

LOCAL AGENCY AGREEMENT

Dated as of July 31, 2003

By and Between

THREE VALLEYS MUNICIPAL WATER DISTRICT

And

THE CITY OF POMONA, CALIFORNIA

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## LOCAL AGENCY AGREEMENT

This Agreement is entered into as of July 31, 2003, by and between Three Valleys Municipal Water District ("TVMWD"), a municipal water district duly organized and existing under the laws of the State of California, and the City of Pomona ("Local Agency"), a charter city of the State of California.

### WITNESSETH:

WHEREAS, in March 2000, California voters approved Proposition 13 ("Prop. 13") authorizing the State of California to sell \$1.97 billion in general obligation bonds for water related projects throughout the State. The Governor's Budget Act for 2000, Chapter 52, Statutes of 2000, appropriated to the California Department of Water Resources ("DWR") local assistance grants for groundwater storage and supply reliability projects in the amount of \$161,544,000 by budget item 3860-01-6027, payable from the Interim Reliable Water Supply and Water Quality Infrastructure and Managed Subaccount; and

WHEREAS, Metropolitan Water District of Southern California ("Metropolitan") was subsequently selected by DWR as a grant recipient for \$45 million (the "Prop. 13 Funds") to be used for groundwater storage projects within its service area. In a letter dated October 13, 2000, DWR set forth the specific terms and conditions of the grant to Metropolitan; and

WHEREAS, on September 20, 2000, Metropolitan sent a letter to its twenty-six member public agencies (consisting of cities, municipal water districts and a county water authority within its 5,155 square-mile service area covering portions of Los Angeles, Orange, San Diego, Riverside, San Bernardino and Ventura Counties), requesting a list of groundwater storage projects to be considered for Prop.13 Funding. On November 1, 2000, Metropolitan delivered to those member public agencies that indicated an interest in the Prop. 13 groundwater storage programs, a Request for Proposals for Participation in Groundwater Storage Programs Using Proposition 13 Funds, RFP No. WRM-2 (the "RFP"); and

WHEREAS, Metropolitan anticipated that programs funded by the Prop. 13 Funds would store water (by various methods) that Metropolitan imports from the State Water Project and the Colorado River. This stored water would be pumped by the member agency (or a sub-agency) with a corresponding reduction in surface water deliveries from Metropolitan. As a result, Metropolitan would have a greater amount of water to distribute within its service area. In addition, such groundwater storage programs are part of a larger effort to meet water supply demands in Southern California, as specifically set forth in the Integrated Water Resources Plan approved by Metropolitan's Board of Directors in 1996, and the Groundwater Storage Principles adopted in connection therewith by Metropolitan's Board of Directors in January 2000; and

WHEREAS, TVMWD has entered into a Groundwater Storage Project Funding Agreement (the "Metropolitan Agreement") with Metropolitan, Inland Empire Utilities Agency and Chino Basin Watermaster whereby, among other things, funding will be provided to finance the City of Pomona facilities listed on Exhibit A hereto (the "Local Agency Facilities") which are necessary to enhance a groundwater storage program in the Chino Basin; and

WHEREAS, TVMWD desires to pass through to the Local Agency funding received under the Metropolitan Agreement which are allocable to the Local Agency Facilities for use by the Local Agency to construct the Local Agency Facilities; and

WHEREAS, in exchange for such funding, the parties hereto intend that the Local Agency assume all obligations of TVMWD under the Metropolitan Agreement and all obligations relating to the Local Agency Facilities, whether such obligations are imposed by Metropolitan, DWR or another entity, such obligations including but not limited to the obligations recited in Sections III, IV, V, VII, X, XI and XII of the Metropolitan Agreement;

NOW THEREFORE, the parties hereto do agree as follows:

**Section 1. Definitions.** All capitalized terms used herein and not otherwise defined shall have the meanings given in the Metropolitan Agreement.

