

Council Meeting of  
December 15, 2009

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

**SUBJECT: Public Works – Approval of an Agreement with the Water Replenishment District of Southern California to operate and maintain the Goldsworthy Groundwater Desalter located at the City Services Yard Facility**

### **RECOMMENDATION**

Recommendation of the Water Commission and the Public Works Director that the City enter into an agreement with the Water Replenishment District of Southern California (WRD) to operate and maintain the WRD Goldsworthy Groundwater Desalter located at the City Services Yard Facility. The agreement is for a five year period and provides the City with full cost reimbursement for all operational, labor, maintenance and other expenses, and will enhance the reliability of service from the facility.

### **Funding**

There are no additional funding requirements.

### **BACKGROUND AND ANALYSIS**

The Water Replenishment District of Southern California (WRD) constructed the Goldsworthy Groundwater Desalination Project (known as the desalter) and placed the facility in service in late 2001. The desalter, located at the City's Service Yard Facility, pumps local groundwater with high salinity levels and removes these salts by a reverse osmosis process to produce high quality drinking water for the City. The drinking water produced by the desalter is purchased exclusively by Torrance Municipal Water (TMW) at favorable rates under a water service supply agreement with WRD. This facility normally provides 6-10% of the municipal service area's potable water requirements.

Since the start-up of the desalter, the Water Replenishment District has utilized two service contracts with Southwest Water Company for the operation of the facility. After reviewing the operational history of the facility, WRD has concluded that the past contracts have not provided for adequate staffing, which has resulted in less than optimal operational and maintenance procedures, and has led to inconsistent water deliveries from the facility.

WRD's current contract with the Southwest Water Company expires at the end of December 2009, and WRD has requested that the City submit a proposal to operate and maintain the facility. The desalter operates under a State of California Public Health Department (CDPH) Drinking Water Supply Permit issued to the City of Torrance. This ultimately places the City as the agency responsible for the water produced through the facility, regardless of who actually operates the desalter. Therefore, it is beneficial for the City to control the operation of a facility that provides drinking water to Torrance residents and businesses.

Over the course of the past few months, staff has been engaged in deliberations with WRD regarding Torrance Municipal Water assuming operation of the desalter facility. The proposed operations agreement with WRD would provide for full reimbursement for all costs incurred by City. A brief Business Case (copy attached) was prepared delineating the rationale for City operation of the facility. A summary of these advantages are as follows:

- Enhances reliability of supply and service by ensuring the facility is operated and maintained in a manner that reduces downtime and maximizes production of drinking water from the facility. This will better meet the needs of our customers and mitigate the impacts of potential imported water shortages.
- Provides full and augmented recovery for all cost items including: labor, operating, maintenance, rehabilitation and replacement costs incurred for the operation of the desalter. Although one additional Water Service Technician position would be required, the City would receive full reimbursement of all direct labor costs, and recover approximately \$79,000 of existing labor expense.
- Provides for additional lower cost local water supplies by mitigating facility downtime, which would increase water production output from the desalter. The current cost advantage of desalter supplies compared to imported Metropolitan Water District (MWD) is approximately \$210 per acre foot (AF). It is estimated TMW operation of the desalter will increase desalter production by a factor of 10-20%, which would result in an additional annual water cost savings of \$25,000-\$50,000.
- Promotes a more integrated operation with other municipal water production facilities that are currently operated with TMW personnel. This would permit better coordinated management of municipal water resources to use various water sources in the most effective and efficient manner.
- Does not require any changes in current job specifications or requirements. Although TMW personnel will require some specialized training to operate the desalter, this is being provided by WRD at no cost the City.
- Enhances a cooperative regional partnership that will help facilitate the development of additional local resources in the future to offset inherently vulnerable imported water deliveries.

This matter was presented to the Water Commission at their meeting held on November 16, 2009. After discussion and deliberation on this issue, the Commission

unanimously supported a position recommending that the City Council approve an agreement with WRD to operate and maintain the desalter.

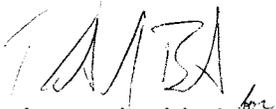
The subject agreement with WRD would be for a period of five years, and permits termination of agreement by either party with a 12 month notification. The operations and maintenance agreement with WRD is mutually beneficial to both parties, and it recommended that the City Council authorize execution of this agreement.

Respectfully submitted,

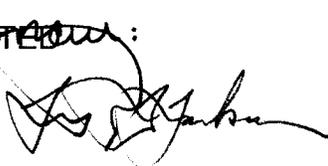
ROBERT J. BESTE  
Public Works director

  
By: Charles Schaich  
Senior Administrative Analyst

CONCUR:

  
Jack van der Linden  
Deputy Public Works Director

  
Robert J. Beste  
Public Works Director

~~NOTED~~  
  
LeRoy J. Jackson  
City Manager

Attachment: A. Agreement for Operation and Maintenance of the Goldsworthy Desalter



**AGREEMENT FOR THE OPERATIONS AND MAINTENANCE OF THE  
GOLDSWORTHY DESALTER**

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This Agreement for operations and maintenance of the Goldsworthy Desalter is entered into as of the 15th day of December 2009 by and between the Water Replenishment District of Southern California (hereinafter "WRD") formed under Division 18 of the California Water Code and the City of Torrance, a municipal corporation (hereinafter the "City"), which are referred to herein collectively as the "Parties" and individually as "Party".

**RECITALS**

**WHEREAS**, WRD is vested with the statutory responsibility to manage, regulate, replenish and protect the quality of groundwater within its boundaries for the beneficial use of approximately four million residents, and pursuant to Water Code Section 60220, the District may take any action necessary or desirable to remove contaminants, such as excessive levels of total dissolved solids ("TDS"), from WRD's groundwater supply and to otherwise protect that groundwater; and

**WHEREAS**, requirements established by the United States Environmental Protection Agency ("USEPA") and the State of California Department of Public Health ("CDPH") provide that water containing TDS in concentrations in excess of 1,000 mg/L is acceptable only for temporary emergency domestic use, and water containing TDS in concentrations in excess of 1,500 mg/L is deemed unacceptable for any domestic or potable use (the "TDS Requirements"), and recent surveys of existing groundwater within WRD's boundaries have revealed significant areas where TDS exceed the foregoing requirements; and

**WHEREAS**, pursuant to its statutory purposes, WRD entered into a Groundwater Recovery Program Agreement Dated December 9, 1998 with the City and the Metropolitan Water District of Southern California ("MWD") which mandates the production and treatment of certain volumes of area groundwater (the "GRP Agreement"), a true and correct copy of the GRP Agreement is attached hereto as Exhibit A; and

**WHEREAS**, pursuant to the GRP, the City and WRD entered into a lease dated January 26, 1999 (the "Ground Lease") for real property owned by the City and located at 20520 Madrona Avenue, Torrance, California (the "Project Site") which provides for the construction thereon by WRD of a well, pipelines and a treatment facility known as the Goldsworthy Desalter (the "Project Facilities" or "Facility") to treat saline groundwater that would not otherwise be usable as a potable domestic water supply, a true and correct copy of the Ground Lease is attached hereto as Exhibit B; and

**WHEREAS**, the City and WRD entered into a Contract Services Agreement dated June 19, 2007 (the "Ground Lease") which requires WRD to treat the groundwater at the Goldsworthy Desalter and provide the City with potable water, a true and correct copy of the Contract Services Agreement is attached hereto as Exhibit C; and

**WHEREAS**, the purpose of the Project Facilities is to maximize the extraction of groundwater containing chloride levels in excess of drinking water standards (“Brackish Groundwater”), to treat the extracted Brackish Groundwater so that it complies with USEPA and CDPH drinking water standards (“Product Water”), to deliver the Product Water to consumers through pipelines and other facilities and appurtenances owned and operated by the City (“Torrance Potable System”), and to achieve the production requirements of the GRP Agreement in compliance with the terms of the Ground Lease and the Contract Services Agreement; and

**WHEREAS**, the Project Facilities were designed and constructed at WRD’s direction in accordance with all applicable local, state and federal regulations, and WRD affirms that the Project Facilities are in good working order at the commencement of the term of this Agreement and are suitable and adequate for the reasonable needs of its expected operations; and

**WHEREAS**, WRD contracted Southwest Water Company, Inc. (SWWC, previously known as Eco Resources) in 2001 to operate the Facility, and the existing services by SWWC will expire on December 31, 2009, and WRD wishes to retain the services of the City to operate the Facility; and

**WHEREAS**, WRD and the City recognize and agree that the intent of this Agreement is to establish a methodology to ensure that the cost of operating the Facility compensates the City for all applicable direct and indirect costs, and that the compensation paid by WRD to the City to operate the Facility shall not exceed the total applicable direct and indirect costs of operation and maintenance.

NOW THEREFORE, for good and valuable consideration, including the mutual promises, covenants and conditions contained herein, WRD and the City mutually desire to implement this Agreement relating to the operations and maintenance of the Facility as follows:

### **AGREEMENT**

#### Section 1: Term

The term of this Agreement shall commence on January 1, 2010 (“Commencement Date”) and shall end on December 31, 2014. WRD and the City shall have the right to terminate this Agreement, without cause, and at any time, by giving 12 months prior written notice to the other Party. Subject to said termination rights, this Agreement shall automatically extend for three (3) additional periods of five (5) years each, unless either Party gives written notice of termination no later than 12 months (on or before January 1, 2014 for original term) prior to the end of the then current term.

#### Section 2: Regulation and Permits.

WRD has constructed the Facility and obtained and paid for permits and other forms of approval from all local, state and federal agencies having jurisdiction over the Facility except for the

CDPH's permit to operate the Facility, for which the City is the holder of the permit. WRD shall be responsible for and shall promptly pay for all permits in its possession, and City is responsible for the CDPH permit. City shall prepare all documentation required for permits and other forms of approval and WRD shall compensate City for the expense (including the time and materials) in preparing said documentation.

### Section 3: Operations and Maintenance of the Facility

In exchange for the consideration and subject to the limitations set forth elsewhere in this Agreement, City shall furnish all professional operations, maintenance and management services required to operate and maintain the Project Facilities for the term of this Agreement; except as expressly set forth elsewhere in this Agreement, such services shall include, without limitation, the tasks set forth in this Section 3.

#### A. Goldsworthy Desalter Operations Group

1. WRD and City shall form an operational working group to be known as the Goldsworthy Desalter Operations Group ("Operations Group"). The purpose of the Operations Group shall be to: 1) annually review and as necessary update the Operations and Maintenance Manual and Standard Operating Procedures (SOPs) to meet or exceed all regulatory requirements. The Operations Group shall complete its first review and update of the Operations and Maintenance Manual and SOP's no later than six months after the Commencement Date; 2) establish annual production targets; and 3) establish remedies and repairs necessary to ensure that the operation of the Facility meets the annual production targets.
2. The Operations Group shall exchange information monthly. Operating information shall include but is not limited to: monthly operator logs, technical information arising from Facility operations, preliminary unaudited financial information, and any applicable proposed regulatory changes or requirements.
3. The Operations Group shall, at a minimum, meet quarterly. The meetings shall include but are not limited to: 1) review of monthly operations and financial information; 2) possible changes to plant operating conditions; and 3) regulatory compliance.
4. The Operations Group shall be comprised of two (2) members appointed in writing by the Public Works Director of the City and two (2) members appointed in writing by the General Manager of WRD. Should the Operations Group be unable to mutually agree upon any issue or decision then the item shall be referred to the Public Works Director of the City and General Manager of WRD who shall meet and confer on the item within 20 days and shall within 20 days after the meet and confer, issue a joint statement on how the item shall be resolved.

- B. City is the lead entity responsible for day-to-day operation of the Facility, routine maintenance of Facility equipment, water quality sampling and analysis, and monthly reporting of Facility operating data, maintenance activities and budgets. City shall assume full responsibility for trouble shooting operational issues and optimization of Facility performance.
- C. The Facility shall be operated in accordance with the “Goldsworthy Desalter Operations Manual” dated August 2003, drafted by Separation Processes Inc.
- D. City shall at all times during the term of this Agreement provide operations, maintenance, management and administrative services required to operate the Project Facilities in compliance with all applicable laws, regulations and permits.
- 1 City shall at all times during the term of this Agreement operate and maintain the Project Facilities so as to maximize the production and delivery to the Torrance Potable System of Product Water that complies with the CDPH (Facility Operating Permit) and the Los Angeles County Sanitation Districts (Discharge Permit), and the Regional Water Quality Control Board (NPDES Permit).
  - 2 City shall at all times during the term of this Agreement ensure that the Project Facilities are operated in compliance with the provisions of the GRP and Ground Lease.
- E. City represents and warrants that all personnel employed by City or by City's contractors who perform any portion of the Scope of Services of this Agreement will possess all certifications and licenses required by regulation or law to perform their functions.
- F. Within sixty (60) days of the Commencement Date of this Agreement, City shall review the existing inventory and maintenance records and conduct an inventory and audit of equipment and supplies of the Project Facilities. City will recommend any changes in inventory, replacement or repair of equipment, or other maintenance practices that may be needed to maintain adequate operation of the Facility.
- G. City shall review the existing Emergency Response Plan and update as necessary. City will submit an updated copy of the Emergency Response Plan to WRD within thirty (30) days after the Commencement Date.
- H. City shall perform all sampling, collection, and laboratory analyses to ensure the successful and efficient operation and maintenance of the Project Facilities and to maintain compliance with the GRP, the Ground Lease, and all applicable permits, laws and regulations. Additional sampling/testing due to new/changed regulations that come into effect after the Commencement Date will be done by City, but at an additional cost. City will perform any additional sampling, collection and laboratory tests it deems necessary for the successful and efficient operation of the Project Facilities. All sampling, collection and laboratory analyses will be performed by persons or firms possessing all licenses and certifications required by law and regulation.

I. City shall have the authority, in its sole and absolute discretion, to suspend production and delivery of water from the Facility when the quality of such water substantially fails to satisfy the water quality standards established by operating permit, law or regulation, provided, however, that City immediately gives notice to WRD of such suspension and that City use its best efforts to minimize the length of time for such suspension. If City suspends production and delivery and the operational problem necessitating such suspension cannot be solved without additional capital expenditures, the Parties agree to meet in good faith to determine a mutually acceptable course of action to solve such operational problem.

J. City shall not make any structural alterations, whether such alterations are considered capital improvements or not, to the Facility without the prior written consent of WRD, which shall not be unreasonably withheld. In seeking consent from WRD, the City shall submit plans, specifications and drawings for such alterations.

K. WRD shall pay the monthly cost of gas, water, electricity, telephone and fire alarm monitoring service used at the Facility directly to each utility as part of the normal operating costs of the Facility.

L. City shall send to WRD copies of all reports prepared by the City in compliance with applicable laws, regulations, orders, and permits from governmental agencies having jurisdiction over the Facility. The Parties agree to provide copies to the other Party of any letters, notices or orders received by the Parties from such agencies within ten (10) days after the receipt of said documents.

#### Section 4: Payment for Operating Costs.

A. The major cost categories for reimbursement are described in Exhibit "D" attached hereto and incorporated herein by this reference. The estimated costs for the operation of the Facility shall be established on an annual basis. The first year's estimated costs shall be based upon the prior five (5) year's actual expenses. WRD shall pay City in monthly installments, upon invoice from City. Said installment payments shall exclude a charge for membrane replacement as described in Section 5. All funds for membrane replacement shall be held by WRD in an "escrow account" until purchase of any membrane is required. Documentation of the status of this escrow account shall be provided as part of the semi-annual audit and reconciliation process described in Section 4(C) below.

B. City's Operating Costs shall include monitoring, engineering, administration, laboratory, and legal costs related to the operation of the Facility, as well as the costs of maintenance, repair and replacement of capital items (except replacement of capital items that equal or exceed \$10,000.00) of the Facility or any part thereof, and the other direct and applicable indirect costs and expenses resulting from the operation, maintenance, repair and replacement (except replacement of capital items that equal or exceed \$10,000.00), including but not limited to the cost for regulatory compliance, annual permits, and the costs of any consultants, contractors,

materials, and equipment that City may require to perform its duties hereunder (subject to WRD's written approval, which shall not be unreasonably withheld).

C. As established and described in Exhibit D and incorporated herein by reference, City shall semiannually conduct an audit and reconciliation. The purpose of this semiannual audit and reconciliation shall be to "true up" the actual costs versus the budgeted costs for the operation of the Facility. Following the audit any overpayment or underpayment shall be applied to the next applicable monthly invoice. If the magnitude of the overpayment or underpayment exceeds the next applicable monthly invoice, WRD and City shall agree upon a schedule to account for any balance owed after applying the overpayment or underpayment to the next monthly transaction.

