AGREEMENT NO. A0-5274
EL TORO RECYCLED WATER SYSTEM EXPANSION PHASE II PROJECT
2014 LOCAL RESOURCES PROGRAM AGREEMENT
AMONG
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,
MUNICIPAL WATER DISTRICT OF ORANGE COUNTY,
AND EL TORO WATER DISTRICT

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THIS AGREEMENT (Agreement) is made and entered into as of November 9, 2021 by and between The Metropolitan Water District of Southern California (Metropolitan), and the Municipal Water District of Orange County (MWDOC), and El Toro Water District (El Toro). Metropolitan, MWDOC, and El Toro may be collectively referred to as "Parties" and individually as "Party".

RECITALS

A. Metropolitan's Board of Directors, at its October 2014 meeting, established terms and conditions for the 2014 Local Resources Program (LRP) for local resource development projects within Metropolitan's service area for the purposes of improving regional water supply reliability. The 2014 LRP Program provides three LRP incentive payment structure options to choose from: (1) sliding scale incentives up to $340/AF over 25 years, (2) sliding scale incentives up to $475/AF over 15 years, or (3) fixed incentive up to $305/AF over 25 years. Under option 2, project must continue to produce for 25 years, even when LRP payments are reduced to zero after 15 years. If an agency fails to comply with this provision, Metropolitan may, at its sole discretion, require reimbursement for a portion of the previous LRP payments toward the project.

B. El Toro has chosen option 2 for this Project (defined below).

C. Metropolitan was incorporated under the Metropolitan Water District Act (Act) Statutes 1969, ch.209, as amended, [§§109.1 et seq. of the Appendix to the West's California Water Code] to transport, store and distribute water in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura, within the State of California.

D. 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 municipal and domestic uses and purposes; set 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.

E. MWDOC, 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.

F. El Toro is a member agency of MWDOC and provides retail water and recycled water services within its service area.

G. El Toro is authorized under Article XI, §9 of the California Constitution and Water Code sections 35400 et seq., to sell and distribute its recycled water.

H. Metropolitan's mission is to provide its service area with adequate and reliable water to meet present and future needs in an environmentally and economically responsible way.

I. El Toro owns and operates an existing recycled water system consisting of secondary and tertiary treatment facilities, pump station, storage and distribution pipelines (Existing Project). The Existing Project has a capacity of 1,175 acre feet per year (AFY) and is currently serving the Laguna Woods Village golf course, various landscaped areas, homeowners associations, school, and on-site process and irrigation uses within the water recycling plant's treatment facilities. There is now in effect an LRP agreement No. 123037 for the Existing project. Existing Project is not part of this agreement. Agreement 123037 is being amended to reduce the contractual yield to 1,050 AFY.

J. Metropolitan, MWDOC, and El Toro entered into LRP Agreement 157433 effective September 13, 2017. El Toro constructed the El Toro Recycled Water System Expansion Phase II Project (Project) to develop additional recycled water distribution infrastructure to increase recycled water deliveries in the City of Laguna Woods and within the El Toro service area. The Project began operation in November 2019.

K. At its meeting on November 9, 2021, Metropolitan's Board of Directors rescinded LRP Agreement 157433 and authorized staff to enter into a new Agreement to continue financial support for the Project. As part of the action, Metropolitan's Board authorized retroactive LRP payments in the amount of $110,010 as a credit against returned payments in the same amount for the Project.

L. Metropolitan, MWDOC, and El Toro determined that it is mutually beneficial for local water projects originating in the service area of El Toro to be developed as a supplement to Metropolitan's imported water supplies in order to meet future water needs.

M. Metropolitan in accordance with the LRP desires to assist in increasing distribution of recycled water by providing a financial incentive to El Toro to implement the Project.

N. MWDOC and El Toro believe that Metropolitan's continued financial contribution toward the cost of the Project will make Project operation economically viable and are committed to implementation of the Project.

O. Metropolitan's LRP and the provisions for financial incentives are premised upon, and require verification of, actual costs for delivering recycled water from the Project.

P. The Parties believe the development of recycled water by the Project benefits the local community within El Toro, MWDOC, and the region served by Metropolitan.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, the Parties do agree as follows:

<u>Section 1: Definitions</u>

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

1.1 "Allowable Yield" shall mean the amount of Recycled Water delivered to End Users by El Toro from the Project in a Fiscal Year that is eligible to receive Metropolitan's financial assistance. Allowable Yield shall be used for non-potable uses through direct deliveries to End Users. Allowable Yield shall not exceed Ultimate Yield and shall exclude Recycled Water that Metropolitan reasonably determines will not reduce El Toro's demand for Metropolitan's imported water. Unless otherwise approved in writing by Metropolitan, Allowable Yield shall exclude: (1) Recycled water provided by existing projects, (2) Allowable Yield from other projects with active or terminated LRP or Local Projects Program agreements; (3) groundwater, surface water, or potable water deliveries to supplement the Recycled Water system; (4) Recycled Water delivered to environmental and recreational impoundments; and (5) disposed recycled water.

