

**FIFTH AMENDMENT
TO
RAILROAD CANYON RESERVOIR
LEASE AGREEMENT
AND INCORPORATION OF
LEASE (SECTION 26, T5S, R4W, SBBM OF RAILROAD CANYON RESERVOIR)**

This FIFTH AMENDMENT TO RAILROAD CANYON RESERVOIR LEASE AGREEMENT AND INCORPORATION OF LEASE (SECTION 26, T5S, R4W, SBBM OF RAILROAD CANYON RESERVOIR) ("Fifth Amendment") is effective as of [INSERT DATE] ["Effective Date"] and are by and between ELSINORE VALLEY MUNICIPAL WATER DISTRICT, a California municipal water district and successor in interest to Temescal Water Company, ("Lessor") and CANYON LAKE PROPERTY OWNERS ASSOCIATION, a California corporation, ("Lessee"). Lessor and Lessee are sometimes hereinafter individually referred to as a "Party" or collectively as the "Parties."

WITNESSETH:

WHEREAS, Lessor (as successor in interest) and Lessee (as assignee) are parties to that certain Railroad Canyon Reservoir Lease Agreement ("Lease Agreement"), dated February 12, 1968, as amended on November 1, 1969 ("First Amendment"), November 30, 1970 ("Second Amendment"), August 1, 1974 ("Third Amendment"), and January 17, 1989 ("Fourth Amendment"); and

WHEREAS, by way of the Lease Agreement, Lessor leased to Lessee certain rights to that certain water storage reservoir known as Railroad Canyon Reservoir (Canyon Lake) owned by Lessor for certain rental amounts and upon certain terms and conditions set forth therein; and

WHEREAS, by way of the First Amendment and Second Amendment, the Parties made amendments and clarifications to the Lease Agreement; and

WHEREAS, by way of the Third Amendment, the Parties agreed that Lessee's rights to Railroad Canyon Reservoir did not include the portion of such Reservoir that is northerly of the southerly boundary of Section 26, T5S, R4W, SBBM. Concurrently with the Third Amendment, the Parties executed a separate lease dated August 1, 1974 whereby Lessor leased certain rights in the portion of the Railroad Canyon Reservoir that is northerly of the southerly boundary of Section 26, T5S, R4W, SBBM to Lessee subject to certain terms and conditions ("Lease for Additional Reservoir Portion"); and

WHEREAS, by way of the Fourth Amendment, the Parties amended certain terms of the Lease Agreement only; and

WHEREAS, as set forth in the Lease Agreement and in the Second Amendment, the term of the Lease Agreement is currently set to expire on December 31, 2022 and Lessee has the option to extend the term of the Lease Agreement for an additional forty-four (44) years to

December 31, 2066. As set forth in the Lease for Additional Reservoir Portion, the term of the Lease for Additional Reservoir Portion is currently set to expire on December 31, 2022; and

WHEREAS, on or about May 8, 2009, the Parties entered into a Memorandum of Understanding wherein they agreed that (1) Lessee's payment of rent under the Lease Agreement was paid in full through August 31, 2009, (2) to jointly waive all claims for over or underpayment of such rent through August 31, 2009, and (3) terms concerning how such rent under the Lease Agreement would be invoiced by Lessor and paid by Lessee on a quarterly basis going forward; and

WHEREAS, the Parties desire to make a further amendment to said Lease Agreement and to incorporate the terms of said Lease for Additional Portion fully into the Lease Agreement, as set forth herein.

NOW, THEREFORE, in consideration of the recitals set forth above and the covenants and agreements set forth below, and for other valuable consideration, the receipt of which is hereby acknowledged by the Parties, the Parties agree as follows:

FIFTH AMENDMENT

A. Rescission of Third Amendment and Lease for Additional Reservoir Portion; Incorporation of Same into Lease Agreement. The Parties agree and acknowledge that it is their intent to hereby rescind the Third Amendment, which solely proclaimed that the Lease Agreement did not include any right or rights for Lessee to use any portion of said Railroad Canyon Reservoir that is northerly of the southerly boundary of Section 26, T5S, R4W, SBBM ("Section 26"), and the Lease for Additional Reservoir Portion (as defined herein), which set forth the terms and conditions for Lessee's use of Section 26 of said Reservoir, in full. The Parties acknowledge and agree that Lessee shall be entitled to use Section 26 and that the terms and conditions of such use shall be governed in every respect by the Lease Agreement as amended, including by the terms of this Fifth Amendment. Lessor shall have no obligation to maintain the water level of Section 26 of the Reservoir at any level, or to maintain any water in Section 26 of the Reservoir, at any time during the Lease Agreement. At any time during the term of the Lease Agreement, Lessor may install fences or other access control devices in said Section 26 along the 1400 foot elevation contour and/or along a line 1,000 feet outbound from said reservoir shoreline which is deemed to be, for the purposes of this paragraph, at the 1375 foot elevation contour. The purpose of such fences or other devices shall be to prevent all unauthorized entry to the reservoir or its immediately adjacent areas.

