MEMORANDUM OF AGREEMENT
BY AND AMONG
TOWN OF YUCCA VALLEY,
HI-DESERT WATER DISTRICT, AND
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
COLORADO RIVER BASIN REGION

June 25, 2008

RECITALS

1. This Memorandum of Agreement (MOA) is entered into by and among the Town of Yucca Valley (Yucca Valley), the Hi-Desert Water District (District), and the California Regional Water Quality Control Board, Colorado River Basin Region (Regional Water Board) (collectively, the Parties). A map of the Town of Yucca Valley, which shows its jurisdictional boundaries, is provided in Attachment "A", which is incorporated herein and made a part of this MOA by reference. A map of the District's water service area is provided in Attachment "B", which is incorporated herein and made a part of this MOA by reference.

2. The MOA reflects the intent of the Parties to clarify the roles, duties, responsibilities, and commitments of each Party with respect to addressing groundwater contamination in and around Yucca Valley caused by septic tank treatment and subsurface disposal systems and with respect to a proposed municipal sewage treatment and water reclamation project (hereinafter, Water Reclamation Project or WRP).

3. The County of San Bernardino (County) has design approval authority for proposed new septic tank treatment and subsurface disposal systems submitted to Yucca Valley that would service private and commercial developments. It is the intent of the Parties in the MOA to coordinate this County approval process with the interim approval authority that the Regional Water Board grants Yucca Valley in this MOA for specified septic tank treatment and subsurface disposal systems, which are described further below.

4. The Parties also acknowledge that the Regional Water Board's delegation of interim approval authority to Yucca Valley for approving certain septic tank treatment and subsurface disposal systems, which are further described below in this MOA, shall not be construed to mean or imply that the Regional Water Board has delegated any of its continuing authority to regulate any such systems to the County, whose approval authority is separate and distinct from the Regional Water Board's authority and is solely governed by the County's agreement with Yucca Valley to approve such systems.

5. Yucca Valley is located in the high desert portion of the Mojave Desert. It relies primarily on an aquifer underlying the Warren Valley Groundwater Basin for its water supply. The Warren Valley Groundwater Basin lies within the Joshua Tree Hydrologic Unit. The aquifer is recharged naturally by infiltration from direct precipitation and intermittent streams. The aquifer is also recharged artificially through recharge basins, which were constructed between 1995 and 2006. The water supply for this recharge operation is provided by State Water Project water pursuant to a contract entered into between the District and the Mojave Water Agency (MWA), a state of California (State) water contractor.

6. The District is a County Water District. The District, which was created pursuant to the County Water District Law (Wat. Code, § 30000 et seq.), provides domestic water services to Yucca Valley. The District's Board of Directors also serves as the Watermaster of the Warren Valley Groundwater Basin pursuant to a court-ordered judgment.[1] To provide these domestic water services, the District obtains water supplies from approximately 15 groundwater wells that have been installed in the Warren Valley Groundwater Basin. The District is seeking approval from the Local Agency Formation Commission, San Bernardino County (LAFCO), to provide sewerage services in addition to its statutorily authorized domestic water services. LAFCO approval is expected by August 2008. The proposed sewer service area for which the District is seeking LAFCO approval is contiguous with the District's water service area, as shown in Attachment "B".

7. Pursuant to various statutory authorities, including but not limited to, the California Emergency Services Act (Gov. Code § 8550 et seq.), and emergency powers provided to cities, counties and other agencies pursuant to Article 2, Chapter 1, Part 1, Division 2, Title 5 of the Government Code (commencing with Section 53019), Yucca Valley, as a political subdivision of the State, may take such actions as are necessary to protect the health and safety and preserve the lives and property of the people of the State within and beyond its territorial limits. Such necessary actions may arise as a result of the improper installation, operation, and/or maintenance of septic tank treatment and subsurface disposal systems that cause, or threaten to cause, harm to persons or property, or both.

8. Pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) (the Act), the State Water Resources Control Board (State Water Board) and each of the nine Regional Water Quality Control Boards (Regional Water Boards) are the principal state agencies charged with protecting the quality of the waters of the state. Such waters are broadly defined, and include surface and ground waters. (Water. Code, § 13050, subd. (e).) In furtherance of this legislative mandate, the Regional Water Boards are required to formulate and adopt water quality control plans (Basin Plans) for all waters within their respective jurisdictional regions. (Water. Code, § 13240.) Regional Water

[1] *Hi-Desert Water District v. Yucca Water Company, Ltd.* (Super. Ct. San Bernardino County, 1992, No. 172103).

Boards are also required to establish such water quality objectives in their Basin Plans as to ensure the reasonable protection of beneficial uses and the prevention of nuisance. (Water. Code, § 13241.) The beneficial uses designated for the Joshua Tree Hydrologic Unit, which underlies Yucca Valley among other communities, include municipal (MUN) and industrial (IND) uses.

9. For purposes of this MOA, septic tank treatment and subsurface disposal systems are defined as follows:

   a. Existing Systems: Septic tank treatment and subsurface disposal systems (i.e., leachfield(s) and/or seepage pit(s)) in Yucca Valley that are in operation prior to the effective date of this MOA. Existing Systems are further defined as being either unregulated (i.e., not subject to a Regional Water Board order) or regulated (i.e., governed by a Regional Water Board order).

   b. New Systems: Septic tank treatment and subsurface disposal systems (i.e., leachfield(s) and/or seepage pit(s)) that are proposed to be constructed in Yucca Valley prior to the effective date of this MOA but that are not in operation by that date, or that are proposed to be constructed on or after that date.

10. The Parties recognize that an interim strategy is necessary to address the water quality impacts of Existing Systems and potential water quality impacts from New Systems until such time as the municipal WRP is built and sewer service is made available.

11. Until a comprehensive policy is developed to deal with the water quality problems associated with the septic tank/subsurface disposal system in Yucca Valley and vicinity, the Regional Water Board believes that it is in the best interest of the people of the State for Yucca Valley to regulate certain smaller New Systems, as specified in this MOA. To the extent that County design approval of such New Systems is required, the Regional Water Board acknowledges that Yucca Valley's authority to regulate is subject to those existing County requirements.

12. Yucca Valley, as with many communities in southern California, has experienced population growth over the past decade. Coupled with this growth has been an increase in the volume of wastewater generated by its residents and commercial establishments. Because Yucca Valley, like many other towns and communities in the high desert, relies on septic tank and subsurface disposal systems to dispose of its municipal, domestic, commercial, and industrial wastes, the population increase has resulted in a greater loading on these septic tank and subsurface disposal systems and greater discharges of waste from these systems. As of the effective date of this MOA, the District estimates that over 8,500 residential and commercial customers in Yucca Valley utilize septic tank and subsurface disposal systems to dispose of their wastewater.

13. A United States Geological Survey (USGS) report described the results of its study conducted in 2003 (Water Resources Investigations Report 03-4009) on groundwater quality in Yucca Valley. The USGS concluded in the report that District wells have been adversely impacted by nitrates from septic tank treatment and subsurface disposal systems.

14. Based on this USGS report and on-going water quality information reported by the District concerning the water quality of its groundwater water supply wells, the Regional Water Board has concluded that the septic tank treatment and subsurface disposal systems in Yucca Valley have caused actual and threatened impacts to areal groundwater supplies in Yucca Valley and vicinity. To address these water quality impacts, Regional Water Board staff is preparing an amendment to the Basin Plan for the Colorado River Basin Region. In connection with this proposed amendment, Regional Water Board staff published Public Notice No. 7-07-53 on November 15, 2007, to invite the public to attend a "scoping meeting" to discuss the scope of the environmental review to be conducted. At the scoping meeting, which was conducted on December 18, 2007, pursuant to the requirements of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), Regional Water Board staff received oral comments from attendees regarding the scope of environmental review that should be conducted for the proposed Basin Plan Amendment. Regional Water Board staff responded to comments during the scoping meeting, and provided a summary of comments to attendees.

