



**SPECIAL NOTICE REGARDING
CORONAVIRUS DISEASE 2019 (COVID-19)
AND PARTICIPATION IN PUBLIC MEETINGS**

On March 4, 2020, Governor Newsom declared a State of Emergency resulting from the threat of COVID-19. Governor Newsom issued Executive Order N-25-20 (3-12-20) and Executive Order N-29-20 (3-17-20) which temporarily suspend portions of the Brown Act relative to conducting public meetings. Subsequent thereto, Governor Newsom issued Executive Order N-33-20 (3-19-20) ordering all individuals to stay at home or at their place of residence. Accordingly, it has been determined that all Board and Workshop meetings of the San Bernardino Valley Municipal Water District will be held pursuant to the Brown Act and will be conducted via teleconference. There will be no public access to the meeting venue.

**SPECIAL MEETING OF THE BOARD OF DIRECTORS
WEDNESDAY, AUGUST 5, 2020, 6:00 P.M.**

PUBLIC PARTICIPATION

Public participation is welcome and encouraged. You may participate in the August 5, 2020, meeting of the San Bernardino Valley Municipal Water District online and by telephone as follows:

**Dial-in Info: 888 788 0099 US Toll-free
Meeting ID: 883 5455 6241**

<https://us02web.zoom.us/j/88354556241>

If you are unable to participate online or by telephone, you may also submit your comments and questions in writing for the District's consideration by sending them to comments@sbumwd.com with the subject line "Public Comment Item #" (insert the agenda item number relevant to your comment) or "Public Comment Non-Agenda Item." Submit your written comments by 6:00 p.m. on Tuesday, August 4, 2020. All public comments will be provided to the President and may be read into the record or compiled as part of the record.

IMPORTANT PRIVACY NOTE: Participation in the meeting via the Zoom app is strongly encouraged. Please keep in mind: (1) This is a public meeting; as such, the virtual meeting information is published on the World Wide Web and available to everyone; (2) Should you participate remotely via telephone, your telephone number will be your "identifier" during the meeting and available to all meeting participants. Participation in the meeting via the Zoom app is strongly encouraged; there is no way to protect your privacy if you elect to call in to the meeting. The Zoom app is free to download.



SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT
380 E. Vanderbilt Way, San Bernardino, CA 92408

SPECIAL MEETING OF THE BOARD OF DIRECTORS

AGENDA

6:00 p.m. Wednesday, August 5, 2020

CALL TO ORDER/PLEDGE OF ALLEGIANCE/ROLL CALL

1. PUBLIC COMMENT

Any person may address the Board on matters within its jurisdiction.

2. DISCUSSION AND POSSIBLE ACTION ITEM(S)

- 2.1 Consider the Cooperative Agreement, Terminating the Joint Exercise of Powers Agreement, Dissolving the San Bernardino Regional Water Resources Authority, and Providing for the Long-Term Maintenance of Bryce E. Hanes Park, with the City of San Bernardino (Page 2)

3. ADJOURNMENT

PLEASE NOTE:

Materials related to an item on this Agenda submitted to the Board after distribution of the agenda packet are available for public inspection in the District's office located at 380 E. Vanderbilt Way, San Bernardino, during normal business hours. Also, such documents are available on the District's website at www.sbvmd.com subject to staff's ability to post the documents before the meeting. The District recognizes its obligation to provide equal access to those individuals with disabilities. Please contact Lillian Hernandez at (909) 387-9214 two working days prior to the meeting with any special requests for reasonable accommodation.



DATE: August 5, 2020

TO: Board of Directors' Special Meeting

FROM: Heather Dyer, CEO/General Manager
Wen Huang, Chief Engineer/Deputy General Manager

SUBJECT: Consider the Cooperative Agreement, Terminating the Joint Exercise of Powers Agreement, Dissolving the San Bernardino Regional Water Resources Authority, and Providing for the Long-Term Maintenance of Bryce E. Hanes Park, with the City of San Bernardino

Over the last few months, District Staff has been working collaboratively with Staff of the City of San Bernardino (City) on an arrangement, subject to approval by the State, for the City to take over the ownership and assume the operations and maintenance responsibility of the Bryce E. Hanes Park. Through the discussions, a Cooperative Agreement has been drafted by District Counsel and the City Attorney's Office to outline detailed arrangements for consideration by the Board of Directors and the City Council, respectively. Among other things, this agreement includes that the City agrees to take over the responsibility for operations and maintenance of the Bryce E. Hanes Park until June 30, 2041 and the District provides a one-time payment of \$2 million of financial assistance in order to provide a solid financial foundation for many years of required O&M activities at the Park, thus sustaining an open-space asset that is notably appreciated by residents of the City, our mutual constituents and ratepayers. The District also commits up to \$250k for water conservation and education elements for the Seccombe Lake Park Project, should the City successfully secure State grant funding for the Project. Additionally, it is also proposed that the San Bernardino Regional Water Resources Authority (Authority), which consists of Valley District and the City of San Bernardino and was created to administer the grant and operations of the Park, be dissolved once the Authority obligations and responsibility have been properly addressed.

