

## Attachment D

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### LEASE AGREEMENT (Mid-Basin Injection Well Project)

THIS LEASE AGREEMENT (“**Lease**”) is made \_\_\_\_\_, 2013, (“**Effective Date**”) by and between ORANGE COUNTY FLOOD CONTROL DISTRICT, a body politic and corporate, hereinafter referred to as “**DISTRICT**,” and ORANGE COUNTY WATER DISTRICT, subdivision of the State of California organized under Chapter 924 of the Statutes of 1933, as amended, , hereinafter referred to as “**TENANT**,” without regard to number and gender. DISTRICT and TENANT may sometimes hereinafter individually be referred to as “**Party**,” or jointly as “**Parties**.”

#### 1. DEFINITIONS (PMA2.1 S)

The following words in this Lease have the significance attached to them in this Section unless otherwise apparent from context:

“**Board of Supervisors**” means the Board of Supervisors of the Orange County Flood Control District.

“**Director**” means the County of Orange, OC Public Works Director, or designee.

“**Auditor-Controller**” means the County of Orange, Auditor-Controller, or designee.

“**County**” means the County of Orange.

*“**TENANT Facilities**” mean, collectively TENANT’s groundwater injection well system within the premises or License Area consisting of a ground water injection well, utility metering device(s), sub-surface and surface pipelines, well and pipeline system appurtenances (e.g. fencing, gates and locks); and a 30-inch pressurized water main, power and communication conduit, and aesthetic covering along Edinger Bridge (“**Bridge**”) installed pursuant County Property Permit No. 2014-00663 (“**Water Main**”).*

#### 2. PREMISES AND LICENSE AREA (PMA3.1 S)

DISTRICT leases to TENANT that certain property hereinafter referred to as “**Premises**,” described in “**Exhibit A**” and shown on “**Exhibit B**,” and “**Exhibit C**,” which exhibits are attached hereto and by reference made a part hereof.

~~TENANT shall also have a non-exclusive license (“**License**”) to utilize DISTRICT’S property labeled “**License Area**” on said Exhibit B for ingress and egress purposes subject to the terms and conditions set forth hereunder. The License may be revoked or otherwise revised at the sole discretion of the Director.~~ *Separate from the leased Premises, TENANT shall have an additional, non-exclusive license (“**License**”) to utilize portions of DISTRICT parcels labelled “**License Area**” on Exhibit B and “**Water Main**” on Exhibit C, each exhibit attached hereto and by this reference incorporated herein, which may individually and/or collectively be referred to herein as the “**License Area**”. TENANT’s use of the License Area shall be in accordance with terms set*

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*forth in Exhibit D (License Area Use), attached hereto and by this reference incorporated herein, and as otherwise addressed in this Lease. The License may be revoked or otherwise revised at the sole discretion of the Director provided such revocation or revision is consistent with the obligations of the parties specified in Exhibit D.*

### 3. USE (PMB1.1 N)

Except as provided hereinbelow in Section 4 (Interruption of Use), TENANT'S use of the Premises shall be exclusive and shall be limited to the construction, installation, operation, maintenance, repair and replacement ~~tenant~~TENANT Facilities ~~of a groundwater injection well system consisting of an injection water supply pump, a monitoring well, utility metering device(s), sub-surface pipelines, groundwater injection well system appurtenances, fencing, gates and locks (“TENANT Facilities”)~~. TENANT shall not park any vehicle on the Premises without TENANT being physically present on the Premises ~~and at no time shall TENANT be permitted to park any vehicle within the License Area.~~ TENANT agrees not to use the Premises for any other purpose nor to engage in or permit any other activity within or from the Premises. TENANT further agrees not to conduct or permit to be conducted any public or private nuisance in, on, or from the Premises, or to commit or permit to be committed any waste within the Premises or License Area.

### 4. INTERRUPTION OF USE

DISTRICT reserves the right to use the Premises surface for the operation and maintenance of its flood control system, including use of the Premises for construction staging purposes, and as reasonably necessary therefor, Director, in Director's sole and absolute discretion, shall have the right to temporarily prohibit TENANT'S use of vehicles or equipment on, over or across the Premises.

TENANT agrees that its sole remedy for such prohibited access and/or use of the Premises shall be an abatement of rent due under Section 6 (Rent) of this Lease. Such rent abatement shall be based upon the proportionate area of the Premises over which TENANT is restricted from using and the number of days of such restricted use. DISTRICT shall not be liable for any other claim, including but not limited to loss of business or interruption of service.

Except in an emergency situation, Director shall endeavor to provide TENANT reasonable advance notice of planned activities which may restrict TENANT'S use of the Premises.

### 5. TERM (PMB2.1 N)

The term of this Lease shall be thirty ~~six~~ (36~~0~~) years commencing the Effective Date of this Lease. However, TENANT may terminate this Lease at any time for any reason upon thirty (30) days written notice to Director. In no event shall such termination become effective until TENANT has fully complied with the provisions of Section 18 (Condition of Premises Upon Termination) of the General Conditions attached to this Lease. Unless otherwise sooner terminated as provided for herein, TENANT'S License shall expire upon the termination of this Lease.

### 6. RENT (PMCI.1 S)

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TENANT agrees to pay as rent for the Premises the sum of One Thousand, Five Hundred Dollars (\$1,500) per month, payable monthly in advance on or before the first day of each month so long as tenancy continues. *TENANT agrees to pay additional rent for the License Area in the amount of Five Hundred Dollars (\$500) per month, due and payable when rent for the Premises is due and payable, that shall commence on \_\_\_\_\_, 2020. Rent for the Premises and the additional rent for the License Area shall collectively be referred to herein as the rent.*

In the event the obligation to pay rent commences or terminates on some date other than the first or last day of the month, the first or last month's rent shall be prorated based upon a thirty (30) day month to reflect the actual period of tenancy.

### 7. REVISION OF RENT (PMC4.2 N)

A. Periodic Rent Adjustment. The rent specified in Section 6 (Rent) shall be subject to automatic annual adjustments in proportion to changes in the Consumer Price Index for Los Angeles-Riverside-Orange County, CA [All Urban Consumers-All Items, Not Seasonally adjusted (Base Period 1982-84=100)] promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor ("CPI").

The automatic adjustment shall be effective on each anniversary of the Effective Date of this Lease (if the Effective Date of this Lease falls on a day other than the first day of the month, the automatic adjustment shall be effective on the first day of the month following the anniversary of the Effective Date of this Lease) and shall be calculated by means of the following formula, rounded up to the nearest dollar.

$$A = \$1,500 \times \frac{B}{C}$$

A = Adjusted Rent

B = CPI for the month prior to the month in which each rental rate adjustment is to become effective

C = CPI for the month in which the lease becomes effective

Notwithstanding the foregoing, in no event shall the rent be reduced by reason of any such adjustment. In the event that the CPI is not issued or published for the period for which such rent is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the U.S. Department of Labor should cease to publish said CPI figures, then any similar index published by any other branch or department of the U.S. Government shall be used and if none is so published, then another index generally recognized and authoritative shall be substituted by Director.