#### Section 5: Capital Items, Obligations to Repair and Replace.

Notwithstanding anything to the contrary herein, City shall not be required to pay for the costs of replacing "capital items" as defined herein, costing more than Ten Thousand Dollars (\$10,000.00) per item, unless the need to replace such capital item is due to the sole negligence of the City. Accordingly, WRD shall pay the costs of replacing capital items costing Ten Thousand Dollars (\$10,000.00) or more, including but not limited to the replacement of membranes. Capital items shall mean: assets permanently fixed to the Facility costing more than \$1,000 and having a useful life of more than three (3) years. If the City receives quotes from equipment supplier that show the cost to replace a single capital item will equal or exceed \$10,000.00, then the City shall give notice to WRD and WRD shall promptly purchase such capital item, if WRD deems that the capital item is necessary to operate the Facility. The City shall not be liable for any damage or breach of this Agreement resulting from any delay by WRD in purchasing such capital item.

The Parties agree that WRD shall directly fund the replacement of the membranes. The condition of the membranes shall be evaluated by a consultant specializing in reverse osmosis process every two years after year six (6) of the membrane life to determine if replacement is required. City is responsible for, on an as-needed basis, the replacement of brine seals and o-rings in the reverse osmosis vessels that are worn out.

#### Section 6: Right of Inspection.

Following reasonable notification to the City which may be oral notwithstanding Section 15(A), WRD shall have the right to inspect the Facility to ensure that the City is in compliance with the Agreement, safety regulations relating to the Facility, and other applicable laws, regulations, orders and permits relating to the Facility. Said inspection right may include sampling the water produced by the Facility.

#### Section 7: Prohibition of Subleasing and/or Assignment.

City shall not assign any portion of this Operating Agreement or sublease all or part of the Facility without the express written permission of WRD.

Section 8: Record Keeping and Audits.

During the term of this Agreement and for five (5) years after termination or expiration of this Agreement, the City shall keep and maintain accounting records for all Operating Costs and other expenses incurred and payments made in connection with the operation and maintenance of the Facility, including the monthly invoices. After providing City with prior reasonable notice of no less than two (2) business days, WRD shall have the right to inspect and photocopy during normal business hours the City's accounting records supporting each monthly invoice. Following such inspection, if WRD disputes the amount of Operating Costs set forth in any monthly invoice, WRD and the City shall mutually select a certified public accountant to audit the City's accounting records and render a certification as to the Operating Costs in accordance with the terms of this Agreement. If such certification proves that the Operating Costs were overstated by more than three percent (3%), then the cost of the accountant and the certification shall be paid by the City. If such certification reveals that an adjustment is necessary, the appropriate payments or reimbursements in connection therewith shall be promptly made following the date of such certification. Notwithstanding anything herein to the contrary, WRD's payment of all or any portion of the Operating Costs shall not be deemed a waiver of WRD's right to audit the City's records and receive any credits for an overstatement of any Operating Costs in accordance with this Section.

During the term of this Agreement and for five (5) years after termination or expiration of this Agreement and after providing WRD with prior reasonable notice of no less than two (2) business days, City shall have the right to inspect and photocopy during normal business hours WRD's accounting records for all operating costs and other expenses incurred and payments made in connection with Capital items, and operations and maintenance of the Facility.

Section 9: Indemnification.

A. The City shall indemnify WRD and its directors, officers, employees, elected and appointed officials and members, attorneys, agents and representatives (collectively, in this Section 9 "WRD") against and hold WRD harmless from, all claims, demands, causes of action, damages, losses and liabilities (including reasonable attorneys' fees and costs of defending against such claims) for personal injury (whether physical or not) to, or death of, any person, from loss of use or damage to property, penalties, fines, or lost profits arising from any negligent act or omission, or willful misconduct, by the City, its officers, agents, or employees, in connection with any aspect of the operation or maintenance of the Facility. The foregoing indemnification does not apply to the extent such injury or damage is caused by the negligence or willful misconduct of WRD.

B. WRD shall indemnify the City and its directors, officers, employees, elected and appointed officials and members, attorneys, agents and representatives (collectively in this Section 9, the "City") against, and hold the City harmless from, all claims, demands, causes of action, damages, losses and liabilities (including reasonable attorneys' fees and costs of defending against such claims) for personal injury (whether physical or not) to, or death of, any person,

from loss of use or damage to property, penalties, fines or lost profits arising from any negligent act or omission, or willful misconduct, by the WRD, in or about the Facility. The foregoing indemnification does not apply to the extent such injury or damage is caused by the negligence or willful misconduct of the City.

Section 10: Insurance.

WRD shall, at its sole expense, maintain property insurance for a reasonable replacement value of the Facility and the underlying Property. The replacement value shall be determined using the guideline for "Property Coverage Decisions" recommended by the Association of California Water Agencies (ACWA) for coverage of common types of water district property. The City shall, at its sole expense, maintain general liability insurance or self-insurance (equivalent in coverage scope to ISO form CG 00 01) in an amount not less than \$1,000,000 per occurrence and in aggregate covering the City's acts and omissions in operating the Facility, and shall cause WRD, its directors, officers, employees, agents and representatives to be additional named insureds under said policy. The City and WRD each shall maintain a program of workers' compensation insurance or self-insurance as required by the California Labor Code covering their own employees and employer's liability insurance in an amount not less than \$1,000,000 per accident. The Parties shall submit written evidence of the required insurance to the other Party within fifteen (15) days of the Commencement Date of this Agreement.

Section 11: Damage and Destruction.

A. Subject to Section 12 below, if the damage or destruction to the Facility is covered by insurance maintained under Section 10, the City and/or WRD (depending upon which Party's insurance covers the loss) shall cause the damage to be repaired as soon as reasonably possible and shall restore the Facility to substantially the same condition as existed before the damage or destruction, regardless of whether the insurance proceeds are sufficient to cover the actual cost of repair and restoration. Any repair costs in excess of the insurance proceeds shall either be paid directly by WRD or be recoverable by the City as Operating Costs under Section 4, unless the repair is needed due to the City's negligent act, omission, or willful misconduct. Under such circumstances, the City shall pay any repair costs in excess of insurance proceeds. If the Facility is shut down due to such damage or destruction for more than 60 consecutive calendar days, the City may not seek to recover from WRD any Operating Costs during the period from the 61st day of the shutdown to the first day that the Facility is restored and resumes production of water.

B. If the damage or destruction to the Facility is caused by a peril not covered by insurance under Section 10, WRD may, at its option, repair the damage as soon as reasonably possible and restore the Facility to substantially the same condition as existed before the damage or destruction.

C. Notwithstanding the foregoing, WRD may elect not to repair any damage or destruction of the Facility and may terminate the Agreement, as provided in Section 12.

Section 12: Termination.

A. In addition to the terminating provisions described in Section 1, either Party may terminate this Agreement by giving notice to the other party if (i) the other party has failed to perform its obligations under this Agreement and not cured that failure, or has not diligently commenced curing that failure, within the applicable cure period set forth in Section 13 or (ii) the other Party has been dissolved.

B. WRD shall have the right to terminate this Agreement by providing ten (10) days prior notice to the City under any of the following circumstances:

(i) Damage to or destruction of the Facility, or any portion thereof, from an insured casualty when the damage to or destruction of the Facility cannot be reasonably repaired, restored or rebuilt within a period of ninety (90) days.

(ii) Damage to or destruction of the Facility, or any portion thereof, from an uninsured casualty;

(iii) Notwithstanding Section 12(B)(i), damage to or destruction of the Facility, or any portion thereof, from an insured casualty occurring during the last two (2) years of the initial term of this Agreement or during the last two (2) years of any extended term.

C. In the event either Party gives notice of the termination of this Agreement, the City shall continue to operate the Facility in accordance with sound operating and maintenance practices until the effective date of termination and WRD shall pay the City in accordance with terms of this Agreement until such termination.

D. In the event this Agreement is terminated and the City no longer operates the Facility, nothing contained in this Agreement shall be interpreted to preclude WRD from contracting with any other person or entity to thereafter operate and maintain the Facility.

E. In the event that this Agreement is properly terminated, the Parties shall remain obligated to pay the other Party for any amounts incurred during the period from the notice of termination to the effective date of termination on a pro rata basis including, but not limited to, the amounts listed in Sections 3 and 4.

Section 13: Opportunity to Cure Defaults.

A. In the event either Party fails to make any payment required hereunder as and when due, or fails to obtain and maintain any insurance required hereunder, there shall be no default under or breach of this Agreement until such failure has continued for ten (10) days following receipt of notice from the other Party specifying such failure.

B. In the event either Party fails to perform any of its other obligations under this

Agreement, there shall be no default under or breach of this Agreement until such failure has continued for thirty (30) days following receipt of notice from the other Party specifying such failure.

C. Notwithstanding Section 13(B), in the event a failure to perform cannot be reasonably cured within such thirty (30) day period, there shall be no default under or breach of this Agreement unless such Party fails to commence and diligently proceed toward full performance of the cure within that thirty (30) day period, or such other period as the Parties may in good faith agree upon.

Section 14: Dispute Resolution.

In the event of a dispute between the Parties with respect to their duties under this Agreement, the Parties shall initially meet through the Operations Group in an attempt to resolve that dispute. Either Party may call for such a meeting by giving notice to the other Party requesting the meeting and setting forth the nature of the dispute. The initial meeting shall be held within five (5) business days after the notice is given to the other Party. The initial meeting may be adjourned and continued as the Parties deem necessary to effectuate a resolution to the dispute. Should the Operations Group be unable to resolve the dispute, the matter shall be resolved pursuant to Section 3(A)(4)

Section 15: Miscellaneous.

A. Notices: Any notice hereunder shall be in writing and shall be deemed to be properly given if personally delivered or deposited with the U.S. Postal Service, first class postage prepaid, return receipt requested and addressed to the following persons:

General Manager  
Water Replenishment District of Southern California  
4040 Paramount Blvd.  
Lakewood, CA 90712

City Clerk  
City of Torrance  
3031 Torrance Boulevard  
Torrance, CA 90509-2970

Either Party may change that Party's address for these purposes by giving notice of the change to the other Party in the manner provided in this Section. If sent by mail, any notice, delivery, or other communication shall be effective on the date shown on the return receipt. If sent by Federal Express, Express Mail or other nationally recognized overnight delivery service, any notice shall be effective on the date shown on the courier's receipt.

- B. **Entire Agreement:** This Agreement constitutes the entire agreement between the Parties relating to the subject matters. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by WRD and the City.
- C. **Attorneys' Fees:** If any action or proceeding arising out of or relating to this Agreement is commenced by either Party to this Agreement, then the prevailing Party shall be entitled to receive from the other Party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing Party.
- D. **Binding Effect:** This Agreement shall be binding on and inure to the benefit of the Parties to this Agreement and their successors and assigns, except as otherwise provided in this Agreement.
- E. **Governing Law:** This Agreement and the legal relations between the Parties shall be governed by and construed in accordance with the laws of the State of California.
- F. **Headings:** The headings of the articles and sections of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.
- G. **Warranty of Authority:** Each officer of WRD and the City affixing his or her signature below thereby represents and warrants that he or she has the full legal authority to bind his or her respective Party to all of the terms, conditions and provisions of this Agreement, that his or her respective Party has the full legal right, power, capacity and authority to enter into this Agreement and perform all of the obligations herein, and that no other approvals or consents are necessary from his or her respective Party in connection therewith.
- H. **Severability:** If any provision or any part of any provision of this Agreement is found to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of any other provision or part hereof.
- I. **Waiver:** The waiver by any Party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.
- J. **Joint Effort.** This Agreement is created as a joint effort and shall not be construed against either Party as the drafter.
- K. **The Third Party Beneficiary.** This Agreement is not intended or designed to or entered for the purpose of creating any benefit or right for any person or entity that is not a party this Agreement.

L. No Joint Venture. The relationship of the Parties is that of lessor and lessee or buyer and seller of water, as the case may be, and the Parties agree that nothing contained herein shall be deemed or construed as creating a partnership, joint venture, principal-agent, association, or employer-employee relationship between them.

Section 16: Access.

A. The City shall secure the Facility against access by unauthorized persons and shall limit access to the Facility to authorized persons only. The City shall likewise secure access to any computer facilities that provide for remote monitoring or operation of the Facility. The City shall notify WRD in writing if modifications to the Facility or computer operating systems are needed to effectuate this requirement.

B. The City or its designee shall maintain a list of persons authorized to enter the Facility and to access any computer facilities that provide for remote monitoring or operation of the Facility.

C. The City shall adopt procedures for emergency access to the Facility.

D. The City shall require all visitors to obtain prior authorization from the City or its designee before entering the Facility.

E. The City shall adopt procedures to ensure that the Facility is not left unattended during deliveries or servicing by persons other than authorized representatives of the City or WRD.

(Signatures on following page)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed the day and year first written above.

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: \_\_\_\_\_  
Lillian Kawasaki, Secretary  
Board of Directors

APPROVED AS TO FORM:

APPROVED AS TO FORM:  
MEYERS, NAVE, RIBACK  
SILVER & WILSON

By: \_\_\_\_\_  
John L. Fellows III  
City Attorney

By: \_\_\_\_\_  
James M. Casso  
Attorneys for the Water Replenishment  
District of Southern California

**EXHIBIT A**

**GROUNDWATER RECOVERY PROGRAM AGREEMENT**

DEC 14 1998

JUL 30 2001



**MWD**  
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

**FILE COPY**

*Office of the General Manager*

December 9, 1998

Mr. Robert L. Campbell  
Water Replenishment District  
of Southern California  
12621 166<sup>th</sup> Street  
Cerritos, CA 90703

Dear Mr. Campbell:

Groundwater Recovery Program Agreement for the Madrona Desalination Facility Project

Enclosed for your records is one fully-executed original of the "1998 Madrona Desalination Facility Project Groundwater Recovery Program Agreement Between the Metropolitan Water District of Southern California, the City of Torrance, and the Water Replenishment District of Southern California."

If you have any questions concerning the attached agreement, please call Mr. Ken Kules at (213) 217-6792.

Very truly yours,

Andrew Sienkiewich  
Principal Engineer

KMK:jpa  
o:\contract\corres\madrona.doc

Enclosure



1998 MADRONA DESALINATION FACILITY PROJECT

GROUNDWATER RECOVERY PROGRAM AGREEMENT BETWEEN  
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA  
THE CITY OF TORRANCE AND  
THE WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA

698-277

**ORIGINAL**

**1998 MADRONA DESALINATION FACILITY PROJECT  
GROUNDWATER RECOVERY PROGRAM AGREEMENT BETWEEN  
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,  
THE CITY OF TORRANCE AND  
THE WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA**

**TABLE OF CONTENTS**

<b>Section</b>	<b>Page</b>
RECITALS .....	1
Section 1: Definitions .....	3
Section 2: Warranties .....	4
Section 3: Ownership and Responsibilities .....	5
Section 4: Billing Process .....	6
Section 5: Reconciliation Process .....	6
Section 6: Coordinating Committee .....	7
Section 7: Record Keeping and Audit .....	8
Section 8: Interruption of Replenishment Water Supply .....	10
Section 9: Term and Amendments .....	10
Section 10: Hold Harmless and Liability .....	11
Section 11: Notice .....	11
Section 12: Successors and Assigns .....	12
Section 13: Severability .....	12
Section 14: Integration .....	12
Section 14: Governing Law .....	13
EXHIBIT A.....	A-1
EXHIBIT B.....	B-1
EXHIBIT C.....	C-1
EXHIBIT D.....	D-1
EXHIBIT E.....	E-1

1998 MADRONA DESALINATION FACILITY PROJECT  
GROUNDWATER RECOVERY PROGRAM AGREEMENT BETWEEN  
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,  
THE CITY OF TORRANCE AND  
THE WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA

THIS AGREEMENT is made and entered into as of December 9, 1998, by and between THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA (hereinafter "Metropolitan"), The CITY OF TORRANCE (hereinafter "Torrance") and the WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA (hereinafter "WRD").