Background:

Starting in early 2011, Valley District partnered with the City of San Bernardino in the development of an urban park on District owned land near 9th and E Streets in San Bernardino. Based on the

District's willingness to sell some of its vacant property for park use, the City was awarded a \$5 million grant to design and build the park in March 2012. However, as a result of the City's fiscal challenges at that time, the State was unable to allow the City of San Bernardino to directly accept the grant funding needed to build the park. In light of this situation, the Mayor of San Bernardino at the time, Pat Morris, requested that Valley District partner with the City on the project and assume the responsibility to complete the design and construction of the park using the \$5 million grant. At the January 15, 2013 Board meeting, the Valley District Board approved the District's partnership in the project and authorized District staff to assume the responsibility for the design and construction and the ongoing operation, maintenance, and repair activities of the proposed "E" Street Park known now as the Bryce E. Hanes Park.

Staff was advised by the State Department of Parks and Recreation (Parks Department) that in order to dispense the \$5 million grant for the Park, the grant agreement would need to be transferred from the City to an eligible entity, such as a Joint Powers Authority (JPA). On April 16, 2013, an Amended and Restated Joint Exercise of Powers Agreement, creating an agency to be known as the San Bernardino Regional Water Resources Authority (Authority), was approved by the Board, with the Authority being comprised of both the District and the City. On June 30, 2013 the Parks Department granted the transfer of the grant award from the City of San Bernardino to the Authority. Through the Authority, Valley District assumed the responsibility for the design and construction for the Park which was completed and a grand opening held on May 13, 2017. Valley District has maintained its operation since 2017.

As a wholesale water agency which entered into this project as a partner in order to help our neighbor, the City of San Bernardino, overcome constraints related to the grant award, Valley District never intended to own and operate the Park long-term. The Amended Joint Exercise of Powers Agreement reflects that intention by contemplating the City's involvement in administration, management and maintenance, and ultimate takeover, of the Park as stated in Section 5 of the Agreement:

"It is expressly agreed that the City will use reasonable efforts to assist with the ongoing administration, management, and maintenance of the municipal park developed on the Property. At such time as the City is reasonable able to allocate the funds necessary to do so, the City will fully assume the responsibility for the ongoing administration, management, and maintenance of the municipal park developed on the property, or, if feasible, the City will create a maintenance district for such purposes."

Since the completion of the Park, District staff has been working with the City staff to discuss transferring the administration, management, and maintenance of the park from the Authority/District to the City. Based on the discussions with the City Management Staff and given potential financial impacts of this transfer of responsibility to the City, it was requested that the Board of Directors consider providing financial assistance to the City in order to ensure the long-term viability of the park through continued operations oversight and long-term maintenance.

Through the discussions, a Cooperative Agreement has been drafted by District Counsel and the City Attorney's Office to outline detailed arrangements for consideration by the Board of Directors and the City Council, respectively. Among other things, this agreement includes that the City agrees to take over the responsibility for operations and maintenance of the Bryce E. Hanes Park until June 30, 2041 and the District provides a one-time payment of \$2 million for financial assistance and a commitment of up to \$250k for water conservation and education elements for the Seccombe Lake Park Project, should the City successfully secure State grant funding for the Project. Additionally, it is also proposed that the Authority be dissolved once the Authority obligations and responsibility have been properly addressed.

More specifically, in consultation with the State Parks Department, Office of Grants and Local Services, in order to effectuate the proposed arrangements, the following necessary steps are required:

1. The Valley District Board of Directors and City Council consider and approve this Cooperative Agreement, respectively.
2. The City will work with California Department of Parks, Office of Grants and Local Services to obtain consent to transfer the assignment of the Authority to the City.
3. The Authority board will meet (*tentatively scheduled for August 10*) to approve:
 - a. Grant deed to the City;
 - b. Assignment of grant agreement to the City; and
 - c. Undertake such other actions as may be necessary to dissolve the Authority.
4. Escrow activities:
 - a. Valley District will approve grant of easement and submit funds of \$2 million to escrow;
 - b. The City will accept grant of easement, grant deed, grant assignment agreement, and obtain State execution of the grant assignment agreement.
5. When escrow closes, the property and easement will be granted to the City and the City will assume sole responsibility for the maintenance and operation of Bryce E. Hanes Park.
6. Valley District files notice of dissolution of Authority with State.

7. Valley District will commit up to \$250k toward Seccombe Lake Park revitalization Project for water conservation elements such as water efficient irrigation systems, drought-tolerant landscaping, and water conservation educational components.

Fiscal Impact:

The proposed \$2 million one-time payment was not included in the FY20-21 General Fund Budget and will come from the General Fund Reserves should the Board approve this agreement. Additionally, District's commitment of up to \$250k for water conservation elements in the Seccombe Lake Project (should the City receive the grant) is included in the FY20-21 General Fund Budget under Line Item 6640 - Water Conservation and Education.

Staff Recommendation:

Authorize the General Manager to execute the Cooperative Agreement - Terminating the Joint Exercise of Powers Agreement, Dissolving the San Bernardino Regional Water Resources Authority, and Providing for the Long-Term Maintenance of Bryce E. Hanes Park, with the City of San Bernardino. The total financial commitment for executing this agreement is up to \$2.25 million.