B. Exercise of Option to Renew. CLPOA hereby exercises its option to renew the Lease Agreement, as amended (including this Fifth Amendment), as such option is set forth in Section 2 of the Second Amendment to extend the term of the Lease Agreement, as such term is set forth in Section 1 of the Lease Agreement. Specifically, CLPOA expressly exercises its option to extend the term of the Lease Agreement, as amended, for an additional forty-four (44) years on the same terms and conditions as are in the Lease Agreement, as amended and including the amendments set forth herein. By this exercise of the term extension option, the term of the Lease Agreement is hereby extended and shall expire on December 31, 2066.

C. Base Rental. Subdivision (4) of subsection (a) (entitled Base Rental) of section 2 (entitled Rental) of the Lease Agreement is hereby deleted. As of the effective date of this Fifth Amendment, Lessee shall no longer owe Lessor any Base Rental amount for payments due after the effective date of this Fifth Amendment. The terms of this paragraph shall not impact any obligation of Lessee to pay the Base Rental that accrued prior to the effective date of this Fifth Amendment.

D. Cost Increase Sum Calculation per Consumer Price Index. Subsection (c) of Section 2 of the Lease Agreement, as amended, is hereby deleted in its entirety and replaced with the following:

“(c) Cost Increase Sum

Lessee shall pay to Lessor on an annual basis additional amounts to be known as the “Cost Increase Sum”, or “CIS”. The parties intended that the CIS to be paid for the 2016-2017 period as hereafter provided shall be a base amount to be paid for the annual cost increase, and that each year after the 2016-2017 period, the CIS shall be adjusted to reflect a cost of living increase factor. The Cost Increase Sum shall be determined as follows:

1. Lessor and Lessee shall agree on or before March 15, 2017 that the Cost Increase Sum due for the period September 1, 2016 through August 31, 2017 (the “2016-2017 CIS Payment”) shall be one million three hundred ninety-nine thousand six hundred fifty one dollars (\$1,399,651.00).

2. The 2016-2017 CIS Payment amount shall be referred to hereafter as the “CIS Payment Base”.

3. Beginning on September 1, 2017, and for each twelve month period thereafter for the remaining term of this Lease, the CIS shall be adjusted by adding to the CIS Payment Base a cost of living adjustment to be calculated as provided hereafter. The intent of the parties is that the increases in the CIS based upon a cost of living adjustment shall be cumulative.

4. The CIS Payment Base shall be adjusted annually during the entire term of this Lease, including any extensions of time thereto, commencing on September 1, 2017 and continuing on September 1 of each calendar year thereafter in accordance with the changes in the Consumer

Price Index for All Urban Consumers (CPI-U) (All Items) (the "Index") in the Los Angeles-Riverside-Orange County, CA Area published monthly by the U.S. Bureau of Labor Statistics (the "Bureau") (hereinafter "CPI Adjustment"). Each annual CPI Adjustment shall apply during the following calendar year, shall be added to the CIS Payment Base as part of Lessee's Cost Increase Sum obligation for such year, and shall be calculated in the following manner:

(i) On or before five business days after the release of the unadjusted CPI for the month of July of that year and the 12 months preceding that date, Lessor shall calculate the CPI Adjustment for the CIS Payment due on September 1 of the applicable year, and shall invoice Lessee for the amount of the CIS Payment. The CIS Payment shall be the sum total of the CIS Payment for the prior twelve month period (as previously adjusted for the cost of living increase) plus the increase in the CIS Payment based upon the current twelve month period CPI Adjustment: provided, however, that the annual change shall be a minimum increase of one percent and a maximum increase of four percent. This payment shall be made by Lessee to Lessor on or before September 1 of the applicable year.

(ii) If the Bureau discontinues the publication of the Index, publishes the Index less frequently, or alters the Index in some other manner, the most nearly comparable index or procedure as selected by Lessor will be substituted for the Index.