RECITALS

- A. Metropolitan was incorporated under the Metropolitan Water District Act ("Act") for the purpose of developing, storing, and distributing water for domestic and municipal purposes;
- B. The Act empowers Metropolitan to acquire water and water rights within or without the State; develop, store and transport water; provide, sell and deliver water at wholesale for domestic and municipal uses and purposes; fix the rates for water; and acquire, construct, operate and maintain any and all works, facilities, improvements and property necessary or convenient to the exercise of the powers granted by the Act;
- C. Torrance, as a member public agency of Metropolitan under the Act, is a wholesale purchaser within its service area of water developed, stored, and distributed by Metropolitan;
- D. Metropolitan's water supply and demand projections for its service area, including that encompassed by Torrance, show that additional sources of supplemental water must be developed to meet future needs;
- E. Metropolitan has determined to take all necessary steps to provide its service area with adequate and reliable supplies of high quality water in the years ahead in an environmentally and economically responsible way;

- F. Certain portions of the West Coast Groundwater Basin (hereinafter "Basin"), including areas within Torrance, contain significant concentrations of total dissolved solids exceeding potable water standards, thereby preventing its use as a domestic supply unless treatment is provided;
- G. Metropolitan and Torrance have determined that it is mutually beneficial for Torrance to increase production from the Basin by encouraging the development and operation of a new treatment facility known as the Madrona Desalination Facility Project (hereinafter "Project");
- H. Torrance has determined that it would be more costly to obtain a portion of its water supply by reclaiming groundwater from the Basin than to purchase an equivalent amount of Treated Full Service from Metropolitan;
- I. Metropolitan, in accordance with its Groundwater Recovery Program (hereinafter, "GRP"), desires to assist Torrance in the cost of recovering the degraded groundwater which exceeds the cost of Treated Full Service from Metropolitan;
- J. Torrance desires to comply with the provisions of Metropolitan's GRP in return for Metropolitan's financial assistance for the Project;
- K. The Los Angeles Superior Court adjudicated the rights to extract and use Basin groundwater in 1961 in California Water Service Co. et al. V. City of Compton, LASC No. 506806, and reserved continuing jurisdiction over the judgment for the protection of the Basin;
- L. WRD is legally authorized to replenish the Basin and will finance and construct the groundwater extraction, treatment and distribution facilities;
- M. WRD shall commence an action for declaratory judgment finding that the production of groundwater for the Project is not chargeable against adjudicated rights and thus will not diminish the right of any party to the judgment to extract water from the Basin. A final judgment is a prerequisite to operation of the Project;

- N. WRD, or its authorized representative, will maintain and operate the groundwater extraction, treatment and distribution facilities and to deliver water from the Project to its distribution system.
- O. The Project will increase regional groundwater production for domestic and municipal uses by producing up to approximately 2,950 acre-feet per year (resulting in approximately 2,400 acre-feet per year of potable water and approximately 550 acre-feet per year of brine after treatment) from the Basin;

Therefore, in consideration of the promises and covenants hereinafter set forth, the parties do agree as follows:

Section 1: Definitions

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

- 1.1 "Allowable Yield" shall mean the actual amount of Recovered Groundwater measured in acre-feet that is delivered from the Project for domestic and municipal use in any given year and receives Metropolitan's financial assistance. Allowable Yield shall only include Recovered Groundwater produced based on an established water right. Such Allowable Yield shall be considered to be local groundwater for purposes of Metropolitan shortage allocations, Agricultural Water Programs and Seasonal Storage Service calculations.
- 1.2 "Deferred Cost" shall mean that cost, in dollars per acre-foot, carried forward from the preceding Fiscal Year as calculated in Exhibit E, incorporated herein by this reference.
- 1.3 "Degraded Groundwater" shall mean groundwater which does not meet applicable drinking water quality standards such as those set forth in Division 4, Environmental Health of Title 22, California Code of Regulations, as amended from time to time, or any successor statute.
- 1.4 "Estimated GRP Contribution" shall mean the advanced financial contribution in dollars per acre-foot Metropolitan pays for Allowable Yield to Torrance for monthly billing

purposes until the Final GRP Contribution is calculated pursuant to procedures in Sections 4.2 and 5.2, respectively.

- 1.5 “Final GRP Contribution” shall mean the financial contribution by Metropolitan to the Project in dollars per acre-foot of Allowable Yield. The Final GRP Contribution for the Project is equal to the sum of the Project Unit Cost and Deferred Cost minus Metropolitan’s prevailing full service treated water rate, but shall not exceed \$250 per acre-foot.
- 1.6 “Fiscal Year” shall mean a Metropolitan Fiscal Year that begins on July 1 and ends on June 30.
- 1.7 “Project” shall mean the Madrona Desalination Facility Project being developed by WRD to produce Recovered Groundwater. The Project is described in Exhibit A incorporated herein by this reference. Torrance and WRD shall consult with Metropolitan and obtain Metropolitan’s approval prior to making any changes to the Project.
- 1.8 “Project Capacity” shall mean 2,400 acre-feet per year.
- 1.9 “Project Unit Cost” shall mean the actual cost to produce an acre-foot of water by the Project in a Fiscal Year and is comprised of three components: Annualized Capital Component, Operation and Maintenance Component, and Annualized Replacement Component as specified in Exhibits B, C, and D, incorporated herein by this reference.
- 1.10 “Recovered Groundwater” shall mean all Degraded Groundwater recovered and delivered for beneficial use by the Project in a Fiscal Year, measured in acre-feet.
- 1.11 “Replenishment Water” shall mean imported water obtained from Metropolitan and used for the purpose of replenishing natural groundwater basins.

## Section 2: Warranties

- 2.1 Torrance and WRD warrant that the Project will increase groundwater production for potable uses from the Basin and improve regional water supply reliability.

- 2.2 Torrance warrants that it is able to and has a right to distribute and sell Allowable Yield produced from the Project.
- 2.3 Torrance and WRD warrant that they do not discriminate against employees or against any applicant for employment because of ethnic group identification, religion, age, sex, color, national origin, or physical or mental disability and further warrants that they require all contractors and consultants performing work on the Project to comply with all laws and regulations prohibiting discrimination against employees or against any applicant for employment because of ethnic group identification, religion, age, sex, color, national origin, or physical or mental disability.
- 2.4 Torrance and WRD warrant that they have or will comply with the provisions of California Environmental Quality Act for each and all components of the Project facilities.

### Section 3: Ownership and Responsibilities

- 3.1 WRD is the sole owner of all Project facilities. Metropolitan and Torrance have no ownership right, title, security interest or other interest in any Project facilities.
- 3.2 WRD is solely responsible for all design, environmental compliance, right-of-way acquisitions, permits, construction, and cost of the Project and all modifications thereof.
- 3.3 Torrance and WRD shall be solely responsible for operating and maintaining the Project in accordance with all applicable local, state, and federal laws. Metropolitan shall have no rights, duties or responsibilities for operation and maintenance of the Project.
- 3.4 WRD shall install, operate and maintain metering devices for the purpose of measuring the quantity of Recovered Groundwater and Allowable Yield. WRD shall also provide electrical metering devices to accurately measure the energy used for the Project to determine incurred operation and maintenance costs.
- 3.5 WRD shall, at all times during the term of this Agreement, exercise its best efforts to operate the Project facilities to maximize Allowable Yield on a sustained basis.

- 3.6 Torrance and WRD shall assist Metropolitan in its effort to forecast future Project production and cost.

Section 4: Billing Process

- 4.1 Metropolitan shall pay Torrance the Final GRP Contribution for up to 2,880 acre-feet (120 percent of Project Capacity) of Allowable Yield in any one Fiscal Year.
- 4.2 Metropolitan shall consult with Torrance to determine the Estimated GRP Contribution based on historic cost data and expected Project activities. Reconciliation of the Estimated GRP Contribution and Final GRP Contribution shall be performed by Metropolitan pursuant to Section 5.
- 4.3 Torrance shall provide written notification to Metropolitan of the initiation of Project operation no less than 30 days prior to initiation of Project operation.
- 4.4 Torrance shall invoice Metropolitan monthly for the Allowable Yield delivered during the previous month subject to the limitations outlined in Sections 4.1 and 4.6. Metropolitan shall pay Torrance for invoiced Allowable Yield pursuant to Sections 4.2 by means of a credit included on the next billing issued to Torrance.
- 4.5 Upon receiving the Metropolitan billing, Torrance shall pay WRD an amount equal to the Metropolitan payment to Torrance for the invoiced Allowable Yield pursuant to Section 4.4.
- 4.6 All invoicing, billing, and credit process shall be in accordance with the rules and regulations established from time to time by Metropolitan as reflected in Metropolitan's Administrative Code.

Section 5: Reconciliation Process

- 5.1 By January First of each Fiscal Year, Torrance and WRD shall provide Metropolitan with: (a) records of Recovered Water and Allowable Yield; (b) supporting documentation of the actual cost of the Project for the previous Fiscal Year required to perform the calculations prescribed in Exhibits B, C, and D; (c) the terms and schedule of payments

of the Project's financing instrument; and (d) a description of any changes to the Project's financing instruments. Metropolitan will suspend its Estimated GRP Contribution if Torrance or WRD fail to provide any of the above required data by April First of each Fiscal Year. During the suspension period, Torrance shall continue to invoice Metropolitan for the Allowable Yield for water accounting purposes. Metropolitan will resume the monthly Estimated GRP Contribution once complete data is received and conduct the corresponding reconciliation pursuant to Section 5.2. Failure by Torrance to provide reconciliation data within 18 months after the end of the Fiscal Year for which a reconciliation is required shall constitute material breach of the Agreement.

- 5.2 Within 180 days after Metropolitan receives complete data from Torrance and WRD, pursuant to Section 5.1, Metropolitan shall calculate the Final GRP Contribution for the Fiscal Year. The Final GRP Contribution shall then apply retroactively to all Allowable Yield for the applicable Fiscal Year. An adjustment shall be computed by Metropolitan for over- or under-payment for the Allowable Yield and included on the next billing issued to Torrance and payments shall be made in accordance with Metropolitan's Administrative Code.
- 5.3 Parties agree that all contributions other than those derived from within Torrance's or WRD's service area boundaries received prior to and during the term of this Agreement that offset eligible Project cost shall be deducted from respective cost components. During the reconciliation following receipt of such contributions, the Parties shall determine the equitable apportionment of such contributions for capital and/or operational purposes. If the Parties are unable to arrive at agreement, Section 6 shall apply.

#### Section 6: Coordinating Committee

- 6.1 The Coordinating Committee is composed of one participant each from Metropolitan, Torrance and WRD. The Coordinating Committee shall meet as needed to resolve issues regarding the GRP Contribution, Annualized Capital Component, Operation and Maintenance Component, Annualized Replacement Component, and Project Unit Cost.

Coordinating Committee's responsibilities exclude renegotiating the terms of this agreement.

- 6.2 The Coordinating Committee shall, to the extent possible, seek to establish consensus in carrying out its responsibilities. Metropolitan shall have one vote and Torrance and WRD shall collectively have one vote on the committee. If by voting the Coordinating Committee cannot resolve a particular matter or matters, a third party shall be appointed by the Parties to provide a third vote on the Committee, and the Coordinating Committee shall then act by majority vote as to the matter or matters. The Coordinating Committee's decision shall be final and binding on all Parties. If the Parties cannot agree on the third party, then any Party may request a court to appoint the third party pursuant to Code of Civil Procedure, Section 1281.6. Costs for the third party shall be paid one-half by Metropolitan and one-half by Torrance and WRD, and shall not be included in the Project Unit Cost.

#### Section 7: Record Keeping and Audit

- 7.1 Torrance and WRD shall establish and maintain accounting records of all costs incurred for the construction, operation and maintenance, and replacement parts of the Project as described in Exhibits B, C and D and all contributions as described in Section 5.3. Accounting for the Project shall utilize generally accepted accounting practices and be consistent with the terms of this Agreement. Torrance's and WRD's Project accounting records must clearly distinguish all costs for the Project from Torrance's and WRD's other water production, treatment, and distribution costs. Torrance's and WRD's records shall also be adequate to determine Allowable Yield and Recovered Groundwater to accomplish all cost calculations described in this Agreement.
- 7.2 Torrance and WRD shall establish and maintain accounting records of all contributions including grants that offset eligible Project capital costs, operation and maintenance costs, and/or replacement costs, as outlined in Section 5.3.

- 7.3 Torrance and WRD shall collect Recovered Water and Allowable Yield data for each Fiscal Year of Project operation and retain records of that data based on the metering requirements in Section 3.4.
- 7.4 Metropolitan shall have the right to audit all Project costs and other data relevant to the terms of this agreement for a period of three Fiscal Years following the termination of this Agreement. Metropolitan may elect to have such audits conducted by its staff or by others, including independent accountants, as designated by Metropolitan. Torrance and WRD shall make available for inspection to Metropolitan or its designee, upon 30 days advance notice, all records, books and other documents, including all billings and costs incurred by contractors, relating to the construction, operation and maintenance of the Project; any grants and contributions, as described in Exhibits B, C and D; and capital cost financing. Upon 30 days advance notice and at Metropolitan's request, Torrance and WRD shall also allow Metropolitan's personnel or its designee to accompany Torrance and WRD staff in inspecting Torrance's and WRD's contractors' records and books for the purpose of conducting such audits of Project costs.
- 7.5 In lieu of conducting its own audit(s), Metropolitan shall have the right to direct Torrance and WRD to have an independent audit conducted of all Project costs incurred in any Fiscal Year(s) pursuant to this Agreement. Torrance and WRD shall then have an audit performed for said Fiscal Year(s) by an independent certified public accounting firm and provide Metropolitan copies of the audit report within six months after the date the audit was requested. The cost of any independent audit performed under this agreement shall be paid by Torrance and WRD and is an allowable Project operation and maintenance cost pursuant to Exhibit C. Based on the results of any independent audit, an adjustment for over or under payment of Allowable Yield for each applicable Fiscal Year shall be paid by Metropolitan or Torrance within one year of determination after such adjustment.
- 7.6 With the first submittal of Project data as required by Section 5, Torrance and WRD shall provide Metropolitan with an audit of costs pursuant to Section 7.5 and a certification from an independent certified public accounting firm indicating that Torrance and WRD

have established an accounting system to record Project water deliveries and costs pursuant to Sections 7.1, 7.2, and 7.3.

Section 8: Interruption of Replenishment Water Supply

- 8.1 This Section shall become applicable upon Torrance or WRD's initial purchase of Replenishment Water for the Project from Metropolitan and shall remain operative thereafter for the term of this agreement.
- 8.2 Torrance and WRD agree to diligently prepare for and operate the Project during interruption of Metropolitan's Replenishment Water deliveries pursuant to Subsections 8.3 and 8.4.
- 8.3 During water shortage conditions, Metropolitan may suspend for up to and including three continuous years delivery to Torrance or WRD of Replenishment Water equal to the most recent 3-year average of Replenishment Water required to support Project's Allowable Yield in accordance with the procedures outlined in Exhibit F and incorporated herein by this reference. Metropolitan may also otherwise suspend delivery to WRD or Torrance of Replenishment Water to the extent required by law or by rules enacted by Metropolitan's Board of Directors, which are generally applicable to Metropolitan's member public agencies. Failure by Torrance or WRD to cause the Project to operate during such shortages or reduce replenishment deliveries to the Basin during such shortages shall constitute material breach of the Agreement effective the first day of the Fiscal Year in which the breach occurs.
- 8.4 Subsequent to the restoration of Metropolitan deliveries of Replenishment Water, WRD shall diligently replenish the Basin to sustain another three years of interruption of Metropolitan Replenishment Water.

Section 9: Term and Amendments

- 9.1 The term of this Agreement shall be twenty (20) years from the date of the initiation of the Project operation.

- 9.2 This Agreement may be amended at any time by written mutual agreement of the parties.
- 9.3 Torrance may terminate this Agreement upon 30 days prior written notice.
- 9.4 This Agreement shall terminate upon occurrence of any of the following:
- a. payments are not required to be made under this Agreement by Metropolitan to Torrance for a five consecutive-year period subsequent to the initiation of operation;
  - b. construction has not commenced within four years following execution of this agreement;
  - c. Allowable Yield is not produced within five years following execution of this Agreement; or
  - d. material breach of this Agreement by any party other than Metropolitan.

Section 10: Hold Harmless and Liability

WRD agrees at its sole cost and expense to defend and hold Metropolitan and Torrance harmless from any claim and any and all liability (including, but not limited to, liability due to water quality) which may arise out of WRD's or Torrance's approval of, and subsequent construction and operation of, the Project or out of the ownership of the Project, and will save and defend Metropolitan and its officers, agents, and employees free from any claims for injury, including death or damage to property, or injury (including death or damage) due to water quality arising out of the construction, operation, or ownership of the Project. Such indemnity shall include all loss related to any claim made, whether or not a court action is filed, and shall include attorney fees, administrative and overhead costs, engineering and consulting fees and all other costs related to or arising out of such claim of liability.