Attachment:

Cooperative Agreement - Terminating the Joint Exercise of Powers Agreement, Dissolving the San Bernardino Regional Water Resources Authority, and Providing for the Long-Term Maintenance of Bryce Hanes Park

**COOPERATIVE AGREEMENT TERMINATING THE JOINT EXERCISE OF
POWERS AGREEMENT, DISSOLVING THE SAN BERNARDINO REGIONAL
WATER RESOURCES AUTHORITY, AND PROVIDING FOR THE LONG-TERM
MAINTENANCE OF BRYCE HANES PARK**

This **COOPERATIVE AGREEMENT** (“*Cooperative Agreement*”) by and between the **CITY OF SAN BERNARDINO**, a charter city and municipal corporation (“*City*”), and the **SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**, a municipal water district and public agency (“*District*”), is made and entered into as of August __, 2020 (“*Effective Date*”). City and District are sometimes individually referred to as “*Party*” and collectively as “*Parties*.”

RECITALS

A. City, District, and the Inland Valley Development Agency (“*IVDA*”) entered into that certain Joint Exercise of Powers Agreement, dated August 26, 1998 (“*Original JPA Agreement*”), creating a joint powers authority to be known as the San Bernardino Regional Water Resources Authority (“*Authority*”).

B. The Original JPA Agreement was amended and restated, and IVDA was removed as a member of the Authority, by that certain Amended and Restated Joint Exercise of Powers Agreement, dated April 16, 2013 (“*Restated JPA Agreement*”), and further amended by that certain First Amendment to Amended and Restated Joint Exercise of Powers Agreement, dated August 5, 2013 (“*First Amendment*” and, together with the Original JPA Agreement and the Restated JPA Agreement, “*Joint Powers Agreement*”).

C. The intent of the Joint Powers Agreement, as amended, was to form an eligible entity so that City, with District’s involvement, could accept and use a grant of \$5 million awarded under the Proposition 84 Statewide Park Program for the construction of a municipal park at the northwest corner of Ninth Street and “E” Street in the City of San Bernardino.

D. Under the Proposition 84 Statewide Park Program, City submitted an application to the State of California, Department of Parks and Recreation (“*State*”), requesting a grant of Five Million Dollars (\$5,000,000.00) to be used in connection with the construction of a municipal park at the northwest corner of Ninth Street and “E” Street in the City of San Bernardino.

E. City received a conditional approval letter dated June 20, 2013, from the State, wherein the State agreed to transfer a grant of Five Million Dollars (\$5,000,000.00) for construction of a park in the City of San Bernardino from City to the Authority, subject to certain grant conditions.

F. Bryce E. Hanes Park (“*Park*”) was constructed and administered by the Authority using the Proposition 84 Statewide Park Program grant money, pursuant to that certain Contract No. C6905064, entered into on or about February 23, 2015, by and between the State and the Authority (as amended, “*State Contract*”), and District has operated and maintained the Park since 2017.

G. The Park is located on that certain real property commonly known as 900 North E Street, City of San Bernardino, County of San Bernardino, State of California, and more particularly identified as Assessor's Parcel No. 0140-143-54 ("**Park Property**"), plus an approximately 8'-wide strip of property adjacent to the westerly edge of the Park Property located in the former right-of-way vacated per Document No. 2015-0433869 of Official Records of San Bernardino County in the City of San Bernardino, County of San Bernardino, State of California, and owned by District ("**Easement Area**").

H. The Joint Powers Agreement reflects the intention of the Parties by contemplating City's involvement in administration, management, and maintenance, and ultimate takeover of the Park.

I. Over the last few months, District and City have negotiated several proposals, subject to approval by the State, for a one-time payment of certain amounts to assist City with operations and maintenance costs, contingent upon City taking ownership and control of the Park and assuming the responsibility for the operation and maintenance of the Park in accordance with the State Contract.

J. After negotiations, District agreed to disburse a one-time payment of \$2 million for financial assistance to provide for ongoing operation and maintenance of the Park, subject to City satisfying certain conditions.

K. District has also agreed to commit up to \$250,000 towards water conservation and education elements for the Seccombe Lake Park Project ("**Seccombe Lake Project**"), should City successfully secure State grant funding for the Seccombe Lake Project.

L. Upon City's taking ownership and control of the Park and assuming the Authority's grant obligations to the State under the State Contract as a result of such ownership, the Authority will have fulfilled its purposes.

M. The Parties now desire to provide for transfer of ownership of the Park Property from the Authority to City, City's assumption of the Authority's grant obligations under the State Contract (subject to State approval), District's disbursement to City of a one-time payment for ongoing operation and maintenance of the Park Property, District's commitment to the Seccombe Lake Project should it proceed, and the ultimate dissolution of the Authority.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants hereinafter contained and for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

TERMS OF AGREEMENT

1. Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above. Said Recitals are incorporated into this Cooperative Agreement by this reference.

