

CONFIDENTIALITY AND COMMON INTEREST AGREEMENT

This Confidentiality and Common Interest Agreement (“Agreement”) is made and entered into as of _____, 2022, by and among the Santa Ana Watershed Project Authority (“SAWPA”), the Eastern Municipal Water District, the Inland Empire Utilities Agency, the Orange County Water District (“OCWD”), the San Bernadino Valley Municipal Water District, the Western Municipal Water District, and the Orange County Sanitation District. Hereinafter, SAWPA and the other above-named public agencies shall collectively be referred to as the “Parties” and individually as “Party.”

Recitals

1.1 The Parties to this Agreement have common interests (collectively, “Common Interests” as defined below) in, among other things, developing and maintaining regional plans, programs, and projects that will protect the water resources in the Santa Ana River basin (the “Basin”). With specific reference to this Agreement, the Parties share Common Interests in, among other things, developing a regional approach to treating or otherwise remediating the surface and ground waters and reclaimable wastewaters in the Basin that have been, or are threatened to be, contaminated by per- and polyfluoroalkyl substances (collectively, “PFAS”).

1.2 In order to advance and promote their Common Interests in addressing and resolving the problems posed by PFAS contamination in the Basin, including, but not limited to, investigating and pursuing pending and potential claims relating to such PFAS contamination as described below, the Parties desire to collaborate with each other by, among other things, having their respective staff persons and attorneys undertake the following pre-decisional, investigatory, and information-gathering actions and activities, among others:

1.2.1 Formulate and develop proposed plans, programs, and projects to mitigate, reduce, or eliminate PFAS concentrations in discharges to the Santa Ana River and its tributaries (collectively, the “SAR”) above Prado Dam that are made by publicly owned treatment works (“POTWs”).

1.2.1.1 Undertake watershed assessment studies to investigate the feasibility of identifying and isolating the amount of PFAS contaminants that third parties are responsible for placing in the water received by POTWs before such water is treated and discharged into the SAR above Prado Dam.

1.2.1.2 Evaluate methodologies to reduce or eliminate PFAS contaminants in discharges made by POTWs with or without mitigation or reduction via pre-treatment/source control activities.

1.2.1.3 Based on the results of the investigation and evaluation described in subparts 1.2.1.1 and 1.2.1.2 above, identify and evaluate the feasibility of, and the costs associated with, various alternatives to sufficiently mitigate or reduce PFAS concentrations in discharges to the SAR above Prado Dam that are made by POTWs. The relative feasibility and cost of each alternative will be assessed with the goal of identifying a preferred alternative.

1.2.2 Formulate and develop plans, programs, and projects to mitigate, reduce, or eliminate PFAS concentrations in discharges to the SAR above Prado Dam that are made by non-POTW sites.

1.2.2.1 Undertake watershed assessment studies to investigate the feasibility of identifying and isolating the amount of PFAS contaminants that are discharged from non-POTWs into the SAR above Prado Dam.

1.2.2.2 Evaluate methodologies to reduce or eliminate PFAS discharges to the SAR above Prado Dam that are made by non-POTWs.

1.2.2.3 Based on the results of the investigation and evaluation described in subparts 1.2.2.1 and 1.2.2.2 above, identify and evaluate the feasibility of, and the costs associated with, various alternatives to reduce/eliminate PFAS discharges to the SAR above Prado Dam that are made by non-POTWs. This evaluation would include quantifying the effect that such reductions/eliminations would have on PFAS concentrations at locations of interest along the SAR, including Riverside Narrows, Prado Dam, and Imperial Highway. The relative feasibility and cost of each alternative will be assessed with the goal of identifying a preferred alternative.

1.2.3 Formulate and develop a proposed institutional framework for roles and responsibilities of the agencies that would undertake the activities and pursue the objectives described in subsections 1.2.1 and 1.2.2 above.

1.2.4 Assess the regulatory feasibility of undertaking the activities and pursuing the objectives described in subsections 1.2.1, 1.2.2, and 1.2.3 above.

1.2.5 Formulate and develop a proposed equitable cost allocation framework to fund the PFAS investigations and reduction programs, including potential cost recovery via litigation against the chemical manufacturers and commercial users of PFAS who are responsible for placing PFAS into the stream of commerce and/or the environment where such contaminants can make their way into the Basin.

