



# PALMDALE WATER DISTRICT

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LAGERLOF, SENECAI, GOSNEY & KRUSE LLP  
Attorneys



## Board of Directors

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Division 2

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Division 5

January 19, 2012

*Agenda for Regular Meeting  
of the Board of Directors of the Palmdale Water District  
to be held at the District's office at 2029 East Avenue Q, Palmdale  
Wednesday, January 25, 2012  
7:00 p.m.*

NOTE: To comply with the Americans with Disabilities Act, to participate in any Board meeting please contact Dawn Deans at 661-947-4111 x103 at least 48 hours prior to a Board meeting to inform us of your needs and to determine if accommodation is feasible.

Agenda item materials, as well as materials related to agenda items submitted after distribution of the agenda packets, are available for public review at the District's office located at 2029 East Avenue Q, Palmdale. Please call Dawn Deans at 661-947-4111 x103 for public review of materials.

**PUBLIC COMMENT GUIDELINES:** The prescribed time limit per speaker is three-minutes. Please refrain from public displays or outbursts such as unsolicited applause, comments, or cheering. Any disruptive activities that substantially interfere with the ability of the District to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.

Each item on the agenda shall be deemed to include any appropriate motion, resolution, or ordinance to take action on any item.

- 1) Pledge of Allegiance.
- 2) Roll Call.
- 3) Adoption of Agenda.
- 4) Public comments for non-agenda items.

- 5) Action Items - Consent Calendar (The public shall have an opportunity to comment on any action item as each item is considered by the Board of Directors prior to action being taken.)
  - 5.1) Approval of minutes of regular meeting held January 11, 2012.
  - 5.2) Payment of bills for January 25, 2012.
- 6) Action Items - Action Calendar (The public shall have an opportunity to comment on any action item as each item is considered by the Board of Directors prior to action being taken.)
  - 6.1) Consideration and possible action on 2012 Budget. (General Manager LaMoreaux)
  - 6.2) Consideration and possible action on Temporary Water Service Agreement between Littlerock Creek Irrigation District, Palmdale Water District, and Developer for Track No. 69008. (Engineering Manager Knudson)
  - 6.3) Consideration and possible action on Agreement to Purchase Tax-Defaulted Properties. (\$16,234.00 – Budgeted 2012 – Engineering Manager Knudson)
  - 6.4) Consideration and possible action on License Agreement with Los Angeles County Metropolitan Transportation Authority for the AVEK Intertie Railroad Crossing. (Engineering Manager Knudson)
  - 6.5) Consideration and possible action on Authorization to Execute Amendment to the Delta Habitat Conservation and Conveyance Plan (DHCCP) Funding Agreement. (Water and Energy Resources Manager Pernula)
  - 6.6) Status report on 2011 Financial Statement, Revenue, and Expense Budget by department. (Finance Manager/CFO Williams)
  - 6.7) Status report on committed contracts issued. (Engineering Manager Knudson)
  - 6.8) Status report on Cash Flow Statement and Current Cash Balances. (Financial Advisor Egan)
  - 6.9) Consideration and possible action on Board Attendance at Conferences, Seminars, and Training Sessions as follows:
    - 6.9.1) ACWA Regional Informational Forums: 2012 Water Bond, Financing Issues, and Strategic Plan to be held for Regions 8, 9 & 10 on February 17, 2012 in Riverside.
- 7) Information Items:
  - 7.1) Reports of Directors: Meetings/Committee Meetings/General Report.
  - 7.2) Report of General Manager.
  - 7.3) Report of Attorney.
- 8) Public comment on closed session agenda matters.
- 9) Closed session under:
  - 9.1) Government Code Section 54956.9(a), existing litigation: *Antelope Valley Ground Water Cases*.
  - 9.2) Government Code Section 54956.9(a), existing litigation: *City of Palmdale vs. Palmdale Water District, Case No. BC413432 (Rate Litigation)*.

- 9.3) Government Code Section 54956.9(a), existing litigation: *City of Palmdale vs. Palmdale Water District and Palmdale Water District Public Facilities Corporation, Case No. BC413907 (Validation Action).*
- 9.4) Government Code Section 54956.9(a), existing litigation: *Palmdale Water District vs. City of Palmdale, Case No. BC420492 (Recycled Water Litigation).*
- 9.5) Government Code Section 54956.9(a), existing litigation: *United States, et al. v. J-M Manufacturing Company, Inc., et al., United States District Court for the Central District of California Case No. ED CV06-0055-GW.*
- 9.6) Government Code Section 54956.9(a), existing litigation: *Central Delta Water Agency vs. Department of Water Resources, Sacramento Superior Court Case No. 34-2010-80000561.*
- 10) Public report of any action taken in closed session.
- 11) Board members' requests for future agenda items.
- 12) Adjournment.



DENNIS D. LaMOREAUX,  
General Manager

DDL/dd

**PALMDALE WATER DISTRICT  
BOARD MEMORANDUM**

**DATE:** January 19, 2012 **January 25, 2012**  
**TO:** BOARD OF DIRECTORS **Board Meeting**  
**FROM:** Mr. Matthew R. Knudson, Engineering Manager  
**VIA:** Mr. Dennis D. LaMoreaux, General Manager  
**RE:** ***AGENDA ITEM NO. 6.2 – CONSIDERATION AND POSSIBLE ACTION  
ON TEMPORARY WATER SERVICE AGREEMENT BETWEEN  
LITTLEROCK CREEK IRRIGATION DISTRICT, PALMDALE WATER  
DISTRICT, AND DEVELOPER FOR TRACT NO. 69008***

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**Recommendation:**

Staff recommends approving a temporary water service agreement between Palmdale Water District (PWD), Littlerock Creek Irrigation District (LCID), and Westport Construction/ICON Builders, A Joint Venture, Contractor for the Palmdale TOD Apartments, LP (Westport) for the use of rough grading water associated with Tract Map No. 69008.

**Alternative Options:**

The alternative option is to take no action on the agreement and the developer would be required to locate an alternate source of water supply to perform the rough grading activities because PWD policy precludes the use of construction water for rough grading on multi parcel projects.

**Background:**

Westport is in the process of constructing a project (Tract Map No. 69008) located near Avenue Q and 4<sup>th</sup> Street East (see exhibit “A”). Westport is going to require water for rough grading, the estimated quantity of which is approximately 12 acre-feet.

PWD policy (Article 9.4 – Rules and Regulations) precludes the use of construction water through the system for the use of rough grading on multi parcel projects.

LCID has rights to water from Littlerock Creek Dam and Reservoir relating to waters impounded at the Dam. LCID is willing to transfer a portion of its rights to

purchase water from the Dam to PWD to enable PWD to deliver construction water to Westport with no adverse impact to PWD customers.

**Strategic Plan Element:**

This work is part of Strategic Goal 2.1 – Ensure adequate water supplies for existing and future customers.

**Budget:**

The approval of this agreement will initiate the contractor to make an initial deposit of \$30,583.96 toward the costs associated with delivering construction water to the proposed Tract No. 69008. The unit rate per the agreement is \$2,387.09/acre-foot delivered plus a monthly service charge of \$234.72.

**Supporting Documents:**

- Copy of the proposed agreement that has been executed by Westport Construction/ICON Builders
- Exhibit “A” showing location of the proposed development



## TEMPORARY WATER SERVICE AGREEMENT

### 1. Identification.

This Agreement, effective on the date of execution by the last of the parties to this Agreement, is between Littlerock Creek Irrigation District, a California irrigation district ("LCID") and Palmdale Water District, a California irrigation district ("PWD") and Westport Construction/ICON Builders, A Joint Venture, Contractor for the Palmdale TOD Apartments, LP ("Westport").

### 2. Recitals.

This Agreement is based upon the following Recitals:

2.1 Westport is in the process of developing real property located within Tract No. 69008 ("Project"), which is located within the service area of PWD.

2.2 Westport requires water for rough grading, the estimated quantity of which is approximately 10 acre-feet which, when losses for conveyance are added, would increase the requirement to approximately 12 acre-feet.

2.3 PWD has determined that unless its water supply is augmented, it is not able to meet the quality and flow requirements of water deliveries to Westport for rough grading within the Project without adversely affecting existing customers.

2.4 LCID has rights to water from Littlerock Creek Dam and Reservoir under the December 22, 1992 Agreement ("Dam Operation Agreement") relating to the division of waters impounded at the Dam.

2.5 LCID is willing to transfer a portion of its rights to purchase water from the Dam to PWD to enable PWD to augment its supply sufficiently to deliver water to the Project with no adverse consequences to its customers.

2.6 Upon augmentation of its supply, PWD is willing to deliver water to Westport.

2.7 The parties agree to the transfer, delivery and sale of water for rough grading purposes on the Project under the terms and conditions of this Agreement.

3. Agreements.

3.1 LCID agrees:

3.1.1 To transfer to PWD, for use by PWD, up to 12 acre-feet of its rights to purchase water from the Dam under the Dam Operation Agreement.