B. Appraisal Adjustment. DISTRICT and TENANT agree that in lieu of a CPI rent adjustment due on the first full month of the eleventh-year anniversary of the Effective Date of this Lease and at each ten-year interval thereafter, so long as this Lease remains in effect, the rental payable pursuant to Section 6 (Rent) shall be subject to an adjustment by appraisal. .

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No less than 150 days prior to each scheduled appraisal rent adjustment effective date, the value of the Premises shall be determined by an appraisal prepared by an independent State-certified general real estate appraiser selected by TENANT from a list of appraisers provided by DISTRICT'S OC Public Works/Real Estate Services (OCPW/Real Estate), or designee, and shall be prepared in accordance with a scope of work provided by OCPW/Real Estate. TENANT shall have the right to review and comment on the proposed scope of work and OCPW/Real Estate shall give due consideration to such comments prior to TENANT'S delivery of the final scope of work to the appraiser. The scope of work shall not include in the valuation the value of any Tenant Facilities or improvements located on the Premises. The appraiser shall be retained by TENANT, at TENANT'S cost and TENANT shall provide a copy of the appraisal to Director.

Effective on the first day of the first full month of the 11th year anniversary of the Effective Date of this Lease and at 120-month intervals thereafter, the monthly rental shall be adjusted to equal ten percent (10%) of the then current appraised value of the Premises using the following formula:

$$\text{Monthly Rent} = (\text{Appraised Value of Premises} \times 10\%) \div 12$$

In no event shall the monthly rent be reduced by reason of any such appraisal rent adjustment.

### 8. RENT PAYMENT PROCEDURE (PMC6.4 S)

Rent payments shall be delivered to the Orange County Treasurer-Tax Collector, Revenue Recovery/Accounts Receivable Unit, P. O. Box 4005, Santa Ana, California 92702-4005 (or may be delivered to 11 Civic Center Plaza, Room G58, Santa Ana 92702). The designated place of payment may be changed at any time by Director upon ten (10) days' written notice to TENANT. Rent payments may be made by check payable to the Orange County Flood Control District with a notation that payment is for the Santa Ana River – Water Injection Lease. TENANT assumes all risk of loss if payments are made by mail.

All sums due under this Lease shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by TENANT or receipt by DISTRICT of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and DISTRICT shall accept such check or payment without prejudice to DISTRICT'S right to recover the balance of the amount due or pursue any other remedy in this Lease.

### 9. CHARGE FOR LATE PAYMENT (PMC7.1 S)

TENANT hereby acknowledges that the late payment of rent or any other sums due hereunder will cause DISTRICT to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include but are not limited to costs such as administrative processing of delinquent notices, increased accounting costs, etc.

Accordingly, if any payment of rent as specified in Section 6 (Rent) or of any other sum due

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DISTRICT is not received by DISTRICT by the due date, a late charge of one and one-half percent (1.5%) of the payment due and unpaid plus \$100 shall be added to the payment, and the total sum shall become immediately due and payable to DISTRICT. An additional charge of one and one-half percent (1.5%) of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

TENANT and DISTRICT hereby agree that such late charges represent a fair and reasonable estimate of the costs that DISTRICT will incur by reason of TENANT'S late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by DISTRICT shall in no event constitute a waiver of TENANT'S default with respect to such overdue payment, or prevent DISTRICT from exercising any of the other rights and remedies granted hereunder.

### 10. MAINTENANCE OBLIGATIONS OF TENANT (PME2.1 N)

TENANT shall, to the satisfaction of Director, keep and maintain the Premises, TENANT Facilities, and all improvements of any kind which may be erected, installed, or made thereon by or on behalf of TENANT in good condition and in substantial repair. It shall be TENANT'S responsibility to take all steps necessary or appropriate to maintain such a standard of condition and repair at no cost to DISTRICT.

TENANT expressly agrees to maintain the License Area, the gate and fence within the License Area, the Premises, and TENANT Facilities in a safe, clean, wholesome, sanitary condition, to the complete satisfaction of Director, and in compliance with all applicable laws. TENANT further agrees to provide approved containers for trash and garbage and to keep the Premises free and clear of rubbish and litter. Director shall have the right to enter upon and inspect the Premises at any time for cleanliness and safety.

If TENANT fails to maintain or make repairs or replacements as required herein, Director shall notify TENANT in writing of said failure. Should TENANT fail to correct the situation within three days after receipt of written notice, Director may make the necessary correction or cause it to be made and the cost thereof, including but not limited to the cost of labor, materials, equipment, and an administrative fee equal to fifteen percent (15%) of the sum of such items, shall be paid by TENANT within 10 days of receipt of a statement of said cost from Director. Director may, at his/her option, choose other remedies available herein, or by law.

### 11. CONSTRUCTION AND MAINTENANCE (PMES2.2 N)

TENANT shall have all construction and/or maintenance plans approved in writing by Director prior to commencement of any work in, on or about the Premises; and upon completion of any such work, TENANT shall immediately notify Director in writing of such completion.

Director's approval of TENANT'S construction and/or maintenance plans shall not be deemed approval from the standpoint of structural safety, suitability for purpose or conformance with building or other codes or other governmental requirements. DISTRICT is not responsible for permitting of any construction and/or maintenance, design, assumptions or accuracy of TENANT'S construction and/or maintenance plans. Director will rely on the professional

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expertise of the Engineer of Record when approving TENANT'S construction and/or maintenance plans.

TENANT shall perform all construction and/or maintenance in such a manner that will not worsen flooding condition or shift flooding elsewhere and allow for unobstructed flood control operations and maintenance of the Channel by DISTRICT.

Should it be necessary for TENANT to conduct any construction or excavation activities or otherwise disturb the surface of the Premises subsequent to the completion of the initial installation of TENANT'S Facilities, TENANT agrees to notify Director in writing sixty no less than (60) days in advance of such planned activities, obtain Director's written approval of all plans, and prior to commencement of any such activities, obtain a permit for construction from the County with payment of normal processing fees. Said approval shall not be withheld unreasonably, nor shall said approval be necessary in any emergency situation or in conducting routine maintenance activities which do not involve disturbance of the surface area of the Premises.

Except in areas in which such activities require regulatory agency approval, or are otherwise designated as environmentally sensitive, TENANT shall have the right to cut such roots as may endanger or interfere with TENANT'S Facilities provided, however, that any excavation shall be made in such a manner as will cause the least injury to the surface of the ground and any improvements and/or landscaping around such excavation, and that the earth so removed shall be replaced and the surface of the ground and any improvements and/or landscaping around such excavation, damaged shall be promptly restored by TENANT at its expense to the same condition as existed prior to excavation, to Director's satisfaction.

### 12. UTILITIES (PME 1.1N)

All utilities supplied to Premises for the purposes of conducting TENANT operations shall be separately metered. TENANT shall be responsible for and pay, prior to the delinquency date, all utility charges related to TENANT'S operations.

