

Council Meeting
June 26, 2012

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

Members of the Council:

SUBJECT: Public Works – Approve agreement for provision of treated water supplies from the Goldsworthy Desalter. Expenditure: Estimate of \$6 million.

RECOMMENDATION

Recommendation of the Public Works Director that City Council approve a water pricing agreement with the Water Replenishment District of Southern California (WRD) to provide treated water supplies from the Goldsworthy Desalter Project in an estimated amount of \$6 million for the life of the agreement, for fiscal years 2012-2013 through 2013-2014, with an option to extend the agreement for two additional years through fiscal 2015-2016.

Funding

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

BACKGROUND

The Goldsworthy Desalter, located at the City Services Facilities, converts saline groundwater into fresh potable (drinking) water. The Water Replenishment District (WRD) owns the desalter, however, Torrance Municipal Water (TMW) operates the facility under a contract with WRD. All treated water from the desalter is purchased by TMW which accounts for approximately 8 percent of municipal potable water supplies.

In April 2007, the City Council approved a revised pricing agreement with WRD to provide TMW with potable water supplies from the desalter through calendar year 2011. This was at a favorable rate compared to imported water supplies purchased from the Metropolitan Water District (MWD). In December 2011, the agreement was amended to extend the term for a six month period through June 30, 2012 to allow TMW and WRD time to develop a new water pricing formulation.

ANALYSIS

Over the last six months, TMW and WRD have been in discussions to develop a new pricing agreement for treated water supplies produced by the desalter. The underlying principle is to establish a pricing mechanism that is flexible, provides significant benefits for both parties, recovers the operation and maintenance (O & M) costs associated with the desalter and keeps both agencies financially whole.

The City has annual groundwater pumping rights of 5,640 acre feet (AF) in the West Coast Basin, but currently only utilizes approximately 2,700 AF of these water rights. For approximately the last five years, WRD has utilized the unused TMW pumping rights to meet groundwater extraction requirements for the desalter. The continued subscription of these pumping rights on an interim basis for the operation of the desalter will not adversely impact the TMW's use of these rights.

As a result of these deliberations, both parties agreed to establish a "baseline rate" estimate for the current fiscal year, and to reconcile this baseline rate against the actual O & M desalter costs at the end of each fiscal year. For fiscal 2012-13, the baseline rate will be \$625 per acre foot (AF), assuming production of 1,500 AF of potable water. The baseline desalter rate is substantially below the purchase cost of MWD tier 1 imported water rate that is at \$794/AF for the balance of calendar 2012 and \$847/AF effective in January 2013. A \$293,000 water cost savings in fiscal 2012-2013 is projected with the execution of the new water pricing agreement with WRD.

The new agreement is for the two year period of fiscal 2012-13 and 2013-14, with an option to extend the agreement for two additional years through fiscal 2015-16 by mutual agreement of both parties.

The proposed new water pricing agreement with WRD provides the following benefits:

- Keeps the desalter operational and provides TMW with 1,500 AF to 2,000 AF of high quality drinking water annually.
- Provides a local supply source that is not impacted by water shortage or drought situations.
- Provides flexibility by permitting termination of the arrangement once TMW can fully utilize its groundwater rights.
- Avoids any direct transfer of water rights to WRD.
- Recovers annual desalter operation and maintenance costs from the pricing structure.
- Enables the continuation of the \$250 AF subsidy by MWD under its Local Resource Program (LRP) to pay for capital construction costs.
- Provides water cost savings to TMW of an estimated \$293,000 in fiscal 2012-13 and in subsequent years of the agreement.

In summary, the proposed water pricing agreement with WRD is highly beneficial to both parties and provides value for unused groundwater pumping rights that would not otherwise be received.

