

Council Meeting of
December 20, 2011

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Public Works – Approve agreement amendment for provision of treated water from the Goldsworthy Desalter. Expenditure: \$700,000.

RECOMMENDATION

Recommendation of the Public Works Director that City Council approve an amendment to the contract service agreement with the Water Replenishment District of Southern California (WRD) (C2007-095) extending the term of agreement for six month through June 30, 2012 in the amount of \$700,000 for provision of treated water from the Goldsworthy Desalter.

Funding

Funding will be derived from the Water Enterprise annual operating budget.

BACKGROUND AND ANALYSIS

The Goldsworthy Groundwater Desalter, located at the City Services Facility, converts saline groundwater into fresh drinking water and currently provides approximately 8 percent of municipal potable water supplies. Although the Water Replenishment District is the owner of the desalter, Torrance Municipal Water (TMW) operates the facility under a contract with WRD and all treated water production from the desalter is purchased by TMW for use within the municipal service area.

In April 2007, the City Council approved a temporary pricing agreement with the Water Replenishment District to provide Torrance Municipal Water with potable water supplies from the Goldsworthy Desalter through 2011 at a favorable rate compared to imported water supplies purchased from the Metropolitan Water District of Southern California. During this period, WRD has utilized unused TMW groundwater pumping rights in the West Coast Basin to meet requirements for extraction of groundwater under the current adjudication of the local West Coast Groundwater Basin (South Bay Area). In June 2007, this agreement was revised to incorporate some technical language changes, as a result of certain concerns raised during a hearing on the agreement before the Superior Court, which has jurisdiction over the West Coast Basin

groundwater adjudication. The revisions did not materially impact the financial or substantive terms of the original agreement.

Over the last several months, TMW and WRD have been engaged in discussions to develop a long term pricing agreement for treated water supplies produced by the desalter. In the interim, it is recommended that the existing Goldsworthy Desalter water pricing agreement with the Water Replenishment District (C2007-095) be extended, in accordance with the attached contract amendment by up to six months through June 30, 2012.

Respectfully submitted,

ROBERT J. BESTE
Public Works Director

Charles J. Schaich
By: Charles J. Schaich
Sr. Administrative Analyst

CONCUR:

Jack van der Linden
Jack van der Linden
Deputy Public Works Director

Robert J. Beste
Robert J. Beste
Public Works Director

Mary Giordano
for LeRoy J. Jackson
City Manager

Attachments: A. Amendment to Agreement
B. Agreement C2007-095

AMENDMENT TO AGREEMENT C2007-095

This Amendment to Agreement C2007-095 ("Amendment") is made and entered into as of January 1, 2012 ("Effective Date"), by and between the CITY OF TORRANCE ("CITY") and the Water Replenishment District of Southern California, a water replenishment district formed under division 18 of the California Water Code (the "CONTRACTOR").

RECITALS:

- A. The CITY and CONTRACTOR entered into a Contract Services Agreement on June 19, 2007, whereby the CONTRACTOR agreed to provide City with fully treated potable water derived from saline groundwater that is extracted from the West Coast Basin.
- B. The Agreement was to terminate on December 31, 2009. The Agreement gave the CONTRACTOR the option to extend the term of the Agreement for an additional 2 years by giving written notice to the City. On November 20, 2009, the CONTRACTOR exercised its option to extend the agreement for an additional 2 year term.
- C. The CITY is satisfied with the work performed by the CONTRACTOR.
- D. Both the CITY and the CONTRACTOR desire to extend the term of the Agreement through June 30, 2012.
- E. Both the CITY and the CONTRACTOR are agreeable to continuing the the scope of work and water pricing structure incorporated into the original agreement during the extension period.

AGREEMENT:

- 1. Paragraph 2 entitled "TERM" is amended in its entirety as follows:

- "2. **TERM**

- Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through June 30, 2012."

- 2. Paragraph 3A entitled "CONTRACTOR'S FEE"

- "A. CONTRACTOR's Fee

- 1. For services rendered pursuant to the Agreement, CONTRACTOR will be paid in accordance with the Compensation Schedule attached as Exhibit B to the original Agreement, provided, however, that in no event will the total

ATTACHMENT A

amount of money paid the CONTRACTOR, for services initially contemplated by this Agreement, exceed the sum of \$700,000 ("Agreement Sum") during the term of January 1, 2012 through June 30, 2012, unless otherwise first approved in writing by CITY.

