA.

“*Obligations*” shall mean bonds and any other evidence of indebtedness of the Authority authorized and issued pursuant to the Act.

“*State*” shall mean the State of California.

Section 2. Purpose. This Agreement is made pursuant to the Act for the purpose of assisting the financing and refinancing of capital improvement projects of the City and to finance working capital for the City by exercising the powers referred to in this Agreement.

Section 3. Term. This Agreement shall become effective as of the date hereof and shall continue in full force and effect until terminated by a supplemental agreement of CSCDA and the City; *provided, however*, that in no event shall this Agreement terminate while any Obligations of the Authority remain outstanding under the terms of any indenture, trust agreement, contract, agreement, lease, sublease or other instrument pursuant to which such Obligations are issued or incurred.

Section 4. The Authority.

(a) Creation of the Authority. There is hereby created pursuant to the Act an authority and public entity to be known as the “Orange City Public Facilities Financing Authority.” As provided in the Act, the Authority shall be a public entity separate from the Members. The debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of the Members.

*Orange City Public Facilities Financing Authority
Joint Exercise of Powers Agreement*

Within 30 days after the effective date of this Agreement or any amendment hereto, the Authority will cause a notice of this Agreement or amendment to be prepared and filed with the office of the Secretary of State of the State in the manner set forth in sections 6503.5 of the Act. Such notice shall also be filed with the office of the Secretary of State.

In addition, as required by Section 53051 of the California Government Code, within 70 days after the effective date of this Agreement, the Authority shall file with the Secretary of State on a form prescribed by the Secretary of State and also with the County Clerk of Orange County, a statement of the following facts: (1) the full, legal name of the Authority, (2) the official mailing address of the Board, (3) the name and residence or business address of each member of the Board, and (4) the name, title, and residence or business address of the chairman, president, or other presiding officer, and clerk or secretary of the Board, and within 10 days after any change in the facts required to be stated pursuant to the foregoing, an amended statement containing such information shall be filed with the Secretary of State on a form prescribed by the Secretary of State and also with the County Clerk of Orange County.

(b) Governing Board. The Authority shall be administered by the Board which shall consist of the members of the City Council of the City. The term of office as a member of the Board shall terminate when such member of the Board shall cease to hold its respective office at the City and the successor to such seat on the City Council shall automatically become a member of the Board, upon assuming such office.

Members of the Board shall not receive any compensation for serving as such, but shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a member if the Board shall determine that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

(c) Meetings of Board.

(1) The Board shall conduct regular meetings on the same date, at the same time and at the same location as the regular meetings of the City Council of the City; provided that the time and place for holding Board meetings may be changed at any time by resolution of the Board. Such regular meetings may occur either during or after the regular meetings of the City Council of the City, but may not commence earlier than the starting time for the regular meetings of the City Council of the City. If the Secretary does not post an agenda for a regular meeting pursuant to the Brown Act, then such lack of posting shall be deemed to be a determination by the Chair that no items required discussion and, therefore, that the regular meeting has been cancelled, except as otherwise provided in the Brown Act. The Board may hold special meetings at any time and from time to time in accordance with law.

(2) All regular and special meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Brown Act.

(3) The Secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as practicable after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to the Members.

(4) A majority of the members of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn meetings from time to time. However, less than a quorum may adjourn a meeting from time to time. A vote of the majority of a quorum at a meeting shall be sufficient to take action.

(d) Officers; Duties; Bonds.

(1) The officers of the Authority shall be the Chair, Vice Chair, Executive Director, Secretary, Treasurer. The Chair shall be the person serving as the Mayor of the City; the Vice-Chair shall be the person serving as the Mayor Pro Tem of the City; the Executive Director shall be the person serving as the City Manager of the City; and the Secretary shall be the person serving as the City Clerk of the City. The Assistant City Manager shall serve as the Assistant Executive Director of the Authority. The officers shall perform the duties normal to their respective offices and such other duties as may be imposed by the Board. The Chair or the Executive Director shall sign all contracts on behalf of the Authority; provided, that the Board may, by resolution, authorized other officers of the Authority to sign contracts on behalf of the Authority. The Vice Chair shall act, sign contracts, and perform all of the Chair's duties in the absence of the Chair. The Secretary shall perform such duties as may be imposed by the Board and cause a copy of this Agreement to be filed with the California Secretary of State pursuant to the Act. These officers shall have such additional powers and duties as may be determined by the Board from time to time by resolution.