**Section 2. Effective Date; Termination Date.** This Agreement shall become effective upon the Effective Date of the Metropolitan Agreement and shall terminate upon the termination of the Metropolitan Agreement.

**Section 3. Funding of Local Agency Facilities.** All amounts allocable to the Local Agency Facilities disbursed by Metropolitan under Section V of the Metropolitan Agreement shall be paid to Local Agency for construction of the Local Agency Facilities.

**Section 4. Local Agency Duties Generally.** Local Agency hereby accepts and agrees to perform all of TVMWD's duties under the Metropolitan Agreement relating to the Local Agency Facilities, it being the intention of TVMWD and Local Agency that Local Agency will be directly responsible for all aspects of constructing, operating and maintaining the Local Agency Facilities in accordance with the Metropolitan Agreement.

**Section 5. Illustrative List of Local Agency Duties.** Among the duties Local Agency shall perform are those set forth below in this Section. Such duties are merely illustrative of the duties Local Agency shall perform and do not limit Local Agency's responsibilities hereunder.

(a) **Construction Duties.** Local Agency shall perform all of TVMWD's duties with respect to the construction of the Local Agency Facilities which are set forth in the Metropolitan Agreement. Such duties include but are not limited to (i) obtaining the Required Approvals applicable to the Local Agency Facilities pursuant to Section III(C) of the Metropolitan Agreement, (ii) providing for the planning and preconstruction requirements of Section IV(A) of the Metropolitan Agreement which relate to the Local Agency Facilities, (iii) providing for the construction of the Local Agency Facilities in accordance with Section IV(B) of the Metropolitan Agreement, and (iv) completing construction of the Local Agency Facilities in

accordance with the timeline set forth in Section IV(B) of the Metropolitan Agreement including retaining and supervising qualified contractors.

(b) Cost Overruns. Local Agency agrees to pay for any cost overruns allocable to the Local Agency Facilities pursuant to Section V(B). In addition, Local Agency shall pay any amounts due to Metropolitan pursuant to Section V(B)(2) which is allocable to the Local Agency Facilities. Should bids for construction of the Local Agency Facilities exceed the Approved Budget by more than five percent (5%), TVMWD will review such cost increase with Local Agency to determine the appropriate way to proceed with the program and Local Agency may authorize use of Local Agency funds, to change the scope of the project, or to discontinue the project, all in accordance with Section V(B)(2) of the Metropolitan Agreement.

(c) Operation and Maintenance Duties. With respect to the Local Agency Facilities, Local Agency agrees to perform those certain duties listed in Section VI(B) of the Metropolitan Agreement, namely:

(i) Cause the Local Agency Facilities to be operated and maintained in as good and efficient condition as upon their construction, ordinary and reasonable wear and depreciation excepted, and otherwise in accordance with industry standards (and DWR standards and requirements, if any);

(ii) Provide for all repairs, renewals, and replacements necessary to the efficient operation of the Local Agency Facilities;

(iii) To the extent existing facilities are utilized for the Program, provide for all repairs, renewals, and replacements necessary to the efficient operation of such existing facilities; and

(iv) Upon call by Metropolitan for Stored Water Delivery, operate Facilities, combined with the existing infrastructure, at Operational Capacity Thresholds necessary to meet performance targets as outlined in Exhibit G of the Metropolitan Agreement.

(d) Delivery of Metropolitan Water.

(i) Direct Replenishment (e.g. by injection or spreading) water delivered into the Chino Basin for the Metropolitan Storage Account shall be allocated as prescribed by the Chino Basin Watermaster's Storage and Recovery Policies.

(ii) In-lieu Replenishment water delivered to Local Agency shall be made only from TVMWD service connections receiving untreated water from Metropolitan. Local Agency shall be responsible to pay for the quantity of in-lieu water delivered assessed at the applicable surcharge on the treated water. Said surcharge in dollars per acre-foot shall be the difference between the rate adopted by TVMWD for non-interruptible treated water and the rate adopted by Metropolitan for non-interruptible untreated water at the time of delivery.