3.1.2 To reduce its entitlement to purchase water under the Dam Operation Agreement by the amount of water sold by PWD to Westport pursuant to this Agreement based upon metered deliveries from PWD during the rough grading phase of the Project, plus 14% of the measured amounts to reflect conveyance and evaporative losses.

3.2 PWD agrees:

3.2.1 To take delivery of water transferred by LCID at Palmdale Lake and thereafter treat and deliver water to Westport through one restricted construction meter mounted on a fire hydrant/service connection in the vicinity of the Project as selected by PWD.

3.2.2 To provide Westport a flow of approximately 250 gallons per minute through the meter; provided, however, this obligation does not constitute a guarantee of any specific quantity, pressure or flow.

3.2.3 To pay LCID from funds deposited by Westport with PWD the sum of \$380.79 for each acre-foot of measured water deliveries to Prestige, payable within 30 days after delivery.

3.2.4 To refund to Westport at the termination of this Agreement \$750.00 upon return of the construction meter to PWD in accordance with PWD's Rules and Regulations.

3.3 Westport agrees:

3.3.1 Upon execution of this Agreement, to deposit with PWD the sum of \$30,583.96 being the estimated cost for acquisition, treatment and delivery of water hereunder, which includes \$1,000.00 for the construction meter set-up charge and the meter deposit.

3.3.2 That for each acre-foot delivered to the Project by PWD for rough grading purposes, PWD shall be authorized to withdraw from the deposit the sum of \$2,387.09 in addition to the monthly service charge in the amount of \$234.72.

3.3.3 To return to PWD upon termination of this Agreement the construction meters in good working condition.

3.3.4 Westport agrees and understands that the water may be transmitted through the construction meter to the Project only for rough grading purposes and only during the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, during the term of this Agreement, except as otherwise approved by the General Manager.

3.3.5 Westport shall defend, indemnify and hold harmless LCID and PWD and each of their governing bodies, officers, employees and agents from and against loss, injury, liability, or damages to the proportionate extent thereof, arising from any omissions or negligent acts of Westport employees, agents and subcontractors pursuant to this Agreement.

3.4 The parties agree:

3.4.1 The term of this Agreement shall be for a period of four (4) months following execution.

3.4.2 The rights and obligations under this Agreement may not be assigned by Westport without prior written consent of PWD and LCID.

3.4.3 There are no third party beneficiaries of this Agreement.

3.4.4 Any delays or failure in performance shall not constitute a default to the extent such delays or failures in performance are caused by occurrences or circumstances beyond the control of the parties, including, but not limited to, acts of God, compliance with any order of governmental authority, accident, fire, flood, explosion, riot, or strike or any other causes of the same class or kind of those specifically named above, which are not within the control of the parties and which, by the exercise of reasonable diligence, the parties are unable to prevent.

3.4.5 The prevailing party, in whole or in part, shall be entitled to reimbursements for all costs and reasonable attorneys' fees incurred in connection with any legal action or proceeding brought against any other party based upon a breach or interpretation of this Agreement.

3.4.6 In no event shall PWD or LCID be liable to Westport for loss of profits or revenue, loss of use, loss of opportunity, loss of goodwill, cost of substitute facilities, goods or services, cost of capital, governmental and regulatory sanction or for any special



consequential, incidental, indirect, punitive or exemplary damages arising in any way from the performance of this Agreement.

**PALMDALE WATER DISTRICT**

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**LITTLEROCK IRRIGATION DISTRICT**

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**Westport Construction/ICON Builders, A Joint Venture,**

**Contractor for Palmdale TOD Apartments, LP.**

By:  \_\_\_\_\_

Its: *VP of Construction* \_\_\_\_\_

Date: *1/17/12* \_\_\_\_\_



SUMAC AVE

4TH ST E

LARKIN AVE

5TH ST E

6TH ST E

AVE Q

PROPOSED TRACT NO. 69008

4TH ST E

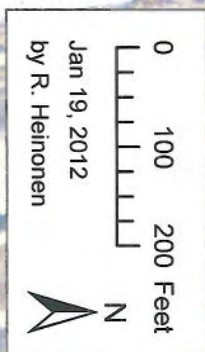
AVE P14

TRANSPORTATION CENTER DR

6TH ST E

SIERRA HWY

EXHIBIT "A"





**P A L M D A L E   W A T E R   D I S T R I C T**  
**B O A R D   M E M O R A N D U M**

**DATE:** January 19, 2012 **January 25, 2012**  
**TO:** BOARD OF DIRECTORS **Board Meeting**  
**FROM:** Mr. Matthew R. Knudson, Engineering Manager  
**VIA:** Mr. Dennis D. LaMoreaux, General Manager  
**RE:** ***AGENDA ITEM NO. 6.4 – CONSIDERATION AND POSSIBLE ACTION  
ON LICENSE AGREEMENT WITH LOS ANGELES COUNTY  
METROPOLITAN TRANSPORTATION AUTHORITY FOR THE  
ANTELOPE VALLEY EAST KERN WATER AGENCY (AVEK)  
INTERTIE RAILROAD CROSSING***

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**Recommendation:**

Staff recommends approving the attached License Agreement between Los Angeles County Metropolitan Transportation Authority (MTA) and Palmdale Water District (District).

**Alternative Options:**

There are no alternatives. The District is required to enter into the attached agreement prior to the MTA authorizing the construction, operation, and maintenance of the proposed water main within their right-of-way.

**Background:**

The District was approached by AVEK to construct an inter-tie between the District and AVEK located at AVEK's Acton Water Treatment Plant. The District and AVEK entered into an agreement in August, 2011 that will allow the District to take delivery of AVEK's State Water Project water at PWD's turnout, treat the water through the Leslie O. Carter Water Treatment Plant, and deliver said water to AVEK's existing Acton Water Treatment Plant.

The District currently has available treatment, storage, and transmission capacity in our system to meet the temporary request of AVEK. There are facilities that will need to be extended in Sierra Highway south of Barrel Springs Road in order to make the necessary inter-connection with AVEK's facilities.

AVEK is responsible for all costs and coordination associated with the design, permitting, and construction of the facilities necessary to deliver said water from the District's water system to AVEK's water system.

All potable water facilities constructed under the agreement between PWD and AVEK will be designed and constructed per PWD Specifications and will become the District's facilities upon acceptance by the District, therefore the attached License Agreement is necessary for the construction, operation, and maintenance of the proposed water main that will be crossing the MTA right-of-way along Sierra Highway.

**Strategic Plan Element:**

This work is part of Strategic Goal 2.1 – Ensure adequate water supplies for existing and future customers.

**Budget:**

The proposed License Agreement requires a one-time fee in the amount of \$1,000 which will be paid for by AVEK.

**Supporting Documents:**

- Proposed License Agreement between MTA and PWD
- Exhibit "E" showing location of the proposed railroad crossing

**LACMTA Customer #RVAL008816**  
**SCRRA File #: S0001395**  
**PROJECT: # 880903**

**LICENSE AGREEMENT**

**BETWEEN**

**LOS ANGELES COUNTY  
METROPOLITAN TRANSPORTATION AUTHORITY**

**AND**

**PALMDALE WATER DISTRICT**



**LICENSE AGREEMENT**

This LICENSE AGREEMENT ("Agreement") is made and entered into as of \_\_\_\_\_ 2012 by and between the **LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY**, a public agency existing under the authority of the laws of the State of California ("MTA"), and **PALMDALE WATER DISTRICT ("LICENSEE")**, upon and in consideration of the agreements, covenants, terms and conditions below:

**PART I**

**BASIC LICENSE PROVISIONS**

Description of License Property: The License Property shall consist of a water line (portable water) within the LACMTA ROW, S/O of Sierra Highway and Barrel Springs Road, located on the Los Angeles County Metropolitan Transportation Authority property at approximately railroad /LACMTA Mile Post 416.6 (or SCRRA Mile Post 65.58) in the City of Palmdale, and the County of Los Angeles, State of California and as more graphically shown on the attached Exhibits "A & A-1" attached hereto.