1.3 To further advance and promote their Common Interests in addressing and resolving the problems posed by PFAS contamination, the Parties also desire to collaborate with each other by, among other things, having their respective decision-making bodies consider entering into one or more Memorandums of Understanding (“MOUs”), or other similar forms of agreement, to approve, adopt, and implement the proposed plans, programs and projects developed by the Parties’ respective staff persons and attorneys as a result of undertaking the actions and activities described above.

1.4 OCWD is currently one of the plaintiffs in a cost recovery action pending against various defendants entitled, *Orange County Water District, et al., v. 3M Company, et al.*, Orange County Superior Court Civil Action No. 30-2020-01172419-CU-PL-CXC (the “3M Action”). In order to, among other things, (a) investigate and identify possible ways to mitigate the PFAS-related damages and remediation costs that OCWD is seeking to recover in the 3M Action and (b) obtain information regarding (i) the nature and extent of PFAS contamination in the Basin, (ii) potential remedies to reduce such contamination, and (iii) other PFAS-related matters to

communicate to OCWD's attorneys in obtaining legal advice and counsel to promote and protect OCWD's interests in the 3M Action, and in any related litigation, OCWD desires to enter into this Agreement for these additional reasons.

1.5 Likewise, in evaluating the feasibility of asserting potential claims against the same defendants in the 3M Action and possibly other responsible third parties, relating to PFAS contamination in the Basin, the other Parties to this Agreement desire to enter into this Agreement for additional reasons similar to OCWD's and to obtain similar information to share with their respective attorneys in seeking legal advice and counsel relating to such claims. All attorneys and law firms referred to in this subsection 1.4 and in subsection 1.3 above shall collectively be referred to as the "Parties' Respective Attorneys."

1.6 Without compromising the confidentiality of information (collectively referred to as "Confidential Information" as defined below) relating to the Parties' Common Interests in (a) undertaking pre-decisional actions and efforts to formulate, prepare, and present the proposed MOUs, or other agreements, for approval by their respective decision-making bodies, and (b) investigating and pursuing pending or potential claims relating to PFAS contamination in the Basin and the possible options and alternatives to remediate or reduce such contamination, the Parties desire to share such Confidential Information with each other and the Parties' Respective Attorneys.

1.7 The Parties believe that the disclosure of Confidential Information relating to the Common Interests between and among the Parties and the Parties' Respective Attorneys is reasonably necessary to promote the Parties' Common Interests, to accomplish the purposes for which the Parties' Respective Attorneys have been or will be consulted regarding PFAS contamination, and to further the purpose of the Parties' deliberations and consultations with each other's respective staff persons, legal counsel, and decision-making bodies.

1.8 The Parties further believe that their mutual interests will best be served by participating in common interest meetings, conferences, and communications in which to share confidential, proprietary, work product or privileged documents, factual material, mental impressions, investigative information, memoranda, interview reports, expert reports, and other oral or written information generated in connection with the Common Interests referenced above, including certain confidences of the Parties (hereinafter collectively referred to as the "Common Interest Materials" as defined below).

1.9 The Parties intend for this Agreement to create a reasonable expectation of confidentiality with regard to any Confidential Information disclosed between or among the Parties relating to their Common Interests.

1.10 For purposes of this Agreement, "Common Interest Materials" shall mean and refer to any Confidential Information relating to the Common Interests that is transmitted, shared, disclosed, or otherwise communicated between or among the Parties and/or the Parties' Respective Attorneys.

1.11 "Confidential Information" shall mean and refer to any data, recordings, oral or written communications, handwritten, printed, or electronic documents, and any other materials or

information in whatever form, that are privileged or protected from discovery or disclosure under the attorney-client privilege, the attorney work product doctrine, the common interest doctrine, the deliberative process privilege, or any other statutory or common law privilege or protection.

1.12 “Common Interests” shall mean and refer to the Parties’ common interests recited in subsections 1.1 through 1.5 above.

2. TERMS OF AGREEMENT

In consideration for the execution of this Agreement, and the above Recitals (which shall be deemed substantive provisions hereof and are hereby acknowledged and agreed to as such by the Parties), terms, obligations, and covenants contained herein, the Parties agree to the following:

2.1 No Joint Attorney/Client Relationship; No Basis To Disqualify Counsel.

The Parties and their interests are represented by their own respective attorneys, and nothing in this Agreement, nor the Parties’ decision to enter into this Agreement, is intended to: (a) compromise the separate and independent attorney-client relationship between the Parties to this Agreement and their separate respective counsel, or (b) create a joint attorney-client relationship between the Parties and any of their separate respective counsel. Neither the act of entering into this Agreement, nor any action taken under this Agreement, including the exchange of privileged information, nor any breach of this Agreement, may be used as a basis for seeking to disqualify any Party’s counsel.