(2) The Treasurer of the City is hereby designated as the Treasurer of the Authority. Pursuant to Section 6505.6 of the Act, the Treasurer of the Authority is designated as the public officer or person who has charge of, handles, or has access to any property of the Authority, and such officer shall file an official bond in the amount of \$25,000 as required by section 6505.1 of the Act; provided, that such bond shall not be required if the Authority does not possess or own property or funds with an aggregate value of greater than \$500 (excluding amounts held by a trustee or other fiduciary in connection with any Bonds). The cost of the bond, if necessary, shall be paid by the City. The Finance Director of the City shall serve as the Assistant Treasurer of the Authority.

(3) So long as required by section 6505 and section 6505.5 of the Act, the Treasurer of the Authority shall prepare or cause to be prepared: (a) a special audit as required pursuant to section 6505 of the Act every year during the term of this Agreement; and (b) a report in writing on the first day of July, October, January and April of each year to the Board, the City and CSCDA which report shall describe the amount of money held by the Treasurer of the Authority for the Board, the amount of receipts since the last such report, and the amount paid out since the last such report (which may exclude amounts held by a trustee or other fiduciary in connection with any Obligations to the extent that such trustee or other fiduciary provides regular reports covering such amounts).

(4) The City Attorney of the City shall serve as the General Counsel to the Authority.

(5) The services of the officers shall be without compensation by the Authority. The City will provide such other administrative services as required by the Authority, and shall not receive economic remuneration from the Authority for the provision of such services.

(6) The Board shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

(7) All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, worker's compensation and other benefits which apply to the activities of officers, agents or employees of the Members when performing their respective functions within the territorial limits of their respective Member, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this Agreement.

(8) None of the officers, agents or employees, if any, directly employed by the Authority shall be deemed, by reason of their employment by the Authority, to be employed by any Member or, by reason of their employment by the Authority, to be subject to any of the requirements of any Member.

(9) The Members hereby confirm their intent and agree that, as provided in Section 4(A) hereof and in the Act, the debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of the City or CSCDA, and they do not intend by the following sentence to impair this provision. Notwithstanding Section 4(A) hereof and the Act, the City and the Authority shall indemnify, defend and hold harmless CSCDA and each of CSCDA's officers, directors, employees, attorneys, Commission members and agents (each, an "Indemnified Party") from and against any and all costs, expenses, losses, claims, damages and liabilities directly or indirectly arising out of or in connection with the activities of the Authority (including but not limited to any transaction or series of transactions undertaken by or for the benefit of the City), except to the extent that such costs, expenses, losses, claims, damages or liabilities arise from the gross negligence or wrongful act of an Indemnified Party. CSCDA may elect to defend itself in any such action with counsel of its choice, the reasonable fees of such counsel to be paid by the City. The Authority and the City shall be jointly and severally liable for any indemnity obligation owed to CSCDA or any other indemnified party under this paragraph. Notwithstanding the provisions of section 895.6 of the California Government Code, the City shall not have any right to contribution from CSCDA. This paragraph (8) shall survive the termination of this Agreement.

(10) In any event, the Authority or the City shall cause all records regarding the Authority's formation, existence, operations, any Obligations issued or incurred by the Authority, obligations incurred by it and proceedings pertaining to its termination to be retained for at least six (6) years following termination of the Authority or final payment of any Obligations issued or incurred by the Authority, whichever is later.

Section 5. Powers. The Authority shall have any and all powers which are common powers of the Members, and the powers separately conferred by law upon the Authority. All such powers, whether common to the Parties or separately conferred by law upon the Authority, are specified as powers of the Authority except any such powers which are specifically prohibited to the Authority by applicable law. Except as otherwise set forth herein as permitted by law, the Authority's exercise of its powers is subject to the restrictions upon the manner of exercising the powers of the City.