Approximate Area: 284 ft. x 155 ft. / 2 = 22,010 sq. ft. (+/-) Irregular shape parcel\*

1.  (§1.1)
2. Use of License Property:  
Construction of water line S/O of Sierra Highway and Barrel Springs Road and no other uses within the licensed property.  (§1.1)
3. Commencement Date:  
March 1, 2012
4. Term (circle one):
  - A. Month-to-month
  - B. N/A months, ending N/A, unless canceled by MTA as provided in Section 1.2 on 30 days' notice  (§1.2)
5. License Fees:
  - A. Base License Fee:  
\$0 per month, payable (circle one):
    - a. Annually in advance @ \$0
    - b. Monthly in advance  (§2.1)
  - B. Additional License Fee:
    - a. One time fee: \$1,000.00
    - b. Other fees: \$N/A  (§2.1)

- C. Base License Fee Adjustment Dates (Circle, if applicable) (§2.2)
- a. Annually based on CPI
  - b. At intervals of not less than three (3) years based on current fair market rent
6. Insurance Amount (See Exhibit "B") (§16)
7. MTA's Address:
- Los Angeles County Metropolitan Transportation Authority (§24.1)  
One Gateway Plaza - 18th Floor  
Los Angeles, CA 90012-2952  
Attn: Velma C. Marshall,  
Deputy Executive Officer – Real Estate  
Contact: Thurman Hodges, Manager of Property Mgmnt.  
(213) 922-2435 / hodgest@metro.net
8. With copy to:  
Southern California Regional Rail Authority  
279 E. Arrow Highway, suite A  
San Dimas, CA 91773 (§24.1)  
Attn: Christos Sourmelis  
sourmelisc@scrra.net
9. Licensee's Name:  
**PALMDALE WATER DISTRICT**  
2029 East Avenue "Q"  
Palmdale, CA 93550  
Dennis LaMoreaux, General Manager  
[dlamoreaux@palmdalewater.org](mailto:dlamoreaux@palmdalewater.org)  
(661) 456-1017
- Contact Person:** Eric Garibay, PE-Sr. Engineer  
(661)-325-7253 Ext: 3127  
[eric.garibay@aecom.com](mailto:eric.garibay@aecom.com)
10. Facility: See Exhibit A-1 "Underground Structure Information" attached. (§1.1)

The foregoing Basic License Provisions and the General License Provisions set forth in attached Part II are incorporated into and made part of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

MTA:

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By: \_\_\_\_\_

Name: Velma C. Marshall

Title: Deputy Executive Officer-Real Estate

LICENSEE:

PALMDALE WATER DISTRICT

By: \_\_\_\_\_

Name: Dennis LaMoreaux,

Title: General Manager

## **INDEX TO LICENSE AGREEMENT - PART II**

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### **Exhibits:**

- "A & A-1" License Property
- "B" Insurance Requirements
- "C" Permitted Hazardous Materials
- "D" LACMTA & SCRRA's Additional Provisions

## **PART II - GENERAL LICENSE PROVISIONS**

### **1. GRANT OF LICENSE/TERM**

1.1 **Grant of License.** MTA hereby grants a non-exclusive license to Licensee in, on, over, under, across and along the real property of MTA in the location shown in the diagram attached hereto as Exhibit A and described in Item 1 of the Basic License Provisions (the "License Property"), for construction, installation, operation, alteration, maintenance, reconstruction and/or removal of the Facility described in Item 9 of the Basic License Provisions, and any usual, necessary and related appurtenances thereto (the "Facility"), for the purposes described in Item 2 of the Basic License Provisions, together with rights for access and entry onto the License Property as necessary or convenient for the use of the Facility. In connection with this grant of license, Licensee, its employees, agents, customers, visitors, invitees, licensees and contractors (collectively, "Licensee's Parties") subject to the provisions hereof, may have reasonable rights of entry and access onto adjoining real property of MTA if necessary for the use of the Facility or the License Property, with the time and manner of such entry and access to be subject to MTA's prior written approval. The License Property, adjoining real property of MTA and personal property of MTA located thereon shall hereinafter collectively be referred to as "MTA Property".

1.2 **Term of Agreement.** The term of this Agreement shall commence on the "Commencement Date" specified in Item 3 of the Basic License Provisions. Unless a specific term of this Agreement is filled in at Item 4.B of the Basic License Provisions, or if Item 4.A is circled, this Agreement shall continue in full force and effect on a month-to-month basis as provided in Item 4.A of the Basic License Provisions until terminated by either party on thirty (30) days' prior written notice. If Item 4.B of the Basic License Provisions is filled in, then this Agreement shall be a license for the term specified in said Item 4.B; provided, however, that MTA shall have the right to terminate this Agreement prior to the date specified in Item 4.B by delivering thirty (30) days' prior written notice to Licensee, provided that MTA, in its sole, reasonable judgment, determines that it then may require possession of the License Property for its primary, transportation-related purposes. The term of this Agreement as provided above is referred to as the "Term".

1.3 **Condition of License Property.** Licensee acknowledges that it has inspected and accepts the License Property in its present condition as suitable for the use for which this Agreement is granted. Execution of this Agreement by Licensee shall be conclusive to establish that the License Property is in good and satisfactory condition as of the Commencement Date.

### **2. PAYMENTS**

2.1 **License Fee.** As consideration for the rights herein granted, Licensee agrees to pay to MTA the amount per year specified in Item 5 of the Basic License Provisions, as such amount may be adjusted as set forth in Section 2.2. If Item 5.B.a of the Basic License Provisions is circled, the one time fee noted therein shall be due and payable upon execution of this Agreement. If Item 5.B.b of the Basic License Provisions is circled, the fee noted therein shall be due and payable as indicated in that item. If Item 5.A.a of the Basic License Provisions is circled, an amount equal to one (1) times the Base License Fee, as such fee may be adjusted pursuant to the provisions of Section 2.2, shall be due and payable, without demand, annually in advance for the convenience of both parties, without affecting the Term of this Agreement as specified in Section 1.2. If Item 5.A.b of the Basic License Provisions is circled, the first year's Base License Fee noted therein shall be due and payable upon execution of this Agreement. Thereafter, the Base License Fee, as such fee may be adjusted pursuant to the provisions of Section 2.2, shall be due and payable, without demand, on or before the first day of each calendar month succeeding the Commencement Date during the Term, except that the Base License Fee for any fractional calendar month at the commencement or end of the Term shall be prorated on a daily basis.

#### **2.2 License Fee Adjustment.**

2.2.1 **Annual CPI Adjustment.** If Item 5.C.a of the Basic Lease Provisions is circled, then the Base License Fee shall be increased, but not decreased, as provided below on the first day of each month during which an annual anniversary of the Commencement Date occurs unless another date(s) is provided in Item 5 of the Basic License Provisions (the "Adjustment Date"). The adjusted Base License Fee as of each Adjustment Date shall be the greater of the Base License Fee on the day preceding that Adjustment Date or that amount multiplied by a fraction, the numerator of which is the CPI figure for the third month preceding the month during which the particular Adjustment Date occurs and the denominator of which is the CPI figure for the month that is three (3) months prior to the month containing the prior Adjustment Date or, if none, the Commencement Date. As used in this section, the "CPI" means the Consumer Price Index for Urban Wage Earners and Clerical Workers, Los Angeles/Riverside/Orange County, all items (1982-84 = 100), published by the U.S. Department of Labor, Bureau of Labor Statistics, or if such index is no longer published, the U.S. Department of Labor's most comprehensive official index then in use that most nearly corresponds to



the index named above. If it is calculated from a base different from the base period 1982-84 = 100, figures used for calculating the adjustment shall first be converted to the base period used under a formula supplied by the Bureau. If a comparable index shall no longer be published by the U.S. Department of Labor, another index generally recognized as authoritative shall be substituted by MTA.

2.2.2 Fair Market Adjustment. If Item 5.C.b of the Basic Lease Provisions is circled, then, at intervals of not less than three (3) years, the Base License Fee (as such fee may be adjusted by Section 2.2.1, above) payable under this Section 2 shall be increased, but not decreased, in order to adjust the fee to the then fair market rental value of the License Property as determined by MTA in good faith. Such increases shall be effective on an anniversary date of the Commencement Date. MTA shall give Licensee written notice of the date and amount of any such adjustment not less than thirty (30) days prior to the applicable anniversary date. If no adjustment is made on the third anniversary of the Commencement Date, an adjustment may nevertheless be made on a subsequent date and thereafter at intervals of not less than three (3) years apart.

2.3 Late Charge. Licensee acknowledges that late payment by Licensee of any payment owed to MTA under this Agreement will cause MTA to incur costs not contemplated by this Agreement, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, if any payment due from Licensee is not received by MTA within five (5) days of when due, Licensee shall pay to MTA an additional sum of ten percent (10%) of the overdue payment as a late charge, up to a maximum amount of \$500 for each late payment. The parties agree that this late charge represents a fair and reasonable estimate of the administrative costs that MTA will incur by reason of a late payment by Licensee. Acceptance of any late payment charge shall not constitute a waiver of Licensee's default with respect to the overdue payment, nor prevent MTA from exercising any of the other rights and remedies available to MTA under this Agreement, at law or in equity, including, but not limited to, the interest charge imposed pursuant to Section 24.5.

### 3. TAXES

Licensee shall be liable for and agrees to pay promptly and prior to delinquency, any tax or assessment, including but not limited to any possessory interest tax, levied by any governmental authority: (a) against the Facility, the License Property and/or any personal property, fixtures or equipment of Licensee used in connection therewith or (b) as a result of the Facility's operations.