Section 11: Notice

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

If to Metropolitan: The Metropolitan Water District of Southern California  
P.O. Box 54153  
Los Angeles, California 90054-0153  
Attention: General Manager

If to Torrance: City of Torrance  
3031 Torrance Boulevard  
Torrance, California 90509-2970  
Attention: City Clerk

If to WRD: Water Replenishment District of Southern California  
12621 East 166<sup>th</sup> Street  
Cerritos, California 90703  
Attention: General Manager

Any party may change such address by notification given to the other party as provided in this section.

Section 12: Successors and Assigns

This Agreement shall inure to the benefit of and be binding upon any successor agency of the parties hereto. This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the duties be delegated, without the express written consent of all parties. Any attempt to assign or delegate this Agreement without the express written consent of all parties shall be void and of no force or effect.

Section 13: Severability

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

Section 14: Integration

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



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

APPROVED AS TO FORM:

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

N. Gregory Taylor  
General Counsel

Edward G. Means III  
Deputy General Manager

By: *M. Scully*  
Deputy General Counsel

By: *Delia C. Man*  
Chief of Planning and Resources

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

*[Signature]*  
Sue Hebers  
City Clerk

APPROVED AS TO FORM:

John L. Fellows III  
City Attorney

CITY OF TORRANCE  
A Municipal Corporation

By: *[Signature]*  
Heather K. Whitham  
Deputy City Attorney

By: *[Signature]*  
Dee Hardison  
Mayor of the City of Torrance

Date: *November 18, 1998*

Date: *November 18, 1998*

APPROVED AS TO FORM:

WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA

By: *[Signature]*  
William F. Kruse  
District Counsel

By: *[Signature]*  
Robert L. Campbell

Date: *November 19, 1998*

Date: *November 19, 1998*

EXHIBIT AMADRONA DESALINATION FACILITYProject DescriptionOverview

The Madrona Desalination Facility Project (Project) will be owned by the Water Replenishment District of Southern California (WRD) and will pump and treat brackish groundwater for municipal use from the West Coast Groundwater Basin (Basin). Product water from the Project's treatment plant would be conveyed to an existing potable water distribution system owned and operated by the City of Torrance (Torrance).

Source Water and Wells

The proposed wells will be located in the Basin in the City of Torrance. The Project requires construction of approximately two new wells as shown on the attached Figure 1. Total pumping capacity would be about 2.9 million gallons per day (MGD). One well has been constructed as a test well and will be equipped as a production well.

The Project will produce about 2,970 acre-feet per year (AFY) of groundwater that is expected to contain over 3,780 milligrams per liter (mg/L) of total dissolved solids (TDS) and 2,100 mg/l of chlorides.

Treatment Facilities

Pumped groundwater will be delivered to a new treatment plant to be constructed at an existing City of Torrance maintenance yard near the intersection of West Spencer Street and Madrona Avenue in the City of Torrance. The approximate dimension of the building housing the treatment facility is 6,000 square feet and construction will require relocation of utilities including storm drain, sanitary sewer, yard lights, and water main.

The treatment plant will remove TDS and chlorides by Reverse Osmosis (RO). The groundwater that is treated by the RO process will be blended with untreated groundwater. The blended water will then be stabilized and disinfected prior to delivery to a treated water wet well and then the potable water distribution system. Other facilities include chemical storage and feed facilities. Treatment will separate the source water into two components: about 2,400 AFY of potable water with a TDS concentration of about 500 mg/L and about 570 AFY of concentrated waste with a TDS concentration of about 11,000 mg/L, which will require disposal. The product water from the treatment facility will be delivered by a booster pump system to an existing 12-inch potable water pipeline in Torrance's 310-foot pressure zone and no higher.

### Concentrated Waste Disposal

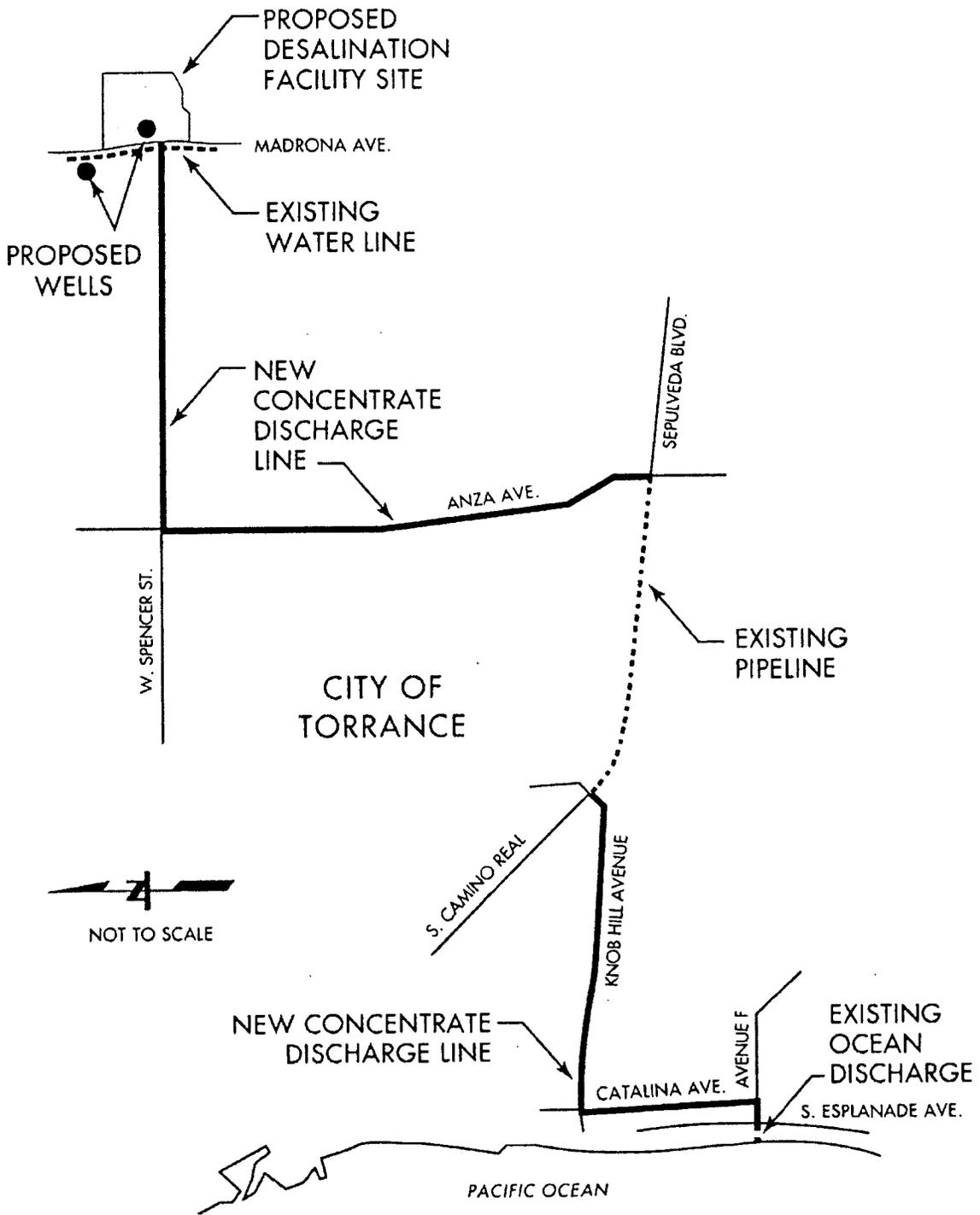
The concentrated waste product of the RO treatment process will be delivered to a concentrated waste discharge line which will, in turn, discharge to a wet well at the Sepulveda Desalination Facility Project site. The waste will then be discharged to a concentrated waste disposal pipeline that will subsequently discharge to a storm drain culvert near the intersection of Avenue F and South Esplanade Avenue. The existing storm drain discharges to the Pacific Ocean at the surf zone. A portion of the waste concentrate disposal pipeline will be new 12-inch diameter pipeline and a portion will be an existing pipeline owned by CWS. A portion of the new pipeline will be used in common with the Sepulveda Desalter Project.

### Maps

Figure 1 shows the proposed Project layout and concentrated waste disposal facilities.

### Points of Connection

Project facilities shall terminate at the points of connection to the existing potable water distribution system and ocean discharge (storm drain) structure.



**Figure 1: Madrona Desalter Project**

## EXHIBIT B

ANNUALIZED CAPITAL COMPONENT

1. The Annualized Capital Component shall be computed using only the following incurred costs by WRD and Torrance for the Project:
  - a. Final design and construction management services.
  - b. Construction of Project facilities (including start-up), more particularly described in Exhibit A. Additional capital improvements that are not consistent with the Project Description outlined in Exhibit A must be submitted to Metropolitan for review. Written approval by Metropolitan is required before such costs are considered eligible for inclusion in the Annualized Capital Component calculation.
  - c. Agency administration of the design, construction and start-up not to exceed three percent of the eligible construction costs unless approved in writing by Metropolitan.
  - d. Fifty percent of the cost of the new waste concentrate disposal system required for the Project that is common to the Sepulveda Desalter Project.
  - e. Permits, including required data collection.
  - f. Purchase of land, rights-of-way and easements for the Project described in Exhibit "A" except as provided herein.
  - g. Construction of one existing test well.
  - h. All contributions as outlined in Section 5.3 of this Agreement shall be treated as negative capital cost values for the purpose of computing the Annualized Capital Component.
2. Cost of the following items shall not be used to calculate the Annualized Capital Component:
  - a. Distribution and concentrated waste disposal facilities beyond the Project's points of connection.
  - b. Environmental planning, documentation, and mitigation measurements required to comply with the California Environmental Quality Act (CEQA).
  - c. Existing water systems, facilities, land, rights-of-way, and easements except as provided herein.

- d. Feasibility studies.
  - e. Deposit of any reserve funds required as a condition of financing.
  - f. All others not specified in Section 1 of this Exhibit.
3. Annualized Capital Cost (ACCost) in dollars per year shall be computed using the following procedure:

- a. For fixed-interest rate financing with uniform payments:

$$\text{ACCost} = \text{CRF}_1 \times P_1 + \text{CRF}_2 \times P_2 + \dots + \text{CRF}_j \times P_j$$

Where:

$P_j$  is each portion of incurred capital cost for Project with a distinct financing arrangement.

$\text{CRF}_j$  is the capital recovery factor for each distinct financing arrangement, as follows:

$$\text{CRF}_j = [i \times (1+i)^n] / [(1+i)^n - 1]$$

$i$  is the interest rate (%)

$n$  is the term of financing commencing in the first Fiscal Year of Project operation (years)

$j$  is the number of each separate financing element

- b. If the Project capital cost is part of a broad financing arrangement that includes other costs, annual payments shall be calculated by prorating the annual payments of the broad financing using the ratio of the Project capital cost to total principle of the financing instrument.
- c. For variable-interest rate financing, annual payments shall be computed based on the actual payments made in applicable Fiscal Year according to WRD's financing documents. Any principal payments toward the Project capital cost before the Project operation will be treated as cash. WRD shall provide Metropolitan with the accumulated paid principal pursuant to Section 5.1.
- d. For fixed-interest rate financing with a non-uniform annual payment schedule, an economically-equivalent uniform annual payment schedule shall be calculated based on "Internal Rate of Return" analysis to establish the annualized capital cost.

- e. Project capital costs not covered by a financing arrangement described above and all grants and contributions as defined in Section 5.3 shall be amortized over 20 years at an interest rate equal to the lesser of:
- (i) Metropolitan's most recent weighted cost of long-term debt on June 30 in the year the capital expenditure occurred; or
  - (ii) the Fiscal Year average of the 25-bond Revenue Bond Index (RBI), as published in the Bond Buyer, in the year the capital expenditure occurred.
- All grants or contributions shall be amortized as a negative capital cost values beginning in the year that money was received.
- f. After first Fiscal Year of operation, only refinancing changes which lower the Annualized Capital Component shall be included in the Annualized Capital Component calculation of each subsequent Fiscal Year.
- g. If the Project capital cost is part of a broad financing arrangement, annual payments shall be calculated by prorating the annual payments of the broad financing using the ratio of the Project capital cost to total amount of the bigger financing.
- h. For all capital financing, cash expenditures, and grants and contributions received after the Project operation, annual payments shall be calculated, using above process, beginning in the Fiscal Year the costs occur.
4. The Annualized Capital Component (ACCom) in dollars per acre-foot for purposes of determining the Project Unit Cost each Fiscal Year shall be calculated using the following formula:

$$\text{ACCom} = \text{ACCost} / \text{Recovered Groundwater}$$

Recovered Groundwater shall not be less than 80 percent of Project Capacity in any year subsequent to initial production of Allowable Yield. Project Capacity in the first Fiscal Year of production of Allowable Yield shall be prorated based on the number of days of production of Allowable Yield.

## EXHIBIT C

OPERATION AND MAINTENANCE COMPONENT

1. The Operation and Maintenance Component shall be computed using the costs incurred during the applicable Fiscal Year for the following:

- a. Professional consulting services for Project operation, maintenance and audits, excluding daily Project operation.
- b. Torrance or WRD labor costs and/or contract labor costs equal to:

$$(\$240,000) \times (\text{CPI}_{\text{current}}/\text{CPI}_{1996})$$

Where:

CPI is the Consumer Price Index for all items for the Los Angeles-Anaheim-Riverside, CA area as published by the U.S. Department of Labor Bureau of Labor Statistics in July of each year.

$\text{CPI}_{\text{current}}$  is the CPI in the Fiscal Year of operation for which O&M costs are being calculated.

$\text{CPI}_{1996}$  is 157.6

Between July 1, and December 30, following the fifth full Fiscal Year of operation and every fifth Fiscal year thereafter, any Party may request the Coordinating Committee to revise the allowable labor cost. Labor cost in the first Fiscal Year of production of Allowable Yield shall be prorated based on the number of days of production of Allowable Yield.

- c. Chemicals and supplies for Project operation, maintenance and repair to maintain reliable system operation and achieve regulatory compliance.
- d. Electrical energy use for:
  - i) Project supply wells.
  - ii) Project lighting and general electrical needs.
  - (i) Booster pump for RO treatment process.
  - (ii) Booster pumps to meet distribution pressure. Energy costs to pump Recovered Groundwater from Project to Torrance's 310-foot pressure zone. Supporting data shall be provided indicating the energy utilized to deliver Recovered Groundwater to Torrance's 310-foot zone. The energy amounts utilized shall be reasonable and practical regarding said delivery. Electrical energy for booster pumping shall not exceed 410 kilowatt-hours for each acre-foot of Recovered Groundwater.
  - (iii) Concentrate waste disposal pumping.

- e. Lease, maintenance and all repairs of existing concentrate disposal pipeline from CWS at a cost of \$21,000 per year.
- f. Water quality sampling and analysis for the Project.
- g. All contributions as outlined in Section 5.3 of this Agreement shall be treated as negative values for the purpose of computing Operation and Maintenance Component.
- h. Replacement parts costs that are less than or equal to the following amount per unit:

$$100,000 \times (\text{ENRCCI} / 6,694)$$

Where ENRCCI is the Engineering News Record Construction Cost Index for Los Angeles area for July of each applicable Fiscal Year. ENRCCI for July 1998 is 6,694.