2. During the Initial Term and any Extended Term of this Agreement, CITY will forbear from exercising or enforcing its rights under section 2.4 of the Lease provided that CITY is not in default under the terms of this Agreement."
3. The persons executing this Agreement on behalf of the CONTRACTOR warrant that (i) the CONTRACTOR is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONTRACTOR; (iii) by so executing this Agreement, the CONTRACTOR is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONTRACTOR is bound.
4. In all other respects, the Agreement dated June 19, 2007 between the CITY and CONTRACTOR is ratified and reaffirmed and is full force and effect.

CITY OF TORRANCE
A Municipal Corporation

WATER REPLENISHMENT DISTRICT
OF SOUTHERN CALIFORNIA
A Water Replenishment District formed under
Division 18 of the California Water Code

By: _____
Frank Scotto
Mayor

By: _____
Sergio Calderon, President
Board of Directors

By: _____
Sue Herbers
City Clerk

By: _____
Robert Katherman, Secretary

APPROVED AS TO FORM:
JOHN L. FELLOWS III
City Attorney

APPROVED AS TO FORM:

By: _____

By: _____
H. Francisco Leal
District Counsel

CONTRACT 487

CONTRACT SERVICES AGREEMENT

This CONTRACT SERVICES AGREEMENT (the "Agreement") is made and entered into as of June 19, 2007 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation (the "CITY"), and the Water Replenishment District of Southern California, a water replenishment district formed under division 18 of the California Water Code (the "CONTRACTOR").

RECITALS:

- A. CITY wishes to retain the services of CONTRACTOR to provide CITY with fully treated potable water derived from groundwater extracted from the West Coast Basin that may contain chlorides in excess of drinking water standards ("Saline Groundwater").
- B. CONTRACTOR will fully treat the groundwater at the Goldsworthy Desalter facility, located in the City Service Center at 20500 Madrona Avenue (the "Facility"). CONTRACTOR is currently leasing the real property on which the Facility is located pursuant to that City of Torrance Desalter Facilities Site Lease dated January 26, 1999 (the "Lease"). CONTRACTOR has constructed a well, pipelines, the Goldsworthy groundwater desalination treatment facility and other improvements at this site (collectively, the "Desalter") to treat groundwater that would not otherwise be usable as a potable domestic water supply.
- C. CITY will use its adjudicated groundwater pumping rights as set forth in the West Coast Basin Judgment (the "Judgment") in connection with the extraction of groundwater by CONTRACTOR, on CITY's behalf. The Judgment regulates the quantity of groundwater extracted, and therefore, parties to the Judgment may extract groundwater pursuant to the Judgment regardless of the chloride concentrations contained in the groundwater. Thus, CITY stipulates and agrees as set forth below, that for every one acre-foot of groundwater extracted and treated at the Desalter well pursuant to this Agreement, one acre-foot of groundwater will be debited from CITY's annual allowable water extractions from the West Coast Basin.
- D. CITY and CONTRACTOR recognize that the actual extractions of groundwater in connection with the operation of the Desalter are governed by the Judgment.
- E. Should CITY's adjudicated groundwater rights no longer be available for the operation of the Desalter, due to CITY's exercise of its termination rights pursuant to section (4) of this Agreement, or due to the expiration of this Agreement as set forth in section (2), or for any other reason, CONTRACTOR shall immediately cease operation of the Desalter and immediately cease extracting groundwater from the Desalter well. CONTRACTOR further agrees that the Desalter will not resume operation, including extraction of groundwater from the Desalter well, until such time that other adjudicated water rights become available for the operation of the Desalter, subject to approval for such use by the Watermaster and the court, or the court approves a new exemption, both court approvals after a noticed motion and pursuant to all applicable procedures set forth in the Judgment.

