

**AGREEMENT No. 122434
CHINO BASIN DESALINATION PROGRAM**

**CONSOLIDATED LOCAL RESOURCES PROGRAM AGREEMENT AMONG
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,
WESTERN MUNICIPAL WATER DISTRICT, INLAND EMPIRE UTILITIES AGENCY,
AND CHINO BASIN DESALTER AUTHORITY**

AGREEMENT No. 122434
CHINO BASIN DESALINATION PROGRAM

CONSOLIDATED LOCAL RESOURCES PROGRAM AGREEMENT AMONG
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,
WESTERN MUNICIPAL WATER DISTRICT, INLAND EMPIRE UTILITIES AGENCY,
AND CHINO BASIN DESALTER AUTHORITY

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
Section 1. Definitions.....	4
Section 2. Representations Warranties	5
Section 3. Ownership and Responsibilities.....	5
Section 4. Invoicing Process	6
Section 5. Production Assessment	6
Section 6. Record Keeping and Audit.....	7
Section 7. Rate Structure Integrity	7
Section 8. Term, Amendments, and Termination	10
Section 9. Hold Harmless and Liability	11
Section 10. Notice.....	11
Section 11. Successors and Assigns.....	12
Section 12. Severability	12
Section 13. Integration	12
Section 14. Governing Law	12
Exhibit A.....	15
Exhibit B	19
Exhibit C	21
<u>Exhibits</u>	
Exhibit A (Project Description)	
Exhibit B (Performance Provisions)	
Exhibit C (Allowable Yield Calculation)	

AGREEMENT No. 122434
CHINO BASIN DESALINATION PROGRAM

CONSOLIDATED LOCAL RESOURCES PROGRAM AGREEMENT AMONG
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,
WESTERN MUNICIPAL WATER DISTRICT, INLAND EMPIRE UTILITIES AGENCY,
AND CHINO BASIN DESALTER AUTHORITY

THIS AGREEMENT is entered into as of July 1, 2011, among The Metropolitan Water District of Southern California (Metropolitan), Western Municipal Water District (Western), Inland Empire Utilities Agency (IEUA), and the Chino Basin Desalter Authority (CDA). The above agencies may be collectively referred to as "Parties" and individually as "Party".

Recitals

- A. Metropolitan was incorporated under the Metropolitan Water District Act ("Act") for the purpose of developing, storing, and distributing water for domestic and municipal purposes;
- B. The Act empowers Metropolitan to acquire water and water rights within or without the State; develop, store and transport water; provide, sell and deliver water at wholesale for domestic and municipal uses and purposes; fix water rates, acquire, construct, operate and maintain any and all works, facilities, improvements and property necessary or convenient to the exercise of the powers granted by the Act;
- C. Western and IEUA, as member public agencies of Metropolitan under the Act, are wholesale purchasers within their service area of water developed, stored, and distributed by Metropolitan;
- D. CDA is a California Joint Powers Agency comprised of Western, IEUA, the Jurupa Community Services District, the Santa Ana River Water Company and the cities of Chino, Chino Hills, Norco and Ontario. CDA was formed by these entities pursuant to the Joint Exercise of Powers Agreement creating the Chino Basin Desalter Authority, dated as of September 25, 2001 and as amended;
- E. Metropolitan's water supply and demand projections for its service area, including that encompassed by Western and IEUA, show that additional sources of water must be developed to meet future needs;
- F. Metropolitan has established the Local Resources Program (LRP) to provide financial assistance for water recycling and groundwater recovery projects that reduce demand on Metropolitan's imported water supplies;

- G. Metropolitan, Western, IEUA and CDA have determined that it is mutually beneficial for local projects originating in Western's and IEUA's service areas to be developed as a supplement to Metropolitan's imported water supplies in order to meet future water needs;
- H. CDA owns and operates the Chino I Desalter and Chino II Desalter with a current capacity of 24,600 acre-feet per year (AFY). CDA is proposing to expand treatment capacity to 35,200 AFY by constructing additional treatment facilities, new wells, collection and distribution system facilities, pump stations, brine disposal facilities, and other pertinent facilities to deliver water to customers.
- I. The Parties entered into a Groundwater Recovery Program Agreement (GRP Agreement) for the Chino Basin Desalination Program, Phase I on December 7, 1995 as amended on February 21, 2002. Since September 2000, Metropolitan has been providing financial incentives to CDA through IEUA and Western without any issues among the Parties.
- J. The Parties entered into a Groundwater Improvement Program Agreement (GIP Agreement) for the Chino Basin Desalination Program, Phase II on July 1, 2007. Under the GIP Agreement, Metropolitan provided financial incentives to CDA through IEUA and Western for fiscal years 2007/08 and 2008/09. Based on cost reconciliation provisions in the GIP Agreement, CDA owes Metropolitan about \$6,000,000.
- K. The Parties desire to terminate the existing GRP Agreement and GIP Agreement and enter into a new consolidated agreement (Agreement) under the Local Resources Program (LRP) including the existing GRP and GIP projects in this LRP agreement for the expansion facilities.
- L. This Agreement will help Metropolitan recover the amount owed from CDA, simplifies the administration of these projects by eliminating annual cost reconciliation, and provides financial support for the development of expansion facilities.
- M. Metropolitan desires to assist in increasing production and distribution of Recovered Groundwater water by providing a financial incentive to CDA to implement the Project;
- N. Western, IEUA, and CDA believe that Metropolitan's continued financial contribution toward the cost of the Project will make Project operation economically viable, and is committed to implementation of the Project;
- O. Western and IEUA desire to participate in and affirmatively support the Project by transferring to CDA the financial incentive that it receives from Metropolitan;

NOW, THEREFORE, in consideration of the promises and covenants set forth herein, the Parties do agree as follows:

Section 1. Definitions

The following words and terms, unless otherwise expressly defined in their context, shall be defined to mean:

- 1.1. “Allowable Yield” shall mean the amount of Recovered Groundwater that is delivered to End User by CDA from the Project in any Fiscal Year that is eligible to receive Metropolitan’s financial assistance. Allowable Yield, measured in acre-feet, shall not exceed Ultimate Yield and shall exclude any Recovered Groundwater Metropolitan reasonably determines will not reduce Western or IEUA’s demand for Metropolitan’s imported water. Allowable Yield shall only include Recovered Groundwater produced by the Project. Unless otherwise approved by Metropolitan in writing, Allowable Yield shall exclude: (1) groundwater production from Metropolitan’s existing and future storage accounts; (2) groundwater production from recycled water accounts; (3) Any non-Project water conveyed through the Project facilities; and (4) Allowable Yield from other projects with active or terminated LRP, GRP, or Local Projects Program agreements. Allowable Yield shall be calculated based on methodology outlined in Exhibit C, attached hereto and incorporated herein by this reference.
- 1.2. “End User” shall mean each user that purchases Recovered Groundwater furnished by the Project, unless otherwise approved by Metropolitan.
- 1.3. “LRP Contribution” shall mean the financial contribution in dollars per acre-foot Metropolitan pays for Allowable Yield to CDA through Western and IEUA for monthly billing purposes and shall be equal to \$139 per acre-foot. LRP Contribution shall be reduced by 0.000071 cents per each one dollar in grants above \$27,800,000 that Western, IEUA, or CDA receives toward the Project’s construction and/or operation and maintenance costs. Such grants include, but not limited to, grants provided by the U.S. Bureau of Reclamation and funding or by private parties.
- 1.4. “Fiscal Year” shall mean Metropolitan Fiscal Year that begins on July 1 and ends on June 30.
- 1.5. “Project” shall mean the Chino Basin Desalination Program being developed by CDA, as described in Exhibit A and incorporated herein by reference, consisting of existing and future treatment facilities, wells, and pipelines, capable of producing and distributing the Allowable Yield. CDA shall notify Metropolitan prior to making any Project changes that require new environmental documentation other than addendum to the existing environmental documentation. After reviewing the proposed change and associated environmental documentation, Metropolitan shall inform Western, IEUA, and CDA of Metropolitan’s decision to include or exclude the Project change to this Agreement.
- 1.6. “Recovered Groundwater” shall mean all treated groundwater, which subject to regulatory requirements, is suitable for beneficial uses.

- 1.7. “Ultimate Yield” is established as 35,200 acre-feet per Fiscal Year and is subject to reduction provisions outlined in Exhibit B, incorporated herein by this reference.

Section 2. Representations Warranties

- 2.1. CDA warrants that the Project will continue to increase groundwater production for potable uses from the Chino Groundwater Basin and improve regional water supply reliability.
- 2.2. CDA warrants that it is able and has a right to utilize and distribute Allowable Yield.
- 2.3. CDA warrants that neither it nor any of its agents discriminate against employees or against any applicant for employment because of ancestry, creed, religion, age, sex, color, national origin, denial of family and medical care leave, marital status, medical condition, mental or physical disability (including HIV and AIDS), and further warrants that it requires all contractors and consultants performing work on the Project to comply with all laws and regulations prohibiting discrimination against employees or against any applicant for employment because of ancestry, creed, religion, age, sex, color, national origin, denial of family and medical care leave, marital status, medical condition, mental or physical disability (including HIV and AIDS).
- 2.4. CDA warrants that it has or will comply with the provisions of the California Environmental Quality Act for each and all components of the Project facilities.
- 2.5. CDA shall notify Metropolitan prior to making any Project changes that require new environmental documentation other than addendum to the existing environmental documentation. After reviewing the proposed change and associated environmental documentation, Metropolitan shall inform Western, IEUA, and CDA of Metropolitan’s decision to include or exclude the Project change to this Agreement.

Section 3. Ownership and Responsibilities

- 3.1. CDA shall be the sole owner of Project facilities. Metropolitan shall have no ownership right, title, security interest or other interest in the Project facilities.
- 3.2. CDA shall be solely responsible for all design, environmental documentation, right-of-way acquisitions, permits, construction, and cost of the Project and all modifications thereof.
- 3.3. CDA shall be solely responsible for operating and maintaining the Project in accordance with all applicable local, State, and federal laws. Metropolitan shall have no rights, duties or responsibilities for operation and maintenance of the Project.
- 3.4. CDA shall install, operate and maintain metering devices for the purpose of measuring the quantity of Allowable Yield delivered to its distribution system.

- 3.5. CDA shall, at all times during the term of this Agreement, use its best efforts to operate or cause the Project facilities to be operated to maximize Allowable Yield on a sustained basis.
- 3.6. CDA shall notify and provide Metropolitan with a copy of relevant agreements if CDA decides to convey non-Project water using Project facilities or convey water to any party that is not the End User.