### 13. INSURANCE (PML10.1N)

A. General Requirements. TENANT agrees to purchase all required insurance at TENANT'S expense and to deposit with Director certificates of insurance, including all endorsements required herein, necessary to satisfy Director that the insurance provisions of this Lease have been complied with and to keep such insurance coverage and the certificates and endorsements therefor on deposit with the Director during the entire term of this Lease.

TENANT may self-insure for their insurance coverage provided such self-insurance meets or exceeds all provisions of the insurance requirements as stated herein throughout the term of this Lease. TENANT shall provide a Certificate of Self-Insurance verifying all the stated coverage minimums and comparable terms to Director.

This Lease shall automatically terminate at the same time TENANT'S insurance coverage is terminated. If within ten (10) business days after termination under this Section, TENANT

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obtains and provides evidence of the required insurance coverage acceptable to Director, this Lease may be reinstated at the sole discretion of Director. TENANT shall pay DISTRICT One Thousand Five Hundred Dollars (\$1,500.00) for processing the reinstatement of this Lease.

TENANT agrees that TENANT shall not operate on the Premises and/or use the License Area at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Director. In no cases shall assurances by TENANT, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Director will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. TENANT also agrees that upon cancellation, termination, or expiration of TENANT'S insurance, Director may take whatever steps are necessary to interrupt any operation from or on the Premises and/or use of the License Area until such time as the Director reinstates the Lease.

If TENANT fails to provide Director with a valid certificate of insurance and endorsements, or binder at any time during the term of the Lease, DISTRICT and TENANT agree that this shall constitute a material breach of the Lease. Whether or not a notice of default has been sent to TENANT, said material breach shall permit Director to take whatever steps necessary to interrupt any operation from or on the Premises and/or use of the License Area, and to prevent any persons, including, but not limited to, members of the general public, and TENANT'S employees and agents, from entering the Premises until such time Director is provided with adequate evidence of insurance required herein. TENANT further agrees to hold DISTRICT and/or County harmless for any damages resulting from such interruption of business and possession, including, but not limited to, damages resulting from any loss of income or business resulting from actions performed by or on behalf of DISTRICT.

All contractors performing work on behalf of TENANT pursuant to this Lease shall obtain insurance subject to the same terms and conditions as set forth herein for TENANT. TENANT shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by DISTRICT from the TENANT under this Lease. It is the obligation of the TENANT to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the Premises and/or upon the License Area. Such proof of insurance must be maintained by TENANT through the entirety of this Lease and be available for inspection by Director at any reasonable time.

All self-insured retentions (**SIRs**) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a "0" by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by County Executive Office of Risk Management ("**CEO/Risk Management**").

If the TENANT fails to maintain insurance acceptable to DISTRICT for the full term of this Lease, DISTRICT may terminate this Lease.

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B. Qualified Insurer. The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier) or have a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's key Rating Guide/Property-Casualty/United States or [ambest.com](http://ambest.com).

If the insurance carrier is not an admitted carrier in the state of California and does not have an A.M. Best rating of A-/VIII, the CEO/Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

C. Minimum Limits. The policy or policies of insurance maintained by the TENANT shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability including coverage for Pollution Liability	\$5,000,000 per occurrence \$5,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Commercial Property Insurance on an "All Risk" or "Special Causes of Loss" basis covering all buildings, contents and any Tenant Facilities or improvements including Business Interruption/Loss of Rents with a 12 month limit.	100% of the Replacement Cost Value and no coinsurance provision

D. Coverage Forms. The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

E. Endorsements.

i. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

a. an Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the Orange County Flood Control District and County of Orange, its elected and appointed officials, officers, employees, and agents as Additional Insureds; and



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b. primary non-contributing endorsement evidencing that the TENANT'S insurance is primary and any insurance or self-insurance maintained by DISTRICT and/or County shall be excess and non-contributing.

ii. All insurance policies required by this contract shall waive all rights of subrogation against the Orange County Flood Control District, County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

iii. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the Orange County Flood Control District, County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

iv. The Commercial Property policy shall be endorsed to include the County of Orange as a Loss Payee as respects its financial interest in the property. A Loss Payee endorsement shall be submitted with the Certificate of Insurance as evidence of this requirement.

v. All insurance policies required by this contract shall give DISTRICT thirty (30) days' notice in the event of cancellation and ten (10) days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

vi. The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy)

F. Delivery. Insurance certificates should be forwarded to DISTRICT address provided in the Section 18 (Notices) below or to an address provided by Director. TENANT has ten (10) business days to provide adequate evidence of insurance or this Lease may be cancelled.

G. Insurance Requirement Changes. DISTRICT expressly retains the right to require TENANT to increase or decrease insurance of any of the above insurance types throughout the term of this Lease. Any increase or decrease in insurance will be as deemed by CEO/Risk Management as appropriate to adequately protect DISTRICT.

Director shall notify TENANT in writing of changes in the insurance requirements. If TENANT does not deposit copies of acceptable certificates of insurance and endorsements with Director incorporating such changes within thirty (30) days of receipt of such notice, this Lease may be in breach without further notice to TENANT, and DISTRICT shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit TENANT'S liability hereunder nor to fulfill the indemnification provisions and requirements of this Lease, nor in any way to reduce the policy coverage and limits available from the insurer.

### 14. ASSIGNING, SUBLETTING, AND ENCUMBERING (PME7.2N)

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Any mortgage, pledge, hypothecation, encumbrance, transfer, or assignment (hereinafter in this section referred to collectively as "**Encumbrance**") of TENANT'S interest in the Premises or the License Area, or any part or portion thereof, shall first be approved in writing by DISTRICT, unless otherwise provided herein. Failure to obtain DISTRICT'S required written approval of an Encumbrance will render such Encumbrance void. Occupancy of the Premises by a prospective transferee, or assignee before approval of the transfer, or assignment by DISTRICT shall constitute a breach of this Lease. The entry into subleases is prohibited and shall constitute a breach of this Lease.

If TENANT hereunder is a corporation or an unincorporated association or partnership, the Encumbrance of any stock or interest in said corporation, association or partnership in the aggregate exceeding 50% or that result in a change in control of such entity shall be deemed an assignment within the meaning of this Lease.

Should DISTRICT consent to any Encumbrance, such consent shall not constitute a waiver of any of the terms, covenants, or conditions of this Lease or be construed as DISTRICT'S consent to any further Encumbrance. Such terms, covenants or conditions shall apply to each and every Encumbrance hereunder and shall be severally binding upon each and every party thereto. Any document to mortgage, pledge, hypothecate, encumber, transfer, or assign the Premises or any part thereof shall not be inconsistent with the provisions of this Lease and in the event of any such inconsistency, the provisions of this Lease shall control.