2. Escrow. Within two (2) business days after the Effective Date ("**Opening of Escrow**"), the Parties shall establish an escrow account for the purpose of consummating the

transactions contemplated by this Cooperative Agreement (“**Escrow**”) at First American Title Insurance Company, Attn: Kelly Simoneau, Senior Commercial Escrow Officer, 3281 East Guasti Road, Suite 440, Ontario, California 91761, (909) 510 6200, ksimoneau@firstam.com (“**Escrow Holder**”). This Cooperative Agreement shall constitute instructions to Escrow Holder. The Parties will execute additional instructions, documents, and forms provided by Escrow Holder that are reasonably necessary to close the Escrow, as directed by Escrow Holder, within three (3) days after receipt of same.

a. *Close of Escrow.* The closing of the transactions contemplated in this Cooperative Agreement (“**Closing**”) shall be held in escrow through Escrow Holder within forty-five (45) days after the Opening of Escrow (“**Closing Date**”); provided, however, the Parties may extend the Closing Date by mutual agreement in writing, which consent may be provided by the City Manager on behalf of City and by the General Manager on behalf of District. Notwithstanding anything contained herein to the contrary, in the event that the Closing has not occurred on or before the Closing Date as amended by the Parties, this Cooperative Agreement shall automatically terminate in all respects, in which case neither Party shall have any further rights or obligations under this Cooperative Agreement and each Party shall bear its own costs incurred concerning this Cooperative Agreement.

3. Authority Actions. Within ten (10) business days following the Effective Date, the Parties shall cause the Authority to hold a special meeting at which the Authority’s Commission shall consider a resolution (“**Resolution**”) for the following actions:

a. Transfer of the Park Property to City at no cost to City through a grant deed (“**Deed**”) in substantially the form attached as **Exhibit “A”** to this Cooperative Agreement;

b. Assignment to City of all of the Authority’s grant obligations with respect to the State under the State Contract, subject to the written consent of the State in compliance with Section II.M of the State Contract. Said assignment shall include approval of any necessary adjustment to the deed restriction on the Park Property necessitated by this assignment and the release of Authority from future obligations under the State Contract; and

c. A finding that all necessary preconditions to the termination of the Authority will be satisfied upon completion of the transfer and assignment described above, including the resolution of all debts, the assignment of all agreements and liabilities, and the distribution of all assets.

While it is recognized that the representatives of the Parties are free to vote as they choose when acting as Members of the Commission, affirmative action on the foregoing items shall be a condition precedent to the obligations of the Parties, including the close of escrow contemplated herein, under Sections 4 and 5 of this Cooperative Agreement.

4. District’s Commitments.

a. *District Escrow Deposits.* No later than the business day immediately preceding the Closing, District shall deliver to Escrow Holder the following:

i. The sum of Two Million Dollars (\$2,000,000) as a one-time payment for financial assistance to City to provide for ongoing operation and maintenance of the Park (“*Financial Assistance Payment*”);

ii. A duly executed and notarized Grant of Easement (“*Grant of Easement*”) granting to City, at no cost to City, an easement over the Easement Area in substantially the form attached as *Exhibit “B”* to this Cooperative Agreement;

iii. An executed closing statement reasonably acceptable to District;
and

iv. Such additional documents as shall be reasonably required by Escrow Holder to consummate the transaction contemplated by this Cooperative Agreement.

b. *Seccombe Lake Project Commitment.* Upon the Closing of Escrow as contemplated in this Cooperative Agreement, District shall provide a financial commitment of up to an additional Two Hundred Fifty Thousand Dollars (\$250,000), subject to City’s successful award of the State grant funding for the Seccombe Lake Project. The financial assistance would be provided in the form of reimbursements for activities completed by City such as water use efficient irrigation system retrofit, drought-tolerant gardens and landscaping, and water conservation educational elements completed under the proposed State grant for the Seccombe Lake Project. District’s financial commitment can be included in City’s Seccombe Lake Project grant application.

c. *District Indemnification.* Upon the Closing of Escrow as contemplated in this Cooperative Agreement, to the fullest extent permitted by law, District shall indemnify, defend, and hold harmless City and its agents, officers, officials, and employees from and against any and all claims, demands, actions, causes of action, suits, proceedings, costs, expenses, liabilities, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity (collectively, “*Claims*”) that arise out of, pertain to, or are incident to District’s operation of the Park and Park Property prior to and including the Closing of Escrow.

5. City Commitments.

a. *City Escrow Deposits.* No later than the business day immediately preceding the Closing, City shall deliver to Escrow Holder the following:

i. A duly adopted Resolution of the Authority approving all of the actions described in Section 3 of this Cooperative Agreement;

ii. A duly executed and notarized Deed from the Authority, including a duly executed certificate of acceptance from City in substantially the form attached as Exhibit “A” to this Cooperative Agreement;

iii. A duly executed and notarized Grant of Easement, including a duly executed certificate of acceptance from City in substantially the form attached as Exhibit “B” to this Cooperative Agreement;

iv. A duly executed Assignment Agreement (“*Assignment Agreement*”) by and among City, the Authority, and the State assigning to and assuming by City, as successor to the Authority, all of the Authority’s grant obligations with respect to the State imposed under the State Contract and releasing the Authority from all future obligations under the State Contract, with the written approval and consent of the State in compliance with Sections II.I.6 and II.M of the State Contract;

v. An executed preliminary change of ownership report in the form prescribed by the San Bernardino County Recorder;

vi. An executed closing statement reasonably acceptable to City; and

vii. Such additional documents as shall be reasonably required by Escrow Holder to consummate the transaction contemplated by this Cooperative Agreement.

b. Upon the Closing of Escrow as contemplated in this Cooperative Agreement, City shall be responsible for, and District and the Authority shall have no further obligation with respect to, the operation and maintenance of the Park pursuant to the State Contract.

c. Upon the Closing of Escrow as contemplated in this Cooperative Agreement, to the fullest extent permitted by law, City shall indemnify, defend, and hold harmless District and its agents, officers, officials, and employees from and against any and all Claims that arise out of, pertain to, or are incident to the operation of the Park and Park Property from and after the Closing of Escrow.