Section 4. Invoicing Process

- 4.1. CDA shall invoice Metropolitan monthly for the LRP Contribution based upon the Allowable Yield delivered to End Users during the previous month. The invoice shall quantify amount of Allowable Yield certified to Western and IEUA. Allowable Yield shall be calculated based on methodology outlined in Exhibit C. After receiving CDA's invoice, Metropolitan shall include a credit equal to CDA's invoice amount on the next monthly water service invoice issued to Western and IEUA in accordance with Metropolitan's Administrative Code.
- 4.3. Pursuant to Metropolitan's Administrative Code, invoices for LRP Contribution must be received by Metropolitan before 3:30 p.m. on the third working day after the end of the month to receive credit for any preceding month on the next monthly water service invoices issued to IEUA and Western. Metropolitan will not pay for any invoiced LRP Contribution received more than six months following the end of any month in which a credit is claimed.
- 4.4. Upon receiving Metropolitan's invoice, Western and IEUA shall include the full amount of the credit received from Metropolitan pursuant to Section 4.1 as credit on its next water service invoice to CDA. Western and IEUA may choose to pay CDA with a legally accepted banking transaction.
- 4.5. Metropolitan has entered into other agreements with Western or IEUA for development of local water resource projects. Each agreement contains specific terms and conditions to determine project yield, payment process, and project performance and any adjustments to contractual yield and incentive payments. Unless approved in writing by Metropolitan, these agreements are independent from each other and, therefore, yield produced under one agreement shall not be used to fulfill performance requirements under any other agreement. These provisions shall also apply to all future incentive agreements between Metropolitan and Western and Metropolitan and IEUA.

Section 5. Production Assessment

- 5.1. By December 31 of each year, CDA shall provide Metropolitan with the following reconciliation data for the previous Fiscal Year: (a) records of Recovered Water and Allowable Yield and (b) a copy of the Chino Basin Watermaster Annual Report or Annual Assessment Package.

- 5.2. If the assessment data is not submitted by December 31 in accordance with Section 5.1, Metropolitan will assess CDA a late penalty charge as prescribed in Metropolitan's Administrative Code, currently set forth in Section 4507 (I) at \$2,500. Metropolitan may suspend its payments of CDA's monthly invoices if CDA fails to provide assessment data by the ensuing April 1. During the suspension period, CDA shall continue to send monthly invoices to Metropolitan for the Allowable Yield for water accounting purposes. Metropolitan will resume payment of CDA's monthly invoices once complete data is received and the corresponding assessment is complete pursuant to Section 5.3. In the event CDA fails to provide reconciliation data by December 31 of the following Fiscal Year, which is 18 months after the end of the Fiscal Year for which an assessment is required, this Agreement shall automatically terminate without notice or action by any Party and CDA shall repay to Metropolitan within 90 days of termination all monthly LRP Contribution payments for which no assessment data was provided.
- 5.3. Within 180 days after Metropolitan receives complete data from CDA, pursuant to Section 5.1, Metropolitan shall conduct a production assessment, calculate the Allowable Yield for the Fiscal Year and the annual LRP Contribution payment for the Fiscal Year and apply it retroactively. An adjustment shall be computed by Metropolitan for over- or under-payment for the Allowable Yield and included in the next billing issued to Western and/or IEUA. Payments shall be made according to Metropolitan's Administrative Code.

Section 6. Record Keeping and Audit

- 6.1 CDA shall establish and maintain accounting records of brine disposal, Recovered Groundwater deliveries from the Project, and Allowable Yield. In addition, CDA shall collect and retain records of the total annual amount of water conveyed outside of CDA's service area using Project facilities. Accounting for the Project shall utilize generally accepted accounting practices and be consistent with the terms of this Agreement.
- 6.2. CDA shall establish and maintain accounting records of all contributions including grants that offset eligible Project capital costs, operation and maintenance costs, and/or replacement costs, as outlined in Section 1.3.
- 6.3. Metropolitan shall have the right to audit grants and Project groundwater production and related water accounting records specified in Section 6.1 and 6.2 for a period of three Fiscal Years following termination of this Agreement. Metropolitan may elect to have such audits conducted by its staff or by others, including independent accountants or engineers, as designated by Metropolitan or its designee. Upon 30 days advance notice, CDA shall make available to the auditor all records, books and other documents related to the determination of Allowable Yield. Based on the results of any independent audit, an adjustment for over- or under-payment for Allowable Yield for each applicable Fiscal Year shall be paid by Metropolitan or CDA within one year of conclusion of audit.

Section 7. Rate Structure Integrity

- 7.1. CDA, Western, and IEUA agree and understand that Metropolitan's rate structure, as of January 1, 2004, ("Existing Rate Structure") provides the revenue necessary to support the development of new water supplies by local agencies through incentive payments in the Local Resources Program (LRP), Conservation Credits Program (CCP), and the Seawater Desalination Program (SDP). In particular, the Water Stewardship Rate is the component of Existing Rate Structure that provides revenue for the LRP, CCP and SDP. Further, CDA, Western, and IEUA acknowledge that Existing Rate Structure and all components within that rate structure were developed with extensive public input and member agency participation, and that the elements of Existing Rate Structure have been properly adopted in accordance with Metropolitan's rules and regulations.
- 7.2. (a) CDA, Western, and IEUA agree that Metropolitan's rates set under the Existing Rate Structure may be reset throughout the term of this Agreement to account for the cost of service, and that CDA, Western, and IEUA will address any and all future issues, concerns and disputes relating to Existing Rate Structure, through administrative opportunities available to them pursuant to Metropolitan's public board process. As such, CDA, Western, and IEUA agree if they file or participate in litigation or support legislation to challenge or modify Existing Rate Structure, including changes in overall rates and charges that are consistent with the current cost-of-service methodology, Metropolitan may initiate termination of this Agreement consistent with Section 7.4. below. Metropolitan agrees that any change in Existing Rate Structure, including changes in cost-of-service philosophy or methodology would be enacted only after collaboration and discussion with its member public agencies, and Metropolitan's public board review and approval process.
- (b) Notwithstanding the foregoing, CDA, Western, and IEUA retain the right to file and/or participate in litigation and/or to support legislation without triggering the termination of this Agreement if there are material changes to Existing Rate Structure or changes in cost-of-service methodology used to set rates by future Metropolitan board action. CDA, Western, and IEUA also retain the right to file and/or support litigation should Metropolitan, in setting rates under Existing Rate Structure, fail to comply with public notice, open meeting, or other legal requirements associated with the process of setting water rates and related taxes, fees, and charges. CDA, Western, and IEUA agree that they will not file or participate in litigation, nor will they support legislation affecting Metropolitan's rate structure after any such change in rate structure or violation of the law regarding rate setting processes until, and unless, they have exhausted all administrative opportunities available to them pursuant to Metropolitan's public board process.