The Authority is hereby authorized, in its own name, to do all acts necessary or convenient for the exercise of its powers, including, but not limited to, any or all of the following: to sue and be sued; to make and enter into contracts; to employ agents, consultants, attorneys, accountants, and employees; to acquire, hold or dispose of property, whether real or personal, tangible or intangible, wherever located; 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 or the rights thereto as security for such Obligations.

Notwithstanding the foregoing, the Authority shall have any additional powers conferred under the Act or under applicable law, insofar as such additional powers may be necessary to accomplish the purposes set forth in Section 2 hereof.

Notwithstanding anything to the contrary in this Agreement, the Authority shall not have the power or the authority to enter into any retirement contract with any public retirement system (as defined in Section 6508.2 of the California Government Code) for any reason. The provision in this paragraph is intended to benefit the Members and to be a confirming irrevocable obligation of the Authority which may be enforced by the Members, individually or collectively.

Section 6. Termination of Powers. The Authority shall continue to exercise the powers herein conferred upon it until the termination of this Agreement in accordance with Section 3 hereof.

Section 7. Fiscal Year. Unless and until changed by resolution of the Board, the fiscal year of the Authority shall be the period from July 1 of each year to and including the following June 30, except for the first fiscal year which shall be the period from the date of this Agreement to June 30, 2020.

Section 8. Disposition of Assets. Upon termination of this Agreement pursuant to Section 3 hereof, any surplus money in possession of the Authority or on deposit in any fund or account of the Authority shall be returned in proportion to any contributions made as required by section 6512 of the Act. The Board is vested with all powers of the Authority for the purpose of concluding and dissolving the business affairs of the Authority. After rescission or termination of this Agreement pursuant to Section 3 hereof, all property of the Authority, both real and personal, shall be distributed to the City, subject to Section 9 hereof.

Section 9. Contributions and Advances. Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by the Members for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution. Any such advance made in respect of a revenue-producing facility shall be made subject to repayment, and shall be repaid, in the manner agreed upon by the City or CSCDA, as the case may be, and the Authority at the time of making such advance as provided by section 6512.1 of the Act. It is mutually understood and agreed that neither the City nor CSCDA has any obligation to make advances or contributions to the Authority to provide for the costs and expenses of administration of the Authority, even though either may do so. The Members may allow the use of personnel, equipment or property in lieu of other contributions or advances to the Authority.

Section 10. Obligations.

(a) Authority to Issue or Incur Obligations. When authorized by the Act or other applicable provisions of law and by resolution of the Board, the Authority may issue or incur Obligations for the purpose of raising funds for the exercise of any of its powers or to otherwise carry out its purposes under this Agreement. Said Obligations shall have such terms and conditions as are authorized by the Board.

(b) Limited Obligations. The Obligations, including the principal and any purchase price thereof, and the interest and premium, if any, thereon, shall be special obligations of the Authority payable solely from, and secured solely by, the revenues, funds and other assets pledged therefor under the applicable Indenture(s) and shall not constitute a charge against the general credit of the Authority or any Member. The Obligations shall not be secured by a legal or equitable pledge of, or lien or charge upon or security interest in, any property of the Authority or any of its income or receipts except the property, income and receipts pledged therefor under the applicable Indenture(s). The Obligations shall not constitute a debt, liability or obligation of the State or any public agency thereof, including any Member, other than the special obligation of the Authority as described above. Neither the faith and credit nor the taxing power of the State or any public agency thereof, including the Members, shall be pledged to the payment of the principal or purchase price of, or the premium, if any, or interest on the Obligations nor shall the State or any public agency or instrumentality thereof, including the Members, in any manner be obligated to make any appropriation for such payment. The Authority shall have no taxing power.

No covenant or agreement contained in any Obligation or Indenture shall be deemed to be a covenant or agreement of any director, officer, agent or employee of the Authority or any Member, in his or her individual capacity and no director or officer of the Authority executing a Obligation shall be liable personally on such Obligation or be subject to any personal liability or accountability by reason of the issuance of such Obligation.