1.2 "End User" shall mean each user that purchases Allowable Yield furnished by this Project within El Toro's service area.

1.3 "Estimated LRP Contribution" shall mean the advanced financial contribution in dollars per acre-foot, not to exceed $475 per acre-foot, Metropolitan pays for Allowable Yield to El Toro for monthly billing purposes until the Final LRP Contribution is calculated pursuant to procedures in Section 5. LRP payments are for up to 15 years after project starts operation but project must continue to produce for 25 years, even after LRP payments are reduced to zero after 15 years, subject to reimbursement provisions outlined in Exhibit F, incorporated herein by this reference.

1.4 "Final LRP Contribution" shall mean the financial contribution, not to exceed $475 per acre-foot, by Metropolitan to the Project for Allowable Yield. The Final LRP Contribution for the Project is equal to the Project Unit Cost minus Metropolitan's prevailing full service treated water rate as defined in Exhibit E attached hereto and incorporated herein by this reference.

1.5 "Fiscal Year" shall mean a Metropolitan Fiscal Year which begins on July 1 and ends on June 30 of the following calendar year.

1.6 "Project" shall mean the El Toro Recycled Water System Expansion Phase II Project, as defined in Exhibit A attached hereto and incorporated herein by this reference, developed by El Toro to deliver the Ultimate Yield. Any future expansions or additions to the Project are not considered to be part of this agreement. El Toro shall notify Metropolitan prior to making any changes to the Project that requires new environmental documentation other than an addendum to the existing environmental documentation. Metropolitan shall inform El Toro of Metropolitan's decision to include or exclude the Project change to this Agreement.

1.7 "Project Unit Cost" shall mean the actual cost to distribute an acre-foot of Recycled Water by the Project and is comprised of an Annualized Capital Component and an Operation and Maintenance Component, as specified in Exhibits B and C attached hereto and incorporated herein by this reference.

1.8 "Recycled Water" shall mean treated municipal wastewater which, subject to regulatory requirements, is suitable for beneficial uses.

1.9 "Recovered Water" shall mean all types of water including Recycled Water and groundwater, or other water delivered for beneficial use to any users by the Project in a Fiscal Year.

1.10 "Ultimate Yield" is 350 acre-feet per Fiscal Year and subject to reduction provisions outlined in Exhibit D, incorporated herein by this reference.

<u>Section 2: Representations and Warranties</u>

2.1 El Toro warrants that it is able and has a right to sell Allowable Yield from the Project.

2.2 El Toro warrants that neither it nor any of its agents discriminate against employees or against any applicant for employment because of ancestry, creed, religion, age, sex, color, national origin, denial of family and medical care leave, marital status, medical condition, mental or physical disability (including HIV and AIDS), and further warrants that it requires 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 ancestry, creed, religion, age, sex, color, national origin, denial of family and medical care leave, marital status, medical condition, mental or physical disability (including HIV and AIDS).

2.3 El Toro warrants that it has or will comply with the provisions of the California Environmental Quality Act for each and all components of the Project facilities.

<u>Section 3: Ownership and Responsibilities</u>

3.1 El Toro shall be the sole owner of Project facilities. Metropolitan shall have no ownership right, title, security interest or other interest in the Project facilities.

3.2 El Toro shall be solely responsible for all design, environmental compliance, right-of-way acquisitions, permits, construction, and cost of the Project and all modifications thereof.

3.3 El Toro 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 Project facilities.

3.4 El Toro shall install, operate, and maintain metering devices for the purpose of measuring the quantity of Recovered Water and Allowable Yield delivered to each End User.

3.5 El Toro shall also provide electrical metering devices to accurately measure the energy used for the Project to determine incurred operation and maintenance costs. Metropolitan shall not pay for electrical energy costs if El Toro fails to install electrical metering devices.

3.6 El Toro shall at all times during the term of this Agreement, use its best efforts to operate the Project facilities to maximize Allowable Yield on a sustained basis.

3.7 El Toro shall assist Metropolitan in its effort to forecast future Project production and cost.

3.8 El Toro shall notify and provide Metropolitan with a copy of relevant agreements and payments if El Toro decides to convey water using Project facilities to any party that is not an End User.

<u>Section 4: Invoicing Process</u>

4.1 El Toro shall notify Metropolitan in writing not less than 30 days prior to the start of Project operation. Before the first invoice, MWDOC, El Toro, and Metropolitan shall meet to coordinate the agreement administration requirements and to determine the Estimated LRP Contribution based on historical cost data and expected Project activities. After the first year of operation, the Estimated LRP Contribution will be determined during the annual reconciliation process pursuant to Section 5.

4.2 After the start of Project operation, El Toro shall invoice Metropolitan monthly for the Estimated LRP Contribution based upon Allowable Yield delivered during the previous month. Metropolitan shall pay El Toro for invoiced Estimated LRP Contribution by means of a credit included on the next monthly water service invoice issued to MWDOC in accordance with Metropolitan's Administrative Code.