- i. Cost for replenishment water at the rate established for pumping by other parties to the Basin Judgment.
2. Costs of the following items shall not be used to calculate the Operation and Maintenance Component:
- a. Operation and maintenance of distribution, concentrate waste disposal and storm drain systems beyond Project's points of connection.
  - b. Replacement parts pursuant to Exhibit "D".
  - c. Repair or replacement of CWS' existing concentrate waste disposal pipeline that requires total expenditure of greater than \$4000 annually.
  - d. Concentrate waste disposal fee unless approved by Metropolitan.
  - e. All other operation and maintenance items not specified in Section 1 of this Exhibit.
3. The Operation and Maintenance Component (OMC) in dollars per acre-foot for purposes of determining the actual Project Unit Cost each Fiscal Year shall be calculated using the following formula:

$$(\text{OMC}) = (\text{Actual Annual Cost of O\&M}) / (\text{Recovered Groundwater}).$$

EXHIBIT D  
ANNUALIZED REPLACEMENT COMPONENT

1. The Annualized Replacement Component shall be computed using incurred costs for the following:
  - a. Membrane replacement.
  - b. Replacement of major parts costing more than the following amounts per unit:
    - (i) 100,000 x (ENRCCI / 6,694)
    - (ii) where ENRCCI is the Engineering News Record Construction Cost Index for Los Angeles area for July of each applicable Fiscal Year. ENRCCI for July 1998 is 6,694.
  - c. All contributions as outlined in Section 5.3 of this Agreement shall be treated as negative values for the purpose of computing Annualized Replacement Component.
  - d. Salvage of replaced parts shall be a negative replacement cost.
2. Costs of the following items shall not be used to calculate the Annualized Replacement Component:
  - a. Replacement of distribution and concentrate waste disposal systems beyond the Project's points of connection.
  - b. Any capital or operation and maintenance costs as previously defined in Exhibits "B" and "C", respectively.
  - c. Reserve funds.
3. The Annualized Replacement Cost (ARCost) shall be calculated the same as ACCost for capital amortization in Exhibit B except that:
  - For membrane replacement, n is the number of years the replaced membranes were in service; for all other replacement costs, n is 20 years.
  - i is Metropolitan's default interest rate in the Fiscal Year of replacement.
  - P is the actual cost of replacement in a Fiscal Year.
4. The Annualized Replacement Component (ARCom) for each replacement occurrence in dollars per acre-foot shall be calculated using the following procedure:

$$\text{ARCom} = \text{ARCost} / \text{Recovered Groundwater}$$

For purposes of this calculation, Recovered Groundwater shall not be less than 80 percent of Project Capacity in any year.

EXHIBIT E  
DEFERRED COST

Deferred Cost (DC) applicable to the determination of Final GRP Contribution for the next Fiscal Year is computed as follows:

$$DC = AYP \times (PUCP - RateP - 250) / RW$$

Where:

AYP = Allowable Yield in the previous Fiscal Year (AF),

PUCP = Project Unit Cost in the previous Fiscal Year (\$/AF) as defined in Section 1.9,

RateP = Metropolitan's applicable full service treated water rate in the previous Fiscal Year (\$/AF),

250 = Maximum Final GRP Contribution (\$/AF), and

RW = Recovered Water in the Fiscal Year that the reconciliation is performed for

- There shall be no DC value carryover upon Agreement termination.
- If DC is calculated as a negative number using the above equation, DC will be Zero.

## EXHIBIT "E"



DIRECTORS  
ROBERT GOLDSWORTHY, PRESIDENT  
DR. KENNETH M. ORDUÑA, VICE PRESIDENT  
LEO J. VANDER LANS, TREASURER  
M. SUSAN CARRILLO, SECRETARY  
ALBERT ROBLES, DIRECTOR

ROBERT L. CAMPBELL, GENERAL MANAGER

September 28, 1998

Mr. Andrew Sienkiewich, P.E.  
Principal Engineer  
Local Resources Program Branch  
Metropolitan Water District  
P.O. Box 54153  
Los Angeles, CA 90054-0153

Dear Mr. Sienkiewich,

Thank you and Mr. Kules for taking the time to meet with West Basin Municipal Water District and WRD staff to discuss Groundwater Recovery Program issues regarding the Madrona and Sepulveda Desalination Facilities. This letter is to summarize the three issues that were raised, and the resolution of each.

**Issue 1 – Demonstration of increased regional production**

Concern was raised that the potential existed for California Water Service (CWS) and the City of Torrance to reduce their normal extractions and rely on the production from the treatment facilities rather than maintain current groundwater production levels and reduce imported water purchases.

Response: WRD will construct, own and operate the desalter facilities at its own expense. It is expected that WRD will contract operations for the Sepulveda and Madrona Desalters with CWS and Torrance, respectively. Therefore, WRD will pay CWS and Torrance its normal labor costs only. Additionally, CWS and Torrance will pay WRD the fair market value for the water produced from the desalters. There is no incentive for either CWS or Torrance to replace normal groundwater extraction with the product water from the desalter, since their cost to produce groundwater will be much less expensive than the market value of both the imported water and treated project water. A reduction in groundwater production would only occur if there were operational or water quality problems preventing CWS and Torrance from pumping groundwater.

WRD is also seeking a court order to exempt the groundwater production for these projects from counting against any agency's adjudicated right, so that "normal" groundwater production is not affected by the desalter projects. However, in order to ensure there is increased groundwater production in the basin, it has been agreed to establish a baseline production for both CWS and Torrance since it will be those agencies that will be reducing their imported water use. Future pumping by each of these would then be compared to that baseline. The following table shows the last 5 years of pumping for each agency.

Mr. Andrew Sienkewich  
September 28, 1998

2

Fiscal Year	CWS Production AF/YR	Torrance Production AF/YR
93-94	22	315
94-95	1,030	1,318
95-96	1	1,454
96-97	189	2,061
97-98	347	4,832
Total production	1,589	9,980
5 Year Average	318	1,996
Baseline (95% of average)	305	1,900

Should CWS and Torrance produce groundwater below their respective baseline in any given year one of the following would occur:

- 1) WRD would demonstrate to MWD that the shortfall in the "normal" groundwater production by CWS or Torrance had been leased out to other agencies and pumped and therefore no reduction in the subsidy would occur, or
- 2) The production eligible for subsidy from the facility would be reduced by the amount the groundwater production was below the baseline.

The pumping from each agency will be reconciled at the end of each year and an adjustment, if any is necessary, would occur at that time.

**Issue 2 – Sustain Project production for up to three consecutive years without delivery of Metropolitan's imported replenishment supplies**

Under the GRP terms, production for the desalter facilities would need to be sustained for up to three consecutive years without delivery of imported replenishment supplies. Clarification was requested as to how this would be accomplished for the desalination facilities.

**Response:** WRD's In-lieu Replenishment Program, to the extent possible, would be used to sustain the groundwater production during a drought situation to meet this three-year obligation. Should the interruption of the In-lieu Program not sustain the desalter production, delivery of water to the spreading basins in the Montebello Forebay would be reduced as necessary to meet the remainder of the obligation.

The In-Lieu portion of the obligation would be calculated using the average of the most recent three-year period (rolling average). When the call is made to cease replenishment for the project, WRD will request qualifying agencies to pump instead of participating in the In-Lieu Program. Should a reduction in spreading

Mr. Andrew Sienkiewich  
September 28, 1998

3

be necessary in addition to the In-Lieu, the most recent three-year average of imported water spreading would be calculated. WRD would then reduce its spreading to an amount below that average as required.

Issue 3 – Other basin projects receiving rebate (WBMWD Recycled Water Project)

The WBMWD Recycled Water Project qualifies for MWD's Local Resources Program. Concerns were raised that the recycled water (that MWD has subsidized) would replenish the desalter facilities.

Response: As stated above, replenishment for these projects will be met through the WRD In-Lieu Replenishment Program and/or spreading in the Montebello Forebay. WRD is not requesting the cost of replenishment through the barrier systems, but is seeking the melded cost of replenishment (the WRD replenishment assessment).

Additionally, there is a freshwater wedge between the saline plume and the West Coast Basin Barrier, which indicates the movement of the plume in the forty-plus years of injecting imported water. The leading edge of the water injected into the seawater barriers is defined by this freshwater wedge. This wedge has not reached the area of the proposed desalter extraction wells. The Sepulveda Desalter production wells are the closest desalter feed wells to the barrier. Modeling work that WBMWD and WRD have conducted show that the fresh water-brackish water interface does move slightly closer to those production wells in twenty years, however, it does not reach them. The production wells for the Madrona Facility are located farther east than the Sepulveda wells, just under two miles from the barrier. Clearly the water that will be injected over the next twenty-plus years will not reach these production wells.

It is our understanding that the resolutions stated above to the issues raised are satisfactory to Metropolitan. If you have any questions or additional concerns, please call Melinda Sperry at (562) 921-5521.

Sincerely,



Robert L. Campbell  
General Manager

cc: Ken Kules – Metropolitan Water District  
Mark Tetterer – West Basin Municipal Water District  
Dave Ebersold – Montgomery Watson

**EXHIBIT B**  
**GROUND LEASE**

**CITY OF TORRANCE  
DESALTER FACILITIES SITE LEASE**

This Desalter Facilities Site Lease (the "Lease") is entered into as of Jan. 26, 1999, between the CITY OF TORRANCE, a ("Torrance" or "Landlord"), and WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA, a water replenishment district formed under division 18 of the California Water Code ("WRD" or "Tenant").

**Recitals**

- A. WRD intends to construct a well, pipelines and a treatment facility (the "Project Facilities" or the "Improvements") on the hereafter described Premises, to remove total dissolved solids ("TDS") from groundwater as part of the program of WRD to insure reliable groundwater supplies within the groundwater basin underlying the southern Los Angeles County coastal plain, thereby allowing use of otherwise marginally useable or non usable water.
- B. Torrance is the owner of one (1) parcel of real property located in the City of Torrance, County of Los Angeles, State of California, commonly known as the City of Torrance City Service Facility, 20500 Madrona Avenue ("Maintenance Yard"), Assessor's Parcel Number 7352-012-909. Landlord's Property is more particularly described as Lot 1 of parcel map number 15380 in the City of Torrance as recorded in Parcel Map Book 226, at page 59, records of Los Angeles County California.
- C. Torrance desires to lease to WRD, as Tenant, a portion of the Maintenance Yard (the Plant Site) and WRD desires to lease such parcel of Landlord's Property. The Plant Site is more fully described on Exhibit A to this Lease.
- D. The Project Facilities will at all times remain the property of WRD. A proposed site plan for the Project Facilities is reflected on Exhibit A.

C99-031

**Agreement**

Landlord and Tenant hereby acknowledge that the foregoing Recitals are true and correct and on the terms, provisions and conditions hereinafter set forth and in consideration of mutual covenants and obligations of parties hereunder, agree as follows:

**1 Premises.**

**1.1 Lease of the Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Plant Site (sometimes hereinafter referred to as the "Premises"), which is more fully described on Exhibit A to this Lease.

**1.2 Grant of Easement.** Landlord agrees to grant Tenant, in a form attached hereto in Exhibit C, an easement across the lands as described in exhibit A, to lay, construct, maintain,

**DUPLICATE  
ORIGINAL**

and repair and reconstruct one or more pipelines, conduits, and the production well associated with the Project.

### 1.3 Access to the Premises.

1.3.1 Access to the Maintenance Yard is from public streets. Access to the Plant Site is by a paved route through the Maintenance Yard. To the extent necessary, Tenant is granted the right to pass through the Maintenance Yard to access the Plant Site.

1.3.2 Tenant shall have access to the Plant Site seven (7) days per week and twenty-four (24) hours per day.

### 1.4 Utilities.

1.4.1 Tenant shall have the right to install utilities to serve the Project Facilities, at Tenant's sole cost and expense.

1.4.2 All utilities serving the Project Facilities shall become the property of Landlord on expiration or earlier termination of this Lease.

1.5 **Survey.** Tenant may have all or any portion of the Premises surveyed by a licensed surveyor, at the sole cost of Tenant, and may depict the location of the Project Facilities thereon. Such survey, when approved in writing by Landlord and Tenant as an amendment to this Lease, shall then replace Exhibit A and shall constitute agreement of Landlord and Tenant on the location of the Project Facilities.

## 2 Use.

2.1 **Project Facilities.** Landlord hereby grants permission to Tenant to occupy the Plant Site to install, construct, maintain, remove, replace and operate, at Tenant's cost, the Project Facilities. Tenant shall not use or permit the use of the Premises for any other purpose without the prior written consent of Landlord. Tenant shall use the Plant Site only for the extraction of saline water and for desalination and distribution of such water.

### 2.2 Permits.

2.2.1 The parties agree that Tenant's ability to use the Premises is dependent upon Tenant obtaining all of the certificates, permits, licenses, and other approvals which may be required from governmental agencies or third parties to install, construct and operate the Project Facilities.

2.2.2 Landlord shall cooperate with Tenant, at no expense to Landlord, in Tenant's effort to obtain approvals and/or permits to use the Premises for the Project Facilities. In cases where Landlord must incur expenses to

obtain approvals and/or permits for the Project Facilities, tenant will reimburse Landlord the full amount of costs incurred.

- 2.2.3 In the event the required permits for construction and operation of the Project Facilities cannot be obtained by Tenant, Tenant shall have the right to cancel this Lease by written notice to Landlord. In the event this Lease is terminated by Tenant, within sixty (60) days after the effective date of such termination, Tenant shall remove all equipment and facilities from Landlord's Property which have previously been located thereon, except the test well which may be maintained on the Maintenance Yard, Tenant shall restore Landlord's Property to a clean and safe condition and substantially the condition of Landlord's Property prior to execution of this Lease.

**2.3 No Warranty By Landlord.** Landlord makes no warranty as to the physical or legal condition of the Premises or the suitability of all or any portion of the Premises for the Project Facilities. By commencing construction of the Project Facilities, Tenant acknowledges that it has investigated the physical and legal conditions of the Premises and their suitability for Tenant's use and that Tenant has accepted the Premises in their "AS-IS" condition. Landlord, as the lessor of the Premises shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises throughout the Term, Tenant hereby assuming the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the entire Premises, including any latent or patent defects existing thereon or therein. Tenant hereby waives any and all rights, whether conferred by statute or otherwise, to make any repairs, replacements, alterations or improvements at the expense of Landlord, or to obtain damages or reductions or abatement of rent or other sums payable hereunder.

**2.4 Torrance's Rights.** Tenant acknowledges that it will process saline water through the Project Facilities and sell the resulting treated water to the City of Torrance. Torrance shall purchase from WRD the treated water produced from the Project Facilities at a rate, on a per acre-foot basis, which is discounted by 6% from the Metropolitan Water District's non-interruptible treated water rate. Should WRD choose to forego operating the plant with WRD personnel, Torrance shall have the first right of refusal to operate the facility. Tenant shall not conduct or permit any activity in or on the Premises, which in any manner interferes, or is reasonably likely to interfere, with the providing of services by Torrance including any communications reasonable to the providing of services.

**2.5 Compliance with Laws.** Tenant shall construct, operate, maintain, repair and replace the Project Facilities, and use the Premises, in compliance with (a) all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state and county authorities pertaining to use of the Premises for the Project Facilities or other purposes for which Tenant uses the Premises, with or without the consent of Landlord (collectively, "Laws"), including without limitation, (i) laws pertaining to the construction, maintenance and use of the Project Facilities; (ii) all applicable federal and state laws, regulations and ordinances pertaining to air and water quality, Hazardous Materials (as hereinafter defined, and as more specifically provided

in Section 16 hereof), waste disposal, air emissions and other environmental matters; and utility availability; (b) with all covenants, conditions and restrictions applicable to the Premises ("Restrictions"); and (c) any direction of any public officer or officers, pursuant to law, which shall impose any duty upon Landlord or Tenant with respect to the use or occupation of the Premises (collectively, "Public Orders"), regardless of when any of the Laws, Restrictions or Public Orders become effective and regardless of whether the benefit of actions required to be taken or avoided by Tenant, or improvements to the Premises or the Project Facilities have a useful life which extends beyond the Initial Term of this Lease or any Extended Term. Notwithstanding the foregoing, Tenant shall not be required to undertake any activity or to make any repairs to Landlord's Property or the Premises pursuant to any Laws, Restrictions or Public Orders unless such repairs are required because of Tenant's construction, specific use, repair, maintenance or operation of the Project Facilities or to repair damage caused by Tenant, its agents, employees, contractors or invitees.

**2.6 Fixtures.** The Project Facilities shall not be or become, or be considered as being affixed to, or a part of, Landlord's Property and any and all provisions and principles of law to the contrary notwithstanding, the Project Facilities shall be and remain the property of Tenant.

### **3 Term and Extension Options**

**3.1 Initial Term.** The term of this Lease shall be for twenty (20) years (the "Initial Term"), and shall commence on February 1, 1999 (the "Commencement Date") and terminate on January 31, 2020, unless sooner terminated as provided herein. If Tenant elects to take possession of the Premises prior to the Commencement Date, Tenant shall notify Landlord and, upon approval by Landlord of the date of such possession, the parties shall execute an amendment to this Lease specifying the new Commencement Date and the expiration date of the Lease.