2.2 Nonwaiver of Applicable Privileges.

2.2.1 The disclosure between or among the Parties or the Parties’ Respective Attorneys of any Confidential Information relating to the Common Interests (defined herein as “Common Interest Materials”) is not intended to be, and shall not be construed as, a waiver of the attorney-client privilege, the attorney work product doctrine, the common interest doctrine, the deliberative process privilege, or any other statutory or common law privilege or protection. Except as otherwise provided herein, all Common Interest Materials shall be and remain confidential and privileged from disclosure to adverse parties or to any other persons or entities who are not Parties to this Agreement.

2.2.2 Any exchanges or disclosures of any Common Interest Materials between or among the Parties or the Parties’ Respective Attorneys would not have been made, and will not be made, but for the sake of (a) securing, advancing, or supplying legal representation by Parties’ Respective Attorneys or (b) facilitating and promoting the investigations, negotiations, discussions, and other activities leading up to the preparation and approval of the above-described MOUs or other agreements to be presented to the Parties’ respective decision-making bodies. The Parties consider all such exchanges and disclosures of Common Interest Materials to be essential to the effective representation of their respective interests, and within the common interest doctrine recognized by California law and California Rules of Court.

2.3 Limitations on Use of Common Interest Materials.

2.3.1 All Common Interest Materials shall be used solely in connection with the Parties' attempts to (a) treat, mitigate, or remediate PFAS contamination in the Basin, (b) identify third parties who are responsible for such contamination, (c) prosecute pending legal actions, investigate potential PFAS-related claims, or otherwise seek cost recovery for the treatment or remediation of PFAS and other contamination in the Basin from responsible third parties including through litigation, and (d) defend against any claims of third parties relating to PFAS contamination in the Basin. The Parties' use of Common Interest Materials shall be limited to confidential use by the Parties and their employees, consultants, and the Parties' Respective Attorneys, and shall not include the right to disclose any such Materials to third parties or to introduce, seek to admit into evidence, refer to, or otherwise disclose any such Materials in any trial, arbitration, mediation, or other judicial, administrative, or other proceedings for any reason, without first obtaining the written consent of the other Parties to this Agreement.

2.3.2 In addition, except as provided herein, no Party, and no Party's counsel, shall disclose any Common Interest Materials generated by or received from one of the other Parties to anyone who is not a Party to this Agreement or is not one of the Parties' Respective Attorneys, without obtaining the written consent of the other Parties to this Agreement. All Confidential Information and Common Interest Materials discussed, generated at, or otherwise arising out of, any meetings at which any employees, agents, members, or representatives of any of the Parties are present shall be deemed to be privileged and confidential.

2.3.3 Provided the required written consent of the Parties is obtained, any person who is not a Party to this Agreement who receives any Common Interest Materials shall be advised beforehand that the Common Interest Materials are privileged and confidential and subject to the terms of this Agreement. Nothing in this Agreement shall limit the right of any Party or any Party's counsel, to disclose any documents or information that has been lawfully obtained or generated by that Party independently of this Agreement.

2.4 Demands for Common Interest Materials.

If any person or entity requests or demands Common Interest Materials through discovery requests, subpoena, Public Records Act requests, or otherwise, the recipient of such a request or demand shall immediately notify the other Parties to this Agreement of the request or demand. Before making any disclosure of Common Interest Materials in response to such a request or demand, the Party receiving the request or demand shall immediately advise the Party or Parties who generated the aforementioned Common Interest Materials, and shall cooperate with the attempts of the other Party or Parties to preserve its/their privileges and protections. The Parties' duties under this paragraph with regard to Common Interest Materials received while this Agreement is in effect shall survive the termination of this Agreement or the withdrawal of any Party.

2.5 Remedies For Breach.

Any breach of the provisions of this Agreement will cause irreparable harm to the non-breaching Parties. Specific performance and injunctive relief shall be available to enforce the terms of this Agreement and shall be the sole remedies for its breach. No breach shall entitle any Party to any claim for damages, sanctions, or any other form of monetary award, except that reasonable attorney's fees shall be awarded to the prevailing party in any dispute arising under this section of this Agreement.