6. Conditions Precedent to Closing of Escrow.

a. *Joint Conditions Precedent to Obligation of the Parties.* The Authority’s adoption of a Resolution approving all of the actions described in Section 3 shall be a concurrent condition precedent for City and District, respectively, to consummate the transactions under this Cooperative Agreement.

b. *Conditions Precedent to Obligation of City.* The obligation of City to consummate the transactions under this Cooperative Agreement shall be subject to the fulfillment on or before the Closing Date of all of the following conditions, any or all of which may be waived by City in its sole discretion:

i. District shall have delivered to Escrow Holder all of the items required to be delivered to Escrow Holder pursuant to the terms of this Cooperative Agreement, including without limitation those provided for in Section 4.a; and

ii. District shall have performed and observed in all material respects all covenants and agreements of this Cooperative Agreement to be performed and observed by District as of the Closing Date.

c. *Conditions Precedent to Obligation of District.* The obligation of District to consummate the transactions under this Cooperative Agreement shall be subject to the

fulfillment on or before the Closing Date of all of the following conditions, any or all of which may be waived by District in its sole discretion:

i. City shall have delivered to Escrow Holder all of the items required to be delivered to Escrow Holder pursuant to the terms of this Cooperative Agreement, including without limitation those provided for in Section 5.a; and

ii. City shall have performed and observed in all material respects all covenants and agreements of this Cooperative Agreement to be performed and observed by City as of the Closing Date.

7. Credits and Prorations.

a. All expenses of the Park Property shall be apportioned between District and City on the basis of a 30-day month as of 12:01 a.m. (Pacific Time) on the Closing Date as if City were vested with title to the Property during the entire day upon which Closing occurs.

b. The provisions of this Section 7 shall survive the Closing.

8. Transaction Taxes and Closing Costs.

a. District and City shall execute such returns, questionnaires, and other documents as shall be required with regard to all applicable real property transaction taxes imposed by applicable federal, state, or local law or ordinance.

b. *District Costs.* District shall pay the following costs and expenses:

i. The fees of any counsel representing District in connection with this transaction, except as otherwise provided in this Cooperative Agreement;

ii. All escrow fees which may be charged by the Escrow Holder incurred in connection with the transactions contemplated in this Cooperative Agreement;

iii. All recording fees incurred in connection with the transfer of the Park Property; and

iv. Any other closing costs, if any, not expressly provided for herein.

c. *City Costs.* City shall pay the following costs and expenses:

i. The fees of any counsel representing City in connection with this transaction, except as otherwise provided in this Cooperative Agreement;

ii. The premium for any policy of title insurance to be issued to City at Closing, provided that City has elected to purchase such coverage, and the fee for all endorsements thereto;

iii. Any documentary transfer taxes or similar taxes that become payable by reason of the transfer of the Park Property; and

d. All costs and expenses incident to this transaction and the Closing that are not specifically described above, shall be paid by the Party incurring the same.

e. The provisions of this Section 8 shall survive the Closing.

9. Termination of Joint Powers Agreement and Dissolution of the Authority. Upon the Closing of Escrow as contemplated in this Cooperative Agreement:

a. The Parties agree that the following preconditions to termination of the Authority have been fulfilled: (i) all revenue bonds and other forms of indebtedness of the Authority have been paid; (ii) the termination of the Joint Powers Agreement will not adversely affect the operation, repair, maintenance, improvement or administration of the Park Property or any other Water Resources Project, as that term is defined in the Joint Powers Agreement; and (iii) the termination of the Joint Powers Agreement is not contrary to the language, spirit, or intent of any contract or grant agreement entered into by the Authority with the United States, the State of California, or any department, administration, or agency of either government;

b. The Parties agree that no Authority assets or surplus monies remain to be distributed or transferred in accordance with Section 12(b) of the Joint Powers Agreement; and

c. The Joint Powers Agreement shall be deemed terminated by the unanimous consent of the Parties pursuant to Section 12(a) of the Joint Powers Agreement and the Authority shall be deemed dissolved. Notice of the termination shall be sent by District to the office of the Secretary of State pursuant to Government Code § 6503.5.

10. Term and Termination. Subject to termination as provided in Section 2.a, this Cooperative Agreement shall remain in effect until both Parties have fulfilled all the terms and conditions herein.

11. Miscellaneous Terms.

a. Amendment. This Cooperative Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing signed by both Parties.

b. Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Cooperative Agreement, the language of this Cooperative Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Except as expressly stated otherwise, any term referencing time, days or period for performance shall be deemed calendar days and not business days. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Cooperative Agreement.

c. Entire Agreement. This Cooperative Agreement constitutes the entire and integrated agreement with respect to the subject matter hereof and supersedes any and all prior and contemporaneous oral or written negotiations, representations or agreements.

d. Notices, Demands and Communications Between the Parties. Any notice to be given or to be served upon either Party hereto in connection with this Cooperative

Agreement must be in writing and shall be deemed to have been given and received: (i) when personally delivered; (ii) two (2) days after it is sent by Federal Express or similar overnight courier, postage prepaid and addressed to the Party for whom it is intended, at that Party's address specified below; (iii) three (3) days after it is sent by certified or registered United States mail, return receipt requested, postage prepaid and addressed to the Party for whom it is intended, at that Party's address specified below; or (iv) as of the date of electronic mail transmission addressed to the Party for whom it is intended, at that Party's electronic mail address specified below subject to written verification of receipt by the receiving party, and provided that an original of such notice is also sent to the intended addressee by means described in clauses (i), (ii), or (iii) within two (2) business days after such transmission. Either Party may change the place for the giving of notice to it at any time by written notice to the other Party as provided herein.