(e) Groundwater and Pumping Responsibilities. Local Agency acknowledges and agrees that Metropolitan has the right to demand the pumping of Metropolitan's stored water in

the Chino groundwater basin in the maximum amount indicated herein. Local Agency shall reduce its imported water and provide for the pumping of stored water upon Metropolitan's request of a Stored Water Delivery, all in accordance with Section VII(C) of the Metropolitan Agreement, and consistent with Exhibit B hereto; provided, that the maximum amount in any given year shall not exceed that percentage of the amount in Exhibit B that equals the percentage of payment to the Local Agency of the \$1,700,000. Local Agency shall be reimbursed by Metropolitan for operation and maintenance expenses incurred when pumping stored water upon Metropolitan's demand (including the operating and maintenance costs associated with the ion exchange facilities), all in accordance with Section VII(D) of the Metropolitan Agreement. Local Agency shall pay TVMWD for Stored Water Deliveries based upon TVMWD rates and charges adopted by its Board of Directors for the Metropolitan Dry Year Storage Program from time to time.

(f) Recordkeeping, Reporting, Inspection and Audit Duties. Local Agency shall perform all of TVMWD's recordkeeping, reporting, inspection and audit duties which relate to the Local Agency Facilities, all in accordance with Section X of the Metropolitan Agreement.

(g) Indemnity. Local Agency shall immediately reimburse TVMWD for any amounts expended for compliance with Section XI of the Metropolitan Agreement which are allocable or which in any way relate to the Local Agency Facilities.

(h) Insurance. Local Agency shall be responsible for providing and paying for all insurance with respect to the Local Agency Facilities required by Section XII of the Metropolitan Agreement.

**Section 6. Representations, Warranties and Covenants.** Local Agency represents, warrants and covenants as follows:

(a) Power and Authority. That Local Agency is a charter city, duly organized and validly existing under the laws of the State of California; that it has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this Agreement, and that the execution and delivery hereof by it and the performance of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which it is a party or by which it is a party or by which it is bound.

(b) Authorization; Valid Obligation. That all proceedings required to be taken by or on behalf of Local Agency to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken, and that this Agreement is its valid and binding obligation enforceable in accordance with its terms, except as the same may be affected by bankruptcy, insolvency, moratorium or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

(c) No Litigation. To the best of Local Agency's knowledge, there is no litigation, proceeding or investigation pending or threatened, to which it is or would be a party, or which does or would bind or relate to the Chino Basin, directly or indirectly, which, individually or in the aggregate, if adversely determined, might materially and adversely affect its ability to

perform its obligations under this Agreement, or which raises a question as to the validity of this Agreement, or any action to be taken hereunder.

(d) Compliance with Laws. In the performance of its obligations hereunder, Local Agency and its contractors and subcontractors will comply with all applicable laws, regulations and ordinances, including, without limitation, those listed in Section IX of the Metropolitan Agreement.

Local Agency and its contractors and subcontractors will give written notice of its obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Local Agency and its contractors will include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts let for the construction of the Local Agency Facilities.

(e) Compliance with DWR Requirements. The Plans will comply with any DWR requirements, including any requirements set forth in the DWR Funding Letter. During the performance of its obligations herein, Local Agency will comply with any DWR requirements, including any requirements set forth in the DWR Funding Letter.

(f) No Construction. That construction of the Local Agency Facilities and related work (including planning activities) did not commence prior to the Effective Date.

(g) Capacity. Local Agency and its contractors, subcontractors and its respective agents will at all times act in an independent capacity and not purport to act as, or represent to others that they are, officers, employees, representatives or agents of Metropolitan, DWR or the State of California.

(h) Oversight and Supervision of Construction. Local Agency will oversee and supervise all contractors and keep control of all work and provisions of services and materials in connection with the Program.