15. Because Yucca Valley and the District recognize that septic tank treatment and subsurface disposal systems in Yucca Valley pose an on-going threat to water quality, they agreed to coordinate efforts to address that threat in a cost-effective, timely, and comprehensive manner by constructing the municipal WRP in several phases. The design of the municipal WRP includes a wastewater reclamation treatment train, which will help replenish the underlying Warren Valley Groundwater Basin.

16. In a joint meeting held on June 13, 2007, the Yucca Valley Town Council and the District's Board of Directors formally recognized their coordination objectives by affirmatively voting to make building the municipal WRP their highest priority. They also voted to have the District be lead agency for the municipal WRP, including acting as lead agency for conducting the environmental review required by CEQA.

17. As of the effective date of this MOA, the District, as lead agency under CEQA, conducted an Initial Study for the municipal WRP. Administrative review of this CEQA document is expected to be completed by June 2008. Following administrative review, the District proposes to issue by September 2008 for public review and comment a Notice of Determination of its intent to adopt a Mitigated Negative Declaration for the WRP. At the same time, the U.S. Bureau of Reclamation (USBOR) is conducting an environmental review, since USBOR

will be furnishing construction funding. That environmental review is being conducted pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.). The USBOR expects to complete its environmental review by October 2008 and issue a Finding of No Significant Impact (FONSI) for the WRP. The District will be coordinating with the USBOR by issuing a Joint CEQA/NEPA document in satisfaction of the District's CEQA obligations.

18. The District also reported that the engineering firm it retained to design the municipal WRP, Montgomery Watson Harza, expects to complete the conceptual design by June 2008. Following bid solicitation and award for construction, the municipal WRP will be constructed in several phases with the first phase serving the main business corridor along State Highway 62.

19. The Parties recognize that design and construction of the municipal WRP will be costly, and that without adequate funding, the WRP is unlikely to materialize. Accordingly, Yucca Valley and the District need financial assistance to defray the capital costs of the WRP. These costs are proposed to be funded through a combination of state and federal loan and grant monies as well as through residential and commercial customer charges assessed those customers served by the WRP.

20. Potential funding sources for the municipal WRP include: (a) Proposition 84, which funds projects including safe drinking water, water quality, and water supply; (b) the State Revolving Fund Loan Program; (c) the U.S. Bureau of Reclamation; and (d) the U.S. Environmental Protection Agency.

21. The District has been coordinating with MWA and other key stakeholders near Yucca Valley, including Joshua Basin Water District, to integrate the municipal WRP into MWA's Integrated Regional Water Management Plan (IRWMP) in order to improve their ability to successfully compete for financial assistance from the State Water Board, the California Department of Water Resources (DWR), and the U.S. Bureau of Reclamation.

22. In recognition of the efforts of Yucca Valley and the District to proactively address these actual and threatened impacts to groundwater caused by septic tank treatment and subsurface disposal systems in Yucca Valley, the Regional Water Board adopted Resolution No. R7-2007-0074, dated September 19, 2007 (Resolution), to assist Yucca Valley and the District in their efforts to address this on-going impact to groundwater. In pertinent part, the Resolution directs the Regional Water Board's Executive Officer to work with Yucca Valley and the District to develop a draft memorandum of agreement to address the impacts from existing and new septic tank treatment and subsurface disposal systems while the municipal WRP is being designed and constructed. The Resolution then directs the Executive Officer to present the draft MOA to the Regional Water Board at the earliest practicable time for its consideration of adoption at a

regularly scheduled public meeting. Accordingly, this draft MOA has been prepared to implement the Resolution.

23. The Parties acknowledge and agree that until the municipal WRP is on-line and the Basin Plan amendment has been adopted by the Regional Water Board, an interim strategy is needed to address proposed discharges of waste from new residential and commercial construction projects, including discharges from proposed new septic treatment and subsurface disposal systems and package wastewater treatment plants. This MOA memorializes that interim strategy.