- 7.3. CDA, Western, and IEUA agree that all users of the Metropolitan conveyance and distribution system should support the LRP, CCP, and SDP, that such projects provide benefits to Metropolitan and the users of the system by making existing distribution and conveyance capacity available for additional delivery, and that under Existing Rate Structure, the Water Stewardship Rate is an element of charges properly adopted by the Metropolitan Board and properly applied to water wheeled through the Metropolitan conveyance and distribution system.
- 7.4. Should CDA, Western, or IEUA file or support litigation, or sponsor or support legislation, that would challenge or be adverse to Existing Rate Structure, as described in Paragraph (a) of Section 7.2., Metropolitan's General Manager may file a 90-day notice of intent to terminate this Agreement with Metropolitan's Executive Secretary, with copies to all members of Metropolitan's Board of Directors, and contemporaneously provide CDA, Western, and IEUA with a copy of the notice. Within 30 days of receipt of such notice, CDA, Western, and IEUA shall have the right to request, in writing, mediation of the dispute by a neutral third party with expertise in finance and rate setting. The mediator shall be selected by agreement of the Parties, or failing agreement within 60 days of such request for mediation, a mediator shall be selected by the Metropolitan Board of Directors from a list of at least four candidates, one each from CDA, Western, and IEUA, and two of which will be supplied by Metropolitan's General Manager. The cost of the mediation shall be borne equally by the Parties. The request for mediation shall also serve to stay the 90-day notice of intent to terminate, but for no more than 90 days beyond the filing of the notice of request for mediation, unless otherwise agreed in writing by the Parties. If mediation does not result in an agreement acceptable to each party to this Agreement within the time provided herein, the notice of intent to terminate shall be reinstated. The Metropolitan Board of Directors shall act to approve or disapprove termination of this Agreement, and all of Metropolitan's obligations hereunder shall terminate if approved, on or before the ninetieth day following filing of the notice to terminate or, if mediation has been requested as described above, the ninetieth day following the request for mediation (or other date agreed in writing by the Parties.)
- 7.5. Metropolitan, CDA, Western, and IEUA agree that should litigation or legislation brought forth or sponsored by third parties result in changes to Existing Rate Structure, this Agreement will continue in effect unless mutually agreed in writing by the parties.
- 7.6. Should Metropolitan and its member agencies agree on an alternative rate and revenue structure that obviates the need for this section on Rate Structure Integrity, this Section shall be amended or deleted to conform to such action.
- 7.7. Notwithstanding the foregoing, Metropolitan shall have no power or authority under this Section to terminate this Agreement, and Metropolitan's General Manager shall not file a 90-day notice of intent to terminate this Agreement, if Western and/or IEUA (but not CDA) file(s) or participate(s) in any litigation or supporting legislation to challenge or modify Existing Rate Structure, but the CDA transmits a writing to Metropolitan's General Manager within thirty (30) days of request therefore from Metropolitan, stating that CDA has not participated directly or indirectly in the filing or prosecution of any

litigation or the drafting or advocacy of any legislation to challenge or modify Existing Rate Structure, and indicates support for Existing Rate Structure.

Section 8. Term, Amendments, and Termination

- 8.1. The Agreement shall commence on the date first herein written and terminate twenty (20) years thereafter. The provisions regarding audit shall remain in effect until three full Fiscal Years after the termination of the Agreement.
- 8.2. This Agreement may be amended at any time by the written mutual agreement of the Parties.
- 8.3. In addition to the automatic termination provided for in Section 5.2, Metropolitan may terminate this Agreement, upon thirty (30) days notice to CDA, Western, and IEUA on the occurrence of one the following:
 - a. A material breach of this Agreement by any Party other than Metropolitan; or
 - b. Payments are not required to be made under this Agreement by Metropolitan to CDA for a five-consecutive-year period subsequent to initiation of Project operations.
- 8.4. Effective six (6) months after written notice to the Parties, this Agreement shall terminate with regard to all Parties upon the occurrence of the two events described in Subsection 8.4(a.) and Subsection 8.4(b.):
 - a. Metropolitan determines that it will no longer:
 - i. Provide incentives or other financial support to its member agencies for seawater desalination, water recycling, or groundwater recovery projects through the Local Resources Program, Seawater Desalination Program, or similar programs; or
 - ii. Utilize the Water Stewardship Rate or a similar charge to fund the Local Resources Program, Seawater Desalination Program, or other similar programs; or
 - iii. Include the Water Stewardship Rate as a charge for all water conveyed on the system; and
 - b. A member of the Western or IEUA delegations to the Board of Directors of the Metropolitan Water District of Southern California votes in favor of the determination described in Subsection 8.4(a.).
- 8.5. The termination provisions of Section 8.4 shall remain in effect only so long as all Metropolitan Local Resources Program, Seawater Desalination Program, or similar program agreements approved by Metropolitan's Board of Directors after November 10, 2009 contain termination provisions materially in accord with Section 8.4 of this Agreement.