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**DUPLICATE
ORIGINAL**

- F. Should the chloride concentrations go above the 1,000 parts per million level as set forth in the original Order Regarding Operation of the Goldsworthy Desalter, CONTRACTOR shall either continue operating the Desalter pursuant to CITY's adjudicated water rights or CONTRACTOR shall apply to the court for an exemption from the Judgment. Until such time that the court grants such exemption, the CONTRACTOR shall operate the Desalter pursuant to CITY's adjudicated water rights.
- G. CONTRACTOR represents that it is qualified to perform the services contemplated by this Agreement.

AGREEMENT:

1. SERVICES TO BE PERFORMED BY CONTRACTOR

- A. CONTRACTOR will provide the services listed in the Scope of Services attached as Exhibit "A" to this Agreement. CONTRACTOR warrants that all work and services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner.
- B. In order for the CONTRACTOR to provide the services described in Exhibit A hereto, CITY shall use its adjudicated groundwater pumping rights as set forth in the Judgment in connection with the extraction of groundwater by CONTRACTOR, on CITY's behalf. CITY's annual allowable water extractions from the West Coast Basin shall be debited by one-acre foot for every acre-foot of groundwater extracted at the Desalter well by CONTRACTOR. Any physical extraction of groundwater by CONTRACTOR for the operation of the Desalter will be done as the agent of CITY.
- C. Should CITY's adjudicated groundwater rights no longer be available for the operation of the Desalter, either due to CITY's exercise of its termination rights pursuant to section (4) of this Agreement or due to, the expiration of this Agreement as set forth in section (2), or for any other reason, CONTRACTOR shall immediately cease operation of the Desalter and immediately cease extracting groundwater from the Desalter well. CONTRACTOR further agrees that the Desalter will not resume operation, including extraction of groundwater from the Desalter well, until such time that other adjudicated water rights become available for the operation of the Desalter, subject to approval for such use by the Watermaster and the court, or the court approves a new exemption, both court approvals after a noticed motion and pursuant to all applicable procedures set forth in the Judgment.
- D. If the chloride concentrations go above the 1,000 parts per million as set forth in the original Order Regarding Operation of the Goldsworthy

, Desalter, CONTRACTOR shall either continue operating the Desalter pursuant to CITY's adjudicated water rights or CONTRACTOR shall apply to the court for an exemption from the Judgment. Until such time that the court grants such exemption, the CONTRACTOR shall operate the Desalter pursuant to CITY's adjudicated water rights.

- E. CONTRACTOR and CITY agree that the Lease shall remain in full force and effect except as provided in this Agreement.

2. TERM

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement shall continue in full force and effect from the Effective Date (the "Initial Term") through December 31, 2009. CONTRACTOR has the option to extend the term of this Agreement for an additional two (2) years by written notice to CITY no later than thirty (30) days prior to the expiration of the Initial Term (the "Extended Term").

3. COMPENSATION

A. CONTRACTOR's Fee.

1. For services rendered pursuant to this Agreement, CONTRACTOR will be paid in accordance with the compensation schedule attached as Exhibit "B" to this Agreement (the "Compensation Schedule").
2. During the Initial Term and any Extended Term of this Agreement, CITY will forbear from exercising or enforcing its rights under section 2.4 of the Lease provided that CITY is not in default under the terms of this Agreement.

B. Schedule of Payment.

Provided that the CONTRACTOR is not in default under the terms of this Agreement, upon presentation of an invoice, CONTRACTOR will be paid the fees described in Paragraph 3.A above, according to the Compensation Schedule. Payment will be due within 30 days after the date of the invoice.

4. TERMINATION OF AGREEMENT

A. Termination by CITY for Convenience.

1. Either CITY or CONTRACTOR may, with sixty (60) days notice to the other, terminate the Agreement for either CITY's or CONTRACTOR's convenience and without cause.
2. Upon receipt of written notice from CITY of such termination for CITY's convenience, CONTRACTOR will:

- a. cease operations as directed by CITY in the notice;
 - b. take actions necessary, or that CITY may direct, for the protection and preservation of the work; and
 - c. except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
3. In case of such termination for CITY's convenience, CONTRACTOR will be entitled to receive payment for work executed, costs incurred by reason of such termination, and reasonable overhead and profit on the work not executed.

