

COPY

LOCAL AGENCY AGREEMENT

Dated as of January 12, 2004

By and Among

INLAND EMPIRE UTILITIES AGENCY,

And

THE CITY OF ONTARIO AND JURUPA COMMUNITY SERVICES DISTRICT

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LOCAL AGENCY AGREEMENT

This Agreement is entered into as of January ___, 2004, by and among the Inland Empire Utilities Agency ("IEUA"), a municipal water district duly organized and existing under the laws of the State of California, and the City of Ontario and Jurupa Community Services District (the latter two collectively the "Local Agencies"), a General Law City, and a Community Services District, respectively, both of which are duly organized and existing under the laws 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 Sub account; and,

WHEREAS, 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, IEUA has entered into a Groundwater Storage Project Funding Agreement (the "Metropolitan Agreement") with Metropolitan, Three Valleys Municipal Water District and Chino Basin Watermaster whereby, among other things, funding will be provided to finance the 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, IEUA desires to pass through to the Local Agencies any amounts received by IEUA under the Metropolitan Agreement which are allocable to the Local Agency Facilities for use by the Local Agencies to construct the Local Agency Facilities; and

WHEREAS, in exchange for such amounts, the Parties hereto intend that the Local Agencies assume the obligations specified herein of IEUA under the Metropolitan Agreement and all obligations relating to the Local Agency Facilities, whether such obligations are imposed by Metropolitan, DWR or another entity;

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 to IEUA under Section V of the Metropolitan Agreement shall be paid to the Local Agencies for construction of the Local Agency Facilities.

Section 4. IEUA Duties. As between IEUA and the Local Agencies, IEUA shall have the following duties included in the Metropolitan Agreement relating to the Local Agency Facilities:

- (a) CEQA. To the extent IEUA determines the Local Agency Facilities listed in Exhibit "A" hereto are not adequately addressed in IEUA's Final Program Environmental Impact Report for the Chino Basin Watermaster Optimum Basin Management Program certified by IEUA on July 12, 2000, or Finding of Consistency (Addendum) certified by IEUA on December 18, 2002, IEUA shall undertake additional environmental review pursuant to the California Environmental Quality Act (CEQA) and prepare, adopt and certify a

Finding of Consistency or other document(s) as appropriate under CEQA.

- (b) Permits and Approvals. IEUA shall be responsible for delivering to Metropolitan the Required Approvals specified in Section III.C. of the Metropolitan Agreement following coordination with and understandings between IEUA and the Local Agencies with respect to any Required Approvals which will be secured by the Local Agencies in connection with the construction and operation of the Local Agency Facilities.
- (c) No Litigation. IEUA shall be responsible for the no litigation certification to Metropolitan described in Section III.D. of the Metropolitan Agreement.

Section 5. Local Agencies Duties. As between IEUA and the Local Agencies, the Local Agencies shall have the following duties included in the Metropolitan Agreement relating to the Local Facilities.

- (a) Program Planning. The Local Agencies shall provide to IEUA the Plans, Schedule and Budget as provided for in, and consistent with, Section IV.A.3 of the Metropolitan Agreement for the Local Agency Facilities listed in Exhibit "A" hereto within a sufficient amount of time to enable IEUA to deliver these items to Metropolitan by September 1, 2004. In the event of disapproval of these items by Metropolitan or DWR (Section IV.A.4.c. of the Metropolitan Agreement), the Local Agencies and IEUA shall agree upon the correction of any deficiencies prior to IEUA meeting with Metropolitan. The Local Agencies shall have responsibility for the items specified in Section IV.A.3.d. & e. of the Metropolitan Agreement.
- (b) Construction. The Local Agencies shall perform all of IEUA's duties included in Section IV.B. of the Metropolitan Agreement with respect to the construction of the Local Agency Facilities listed in Exhibit "A" hereto. The Local Agencies may let contracts for the Local Agency Facilities through addendum or change order consistent with their and IEUA's enabling authorities.
- (c) Project Construction Funding. The Local Agencies agree to pay for any cost overruns (Section V.B. of the Metropolitan Agreement) allocable to the Local Agency Facilities listed in Exhibit "A" hereto subject to prior consultation with IEUA and approval by the Local Agencies. The Local Agencies shall provide IEUA with the information and certifications necessary for IEUA to submit an Invoice pursuant to Section V.C. of the Metropolitan Agreement.
- (d) Operation and Maintenance of Local Agency Facilities. With respect to the Local Agency Facilities listed in Exhibit "A" hereto, the Local Agencies shall be responsible for performing the duties set forth in Section VI.B. of the Metropolitan Agreement.