Section 9. Hold Harmless and Liability

- 9.1. CDA agrees at its sole cost and expense to protect, indemnify, defend, and hold harmless Metropolitan and its Board of Directors, officers, representatives, agents and employees from and against any and all claims and liability of any kind (including, but not limited to, any claims or liability for injury or death to any person, damage to property, natural resources or the environment, or water quality problems) that arise out of or relate to CDA's approval, construction, operation, repair or ownership of the Project, including any use, sale, exchange or distribution of Project water. Such indemnity shall include all damages and losses related to any claim made, whether or not a court action is filed, and shall include attorney fees, administrative and overhead costs, engineering and consulting fees and all other costs related to or arising out of such claim of liability.
- 9.2. CDA shall include the following language in its agreement with any consultant or contractor retained by CDA to work on the Project: "(Consultant) agrees at its sole cost and expense to protect, indemnify, defend, and hold harmless Metropolitan and its Board of Directors, officers, representatives, agents and employees from and against any and all claims and liability of any kind (including, but not limited to, any claims or liability for injury or death to any person, damage to property, natural resources or to the environment, or water quality problems) that arise out of or relate to CDA's approval, construction, operation, repair or ownership of the Project, including the use, sale, exchange or distribution of Project water. Such indemnity shall include all damages and losses related to any claim made, whether or not a court action is filed, and shall include attorney's fees, administrative and overhead costs, engineering and consulting fees and all other costs related to or arising out of such claim or liability."

Section 10. Notice

Any notice, payment or instrument required or permitted to be given hereunder shall be deemed received upon personal delivery or 24 hours after deposit in any United States post office, first class postage prepaid and addressed to the Party for whom intended, as follows:

If to Metropolitan:

The Metropolitan Water District of Southern California
Post Office Box 54153
Los Angeles, CA 90054-0153
Attention: Manager, Water Resource Management

If to Western:

Western Municipal Water District
14205 Meridian Parkway
Riverside, CA 92518
Attention: Director of Water Resources

If to IEUA:

Inland Empire Utilities Agency
6075 Kimball Avenue
Chino, CA 91708
Attention: General Manager

If to CDA:

Chino Basin Desalter Authority
2151 South Haven, Suite 202
Ontario, CA 91761
Attention: General Manager

Any Party may change such address by notice given to each of the other Parties as provided in this section.

Section 11. Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto. This Agreement and any portion thereof shall not be assigned or transferred to any entity not an original Party to this Agreement, nor shall any of the duties be delegated, without the express written consent of all the Parties. Any attempt to assign or delegate this Agreement or any of the obligations or benefits of this Agreement without the express written consent of all Parties shall be void and of no force or effect.

Section 12. Severability

The partial or total invalidity of one or more sections of this Agreement shall not affect the validity of this Agreement.

Section 13. Integration

This Agreement comprises the entire integrated understanding between the Parties concerning the Project, and supersedes all prior negotiations, representations, or agreements.

Section 14. Governing Law

The law governing this Agreement shall be the laws of the state of California and the venue of any action brought hereunder shall be in Los Angeles County, California.

//
//
//
//
//
//
//
//
//
//


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date first hereinabove written.

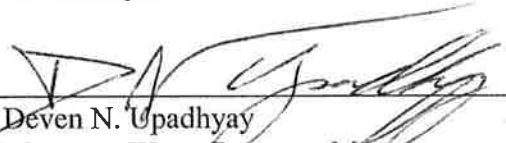
APPROVED AS TO FORM:

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Marcia L. Scully
Acting General Counsel

Jeffrey Kightlinger
General Manager

By: 
Setha E. Schlang
Senior Deputy General Counsel

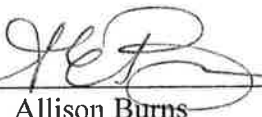
By: 
Deven N. Upadhyay
Manager, Water Resource Management


Date: 8/9/11

Date: 8/17/11

APPROVED AS TO FORM:

CHINO BASIN DESALTER AUTHORITY

By: 
Allison Burns
General Counsel

By: 
Curtis D. Paxton
General Manager

Date: 08/04/2011

Date: 08/04/2011

APPROVED AS TO FORM:

INLAND EMPIRE UTILITIES AGENCY

By: _____
Jean Cihigoyenetché
General Counsel

By: _____
Thomas A. Love
General Manager

Date: _____

Date: _____

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date first hereinabove written.

APPROVED AS TO FORM:

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Marcia L. Scully
Acting General Counsel

Jeffrey Kightlinger
General Manager

By: _____
Setha E. Schlang
Senior Deputy General Counsel

By: _____
Deven N. Upadhyay
Manager, Water Resource Management

Date: _____

Date: _____

APPROVED AS TO FORM:

CHINO BASIN DESALTER AUTHORITY

By: _____
Allison Burns
General Counsel

By: _____
Curtis D. Paxton
General Manager

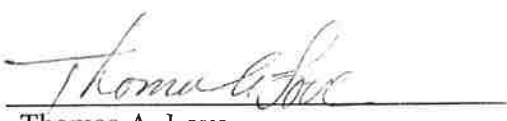
Date: _____

Date: _____

APPROVED AS TO FORM:

INLAND EMPIRE UTILITIES AGENCY

By: 
Jean Cihigoyenetché
General Counsel

By: 
Thomas A. Love
General Manager

Date: 7/13/11

Date: 7/13/11

APPROVED AS TO FORM:

WESTERN MUNICIPAL WATER DISTRICT

By: John Schatz (Special Counsel)
John Schatz
General Counsel

By: 
John V. Rossi
General Manager

Date: 7/25/2011

Date: 7/26/11

In quadruplet

Exhibit A
Chino Basin Desalination Program
Project Description

Overview

The project includes a series of existing and proposed wells, pumps, pipelines and desalting facilities that will treat brackish water from the Chino Groundwater Basin. The product water will be delivered for potable use to Inland Empire Utilities Agency (IEUA) and Western Municipal Water District's (Western) service area. The project will be owned and operated by the Chino Basin Desalter Authority (CDA).