DISTRICT agrees that it will not arbitrarily withhold consent to any Encumbrance, but DISTRICT may withhold consent at its sole discretion if any of the following conditions exist:

- A. TENANT or any of TENANT'S successors or assigns is in default of any term, covenant or condition of this Lease, whether notice of default has or has not been given by DISTRICT.
- B. The prospective Encumbrancer has not agreed in writing to keep, perform, and be bound by all the terms, covenants, and conditions of this Lease.
- C. All the terms, covenants, and conditions of Encumbrance, including the consideration therefor of any and every kind, have not been revealed in writing to Director.
- D. TENANT has not provided Director with a copy of all documents relating thereto including, but not limited to, appraisals if any.
- E. Any construction required of TENANT as a condition of this Lease has not been completed to the satisfaction of DISTRICT.
- F. The processing fee required by DISTRICT and set out below has not been paid to DISTRICT.

A processing fee of Two Thousand Five Hundred Dollars (\$2,500.00) shall be paid to DISTRICT for processing each consent to assignment, transfer, hypothecation, or sublease submitted to DISTRICT as required by this Lease. This processing fee shall be deemed earned by DISTRICT when paid and shall not be refundable.

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The processing fee specified above shall be automatically adjusted for all consents required or requested subsequent to the second year of this Lease. Said adjustment shall be in proportion to the change in the CPI [as defined in Section 6 (Rent)], or any replacement index thereto. Said automatic adjustment shall be calculated by means of the following formula, then rounded to the nearest ten dollar figure:

$$A = \$2,500 \times \frac{B}{C}$$

Where            A = adjusted processing fee  
                     B = CPI for the month prior to the month in which the request for consent to assignment, transfer or sublease is dated  
                     C = CPI for the month this Lease became effective

Notwithstanding the foregoing, in no event shall the processing fee be reduced by reason of any such adjustment.

### 15. MECHANICS LIENS OR STOP-NOTICES (PMD4.1 N)

TENANT shall at all times indemnify, defend with counsel approved in writing by DISTRICT, and save DISTRICT and County harmless from all claims, losses, demands, damages, cost, expenses, or liabilities in connection with the use, construction, repair, alteration, or installation of any TENANT Facilities by TENANT within, upon, or under the Premises and/or the License Area, and from the cost of defending against such claims, including reasonable attorney fees and costs.

In the event a lien or stop-notice is imposed upon the Premises or License Area as a result of such construction, repair, alteration, or installation, TENANT shall either:

- A. Record a valid Release of Lien, or
- B. Procure and record a bond in accordance with Section 3143 or 3196 of the Civil Code, which frees the Premises from the claim of the lien or stop-notice and from any action brought to foreclose the lien.

Should TENANT fail to accomplish one of the two actions above within fifteen (15) days after the filing of such a lien or stop-notice, TENANT shall be deemed to be in default under this Lease and shall be subject to the provisions of Section 15 (Default In Terms of the Lease by Tenant) of the General Conditions attached hereto.

### 16. HAZARDOUS MATERIAL (PMF9.1 N)

A. Definition of Hazardous Materials. For purposes of this Lease, the term “**Hazardous Materials**” shall mean any hazardous or toxic substance, material, product, byproduct, or waste which is or shall become regulated by any governmental entity, including, without limitation, the County of Orange, the State of California or the United States government.

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B. Use of Hazardous Materials. TENANT or TENANT'S employees, agents, independent contractors or invitees (collectively "**TENANT Parties**") shall not cause or permit any Hazardous Materials to be brought upon, stored, kept, used, generated, released into the environment or disposed of on, under, from or about the Premises or the License Area (which for purposes of this clause shall include the subsurface soil and ground water). Notwithstanding the foregoing, TENANT may keep on or about the Premises small quantities of Hazardous Materials that are used in the ordinary, customary, and lawful cleaning of and business operations or the operation, maintenance or repair of TENANT Facilities on the Premises. Said permitted Hazardous Materials shall be stored in a safe location and shall be disposed of in a manner provided by law.

C. TENANT Obligations. If the presence of any Hazardous Materials on, under or about the Premises or the License Area caused or permitted by TENANT or TENANT Parties, results in (i) injury to any person, (ii) injury to or contamination of the Premises (or a portion thereof), or (iii) injury to or contamination of any real or personal property wherever situated, TENANT, at its sole cost and expense, shall promptly take all actions necessary or appropriate to return the Premises and/or to the License Area to the condition existing prior to the introduction of such Hazardous Materials to the Premises and/or the License Area and to remedy or repair any such injury or contamination. Without limiting any other rights or remedies of DISTRICT under this Lease, TENANT shall pay the cost of any cleanup or remedial work performed on, under, or about the Premises and/or the License Area as required by this Lease or by applicable laws in connection with the removal, disposal, neutralization or other treatment of such Hazardous Materials caused or permitted by TENANT or TENANT Parties. Notwithstanding the foregoing, TENANT shall not take any remedial action in response to the presence, discharge or release, of any Hazardous Materials on, under or about the Premises and/or the License Area caused or permitted by TENANT or TENANT Parties, or enter into any settlement agreement, consent decree or other compromise with any governmental or quasi-governmental entity without first obtaining the prior written consent of the DISTRICT. All work performed or caused to be performed by TENANT as provided for above shall be done in good and workmanlike manner and in compliance with plans, specifications, permits and other requirements for such work approved by DISTRICT.

D. Indemnification for Hazardous Materials. To the fullest extent permitted by law, TENANT hereby agrees to indemnify, hold harmless, protect and defend (with attorneys acceptable to DISTRICT) DISTRICT and County, its elected officials, officers, employees, agents, independent contractors, and the Premises and/or the License Area, from and against any and all liabilities, losses, damages (including, but not limited, damages for the loss or restriction on use of rentable or usable space or any amenity of the Premises and/or the License Area or damages arising from any adverse impact on marketing and diminution in the value of the Premises), judgments, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, reasonable attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), whether foreseeable or unforeseeable, arising directly or indirectly out of the presence, use, generation, storage, treatment, on or off-site disposal or transportation of Hazardous Materials on, into, from, under or about the Premises by TENANT or TENANT Parties. The foregoing indemnity shall also specifically include the cost

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of any required or necessary repair, restoration, clean-up or detoxification of the Premises and/or the License Area and the preparation of any closure or other required plans.

### 17. BEST MANAGEMENT PRACTICES (PML 11.2 N)

TENANT and TENANT Parties shall conduct operations under this Lease so as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems (“**Stormwater Drainage System**”), and to ensure that pollutants do not directly impact “Receiving Waters” (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).

The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System permits (“**Stormwater Permits**”) to the County of Orange, and to the Orange County Flood Control District and cities within Orange County, as co-permittees (hereinafter collectively referred to as “**County Parties**”) which regulate the discharge of urban runoff from areas within the County of Orange, including the Premises. The County Parties have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the Stormwater Drainage System.

To assure compliance with the Stormwater Permits and water quality ordinances, the County Parties have developed a Drainage Area Management Plan (“**DAMP**”) which includes a Local Implementation Plan (“**LIP**”) for each jurisdiction that contains Best Management Practices (“**BMPs**”) that parties using properties within Orange County must adhere to. As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in a cost effective manner. These BMPs are found within the DISTRICT’S LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as “BMP Fact Sheets”) and contain pollution prevention and source control techniques to eliminate non-stormwater discharges and minimize the impact of pollutants on stormwater runoff.