**3.2 Entry Prior to the Commencement Date.** After execution of this Lease, but prior to the Commencement Date, Tenant may survey the Premises, conduct a structural soils test and conduct any other investigations needed to determine if the surface and location of the Premises are suitable for Tenant's purposes and to prepare for construction of the Project Facilities, provided that (a) the indemnification provisions of Section 10.2. shall apply; (b) before entering Landlord's Property or the Premises, Tenant shall provide the insurance certificate required in Section 13 of this Lease and evidence of workers' compensation insurance coverage for Tenant, its agents' and contractors' employees; (c) Tenant shall notify Landlord at least forty-eight (48) hours prior to such entry for planning purposes and ten (10) days prior to such entry for any purpose for which a mechanic's lien can be claimed, so that Landlord may post a Notice of Non-Responsibility; (d) Tenant shall keep Landlord's Property free and clear of mechanics' and/or materialmen's liens, and (e) except for a structural soils test, Tenant shall not conduct any subsurface investigations of the Premises without the prior written consent of Landlord.

**3.3 Extended Terms.** The Initial Term may be extended, by written notice from Tenant to Landlord given no later than one hundred eighty (180) days prior to expiration of the Initial Term, for an additional period (the "Extended Term"), provided that the initial Term and

the Extended Term shall not exceed a total of thirty-five (35) years. The use of the word "Term" herein shall mean and include the Initial Term and any Extended Term unless the context specifically requires a distinction.

**3.4 Holding Over.** Should Tenant, with Landlord's consent, hold possession of the Premises or any portion thereof after the date upon which the Premises are to be surrendered, Tenant will become a tenant on a month-to-month basis upon all the terms, covenants and conditions of this Lease.

#### **4 Termination Rights; Obligations at Expiration or Termination By Tenant.**

##### **4.1 By Tenant**

4.1.1 Tenant shall have the right to terminate this Lease at any time upon any of the following events: (a) if the approval of any agency, board, court, or other governmental authority necessary for the construction and/or operation of the Project Facilities, is denied by the public agency authorized to issue such approval, or, (b) a required permit or approval is issued, but subsequently revoked, canceled or not renewed, through no act, omission or fault of Tenant; or (c) if Tenant determines at any time that the Premises are not appropriate under Tenant's design or engineering specification for the Project Facilities; or (d) Tenant determines that groundwater quality has sufficiently improved to justify the cessation of Project operations, or (e) if the Project Facilities are damaged or destroyed or become technologically obsolete and the Premises are no longer suitable for new Project Facilities at a cost acceptable to Tenant. Notwithstanding the foregoing, Tenant shall not have the right to terminate this Lease at any time that (i) an uncured Event of Default exists, or (ii) a default exists which with the passage of time or giving of notice, or both, could become an Event of Default, or (iii) if a default or an Event of Default occurs between the date of giving a notice of termination and the effective date of such termination, such termination shall not occur until the default or Event of Default is cured.

4.1.2 Tenant will give Landlord thirty (30) days written notice of termination of this Lease under the terms of Section 4.1.1. Upon termination, neither party will owe any further obligation under the terms of this Lease except for (a) the indemnification obligations under Section 16 and Section 18, and (b) Tenant's responsibility pursuant to Section 4.3 for removing the Project Facilities and all other equipment from the Premises and restoring the Premises to their original condition, as near as practicable. Property shall be restored to its original pre-lease condition within 180 days of lease termination or the facility shall be signed over to the Torrance Municipal Water Department or its successor at the sole discretion of the City of Torrance.

4.2 **By Landlord.** Landlord shall have the right to terminate this Lease in the event of breach of the terms and conditions hereof by Tenant, as provided in Section 11 hereof.

4.3 **Tenant's Obligations at Expiration or Termination.**

- 4.3.1 Tenant shall remove the Project Facilities (except for the test well) from the Premises upon expiration or termination of the Lease and leave the Premise free and clear of debris and in a safe and secure condition.
- 4.3.2 Upon the written request of Landlord made (a) prior to the expiration of the Lease, (b) concurrently with termination of the Lease by Landlord, or (c) prior to the termination of the Lease in the event of termination by Tenant, Tenant shall remove or cause to be removed from Landlord's Property all utility company and other equipment and facilities serving Tenant. If Landlord does not request removal of such utility equipment and facilities, all such equipment and facilities which do not belong to a utility company shall become the property of Landlord at termination of this Lease.
- 4.3.3 Upon request of Landlord, Tenant shall execute, acknowledge and deliver to Landlord a quitclaim deed or deeds by Tenant and each utility company serving the Premises to clear title to Landlord's Property of all rights under this Lease to install, use, maintain and replace utility lines on Landlord's Property. Tenant shall surrender the Premises to Landlord in a safe and clean condition, and upon request of Landlord, shall restore Landlord's Property, including without limitation the Premises excepting the test well, substantially to its condition prior to the installation of utility equipment and the Project Facilities by Tenant.

5 **Rent**

5.1 **Base Rent.** Tenant agrees to pay Landlord, at the address designated in or pursuant to Section 17, as rent for the Premises ("Base Rent"), commencing on the Commencement Date), the annual sum of Thirty Thousand Dollars (\$30,000) payable in equal monthly installments of Two thousand five hundred Dollars (\$2,500.00) in advance on or before the first day of each and every calendar month during the Term.

5.2 **Base Rent Adjustment.** The Base Rent shall be adjusted, on and commencing with the fifth, tenth and fifteenth anniversary of the Commencement Date (each of which is hereafter referred to as an "Adjustment Date") during the Initial Term and every fifth anniversary of the Commencement Date during each Extended Term. Such adjustments shall be for the purpose of reflecting the increase, if any, in the Consumer Price Index. Adjustments, if any, shall be calculated based upon the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index, CPI-U for the Los Angeles Metropolitan Statistical Area, Sub-Group "All

Items," (the "Index"). The Index published as of the most recent month prior to the Adjustment Date shall be compared with the Index sixty (60) months immediately preceding such Adjustment Date. On each Adjustment Date, Base Rent shall be increased by the percentage increase, if any, in the Index during the previous five (5) year period. Notwithstanding any subsequent decrease in the Index, the Base Rent shall not be less than that paid during the immediately preceding year. If on the Adjustment Date, the Index is not of the format referenced in this Section 5, any such official index as may be published by the Bureau of Labor Statistics, or any successor or similar governmental agency as may then exist or be most nearly equivalent thereto, may be used, as selected by Landlord in its reasonable discretion.

**5.3 Extended Term Rent.** Commencing with the first day of the first year of each Extended Term, Tenant agrees to pay to Landlord as Base Rent the monthly rent which was payable by Tenant for the last month of the immediately preceding year, increased by any applicable increase in the Index, calculated pursuant to Section 5.2, above. Base Rent for each Extended Term shall be subject to Index increases calculated pursuant to Section 5.2, above.

**5.4 Prorated Rent.** Rent for any period during the term hereof which is less than one (1) month shall be prorated based on a thirty-(30) day month.

**5.5 General Provisions Regarding Rent.** All sums payable by Tenant to Landlord hereunder shall be included in the term "Rent." All Rent hereunder shall be payable in lawful money, without notice or demand, unless specifically provided otherwise herein, and without deduction or setoff.

## 6 Utilities.

**6.1 Utility Service and Improvements.** Tenant shall, at its expense, obtain from the utility company that provides electric service to Landlord's Property the electrical service and construct the utility improvements necessary to serve the Project Facilities. Such service and improvements shall include the installation of a separate meter and main breaker and may include a standby power generator. The cost of such meter and of installation, maintenance and repair thereof shall be paid for by the Tenant. With the exception of the electrical service provider's transformer, which will not be visible from the street, all utilities must be underground.

**6.2 Utility Charges.** Tenant shall be solely responsible for and promptly pay all charges for gas, electricity, telephone service, or any other utility used or consumed by Tenant on the Premises.

## 7 Construction Obligations and Alterations.

### 7.1 Construction Obligations.

7.1.1 Tenant shall perform all construction and installation work for the Project Facilities, or cause it to be performed, (a) at Tenant's sole cost and

expense, (b) in a good and workmanlike manner, (c) in compliance with applicable governmental permits and requirements, and (d) conforming to the accepted design resulting from Comments on Tenant's Plans as described in Section 8. Tenant shall give Landlord at least ten (10) days written notice prior to commencement of construction activities and at least five (5) days written notice prior to recommencement of construction activities after any work stoppage longer than 10 working days. Tenant shall conduct all construction activities in a manner likely to cause the least reasonable disruption or inconvenience to Landlord. Tenant shall not cause or permit any disruption of utility service to Landlord's Property or any adjacent property or any impairment of access to such properties without at least forty-eight (48) hours prior written notice to Landlord and/or the owner or occupant of such adjacent property, as applicable.

7.1.2 Prior to start of construction, Tenant and Landlord shall mutually agree upon access and storage areas for construction equipment, material delivery and storage areas, a construction worker parking area, and an appropriate construction work area adjacent to the Project Facilities and any other work areas on Landlord's property deemed necessary.

7.1.3 **Alterations.** Tenant may make additions, alterations and changes ("Alterations") in or to the Premises, provided Tenant shall not then be in default in the performance of any of Tenant's covenants or agreements in this Lease. Additions, alterations and changes to the exterior of the building and increases in square footage beyond the original construction require Landlord consent. Notice of such request must be sent to the City, and require City Council consent.

7.1.4 At all times during construction of the Project Facilities, authorized officers, officials, employees, agents and representatives of Torrance shall be permitted to inspect the project facility construction. WRD shall reimburse Torrance for the reasonable costs of plan checks and inspection by City of Torrance Building and Public Works inspectors.

7.2 **Waste.** Tenant will not do, permit or suffer any waste, damage, disfigurement or injury to the Premises or any part thereof.

7.3 **Workers Compensation Insurance.** Prior to commencing any construction, Tenant shall deliver to Landlord customary evidence of workers' compensation insurance coverage for the employees of Tenant and Tenant's agents, contractors, and/or suppliers.

7.4 **Mechanic's Liens.** Tenant shall keep the Premises free and clear of all mechanic's or materialman's liens resulting from construction performed by or for Tenant.

## 8 **Comment on Tenant's Plans.**

**8.1 Comment Procedure.** California Government Code Section 53091 exempts the location and construction of facilities for the production, generation, storage, or transmission of water from the building and zoning ordinances of a county or city. However, WRD shall transmit to Torrance copies of plans and specifications (hereinafter, the "Project Design") for construction of the Project Facilities for review and comment. It is expected that the design will be submitted in a series of approximately 3 packages. The first package will include utility relocations and site development for the desalter. This package is scheduled to be available for comment in early February 1999. The second package will include the remainder of the design for the desalter and yard piping and is anticipated to be available for comment in late March. The third package will include the brine line and is also anticipated in late March. All packages shall be mutually agreed to be complete and ready for construction. Owing to the potential for future adjustments to the project schedule, the exact dates and specific content of these packages may vary. Torrance will make a good faith effort to respond to the design packages within 5 business days of submittal, with the exception of the package containing the structural design of the desalter where the response time may not be longer than 10 business days. WRD will provide 5 business days notice prior to the submittal of any design package for comment. Business days are defined as normal Torrance City Hall operating hours.

8.1.1 Torrance shall be deemed to have reviewed any portion of the Project Design in the event that Torrance fails to transmit written comments of any portion of the Project Design to WRD within the review period specified above for each package. Each review period shall commence upon the business day on which that portion of the Project Design was received by Torrance.

8.1.2 In the event that Torrance timely comments on any portion of the Project Design pursuant to this Paragraph 8.1, WRD and Torrance shall meet within five business (5) days or other mutually agreed upon period in a good faith effort to modify the Project Design so as to resolve the concerns raised by Torrance. Construction shall not commence on the design package under review until comments are resolved to the satisfaction of both parties. This review shall not affect any previously approved construction package.

## **9 Repairs, Maintenance and Operation**

**9.1 Tenant's Obligations.** Tenant shall maintain and operate the Premises maintain and operate the Project Facilities, (a) in such a manner as to not interfere with Landlord's use of the portion of Landlord's Property adjacent to the Project Facilities; (b) in a manner which will not cause a disturbance or nuisance to the other occupants of Landlord's Property; (c) in compliance with all Laws and all requirements imposed by the insurers who provide the insurance required by this Lease, and (d) at all times in good condition and repair and in a neat, clean and safe condition. Tenant shall repair all damage to Landlord's Property caused by use of the Premises by Tenant, its agents, contractors, employees or invitees and/or the negligence or

misconduct of Tenant, its agents, contractors, employees or invitees. Tenant shall repair all damage to Landlord's Property caused by Tenant's construction activities. For the purposes of this Section 9.1, "good condition and repair" shall include making all necessary replacements, renewals, alterations, additions, betterments and any work required for the continued use of the Premises and any work required by any order of any governmental agency. All repairs made by Tenant shall be at least equal in quality and class to the original work. Tenant shall not obstruct the access to the Maintenance Yard in any manner.

**9.2 Landlord's Obligations.** Landlord shall promptly repair all damage to the Premises caused by the negligence or willful misconduct of Landlord, its agents, contractors and employees. Tenant acknowledges that Landlord shall have no obligation or liability under this Lease on account of any damage to the Project Facilities resulting from vandalism, adverse weather conditions or events not directly controlled by Landlord.

## **10 Liability and Indemnity**

**10.1 No Liability of Landlord.** Landlord shall not be responsible or liable for any damage to any property of Tenant or of any person or persons at any time on the Premises from steam, gas or electricity or from water or rain, whether the same may leak or flow into or flow from any part of the Project Facilities. Landlord shall not be responsible or liable for damage or loss on account of any accident or injury, including death, to any of Tenant's employees, agents, or invitees, or to any person or persons in or about the Premises or the streets or sidewalks adjacent thereto. Tenant agrees that it will not hold Landlord in any way responsible for any of the foregoing.

### **10.2 Tenant's Obligations.**

10.2.1 Tenant agrees to indemnify Landlord, the City Council, each member thereof present and future, its officers, agents and employees against and hold them harmless from all claims, demands, causes of action, damages, losses and liabilities (including reasonable attorneys' fees and costs and expenses of defending against such claims) for injury to or death of any person or from loss of use of or damage to property (collectively, "Claims") arising from (a) any act or omission of Tenant, its agents, employees or contractors occurring during the term of this Lease in or about the Premises, (b) any negligence or willful misconduct of Tenant, its agents, employees or contractors, on or about Landlord's Property, and (c) any obligation, act or omission of Tenant in connection with any license or governmental permit issued to Tenant in connection with the Premises or the Project Facilities. The foregoing indemnification includes, but is not limited to, any loss or damage resulting from work done on the Premises and/or Landlord's Property by Tenant, excluding any injury to the extent it arises from the negligence or willful misconduct of Torrance, its agents, employees or contractors in its capacity as Landlord.

10.2.2 Tenant agrees to use and occupy the Premises at Tenant's own risk and hereby waives any claim against Landlord, the City Council, each member thereof, present and future, its officers, agents, employees and contractors, for any damage or injury brought by Tenant to the full extent permitted by law, including, without limitation, Claims resulting from any natural causes, such as, but not limited to, earthquake, fire or flood, but excepting Claims to the extent they are caused by the negligence or willful misconduct of Torrance, its agents, employees or contractors in its capacity as Landlord.

**10.3 Landlord's Obligations.** Landlord agrees to indemnify Tenant against and hold Tenant harmless from all Claims arising from any negligence or willful misconduct of Landlord, its agents, employees, contractors, occurring during the term of this Lease.

**10.4 Survival of Indemnifications.** The foregoing indemnifications shall survive expiration or termination of this Lease for a period of two (2) years after such expiration or termination.

**10.5 Consequential Damages.** Notwithstanding the foregoing provisions of this Section 10, in no event shall either party be liable to the other for consequential damages, including without limitation, loss of business or income.