4.3 Pursuant to Metropolitan's Administrative Code, invoices for Estimated LRP Contribution must be received by Metropolitan before 3:30 p.m. on the third working day after the end of the month to receive credit for any preceding month on the next monthly water service invoices issued to MWDOC. Metropolitan will not pay for any invoiced Estimated LRP Contribution received more than six months following the end of any month in which a credit is claimed, and the Recycled Water claimed in any such late invoice shall not be included in the Allowable Yield.

4.4 Metropolitan, MWDOC, and El Toro have entered into agreements for development of local water resources projects in addition to this Agreement. Each agreement contains specific terms and conditions to determine project yield, payment process, and project performance and any adjustments to contractual yield and incentive payments. Unless approved in writing by Metropolitan, these agreements are independent from each other and, therefore, the yield produced under one agreement shall not be used to fulfill the performance requirements under other agreements. These provisions shall also apply to all future incentive agreements between Metropolitan, MWDOC, and El Toro.

Section 5: Reconciliation Process

5.1 After the start of Project operation and by December 31 of each year, El Toro shall provide Metropolitan with the following reconciliation data for the previous Fiscal Year: (a) records of Recovered Water and Allowable Yield; (b) supporting documentation of the actual cost of the Project required to perform the calculations prescribed in Exhibits B and C; (c) records of water deliveries to end users; (d) terms and schedule of payments of the Project's financing instruments; (e) a description of any changes to the Project's financing instruments; and (f) all contributions pursuant to Section 5.4.

5.2 If reconciliation data is not submitted by December 31 in accordance with Section 5.1, Metropolitan will assess a late penalty charge to El Toro as prescribed in Metropolitan's Administration Code, currently set at $2,500 in Section 4507. Metropolitan may suspend its payment of Estimated LRP Contribution if El Toro fails to provide reconciliation data by the ensuing April 1. During the suspension period, El Toro shall continue to invoice Metropolitan for the Estimated LRP Contribution based upon the Allowable Yield for water accounting purposes. Metropolitan will resume payment of the monthly Estimated LRP Contribution once complete data is received and the corresponding reconciliation is complete pursuant to Section 5.3. In the event El Toro fails to provide reconciliation data by December 31 of the following Fiscal Year, which is 18 months after the end of the Fiscal Year for which a reconciliation is required, this Agreement shall automatically terminate without notice or action by any Party and El Toro shall repay Metropolitan all Estimated LRP Contributions for which no reconciliation data was provided within 90 days of termination.

5.3 Within 180 days after Metropolitan receives complete data from El Toro, pursuant to Section 5.1, Metropolitan shall calculate the Final LRP Contribution for the Fiscal Year. The Final LRP 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 monthly water service invoice issued to MWDOC. As part of this reconciliation, Metropolitan shall also consult with El Toro to determine the Estimated LRP Contribution for the following year based on historic cost data and expected Project activities.

5.4 The Parties agree that all contributions other than LRP incentives under this Agreement and contributions by El Toro, including but not limited to grants provided by the U.S. Bureau of Reclamation and funding by private parties received prior to and during the term of this Agreement that offset eligible Project costs, shall be deducted from all respective cost components. During the reconciliation process, following receipt of such contributions, the Parties shall determine the equitable apportionment of such contributions for capital and/or operational purposes.

Section 6: Record Keeping and Audit

6.1 El Toro 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 and C. Accounting for the Project shall utilize generally accepted accounting practices and be consistent with the terms of this Agreement. El Toro's Project accounting records must clearly distinguish all costs for the Project from El Toro's other water production, treatment, and distribution costs. El Toro's records shall also be adequate to determine Allowable Yield and Recovered Water to accomplish all cost calculations contemplated in this Agreement.

6.2 El Toro 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 5.4.

6.3 El Toro 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. In addition, El Toro shall collect and retain records of the total annual amount of water conveyed outside of El Toro's service area using Project facilities.

6.4 Metropolitan shall have the right to audit Project costs and other data relevant to the terms of this Agreement both during the Agreement term and for a period of three years following the termination of this Agreement. Metropolitan may elect to have such audits conducted by its staff or by others, including independent accountants, designated by Metropolitan. El Toro 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 and C, and capital cost financing. Upon 30 days advance notice and at Metropolitan's request, El Toro shall also allow Metropolitan's staff or its designee to accompany El Toro staff in inspecting El Toro's contractors' records and books for the purpose of conducting audits of Project costs.

6.5 In lieu of conducting its own audit(s), Metropolitan shall have the right to direct El Toro to have an independent audit conducted of all Project costs incurred in any Fiscal Year(s) pursuant to this Agreement. El Toro 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 of the audit request. The cost of any independent audit performed under this Agreement shall be paid by El Toro and is an allowable Project operation and maintenance cost pursuant to Exhibit C.

