

**THIRD AMENDMENT TO
JOINT EXERCISE OF POWERS AGREEMENT
FENNER VALLEY WATER AUTHORITY**

THIS THIRD AMENDMENT TO THE JOINT EXERCISE OF POWERS AGREEMENT (“Third Amendment”) is made and entered into on August 2nd, 2023 by and among Santa Margarita Water District, a California water district (“SMWD”) and Fenner Gap Mutual Water Company, a California nonprofit mutual benefit corporation (each individually a “Member” and collectively “Members”).

RECITALS

A. Whereas, Members entered into a Joint Exercise of Powers Agreement on November 14, 2014, creating the Fenner Valley Water Authority (“Authority”).

B. Whereas, each of the Members is a public agency or non-profit mutual water company duly organized under the constitution and laws of the State of California and so authorized and each is empowered to contract with all the other parties for the joint exercise of powers under Article I and II, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the California Government Code.

C. Whereas, each of the Members has the authority and power to direct and coordinate actions relating to improving access to clean, reliable and affordable water supply, improving conservation and storage of water supplies to assist communities during periods of extended drought, improving the sustainability and monitoring of groundwater basins, enhancing economic development by stabilizing long-term sustainable water supplies for housing, businesses and underserved communities, and to create a separate public agency to carry out such activities.

D. Whereas, the Members recognize the immediate necessity for and benefit of coordinated planning, in addition to the construction, operation and maintenance of facilities to convey, store and optimize water supplies for beneficial uses in underserved, remote, disadvantaged and high-growth communities in Southern California.

E. Whereas, the First Amendment was approved by SMWD and Fenner Valley Mutual Water Company (“FVMWC”) in October of 2017 and removed the requirement that the Directors and Alternate Directors to the Authority Board be Directors of the member agency Board of Directors. In addition, the First Amendment allows for the Alternates appointed by the Managing Member (SMWD) to serve for either of its Board Members.

F. Whereas, the Second Amendment was approved by SMWD and FVMWC in June of 2020 and replaced Section 6.3 (Directors) detailing the requirements for appointment of Directors and Alternate Directors.

G. Whereas, FVMWC amended its Articles of Incorporation on October 26, 2022 with the California Secretary of State changing its name to Fenner Gap Mutual Water Company (“FGMWC”).

TERMS OF AGREEMENT

In consideration of the mutual promises and covenants herein contained, the Members agree to the following:

- A. Any reference to FVMWC in the Joint Exercise of Powers Agreement, as amended, applies to FGMWC.
- B. Add a new Section 5.3, to read as follows:

5.3. Ex-Officio Members. In order to assist in coordinating the duties and activities of the Authority with other governmental entities, the following may be ex-officio (non-voting) members of the Authority:

- a) Any county, city or local government agency whose boundaries include a Member of the Authority or any beneficiary of Project Facilities including, without limitation, the pipelines, pumping plants, and infrastructure utilized for the conveyance, treatment, storage, groundwater recharge and delivery of Project Water for beneficial use within the Project's intended boundaries.
- b) A Federally-Recognized Indian Tribe
- c) A Non-Profit Organization
- d) Metropolitan Water District of Southern California
- e) California Department of Water Resources (CDWR)

Other ex-officio members may be added by a unanimous vote of the Board of Directors. Notwithstanding Section 14.2, an ex-officio member may unilaterally withdraw as an ex-officio member of the Authority.

Upon execution of a joinder substantially in the form attached hereto as Exhibit A, an ex-officio member shall be entitled to designate one representative, at its sole discretion, to attend and participate in the meetings of the Board of Directors. The ex-officio member's designated representative will serve as a non-voting director, and such non-voting director shall not contribute to the constitution of a quorum required by Section 8.1. An ex-officio member may be removed by a majority vote of the Board of Directors.

Ex-officio members are not responsible for the debts, liabilities, and obligations of the Authority, and none of the duties, responsibilities, or obligations of Members as set forth in this Agreement shall apply to ex-officio members unless expressly indicated otherwise.

C. Delete the entirety of Section 3.1.18 and replace it with the following:

To obtain the necessary permits, agreements, and approvals, provide funding, undertake investigations and studies, and perform all related acts as are necessary and appropriate to deliver water from the Fenner Valley Aquifer System for beneficial uses by direct delivery and exchange via existing and planned facilities.


D. Renumber the existing Section 3.1.18 as Section 3.1.19.


IN WITNESS WHEREOF, the Members hereto have executed this Third Amendment by authorized officials thereof on the dates indicated below.

SANTA MARGARITA WATER DISTRICT

August 2, 2023

DATED: _____


By: 
Title: Board President


APPROVED AS TO FORM:
By: 
Title: General Counsel

Address: 26111 Antonio Parkway
Rancho Santa Margarita, CA 92688

FENNER GAP MUTUAL WATER COMPANY

DATED: 08/01/2023

By: 
Title: Susan P. Kennedy, President

APPROVED AS TO FORM:
By: 
Title: General Counsel

Address: 550 South Hope Street, Suite 2850
Los Angeles, CA 90071

EXHIBIT A: FORM JOINDER FOR EX-OFFICIO MEMBERS

JOINDER

THIS JOINDER AGREEMENT (“Joinder”) is made as of this [DATE], and among Santa Margarita Water District, a California water district (“SMWD”), Fenner Gap Mutual Water Company, a California nonprofit mutual benefit corporation (“FGMWC”), and [EX-OFFICIO MEMBER], a _____.

RECITALS

A. SMWD and Fenner Valley Mutual Water Company (“FVMWC”) entered into a Joint Exercise of Powers Agreement on November 14, 2014, creating the Fenner Valley Water Authority (“Authority”). SMWD and FVMWC entered into a First Amendment to the Joint Exercise of Powers Agreement in October 2017 and a Second Amendment to the Joint Exercise of Powers Agreement in June 2020.

B. On October 26, 2022, FVMWC amended its Articles of Incorporation with the California Secretary of State changing its name to Fenner Gap Mutual Water Company.

C. In _____ 2023, SMWD and FGMWC entered into a Third Amendment to the Joint Exercise of Powers Agreement providing an opportunity for one or more Ex-Officio Members to join the Authority.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Joinder of [_____]. [_____] hereby joins the Authority as an Ex-Officio Member, with the rights and privileges described in Section 5.3 of the Joint Exercise of Powers Agreement.

IN WITNESS WHEREOF, the Members hereto have executed this Third Amendment by authorized officials thereof on the dates indicated below.

SANTA MARGARITA WATER DISTRICT

DATED: _____

APPROVED AS TO FORM:

By: _____

By: _____

Title:

Title: General Counsel

Address: _____

FENNER GAP MUTUAL WATER
COMPANY

DATED: _____

APPROVED AS TO FORM:

By: _____
Title:

By: _____
Title: General Counsel

Address: _____

[EX OFFICIO MEMBER]

DATED: _____

APPROVED AS TO FORM:

By: _____
Title:

By: _____
Title: General Counsel

Address: _____