- (e) Delivery of Metropolitan Water. Watermaster and IEUA will allocate Metropolitan water supplied by Metropolitan's Storage Account (replenishment, injection or in lieu) through an annual operating plan to be approved by IEUA and Watermaster. To the extent the Local Agencies are allocated Metropolitan in lieu water, rate and charges paid by the Local Agencies for such in lieu deliveries shall be based upon IEUA rates and charges adopted its Board of Directors for the Metropolitan Dry Year Storage Program from time-to-time.
- (f) Groundwater and Pumping Responsibilities. The Local Agencies acknowledge that Metropolitan has the right to demand the pumping of stored water in the Chino groundwater basin. The Local Agencies shall provide for the pumping of stored water (on a pro rata basis determined by IEUA on the basis of all applicable groundwater pumpers that have agreements with IEUA similar to this Agreement) 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. The Local Agencies shall be reimbursed by Metropolitan for operation and maintenance expenses incurred when pumping stored water upon Metropolitan's demand, all in accordance with Section VII(D) of the Metropolitan Agreement.
- (g) Record Keeping, Reporting, Inspection and Audit Duties. The Local Agencies shall perform all of IEUA's record keeping, reporting, inspection and audit duties, which relate to the Local Agency Facilities, all in accordance under Section X of the Metropolitan Agreement.
- (h) Indemnity. The Local Agencies shall immediately reimburse IEUA 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 to the extent such indemnification is directly related to the Local Agencies' duties expressly specified in this Agreement.
- (i) Insurance. The Local Agencies 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. The Local Agencies represent, warrant and covenant as follows:

- (a) Power and Authority. That the City of Ontario is a general law city and Jurupa Community Services District is a Community Services District, duly organized and validly existing under the laws of the State of California; that they have all necessary power and authority to enter into this Agreement and to perform their obligations hereunder on the terms set forth in this Agreement, and that the

- execution and delivery hereof by them and the performance of their obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which they are a party or by which they are a party or by which they are bound.
- (b) Authorization; Valid Obligation. That all proceedings required to be taken by or on behalf of the Local Agencies to authorize them to make, deliver and carry out the terms of this Agreement have been duly and properly taken, and that this Agreement is their 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 the Local Agencies' knowledge, there is no litigation, proceeding or investigation pending or threatened, to which they are 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 their ability to perform their 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 their obligations hereunder, the Local Agencies and their contractors and subcontractors will comply with all applicable laws, regulations and ordinances, including, without limitation, those listed in Section IX of the Metropolitan Agreement.
The Local Agencies and their contractors and subcontractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Local Agencies and their 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) No Construction. Construction of the Local Agency Facilities and related work (including planning activities), for purposes of Prop. 13 Funds eligibility, did not commence prior to the Effective Date.
- (f) Capacity. The Local Agencies and their contractors, subcontractors and their 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.
- (g) Oversight and Supervision of Construction. The Local Agencies will oversee and supervise all contractors and keep control of all work and provisions of services and materials in connection with the Program.

- (h) Maintain Ownership of Program Property. The Local Agencies 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.

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 IEUA:	Inland Empire Utilities Agency 9400 Cherry Avenue, Bldg. A Fontana, California 92335 Attention: Treasurer	New Address: 6075 Kimball Avenue Chino, CA 91710
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With a copy to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Douglas Brown

If to Watermaster: Chino Basin Watermaster
9641 San Bernardino Road
Rancho Cucamonga, California 91730
Attention: John Rossi

If to Local Agency: Jurupa Community Services District
11201 Harrel Street
Mira Loma, California 91752
Attention: Carole A. McGreevy

With a copy to: John J. Schatz, Esq.
P.O. Box 7775
Laguna Niguel, California 92607

If to Local Agency: City of Ontario

Attention: _____

With a copy to:

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, IEUA has executed this Agreement with the approval of its governing body, Watermaster 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.

INLAND EMPIRE UTILITIES AGENCY

By: _____

President

JURUPA COMMUNITY SERVICES DISTRICT

By: _____

Kenneth J. McLaughlin, President

CITY OF ONTARIO

By: _____

EXHIBIT A

LOCAL AGENCY FACILITIES

City Of Ontario

Central Ion Exchange Nitrate Removal Facility at Cucamonga Avenue between Fourth Street and I Street.

5 Wells at Conours & Milliken Ave; 1335 Holt Blvd, G Street & Dupont Ave; Jurupa Street & Dupont Ave.

Jurupa Community Services District

Roger D. Teagarden Ion Exchange Water Treatment Facility, 4150 Etiwanda Avenue, Mira Loma.

EXHIBIT B

PERFORMANCE TARGET

Jurupa Community Services District:

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

2,000 AF reduced imported water reduction

2,000 AF pumped from MWD storage account

2,000 AF increase in JCSD overall local supply production

all three criteria must be met plus or minus 10 percent

Failure to perform would result in JCSD being charged a rate equal to two times the Tier 2 rates in effect at such time for each AF of the Dry Year Shift obligation not met.