6.6 El Toro shall retain an independent auditor satisfactory to Metropolitan to conduct an initial audit of the Project costs and accounting record keeping practices and submit the results to Metropolitan with the first reconciliation data as outlined in Section 5.

6.7 El Toro shall keep all Project records for at least ten consecutive years prior to each cost audit per Section 6. El Toro shall maintain audited records for three years after the audit. El Toro shall keep unaudited Project records for at least three years following the termination of this Agreement.

6.8 If an audit of El Toro's reported Project costs cannot be provided, then those costs are not eligible under this Agreement. Based on the results of any project cost audit, an adjustment for over- or under-payment of Allowable Yield for each applicable Fiscal Year shall be completed by Metropolitan and included in Metropolitan's next invoice issued to El Toro.

Section 7: Term and Amendments

7.1 The Agreement shall commence on the first date herein written and shall terminate on October 31, 2044, subject to provisions outlined in Exhibit D. LRP payments began in November 2019 and will end no later than October 31, 2034. Project must continue to produce until October 31, 2044, even after LRP payments are reduced to zero, subject to reimbursement provisions outlined in Exhibit F, incorporated herein by this reference. The provisions regarding reconciliation and audit shall remain in effect until three years after Agreement termination.

7.2 This Agreement may be amended at any time by the written mutual agreement executed by each of the Parties.

7.3 In addition to the termination provisions provided for in Section 5.2, and Exhibit D, Metropolitan may terminate this Agreement, upon thirty (30) day's notice to El Toro on the occurrence of one the following:

a. A material breach of this Agreement by any party other than Metropolitan; or

b. Metropolitan is not required to make payments to El Toro pursuant to the terms of this Agreement for a five-consecutive year period subsequent to Project operation.

7.4 Each Party represents that it is represented by legal counsel, that it has reviewed this Agreement and agrees that:

a. This Agreement is legally enforceable;

b. Payments made by Metropolitan to El Toro through MWDOC pursuant to this Agreement are a legal use of Metropolitan's funds; and

c. Metropolitan may legally recover the costs incurred by Metropolitan pursuant to this Agreement in the water rates charged to its Member Agencies, including MWDOC.

Section 8: Hold Harmless and Liability

8.1 Except for the sole negligence or willful misconduct of Metropolitan, El Toro agrees at its sole cost and expense to protect, indemnify, defend, and hold harmless Metropolitan and its Board of Directors, officers, representatives, agents and employees from and against any and all claims and liability of any kind (including, but not limited to, any claims or liability for injury or death to any person, damage to property, natural resources or the environment, or water quality problems) that arise out of or relate to El Toro's approval, construction, operation, repair or ownership of the Project, including any use, sale, exchange or distribution of Project water. Such indemnity shall include all damages and losses 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, but shall exclude damages and losses that arise from the sole negligence or willful misconduct of Metropolitan.

8.2 El Toro shall include the following language in any agreement with any consultant or contractor retained to work on the Project:

"Except for the sole negligence or willful misconduct of Metropolitan, (Consultant) agrees at its sole cost and expense to protect, indemnify, defend, and hold harmless Metropolitan and its Board of Directors, officers, representatives, agents and employees from and against any and all claims and liability of any kind (including, but not limited to, any claims or liability for injury or death to any person, damage to property, natural resources or the environment, or water quality problems) that arise out of or relate to El Toro's approval, construction, operation, repair or ownership of the Project. Such indemnity shall include all damages and losses 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, but shall exclude damages and losses that arise from the sole negligence or willful misconduct of Metropolitan."

Section 9: 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
Post Office Box 54153
Los Angeles, California 90054-0153
Attention: Manager, Water Resource Management

If to MWDOC:

Municipal Water District of Orange County
18700 Ward Street
Fountain Valley, CA 92708
Attention: General Manager

If to El Toro:

El Toro Water District
24251 Los Alisos Blvd.
Lake Forest, CA 92630
Attention: General Manager

Any Party may change such address by notice given to each of the other Parties as provided in this section.

Section 10: Successors and Assigns

The benefits and obligations of this Agreement are specific to the Parties and are not assignable without the express written consent of Metropolitan. Any attempt to assign or delegate this Agreement or any of the obligations or benefits of this Agreement without the express written consent of Metropolitan shall be void and of no force or effect.

Section 111: Severability

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

Section 12: No Third Party Beneficiary

This Agreement does not create, and shall not be construed to create any rights enforceable by any person, partnership, corporation, joint venture, limited liability company, or any other form of organization or association of any kind that is not a party to this Agreement.

Section 13: Integration

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

Section 14: Governing Law

The law governing this Agreement shall be the laws of the State of California and the venue of any action brought hereunder shall be in Los Angeles County, California.

Section 15: Non-Waiver

No delay or failure by any Party to exercise or enforce at any time any right or provision of this Agreement shall be considered a waiver thereof or of such Party's right thereafter to exercise or enforce each and every right and provision of this Agreement. A waiver to be valid shall be in writing and need not be supported by consideration. No single waiver shall constitute a continuing or subsequent waiver.