### 4. CONSTRUCTION

Any work performed or caused to be performed by Licensee on the Facility or the License Property shall be performed (a) at Licensee's sole cost and expense; (b) in accordance with any and all applicable laws, rules and regulations (including the MTA's rules and regulations), and (c) in a manner which is (i) equal to or greater than the then applicable standards of the industry for such work, and (ii) satisfactory to MTA. Prior to commencement of any construction, reconstruction, installation, restoration, alteration, repair, replacement or removal (other than normal maintenance) (hereinafter, "Work") on the License Property, Licensee shall submit work plans to MTA for review and approval. Any such Work must be carried out pursuant to work plans approved in writing by MTA. In addition, Licensee shall provide MTA with at least 10 calendar days' written notice prior to commencement of any Work on the License Property or the Facility, except in cases of emergency, in which event Licensee shall notify MTA's representative personally or by phone prior to commencing any Work. Unless otherwise requested by MTA, upon completion of any Work, Licensee shall restore the MTA Property to its condition immediately preceding the commencement of such Work.

### 5. CONTRACTORS; APPROVAL AND INSURANCE

Any contractors of Licensee performing Work on the Facility or the License Property shall first be approved in writing by MTA, which approval shall not be unreasonably withheld. With respect to such Work, Licensee shall, at its sole cost and expense, obtain and maintain in full force and effect throughout the term of such Work, insurance, as required by MTA, in the amounts and coverages specified on, and issued by insurance companies as described on, Exhibit "B". Additionally, Licensee shall cause any and all of its contractors and subcontractors which may (i) be involved with such Work, or (ii) may, for any reason, need to enter onto the License Property to obtain and maintain in full force and effect during the Term of this Agreement, or throughout the term of such Work (as applicable), insurance, as required by MTA, in the amounts and coverages specified on, and issued by insurance companies as described on, Exhibit "B". MTA reserves the right, throughout the Term of this Agreement, to review and change the amount and type of insurance coverage it requires in connection with this Agreement or the Work to be performed on the License Property.

## **6. REIMBURSEMENT**

Licensee agrees to reimburse MTA for all reasonable costs and expenses incurred by MTA in connection with Work on or maintenance of the License Property or the Facility, including, but not limited to, costs incurred by MTA in furnishing any materials or performing any labor, reviewing Licensee's Work plans and/or inspecting any Work, installing or removing protection beneath or along MTA's tracks, furnishing of watchmen, flagmen and inspectors as MTA deems necessary and such other items or acts as MTA in its sole discretion deems necessary to monitor or aid in compliance with this Agreement.

## **7. LIENS**

Licensee will fully and promptly pay for all materials joined or affixed to the Facility or MTA Property, and fully and promptly pay all persons who perform labor upon said Facility or MTA Property. Licensee shall not suffer or permit to be filed or enforced against the MTA Property or the Facility, or any part thereof, any mechanics', materialmen's, contractors', or subcontractors' liens or stop notices arising from, or any claim for damage growing out of, any testing, investigation, maintenance or Work, or out of any other claim or demand of any kind. Licensee shall pay or cause to be paid all such liens, claims or demands, including sums due with respect to stop notices, together with attorney's fees incurred by MTA with respect thereto, within ten (10) business days after notice thereof and shall indemnify, hold harmless and defend MTA from all obligations and claims made against MTA for the above described work, including attorney's fees. Licensee shall furnish evidence of payment upon request of MTA. Licensee may contest any lien, claim or demand by furnishing a statutory lien bond or equivalent with respect to stop notices to MTA in compliance with applicable California law. If Licensee does not discharge any mechanic's lien or stop notice for works performed for Licensee, MTA shall have the right to discharge same (including by paying the claimant) and Licensee shall reimburse MTA for the cost of such discharge within ten (10) business days after billing. MTA reserves the right at any time to post and maintain on the MTA Property such notices as may be necessary to protect MTA against liability for all such liens and claims. The provisions of this section shall survive the termination of this Agreement.

## **8. MAINTENANCE AND REPAIR**

Licensee, at Licensee's sole expense, shall maintain the License Property and the Facility in a first-class condition during the Term of this Agreement and shall perform all maintenance and clean-up of the License Property and the Facility as necessary to keep the License Property and the Facility in good order and condition, to MTA's satisfaction. If any portion of the MTA Property, including improvements or fixtures, suffers damage by reason of the access to or use of the License Property, by Licensee, Licensee's Parties or by Licensee's partners, officers or directors, including but not limited to damage arising from any tests or investigations conducted upon the License Property, Licensee shall, at its own cost and expense, immediately repair all such damage and restore the MTA Property to as good a condition as before such cause of damage occurred. Repair of damage shall include, without limitation, regrading and resurfacing of any holes, ditches, indentations, mounds or other inclines created by any excavation by Licensee or Licensee's Parties.

## **9. LANDSCAPING**

If required by MTA, then Licensee, at its sole cost and expense, shall install barrier landscaping to shield the Facility from public view. MTA shall have the right to review and approve landscaping plans prior to installation. All landscaping work shall be done in accordance with the provisions of Section 4 above.

## **10. USE**

The License Property and the Facility shall be used only for the purposes specified in Item 2 of the Basic License Provisions and for such lawful purposes as may be directly incidental thereto. No change shall be made by Licensee in the use of the License Property, the Facility or the commodity or product being conveyed through the Facility (if any) without MTA's prior written approval.

## **11. ABANDONMENT**

Should Licensee at anytime abandon the use of the Facility or the License Property, or any part thereof, or fail at any time for a continuous period of ninety (90) days to use the same for the purposes contemplated herein, then this Agreement shall terminate to the extent of the portion so abandoned or discontinued, and in addition to any other rights or remedies, MTA shall immediately be entitled to exclusive possession and ownership of the portion so abandoned or discontinued, without the encumbrance of this Agreement.

## **12. BREACH**

Should Licensee breach, or fail to keep, observe or perform any agreement, covenant, term or condition on its part herein contained, then, in addition to any other available rights and remedies, MTA at its option may:

(a) perform any necessary or appropriate corrective work at Licensee's expense, which Licensee agrees to pay to MTA upon demand, or

(b) with or without written notice or demand, immediately terminate this Agreement and at any time thereafter, recover possession of the License Property or any part thereof, and expel and remove therefrom Licensee and any other person occupying the License Property by lawful means, and again repossess and enjoy the License Property and the Facility, without prejudice to any of the remedies that MTA may have under this Agreement, at law or equity by reason of Licensee's default or of such termination. Upon notice or demand to Licensee by MTA of Licensee's breach, Licensee shall have five (5) business days to cure said breach.

## **13. SURRENDER**

Upon termination of this Agreement, unless otherwise requested in writing by MTA prior to the date of termination, Licensee, at its own cost and expense, shall immediately remove the Facility and restore the MTA Property as nearly as possible to the same state and condition as existed prior to the construction, reconstruction or installation of said Facility. Should Licensee fail to comply with the requirements of the preceding sentence, MTA may at its option (i) perform the same at Licensee's expense, which costs Licensee agrees to pay to MTA on demand, or (ii) assume title and ownership of said Facility. No termination hereof shall release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date the Facility is removed and the MTA Property is restored.

## **14. INDEMNIFICATION**

Licensee, on behalf of itself and its successors and assigns, agrees to indemnify, defend (by counsel satisfactory to MTA), and hold harmless MTA and its subsidiaries, officers, directors, employees, agents, successors and assigns (individually and collectively, "Indemnitees"), to the maximum extent allowed by law, from and against all loss, liability, claims, demands, suits, liens, claims of lien, damages (including consequential damages), costs and expenses (including, without limitation, any fines, penalties, judgments, litigation expenses, and experts' and attorneys' fees), that are incurred by or asserted against Indemnitees arising out of or connected in any manner with (i) the acts or omissions to act of the Licensee, or its officers, directors, affiliates, Licensee's Parties or anyone directly or indirectly employed by or for whose acts Licensee is liable (collectively, "Personnel") or invitees of Licensee in connection with the MTA Property or arising from the presence upon or performance of activities by Licensee or its Personnel with respect to the MTA Property, (ii) bodily injury to or death of any person (including employees of Indemnitees) or damage to or loss of use of property resulting from such acts or omissions of Licensee or its Personnel, or (iii) non-performance or breach by Licensee or its Personnel of any term or condition of this Agreement, in each case whether occurring during the Term of this Agreement or thereafter.

The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees; shall survive termination of this Agreement; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement. Upon request of MTA, Licensee shall provide insurance coverage for possible claims or losses covered by the indemnification and defense provisions of this Agreement.

Claims against the Indemnitees by Licensee or its Personnel shall not limit the Licensee's indemnification obligations hereunder in any way, whether or not such claims against Indemnitees may result in any limitation on the amount or type of damages, compensation, or benefits payable by or for a Licensee or its Personnel under workers' compensation acts, disability benefit acts or other employee benefit acts or insurance.