(i) Maintain Ownership of Program Property. Local Agency will not sell, abandon, lease, transfer, exchange, mortgage, hypothecate or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Program without the written consent of TVMWD, which consent shall not unreasonably be withheld. TVMWD shall have the burden of persuasion with respect to the unreasonableness of any proposed Local Agency action regarding the property. Local Agency shall use reasonable efforts to avoid material legal injury to third parties and to comply with lawful regulatory agency requirements in the construction and operation of Local Agency Facilities.

#### **Section 7. Miscellaneous.**

(a) Headings. The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.

(b) Partial Invalidity. If any one or more of the covenants or agreements provided in this Agreement to be performed should be determined to be invalid or contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining

covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

(c) Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

(d) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(e) Notices. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by Federal Express or another reputable commercial overnight courier that guarantees next day delivery and provides a receipt, or (d) by telefacsimile or telecopy, and such notices shall be addressed as follows:

If to TVMWD:            Three Valleys Municipal Water District  
                                 1021 E. Miramar Avenue  
                                 Claremont, CA 91711  
                                 Attn: General Manager

If to Local Agency:    City of Pomona  
                                 505 S. Garey Av.  
                                 Box 660  
                                 Pomona, CA 91769  
                                 Attention: Utilities Services Director

or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be deemed delivered when actually delivered, if such delivery is in person, upon deposit with the U.S. Postal Service, if such delivery is by certified mail, upon deposit with the overnight courier service, if such delivery is by an overnight courier service, and upon transmission, if such delivery is by telefacsimile or telecopy.

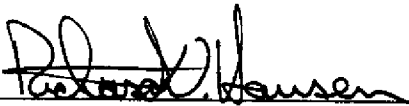
(f) Merger of Prior Agreements. This Agreement and the Exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof.

(g) Time of the Essence. Time is of the essence in the performance of this Agreement.

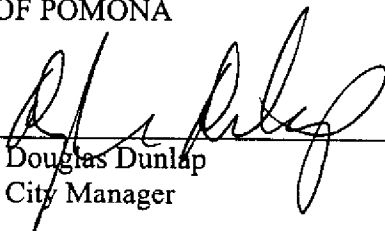


IN WITNESS WHEREOF, TVMWD has executed this Agreement with the approval of its governing body, and Local Agency has executed this Agreement in accordance with the authorization of its governing body.

THREE VALLEYS MUNICIPAL WATER  
DISTRICT

By:   
Richard W. Hansen  
General Manager/Chief Engineer

CITY OF POMONA

By:   
Douglas Dunlap  
City Manager

## **EXHIBIT A**

### **CITY OF POMONA**

#### **LOCAL AGENCY FACILITIES**

The Anion Exchange Plant (AEP) has been in service since 1992 and has an existing treatment and blending capacity of 15 MGD. The AEP receives high nitrate groundwater from 12 or more extraction wells, all of which are located in the Chino Basin, Management Zone 1. The majority of the facility is housed under a prefabricated metal roof, with expanded metal sides to provide security.

This local project involves expansion of the AEP to increase treatment/blending capacity to approximately 17 to 18 MGD. The plant expansion will be completed within the confines of the existing site and will include, at a minimum, additional vessels, additional waste brine storage tanks, new salt storage tanks, and upsizing of the brine disposal pipeline.

**EXHIBIT B**

**PERFORMANCE TARGETS**

**CITY OF POMONA**

Dry Year Shift obligation of 2,000 AF over 12-month period

2,000 AF reduced demand on imported water  
2,000 AF pumped from Metropolitan Water District storage account  
2,000 AF increase in City of Pomona overall local supply production

All three criteria must be met plus or minus 10 percent

City of Pomona shall be responsible for any applicable Nonperformance Penalty assessed to TVMWD and resulting from the failure to meet the above-stated targets in accordance with Section XIII(B) of the Metropolitan Agreement.