B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the nondefaulting party gives the defaulting party written notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.
2. In the event this Agreement is terminated for cause by the default of the CONTRACTOR, the CITY may, at the expense of the CONTRACTOR and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due the CONTRACTOR under the terms of this Agreement will be retained by the CITY, but the retention will not release the CONTRACTOR and its surety from liability for the default. Under these circumstances, however, the CONTRACTOR and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the amount agreed to in Paragraph 3.A. and any amount authorized for extra services.
3. Termination for cause will not affect or terminate any of the rights of the CITY as against the CONTRACTOR or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

C. Termination for Breach of Law.

In the event the CONTRACTOR or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the CITY determines to be so serious and compelling as to affect CONTRACTOR's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. CITY will not take action until CONTRACTOR has been given notice and an opportunity to present evidence in mitigation.

5. **FORCE MAJEURE**

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental control, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform.

6. **RETENTION OF FUNDS**

CONTRACTOR authorizes CITY to deduct from any amount payable to CONTRACTOR (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate CITY for any losses, costs, liabilities, or damages suffered by CITY, and all amounts for which CITY may be liable to third parties, by reason of CONTRACTOR's acts or omissions in performing or failing to perform CONTRACTOR's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by CONTRACTOR, or any indebtedness exists that appears to be the basis for a claim of lien, CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of CONTRACTOR to insure, indemnify, and protect CITY as elsewhere provided in this Agreement.

7. **CITY REPRESENTATIVE**

Robert J Beste is designated as the "City Representative," authorized to act in

its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONTRACTOR

8. **CONTRACTOR REPRESENTATIVE(S)**

The following principal(s) of CONTRACTOR are designated as being the principal(s) and representative(s) of CONTRACTOR authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

- 1) Robb Whitaker, General Manager

9. **INDEPENDENT CONTRACTOR**

The CONTRACTOR is, and at all times will remain as to CITY, a wholly independent contractor. Neither CITY nor any of its agents will have control over the conduct of the CONTRACTOR nor any of the CONTRACTOR's employees, except as otherwise set forth in this Agreement. The CONTRACTOR may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

10. **NO CONVEYANCE**

This Agreement shall in no way be construed so that CONTRACTOR has a leasehold interest or any other property interest in CITY's adjudicated groundwater pumping rights in the West Coast Basin.

11. **OTHER LICENSES AND PERMITS**

CONTRACTOR warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

12. **FAMILIARITY WITH WORK**

By executing this Agreement, CONTRACTOR warrants that CONTRACTOR (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, CONTRACTOR warrants that CONTRACTOR has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should CONTRACTOR discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONTRACTOR must immediately inform CITY of that fact and may not proceed except at CONTRACTOR's risk until written instructions are received from CITY.

13. **CARE OF WORK**

CONTRACTOR must adopt reasonable methods during the term of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by CITY, except those losses or damages as may be caused by CITY's own negligence.

14. **CONTRACTOR'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS**

Records of accounts between CITY and the CONTRACTOR, will be kept on a generally recognized accounting basis. CONTRACTOR will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to CITY during normal working hours. CONTRACTOR will maintain these records for three years after final payment.

15. **INDEMNIFICATION**

A. Subject to Paragraph 15.B., CONTRACTOR will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever arising out of or related to the services provided to CITY pursuant to this Agreement. CITY will indemnify, defend, and hold harmless CONTRACTOR, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever arising out of or related to any action required of CITY pursuant to this agreement. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of CONTRACTOR, its officers, employees, agents, subcontractors or vendors, if CITY is responsible for the indemnification, or CITY, its officers, employees, agents, subcontractors or vendors if CONTRACTOR is responsible for the indemnification. Payment by either CITY or CONTRACTORS is not a condition precedent to enforcement of this indemnity.

B. In the event that any third party challenges the validity or enforceability of this Agreement, CITY agrees to vigorously defend such an action, at its sole cost, through legal counsel acceptable to CONTRACTOR, which acceptance CONTRACTOR shall not unreasonably withhold.

16. **NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES**

No officer or employee of CITY will be personally liable to CONTRACTOR, in the event of any default or breach by the CITY or for any amount that may become due to CONTRACTOR

17. **NON-LIABILITY OF CONTRACTORS OFFICERS AND EMPLOYEES**

No officer or employee of CONTRACTOR will be personally liable to CITY, in the

event of any default or breach by the CONTRACTOR or for any amount that may become due to CITY.

