

Council Meeting of
June 19, 2007

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

Members of the Council:

SUBJECT: Public Works - Approval of Revised Agreement with the Water Replenishment District of Southern California (WRD) for provision of Treated Water from the Goldsworthy Desalter Project. Expenditure: Estimate \$4.8 million over the life of the Agreement.

RECOMMENDATION

The Public Works Director recommends that the City Council approve the revised Agreement with the Water Replenishment District of Southern California (WRD) to provide treated potable water supplies from the Goldsworthy Desalter Project for the remainder of Calendar 2007 through Calendar 2009, with an option to extend the Agreement for two additional years, through 2011. The revisions are technical language changes that do not have any material impact on the terms of the original Agreement previously approved by Council on April 10, 2007.

Funding

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

BACKGROUND AND ANALYSIS

On April 10, 2007 the City Council approved an Interim Agreement with the Water Replenishment District of Southern California for WRD to provide the Municipal Water Utility (TMW) with potable water supplies through 2011 from the Goldsworthy Desalter Project. During this interim period, WRD would utilize unused pumping water rights of the City to meet requirements for extraction of groundwater under the current adjudication of the local West Coast Basin (South Bay area).

Subsequent to approval of this Agreement by City Council, the WRD submitted this matter for a hearing before the Superior Court, which has jurisdiction over the West Basin Groundwater Basin Adjudication, for ratification. At this hearing, the Watermaster Service of the State Department of Water Resources (DWR), which monitors and oversees all extractions of groundwater and groundwater transfers within the West Coast Basin, raised some last minute technical concerns regarding the specific language provisions, which they had not commented on during the original review period. As a result, WRD and the Watermaster Service were instructed by the Superior

Court to reconcile these language changes and return to Court by the end of June for formal ratification.

The revisions to the Agreement solely reflect clarification statements and technical language changes that the Watermaster Service felt better defined the temporary use of City groundwater pumping rights to produce potable water from the Goldsworthy Desalter project. These language changes do not affect any of the substantive or financial terms of the original Agreement originally approved by Council. With approval of this revised Agreement, this item will be submitted by WRD to the Superior Court for formal ratification.

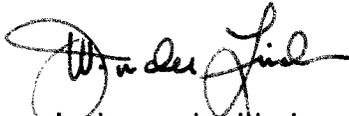
Respectfully submitted,

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

Attachments: A. Revised Agreement with WRD
 B. City Council Item Date April 10, 2007

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.

- 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 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

ATTEST:

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)

Council Meeting Of
April 10, 2007

SUPPLEMENTAL MATERIAL

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

Members of the Council:

SUBJECT: SUPPLEMENTAL MATERIAL TO COUNCIL AGENDA ITEM 8 F

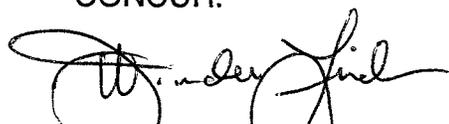
Attached is a revised chart entitled "Financial Impact on Water Costs for Interim Agreement with Water Replenishment District (WRD)", which more clearly defines and clarifies the financial benefits to the City with regard to the proposed agreement.

The Interim WRD agreement permits continued operation of the Goldsworthy Groundwater Desalter Project and provides economic benefits both in terms of cost avoidance from incurring higher Metropolitan Water District (MWD) tier 2 rates and in direct saving due to a WRD discount rate for Desalter water. By executing this agreement the City would realize annual financial benefits ranging from approximately \$174,000 to \$261,000. In total, this savings amounts to over \$1 million during the life of the agreement.

Respectfully submitted,

ROBERT J. BESTE
Public Works Director

CONCUR:


Jack van der Linden
Deputy Public Works Director


Robert J Beste
Public Works Director


LeRoy J. Jackson
City Manager


By Charles Schaich
Senior Administrative Analyst

Attachment: A. Financial Impact Chart

**FINANCIAL IMPACT ON WATER COSTS
INTERIM SERVICE AGREEMENT WITH WATER REPLENISHMENT DISTRICT (WRD)**

	ACTUAL			PROJECTED		
	2007	2008	2009	2010	2011	
1. Metropolitan Water District (MWD) Rates \$/AF						
a. Tier 1 Standard Rate	\$478	\$508	\$538	\$568	\$598	
b. Tier 2 Premium Rate (a)	\$574	\$604	\$634	\$664	\$694	
2. WRD Rates for Desalter Water (@ 2,000AF/YR)	\$464.41	\$482.99	\$502.31	\$522.40	\$543.30	
3. Purchases MWD in AF						
a. Without Desalter Water	22,766	22,257	22,354	22,451	22,547	
b. With Desalter Water	20,766	20,257	20,354	20,451	20,547	
4. Purchases MWD Water in AF Higher Tier 2 Block (above 20,976 AF)						
a. Without Desalter Water	1,799 (b)	1,290 (b)	1,387 (b)	1,484 (b)	1,580 (b)	
b. With Desalter Water	0	0	0	0	0	
5. Higher Cost of MWD Water Due to MWD Tier 2 Purchases						
a. Without Desalter Water	\$172,704	\$123,840	\$133,152	\$142,464	\$151,680	
b. With Desalter Water	0	0	0	0	0	
6. Differential between MWD Tier 1 and WRD Desalter Water \$ /AF	\$13.59	\$25.10	\$35.69	\$45.60	\$54.70	
7. Direct Water Saving Cost with Desalter Water @ 2,000 AF/YR	\$27,180	\$50,200	\$71,380	\$91,200	\$109,400	
Equals Total Economic Benefit with Desalter Water (5a + 7)	\$199,884	\$174,040	\$204,532	\$233,664	\$261,080	

(a) All annual MWD purchases of imported water in excess 20,967 AF are priced at a premium tier 2 rate at \$96 per Acre Foot (AF) above tier 1 rate.
(b) Purchase of MWD Tier 2 water in 2007 through 2011 takes into account projected groundwater production from Well No. 6.

Council Meeting of
April 10, 2007

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

Members of the Council:

SUBJECT: Public Works – Approval of an Interim Agreement with the Water Replenishment District of Southern California (WRD) for the provision of treated water from the Goldsworthy Desalter Project. Expenditure: Estimate \$4.8 million over life of Agreement.

RECOMMENDATION

The Public Works Director recommends that the City Council approve an Interim Contract Service Agreement with the Water Replenishment District of Southern California (WRD) to provide treated potable water supplies from the Goldsworthy Desalter Project for the remainder of calendar 2007 through calendar 2009, with an option to extend the Agreement for two additional years through 2011.

Funding

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

BACKGROUND

The West Coast Groundwater Basin serves as a drinking water supply for Torrance and surrounding communities in the South Bay. Major portions of the Basin can no longer be used as drinking water due to degradation of water quality resulting from the presence of a large plume of intruded seawater. As a means to remediate this situation and restore a portion of the degraded Basin to beneficial use, the Water Replenishment District (WRD) constructed a groundwater desalter facility in the city of Torrance. WRD provides for groundwater replenishment and is responsible for overall groundwater management in both the West Coast and adjacent Central Basin.

The Goldsworthy Desalter as the facility is named, is located at the City Services Facility Yard. It extracts saline groundwater and treats it to potable drinking water that is sold exclusively to Torrance Municipal Water (TMW) at a 6% discount compared to the prevailing Metropolitan Water District (MWD) composite wholesale water rates. This facility operates under a 1998 tri-party master agreement between the Water Replenishment District (WRD) and the City, along with MWD, which provides supplemental funding of up to \$250 per acre foot (af) under local resources program.

Final construction of the Desalter project was completed in 2001 and was designed initially to produce approximately 2,400 af of high quality drinking water annually for use by the City of Torrance. Subsequent to completion of the Desalter, the Superior Court of the State of California granted an exemption from the use of groundwater pumping rights, but imposed a stipulation that the exemption applied only as long as the extracted water maintained a salinity content in excess of 1,000 parts per million (ppm) of chlorides.

The Goldsworthy Desalter became operational in May 2002, and has successfully extracted saline groundwater from the plume and provided over 10,000 af of high quality potable water to TMW. However, the Desalter has experienced considerable difficulty in meeting the artificially high salinity standard set by the Court despite employing several well production methods.