If to City: City of San Bernardino
Attn: City Manager
290 North D Street
San Bernardino, CA 92401
Telephone: (909) 384-5122
E-Mail: ledoux_te@sbcity.org

with a copy to: City of San Bernardino
Attn: City Attorney
290 North D Street
San Bernardino, CA 92401
Telephone: (909) 384-5355
E-Mail: attorney@sbcity.org

If to District: San Bernardino Valley Municipal Water District
Attn: CEO/General Manager
380 East Vanderbilt Way
San Bernardino, CA 92408
Telephone: (909) 387-9200
E-Mail: heatherd@sbumwd.com

with a copy to: Varner & Brandt LLP
Attn: Brendan W. Brandt
3750 University Avenue, Suite 610
Riverside, CA 92501
Telephone: (951) 274-7777
E-Mail: brendan.brandt@varnerbrandt.com

e. Counterparts. This Cooperative Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument. Signatures may be delivered electronically and shall be binding upon the Parties as if they were originals.

f. Laws and Regulations. Each Party shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of this Cooperative Agreement, and shall give all notices required by law. Each Party shall be liable for all violations of such laws and regulations in connection with this Cooperative Agreement. If either Party performs any of its obligations hereunder knowing that its actions are contrary to such laws, rules and regulations and without giving written notice to the other, the violating Party shall be solely responsible for all costs arising therefrom.

g. Approvals. Approvals required by Parties, or any officers, agents or employees thereof, shall not be unreasonably withheld and approval or disapproval shall be given within a reasonable time.

h. Mutual Cooperation; Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Cooperative Agreement and the satisfaction of the conditions of this Cooperative Agreement. Each Party agrees to perform any further acts and to execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Cooperative Agreement.

i. Third Party Beneficiaries. This Cooperative Agreement and the performance of the Parties obligations hereunder are for the sole and exclusive benefit of City and District. No person or entity who or which is not a signatory to this Cooperative Agreement shall be deemed to be benefited or intended to be benefited by any provision hereof, and no such person or entity shall acquire any rights or causes of action against either City or District hereunder as a result of a Party's performance or non-performance of its obligations under this Cooperative Agreement.

j. Relationship of Parties. The Parties agree and intend that City and District are independent contracting entities and do not intend by this Cooperative Agreement to create any partnership, joint venture, or similar business arrangement, relationship or association between them.

k. Governing Law. This Cooperative Agreement shall be governed by the laws of the State of California without regard to conflicts of laws principles. This Cooperative Agreement shall be deemed to have been made in the County of San Bernardino, California, regardless of the order of the signatures of the Parties affixed hereto. Any litigation or other legal proceedings which arise under or in connection with this Cooperative Agreement shall be conducted in a federal or state court located within or for San Bernardino County, California. The Parties consent to the personal jurisdiction and venue in federal or state court located within the County of San Bernardino, California, and hereby waive any defenses or objections thereto including defenses based on the doctrine of forum *non conveniens*.

l. Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Either Parties' consent or approval of any act by the other Party requiring its consent or approval shall not be deemed to waive or render unnecessary its consent to or approval of any subsequent act of the other Party. Any waiver by either Party of any default must be in writing

and shall not be a waiver of any other default concerning the same or any other provision of this Cooperative Agreement.

m. Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Cooperative Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

n. Legal Counsel. Each Party acknowledges that: (i) it has read this Cooperative Agreement; (ii) it has had the opportunity to have this Cooperative Agreement explained to it by legal counsel of its choice; (iii) it is aware of the content and legal effect of this Cooperative Agreement; and (iv) it is not relying on any representations made by the other Party or any of the employees, agents, representatives, or attorneys of the other Party, except as expressly set forth in this Cooperative Agreement.

o. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Cooperative Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Cooperative Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder.

p. Binding Effect. The terms of this Cooperative Agreement shall inure to the benefit of, and shall be binding upon, each of the Parties and their respective successors and assigns.

q. Authorized Representatives. The person or persons executing this Cooperative Agreement on behalf City and District warrant and represent that they have the authority to execute this Cooperative Agreement on behalf of that Party and that they have the authority to bind that Party to the performance of its obligations hereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Cooperative Agreement to be entered into as of the Effective Date set forth above.