TENANT, TENANT Parties, and all persons authorized by TENANT to conduct activities on the Premises and/or the License Area shall, throughout the term of this Lease, comply with all applicable BMP Fact Sheets as they exist now or are modified, and shall comply with all other requirements of the Stormwater Permits, as they exist at the time this Lease commences or as the Stormwater Permits may be modified. TENANT agrees to maintain current copies of all applicable BMP Fact Sheets on the Lease Area throughout the term of this Lease. The BMPs applicable to uses authorized under this Lease must be performed as described within all applicable BMP Fact Sheets.

TENANT may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted to the Director for review and approval prior to implementation.

Director may enter the Premises and/or review TENANT’S records at any time to assure that activities conducted on the Premises or over the License Area comply with the requirements of

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this section. TENANT may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this section.

18. NOTICES (PMF10.1 S)

All notices, documents, correspondence, and communications concerning this Lease shall be addressed as set forth in this clause, or as the parties may hereafter designate by written notice, and shall be sent through the United States mail, duly registered or certified with postage prepaid. Any such mailing shall be deemed served or delivered twenty four (24) hours after mailing. Each party may change the address for notices by giving the other party at least ten (10) calendar days prior written notice of the new address.

Notwithstanding the above, either party may also provide notices, documents, correspondence, or such other communications to the other by personal delivery, regular mail, or facsimile and, so given, shall be deemed to have been given upon receipt if provided by personal delivery or facsimile, or forty-eight (48) hours after mailing if provided by regular mail.

TO: DISTRICT  
County of Orange  
OC Public Works/Real Estate Services  
RE: E01-706.1 - OCWD Lease  
P. O. Box 4048  
Santa Ana, CA 92702-4048  
Facsimile: 714/834-2870

TO: TENANT  
Orange County Water District  
18700 Ward Street  
P. O. Box 8300  
Fountain Valley, CA 92728-8300  
Facsimile: 714/378-3370  
Attn: Property Management

19. AUTHORITY (PMES20.1S)

The Parties to this Lease represent and warrant that this Lease has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

20. GENERAL CONDITIONS

This Lease includes the General Conditions attached hereto and by this reference made a part hereof. In the event of any conflict between the provisions of this Lease and the provisions in the General Conditions, the provision of this Lease shall control.

21. COUNTERPARTS

This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGES]

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IN WITNESS WHEREOF, the Parties have executed this Lease the day and year first above written.

**DISTRICT**

ORANGE COUNTY FLOOD  
CONTROL DISTRICT, a body corporate and  
politic

Approved as to Form  
Office of the County Counsel  
Orange County, California

By: \_\_\_\_\_  
Deputy

By: \_\_\_\_\_  
Chairman, Board of Supervisors  
Orange County, California

Date: \_\_\_\_\_

Signed and certified that a copy of this document  
has been delivered to the  
Chair of the Board per  
G.C. Sec. 25103, Resolution 79-1535

**ATTEST:**

\_\_\_\_\_  
Susan Novak  
Clerk of the Board of Supervisors  
Orange County Flood Control District  
Orange County, California

TENANT’S signature on following page



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**TENANT**

ORANGE COUNTY WATER DISTRICT,  
subdivision of the State of California organized  
under Chapter 924 of the Statutes of 1933, as  
amended

Approved as to Form  
RUTAN & TUCKER, LLP.

By: \_\_\_\_\_  
General Counsel  
Orange County Water District

By: \_\_\_\_\_  
Shawn Dewane, President

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Michael R. Markus P.E., General Manager

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### **GENERAL CONDITIONS (PMGE1.2-29.1)**

#### **1. TIME (PMGE1.2 S)**

Time is of the essence of this Lease. Failure to comply with any time requirement of this Lease shall constitute a material breach of this Lease.

#### **2. SIGNS (PMGE2.2 S)**

TENANT agrees not to construct, maintain, or allow any signs, banners, flags, etc., upon the Premises or License Area except as approved by Director. TENANT further agrees not to construct, maintain, or allow billboards or outdoor advertising signs upon the Premises or License Area. Such signs are prohibited on DISTRICT property by Resolutions F60-23 and F60-65 of DISTRICT'S Board of Supervisors.

Unapproved signs, banners, flags, etc., may be removed by Director without prior notice to TENANT.

#### **3. PERMITS AND LICENSES (PMGE3.2 S)**

TENANT shall be required to obtain any and all approvals, permits and/or licenses which may be required in connection with the operation of the Premises as set out herein. No permit, approval, or consent given hereunder by DISTRICT, in its governmental capacity, shall affect or limit TENANT'S obligations hereunder, nor shall any approvals or consents given by DISTRICT, as a Party to this Lease, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, or regulations.

#### **4. LEASE ORGANIZATION (PMGE5.2 S)**

The various headings and numbers herein, the grouping of provisions of this Lease into separate clauses and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

#### **5. AMENDMENTS (PMGE6.2 S)**

This Lease is the sole and only agreement between the Parties regarding the subject matter hereof; other agreements, either oral or written, are void. Any changes to this Lease shall be in writing and shall be properly executed by both Parties.

#### **6. UNLAWFUL USE (PMGE7.2 S)**

TENANT agrees no improvements shall be erected, placed upon, operated, nor maintained within the Premises or License Area, nor any business conducted or carried on therein or therefrom, in violation of the terms of this Lease, or of any regulation, order of law, statute, bylaw, or ordinance of a governmental agency having jurisdiction.

#### **7. NONDISCRIMINATION (PMGE8.2 S)**

TENANT agrees not to discriminate against any person or class of persons by reason of sex, age, race, color, creed, physical handicap, or national origin in employment practices and in the activities conducted pursuant to this Lease. TENANT shall make its accommodations and services available to the public on fair and reasonable terms.

#### **8. INSPECTION (PMGE9.2 S)**

DISTRICT or its authorized representative shall have the right at all reasonable times to inspect the Premises and License Area to determine if the provisions of this Lease are being complied with.

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### 9. HOLD HARMLESS (PMGE10.2 N)

TENANT acknowledges that the Premises and License Area lie in, on or about an area commonly referred to as the Santa Ana River Flood Channel (hereinafter referred to as “**Channel**”) and may be subject to all hazards associated with flood conditions and TENANT agrees to assume all risks, financial or otherwise associated therewith, including, but not limited to any interruption in or restricted use of the Premises and/or the License Area, whether temporary or permanent due to DISTRICT’s use of, or operations conducted in, on, or about the Premises and/or the License Area.