NOW, THEREFORE, it is hereby agreed by and among Yucca Valley, the District, and the Regional Water Board to implement the following interim strategy to address the actual and threatened impacts to groundwater caused by Existing Systems and New Systems in Yucca Valley and surrounding areas:

1. New Systems:

a. Yucca Valley's regulatory authority:

Yucca Valley shall have regulatory authority only for those New Systems that meet the following criteria:

(1) The New System serves 10 or fewer dwelling units or serves commercial development that is expected to generate 2,500 gallons per day or less of wastewater.

(2) The New System is designed, constructed, and maintained in accordance with U.S. Environmental Protection Agency (USEPA) and the Act's[2] criteria for septic tank disposal systems, and Yucca Valley is able to provide satisfactory assurance to the Regional Water Board that such systems will be designed, constructed, and maintained in accordance with these criteria. These criteria include, but are not limited to, system location, sizing, setbacks, separation from groundwater, and replacement disposal area as site-specific circumstances warrant.

(3) The New System has been approved by Yucca Valley in compliance with the applicable provisions of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).

---

[2] The USEPA criteria can be found at the following USEPA website link for septic (onsite) systems: http://cfpub.epa.gov/owm/septic/index.cfm. The Act's criteria can be found in Article 5 of Chapter 4 of Division 7 of the Water Code, commencing with Section 13280, which addresses individual disposal systems. The website link to the Act is: http://www.waterboards.ca.gov/water_laws/docs/portercologne.pdf.

b. Duties of Yucca Valley:

(1) The regulatory duties of Yucca Valley include, but are not limited to, ensuring that New Systems subject to its regulatory authority granted herein meet the design, construction, operation, and maintenance criteria prescribed by the USEPA and the Act.

(2) Pursuant to Section 13282 of the Act, Yucca Valley shall provide to the Regional Water Board by October 15, 2008 a report describing the measures (e.g., ordinance, staffing, and system permitting changes/additions) that Yucca Valley has implemented to ensure that the systems are appropriately designed, located, sized, spaced, constructed, and maintained. The report shall be subject to the Regional Water Board Executive Officer's approval.

(3) If the Executive Officer approves the report, Yucca Valley shall be allowed to regulate the New Systems specified above, so long as Yucca Valley has also obtained the required County approvals for such systems, if any.

(4) If the Executive Officer rejects the report, or if Regional Water Board staff confirm that such systems are not adequately designed, etc., based on a failure of the system or other documented causes, the Regional Water Board retains the right under the Act to prescribe any necessary Waste Discharge Requirements (WDRs) or to take any other regulatory actions deemed necessary or appropriate to protect the quality of waters of the State. These actions include, but are not limited to, requiring the owner/operator to replace the failing system with a system that meets USEPA and the Act's criteria; and prohibiting the discharge of waste from such proposed New Systems in accordance with any duly adopted Basin Plan amendment that prohibits septic tank treatment and subsurface disposal system discharges.

(5) Yucca Valley shall provide the Regional Water Board with quarterly reports showing the following:

- The number of New Systems Yucca Valley has approved for the preceding quarter of the calendar year.
- For each approved New System:
- The location of the New System (by Assessor's Parcel Number and address).
- The projected wastewater discharged (gallons per day)
- The size of the New System (i.e., septic tank and disposal field dimensions).
- Information regarding whether the approved New System replaced an Existing System (or a component thereof).

- The name and address of the owner(s) and operator(s).

c. Duties of the Regional Water Board:

(1) The Regional Water Board shall regulate all proposed New Systems that are not regulated by Yucca Valley or that do not meet the criteria specified above for regulation by Yucca Valley.

(2) The scope of the Regional Water Board's regulation of such New Systems includes, but is not limited to:

- Requiring the owner and/or operator of the proposed New System to submit a Report of Waste Discharge pursuant to Section 13260 of the Act.
- Prescribing WDRs pursuant to Section 13263 of the Act.
- Waiving WDRs pursuant to Section 13269 of the Act.
- Prohibiting the discharge of waste from such New Systems pursuant to a duly adopted Basin Plan amendment that prohibits this type of discharge.

(3) The Regional Water Board shall send a report to Yucca Valley and the District for those New Systems that it has approved pursuant to WDRs issued or waived.