## **15. ASSUMPTION OF RISK AND WAIVER**

To the maximum extent allowed by law, Licensee assumes any and all risk of loss, damage or injury of any kind to any person or property, including without limitation, the Facility, the MTA Property and any other property of, or under the control or custody of, Licensee, which is on or near the License Property. Licensee's assumption of risk shall include, without limitation, loss or damage caused by defects in any structure or improvement on the MTA Property, accident or fire or other casualty on the MTA Property, or electrical discharge, noise or vibration resulting from MTA's transit operations on or near the MTA Property. The term "MTA" as used in this section shall



include: (i) any transit or rail-related company validly operating upon or over MTA's tracks or other property, and (ii) any other persons or companies employed, retained or engaged by MTA. Licensee, on behalf of itself and its Personnel (as defined in Section 14) as a material part of the consideration for this Agreement, hereby waives all claims and demands against MTA for any such loss, damage or injury of Licensee and/or its Personnel. In that connection, Licensee waives the benefit of California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The provisions of this section shall survive the termination of this Agreement.

#### **16. INSURANCE**

Licensee, at its sole cost and expense, shall obtain and maintain in full force and effect during the Term of this Agreement insurance as required by MTA in the amounts and coverages specified and issued by insurance companies as described on Exhibit "B". MTA reserves the right, throughout the Term of this Agreement, to review and change the amount and type of insurance coverage it requires in connection with this Agreement or the Work to be performed on the License Property. Prior to (i) entering the License Property or (ii) performing any Work or maintenance on the License Property, Licensee shall furnish MTA with insurance endorsements or certificates evidencing the existence, amounts and coverages of the insurance required to be maintained hereunder. In most instances, MTA does not allow self-insurance, however, if Licensee can demonstrate assets and retention funds meeting MTA's self-insurance requirements, MTA may permit Licensee to self-insure, provided, however that the right to self-insure with respect to any coverage required to be maintained hereunder may be granted or revoked by MTA at its sole and absolute discretion. MTA shall not be liable for the payment of any premiums or assessments for insurance required to be maintained by Licensee under this Agreement.

#### **17. TESTS AND INSPECTIONS**

MTA shall have the right at anytime to inspect the License Property and the Facility so as to monitor compliance with this Agreement. If, in MTA's sole judgment, any installation on, or use or condition of the License Property may have an adverse effect on the MTA Property, adjacent property (whether or not owned by MTA) or MTA operations, MTA shall be permitted to conduct any tests or assessments, including but not limited to environmental assessments, of, on or about the License Property, as it determines to be necessary or useful to evaluate the condition of the License Property. Licensee shall cooperate with MTA in any tests or inspections deemed necessary by MTA. Licensee shall pay or reimburse MTA, as appropriate, for all reasonable costs and expenses incurred due to the tests, inspections or any necessary corrective work and inspections thereafter. MTA shall notify Licensee of any testing to be performed by MTA on the License Property and Licensee shall have the option to have a person present during the scheduled MTA testing.

#### **18. HAZARDOUS/TOXIC MATERIALS USE AND INDEMNITY**

Licensee shall operate and maintain the License Property in compliance with all, and shall not cause or permit the License Property to be in violation of any federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adopted in the future which are or become applicable to Licensee or the License Property ("Environmental Laws"). Except for Hazardous Materials expressly approved by MTA in writing as shown on Exhibit "C", Licensee shall not cause or permit, or allow any of Licensee's Parties to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on or about the MTA Property. Any Hazardous Materials on the site shall be stored, used, generated and disposed of in accordance with all applicable Environmental Laws. As used herein, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

Licensee shall indemnify, defend (by counsel acceptable to MTA) and hold harmless the Indemnities (as defined in Section 14) from and against all loss, liability, claim, damage, cost or expense (including without limitation, any fines, penalties, judgments, litigation expenses, attorneys' fees, and consulting, engineering, and construction fees and expenses) incurred by Indemnitees as a result of (a) Licensee's breach of any prohibition or provision of this section, or (b) any release of Hazardous Materials upon or from the Facility or the License Property or contamination of the MTA Property or adjacent property (i) which occurs due to the use and occupancy of the Facility or the MTA Property by Licensee or Licensee's Parties, or (ii) which is made worse due to the act or failure to act of Licensee or Licensee's Parties.

The foregoing indemnity shall be effective regardless of any negligence (whether active, passive, derivative, joint, concurring or comparative) on the part of Indemnitees, unless caused solely by the gross negligence or willful misconduct of Indemnitees; shall survive termination of this Agreement; and is in addition to any other rights or remedies which Indemnitees may have under the law or under this Agreement.

In addition, in the event of any release on or contamination of the License Property, Licensee, at its sole expense, shall promptly take all actions necessary to clean up the affected property (including the MTA Property and all affected adjacent property -- whether or not owned by MTA) and to return the affected property to the condition existing prior to such release or contamination, to the satisfaction of MTA and any governmental authorities having jurisdiction thereover.

#### **19. UNDERGROUND STORAGE TANKS**

NEITHER LICENSEE NOR LICENSEE'S PARTIES SHALL INSTALL OR USE ANY UNDERGROUND STORAGE TANKS ON THE LICENSE PROPERTY UNLESS SPECIFICALLY APPROVED IN ADVANCE IN WRITING BY MTA, WHICH APPROVAL MAY BE WITHHELD IN MTA'S SOLE DISCRETION.

At MTA's option, upon the termination of this Agreement at any time and for any reason, Licensee shall, prior to the effective date of such termination, remove and close all underground storage tanks and related equipment and clean up and remove all Hazardous Materials in, on, under and about the MTA Property, in accordance with the requirements of all Environmental Laws and to the satisfaction of MTA and any governmental authorities having jurisdiction thereover, and deliver to MTA a copy of a certificate of closure issued for such tanks by the appropriate governmental authority.

#### **20. SUBORDINATE RIGHTS**

This Agreement is subject and subordinate to the prior and continuing right and obligation of MTA, its successors and assigns, to use the MTA Property in the exercise of its powers and in the performance of its duties, including those as a public transportation body. Accordingly, there is reserved and retained unto MTA, its successors, assigns and permittees, the right to construct, reconstruct, maintain and use existing and future rail tracks, facilities and appurtenances and existing and future transportation, communication, pipeline and other facilities and appurtenances in, upon, over, under, across and along the MTA Property, and in connection therewith the right to grant and convey to others, rights and interests to the MTA Property on the License Property and in the vicinity of Facility. This Agreement is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens, claims and other matters of title ("title exceptions") which may affect the MTA Property now or hereafter, and the words "grant" or "convey" as used herein shall not be construed as a covenant against the existence of any such title exceptions.

#### **21. COMPLIANCE WITH LAWS**

Licensee shall comply with all applicable federal, state and local laws, regulations, rules and orders in its work on, or maintenance, inspection, testing or use of, the Facility and the MTA Property and shall furnish satisfactory evidence of such compliance promptly upon request of MTA. MTA may enter the License Property to inspect the Facility at any time, upon provision of reasonable notice of inspection to Licensee. Licensee shall obtain all required permits or licenses required by any governmental authority for its use of the License Property and the Facility, at its sole cost and expense.

#### **22. CONDEMNATION**

In the event all or any portion of the License Property shall be taken or condemned for public use (including conveyance by deed in lieu of or in settlement of condemnation proceedings), Licensee shall receive compensation (if any) only for the taking and damage to the Facility. Any other compensation or damages arising out of such taking or condemnation awarded to Licensee are hereby assigned by Licensee to MTA.

#### **23. MARKERS**

Project markers in form and size satisfactory to MTA, identifying the Facility and its owners, will be installed and constantly maintained by and at the expense of Licensee at such locations as MTA shall designate. Such markers shall be relocated or removed upon request of MTA without expense to MTA. Absence of markers in or about MTA Property does not constitute a warranty by MTA of the absence of subsurface installations.



## 24. GENERAL PROVISIONS

24.1 Notices. All notices and demands which either party is required to or desires to give to the other shall be made in writing by personal delivery, by express courier service or by certified mail postage prepaid, and addressed to such party at its address set forth in the Basic License Provisions. Either party may change its address for the receipt of notice by giving written notice thereof to the other party in the manner herein provided. Notices shall be effective only upon receipt by the party to whom notice or demand is given.

24.2 Non-Exclusive License. The license granted herein is not exclusive and MTA specifically reserves the right to grant other licenses within the License Property.

24.3 Governing Law. This Agreement shall be governed by the laws of the State of California.

24.4 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions, or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

24.5 Interest on Past-due Obligations. Except as expressly herein provided, any amount due to MTA which is not paid when due shall bear interest, from the date due, at the maximum rate then allowable by law. Such interest will be due MTA as it accrues. Payment of such interest shall not excuse or cure any default by Licensee under this Agreement, provided, however, that interest shall not be payable on late charges incurred by Licensee.

24.6 Captions. The captions included in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement or any provision hereof, or in any way affect the interpretation of this Agreement.

24.7 Survival of Obligations. All obligations of Licensee hereunder not fully performed as of the expiration or earlier termination of the Term of this Agreement shall survive the expiration or earlier termination of this Agreement, including without limitation, all payment obligations with respect to License Fees and all obligations concerning the condition of the MTA Property and the Facility.