TENANT hereby releases and waives all claims and recourse against DISTRICT, and COUNTY including the right of contribution for loss or damage of persons or property, arising from, growing out of or in any way connected with or related to this Lease except claims arising from the concurrent active or sole negligence of DISTRICT and/or COUNTY, their officers, agents, employees and contractors. TENANT hereby agrees to indemnify, defend (with counsel approved in writing by DISTRICT), and hold harmless, DISTRICT and COUNTY, their elected and appointed officials, officers, agents, employees and contractors against any and all claims, losses, demands, damages, cost, expenses or liability for injury to any persons or property, arising out of the operation or maintenance of the property described herein, and/or TENANT’S exercise of the rights under this Lease, except for liability arising out of the concurrent active or sole negligence of DISTRICT, and/or COUNTY, their elected and appointed officials, officers, agents, employees or contractors including the cost of defense of any lawsuit arising therefrom. If DISTRICT or COUNTY is/are named as co-defendant(s) in a lawsuit, TENANT shall notify DISTRICT of such fact and shall represent DISTRICT/COUNTY in such legal action unless DISTRICT/COUNTY undertakes to represent itself/themselves as co-defendant(s) in such legal action, in which event, TENANT shall pay to DISTRICT/COUNTY its/their litigation costs, expenses, and attorneys' fees. If judgment is entered against DISTRICT/COUNTY and TENANT by a court of competent jurisdiction because of the concurrent active negligence of DISTRICT/COUNTY and TENANT, DISTRICT and TENANT agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

TENANT acknowledges that it is familiar with the language and provisions of California Civil Code Section 1542 which provides as follows:

*A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which, if known by him or her, must have materially affected his or her settlement with the debtor.*

TENANT, being aware of and understanding the terms of Section 1542, hereby waives all benefit of its provisions to the extent described in this paragraph.

### 10. TAXES AND ASSESSMENTS (PMGE11.2 S)

This Lease may create a possessory interest which is subject to the payment of taxes levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Premises or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of TENANT, and TENANT shall cause said taxes and assessments to be paid promptly.

### 11. SUCCESSORS IN INTEREST (PMGE12.2 S)

Unless otherwise provided in this Lease, the terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the Parties hereto, all of whom shall be jointly and severally liable hereunder.

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### 12. CIRCUMSTANCES WHICH EXCUSE PERFORMANCE (PMGE13.2 S)

If either Party shall be delayed or prevented from the performance of any act required hereunder by reason of Acts of God, restrictive governmental laws or regulations, or other cause without fault and beyond the control of the Party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. However, nothing in this Section shall excuse TENANT from the prompt payment of any rental or other charge required of TENANT except as may be expressly provided elsewhere in this Lease

### 13. PARTIAL INVALIDITY (PMGE14.2 S)

If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

### 14. WAIVER OF RIGHTS (PMGE15.2 S)

The failure of DISTRICT or TENANT to insist upon strict performance of any of the terms, covenants, or conditions of this Lease shall not be deemed a waiver of any right or remedy that DISTRICT or TENANT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants, and conditions of the Lease thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the Lease. Any waiver, in order to be effective, must be signed by the Party whose right or remedy is being waived.

### 15. EVENTS OF DEFAULT AND REMEDIES (PMGE16.2 S)

- A. Events of Default. The occurrence of any one or more of the following events shall constitute a default hereunder by TENANT:
1. The abandonment or vacation of the Premises by TENANT.
  2. The failure by TENANT to make any payment of rent or any other sum payable hereunder by TENANT, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from DISTRICT to TENANT; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 et seq.
  3. The failure or inability by TENANT to observe or perform any of the provisions of this Lease to be observed or performed by TENANT, other than specified in subparagraphs A.(1) or A.(2) above, where such failure shall continue for a period of ten (10) days after written notice thereof from DISTRICT to TENANT; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure Section 1161 et seq.; provided, further, that if the nature of such failure is such that it can be cured by TENANT but that more than ten (10) days are reasonably required for its cure (for any reason other than financial inability), then TENANT shall not be deemed to be in default if TENANT shall commence such cure within said ten (10) days, and thereafter diligently prosecutes such cure to completion.
  4. The making by TENANT of any general assignment for the benefit of creditors.
  5. A case is commenced by or against TENANT under Chapters 7, 11 or 13 of the Bankruptcy Code, Title 11 of the United States Code as now in force or hereafter amended and if so commenced against TENANT, the same is not dismissed within sixty (60) days of such commencement.

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6. The appointment of a trustee or receiver to take possession of substantially all of TENANT'S assets located at the Premises or of TENANT'S interest in this Lease, where such seizure is not discharged within thirty (30) days.
  7. TENANT'S convening of a meeting of its creditors or any class thereof for the purpose of effecting a moratorium upon or composition of its debts. In the event of any such default, neither this Lease nor any interests of TENANT in and to the Premises shall become an asset in any of such proceedings and, in any such event and in addition to any and all rights or remedies of the DISTRICT hereunder or by law; provided, it shall be lawful for the DISTRICT to declare the term hereof ended and to re-enter the Premises and take possession thereof and remove all persons therefrom, and TENANT and its creditors (other than DISTRICT) shall have no further claim thereon or hereunder.
- B. Remedies. In the event of any default by TENANT, then, in addition to any other remedies available to DISTRICT at law or in equity, DISTRICT may exercise the following remedies:
1. DISTRICT may terminate this Lease and all rights of TENANT hereunder by giving written notice of such termination to TENANT. In the event that DISTRICT shall so elect to terminate this Lease, then DISTRICT may recover from TENANT:
    - (a) The worth at the time of award of the unpaid rent and other charges, which had been earned as of the date of the termination hereof;
    - (b) The worth at the time of award of the amount by which the unpaid rent and other charges which would have been earned after the date of the termination hereof until the time of award exceeds the amount of such rental loss that TENANT proves could have been reasonably avoided;
    - (c) The worth at the time of award of the amount by which the unpaid rent and other charges for the balance of the term hereof after the time of award exceeds the amount of such rental loss that TENANT proves could be reasonably avoided;
    - (d) Any other amount necessary to compensate DISTRICT for all the detriment proximately caused by TENANT'S failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary repair, renovation and alteration of the Premises, reasonable attorneys' fees, expert witness costs, and any other reasonable costs; and
    - (e) Any other amount which DISTRICT may by law hereafter be permitted to recover from TENANT to compensate DISTRICT for the detriment caused by TENANT'S default.

The term "rent" as used herein shall be deemed to be and to mean the annual rent and all other sums required to be paid by TENANT pursuant to the terms of this Lease. All such sums, other than the annual rent, shall be computed on the basis of the average monthly amount thereof accruing during the 24-month period immediately prior to default, except that if it becomes necessary to compute such rental before such 24-month period has occurred, then such sums shall be computed on the basis of the average monthly amount during such shorter period. As used in subparagraphs B.1.(a) and B.1.(b) above, the "worth at the time of award" shall be computed by allowing interest at the maximum rate permitted by law. As used in subparagraph B.1.(c) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%), but not in excess of ten percent (10%) per annum.

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2. Continue this Lease in effect without terminating TENANT'S right to possession even though TENANT has breached this Lease and abandoned the Premises and to enforce all of DISTRICT'S rights and remedies under this Lease, at law or in equity, including the right to recover the rent as it becomes due under this Lease; provided, however, that DISTRICT may at any time thereafter elect to terminate this Lease for such previous breach by notifying TENANT in writing that TENANT'S right to possession of the Premises has been terminated.