CITY OF SAN BERNARDINO

**SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT**

By: _____
Teri Ledoux, City Manager

By: _____
Heather Dyer, General Manager

Date: _____

Date: _____

APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM:

By: _____
Best Best & Krieger LLP, City Attorney

By: _____
Brendan W. Brandt
Varner & Brandt LLP, General Counsel

ATTEST:

ATTEST:

By: _____
Genoveva Rocha, Acting City Clerk

By: _____
Clerk of the Board

EXHIBIT "A"
FORM OF GRANT DEED

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

First American Title Insurance Company
Attn: Kelly Simoneau, Senior Commercial
Escrow Officer
3281 East Guasti Road, Suite 440
Ontario, California 91761

MAIL TAX STATEMENTS TO:

City of San Bernardino
Attn: City Manager
290 North D Street
San Bernardino, California 92401

APN: 0140-143-54

SPACE ABOVE LINE FOR RECORDER'S USE
NO FEE PER GOVERNMENT CODE SECTIONS 6103, 27383 AND
REVENUE AND TAXATION CODE SECTION 11922

GRANT DEED

The undersigned Grantor(s) declare(s): Documentary Transfer Tax \$_____; City Transfer Tax \$_____

computed on the consideration or full value of property conveyed, OR

computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,

unincorporated area; City of San Bernardino

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, **SAN BERNARDINO REGIONAL WATER RESOURCES AUTHORITY**, a California joint powers authority ("**Grantor**"), does hereby **GRANT** to **CITY OF SAN BERNARDINO**, a California charter city and municipal corporation ("**Grantee**"), the following described real property located in the County of San Bernardino, State of California:

See Exhibit "1"

SAID PROPERTY IS CONVEYED SUBJECT TO all liens, encumbrances, easements, covenants, conditions and restrictions of record, and all matters that would be disclosed or apparent by a survey and/or an inspection of the Property.

In consideration of the issuance of the Grant Funds by the STATE OF CALIFORNIA DEPARTMENT OF PARKS AND RECREATION ("**State**"), the undersigned Grantee hereby irrevocably covenants with the State that the conditions of the grant as set forth in the Grant Agreement between the Grantee and the State, the terms of which are incorporated herein by reference, shall at all times on and after the date on which this Deed Restriction is recorded constitute for all purposes covenants, conditions, and restrictions on the use and enjoyment of the Property that are hereby attached to the deed to the Property as fully effective components thereof.

1. **DURATION.** This Deed Restriction shall remain in full force and effect and shall bind Grantee and all its assigns or successors-in-interest until June 30, 2041, or upon mutual written agreement between the Grantee and the State.

2. **SEVERABILITY.** If any provision of these restrictions is held to be invalid, or for any reason becomes unenforceable, no other provision shall be affected or impaired.

IN WITNESS WHEREOF, Grantor has caused its name to be affixed hereto and this instrument to be executed by its duly authorized officer and the provisions of this Grant Deed are hereby approved and accepted by Grantee.

Dated: _____, 2020.

GRANTOR:

**SAN BERNARDINO REGIONAL WATER
RESOURCES AUTHORITY**

[Exhibit purposes only; not for execution]

By: _____

Name: _____

Its: _____

Dated: _____, 2020.

GRANTEE:

CITY OF SAN BERNARDINO

[Exhibit purposes only; not for execution]

By: _____

Teri Ledoux
City Manager

APPROVED AS TO FORM:

[Exhibit purposes only; not for execution]

By: _____

Best Best & Krieger LLP
City Attorney

ATTEST:

[Exhibit purposes only; not for execution]

By: _____

Genoveva Rocha
Acting City Clerk

EXHIBIT "1" TO GRANT DEED

LEGAL DESCRIPTION

[TO BE ADDED BY ESCROW]

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Exhibit purposes only; not for execution]

Notary Public

(Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)

On _____ before me, _____, Notary Public, personally appeared **TERI LEDOUX**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Exhibit purposes only; not for execution]

Notary Public

(Seal)

PUBLIC AGENCY CERTIFICATE OF ACCEPTANCE

(Government Code Section 27281)

This is to certify that the real property conveyed by the SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT (“Grantor”), on the Grant Deed dated *****INSERT DATE*****, 2020 to the CITY OF SAN BERNARDINO, a charter city and municipal corporation (“Grantee”), is hereby accepted by the undersigned officer on behalf of the Grantee, pursuant to the authority conferred by the City Council, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 2020.

GRANTEE:

CITY OF SAN BERNARDINO

[Exhibit purposes only; not for execution]

By: _____

Teri Ledoux
City Manager

EXHIBIT "B"

FORM OF GRANT OF EASEMENT

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

First American Title Insurance Company
Attn: Kelly Simoneau, Senior Commercial
Escrow Officer
3281 East Guasti Road, Suite 440
Ontario, California 91761

APNs: 0140-143-52, 0140-143-55

SPACE ABOVE LINE FOR RECORDER'S USE
NO FEE PER GOVERNMENT CODE SECTIONS 6103, 27383 AND
REVENUE AND TAXATION CODE SECTION 11922

GRANT OF EASEMENT

THIS GRANT OF EASEMENT is made as of _____, 2020, by and between **SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**, a California municipal water district and public agency ("**Grantor**"), and **CITY OF SAN BERNARDINO**, a California charter city and municipal corporation ("**Grantee**"). Grantor and Grantee are sometimes hereinafter referred to individually as "**Party**" and collectively as "**Parties.**"

RECITALS

A. Bryce E. Hanes Park ("**Park**") was constructed and administered by Grantor on behalf of the San Bernardino Regional Water Resources Authority, a California joint powers authority ("**Authority**"), using Proposition 84 Statewide Park Program grant money from the State of California, Department of Parks and Recreation ("**State**"), pursuant to that certain Contract No. C6905064, entered into on or about February 23, 2015 (as amended, "**State Contract**"), by and between the State and the Authority.