18. **INSURANCE**

CONTRACTOR and its subcontractors will maintain insurance in accordance with paragraph 13 of the Lease.

19. **CONFLICT OF INTEREST**

A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.

B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

20. **NOTICE**

A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:

1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.
2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.
3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.
4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.
5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on

receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

6. Addresses for purpose of giving notice are as follows:

CONTRACTOR: Water Replenishment District
4040 Paramount Blvd.
Lakewood, CA 90712
Attn: General Manager
Fax: (562) 921-6101

CITY: City Clerk
City of Torrance
3031 Torrance Boulevard
Torrance, CA 90509-2970
Fax: (310) 618-2931

- B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

21. **PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING**

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by CITY without prior court approval and may not be assigned or subcontracted by CONTRACTOR without prior notification to the court appointed watermaster overseeing the Judgment and approved by the court, if applicable. Neither the City nor the Contractor may assign or subcontract this Agreement without the prior written consent of the other.

22. **INTEGRATION; AMENDMENT**

This Agreement represents the entire understanding of CITY and CONTRACTOR as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties. This Agreement will supersede any prior contract services agreements governing the Desalter between CITY and CONTRACTOR once the parties have fully approved and executed this Agreement.

23. **INTERPRETATION**

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

24. **SEVERABILITY**

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

25. **TIME OF ESSENCE**

Time is of the essence in the performance of this Agreement.

26. **GOVERNING LAW; JURISDICTION**

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

27. **COMPLIANCE WITH STATUTES AND REGULATIONS**

CONTRACTOR, as the CITY's agent, will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders, including the Judgment.

28. **WAIVER OF BREACH**

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

29. **ATTORNEY'S FEES**

Except as provided for in Paragraph 15, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

30. **EXHIBITS**

All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

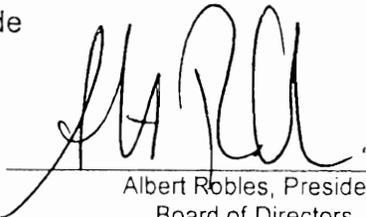
31. CONTRACTOR'S AUTHORITY TO EXECUTE

The persons executing this Agreement on behalf of the CONTRACTOR warrant that (i) the CONTRACTOR is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONTRACTOR; (iii) by so executing this Agreement, the CONTRACTOR is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONTRACTOR is bound.

CITY OF TORRANCE
a Municipal Corporation

WATER REPLENISHMENT DISTRICT
OF SOUTHERN CALIFORNIA
a Water Replenishment District formed
under division 18 of the California Water
Code

By: 
Frank Scotto, Mayor

By: 
Albert Robles, President
Board of Directors

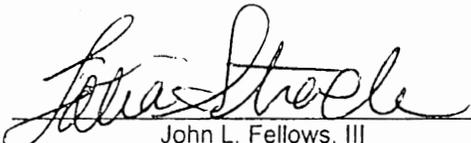
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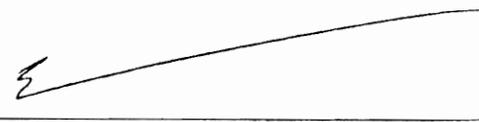
By: 
Sue Herbers, City Clerk

By: 
Sergio Calderon, Secretary
Board of Directors

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: 
John L. Fellows, III
City Attorney

By: 
Ed Casey
District Counsel

Attachments: Exhibit A Scope of Services
Exhibit B Compensation Schedule

EXHIBIT A**SCOPE OF SERVICES**

The services would be to provide CITY with a fully treated potable water supply that meets all water quality standards and mutually agreed upon water quality parameters for use as a domestic water supply. While this Agreement is in effect, CITY will exercise a portion of its adjudicated groundwater pumping rights, up to maximum of 2,990 acre feet annually, for a period of time agreeable to both parties for extracting groundwater from the West Coast Basin at the Goldsworthy Desalter well.