## 11 Default.

**11.1 Events of Default.** The occurrence of any of the following shall constitute an Event of Default:

11.1.1 Any failure by Tenant to pay any installment of Base Rent, or any other charge or sum of money due to Landlord, or to be paid by Tenant under this Lease, within ten (10) days such sum is due;

11.1.2 A failure by Tenant to observe and perform any term, covenant, agreement or obligation of Tenant under this Lease which failure is not cured within a period of thirty (30) days after written notice from Landlord specifying such default, (which cure shall include compensation for any damages suffered and costs incurred by Landlord, including reasonable attorneys' fees and costs, due to such default and prior to such cure), unless such default cannot be cured within said thirty (30) days, in which case Tenant shall commence to cure said default within said thirty (30) days and shall cure the same with all reasonable dispatch; provided however, that in the event such default shall, in the sole judgment of Landlord, subject the Premises or the remainder of Landlord's Property to the risk of physical damage, or subject the Landlord to the risk of civil or criminal penalties or damages, Landlord may at its option immediately declare an Event of

Default under this Lease notwithstanding the above referenced thirty (30) day cure period; or

- 11.1.3 The abandonment or vacation of the Project Facilities by Tenant for a continuous period exceeding thirty (30) days; or
- 11.1.4 The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition for liquidation, reorganization or arrangement under any law relating to bankruptcy or insolvency (unless, in the case of a petition filed against Tenant, the same is dismissed within thirty (30) days); the appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; the attachment, execution or other judicial seizure of all or substantially all of Tenant's assets located in or upon the Premises or of Tenant's interest in this Lease, where such seizure is not vacated or discharged within ten (10) days; or if Tenant is generally not paying its debts as they become due. In no event shall this Lease be assigned or assignable by operation of law or by voluntary or involuntary bankruptcy proceedings or otherwise, and in no event shall this Lease or any rights or privileges hereunder be an asset of Tenant under any bankruptcy, insolvency, reorganization or other debtor relief proceedings. Provided, however, that if any provisions of this section are stayed or are otherwise unenforceable under applicable bankruptcy law, this Lease shall be deemed to expire sixty (60) days following the date of order for relief in such bankruptcy, unless within such period (or such longer period ordered by the court within such period) the trustee of Tenant assumes this Lease and satisfies all of the requirements of Sections 365(b)(1) of the Bankruptcy Code of 1978, as amended, or the comparable provisions of any successor statute, as to the provision of adequate protection and assurance as to future performance by such trustee. In no event shall any such trustee further assign this lease without complying with Section 365(f) of the Bankruptcy Code as well as all of the provisions of this Lease applicable to assignments by Tenant.

**11.2 Landlord's Remedies.** Upon the occurrence of an Event of Default, Landlord shall have, in addition to any other remedies available at law, without further notice to Tenant, and without barring later election of any other remedy, any one or more of the remedies hereafter specified, at Landlord's election:

- 11.2.1 *Termination of Lease.* Landlord shall have the right to give Tenant three (3) days' notice of termination of this Lease and Tenant's right to possession of the Premises and, at the expiration of said three (3) day period, the Term shall expire as fully and completely as if that day were

the day specified in this Lease for the expiration of the Term and Tenant shall vacate and deliver possession of the Premises to Landlord, but Tenant shall remain liable as hereafter provided. If Tenant fails to so vacate and deliver the Premises, Landlord shall have the right, subject to applicable law, without notice, to re-enter the Premises and dispossess Tenant and the legal representatives of Tenant and all other occupants of the Premises by unlawful detainer or other summary proceedings, or otherwise, and remove the Project Facilities and utility equipment and facilities and regain possession of the Premises (but Landlord shall not be obligated to effect such removal) and Tenant hereby waives service of notice of intention to re-enter or to institute legal proceedings to that end.

In the event of termination of this Lease or termination of Tenant's right to possession (as a result of an Event of Default), Landlord shall have:

11.2.1.1 The rights and remedies provided by California Civil Code Section 1951.2 to recover from Tenant upon termination of the Lease:

- (a) the worth at the time of award of the unpaid Base Rent and other charges which had been earned at the time of termination;
- (b) the worth at the time of award of the amount by which the unpaid Base Rent and other charges which would have been earned after termination until the time of award exceed the amount of such rental loss that Tenant proves could have been reasonably avoided;
- (c) subject to Subdivision (c) of California Civil Code Section 1951.2, the worth at the time of award of the amount by which the unpaid Base Rent and other charges for the balance of the Term after the time of award exceeds the amount of Base Rent loss that Tenant proves could be reasonably avoided;
- (d) and any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

The "worth" at the time of award of the amounts referred to in this Section 11.2.1.1 shall be computed by allowing interest at the Prime Rate as

averaged utilizing the previous calendar quarters rate as published in the Wall Street Journal.

- 11.2.1.2 The right to enforce, to the extent permitted by the laws of the State of California then in force and effect, any other rights or remedies set forth in this Lease or otherwise applicable hereto by operation of law or contract.
  - 11.2.1.3 The right to receive from Tenant a quit claim deed releasing any interest of Tenant in the Premises.
- 11.2.2 *Continuation of Lease.* In the event of any Event of Default (and regardless of whether or not Tenant has abandoned the Premises), this Lease shall not terminate unless Landlord, at Landlord's option, elects at any time after occurrence of an Event of Default to terminate Tenant's right to possession by the giving of written notice (including but not limited to any notice preliminary or prerequisite to the bringing of legal proceedings in unlawful detainer) which terminates Tenant's right to possession. As long as this Lease continues in effect, Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover all Base Rent as it becomes due hereunder. For the purpose of this Section 11, the following shall not constitute termination of Tenant's right to possession: (a) acts of maintenance or preservation or efforts to relet the Premises, or (b) the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease.
- 11.2.3 *Other Remedies.* In the event of a breach by Tenant of any of the terms, covenants, conditions, provisions or agreements of this Lease, Landlord shall additionally have the right of injunction. Provision in this Lease of any particular remedy shall not preclude Landlord from any other remedy, at law or in equity. All rights and remedies of Landlord enumerated in this Lease shall be cumulative, and the exercise by Landlord of any right or remedy provided for in this Lease or allowed by law or equity shall not be to the exclusion of any other right or remedy.
- 11.2.4 *Cure By Landlord.* At any time after Tenant commits or permits a default, Landlord may cure the default at Tenant's cost, and otherwise take such action with respect thereto as Landlord shall deem reasonably necessary and Landlord shall have no liability therefor. If Landlord at any time, by reason of Tenant's default, pays any sum or does any act that requires the payment of any sum, or if Landlord incurs any expense, including attorneys' fees and costs, in instituting proceedings, or defending any action or proceeding instituted by reason of default of Tenant hereunder, the sum or expense paid by Landlord, with all interest, costs, and damages, shall be due immediately from Tenant to Landlord at the time

the same is paid, and if not so immediately paid by Tenant, shall bear interest as Prime Rate quoted from time to time in the Wall Street Journal.

**12** Reserved.

**13** Insurance.

**13.1** The Vendor/Contractor and its subcontractors must maintain at their sole expense the following insurance, which shall be full coverage not subject to self-insurance provisions.

**13.1.1** Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:

- (a) Primary Bodily Injury with limits of at least \$1,000,000 per person \$2,000,000 per occurrence and;
- (b) Primary Property Damage with limits of at least \$1,000,000 per occurrence, or
- (c) Combined single limits of at least \$2,000,000 per occurrence.

**13.1.2** General Liability including coverage for premises, products and completed operations, independent contractors/vendors, personal injury and contractual obligations with combined single limits of at least \$5,000,000 per occurrence.

**13.1.3** Pollution Liability with limits of at least \$5,000,000 per occurrence.

**13.1.4** Workers' Compensation with limits as required by the State of California and Employer's Liability with limits of at least \$500,000.

**13.2** The City of Torrance, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insured under the automobile and general liability policies.

**13.3** Vendor/Contractor shall provide certificates of insurance and, or endorsements to the City Clerk/ Purchasing Agent of the City of Torrance before commencement of work.

**13.4** Each insurance policy required by this clause shall contain a provision that no termination, cancellation or change of coverage can be made without 30 days notice to the City.

**13.5** Vendors insurance must be primary and non-contributory as to other available insurance, including insurance that may be provided by the City.

**SUFFICIENCY OR INSURERS AND SURETIES:**

Insurance required by this contract/purchase order will be satisfactory only if issued by companies rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category of a VII or better, unless these requirements are modified or waived by the City Risk Manager.

#### 14 Warranties.

**14.1 Warranty of Title and Quiet Enjoyment.** Landlord warrants that (a) there are no liens, encumbrances or exceptions to property title existing as of the date of this Lease that would interfere with Tenant's rights hereunder; (b) Landlord has the power and authority to enter into and perform this Lease. Landlord covenants and agrees with Tenant that upon Tenant paying the Base Rent and observing and performing all the terms, covenants, and conditions on Tenant's part to be observed and performed, and subject to the effect, if any, of applicable land use regulations, including without limitation, zoning restrictions, limitations on non-conforming uses, conditional use permits and special use permits; and Tenant may peacefully and quietly enjoy the Premises.

**14.2 Tenant's Warranties.** Tenant warrants that it has the power and authority to enter into this Lease and perform the obligations of the Tenant hereunder. Those persons signing this lease on behalf of Tenant warrant and represent that they are authorized to execute this document on behalf of Tenant.

#### 15 Assignment and Subletting by Tenant.

**15.1 Landlord's Consent.** Tenant shall not voluntarily or by operation of law assign, transfer, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in the Lease or in the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld. Unless specifically agreed to in writing by Landlord, Tenant shall not be relieved of its obligations under this Lease by a Permitted Transfer or by a Transfer to which Landlord consents.

**15.2 Permitted Transferees.** Notwithstanding Section 15.1, Tenant may, with Landlord's approval and in Tenant's sole discretion, request the right to, assign or sublet (a) to any entity in which Tenant has a thirty percent (30%) or greater interest (an "Affiliate"); (b) to any entity with which Tenant and/or any Affiliate may merge or consolidate. Each of the foregoing transferees is hereafter referred to as a "Permitted Transferee." Tenant shall provide Landlord with written notice of any assignment or subletting to a Permitted Transferee. Any such assignment shall not be effective until the Permitted Transferee signs and delivers to Landlord a document in which the assignee assumes responsibility for all of Tenant's obligations under the Lease arising from and after the effective date of the assignment. Any such assignment or subletting to a Permitted Transferee shall not relieve Tenant of its obligations under this Lease. The requirements of Sections 15.3.4 and 15.3.5.2 shall apply to Permitted Transfers, but the other provisions of Section 15.3 shall not apply. Such assignment requires City Council approval, which approval shall not be unreasonably withheld.

**15.3 Notice of Assignment of Subleasing.** In the event Tenant desires to assign this Lease or sublet the Premises, to a person or entity other than a Permitted Transferee, Tenant shall notify Landlord in writing (hereinafter referred to as "Sublet Notice") of the terms of the proposed assignment or subletting, at least thirty (30) days in advance of the date on which Tenant desires to make such assignment or sublease. The Sublet Notice shall specifically identify the proposed assignee or sublessee and such notice shall be accompanied by copies of the proposed documents of assignment or sublease and current financial statements of the proposed assignee or subtenant. Landlord shall then have a period of thirty (30) days following receipt of such notice within which to notify Tenant in writing that Landlord elects to do one of the following:

15.3.1 Terminate this Lease, in which event Tenant shall be relieved of all further obligations hereunder from and after such date; provided that if Landlord gives Tenant notice that it elects to terminate this Lease, Tenant shall have five (5) days after receipt of such notice to either (a) revise the proposed transaction in a manner acceptable to Landlord and Tenant, or (b) notify Landlord that Tenant will not proceed with the sublease or assignment, in which event this Lease shall remain in effect; or

15.3.2 Permit Tenant to assign or sublet to the proposed assignee or sublessee on the terms set forth in the Sublet Notice, subject, however, to Landlord's prior written approval of the proposed assignee or sublessee, which approval shall not be unreasonably withheld; or

15.3.3 Deny consent to the assignment or sublease on the terms set forth in the Sublet Notice, with the disapproved provisions of the Sublet Notice and each additional condition required by Landlord specified (such notice being referred to herein as a "Disapproval Notice"), in which event Tenant shall have the right to give Landlord a revised Sublet Notice within fifteen (15) days after receipt of Landlord's Disapproval Notice, in which the disapproved matters are revised to conform to all of Landlord's requirements under the Disapproval Notice. Upon receipt of such revised Sublet Notice, Landlord shall be deemed to have approved the subleasing or assignment on the terms set forth in the revised Sublet Notice, subject, however, to Landlord's prior written approval of the proposed assignee or sublessee, which approval shall not be unreasonably withheld.

15.3.4 Without limiting the generality of the foregoing, it shall not be unreasonable for Landlord to impose conditions upon its approval. Specifically, but without the following being an exclusive listing of the conditions which may be imposed, Landlord may condition its approval upon Landlord's determination that:

15.3.4.1 The proposed assignee or sublessee has a net worth or cash flow sufficient to enable it to perform all its obligations

under this Lease and to install, maintain and operate all Project Facilities;

15.3.4.2 The proposed assignee or sublessee is engaged in a business, and the Premises will be used in a manner, which (i) is consistent with the use described in Section 2 of this Lease; (ii) does not conflict with any exclusive tenancy or use rights of any other tenant of Landlord's Property; and (iii) does not contemplate the use or storage on the Premises of Hazardous Substances;

15.3.4.3 Tenant is not in default of any provision of this Lease at the time and has not been in default within a period of six (6) months prior to this time, it makes its request for Landlord's consent to the proposed assignment or subletting.

15.3.5 If Tenant believes Landlord's withholding of consent to a proposed assignment, subletting or transfer is unreasonable, Tenant's sole remedy shall be to request binding arbitration of the dispute. The sole power of the arbitrator shall be to determine if the withholding of consent by Landlord was reasonable. If the arbitrator determines that such withholding of consent was unreasonable, Tenant shall have, as its sole remedy, the right to proceed with the proposed assignment, subletting, or transfer.

**15.4 Collection of Rent by Landlord after Assignment.** If this Lease is assigned, whether or not in violation of the provisions of this Lease, Landlord may collect rent from the assignee. In such event, Landlord may apply the net amount received by it from such assignee to the Base Rent and other payments and charges provided for in this Lease and no such collection shall be deemed to be (a) a waiver of any covenant herein against assignment or subletting, (b) an acceptance of the assignee or subtenant as Tenant under this Lease or (c) a release of Tenant from the further performance of Tenant's obligations under this Lease.

**15.5 Tenant's Indemnification of Landlord Against Sublease Obligations.** Tenant shall indemnify and defend Landlord, the City Council, each member thereof, present and future, its officers, agents and employees against and hold Landlord harmless from any and all liability, loss or damage (including without limitation reasonable attorneys' and paralegals' fees and expenses) which Landlord may incur under any sublease by reason of any alleged obligation or undertaking to be performed or discharged by Tenant under the same. The grant to Landlord of the right to collect rents, issues and profits shall not impose upon Landlord any responsibility for the control, care, management or repair of the Premises or for the performance of any or the terms and provisions contained in any sublease or otherwise impose any obligation on Landlord, including without limitation any liability under any covenant of quiet enjoyment contained in any sublease.

## 15.6 Debt Security.

15.6.1 Tenant may, with Landlord's consent, which shall not be unreasonably withheld, pledge, mortgage, convey by deed of trust or security deed, assign, create a security interest in, or otherwise execute and deliver any and all instruments for the purpose of securing bona fide indebtedness of any or all of Tenant's interest in this Lease, any part thereof and any and all of Tenant's right, title and interest in and to any and all of the Project Facilities.

15.6.2 Promptly on Tenant's or Tenant's lender's request, but no more often than once in any twelve (12) month period, Landlord shall execute and deliver, waivers of Landlord's right to levy or distrain upon for rent any of Tenant's property given as security for a debt, consents that none of the Project Facilities shall become fixtures, consents to giving notice to Tenant's lender(s) in the event of Tenant's default under the provisions of this Lease (provided that Tenant has furnished to Landlord the name and address of the person and entity to which notice should be sent) and consents to Tenant's assignment to any lender(s) of any and all of Tenant's interest in and to this Lease and the Project Facilities. Landlord shall provide a reasonable for of nondisturbance agreement to Tenant's lender upon request.

## 16 Hazardous Substances.

**16.1 Definitions.** "Hazardous Substances" shall mean any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Law (as hereinafter defined) as a "hazardous substance", "hazardous material", "hazardous waste", "extremely hazardous waste", "infectious waste", "toxic substance", "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity, including any petroleum, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). Hazardous Substances shall include, without limitation those substances listed in the United States Department of Transportation Table (49 CFR 172.101, as amended). "Environmental Law" shall mean any present and future federal, state, and local law (whether under common law, statute, rule, regulation or otherwise), requirement under any permit issued with respect thereto, and other requirements of governmental authorities having jurisdiction thereunder relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sections 9601, et seq.), as heretofore or hereafter amended.