Nothing in this Section shall be deemed to affect TENANT'S indemnity of DISTRICT liability or liabilities based upon occurrences prior to the termination of this Lease for personal injuries or property damage under the indemnification clause or clauses contained in this Lease.

No delay or omission of DISTRICT to exercise any right or remedy shall be construed as a waiver of such right or remedy or any default by TENANT hereunder. The acceptance by DISTRICT of rent or any other sums hereunder shall not be (a) a waiver of any preceding breach or default by TENANT of any provision thereof, other than the failure of TENANT to pay the particular rent or sum accepted, regardless of DISTRICT'S knowledge of such preceding breach or default at the time of acceptance of such rent or sum, or (b) waiver of DISTRICT'S right to exercise any remedy available to DISTRICT by virtue of such breach or default. No act or thing done by DISTRICT or DISTRICT'S agents during the term of this Lease shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender shall be valid unless in writing and signed by DISTRICT.

Any installment or rent due under this Lease or any other sums not paid to DISTRICT when due (other than interest) shall bear interest at the maximum rate allowed by law from the date such payment is due until paid, provided, however, that the payment of such interest shall not excuse or cure the default.

All covenants and agreements to be performed by TENANT under any of the terms of this Lease shall be performed by TENANT at TENANT'S sole cost and expenses and without any abatement of rent. If TENANT shall fail to pay any sum of money, other than rent required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, or to provide any insurance or evidence of insurance to be provided by TENANT, then in addition to any other remedies provided herein, DISTRICT may, but shall not be obligated to do so, and without waiving or releasing TENANT from any obligations of TENANT, make any such payment or perform any such act on TENANT'S part to be made or performed as provided in this Lease or to provide such insurance. Any payment or performance of any act or the provision of any such insurance by DISTRICT on TENANT'S behalf shall not give rise to any responsibility of DISTRICT to continue making the same or similar payments or performing the same or similar acts. All costs, expenses, and other sums incurred or paid by DISTRICT in connection therewith, together with interest at the maximum rate permitted by law from the date incurred or paid by DISTRICT shall be deemed to be additional rent hereunder and shall be paid by TENANT with and at the same time as the next monthly installment of rent hereunder, and any default therein shall constitute a breach of the covenants and conditions of this Lease.

### **16. RESERVATIONS TO DISTRICT (PMGE18.2 S)**

The Premises are accepted "as is" and "where is" by TENANT subject to any and all existing easements, encumbrances. DISTRICT reserves the right to install, lay, construct, maintain, repair, and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil, and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, and along the Premises or any part thereof, and to enter the Premises for any and all such purposes. DISTRICT also reserves the right to grant franchises, easements, rights of way, and permits in, over, upon, through, across, and along any and all portions of the Premises. No right reserved by DISTRICT in this clause shall be so exercised as to interfere unreasonably with TENANT'S operations hereunder or to impair the security of any secured creditor of TENANT.

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DISTRICT agrees that rights granted to third parties by reason of this Section shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. DISTRICT further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Premises by TENANT, the rental shall be reduced in proportion to the interference with TENANT'S use of the Premises.

### **17. HOLDING OVER (PMGE19.2 S)**

In the event TENANT shall continue in possession of the Premises after the term of this Lease, such possession shall not be considered a renewal of this Lease but a tenancy from month to month and shall be governed by the conditions and covenants contained in this Lease.

### **18. CONDITION OF PREMISES UPON TERMINATION (PMGE20.2 N)**

A. Unless Director has provided TENANT with written notice that DISTRICT wishes to retain any or all TENANT Facilities, TENANT shall, at TENANT'S sole cost and expense no later than the expiration or sooner termination of this Lease:

1. abandon all water wells on the Premises in place, in accordance with state water well standards (e.g. CA Department of Water Resources Bulletins 74-81 and Bulletins 74-90); and,
2. remove all other TENANT Facilities, both surface and underground, located on or within the Premises and the License Area to Director's satisfaction which shall include, but not be limited to, compaction of filled excavations to ninety percent (90%) compaction as determined by California Test Method No. 216 and delivering the Premises and the License Area in a condition which allows for unrestricted use of the property.

B. Should TENANT fail to satisfy its obligations in the above sub-section 18.A., DISTRICT shall have the right to perform, or cause to be performed, any task necessary for the Premises and the License Area to be returned in conformance therewith at TENANT'S cost, including the cost of labor, materials, equipment, disposal fees and other costs Director determines to be reasonably related to such removal or abandonment, plus an administrative fee equal to fifteen percent (15%) of the sum of those items, without liability therefor to TENANT or to any person claiming under TENANT. Director shall present TENANT with an invoice for labor, materials, equipment, disposal fees and other costs Director determines to be reasonably related to removal of such TENANT Facilities which invoice TENANT agrees to pay within thirty (30) days of receipt.

### **19. DISPOSITION OF ABANDONED PERSONAL PROPERTY (PMGE21.2 S)**

If TENANT abandons or quits the Premises or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to and left on the Premises and/or the License Area fifteen (15) days after such event shall, at DISTRICT'S option, be deemed to have been transferred to DISTRICT. DISTRICT shall have the right to remove and to dispose of such property without liability therefor to TENANT or to any person claiming under TENANT, and shall have no need to account therefor.

### **20. QUITCLAIM OF TENANT'S INTEREST UPON TERMINATION (PMGE22.2 S)**

Upon termination of this Lease for any reason, including but not limited to termination because of default by TENANT, TENANT shall execute, acknowledge, and deliver to DISTRICT, within thirty (30) days after receipt of written demand therefor, a good and sufficient deed whereby all right, title, and interest of TENANT in the Premises is quitclaimed to DISTRICT. Should TENANT fail or refuse to deliver the required deed to DISTRICT, DISTRICT may prepare and record a notice reciting the failure of TENANT to execute, acknowledge, and deliver such deed and said notice shall be conclusive evidence of the termination of this Lease and of all rights of TENANT or those claiming under TENANT in and to the Premises.

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### **21. DISTRICT'S RIGHT TO RE-ENTER (PMGE23.2 S)**

TENANT agrees to yield and peaceably deliver possession of the Premises to DISTRICT on the date of termination of this Lease, whatsoever the reason for such termination. Upon giving written notice of termination to TENANT, DISTRICT shall have the right to re-enter and take possession of the Premises on the date such termination becomes effective without further notice of any kind and without institution of summary or regular legal proceedings. Termination of the Lease and re-entry of the Premises by DISTRICT shall in no way alter or diminish any obligation of TENANT under the Lease terms and shall not constitute an acceptance or surrender.

TENANT waives any and all right of redemption under any existing or future law or statute in the event of eviction from or dispossession of the Premises for any lawful reason or in the event DISTRICT re-enters and takes possession of the Premises in a lawful manner.