When the chloride level in the well water fell below the 1,000 ppm standard, a "Desalter Working Group" convened as stipulated by the Court. The purpose of this working group is to discuss options and make recommendations to the Court for the future operation of the facility. Through discussions, the group recommended that WRD secure the use of groundwater pumping rights in the West Basin on an interim basis to keep the Desalter operational. Subsequently, the Court granted WRD an extension of the exemption until April 23, 2007 in order to work out an arrangement with the City of Torrance for the temporary use of a portion of the City's unused groundwater rights.

ANALYSIS

Over the last several months WRD has been meeting with the Public Works Department to negotiate an agreement for the use of approximately 2,000 af/yr of the City's unused groundwater pumping rights, and for the provision to provide potable water from the Desalter to the City on an interim basis.

The City owns 5,640 af of pumping water rights in the West Coast Basin and is currently only utilizing approximately 1,200 af/yr through its sole groundwater supply well and 330 af/yr through a small lease agreement. Any pumping rights that are not used during the fiscal year are forfeited for that year, and the lease market is virtually non-existent at this time, since there are currently 12,000 to 18,000 af of unused water rights annually in the West Basin

TMW is working to develop and implement a groundwater supply program over the next several years. During this period, TMW is expected to have approximately 4,000 af/yr of unused pumping rights available. Subscribing approximately 2,200 af/yr (includes 10% for brine waste) of these pumping rights to the operation of the Goldsworthy Desalter on an interim basis will not impact any short term use of these rights. The term of the agreement is for three years (2007-2009) with an option to extend for two additional years (2010-2011). It would also terminate and revert back to the original agreement if: (1) the Desalter meets the prescribed 1,000 ppm chloride concentration, which exempts the use of pumping rights and/or (2) TMW can use these rights for the extraction of groundwater supplies from new wells or other beneficial use.

CONTRACT SERVICES AGREEMENT

This CONTRACT SERVICES AGREEMENT (the "Agreement") is made and entered into as of April 10, 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 saline groundwater that is extracted from the West Coast Basin.
- 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 saline 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 to be treated by CONTRACTOR, which CITY acknowledges will reduce CITY's annual water extractions from the West Coast Basin by the same amount. CITY's annual water extractions from the West Coast Basin will no longer be reduced should the chloride concentration levels be restored to the 1,000 parts per million level stipulated in the original Order Regarding Operation of the Goldsworthy Desalter exempting operation of the Facility, if such exemption is still in effect at that time pursuant to the necessary court approval.
- D. 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. 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 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) Rob Whitaker, General Manager
- 2) Mario Garcia, 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 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 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: _____
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. CITY will temporarily exercise a portion of its adjudicated groundwater pumping rights, up to maximum of 2,990 acre feet annually, for an interim period of time agreeable to both parties for extracting saline groundwater from the West Coast Basin to be treated at the Facility.

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

- Provide for all equipment and facilities necessary to operate the saline 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 saline 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 will provide hydrogeologic assistance to CITY in locating suitable locations for its proposed groundwater well field with regard to proximity to the groundwater saline plume.

- 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)

ECONOMIC ADVANTAGE OF ENTERING INTO
 INTERIM WATER SERVICE AGREEMENT WITH
 WATER REPLENISHMENT DISTRICT TO KEEP
 GOLDSWORTHY DESALTER OPERATIONAL
 2007 THROUGH 2011 IN AF

I Cost Avoidance Benefit

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Option Yr 2010</u>	<u>Option Yr 2011</u>
Projected MWD Tier 2 Purchases without Desalter Operational AF	1,799	1,290	1,387	1,484	1,580
MWD Tier 2 rate Differential \$/AF	<u>\$ 96</u>	<u>\$ 96</u>	<u>\$ 96</u>	<u>\$ 96</u>	<u>\$ 96</u>
Equals: Annual Cost Avoidance Benefit \$	\$ 172,704	\$ 123,840	\$ 133,152	\$ 142,464	\$ 151,680

II Incremental Desalter Purchase Cost Savings

Projected Savings Due to Revised Formula Desalter Supplies	\$ 0	\$ 23,020	\$ 44,200	\$ 64,020	\$ 82,220
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Net Economic Advantage -Cost Avoidance and -Revised Pricing Formula	\$ 172,704	\$ 146,860	\$ 177,352	\$ 206,484	\$ 233,900
Economic Advantage in \$ Per AF (2,000 AF)	\$ 86.35	\$ 73.43	\$ 88.68	\$ 103.24	\$ 116.95