24.8 Waiver of Covenants or Conditions. The waiver by one party of the performance of any covenant or condition under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by it of any other covenant or condition under this Agreement.

24.9 Effective Date/Nonbinding Offer. Submission of this License for examination or signature by Licensee does not constitute an offer or option for license, and it is not effective as a license or otherwise until executed and delivered by both MTA and Licensee. Each individual executing this License on behalf of MTA or Licensee represents and warrants to the other party that he or she is authorized to do so.

24.10 Amendment. This Agreement may be amended at any time by the written agreement of MTA and Licensee. All amendments, changes, revisions, and discharges of this Agreement in whole or in part, and from time to time, shall be binding upon the parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the parties hereto.

24.11 Assignment. This Agreement and the license granted herein are personal to the Licensee. Licensee shall not assign or transfer (whether voluntary or involuntary) this Agreement in whole or in part, or permit any other person or entity to use the rights or privileges hereby conveyed, without the prior written consent of MTA, which may be withheld in MTA's sole and absolute discretion, and any attempted act in violation of the foregoing shall be void and without effect and give MTA the right to immediately terminate this Agreement.

24.12 Attorneys' Fees. In any judicial or arbitration proceeding involving performance under this Agreement, or default or breach thereof, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

24.13 Nondiscrimination. Licensee certifies and agrees that all persons employed thereby and/or the affiliates, subsidiaries, or holding companies thereof and any contractors retained thereby with respect to the License Property are and shall be treated equally without regard to or because of race, religion, ancestry, national origin, or sex, and in compliance with all federal and state laws prohibiting discrimination in employment, including but

not limited to the Civil Rights Act of 1964; the Unruh Civil Rights Act; the Cartwright Act; and the California Fair Employment Practices Act.

24.14 Further Acts. Licensee agrees to perform any further acts and 140% to execute and deliver in recordable form any documents which may be reasonably necessary to carry out the provisions of this Agreement, including, at MTA's sole discretion, the relocation of the Facility and the license granted hereby.

24.15 Termination for Public Project. Licensee hereby expressly recognizes and agrees that the License Property is located on MTA property that may be developed for public projects and programs which may be implemented by MTA or other public agencies, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects and other public uses (collectively "Project"), and that Licensee's use of the License Property under this Lease is an interim use. Accordingly, as a condition to entering into this Lease, MTA expressly reserves the right to terminate the Lease for any of such public Project. Licensee expressly acknowledges and agrees that: (1) MTA may terminate this License for any public project; (2) Licensee will **NOT** oppose any public Project when planned or implemented on or adjacent to the License Property, and (3) in the event MTA terminates this License and requires Licensee to vacate the License Property for any Public Project, Licensee (a) shall not be entitled to receive any relocation assistance, moving expenses, goodwill or other payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §4601 et seq. and/or the California Relocation Assistance Law, as amended, California Government Code §7260 et seq; and (b) shall not be entitled to any compensation under the eminent domain law, as a result of such termination and vacation of the License Property.

24.16 Future Need of License Property. If MTA shall at any time, or from time to time, so require by written notice thereof to Licensee based on the need of MTA, in its sole discretion, for the License Property for its public purposes Licensee shall reconstruct, alter, make changes as required by MTA, relocate or remove its Facility at Licensee's sole cost and expense.

24.17 Time of Essence. Time is of the essence.

24.18 No Recording. Licensee shall not record or permit to be recorded in the official records of the county where the License Property is located, this Agreement, any memorandum of this Agreement or any other document giving notice of the existence of this Agreement or the license granted hereby.

24.19 Revocable License. Licensee agrees that notwithstanding the improvements made by Licensee to the License Property or other sums expended by Licensee in furtherance of this Agreement, the license granted herein is revocable by MTA in accordance with the terms of this Agreement.

24.20 Entire Agreement; Amendments. This Agreement and the Exhibits hereto constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior verbal or written agreements and understandings between the Parties with respect to the items set forth herein. This Agreement may be amended at any time by the written agreement of MTA and Licensee. All amendments, changes, revisions, and discharges of this Agreement in whole or in part, and from time to time, shall be binding upon the parties despite any lack of legal consideration, so long as the same shall be in writing and executed by the parties hereto. 24.20

24.21 Additional Provisions. Those additional provisions set forth in Exhibit "D", if any, are hereby incorporated by this reference as if fully set forth herein.

INITIALS  
#24.15



Licensee

MTA



# EXHIBIT "A"



	Branch/Line Valley	Map reference VAL-18	SCRR Mile Post 65.58	EXHIBIT 'A'	TENANT Palmdale Water District	
	MTA Mile Post 416.6	APN-3053-019-904	City Palmdale			
	County LOS ANGELES	Cross Streets Sierra Hwy & Barrel Spring Road	Thomas Guide Grids 4286-C6	L.A.C.M.T.A. One Gateway Plaza-18 <sup>th</sup> Floor Los Angeles, CA 90012-2952	MTA File No. RVAL008816	
	Area 22,010 sq. ft.	Use: Portable Water Line	Legend +++++ RR Water Line 		Scale NTS	L. Gillam, Sr. Real Estate Officer  1/10/12



# EXHIBIT A-1

## Underground Structure Information Information By Applicant

SCRRA File No.: 50001395  
 SUNA Proj. #. 000903

**Project Name:** Palmdale Water District Acton WTP Intertie Project

Notes: 1 - Applicant to fill in all information lines or N/A if it does not apply.

2 - If pipe or casing diameter is greater than 42-inches, applicant must submit engineering plans, calculations, specifications, soil reports, shoring plans, and sequence of construction.

**Carrier Pipe:** ☒ New Construction    ☐ Reconstruction

**Non-Flammable Substance** ☒ (See SCRRA Standard ES 2201)

**Flammable Substance** ☐ (See SCRRA Standard ES 2202)

**Applicant Doing Business as:** ☐ Individual    ☐ Partnership    ☐ Corporation  
☒ Municipality / Public Agency

**Nearest Cross Streets:** Sierra Hwy / Barrel Springs Rd  
**Angel of Crossing with Track:** 30D 25M 50S  
**Pipe Slope or Gradient:** S=0.0015

Content to be Handled  
 Nominal Diameter  
 Pipe Material  
 Specifications and Grade  
 Wall Thickness  
 Operating Pressure/Maximum Pressure  
 Minimum Yield Strength  
 Type Joints  
 Coating Material  
 Length of Casing  
 Longitudinal Distance from Centerline of Track  
 Vents:                      Number:  
                                     Distance from Centerline of Track  
 Depth:                      Base of Rail to Top of Casing  
                                     Roadway Ditches  
 Method of Installation: ☒ Dry Bore    ☐ Directional Bore

Type, Size, and Spacing of Insulator Supports  
 Distance to Shut-off Valve on Each Side of R/W  
 Types of Seals at Ends of Casings  
 Cathodic Protection (Type)  
 Casing Filler  
 Longitudinal Pipeline : Distance from Centerline of Outside Track  
                                     Depth of Bury to Top of Pipe

Carrier Pipe	Casing Pipe
Water	NA
20-in	36 in
Steel	Steel
Refer to Spec.	Refer to Spec.
0.128 in	0.531 in
177 psi	NA
35,000	33,000
Welded	Welded
Cement	None
NA	200 ft
NA	50 ft @ jacking and rec pits
None	None
NA	NA
12.5 ft +/-	12 ft
NA	NA

PSI or equal, 3 per joint with 10 ft maximum spacing  
 1,000 ft on north 2,300 ft on south (+/-)  
 1/8 in neoprene fastened with SS clamps

EMS Station  
 Sand  
 NA  
 NA

Southern California Regional Rail Authority  
 (SCRRA)

N. PATEL  
 APPROVED



## Exhibit "B"

### INSURANCE REQUIREMENTS FOR LEASES, LICENSES, AND PERMITS

Lessee, Licensee, or Permittee shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the use of MTA property hereunder by the Lessee, Licensee, or Permittee, his agents, representatives, employees or subcontractors.

#### **Minimum Scope of Insurance** (Check all applicable boxes)

Coverage shall be at least as broad as:

- ☒ Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- ☒ Insurance Services Office Form No. CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- ☒ Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.
- ☐ Course of Construction insurance form providing coverage for "all risks" of loss.
- ☐ Property insurance against all risks of loss to any licensee improvements or betterments.
- ☐ Insurance Services Office Railroad Protective Liability
- ☐ Contractor's Pollution Liability with coverage for:
  - a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
  - b. property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
  - c. defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; and
  - d. losses caused by pollution conditions that arise from the operations of the contractor described under the scope of services of this contract.

#### **Minimum Limits of Insurance** (Check all applicable boxes)

Lessee, Licensee, or Permittee shall maintain limits no less than:

- ☒ General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- ☒ Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- ☒ Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
- ☐ Course of Construction: Completed value of the project.
- ☐ Property Insurance: Full replacement cost with no coinsurance penalty provision.
- ☐ Railroad Protective Liability: \$2,000,000 per occurrence. Aggregate limit shall apply separately to this project/location or the aggregate limit shall be twice the required per occurrence limit
- ☐ Contractors Pollution Liability: \$1,000,000 per occurrence/\$2,000,000 annual aggregate.