B. Contemporaneous with this Grant of Easement, City is taking ownership and control of the Park and assuming the Authority's grant obligations to the State under the State Contract as a result of such ownership.

C. Grantor desires to grant to Grantee, and Grantee desires to acquire from Grantor, an easement within a portion of Grantor's property located in the former right-of-way vacated per Document No. 2015-0433869 of Official Records of San Bernardino County in the City of San Bernardino, County of San Bernardino, State of California, as more particularly described and depicted in **Exhibit "1"** and **Exhibit "2"**, respectively, attached hereto and incorporated herein by this reference ("**Easement Area**"), to be used in connection with the City's use of adjacent property with Assessor's Parcel Number 0140-143-54.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants hereinafter contained and for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

TERMS OF AGREEMENT

1. The Parties hereby affirm the facts set forth in the Recitals above. Said Recitals are incorporated into this Grant of Easement by this reference.

2. Grantor hereby grants to Grantee an exclusive easement over, on, and across the Easement Area in connection with the City's use of the adjacent property with Assessor's Parcel Number 0140-143-54 ("*Easement*"). This Easement shall remain in full force and effect in perpetuity. Grantor expressly reserves for itself and its successors and assigns the right to use the Easement Area or to grant other easements or licenses at the same location so long as such uses do not unreasonably interfere with the rights herein granted.

3. This Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, easements, and rights of way pertaining to the Easement Area, whether or not of record. The use of the word "grant" shall not imply any warranty on the part of the Grantor with respect to the Easement or the Easement Area.

4. Grantee shall comply with all applicable laws, ordinances, and regulations, including without limitation all applicable regulatory, environmental, and safety requirements, at Grantee's sole cost and expense.

5. Grantee shall not use, deposit, or permit the use or deposit of any hazardous material or toxic waste or other harmful substances in, on, or about the Easement Area.

6. This Grant of Easement is made on the express condition that Grantor is to be free from all liability by reason of injury or death to persons or injury to property from whatever cause arising out of or related to the exercise of any rights granted pursuant to this Easement or use of the Easement Area, including without limitation any liability for injury or death to the person or property of Grantee or Grantee's contractors, agents, officers, members, employees, invitees, or licensees or to any property under the control or custody of Grantee, by Grantee or Grantee's contractors, agents, officers, members, employees, invitees, or licensees. Grantee and its successors and assigns shall indemnify, defend, and hold harmless Grantor and its successors and assigns, and the directors, officers, employees, contractors, agents, and representatives of each of them, from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies of whatever nature, including reasonable attorneys' fees (collectively, "*Claims*"), arising out of or related to the exercise of any rights granted pursuant to this Easement or use of the Easement Area by Grantee or Grantee's contractors, agents, officers, members, employees, invitees, or licensees or the general public; provided, however, Grantee's indemnification obligations shall not apply to the extent such Claims are caused solely by the willful or grossly negligent acts of Grantor.

7. This Grant of Easement contains the entire agreement between the Parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this Grant of Easement shall be of no force or effect except in a subsequent modification in writing, signed by the Party to be charged.

8. This Grant of Easement shall bind and inure to the benefit of the respective successors and assigns of the Parties hereto.

IN WITNESS WHEREOF, Grantor has caused its name to be affixed hereto and this instrument to be executed by its duly authorized officer and the provisions of this Grant of Easement are hereby approved and accepted by Grantee.

Dated: _____, 2020.

GRANTOR:

**SAN BERNARDINO VALLEY MUNICIPAL
WATER DISTRICT**

[Exhibit purposes only; not for execution]

By: _____

Name: _____

Its: _____

Dated: _____, 2020.

GRANTEE:

CITY OF SAN BERNARDINO

[Exhibit purposes only; not for execution]

By: _____

Teri Ledoux
City Manager

APPROVED AS TO FORM:

[Exhibit purposes only; not for execution]

By: _____

Best Best & Krieger LLP
City Attorney

ATTEST:

[Exhibit purposes only; not for execution]

By: _____

Genoveva Rocha
Acting City Clerk

**EXHIBIT "1" TO GRANT OF EASEMENT
LEGAL DESCRIPTION OF EASEMENT AREA**

[TO BE ADDED BY ESCROW]

**EXHIBIT “2” TO GRANT OF EASEMENT
DEPICTION OF EASEMENT AREA**

[TO BE ADDED BY ESCROW]

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Exhibit purposes only; not for execution]

Notary Public

(Seal)

ACKNOWLEDGMENT

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STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO)

On _____ before me, _____, Notary Public, personally appeared **TERI LEDOUX**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

[Exhibit purposes only; not for execution]

Notary Public

(Seal)

PUBLIC AGENCY CERTIFICATE OF ACCEPTANCE

(Government Code Section 27281)

This is to certify that the real property conveyed by the SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT (“Grantor”), on the Grant of Easement dated *****INSERT DATE*****, 2020 to the CITY OF SAN BERNARDINO, a charter city and municipal corporation (“Grantee”), is hereby accepted by the undersigned officer on behalf of the Grantee, pursuant to the authority conferred by the City Council, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 2020.

GRANTEE:

CITY OF SAN BERNARDINO

[Exhibit purposes only; not for execution]

By: _____

Teri Ledoux
City Manager