2. Unregulated Existing Systems:

a. Duties of Yucca Valley and the District:

(1) Yucca Valley, in coordination with the District, shall provide a public education and outreach program.

(2) At a minimum, the public education and outreach program shall include a discussion of water quality threats and impacts caused by discharges of waste from septic tank treatment and subsurface disposal systems, and recommended best management practices for the operation and maintenance of those systems. The program shall also include a description of the proposed municipal WRP and its phasing schedule, as described further below. The program may also include providing the public with educational leaflets and other mailings, conducting public meetings, and utilizing other forms of media, such as television, radio, and newspapers, to disseminate this information to the public. Upon request by Yucca Valley or the District, Regional Water Board staff shall assist Yucca Valley and the District in this task.

(3) Yucca Valley, in coordination with the District, shall provide the Regional Water Board with updates on the public education and outreach program being implemented. The updates may be included in the quarterly reports to be submitted pursuant to Paragraph 1(b)(5), above. The public education and outreach program shall be implemented by October 15, 2008.

b. Duties of the Regional Water Board:

(1) The Regional Water Board shall determine whether it needs to regulate any currently Unregulated Existing Systems. This determination shall include evaluating whether such Unregulated Existing Systems may need to be prescribed WDRs or issued waivers of WDRs.

(2) The Regional Water Board shall send a report to Yucca Valley and the District of any Unregulated Existing Systems for which it has determined that WDRs need to be prescribed and their permit status, and those Unregulated Existing Systems for which it has waived WDRs.

3. Regulated Existing Systems:

a. Duties of Yucca Valley and the District:

(1) The duties of Yucca Valley and the District with respect to Regulated Existing Systems (i.e., those systems that are currently regulated by the Regional Water Board) are limited to their respective legal authorities to take such actions as are necessary to ensure the protection of the public health and safety and to preserve the lives and property of the people of the State.

(2) In the event that Yucca Valley or the District determine that the operation or maintenance of a Regulated Existing System causes, or threatens to cause, harm to persons or property, or both, Yucca Valley or the District, whichever Party has made that determination, shall notify the Regional Water Board of that determination as soon as is practicable by telephonic or electronic means, whichever is the more expedient method of communication at the time.

b. Duties of the Regional Water Board:

(1) The Regional Water Board shall continue to regulate, pursuant to its authority under the Act, all Regulated Existing Systems that have been prescribed WDRs or that are in the process of being prescribed WDRs. These Regulated Existing Systems include, but are not limited to, package wastewater treatment plants designed for residential subdivisions and commercial businesses.

(2) The Regional Water Board shall send a report to Yucca Valley and the District of any Regulated Existing Systems for which WDRs have been prescribed, or that are in the process of being prescribed and their permit status.

4. **WRP Project Phasing Schedule:**

a. The approved Conceptual Design of the municipal WRP shall describe all phases of the WRP.

b. The District, in coordination with Yucca Valley, shall develop a plan for connecting existing and any proposed new residences and businesses to the municipal WRP for the first phase of the WRP (Phase 1), which will address those properties located along State Highway 62 in Yucca Valley.

c. The District, in coordination with Yucca Valley, shall develop a connection schedule for all other phases of the municipal WRP.

d. The connection plan and schedule for Phase 1 and all other phases of the municipal WRP is jointly referred to hereinafter as the Phasing Schedule. The Parties understand that the Phasing Schedule may need to be adjusted from time to time due to a variety of factors, such as CEQA requirements, funding issues, government procedural requirements, and engineering considerations.

e. The District shall provide the Regional Water Board with a copy of the proposed Phasing Schedule by August 2008. The proposed Phasing Schedule shall take into consideration various factors, including, but not limited to: the phasing of the sewage collection system; the relative threat to groundwater quality based on location, density of development, businesses being served, depth to groundwater, and other similar factors; engineering requirements and limitations; economic considerations; practicability of hook-up; business and housing development needs; stub out and set back requirements; legal constraints, if any; and public safety and health needs. Regional Water Board staff shall provide regulatory assistance and expertise as requested with respect to any of these factors.