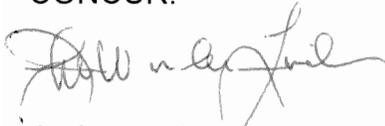
Respectfully submitted,

ROBERT J. BESTE
Public Works Director

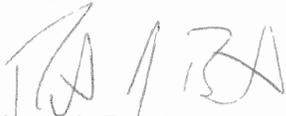


By: Charles J. Schaich
Sr. Administrative Analyst

CONCUR:



Jack van der Linden
Deputy Public Works Director



Robert J. Beste
Public Works Director



LeRoy J. Jackson
City Manager

Attachment: A. Agreement with Water Replenishment District

CONTRACT SERVICES AGREEMENT

This CONTRACT SERVICES AGREEMENT (the "Agreement") is made and entered into as of July 1, 2012 (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 saline 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 to treat groundwater that would not otherwise be usable as a potable domestic water supply.
- C. CITY will use its adjudicated groundwater pumping rights in the West Coast Basin 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. 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 annual extractions of groundwater in connection with operation of the Desalter are governed by the Judgment.
- E. Should the 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) 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 noticed motion and pursuant to all applicable procedures set forth in the Judgment.
- 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 an 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 for the West Coast Basin shall be debited by one-acre foot for every acre-foot of groundwater extracted at the Desalter well by the CONTRACTOR. Any physical extraction of groundwater by CONTRACTOR for the operations 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) CONTRACTOR further agrees that he 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 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 will continue in full force and effect from the Effective Date (the "Initial Term") through June 30, 2014. CONTRACTOR and the CITY have the option to extend the term of this Agreement for an additional two years by written consent of both the CONTRACTOR and CITY designated representatives no later than thirty 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"), provided, however, that in no event will the total amount of money paid to the CONTRACTOR, for services contemplated by this Agreement, shall exceed the sum of \$6,000,000 ("Agreement Sum"), unless otherwise first approved in writing by the 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 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) General Manager
- 2) Assistant 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 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 CONTRACTOR 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 by CONTRACTOR shall not be unreasonably withheld.

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 of
Southern California
4040 Paramount Blvd.
Lakewood, CA 90712
Attn: Assistant 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 either CITY or CONTRACTOR 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.

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 will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

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

ATTEST:

By: _____
Sue Herbers, City Clerk

By: _____
Willard H. Murray, Secretary
Board of Directors

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
John L. Fellows III
City Attorney

By: _____
H. Francisco Leal
Interim District Counsel

Attachments: Exhibit A Scope of Services
 Exhibit B Compensation Schedule

EXHIBIT A

SCOPE OF SERVICES

The services provided by the CONTRACTOR to the CITY is the provision of fully treated potable water supply from the Goldsworthy Desalter that meets all water quality standards and mutually agreed upon water quality parameters for use as a domestic water supply. While the Agreement is in effect, CITY will exercise a portion of its adjudicated groundwater pumping rights, up to maximum of 2,900 acre feet annually, for a period of time agreeable to both parties for the extraction of groundwater from the West Coast Basin at the Goldsworthy Desalter well.

The other services rendered for the Goldsworthy Desalter, well and ancillary facilities (collectively referred to as "Plant") include but are not limited to, the following:

- a. Provide all infrastructure, equipment and facilities necessary to operate the groundwater well, the desalination treatment plant and ancillary facilities located in, on or under the Plant.
- b. Implement corrective measures, in conjunction with the CITY, to promptly restore facilities back in active service in the event of an operational failure.
- c. Provide for reimbursement of all operation and maintenance costs of the Plant.
- d. Replacement, refurbishment or construction of necessary facilities and/or equipment to ensure the Plant is maintained in an optimal state.
- e. Ensure that potable water production of the Plant is optimized.
- f. Provide all technical services to ensure the continued operation of the Facility in an optimized manner.
- g. In conjunction with the vendor responsible for operating and maintaining the Plant:
 - Ensure that all water quality testing and analysis necessary to meet all federal and state water quality regulations /standards and other water agreed upon water parameters is met.
 - Ensure that personnel responsible for operations and maintenance of the Plant have requisite certifications/licenses and are fully qualified to operate Plant facilities.
 - Ensure that emergency backup support is available if assigned Plant operational personnel are not available.
 - Ensure that potable water production from the Plant is optimized.
 - Ensure there is pro-active safety plan and training and the Plant is operated in compliance with accordance with internal safety plans, OSHA requirements and City safety standards.
 - Provide for adequate security measures to protect the integrity of the Plant and water supply.
 - Ensure there is an emergency response and notification plan in place
 - Ensure that all water quality testing and analysis necessary to meet federal and state water quality regulations/standards and other agreed upon water quality parameters are performed, and that

all water quality documents, test reports, and other information as required by regulatory agencies and CITY are submitted are that these records are appropriately retained and accessible.