Project Facilities

The Project is being developed in three Phases. Phases I and II are existing and in operation and Phase III is under consideration. When fully developed, the Project could deliver up to 35,200 acre-feet per year. Below is a description of the project facilities.

Phase I Facilities:

The Chino I Desalter consists of 14 groundwater extraction wells, pipelines to convey raw water to the desalting facilities, pipelines to convey treated water to the existing potable systems, a 14 MGD treatment facility, a 3 million gallon reservoir and 2 booster pumping stations. Figure 1 shows the location of Chino I Desalter facilities.

Phase II Facilities:

The Chino II Desalter consists of 8 groundwater extraction wells pipelines to convey raw water to the desalting facilities, pipelines to convey treated water to the existing potable systems, a 10 MGD treatment facility, a 3 million gallon clearwell, a 5 million gallon storage reservoir, and 3 booster pumping stations. The location of Chino II Desalter facilities is shown on Figure 1.

Proposed Phase III Facilities

The proposed expansion consists of construction new treatment facilities, wells, pump stations and pipelines to increase potable water production from 24,600 AFY to approximately 35,200 AFY. The project consists of installing and operating the following equipment and components: up to six new extraction wells; approximately 22,500 feet of new pipelines to deliver the raw water to the Chino I Desalter and Chino II Desalter; new treatment facilities at the Chino Desalter II to treat the additional raw water; a proposed brine concentrate reduction facility at the Chino Desalter II; expansion of an existing booster pump station and construction of two new booster pump stations to transfer product water to potable water suppliers; and about 38,300 feet of new pipelines to deliver product (treated) water to water suppliers.

Source of Project Water

The source of the raw groundwater is the Chino Basin. The groundwater will be recovered through the Chino I and Chino II Desalters.

End Users

The users of the product water are the members of the CDA, IEUA, and Western.

Points of Connection

The Project will start at the wells and terminate at the point of connection to the existing distribution system and existing sewer discharge lines.

This page intentionally left blank

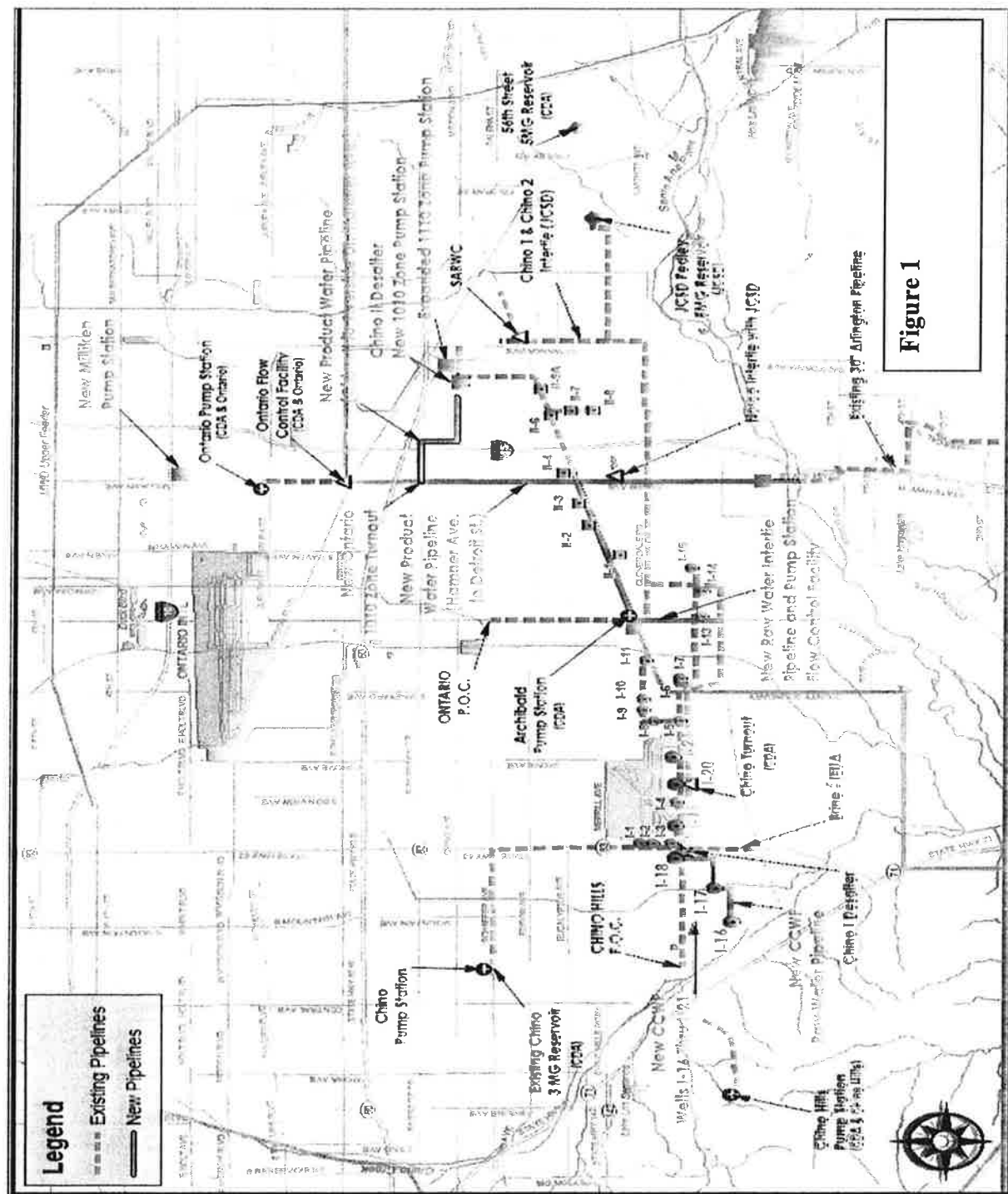


Exhibit B

PERFORMANCE PROVISIONS

1. If the Allowable Yield during the Fiscal Years 2010/11 through 2013/14 does not reach the target yield of 50 percent of the Ultimate Yield, then Metropolitan will reduce the Ultimate Yield by the target shortfall using the highest Allowable Yield produced in that period. For example, the Ultimate Yield of a project with the following performance will be revised from 35,200 to 33,000 AFY for Scenario 1 while there would be no adjustment under Scenario 2:

Project Ultimate Yield = 35,200 AFY

	Scenario 1	Scenario 2
Fiscal Year	Allowable Yield (AFY)	Allowable Yield (AFY)
2010/11	14,000	14,000
2011/12	15,000	15,500
2012/13	15,300	19,650
2013/14	15,400	18,520

50 percent of the Ultimate Yield = $0.50 \times 35,200 = 17,600$ AFY

Scenario 1. Shortfall = $17,600 - 15,400 = 2,200$ AFY

Revised Ultimate Yield = $35,200 - 2,200 = 33,000$ AFY

Scenario 2. Since, the Allowable Yield in the Fiscal Year 2012/13 is greater than 17,500, no adjustment is required.

2. If the Allowable Yield during the Fiscal Years 2014/15 through 2017/18 does not reach the target of 75 percent of the Ultimate Yield, then Metropolitan will reduce the Ultimate Yield (or the Revised Ultimate Yield) by the target shortfall using the highest Allowable Yield produced in that period. For example, the Ultimate Yield of the project in above example with the following performance will be reduced from 33,000 to 29,000 AFY for Scenario 1 and from 35,200 to 30,200 AFY in Scenario 2:

	Scenario 1	Scenario 2
Fiscal Year	Allowable Yield (AFY)	Allowable Yield (AFY)
2014/15	13,000	20,000
2015/16	15,000	20,700
2016/17	18,000	21,000
2017/18	20,750	21,400

Scenario 1. Revised Ultimate Yield = 33,000 AFY
75 percent of Ultimate Yield = $0.75 \times 33,000 = 24,750$ AFY
Shortfall = $24,750 - 20,750 = 4,000$ AFY
Revised Ultimate Yield = $33,000 - 4,000 = 29,000$ AFY

Scenario 2. Ultimate Yield = 35,200 AFY
75 percent of Ultimate Yield = $0.75 \times 35,200 = 26,400$ AFY
Shortfall = $26,400 - 21,400 = 5,000$ AFY
Revised Ultimate Yield = $35,200 - 5,000 = 30,200$ AFY

3. If the Allowable Yield during the Fiscal Years 2018/19 through 2018/22 (and every four-year period thereafter) does not reach the target yield of 75 percent of the Ultimate Yield, then Metropolitan will reduce the Ultimate Yield (or the revised Ultimate Yield) by one-half the target shortfall using the highest Allowable Yield produced in that period. The adjustment will be made using the same methodology shown in the above examples.

Exhibit C

Allowable Yield Calculation

The following methodology is used to calculate the Allowable Yield for monthly invoicing and annual production assessment:

Baseline and Cap

The following CDA agencies must collectively produce a minimum amount of groundwater (Baseline) annually to show that Project yield will increase groundwater production in the area, providing a regional benefit. The Baseline is established as a 5-yr moving average of Chino Basin groundwater production by the following CDA agencies, as reported in the column titled “Total Production & Exchanges” of the Table titled “Pool 3 Water Production Summary” of the Chino Basin Watermaster Report or Annual Assessment Package. A “production right cap” (Cap) is also established as a 5-yr moving average, which is the sum of the Operating Safe Yield and Net Ag Re-Allocation pumping rights of the following CDA agencies, as reported in columns titled “Assigned Share of Operating Safe Yield” and “Net Ag Pool Reallocation” of the Table titled “Pool 3 Water Production Summary” of the Chino Basin Watermaster Report or Annual Assessment Package. In the following example for FY 2011/12, the Baseline is 44,252 acre-feet and the Cap is 51,276 acre-feet.

Baseline – Total Production & Exchange

Agency	2005/06	2006/07	2007/08	2008/09	2009/10	Average
City of Chino	4,762	8,062	3,463	2,244	-424	3,621
City of Norco	0	0	0	0	0	0
City of Chino Hills	2,839	4,483	3,312	1,988	974	2,719
Santa Ana River Water Company	415	273	402	160	0	250
Jurupa Community Services District	17,558	17,840	16,062	17,159	13,728	16,469
City of Ontario	29,627	25,205	20,431	13,222	17,478	21,193
Western MWD	0	0	0	0	0	0
IEUA	1	0	0	0	0	0
Total	55,202	55,863	43,670	34,773	31,756	44,252

*Source – Chino Basin Watermaster Annual Report

Cap –Sum of the Operating Safe Yield and Net Ag Pool Reallocation

Agency	2005/06	2006/07	2007/08	2008/09	2009/10	Average
City of Chino	12,016	11,338	12,325	12,089	12,148	11,983
City of Norco	307	301	315	312	312	309
City of Chino Hills	4,197	3,975	4,225	4,164	4,168	4,146
Santa Ana River Water Company	1,978	1,946	2,032	2,011	2,013	1,996
Jurupa Community Services District	14,003	12,917	14,622	14,509	14,683	14,147
City of Ontario	18,434	18,163	19,101	18,881	18,894	18,695
Western MWD	-	-	-	-	-	-
IEUA	-	-	-	-	-	-
Total	50,936	48,640	52,619	51,967	52,218	51,276