Section 16: Joint Drafting

All parties have participated in the drafting of this Agreement and have been represented by counsel at all times. The rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

Section 17: Entire Agreement

This writing contains the entire agreement of the Parties relating to the subject matter hereof; and the Parties have made no agreements, representations, or warranties either written or oral relating to the subject matter hereof which are not set forth herein.

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

APPROVED AS TO FORM:

Marcia L. Scully
General Counsel

By: ______________________________
Setha E. Schlang
Senior Deputy General Counsel

Date: ______________________________

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Adel Hagekhalil
General Manager

By: ______________________________
Brad Coffey
Manager, Water Resource Management

Date: ______________________________

APPROVED AS TO FORM:

By: ______________________________
Joseph Byrne General Counsel

Date: ______________________________

MUNICIPAL WATER DISTRICT OF ORANGE COUNTY

By: ______________________________
Robert J. Hunter
General Manager

Date: ______________________________

APPROVED AS TO FORM:

By: ______________________________

General Counsel

Date: ______________________________

EL TORO WATER DISTRICT

By: ______________________________
Dennis Cafferty
General Manager

Date: ______________________________

EXHIBIT A

El Toro Recycled Water System Expansion Phase II Project

PROJECT DESCRIPTION

Overview

The El Toro Recycled Water System Expansion Phase II Project (Project) is owned and operated by El Toro Water District (El Toro). The Project expands El Toro's existing recycled water distribution system by approximately 28,500 feet. The Project delivers up to 350 acre-feet per year (AFY) of recycled water to the City of Laguna Woods and within the El Toro's service area.

Project Facilities

The Project (shown in Figure 1) consists of two components:

West Side System Expansion: Extends the existing distribution system to the District's southwest boundary. It is approximately 20,600 feet of distribution pipeline. This increases recycled water deliveries to the Laguna Woods Village in the City of Laguna Woods by 240 acre-feet per year (AFY).

East Side System Expansion: Extends the distribution system constructed in Phase I Project East Side System within the confines of the portion of the Laguna Woods Village Community bounded by El Toro Road and Avenida de la Carlota. It is approximately 7,900 feet of distribution pipeline. This increases recycled water deliveries to the Laguna Woods Village in the City of Laguna Woods by 110 AFY.

Existing Projects

El Toro owns and operates an existing recycled water system consisting of a secondary and tertiary wastewater reclamation plant, distribution system, and storage (Existing Project). The Existing Project has a capacity of 1,175 AFY and is currently serving the Laguna Woods Village golf course, various landscaped areas, homeowners associations, school, and on-site process and irrigation uses within the water recycling plant's treatment facilities. There is now in effect an LRP agreement No. 123037 for the Existing project. Existing Project is not part of this agreement. Agreement 123037 was amended to reduce the contractual yield to 1,050 AFY.

Source of Water

Source water for the Project is tertiary treated water from the El Toro Water Recycling Plant.

End Users

The Project serves recycled water to customers in El Toro's service area including the East and West sides of the Laguna Woods Village Community.

Points of Connection

Project facilities begin at the connection to the existing recycled water distribution pipeline and end at the following points of connection:

- End Users
- Sewer, storm drain, channel and potable system interties

Figure 1

EL TORO RECYCLED WATER SYSTEM EXPANSION PHASE II PROJECT

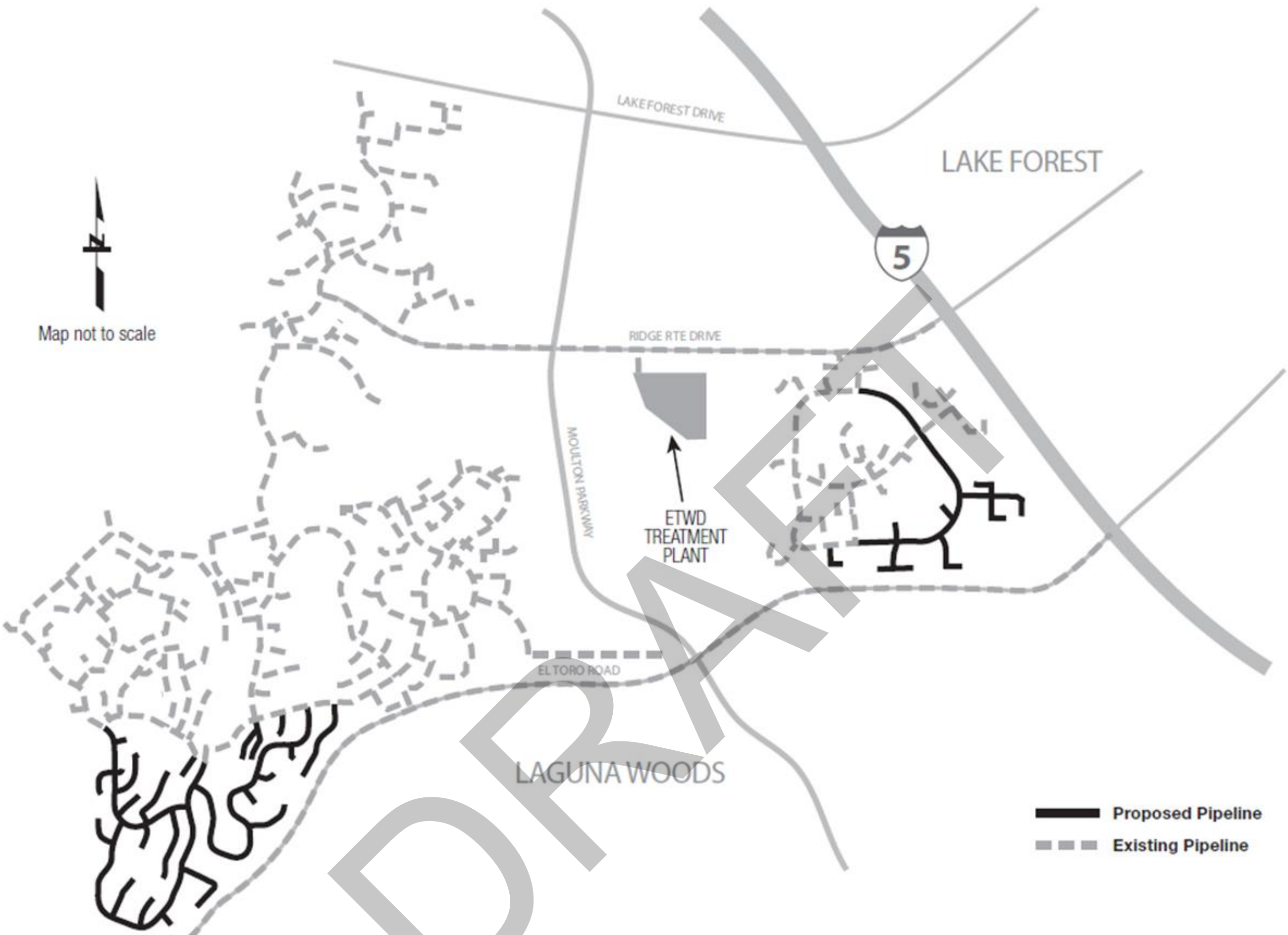

EXHIBIT B

ANNUALIZED CAPITAL COMPONENT

1. The Annualized Capital Component shall be computed using only costs incurred by El Toro for the Project. The Annualized Capital Component shall be computed using costs for the following:

   a. Design (including preliminary design) and construction management services.

   b. Construction of Project facilities, more particularly described in Exhibit A.

   c. Agency administration of the Project design, construction, and start-up, not to exceed three (3) percent of construction costs unless otherwise approved in writing by Metropolitan.

   d. Permits, including required data collection.

   e. Land, right-of-way and easements for the Project described in Exhibit A.

   f. Environmental documentation and mitigation measures directly related to the implementation or operation of the project and required to comply with applicable environmental permits and laws, including but not limited to the California Environmental Quality Act, National Environmental Policy Act, and the California and Federal Endangered Species Acts. Environmental documentation costs shall commence with the Notice of Preparation (NOP) and conclude with the filing of the Notice of Determination. Environmental documentation costs incurred prior to the NOP that are directly related to the environmental clearance of the Project may also be eligible, subject to review and approval by Metropolitan.

   g. All contributions as outlined in Section 5.4 of this Agreement shall be treated as negative capital cost values for the purpose of computing the Annualized Capital Component.

   h. The on-site retrofit costs, if paid by El Toro.

2. Cost of the following items shall not be used to calculate the Annualized Capital Component:

   a. Storm drains, sewer collection systems, and treatment and distribution facilities beyond the Project's points of connection

   b. Existing facilities, land, right-of-way, and easements

   c. Feasibility studies

   d. Deposit of any reserve funds required as a condition of financing

e. Payments made to another department or element of El Toro, unless otherwise approved in writing by Metropolitan

f. Public outreach, education, and water marketing activities including but not limited to preparing brochures and handout materials, training, meetings, and workshops

g. All others costs not specified in Section 1 of this Exhibit, unless otherwise approved in writing by Metropolitan

3. Annualized Capital Cost (ACCost) in dollars per year shall be computed using the following procedure:

a. For fixed-interest rate financing:

$ACCost = CRF_1 \times P_1 + CRF_2 \times P_2 + ... + CRF_j \times P_j$

Where:

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

CRF_j is the capital recovery factor for each distinct financing arrangement, as follows:

$CRF_j = [i \times (1+i)^n] / [(1+i)^n-1]$

where:

i is the interest rate (%).

n is the term of financing (in years) commencing in the first Fiscal Year of Project operation. For all capital financing, cash expenditures, and grants and contributions received after the Project begins operation, annual payments shall be calculated, using above process, beginning in the Fiscal Year the costs occur.

j is the number of each separate financing element.