- Ensure compliance with all environmental regulations and requirements including those promulgated by the California Department of Public Health, the State and Regional Water Control Boards, the CITY and other regulatory bodies.
 - Ensure that all permits, licenses and certifications required to operate the Plant are obtained.
 - Ensure that the Plant site and surrounding area is cleaned and maintained.
 - Ensure for Plant reliability and provide accountability for sustained operation.
 - Ensure that all discharge “pumping to waste” effluent from the Plant is in accordance with State and CITY regulatory requirement. 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 the storm drain system shall be charged to the CONTRACTOR
- h. Maintain, provide and submit all documentation, cost/financial data and other records as required by Metropolitan Water District (the “MWD”) to ensure 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 Plant.
- i. Maintain open channels of communication with CITY and provide notification of any significant event.

Additional Requirements:

- CITY has right to access Plant facilities.
- CONTRACTOR shall provide CITY with sufficient advance notification regarding major maintenance scheduled or commencement of significant improvements to the Plant.
- CONTRACTOR shall promptly inform the CITY of any significant changes in operational parameters or production derived from the Plant.
- 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 examine all cost and financial data maintained by CONTRACTOR regarding the Plant.
- CONTRACTOR shall not conduct or permit any activity on the premises that interferes with providing water service to the CITY.
- CONTRACTOR will provide hydrogeologic assistance to CITY in locating potential suitable locations for its proposed groundwater well field with regard to the proximity and movement of the groundwater saline plume.

EXHIBIT B

COMPENSATION SCHEDULE

The following provisions reflect a water pricing structure schedule that the CONTACTOR will charge the CITY pursuant to the Agreement for potable water purchases from the Goldsworthy Desalter priced on the basis of dollars (\$) per acre feet (AF). The rate charged the CITY will only include normal and generally accepted Operations and Maintenance costs (O&M), and will exclude any capital or extraordinary costs.

Desalter Water Pricing Structure and Rate

- a. The CONTRACTOR and the CITY both wish to establish a water pricing structure that reflects the actual Operations and Maintenance (O&M) costs associated the operation and maintenance of the Goldsworthy Desalter and a structure that incentivizes optimal water production from the Desalter.
- b. The rate charged the CITY will be based on the most current data for Operations and Maintenance costs. Operations and Maintenance costs consist of the following components: Professional Consulting Services, Labor (contract operator), Labor (WRD), Office Expenses, Material and Equipment (including chemicals), Utilities for Equipment and Building, Maintenance and Repair Expense, Site lease to CITY and Brine Disposal Fees to Los Angeles County Sanitation District (LACSD).
- c. The new rate will be become effective on July 1 of each fiscal year pursuant to the term of this Agreement.
- d. Baseline Rate. The rate established by the beginning of the fiscal year shall referred to as a "Baseline Rate" mutually agreed upon by the CONTRACTOR and the CITY that reflects the best estimate based on projected O&M costs and estimated purchases of water by the CITY from water produced by the Desalter. This Baseline Rate will be charged for the duration of the fiscal year and will be reconciled pursuant to section (e) below. The baseline rate for fiscal 2012-13 effective July 1, 2012 will be established at \$625/AF.

On a monthly basis, CITY will pay the CONTRACTOR for water purchase based on the Baseline Rate times the actual monthly production in acre feet by the Goldsworthy Desalter.

- e. Reconciliation. At the end of the fiscal year (ending June 30th), the CITY will prepare the actual operations and maintenance costs tabulated monthly for the fiscal year. An adjustment will be calculated by subtracting the actual total annual O&M cost by the total annual water purchasing cost. If the difference in costs is positive, the CITY shall pay the difference amount to the CONTRACTOR as a debit adjustment to water purchase payments in the next fiscal year. If the difference in costs is negative, an adjustment will be made with the difference amount credited to the CITY for water purchasing payments in the next fiscal year.

Water Replenishment District (WRD) Replenishment Assessment (RA):

CITY will be invoiced 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 at Goldsworthy Well(s) in AF)

Desalter Credit

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

(Current RA in \$/AF) x (Monthly production at Goldsworthy Well(s) in AF)

City of Torrance will be invoiced monthly for the cost of purchasing potable water for the Desalter and the corresponding Desalter Credit above.