2.6 No Obligation to Share Confidential Information.

This Agreement does not impose any obligation on the Parties or the Parties' Respective Attorneys to share documents or information with any other Party or their counsel. Nothing in this Agreement shall be deemed to create any duty of cooperation or other legal rights or duties, except as expressly stated herein.

2.7 No Licensing Rights.

The supplying of Common Interest Materials shall not be considered to provide any license or proprietary rights, including any implied patent license or intellectual property rights in the property of another or any legal rights now or hereinafter held by virtue of this Agreement.

2.8 No Representations or Warranties re Accuracy.

The Parties acknowledge that, except as may be set forth in a definitive, written agreement, no Party nor any of its directors, officers, employees, affiliates, advisors, or elected or appointed officials shall have been deemed to make, or shall be responsible for, any representations or warranties, express or implied, with respect to the accuracy or completeness of the Common Interest Materials supplied under this Agreement. Further, it is acknowledged hereby by the Parties that only those representations and warranties made by the Parties in a definitive, written agreement shall have any force or effect.

2.9 Limitations on Liability.

In no event shall any Party be liable to another for consequential, special, indirect, incidental, punitive or exemplary loss, damage or expense relating to this Agreement.

2.10 Duty of Care.

The Parties shall protect the disclosed Common Interest Materials by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, disclosure, dissemination, or publication of the Common Interest Materials as a Party uses to protect its own Confidential Information.

3. ADDITIONAL TERMS

3.1 No Agency Relationship.

Nothing herein shall create any agency relationship among the Parties, and no Party or Parties shall have any right or authority to waive any privilege or protection on behalf of any other

Party or Parties. The waiver of any privilege or protection by a Party or Parties shall not be deemed to be a waiver of the same privilege or protection by the other Party or Parties to this Agreement.

3.2 Agreement Not Confidential.

Neither this Agreement, nor any of its terms or conditions, shall be deemed confidential.

3.3 Entire Agreement.

This Agreement shall constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and shall supersede and replace any previous agreements and understandings between or among the Parties, whether written or oral, with respect to the subject matter of this Agreement, provided, however, that any prior confidentiality agreements between the Parties shall remain in full force and effect. This Agreement represents the final agreement between and among the Parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the Parties. There are no unwritten oral agreements between the Parties respecting the subject matter of this Agreement.

3.4 Authority.

Each Party warrants and represents to each other Party that the undersigned representative for such Party has full and complete authority to execute this Agreement and bind said Party to the terms hereof. Each Party further warrants and represents that it has negotiated this Agreement through its respective counsel and that such Party has voluntarily executed it after consulting with counsel of its own choosing.

3.5 Counterparts; electronic signature.

This Agreement shall become binding upon the execution of the Agreement by each Party. This Agreement may be executed in any number of counterparts, each of which shall be fully effective as an original, and all of which together shall constitute one and the same instrument. A signature delivered by electronic mail shall have the same force and effect as an original signature. When fully executed, the effective date of this Agreement shall be the date written in the first paragraph on page 1 hereof.

SO AGREED:

(Dated)

SANTA ANA WATERSHED PROJECT AUTHORITY.

By: [Print Name] _____
Its: [Print Title] _____

By: [Print Name] _____
Its: [Print Title] _____

EASTERN MUNICIPAL WATER DISTRICT.

(Dated)

By: [Print Name] _____
Its: [Print Title] _____

By: [Print Name] _____
Its: [Print Title] _____

INLAND EMPIRE UTILITIES AGENCY.

(Dated)

By: [Print Name] _____
Its: [Print Title] _____

By: [Print Name] _____
Its: [Print Title] _____

ORANGE COUNTY WATER DISTRICT.

(Dated)

By: [Print Name] _____
Its: [Print Title] _____

By: [Print Name] _____
Its: [Print Title] _____

SAN BERNADINO VALLEY MUNICIPAL WATER DISTRICT.

(Dated)

By: [Print Name] _____

Its: [Print Title]_____

By: [Print Name]_____

Its: [Print Title]_____

(Dated)

WESTERN MUNICIPAL WATER DISTRICT.

By: [Print Name]_____

Its: [Print Title]_____

By: [Print Name]_____

Its: [Print Title]_____

(Dated)

ORANGE COUNTY SANITATION DISTRICT.

By: [Print Name]_____

Its: [Print Title]_____

By: [Print Name]_____

Its: [Print Title]_____