### **22. PUBLIC RECORDS (PMGE25.2 S)**

Any and all written information submitted to and/or obtained by DISTRICT from TENANT or any other person or entity having to do with or related to this Lease, the Premises, and/or the License Area, either pursuant to this Lease or otherwise, at the option of DISTRICT, may be treated as a public record open to inspection by the public pursuant to the California Records Act (Government Code Section 6250, etc.) as now in force or hereafter amended, or any Act in substitution thereof, or otherwise made available to the public and TENANT hereby waives, for itself, its agents, employees, subtenants, and any person claiming by, through or under TENANT, any right or claim that any such information is not a public record or that the same is a trade secret or confidential information and hereby agrees to indemnify and hold DISTRICT harmless from any and all claims, demands, liabilities, and/or obligations arising out of or resulting from a claim by TENANT or any third party that such information is a trade secret, or confidential, or not subject to inspection by the public, including without limitation reasonable attorneys' fees and costs.

### **23. RELATIONSHIP OF PARTIES (PMGE26.2 S)**

The relationship of the Parties hereto is that of DISTRICT and TENANT, and it is expressly understood and agreed that DISTRICT does not in any way or for any purpose become a partner of, or a joint venture with TENANT in the conduct of TENANT'S business or otherwise, and the provisions of this Lease and the agreements relating to rent payable hereunder are included solely for the purpose of providing a method by which rental payments are to be measured and ascertained.

### **24. ATTORNEYS' FEES (PMGE28.1)**

In any action or proceeding brought to enforce or interpret any provision of this Lease, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorneys' fees and costs.

### **25. VENUE (PMGE29.1)**

The Parties hereto agree that this Lease has been negotiated and executed in the State of California and shall be governed by and construed under the laws of California. In the event of any legal action to enforce or interpret this Lease, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties hereto specifically agree to waive any and all rights to request that an action be transferred for trial to another county.



**Attachment D**

EXHIBIT 'A'

LEGAL DESCRIPTION

ORANGE COUNTY WATER DISTRICT  
SANTA ANA RIVER WELL 10  
LEASE SITE

THAT PORTION OF PARCEL NO. E1-706 IN THE CITY OF FOUNTAIN VALLEY, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS DESCRIBED IN THE GRANT DEED TO THE ORANGE COUNTY FLOOD CONTROL DISTRICT RECORDED FEBRUARY 9, 1961 IN BOOK 5625, PAGE 308, OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL AS DESCRIBED IN SAID GRANT DEED, SAID POINT BEING ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF THE SANTA ANA RIVER AS SHOWN ON RECORD OF SURVEY 92-1068 FILED IN BOOK 146, PAGES 10 THROUGH 20, INCLUSIVE, OF RECORD OF SURVEYS, IN THE OFFICE OF SAID COUNTY RECORDER, SAID POINT ALSO BEING ON A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 22,743.33 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 72°30'20.6" EAST; THENCE SOUTHWESTERLY 125.63 FEET ALONG THE SOUTHEASTERLY BOUNDARY LINE OF SAID PARCEL AND SAID CURVE THROUGH A CENTRAL ANGLE OF 0°18'59.4" TO THE NORTHEAST CORNER OF THE EASEMENT TO THE COUNTY OF ORANGE PARCEL 119 AS DESCRIBED IN THE DOCUMENT RECORDED DECEMBER 3, 2012 AS INSTRUMENT NO. 2012000743969, OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER; THENCE ALONG THE BOUNDARY LINE OF SAID PARCEL 119 NORTH 89°33'45" WEST 50.63 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 119; THENCE CONTINUING ALONG THE BOUNDARY LINE OF SAID PARCEL 119 SOUTH 0°26'15" WEST 2.00 FEET TO A POINT ON THE NORTH BOUNDARY LINE OF THE 50.00 FOOT WIDE STREET AND HIGHWAY EASEMENT RESERVED TO THE COUNTY OF ORANGE IN SAID GRANT DEED; THENCE LEAVING THE BOUNDARY LINE OF SAID PARCEL 119 AND ALONG THE NORTH BOUNDARY LINE OF SAID STREET AND HIGHWAY EASEMENT NORTH 89°33'45" WEST 41.16 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT 25.00 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM THE WESTERLY BOUNDARY LINE OF SAID PARCEL NO. E1-706; THENCE ALONG SAID PARALLEL LINE NORTH 0°25'15" EAST 122.00 FEET TO A POINT ON THE NORTH BOUNDARY LINE OF SAID PARCEL NO. E1-706; THENCE ALONG THE NORTH BOUNDARY LINE OF SAID PARCEL NO. E1-706 SOUTH 89°33'45" EAST 129.00 FEET TO THE POINT OF BEGINNING.

**Attachment D**

EXHIBIT 'A'

LEGAL DESCRIPTION

ORANGE COUNTY WATER DISTRICT  
SANTA ANA RIVER WELL 10  
LEASE SITE

THE AREA OF THE ABOVE DESCRIBED PARCEL IS 13,336 SQUARE FEET, MORE OR LESS.

ALL AS SHOWN ON EXHIBIT 'B' ATTACHED HERETO AND MADE A PART HEREOF.



*David A. Bush*  
4-09-13

**Attachment D**

E01.706-1  
Santa Ana River

*Exhibit A*

Attachment D

EXHIBIT 'B'

ORANGE COUNTY WATER DISTRICT  
SANTA ANA RIVER WELL 10  
LEASE SITE

POINT OF BEGINNING  
NE COR PCL NO. E1-706  
PER O.R. 5625/308

N'LY BOUNDARY LINE PCL NO.  
E1-706 PER O.R. 5625/308

S89°33'45"E

129.00'

S72°30'20.6"E(R)

122.00'

308

E1-706

PARCEL NO.  
5625

R=22,743.33'  
NW'LY RIGHT-OF-WAY LINE OF  
THE SANTA ANA RIVER PER  
R.S.B. 146/10-20

L=125.63'

SANTA ANA RIVER

W'LY BOUNDARY LINE PCL NO.  
E1-706 PER O.R. 5625/308

License Area

Q. R.

25.00'

N0°25'15"E

S0°26'15"W  
2.00'

N89°33'45"W  
50.63'

NE COR PCL 119 PER  
O.R. 2012000743969

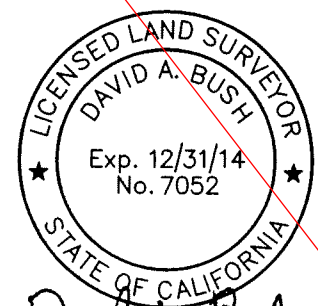
N89°33'45"W  
41.16'

PARCEL 119  
O.R. 2012000743969

NORTH LINE 50.00' WIDE  
STREET AND HIGHWAY EASEMENT  
PER O.R. 5625/308

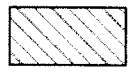
50'

EDINGER AVENUE



Da A. Bush

SCALE: 1"=20'



AREA = 13,336± SQ. FT.

**Attachment D**

E01.706-1  
Santa Ana River

*Exhibit B*

**Attachment D**

E01.706-1  
Santa Ana River

*Exhibit C*

**Attachment D**

E01.706-1  
Santa Ana River

*Exhibit D*