#### **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by MTA. At the option of MTA, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects MTA, its officials and employees; or the Lessee, Licensee, or Permittee shall procure a bond guaranteeing payment of losses, and related investigations, claim administration and defense expenses.

## **EXHIBIT "B" continued**

### **Other Insurance Provisions**

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. MTA, its subsidiaries, officials and employees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Lessee, Licensee, or Permittee; products and completed operations of the Lessee, Licensee, or Permittee; License Property owned, occupied or used by the Lessee, Licensee, or Permittee; and automobiles owned, leased, hired or borrowed by the Lessee, Licensee, or Permittee. The coverage shall contain no special limitations on the scope of protection afforded to MTA, its subsidiaries, officials and employees.
2. For any claims related to this project, the Lessee, Licensee, or Permittee's insurance coverage shall be primary insurance as respects MTA, its subsidiaries, officials and employees. Any insurance or self-insurance maintained by MTA, its subsidiaries, officials and employees shall be excess of the contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to MTA, its subsidiaries, officials and employees.
4. The Lessee, Licensee, or Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either a party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to MTA.
6. Workers' Compensation and Employer's Liability policies shall contain the inclusion of the MTA, its Subsidiaries, officials and employees as additional insured, or provide a waiver of subrogation.

Course of construction policies shall contain the following provisions:

1. MTA shall be named as loss payee.
2. The insurer shall waive all rights subrogation against MTA.

### **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by MTA.

### **Verification of Coverage**

Lessee, Licensee, or Permittee shall furnish MTA with original endorsements and certificates of insurance evidencing coverage required by this clause. All documents are to be signed by a person authorized by that insurer to bind coverage on its behalf. All documents are to be received and approved by the MTA before work commences. As an alternative, the Lessee, Licensee, or Permittee may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

### **Contractors and Subcontractors**

Lessee, Licensee, or Permittee shall include all contractors and subcontractors as insureds under its policies or require certificates and endorsements for each contractor and subcontractor. All coverages for contractors and subcontractors shall be subject to all of the requirements stated herein. The administration of insurance compliance of contractors and subcontractors shall be subject to audit review by MTA.

## **Exhibit "C"**

Permitted Hazardous Materials

**No hazardous materials are permitted to be used or stored on License Property.**

### **Exhibit "D"**

1. **Paving and Fencing.** If applicable, Licensee will pave lease area with asphalt or concrete, and Licensee will construct a chain link fence (or better quality) measuring a minimum of six (6) feet high around the entire perimeter of License Property described in Exhibit "A". Licensee shall be responsible for the total expense of fencing and asphalt.
2. **Importation of Soil/Fill Dirt.** Lessee shall not bring upon or use any Import Soil on the License Property in conjunction with any purposes allowed under this Agreement, until said Import Soil has been laboratory tested by a *certified hazardous waste testing laboratory* and the test results have been approved by MTA's Environmental Consultant. Additionally, any soil currently existing on the License Property may not be spread on the License Property unless and until it is characterized as Clean Soil to the reasonable satisfaction of MTA's Environmental Consultant.
3. **Maintenance of License Property.** Lessee shall keep the License Property free and clear of weeds, trash, vegetation, unauthorized vehicle parking, graffiti and occupancy by transients/homeless persons or individuals. Lessee shall be fully responsible for ALL maintenance and maintenance that is required or necessary in connection with Lessee's use of License Property.
4. **Protection of Underground and Aboveground Installations.** Lessee shall ensure that it and Lessee's Parties protect, from and against any and all damage, all underground and aboveground installations and improvements, such as pipes, fiber optic lines and wires, which may be impacted by any work or any use of the License Property by Lessee.
5. **Improvements.** Both Lessee and MTA acknowledge that the License Property is leased in "AS IS" condition and, if applicable, any track removal, grading, paving and fencing as may be necessary or required to meet Lessee's needs will be the sole responsibility of the Lessee. No permanent structures may be constructed on the License Property without Lessor's prior written approval. Licensee will be responsible for the removal of all permitted improvements upon termination of Lease.
6. **Utilities.** Lessee shall pay for any and all utilities for its benefit, security and use.
7. **Warranties.** The MTA makes no warranties as to the suitability of the location for Licensee's intended use as to zoning, visibility, traffic count or any other factors, which may cause Licensee to want to lease the License Property.



**Exhibit "D"**  
LACMTA's Additional Provisions

8. **Zoning or Permitting.** The property is currently zoned "Public Facilities" which carries a restricted use, and will require the licensee to obtain a zone variance, or a conditional use permit. Any permits, inspection fees, or costs associated with the use or maintenance of the Premise by any governmental agency, department, or organization, or any labor expenses for the installation or maintenance of any permitted improvements are the Licensee's sole responsibility. Copies of permits are to be readily available for inspection by MTA personnel.
9. **Signage.** NO SIGNS PERMITTED on or along the perimeter of the leasehold unless such signs were requested and approved under your original proposal and covered by the required insurance.
10. **Property Under Study for Public Projects and Programs.** Licensee hereby acknowledges and agrees that this Lease (or License) is located on MTA property that may be developed for public projects and programs, such as, but not limited to: rail and bus transitways, bikeways, walkways, beautification projects and other related uses, and that Licensee understands and knows that its use of the License Property under this lease (or license) may be impacted by such public projects and programs, **including the termination of this Lease (or License).** Further, Licensee hereby acknowledges and agrees that as a condition of MTA granting this Lease (or License) to Licensee, which is an interim, temporary use until a public project and program is implemented, Licensee covenants that it will **NOT** oppose any -public projects and programs when planned or implemented on this property.

Licensee	MTA
Initials #10	

**Exhibit "D"**  
**SCRRA Additional Provisions**

1. Licensee or licensee's contractor shall contact SCRRA at 1-877-452-0205 to schedule (EIC) Flagging Services. The Licensee or licensee's contractor will need a valid SCRRA project number, located in the upper right hand corner of the Right-of-Entry.
2. Licensee or licensee's contractor shall be responsible for the location and protection of any and all surface, sub-surface, and overhead lines and structures.
3. The Licensee or licensee's contractor shall call SCRRA's signal department (909) 859-4100 to mark signal and communication cables and conduits. In case of signal emergencies or grade crossing problems, the contractor shall call SCRRA's 24-hour signal emergency number: 1-888-446-9721.
4. The Licensee shall obtain permission from any fiber optic, gas or oil lines that may be located along or across the right-of-way.
5. If SCRRA shall deem it necessary in the future, to build additional track, tracks or other facilities in connection with the operation of its railroad, at the request of SCRRA, the Licensee shall modify, at its own expense, the proposed utility and/or roadway to conform to the rail line.
6. The Licensee agrees to execute and deliver to SCRRA, prior to commencing any work within the rail right-of-way, SCRRA Right of Entry Agreement (Form No.6) and deliver and secure approval of the insurance required by the two exhibits attached to Form No.6. If the Licensee retains a contractor to perform any work within the rail right-of-way, the Licensee shall incorporate in its contract documents SCRRA Form No.6 and SCRRA Rules and Requirements for Construction on Railway Property (Form No. 37). SCRRA's Right-of-Way Encroachments Office can be reached at (909) 394-3418.
7. Licensee's contractor, at its sole cost and expense, shall obtain and maintain, in full force and effect, insurance as required by SCRRA during the entire construction period. The Contractor shall furnish copies of the insurance certificates to all affected operating railroads.
8. Third Party Safety training is required for all work near or within the railroad right of way. Licensee's contractor shall contact SCRRA at 1-877-452-0205 to schedule safety training. The contractor will need a valid SCRRA project number, located in the upper right hand corner of the Right-of-Entry. No work may commence on the railroad right of way until this training has been completed.



EXHIBIT "E"

PROPOSED PWD - AVEK (ACTON WTP) INTERTIE RR CROSSING





**P A L M D A L E   W A T E R   D I S T R I C T**  
**B O A R D   M E M O R A N D U M**

**DATE:** January 19, 2012 **January 25, 2012**  
**TO:** BOARD OF DIRECTORS **Board Meeting**  
**FROM:** Mr. Jon M Pernula, Water and Energy Resources Manager  
**VIA:** Mr. Dennis D. LaMoreaux, General Manager  
**RE:** ***AGENDA ITEM NO. 6.5 – CONSIDERATION AND POSSIBLE ACTION  
ON AUTHORIZATION TO EXECUTE AMENDMENT TO THE DELTA  
HABITAT CONSERVATION AND CONVEYANCE PLAN (DHCCP)  
FUNDING AGREEMENT***

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**Recommendation:**

Staff recommends approval of the Delta Habitat Conservation and Conveyance Plan (DHCCP) Supplemental Funding Agreement for Palmdale Water District's share of costs to prepare the environmental analysis, planning and design of delta conservation measures including delta conveyance options for the DHCCP.