(iii) In addition to the CIS Payment, on or before September 1 of each year, Lessee shall pay to Lessor any costs to Lessor other than water costs incurred by reason of this Lease during the previous year including but not limited to any increase in taxes by reason of this Lease. Lessor shall invoice such additional costs to lessee when the CIS Payment is invoiced, and shall provide reasonable documentation of the costs incurred.

(iv) In the event Lessee disputes the amount of said Cost Increase Sum as set forth in this subsection, or any part thereof, Lessee shall have the right to challenge such amount by arbitration pursuant to Section 16, as amended, of this Lease."

E. Lake Level / Access. Section 3. of the "Railroad Canyon Reservoir Lease Agreement", dated February 12, 1968, requires Lessor to maintain the water level of the Reservoir at a minimum of 1372 M.S.L. The primary purpose of Lessor's ownership of the Reservoir is to provide water to the Lessor's customers and ratepayers. Subject to that primary purpose, it is also the intent of this Lake Lease Agreement, to provide as many of Lessee's members with direct recreational access to the Reservoir as possible, from the Lessee's members' properties, for boating, swimming, fishing and water sports. Therefore, to the extent feasible consistent with the stated primary purpose of Lessor's ownership and the other provisions of Section 3 of the "Railroad Canyon Reservoir Lease Agreement", dated February 12, 1968, Lessor will use reasonable efforts to maintain the water level of the Reservoir at that level above 1372 M.S.L. which provides the greatest number of Lessee's members with direct recreational access to the Reservoir from the Lessee's members' properties, for boating, swimming, fishing and water sports.

F. Lake Level / Penalties. The last paragraph in Section 3. of the "Railroad Canyon Reservoir Lease Agreement", dated February 12, 1968; and Section 2. of the "Fourth Amendment to Railroad Canyon Reservoir Lease Agreement", dated January 17, 1989, are hereby removed, and replaced with the following paragraph:

"In any event, Lessor's liability for damages incurred by Lessee, Lessee's assignees, sublessees or other interested parties for failure of Lessor to maintain the reservoir is, per day, 1/365th of the prior calendar year's total annual rental payment for each day after 10 days that the lake level falls below 1372 M.S.L. at which the water elevation is maintained by Lessor or the total annual rental payment, whichever is less."

Except as stated in Paragraphs E and F herein, Section 3 of the "Railroad Canyon Reservoir Lease Agreement", dated February 12, 1968 remains in full force and effect.

G. Indemnification; Hold Harmless; Insurance. The third paragraph of Section 4 of the Lease Agreement beginning "Lessee agrees to indemnify . . ." is hereby deleted and replaced in its entirety with the following:

"Scope of Indemnity. To the fullest extent permitted by law, Lessee shall defend, indemnify and hold Lessor, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including but not limited to wrongful death, in any manner arising out of, pertaining to, or incident to any alleged negligent acts, omissions or willful misconduct arising from the lease and/or use of the Reservoir by (1) Lessee and its officials, officers, employees, agents, consultants, subconsultants, contractors, licensees and invitees; (2) Lessee's members and all homeowners in Canyon lake, including their respective family members, officials, officers, employees, agents, consultants, subconsultants, contractors, licensees and invitees; and (3) any and all other persons (including trespassers) who use the Reservoir, except Lessor and anyone acting in his/her/their capacity as an agent of Lessor. Lessee's obligations under this Section shall include the payment of all consequential damages, expert witness fees, reasonable attorney's fees and other related expenses incurred by Lessor.

Additional Indemnity Obligations. Where Lessee is obligated to indemnify Lessor, as stated above (hereafter "Indemnity Claims") Lessee shall defend, with counsel of Lessor's choosing, and at Lessee's own cost, expense and risk, any and all such aforesaid claims, demands, causes of action, costs, expenses, liability, loss, damage, injury or other legal proceedings of every kind that may be brought or instituted against Lessor or its directors, officials, officers, employees, volunteers or agents. For any Indemnity Claims, Lessee shall pay and satisfy any judgment, award or decree that may be rendered against Lessor or its directors, officials, officers, employees, volunteers and agents as part of any such claims, demands, causes of action, costs, expenses, liability, loss, damage, injury or other legal proceedings of every kind. For any Indemnity Claims, Lessee shall also reimburse Lessor for the cost of any settlement paid by Lessor or its directors, officials, officers, employees, volunteers or agents as part of any such claims, demands, causes of action, costs, expenses, liability, loss, damage, injury or other legal proceedings of every kind. Such reimbursement shall include payment for Lessor's reasonable attorney's fees and costs including expert witness fees. For any Indemnity Claims, Lessee shall reimburse Lessor and its directors, officials, officers, employees, volunteers or agents for any and all reasonable legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Lessee's obligation to indemnify shall survive expiration or termination of this Lease Agreement, and shall not be restricted to insurance proceeds, if any, received by Lessor, its directors, officials, officers, employees, volunteers or agents.