*Source – Chino Basin Watermaster Annual Report

Allowable Yield Calculation

As indicated in Section 1.1, the Allowable Yield is the Project production through Chino I and Chino II Desalters that reduce a demand on Metropolitan’s imported water. Allowable Yield shall not exceed Project production in any month and Ultimate Yield in any fiscal year. If calculated Allowable Yield is a negative number, the Allowable Yield is zero for that month or year. The following formula is used to calculate the Allowable Yield.

$$\text{Allowable Yield} = \text{PY} + \text{GW} - (\text{the lesser of Baseline or Cap})$$

Where,

PY = Combined cumulative monthly production from Chino I and Chino II Desalters

GW = Total cumulative monthly Chino Basin groundwater production by the above CDA agencies, as reported in the column titled “Total Production & Exchanges” of the table titled “Pool 3 Water Production Summary” of Chino Basin Watermaster Report or Annual Assessment Package

Baseline and Cap are calculated annually using the methodology in the above tables.

All data will be obtained from CDA’s actual meter read records and/or Chino Basin Watermaster Assessment Package and Report.

Example 1 – Baseline is less than Cap

PY = 28,000 AF

GW = 45,000 AF

Baseline = 48,000 AF

Cap = 50,000 AF

For annual production assessment per Section 5: CDA shall provide Metropolitan with annual values for PY and GW based on actual meter reads.

$$\text{Allowable Yield} = 28,000 + 45,000 - 48,000 = 25,000 \text{ AF}$$

For monthly invoicing per Section 4.1: CDA shall provide Metropolitan with monthly values for PY and GW based on actual meter reads.

All values are in acre-feet. The lesser of Baseline or Cap = 48,000 AF

Month	PY	Cumulative PY	GW	PY+GW	Cumulative PY+GW	Allowable Yield	Cumulative Allowable Yield
July	2,500	2,500	4,000	6,500	6,500	0	0
August	2,300	4,800	4,200	6,500	13,000	0	0
September	2,600	7,400	4,100	6,700	19,700	0	0
October	2,100	9,500	3,800	5,900	25,600	0	0
November	2,200	11,700	4,000	6,200	31,800	0	0
December	2,100	13,800	3,800	5,900	37,700	0	0
January	2,400	16,200	3,000	5,400	43,100	0	0
February	2,600	18,800	3,500	6,100	49,200	1,200	1,200
March	2,500	21,300	3,200	5,700	54,900	5,700	6,900
April	2,100	23,400	3,200	5,300	60,200	5,300	12,200
May	2,200	25,600	4,100	6,300	66,500	6,300	18,500
June	2,400	28,000	4,100	6,500	73,000	6,500	25,000
Total	28,000		45,000	73,000		25,000	

Example 2 – Baseline is greater than Cap

PY = 28,000 AF

GW = 45,000 AF

Baseline = 53,000 AF

Cap = 50,000 AF

For annual production assessment per Section 5: CDA shall provide Metropolitan with annual values for PY and GW based on actual meter reads.

$$\text{Allowable Yield} = 28,000 + 45,000 - 50,000 = 23,000 \text{ AF}$$

For monthly invoicing per Section 4.1: CDA shall provide Metropolitan with monthly values for PY and GW based on actual meter reads.

All values are in acre-feet. The lesser of Baseline or Cap = 50,000 AF

Month	PY	Cumulative PY	GW	PY+GW	Cumulative PY+GW	Allowable Yield	Cumulative Allowable Yield
July	2,500	2,500	4,000	6,500	6,500	0	0
August	2,300	4,800	4,200	6,500	13,000	0	0
September	2,600	7,400	4,100	6,700	19,700	0	0
October	2,100	9,500	3,800	5,900	25,600	0	0
November	2,200	11,700	4,000	6,200	31,800	0	0
December	2,100	13,800	3,800	5,900	37,700	0	0
January	2,400	16,200	3,000	5,400	43,100	0	0
February	2,600	18,800	3,500	6,100	49,200	0	0
March	2,500	21,300	3,200	5,700	54,900	4,900	4,900
April	2,100	23,400	3,200	5,300	60,200	5,300	10,200
May	2,200	25,600	4,100	6,300	66,500	6,300	16,500
June	2,400	28,000	4,100	6,500	73,000	6,500	23,000
Total	28,000		45,000	73,000		23,000	



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Date: August 8, 2011
To: Deven N. Upadhyay, Manager, Water Resource Management
From: Ray Mokhtari, Senior Engineer
Subject: Execution of a new consolidated LRP Agreement for three phases of the Chino Basin Desalination Program and termination of existing agreements for Phases I and II

1. **Parties:** Metropolitan, IEUA, Western, and CDA
2. **Metropolitan Agreement Administrator:** Ray Mokhtari
3. **Purpose:** The subject project is being implemented in three phases. Phases I and II are in operation and Phase III is under consideration. We have two existing agreement for Phases I and II. Under the existing agreements, CDA owes us about \$6 million for LRP incentive overpayments. In order to recover our \$6 million, we are terminating the existing two agreements and executing a new consolidated LRP agreement for all three phases of the project. The new agreement will also simplify contract administration for the project by eliminating annual cost reconciliation.
4. **Authority:** Board action of June 2011.
5. **Financial Arrangements:** Provide \$139 per acre foot over 20 years.
6. **Compliance with Budget:** It is included in the LRP budget
7. **Start and Termination Dates:** Starts on July 1, 2011 and end on June 30, 2031.
8. **Pertinent Issues:** None
9. **Needed Action:** Sign all four agreements. Also, sign the termination letter. IEUA sent us only three signed originals instead of four. This way IEUA can have an original letter for their files.

Ray Mokhtari

RM:tt

o:\a\s\m\2011\Chino Desalter LRP agree memo to deven 2.docx