The services include, but are not limited to, the following:

- Provide for all equipment and facilities necessary to operate the groundwater well, the desalination treatment plant and ancillary facilities located in, on or under the Facility in an optimized manner.
- Operate and maintain the Facility required for the extraction and treatment of non-potable groundwater. CITY shall be a participant in the selection process of any third party vendor chosen to operate the Facility.
- Implement corrective measures to promptly restore the Facility back into active service in the event of operational failure.
- Ensure that personnel responsible for operation and maintenance of the Facility have requisite certifications/licenses and are fully qualified to the Facility.
- Provide emergency backup support in the event the assigned plant operational personnel are not available.
- Replacement, refurbishment or construction of necessary facilities and/or equipment to ensure the Facility maintained in an optimal state.
- Ensure that potable water production from the Facility is optimized.
- Perform continuous water quality monitoring and maintain data logs and other pertinent documentation.
- Perform all water quality testing and analysis necessary to meet all federal and state water quality regulations/standards and other agreed upon water quality parameters. CONTRACTOR shall also be responsible for submittal of all water quality documents, test reports and other information as required by regulatory agencies and CITY. CITY shall be appraised of all submittals and shall be entitled to copies upon request.
- Provide all technical services to ensure the continued operation of the Facility in an optimized manner.
- Maintain, provide and submit all documentation, cost/financial data and other records as required by the Metropolitan Water District (the "MWD") to ensure continued receipt of MWD subsidies under the Groundwater Recovery Program and/or successor programs. Provide assistance as required to support CITY in any negotiations with MWD regarding the Facility.

- Ensure that there is pro-active safety plan and training and that the third party vendor contracted to operate the Facility is in compliance with internal safety plans, any Occupational Safety and Health Administration (OSHA) requirements and City safety procedures.
- Provide for adequate security measures to protect the integrity of the Facility and the water supply.
- Ensure there is an emergency response and notification plan in place and that personnel assigned are trained in its application.
- Comply with all environmental regulations and requirements including those promulgated by the State and Department of Health Services, State Water Regional Quality Control Board, CITY and other regulatory bodies. CONTRACTOR shall be responsible for preparation and submittal of all required compliance reports and documentation.
- Ensure the Facility reliability and provide accountability for its sustained operation.
- Maintain open channels of communication with CITY and provide notification of any significant event.
- Provide for all permits, licenses and certifications necessary to operate the Facility to produce potable water for the CITY's use.
- Discharge all "pumping to waste" effluent from the Facility in accordance with State regulatory and City requirements. CITY shall be notified of any discharges to the retention basins. The incremental cost of pumping out any plant effluent from the retention basin to storm drain system shall be charged to CONTRACTOR.
- Maintain and clean the plant site and surrounding area.

Additional requirements:

- CITY has the right of access to the Facility.
- CONTRACTOR shall promptly inform CITY of any significant changes in operational parameters or production derived from the Facility.
- CONTRACTOR shall provide CITY with sufficient advance notification regarding major maintenance schedules or commencement of significant improvements to the Facility.
- CONTRACTOR shall promptly notify CITY of any "discharges to waste" to CITY's retention basins. CONTRACTOR shall comply with City requirements regarding these types of discharges.
- CITY has the right to perform supplemental water quality test on water supplied from the Facility. In addition, CITY will have access to all water quality data regarding the Facility.
- CITY has the right to examine all cost and financial data maintained by CONTRACTOR regarding the Facility.
- CITY retains a first right of refusal with regard to operating the Facility.
- CONTRACTOR shall not conduct or permit any activity on the premises that interfere with providing water service to CITY.

EXHIBIT B

COMPENSATION SCHEDULE

The following schedule reflects a water pricing structure that CONTRACTOR will charge CITY pursuant to the Agreement. For the remainder of Calendar Year 2007 (April 23, 2007 through December 31, 2007), potable water purchases from CONTRACTOR will be priced on the basis of dollars per acre feet (AF). For Calendar Years 2008 and 2009, the pricing formula delineated below will be used.