In the first Fiscal Year and Fiscal Year n+1 of production of Allowable Yield, each amortization for the calculation of ACCost shall be prorated by the number of days needed to achieve exactly n years of amortization following the first day of production of Allowable Yield.

b. For variable-interest rate financing, annual payments shall be computed based on the actual payments made in the applicable Fiscal Year according to El Toro's financing documents. Any principal payments toward the Project capital cost before the Project operation will be treated as cash. El Toro shall provide Metropolitan with the accumulated paid principal pursuant to Section 5.1.

c. For fixed-interest rate financing with a non-uniform annual payment schedule, an economically- equivalent uniform annual payment schedule shall be calculated based on an "Internal Rate of Return" analysis to establish the annualized capital cost.

d. 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 25 years at an interest rate equal to the lesser of:

a) Metropolitan's most recent weighted cost of long-term debt on June 30 in the year the capital expenditure occurred; or

b) The Fiscal Year average of the 25-bond Revenue Bond Index (RBI) as published in the Bond Buyer, or such other index that may replace the RBI, over the most recent Fiscal Year prior to the date the replacement cost was incurred.

All grants or contributions shall be amortized as negative capital cost values beginning in the year that money was received.

e. After the 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.

f. 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 the initial principal of the broad financing arrangement.

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:

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

EXHIBIT C

OPERATION AND MAINTENANCE COMPONENT

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

   a. Professional consulting services for Project operation, maintenance and audit, excluding daily Project operation.

   b. El Toro paid salaries only for plant operators and distribution system maintenance staff directly related to the operation and production of Allowable Yield will be eligible up to the following amount:

      ($0) X (CPI / 249.936)

      Where, CPI is the All Urban Consumers Consumer Price Index published by the U.S. Bureau of Labor Statistics in July for Los Angeles, Riverside and Orange County, CA for July in the applicable Fiscal Year and 249.936 is the CPI published for July 2016.

   c. Chemicals and supplies for Project operation and maintenance.

   d. Net electrical energy (recovered energy shall be deducted from energy purchased) for Project operations. Metropolitan shall not pay for electrical energy cost if El Toro fails to install electrical metering devices.

   e. Contractor services and supplies for Project facilities, operation, maintenance and repair to maintain reliable system operation and achieve regulatory compliance.

   f. Monitoring required by permits, including water quality sampling and analysis of Recycled Water produced by the Project.

   g. All contributions as outlined in Section 5.4 of this Agreement shall be treated as negative operation and maintenance cost values for the purpose of computing the Operation and Maintenance Component.

   h. Replacement costs of Project parts.

2. Costs of the following items shall not be used to calculate the Operation and Maintenance Component:

   a. Operation and maintenance of any facilities beyond the Project's points of connection.

   b. Payments made to another department or element of El Toro, unless otherwise approved in writing by Metropolitan.

c. Public outreach, education, and water marketing activities including but not limited to preparing brochures and handout materials, training, meetings, and workshops.

d. Fines, penalties, settlements, or judgments due to Project operation.

e. All others costs not specified in Section 1 of this Exhibit, unless otherwise approved in writing by Metropolitan.

3. The Annualized Operation and Maintenance Component (O&MC) in dollars per acre-foot for purposes of determining the actual Project Unit Cost each Fiscal Year shall be calculated using the following formula:

O&MC = (Actual Annual Cost of O&M) / (Recovered Water)

EXHIBIT D

PERFORMANCE PROVISIONS

1. The following performance provisions apply:

   a. Metropolitan will terminate this Agreement if construction has not commenced by September 13, 2019. As opposed to Provision 1b below, there is no established appeal process for this outcome.

   b. Metropolitan will terminate this Agreement if Allowable Yield is not delivered on or before September 13, 2021. The Project sponsor(s) may appeal this decision to Metropolitan's Board of Directors.

   c. If the Allowable Yield during Fiscal Years 2020-2021 through 2023-2024 does not reach the target yield of 50% of the Ultimate Yield, then Metropolitan will reduce the Ultimate Yield by the target shortfall using the highest Allowable Yield produced in that four-year period. For example, the Ultimate Yield of a project with the following performance will be revised from 350 to 300 AFY for Scenario 1 while there would be no adjustment under Scenario 2:

   Project Ultimate Yield = 350 AFY

	Scenario 1	Scenario 2
Fiscal Year	Allowable Yield (AFY)	Allowable Yield (AFY)
2020-2021	60	60
2021-2022	80	90
2022-2023	90	175
2023-2024	125	200

   50% of the Ultimate Yield = 0.50 x 350 = 175 AFY

Scenario 1: Shortfall = 175 - 125 = 50 AFY
Revised Ultimate Yield = 350 - 50 AFY = 300 AFY

Scenario 2: Since, the Allowable Yield in the Fiscal Year 2022-2023 is 175 AFY, no adjustment is required. Ultimate Yield remains at 350 AFY.