Insurance. During the entire term of this Lease Agreement, and without diminishing any of Lessee's indemnity obligation, Lessee shall:

Liability Insurance. Lessee shall obtain and maintain commercial general liability insurance insuring against all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, for which Lessee has an obligation to indemnify under this Lease Agreement (collectively, the "Claims"). Such liability insurance coverage shall be at least as broad as the latest version of Insurance Service Office Commercial General Liability coverage (occurrence form CG 0001), with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and Two Million Dollars (\$2,000,000) aggregate.¹ The general liability policy shall be endorsed to state that: (1) Lessor, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insured with respect to the Claims or operations performed by or on behalf of Lessor, including materials, parts or equipment furnished in connection with such

¹ The minimum liability limits shall be reviewed every on September 1 every five (5) years, with the first review due on September 1, 2021, to determine if the parties can agree, in good faith, if the limits need to be revised and, if so, to what amount(s). If the parties cannot agree on this issue, the matter shall be resolved by binding arbitration pursuant to Section 16, as amended, of this Lease.

work; (2) the insurance coverage shall be primary insurance as respects Lessor, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Lessee's scheduled underlying coverage; (3) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Lessor; and (4) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to Lessor, its directors, officials, officers, employees, agents and volunteers. Any insurance or self-insurance maintained by Lessor, its directors, officials, officers, employees, agents and volunteers shall be excess of Lessee's insurance and shall not be called upon to contribute with it in any way.

Separation of Insureds. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to Lessor, its directors, officials, officers, employees, agents and volunteers.

Deductibles and Self-insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by Lessor. Lessee shall guarantee that, at the option of Lessor, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Lessor, its directors, officials, officers, employees, agents and volunteers; or (2) Lessee shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California and satisfactory to Lessor.

Verification of Coverage. Lessee shall furnish Lessor with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to Lessor. The certificates and endorsements for such insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by Lessor if requested. All certificates and endorsements must be received and approved by Lessor before work commences. Lessor reserves the right to require complete, certified copies of all required insurance policies, at any time.

Reporting of Claims. Lessee shall report to Lessor, in addition to Lessee's insurer, any and all insurance claims submitted by Lessee in connection with Lessee's rights under this Lease Agreement."

H. Mediation / Arbitration. It is intended by Lessee and Lessor, that any dispute, claim or controversy of any nature whatsoever concerning this Lake Lease Agreement is to be submitted to mediation as set forth in subparagraphs 1. – 7 below. Any remaining dispute will be submitted to binding arbitration as set forth in subparagraph 8 below. The dispute resolution procedure in this paragraph is intended to apply to any dispute between Lessor and Lessee related to this Lake Lease Agreement and it expressly replaces: Section 16 of the "Railroad Canyon Reservoir Lease Agreement" dated February 12, 1968; and Section 3. of the "Fourth Amendment to Railroad Canyon Reservoir Lease Agreement" dated January 17, 1989. This dispute resolution procedure in this paragraph also modifies any other prior provision in the Lake Lease, to the extent it conflicts with this paragraph.

1. The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to JAMS, or its successor, for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration pursuant to the clause set forth in Paragraph H.5. below.
2. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested.
3. The parties will cooperate with JAMS and with one another in selecting a mediator and/or arbitrator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The agreed upon mediator and/or arbitrator shall have experience in claims similar to the ones in dispute. The parties agree that they will participate in the mediation in good faith.
4. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
5. Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or at any time following 45 days from the date of filing the written request for mediation, whichever occurs first ("Earliest Initiation Date"). The mediation may continue after the commencement of arbitration if the parties so desire.
6. At no time prior to the Earliest Initiation Date shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by JAMS Rules or by agreement of the parties. However, this limitation is inapplicable to a party if the other party refuses to comply with the requirements of Paragraph H.3. above.

7. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled until 15 days after the Earliest Initiation Date. The parties will take such action, if any, required to effectuate such tolling.
8. After mediation as set forth above, any remaining dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in the State of California, pursuant to the Federal Arbitration Act (9 U.S.C. §§ 1-16, now in effect and as may hereafter be amended). The arbitration shall be administered by JAMS in San Diego California, pursuant to JAMS' Streamlined Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction.

After mediation as set forth above, arbitration is the only forum in which a dispute regarding this Agreement may be heard. Both parties hereby expressly waive all rights, constitutional or otherwise, to have their disputes under this Agreement determined by a jury trial or bench trial. The arbitrator shall have the authority to award attorney fees and costs to the prevailing party, including without limitation, all costs incurred in initiating or defending the arbitration claim, and any and all discovery costs. The arbitrator's decision will be legally binding, final, and judgment may be entered thereon.

9. Each Party shall pay ½ of the fees of the arbitrator. The arbitrator shall award reasonable attorney fees and costs to the prevailing party. In the event a Party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, the other Party is entitled to costs of suit, including reasonable attorney fees for having to compel arbitration or defend or enforce the award.

I. Interface Committee. CLPOA and EVMWD will form a CLPOA – EVMWD Interface Committee (“Committee”) for the purpose of collaborating as necessary on any issues between the parties that may affect the Lake, or the Lake Lease, and attempting to prevent any future issues from resulting in mediation, arbitration, or litigation.

- i. The Committee will be composed of two current CLPOA Board Members, two current EVMWD Board Members, the General Manager of each entity, along with their respective expert consultants, or other staff members, as each entity may choose in its sole discretion.
- ii. The Committee will meet as necessary on any issues between the parties to attempt to prevent any future issues from resulting in mediation, arbitration, or litigation.

J. Future Option to Renew. Lessor hereby grants to Lessee the option to renew this Lease Agreement as amended, on the same terms and conditions as are in the Lease Agreement, as amended, for an additional forty-four (44) year term, commencing January 1, 2067. Lessee has the right to exercise this option at any time after the effective date of this Fifth Amendment, by providing written notice to Lessor. If Lessee, its successors or assigns, fails to exercise this option to renew, by December 31, 2066, this Lease Agreement, as amended, will continue on a

year to year basis on the same terms and conditions of this Lease Agreement, as amended, provided that Lessor, its successors or assigns, may thereafter provide written notice to Lessee, its successors or assigns, that the Lease Agreement will terminate within one hundred twenty (120) days, unless Lessee, its successors or assigns, exercises the option by written notice thereof within said period of one hundred twenty (120) days.

K. Limitations of Fifth Amendment. Nothing contained herein shall alter or otherwise effect the terms and conditions of the Lease Agreement (as amended) other than as specifically set forth herein. In the event this Fifth Amendment is invalid for any reason whatsoever, all of the original terms and conditions of the Lease Agreement, as amended, shall remain in full force and effect. To the extent anything herein this Fifth Amendment conflicts with the Lease Agreement, as amended, or the Lease for Additional Reservoir Portion, the terms of this Fifth Amendment shall control.

[Signatures on Following Page]

**SIGNATURE PAGE TO THE
FIFTH AMENDMENT
TO
RAILROAD CANYON RESERVOIR
LEASE AGREEMENT
AND INCORPORATION OF
LEASE (SECTION 26, T5S, R4W, SBBM OF RAILROAD CANYON RESERVOIR)**

IN WITNESS WHERE, the parties hereto have executed this Fifth Amendment on the day and year first above written.

Elsinore Valley Municipal Water District:

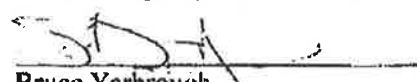
By: 
John Vega
General Manager

Date: 3-10-17

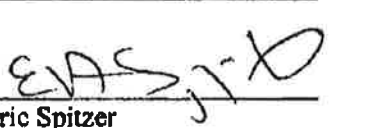
By: 
Harvey Ryan
Board President

Date: 3/10/17

Canyon Lake Property Owners Association:


By: 
Bruce Yarbrough
Board President

Date: 2-21-17

By: 
Eric Spitzer
~~Secretary~~
VICE PRESIDENT


Date: 2-21-2017

Approved as to Form:

By: 
James G. Sandler
District Counsel
Sandler, Lasry, Laube, Byer & Valdez
LLP

Date: 3-10-17

Approved as to Form:

By: 
Howard Sillardorf, Sillardorf Law, LLP,
Counsel for Canyon Lake Property
Owners Association

Date: 2/23/17