Desalter Rate:

First Year **\$464.41 per AF**
 Calendar Year 2007 (Effective Dates 4/23/07 – 12/31/07)

Second and Third Year
 Calendar Years 2008 and 2009

New rate in \$/AF = (Current rate in \$/AF) x (CPI: All Items adjustment)

The rate for the ensuing years shall be calculated at the beginning of each calendar year (January) using the U.S. Department of Labor, Bureau of Labor Statistics (www.bls.gov) Consumer Price Index (CPI) for All Urban Consumers for Los Angeles-Riverside-Orange County, CA (1982-84=100) not seasonally adjusted. The index used shall be for the category of "ALL ITEMS". The index values compared to calculate the CPI adjustment shall be those values for the month of November from the preceding calendar year and the month of November for the then current calendar year.

Desalter Credit:

CONTRACTOR shall credit CITY on each monthly invoice an amount equal to the following formula:

(Current RA in \$/AF) x (Monthly production at Madrona Well 2 in AF)

CITY will be invoiced monthly for the cost of purchasing potable water from the Desalter and the corresponding Desalter Credit calculated above.

Water Replenishment District (WRD) Replenishment Assessment:

CITY will be invoiced separately and shall be responsible for paying the replenishment assessment (RA) levied by CONTRACTOR on all groundwater production from the West Coast Basin. The RA is applied to every acre-foot of production by CITY and is adjusted on July 1 of each year. CITY shall pay CONTRACTOR monthly based on the following formula:

(Current RA in \$/AF) x (Monthly production by CITY in AF)

Mr. Goshi replied that this is the first time pumping had been *voluntarily* shut down for an extended time. Director Kawasaki asked if Met had developed plans and activities for groundwater conservation. Mr. Goshi replied that Met is coordinating with member agency managers to ensure that local water supplies are available for use. Director Kawasaki asked about the projections of continued water supply from the Lower Colorado River. Mr. Goshi said that this is the most solid source of supply for the region even though there has been a dry period over the past eight years.

7. APPROVAL OF REVISED AGREEMENT BETWEEN WRD AND CITY OF TORRANCE FOR SERVICES BY GOLDSWORTHY DESALTER

District Counsel Ed Casey referred to the revised agreement between the WRD and the City of Torrance regarding the operations of the Goldsworthy Desalter. Mr. Casey stated that he was pleased to announce that all of the Watermaster's concerns regarding the operations of the Desalter were resolved. He explained that the Watermaster, the District's Technical Advisory Committee (TAC) and the Groundwater Quality Committee have reviewed and approved the revised agreement. Mr. Casey noted that the revised agreement supersedes the prior WRD-Torrance Contract Services Agreement governing the Desalter. The agreement is agendized for approval by the Torrance City Council on June 19 which is before the next court hearing on June 28, 2007.

Upon a motion duly made by Director Katherman and seconded by Director Kawasaki and unanimously approved, it was

RESOLVED: The Board approves the revised Contract Services Agreement between the WRD and the City of Torrance regarding operations of the Goldsworthy Desalter.



487

DIRECTORS

ALBERT ROBLES
PRESIDENTROBERT KATHERMAN
VICE PRESIDENTLILLIAN KAWASAKI
SECRETARYSERGIO CALDERON
TREASURERWILLARD H. MURRAY, JR.
DIRECTORROBB WHITAKER, P.E.
GENERAL MANAGER

November 20, 2009

Sue Herbers
City Clerk
City of Torrance
3031 Torrance Boulevard
Torrance, California 90509-2970

Subject: Extension of Term for Contract Services Agreement

Dear Ms. Herbers:

The City of Torrance (City) and the Water Replenishment District of Southern California (WRD) entered into a contract services agreement (Agreement) on June 19, 2007 for operation and water production of the Goldsworthy Desalter located in the City Service Center at 20500 Madrona Avenue. The Initial Term of the Agreement will expire on December 31, 2009.

The purpose of this letter is to notify you with WRD's decision to extend the Term of the Agreement for an additional two (2) years according to Article 2 in the Agreement.

Please contact me or Mr. Robert Siemak at (562) 921-5521 if you have any questions on this subject.

Sincerely,

Robb Whitaker, P.E.
General Manager

cc. Robert J. Beste/City of Torrance
Robert Siemak/WRD

4040 Paramount Boulevard
Lakewood, CA 90712
Tel (562) 921-5521
Fax (562) 921-6101
www.wrd.org