**16.2 Use of Hazardous Substances on Property.** Tenant warrants and agrees that all Hazardous Substances used by Tenant, its agents, employees or contractors on the Premises shall

be used in strict accordance with all applicable laws, regulations and orders of all governmental authorities. Tenant shall give Landlord written notice prior to the use of any Hazardous Materials on the Premises or the transportation of any Hazardous Materials across the Premises. Any consent to or approval by Landlord of Tenant's use or handling of Hazardous Substances shall not constitute an assumption of risk respecting the same nor a warranty or certification by Landlord that Tenant's proposed use and handling of Hazardous Substances is safe or reasonable or in compliance with Environmental Laws. Tenant shall maintain current all permits required for its operations, including those for the use, storage and/or disposal of Hazardous Substances and shall provide Landlord copies thereof. Any storage tank used for the storage of Hazardous Substances on the Land shall be equipped with spill and overflow prevention equipment, including, but not limited to, secondary containment for the tank that will capture at least 100% of the contents of the tank in the event of a release from the tank.

**16.3 Release of Hazardous Substances.** Tenant shall not cause or permit the release or discharge of Hazardous Substances by Tenant, its agents, employees or contractors, into the air, soils, groundwater or the Project Facilities in excess of levels allowed by law.

**16.4 Landlord's Remedies.** Upon occurrence of an Event of Default by Tenant by violation of this Section 16 by reason of the release of Hazardous Substances or by reason of the use of Hazardous Substances in violation of this Section 16, Landlord shall have the right to (a) terminate the Lease and collect damages, inclusive of the cost of remediation of any Hazardous Substances released or discharged into the air, soil, groundwater by the Project Facilities or any related equipment; or (b) require the remediation of Hazardous Substances released by Tenant while still enforcing the remaining terms of the Lease.

**16.5 Landlord's Representation and Warranty.** Landlord represents and warrants for the benefit of Tenant that (a) Landlord's use of Hazardous Materials in on or under the Premises and all operations thereon currently comply with applicable Environmental Laws; (b) Landlord is not a party to any litigation or settlement with any governmental or private party concerning the actual or alleged presence, release or threatened release of Hazardous Materials on or about the Premises or Landlord's Property before execution of this Lease; and (c) Landlord has not received notice of any violation or any alleged violation of any Environmental Law on or about the Premises or Landlord's Property.

**16.6 Entry for Inspection and Testing.** Tenant expressly agrees that Landlord shall have the right to enter the Premises to inspect the Premises and/or to perform environmental investigations and assessments of the Premises (the "Environmental Assessments") upon reasonable notice to Tenant (not less than 24 hours), that this right of entry shall include the right to test for Hazardous Substances in the air, soil and groundwater. Tenant shall pay for the cost of performing such testing if the results establish that Tenant has caused the presence of Hazardous Substances in excess of levels allowed by law. If Landlord so requires, Tenant shall comply, at its sole cost and expense, with all recommendations contained in any Environmental Assessment, to the extent such recommendations concern Tenant's operations on the Premises or Hazardous Substances released by Tenant, including any recommendation with respect to the precautions which should be taken with respect to activities on the Premises or any recommendations for

additional testing and studies to detect the presence of Hazardous Substances and any recommendations of activities to remediate Hazardous Substances released by Tenant.

## **16.7 Indemnifications.**

16.7.1 The indemnification provided for in Section 10 of this Lease shall be applicable to Tenant's use, storage, and disposal of Hazardous Substances. The indemnification by Tenant shall include, without limitation, (a) personal injury claims, (b) the payment of liens, (c) diminution in the value of the Premises, (d) damages for the loss of or restriction on use of the Premises, (e) sums paid in settlement of claims, (f) reasonable attorneys' fees, consulting fees and expert fees, (g) the cost of any investigation of site conditions, and (h) the cost of any repair, cleanup, remedial, removal or restoration work or detoxification if required by any governmental or quasi-governmental agency or body having jurisdiction or deemed necessary in Landlord's reasonable judgment.

16.7.2 Landlord shall indemnify and defend Tenant against, and shall hold Tenant harmless from, all Claims arising out of or related to the presence of Hazardous Substances on the Premises on the date of this Lease and the release or threatened release by Landlord, in the capacity of Landlord, of Hazardous Substances on the Premises after the date of this Lease. The indemnifications by Landlord shall include, without limitation, (a) personal injury claims, (b) the payment of liens, (c) diminution in the value of the Premises, (d) damages for the loss of or restriction on use of the Premises, (e) sums paid in settlement of claims, (f) reasonable attorneys' fees, consulting fees and expert fees, (g) the cost of any investigation of site conditions, and (h) the cost of any repair, cleanup, remedial, removal or restoration work or detoxification performed by Tenant, if required by any governmental or quasi-governmental agency or body having jurisdiction or deemed necessary in Landlord's reasonable judgment.

16.7.3 The indemnifications set forth in this Section 16 shall survive the termination of the Lease.

**16.8 Notice of Violations, Investigations and Claims.** Each party shall immediately advise the other party in writing of, and provide the other party with a copy of: (a) any notices of violation or potential or alleged violation of any Environmental Law which are received from any governmental agency; (b) any and all inquiry, investigation, enforcement, cleanup, removal or other governmental or regulatory actions instituted or threatened relating to the Premises; and (c) all claims made or threatened by any third-party against Tenant or the Premises relating to any Hazardous Substances.

**17 Notices.** Any and all notices or other communications required or permitted to be given under this Agreement, or by law, shall be in writing and either (a) personally delivered (including delivery by written electronic transmission with receipt acknowledged), (b) sent by United States mail, certified or express mail, postage prepaid, return receipt requested, or (c) sent by Federal Express or other nationally recognized overnight courier service that provides receipted delivery service, delivery charges prepaid, return receipt requested, and shall be deemed to have been given upon the date of delivery (or the date of refusal to accept delivery, as the case may be) at the addresses specified in this Section 17 or such other address as either party may from time to time specify in writing to the other in the manner aforesaid

**LANDLORD:**

**City Clerk**  
 City of Torrance  
 3031 Torrance Blvd.  
 Torrance, CA 90503  
 Attn: City Clerk  
 Phone: (310) 618-2870  
 FAX: (310) 618-2931

**TENANT:**

Water Replenishment District  
 12621 E. 166 Street  
 Cerritos, CA 90703  
 Attn: General Manager  
 Phone: (562) 921-5521  
 Fax: (562) 921-6101

With a Copy to:

William F. Kruse, Esq.  
 Lagerlof, Senecal, Bradley, Gosney &  
 Kruse, LLP  
 301 N. Lake Avenue, 10th Floor  
 Pasadena, CA 91101-4108

The address to which any notice or demand may be given to either party may be changed by written notice.

**18 Invalidity.** If any provision of this Lease is invalid or unenforceable with respect to any party, the remainder of this Lease or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**19 Consent.** Whenever under this Lease the consent or approval of either party is required or a determination must be made by either party, except as expressly provided with respect to a specific consent or approval, no such consent or approval shall be unreasonably withheld or delayed, and all such determinations shall be made on a reasonable basis and in a reasonable manner.

**20 Attorneys' Fees and Costs.** In the event of any action or proceeding at law or in equity between Landlord and Tenant to enforce or interpret any provision of this Lease or to protect or establish any right or remedy of either Landlord or Tenant hereunder, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including,

without limitation, reasonable attorneys', paralegals', expert witnesses' and appraisers' fees and expenses and court costs, incurred in such action or proceeding and in any appeal in connection therewith by such prevailing party, whether or not such action, proceeding or appeal is prosecuted to judgment or other final determination, together with all costs of enforcement and/or collection of any judgment or other relief. The term "prevailing party" shall include, without limitation, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought, whether by compromise, settlement or judgment.

**21 Entire Agreement and Binding Effect.** This Lease and any attached exhibits, as signed by the parties hereto to the extent specifically referenced herein, constitute the entire agreement between Landlord and Tenant and no prior written promises, nor prior, contemporaneous, or subsequent oral promises or representations, shall be binding. This Lease shall not be amended or changed except by written instrument signed by the parties hereto. Section captions herein are for convenience only and neither limit nor amplify the provisions of this instrument. The provisions of this instrument shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of said Landlord and Tenant.

**22 Governing Law.** This Lease shall be governed by the laws of the State of California.

**23 Memorandum of Lease.** This Lease shall not be recorded by any party. Landlord and Tenant shall each execute and deliver to the other a memorandum of this Lease in the form of Exhibit B for the purpose of evidencing this Lease of record.

**24 No Joint Venture, Partnership or Agency.** Nothing contained in this Lease shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than that of landlord and tenant.

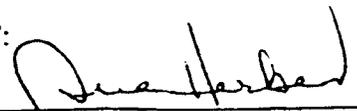
Executed on the dates hereafter set forth.

**LANDLORD:**

City of Torrance

By:   
Dee Hardison, Mayor

ATTEST:

By:   
Sue Herbers, City Clerk

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

John L. Fellows, III  
City Attorney

By: *Heather K. Whitham*  
Heather K. Whitham,  
Deputy City Attorney

**TENANT:**

WATER REPLENISHMENT DISTRICT OF SOUTHERN CALIFORNIA,  
a water replenishment district formed under Division 18 of the California Water Code

By: *Robert Campbell*  
Robert Campbell General Manager

Date: 1/26/99

**APPROVED AS TO FORM:**

By: *William F. Kruse*  
William F. Kruse  
District Counsel

**REVIEWED BY:**

*Thomas R. Holliman* 2/24/99  
THOMAS R. HOLLIMAN, PE  
ASSISTANT GENERAL MANAGER

**EXHIBIT A**

## Description of Plant Site

A PORTION OF PARCEL 1 OF PARCEL MAP NUMBER 15380 IN THE CITY OF TORRANCE AS RECORDED IN PARCEL MAP BOOK 226, AT PAGE 59, RECORDS OF LOS ANGELES COUNTY CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 1, THENCE S89°59'51"E 157.87 FEET ALONG THE SOUTH LINE THEREOF, THENCE N0°00'09"E 10.00 FEET TO THE POINT OF BEGINNING, THENCE N0°00'09"E 46.67 FEET, THENCE S89°59'51"E 125.67 FEET, THENCE N0°00'09"E 93.33 FEET, THENCE S89°59'51"E 24.00 FEET, THENCE S0°00'09"W 93.33 FEET, THENCE S89°59'51"E 5.33 FEET, THENCE S0°00'09"W 46.67 FEET, THENCE N89°59'51"W 155.00 FEET TO THE POINT OF BEGINNING.

Proposed Site Plan for Project Facilities

**EXHIBIT C**  
**CONTRACT SERVICES AGREEMENT**

CONTRACT 487
-----------------

## CONTRACT SERVICES AGREEMENT

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

### RECITALS:

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

C2007-095

**DUPLICATE  
ORIGINAL**

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

**AGREEMENT:**

**1. SERVICES TO BE PERFORMED BY CONTRACTOR**

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

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

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

2. **TERM**

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

3. **COMPENSATION**

A. CONTRACTOR's Fee.

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

B. Schedule of Payment.

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

4. **TERMINATION OF AGREEMENT**

A. Termination by CITY for Convenience.

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

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

B. Termination for Cause.

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

C. Termination for Breach of Law.

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

5. **FORCE MAJEURE**

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

6. **RETENTION OF FUNDS**

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

7. **CITY REPRESENTATIVE**

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

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

**8. CONTRACTOR REPRESENTATIVE(S)**

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

- 1) Robb Whitaker, General Manager

**9. INDEPENDENT CONTRACTOR**

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

**10. NO CONVEYANCE**

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

**11. OTHER LICENSES AND PERMITS**

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

**12. FAMILIARITY WITH WORK**

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

**13. CARE OF WORK**

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

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

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

**15. INDEMNIFICATION**

A. Subject to Paragraph 15.B., CONTRACTOR will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever arising out of or related to the services provided to CITY pursuant to this Agreement. CITY will indemnify, defend, and hold harmless CONTRACTOR, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever arising out of 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**

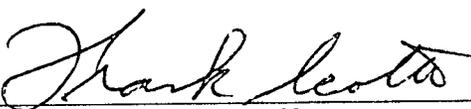
All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

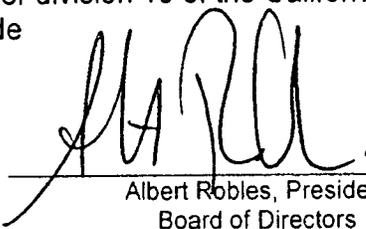
31. **CONTRACTOR'S AUTHORITY TO EXECUTE**

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.

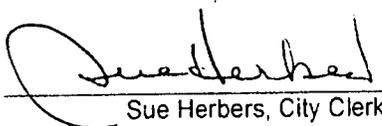
CITY OF TORRANCE  
a Municipal Corporation

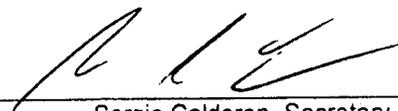
WATER REPLENISHMENT DISTRICT  
OF SOUTHERN CALIFORNIA  
a Water Replenishment District formed  
under division 18 of the California Water  
Code

By:   
Frank Scotto, Mayor

By:   
Albert Robles, President  
Board of Directors

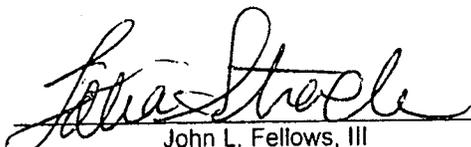
ATTEST:

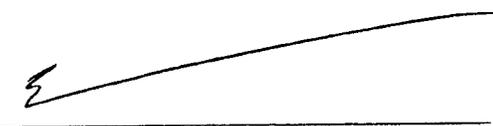
By:   
Sue Herbers, City Clerk

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](http://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)**

**EXHIBIT D****GOLDSWORTHY DESALTER  
OPERATIONAL COSTS ESTIMATE**

WRD shall fully compensate the City for all expenses incurred in the operation, maintenance and rehabilitation of the Facility pursuant to this Agreement. Certain operating and maintenance costs will be initially paid by the City and be reimbursed by WRD. These reimbursed expenses include, but are not limited to, the following: direct and indirect labor costs, chemical costs, water quality analysis and laboratory testing costs, repair and maintenance costs and other costs related to the operation and maintenance of the Facility. Costs paid directly by WRD include the following: consultant services, utilities, permit fees (with the exception of the CDPH permit, which is to be paid by the City), site lease, sewer discharge fees, membrane replacement, well redevelopment and any other major cost items.

The estimated annual cost projection for these items is as follows:

<b>To be Reimbursed to City by WRD</b>	<b>Estimated Cost</b>
a. Direct and Indirect Labor Costs	\$ 254,400.00
b. Chemicals	\$ 150,000.00
c. Water Quality Analysis	\$ 12,000.00
d. Repairs & Maintenance	\$ 66,000.00
e. Other Related Costs	<u>\$ 10,000.00</u>
	<b>\$ 492,400.00</b>
 <b>To be Paid Directly by WRD</b>	
1. Consultant Services	\$ 40,000.00
2. Utilities	\$ 210,000.00
3. Permits	\$ 2,700.00
4. Site Lease	\$ 37,000.00
5. Sewer Discharge Fees	\$ 110,000.00
6. Membrane Replacement	\$ 33,000.00
7. Well Redevelopment	<u>\$ 25,000.00</u>
	<b>\$ 457,700.00</b>

The City's direct labor costs will be in accordance with the City's current total compensation labor rates for the job classification(s) performing work at the Facility (refer to Attachment 1). All direct labor charges will be subject to an indirect cost allocation factor based on the City's current indirect cost rate. The total compensation labor rates and indirect cost allocation factor will be adjusted on an annual basis.

The City will be paid by WRD monthly within 30 days of receipt of a City issued invoice and supporting documentation.

## ATTACHMENT 1- EXHIBIT D

**Projected Labor Costs  
City of Torrance Operation  
of  
Water Replenishment District  
Goldsworthy Desalter Facility**

**Personnel Costs**

<u>Position</u>	<u>FTE</u>	<u>Annual Composite Rate \$</u>	<u>Total Amount Cost \$</u>
Water Tech III	1.0	\$ 114,000	\$ 114,000
Water Quality Inspector	0.3	\$ 122,000	\$ 36,600
Water Supervisor	0.1	\$ 142,400	\$ 14,200
Sr. Water Supervisor	0.1	\$ 174,400	\$ 17,400
PW Direct Admin	0.1	\$ 148,300	\$ 14,800

<b>General &amp; Admin.</b>		Direct Labor	<u>\$ 197,000</u>
18.96% Indirect Cost Factor	<u>Percentage</u> 18.96%	Indirect Labor	<u>\$ 37,400</u>
		Total Labor Costs	\$ 234,400

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