Section 11. Agreement not Exclusive. This Agreement shall not be exclusive and shall not be deemed to amend or alter the terms of other agreements between the City and CSCDA, except as the terms of this Agreement shall conflict therewith, in which case the terms of this Agreement shall prevail.

Section 12. Accounts and Reports.

(a) Books and Records. All funds of the Authority shall be strictly accounted for in books of account and financial records maintained by the Authority, including a report of all receipts and disbursements. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles and by each Indenture for outstanding Obligations (to the extent such duties are not assigned to a trustee for owners of Obligations). The books and records of the Authority shall be open to inspection at all reasonable times by the Members and their representatives.

(b) Indentures. The Authority shall require that each Indenture provide that the trustee appointed thereunder shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of such Indenture. Said trustee may be given such duties in said Indenture as may be desirable to carry out the requirements of this Section 12.

(c) Audits. The Treasurer of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Authority in compliance with the requirements of the Act. Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section 12, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for that purpose.

(d) Audit Reports. The Treasurer of the Authority, as soon as practicable after the close of each Fiscal Year but in any event within the time necessary to comply with the requirements of the Act shall file a report of the audit performed pursuant to this Section 12 as required by the Act and shall send a copy of such report to public entities and persons in accordance with the requirements of the Act.

Section 13. Funds. Subject to the provisions of each Indenture for outstanding Obligations providing for a trustee to receive, have custody of and disburse funds which constitute Authority funds, the Treasurer of the Authority shall receive, have the custody of and disburse Authority funds pursuant to accounting procedures approved by the Board and shall make the disbursements required by this Agreement or otherwise necessary to carry out the provisions and purposes of this Agreement.

Section 14. Conflict of Interest Code. The Authority shall, by resolution, adopt a Conflict of Interest Code to the extent required by law. Such Conflict of Interest Code may be the conflict of interest code of the City.

Section 15. Breach. If default shall be made by the City or CSCDA in any covenant contained in this Agreement, such default shall not excuse either the City or CSCDA from fulfilling its obligations under this Agreement and the City and CSCDA shall continue to be liable for the performance of all conditions herein contained. The City and CSCDA hereby declare that this Agreement is entered into for the benefit of the Authority created hereby and the City and CSCDA

hereby grant to the Authority the right to enforce by whatever lawful means the Authority deems appropriate all of the obligations of each of the parties hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

Section 16. Notices. Notices and other communications hereunder to the parties shall be sufficient if delivered to the clerk or secretary of the governing body of each party.

Section 17. Withdrawals and Additions of Members.

(a) Withdrawals. Any Member may withdraw from the Authority by filing with the Board a certified copy of a resolution of the governing body of the Member expressing its desire to so withdraw, whereupon the withdrawing Member shall no longer be considered a Member for any reason or purpose under this Agreement and its rights and obligations under this Agreement shall terminate. The withdrawal of a Member shall not affect the existence of the Authority nor the effectiveness of any Obligations of the Authority.

(b) Additional Members. Any public agency may be added as a party to this Agreement, and become a Member, by filing with the Board a certified copy of a resolution of the governing body of such public agency whereby it agrees to the provisions of this Agreement and requests to become a Member. The Board may accept or reject any such proposal in its sole discretion, and if accepted, such public agency shall become a Member when: (i) its admission is approved by a vote of a majority of the Board voting on the matter and (ii) such public agency agrees to share public agency's future share of the costs and expenses incurred by the Authority in the course of its activities. Upon satisfaction of the provisions of this clause (b), such public agency shall be a Member for all purposes of this Agreement. The effectiveness of such membership shall not constitute an amendment or modification of this Agreement.

Section 18. Effectiveness. This Agreement shall become effective and be in full force and effect and a legal, valid and binding obligation of CSCDA and the City, as the initial Members, when each party has executed a counterpart of this Agreement.

Section 19. Severability. Should any part, term, or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

Section 20. Successors; Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties. Except to the extent expressly provided herein, neither party may assign any right or obligation hereunder without the consent of the other.