5. **Solicitation of Public Comments for Phasing Schedule and Other Project Elements:** The District, in coordination with Yucca Valley and with Regional Water Board assistance as requested, shall prepare a public participation and stakeholder outreach program regarding the proposed Phasing Schedule as part of the public education and outreach program described above.

6. **Regional Water Board Educational Outreach Assistance:** In connection with the Regional Water Board's desire to phase out discharges of waste from septic tank treatment and subsurface disposal systems in Yucca Valley through an amendment of the Basin Plan, the Regional Water Board shall assist Yucca Valley and the District in encouraging the residents and businesses of Yucca Valley and surrounding areas to connect to the municipal WRP, to the extent that sewer service becomes available to serve them, by explaining that this is the most practical solution for addressing the areal groundwater impacts caused by these systems.

7. **Regional Water Board Alternatives Analysis:** In accordance with its duties under CEQA, the Regional Water Board shall also evaluate alternatives to requiring residents and businesses to connect to the municipal WRP or to prohibiting the discharge of waste from septic tank treatment and subsurface disposal systems.

8. **System Connection Requirement:** In addition to the Regional Water Board's efforts described in Paragraphs 6 and 7, above, the District, pursuant to its legal powers as an authorized sewer service agency, shall require residents and businesses to connect to the municipal WRP in accordance with the Notice of Availability of Sewer Service, which is issued to those individuals and businesses once sewer service becomes available to serve them.

9. **Environmental Review Compliance:** As described in Recital 17, above, the District, as Lead Agency under CEQA, shall satisfy its CEQA obligations by coordinating with the USBOR to issue a Joint CEQA/NEPA document.

10. **Separate and Distinct Duties:** All activities performed under this agreement shall be separate and distinct from those activities already identified and performed by Yucca Valley, the District, and the Regional Water Board, respectively, pursuant to any existing obligations and duties they have under the law.

11. **Amendments:** This MOA may be amended at any time for any reason by the unanimous written consent of the Parties to this agreement.

12. **Periodic Review:** This MOA shall be reviewed periodically by all Parties to determine its effectiveness in achieving its purpose—to address the groundwater impacts associated with septic tank treatment and subsurface disposal systems until such time as the municipal WRP is constructed and on-line. Upon completion of this periodic review, the MOA may be renewed, revised, or terminated upon unanimous written consent of the Parties.

13. **Counterparts:** This MOA may be executed in counterparts, which shall be effective as if the original document was executed by all Parties.

14. **No Abridgment of Existing Authorities:** Nothing in this MOA is intended to abridge, supercede, limit, or abrogate the respective powers, authorities, duties, or legal obligations of the Parties specified herein. To the extent that any provision in this MOA is determined to have such an effect, that provision shall be null and void. With respect to the Regional Water Board, the Regional Water Board retains all powers provided it pursuant to the Porter-Cologne Water Quality Control Act (Water. Code, § 13000 et seq.).

15. **Effective Date:** By their signatures below, the Parties acknowledge that the MOA does not become effective until: (1) the MOA has been presented to the Parties' respective Boards of Directors or similar governing bodies for their consent and approval; (2) such governing bodies have agreed, through their consent and approval of the MOA, to be bound by the terms of the MOA to the extent not inconsistent with their existing legal authorities and obligations; (3) such consent and approval has been properly obtained in accordance with any legally applicable public meeting and other procedural requirements to which these governing bodies are subject; and (4) the last signatory to this MOA has executed the MOA.

16. **Sunset Provision:** This MOA shall remain in effect until June 30, 2018, unless terminated prior to that time by any Party, after consultation with the other Parties and a 30-day advance written notice has been provided to the other Parties to terminate the MOA.

Date: 6/25/08

ROBERT PERDUE, Executive Officer
Regional Water Quality Control Board,
Colorado River Basin Region

Date: 10/23/2008

ANDREW J. TAKATA, Town Manager
Town of Yucca Valley

Date: 10/23/2008

ROGER MAYES, President
Hi-Desert Water District