   d. If the Allowable Yield during Fiscal Years 2024-2025 through 2027-2028 does not reach the target yield of 75 percent of the Ultimate Yield (or the Revised Ultimate Yield), then Metropolitan will reduce the Ultimate Yield (or the Revised Ultimate Yield) by the target shortfall using the highest Allowable Yield produced in that period. For Example, the Ultimate Yield of the project in this example with the following performance will be reduced to 255 AFY for Scenario 1 while there would be no adjustment under Scenario 2:

	Scenario 1	Scenario 2
Fiscal Year	Allowable Yield (AFY)	Allowable Yield (AFY)
2024-2025	150	210
2025-2026	160	250
2026-2027	170	275
2027-2028	180	280

Scenario 1: Revised Ultimate Yield = 300 AFY (see above calculations in 1c)
75% of Ultimate Yield = 0.75 x 300 = 225 AFY
Shortfall = 225 – 180 = 45 AFY
Revised Ultimate Yield = 300 – 45 = 255 AFY

Scenario 2: Ultimate Yield = 350 AFY
75% of ultimate Yield = 0.75 x 350 = 263 AFY
Since, the Allowable Yield in the Fiscal Year 2026-2027 is greater than 263 AFY, no adjustment is required.

e. If the Allowable Yield during Fiscal Years 2028-2029 through 2031-2032 (and every four-year period thereafter) does not reach the target yield of 75 percent of the Ultimate Yield (or revised Ultimate Yield), then Metropolitan will reduce the Ultimate Yield (or the Revised Ultimate Yield) by the target shortfall using the highest Allowable Yield produced in that period. The adjustment will be made using the same methodology shown in the above examples.

EXHIBIT E

MWD Administrative Code Section 4401 (c)

§ 4401. Rates

(c) For purposes of agreements existing under the Local Resource Program, Local Project Program, Groundwater Recovery Program and other similar programs, references to the "full service water rate," "full service treated water rate," "treated non-interruptible water rate" or "other prevailing rate" or to the "reclaimed water rate" or "recycled service rate" shall be deemed to refer to the sum of the System Access Rate, Water Stewardship Rate, System Power Rate, the expected weighted average of Tier1 Supply Rate and Tier 2 Supply Rate (equal to the estimated sales revenues expected from the sale of water at the Tier 1 and Tier 2 Supply Rates divided by the total District sales in acre-feet expected to be made at the Tier 1 and Tier 2 Supply Rates), a Capacity Charge expressed on a dollar per acre-foot basis and Treatment Surcharge.

(The text in this exhibit cannot be modified. It is a quote taken from MWD's Admin Code)

EXHIBIT F

PAYMENT AND REIMBURSEMENT PROVISIONS

In addition to the performance provisions in Exhibit D, the following performance provisions apply. If El Toro fails to comply with this provision, Metropolitan, in its sole discretion, may require reimbursement for a portion of the previous LRP payments toward the Project as outlined below.

1. Agreement terminates on October 31, 2044, which is 25 years after the project starts operation.
2. For operational years 1 through 15, LRP payments will be up to $475/AF, calculated annually per Section 1.4.
3. For operational years 16 through 25, the LRP payments will be zero.
4. Project must produce and use at least a minimum amount of recycled water (Baseline), as defined below, in the years 16 through 25.
5. Unless approved by Metropolitan in writing, the Baseline, in AFY, is the average of project production during years 1 through 15, calculated in year 16 of operation.
6. If Baseline production is not achieved, El Toro shall reimburse Metropolitan for the shortfall in that year as follows:

   Reimbursement ($) = $135/AF x Shortfall (AF)
7. Reimbursement calculations will be completed during annual Reconciliation Process, as outlined in Section 5 for each operational year of 16 through 25.
8. Maximum Reimbursement would be equal to the difference between the total payments under options 1 and 2 during the first 15 years, calculated in year 16 of operation.
9. Should Metropolitan and its member agencies agree on an alternative performance provision and/or a reimbursement methodology, as outlined in this Exhibit F, the member agency shall be allowed to amend to conform to such action.

<u>Example for year 20</u>

Baseline = 250 AFY (calculated in year 16)

Total LRP payments received in years 1 through 15 under option 2 = $992,000

Calculated payments in years 1 through 15 under option 1 = $966,000

Maximum Reimbursement = $992,000 – $966,000 = $26,000 (calculated in year 16)

Total reimbursements to date = $20,000 (sum of reimbursements in years 16 through 19)

Remaining reimbursement = $26,000 - $20,000 = $6,000

Actual project production in year 20 = 200 AF

Shortfall = 250 - 200 = 50 AF

Reimbursement in year 20 = $135/AF x 50 AF = $6,750

Since the remaining reimbursement is only $6,000, reimbursement in year 20 is $6,000.

Since the Maximum Reimbursement is achieved, there will be no more calculations for years 21 through 25.