Section 21. Amendment of Agreement. This Agreement may be amended by supplemental agreement executed by the Members at any time; provided, however, that this Agreement may be terminated only in accordance with Section 3 hereof and, provided further, that such supplemental agreement shall be subject to any restrictions contained in any Obligations or documents related to any Obligations to which the Authority is a party.

Section 22. Form of Approvals. Whenever an approval is required in this Agreement, unless the context specifies otherwise, it shall be given, in the case of CSCDA, by resolution duly adopted by the Board of Directors of CSCDA, and, in the case of the City, by resolution duly adopted by the Board of Directors of the City, and, in the case of the Authority, by resolution duly adopted by the Board. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

Section 23. Waiver of Personal Liability. No member, officer, employee, attorney, agent, and, with respect to CSCDA, Commission member of the Authority, the City or CSCDA shall be individually or personally liable for any claims, losses, damages, costs, injury and liability of any kind, nature or description arising from the actions of the Authority or the actions undertaken pursuant to this Agreement, and the City shall defend such members, officers, employees, attorneys, agents, or, with respect to CSCDA, Commission member, against any such claims, losses, damages, costs, injury and liability. Without limiting the generality of the foregoing, no member, officer, employee, attorney, agent, or, with respect to CSCDA, Commission member, of the Authority or of any Member shall be personally liable on any Obligations or be subject to any personal liability or accountability by reason of the issuance of Obligations pursuant to the Act and this Agreement. To the full extent permitted by law, the Board shall provide for indemnification by the Authority of any person who is or was a member of the Board, or an officer, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a member of the Board, or an officer, employee or other agent of the Authority, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in the course and scope of his or her office, employment or agency. In the case of a criminal proceeding, the Board may provide for indemnification and defense of a member of the Board, or an officer, employee or other agent of the Authority to the extent permitted by law.

Section 24. Miscellaneous.

(a) Notices. Notices to the City hereunder shall be sufficient if delivered to the General Manager of the City, and notices to CSCDA hereunder shall be sufficient if delivered to CSCDA staff.

(b) Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

*Orange City Public Facilities Financing Authority
Joint Exercise of Powers Agreement*

(c) Performance by Authorized Deputies or Assistants, Officers of Member.

Where reference is made to duties to be performed for the Authority by a public official or employee, such duties may be performed by that person's duly authorized deputy or assistant. Where reference is made to actions to be taken by a Member, such action may be exercised through the officers, staff or employees of such Member, in the manner provided by law.

(d) Governing Law. This Agreement is made in the State, under the

Constitution and laws of the state and is to be construed as a contract made and to be performed in the State.

(e) Complete Agreement. This Agreement is the complete and exclusive

statement of the agreement among the parties with respect to the subject matter hereof, which supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between the parties relating to the subject matter of this Agreement.

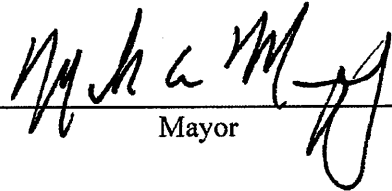
(f) Execution in Counterparts. This Agreement may be executed in several

counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers or officials thereunto duly authorized.

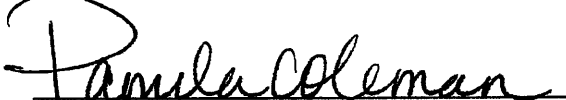
CITY OF ORANGE

By



Mayor

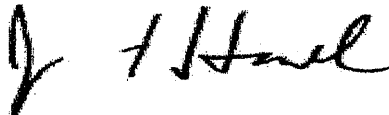
Attest:



City Clerk

*Orange City Public Facilities Financing Authority
Joint Exercise of Powers Agreement*

**CALIFORNIA STATEWIDE
COMMUNITIES DEVELOPMENT
AUTHORITY**

A handwritten signature in black ink, appearing to read "J. H. Havel". The signature is written in a cursive style with a large initial "J" and a distinct "H" and "A" in the middle.

By: _____
Authorized Signatory