**Alternative Options:**

Staff recommends continued participation in DHCCP which is the only option or alternative currently available for delta conservation that includes restoration of the State Water Projects long term reliability.

**Impact of Taking No Action:**

The DHCCP planning process is appropriately paid for by the State Water Contractors because the State Water Project is a primary beneficiary of the improved conveyance and regulatory assurances that are anticipated to result from the completion of the planning. If no action is taken the District would be breaking ranks with the other participating State Water Contractors and could risk losing the benefits attributable to the increased reliability and additional resource made available by the plan.

**Background:**

In March 2008, Governor Arnold Schwarzenegger directed the California Department of Water Resources (DWR), in cooperation with other state and federal agencies, to initiate the public environmental review process necessary for the Bay Delta Conservation Plan (BDCP). The BDCP is a collaborative effort between public



water agencies, environmental organizations and state and federal agencies to map out a comprehensive, long-term conservation and restoration plan for the deteriorating Sacramento-San Joaquin River Delta (Delta). The purpose of the BDCP is to provide for the recovery of endangered and sensitive species and their habitats in the Delta in a way that also will provide for the protection and restoration of water supplies.

An outgrowth and part and parcel to the BDCP is the DHCCP, which includes conveyance, and is the funding vehicle being used to initiate the environmental and engineering planning work required. Accordingly the Palmdale Water District Board of Directors approved participation in the DHCCP funding agreement in March of 2009. Through this agreement PWD committed to paying its share of half of the original \$140 million dollar DHCCP estimated cost along with the other State Water Project contractors. At the time our Board approved the original funding agreement our share of the \$70 million cost (1/2 of \$140 million) was estimated to be between \$360,000.00 and \$399,000.00. The DHCCP Funding Agreement provides for these program costs to be included in each participating SWP contractors Annual Statement of Charges.

In December of 2009, after a reassessment by DWR of program scope, technical needs, and schedule, a revised budget was developed that integrated the costs of activities related to both the BDCP and the DHCCP. The revised budget resulted in an increased cost for state water contractors at that time. Subsequent work has revealed that additional funding is needed to complete the BDCP and DHCCP planning phase costs in the amount of \$50 million dollars for the State Water Project share of the work. The increased cost will be included in our annual SWP statement of charges and are collected by DWR from all participating SWP contractors.

#### **Strategic Plan Element:**

The specific element of this work is part of Strategic Goal 2.1 Ensure adequate water supplies for existing and future customers.

#### **Budget:**

The additional cost for PWD's share of the DHCCP funding amendment in the amount of \$262,150.00 will be included in the **2012, 2013 and 2014 PWD Budgets under Fixed Costs - SWP as part of assessment tax rolls.** (These costs will not be collected through customer water rates.)

#### **Supporting Documents:**

- Agreement for supplemental funding of DHCCP
- DHCCP Cost Allocation spreadsheet
- Latest DHCCP Element Budget and Expenditures chart
- Summary list of anticipated DHCCP State Water Project Contractors participation

**State of California  
California Natural Resources Agency  
DEPARTMENT OF WATER RESOURCES**

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**AGREEMENT FOR  
SUPPLEMENTAL FUNDING BETWEEN  
THE DEPARTMENT OF WATER RESOURCES  
AND**

**PALMDALE WATER AGENCY**

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**FOR THE COSTS OF ENVIRONMENTAL ANALYSIS, PLANNING AND DESIGN  
OF DELTA CONSERVATION MEASURES,  
INCLUDING DELTA CONVEYANCE OPTIONS**

**(SWPAO #09918S)**

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**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2011, pursuant to the provisions of all applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources ("Department" or "DWR"), and Palmdale Water Agency ("Contractor"), herein referred to collectively as "Parties."

### RECITALS

- A. **WHEREAS**, DWR and the Contractor have entered into and subsequently amended a long-term water supply contract, herein referred to as the "Water Supply Contract," providing that DWR will supply certain quantities of water to the Contractor, providing that the Contractor shall make certain payments to DWR, and setting forth the terms and conditions of such supply and such payment; and
- B. **WHEREAS**, the Bay Delta Conservation Plan ("BDCP") process was initiated in 2005-2006 and the Delta Habitat Conservation and Conveyance Program ("DHCCP") was initiated in 2008. The Parties will refer to the combined planning processes as the "Planning Phase" of the DHCCP and the BDCP ("Programs"); and
- C. **WHEREAS**, the Contractor and other State Water Project "SWP" and Central Valley Project "CVP" water contractors (as defined herein), contributed, through prior agreements, to the funding of the BDCP and DHCCP; and
- D. **WHEREAS**, the Contractor and other SWP and CVP water contractors committed in the "Cooperation Agreement Among Potentially Regulated Entities for Preparation of the Bay Delta Conservation Plan" (November 2006, as amended 2009) to provide approximately 13 million dollars (\$13,000,000) for the development of the BDCP, executing that commitment through the "Costs Share Agreement Between the Department of Water Resources and Zone 7," as amended; and dedicated 140 million dollars (\$140,000,000) for the development of the DHCCP through the "Agreement for Funding Between the Department of Water Resources and the San Luis & Delta Mendota Water Authority for the Costs of Environmental Analysis, Planning and Design of Delta Conservation Measures, Including Delta Conveyance Options" (March 2009, as amended June 2010), and the "Agreement for Funding Between the Department of Water Resources and [various SWCs] for Costs of Environmental Analysis, Planning and Design of Delta Conservation Measures Including Delta Conveyance Options" (March 2009). These costs were shared on an equal basis with 50 percent provided by the SWP Contractors and 50 percent provided by a subset of the CVP contractors.
- E. **WHEREAS**, starting in 2007, and continuing into the present, DWR has billed the SWP Water Contractors for BDCP costs in addition to the costs provided for in the aforementioned agreements. As of June 30, 2011, DWR has charged approximately 6 million, 500 thousand dollars (\$6,500,000) to the SWP Water Contractors for the development of the BDCP through direct charges in their billing statements, in addition to the funds provided in the aforementioned funding agreements. It is further anticipated that this direct charge to solely the SWP Water Contractors will continue until December, 2011, ultimately totaling

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8 million 600 thousand dollars (\$ 8,600,000). After project approval, it is anticipated that there will be a reconciliation between the state and federal water contractors for BDCP and DHCCP costs, including the 8 million 600 thousand dollars (\$ 8,600,000), that will achieve an equal split between the State and federal water contractors, with 50 percent of these BDCP and DHCCP costs paid by the SWP Water Contractors and 50 percent of these BDCP and DHCCP costs paid by the CVP contractors.

- F. **WHEREAS**, participating SWP and CVP water contractors have agreed among themselves that the costs of the BDCP and DHCCP Planning Phase should be shared equally: 50 percent by Public Water Agencies that receive water from the SWP and 50 percent by Public Water Agencies that receive water from the CVP. Additionally, the Public Water Agencies have agreed that in-kind services or any funds provided to DWR via a financial assistance agreement with U.S. Department of the Interior, Bureau of Reclamation (Reclamation) shall also be credited towards the portion of the BDCP and DHCCP Planning Phase costs assigned to Public Water Agencies that receive water from the CVP.
- G. **WHEREAS**, DWR has informed the SWP Water Contractors that additional funding is required to complete the BDCP and DHCCP Planning Phase tasks listed in Exhibit 1 hereto, and that 50 percent of that additional funding will need to be provided by the SWP Water Contractors, with the other 50 percent being provided by the federal contractors and Reclamation; and
- H. **WHEREAS**, certain CVP contractors agreed to fund the remaining 50 percent of the total BDCP and DHCCP Planning Phase costs and Reclamation, as allowed under federal appropriations law, via in-kind services and a financial assistance agreement, agreed to provide some portion of this 50 percent; and
- I. **WHEREAS**, the Contractor, as a Public Water Agency (as defined herein), has entered into the First Amended MOA (as defined herein), which establishes the respective roles of the Parties hereto in managing completion of the BDCP and DHCCP Planning Phase; and
- J. **WHEREAS**, the Contractor is willing to enter into this Agreement to pay a share of the BDCP and DHCCP Planning Phase costs based on the agreement reached in the First Amended MOA between the Contractor, as a Public Water Agency, DWR, and Reclamation, which provides the Contractor and the Supplemental Funding Contractors with a significant role in decisions related to the budget, scope, schedule, work product, and activities of the BDCP and DHCCP Planning Phase to ensure its timely completion in a cost-effective manner.



## AGREEMENT

NOW THEREFORE, it is mutually agreed by the Parties as follows:

A. **Definitions**

When used in this Agreement, the definitions in the Water Supply Contract (as defined herein) shall apply. In addition, the following definitions shall apply:

1. **"BDCP and DHCCP Planning Phase Supplemental Costs"** means the additional 100 million dollars (\$100,000,000) supplemental Planning Phase costs dedicated to the development of the BDCP-DHCCP.
2. **"BDCP Planning Phase Supplemental Costs"** means the costs associated with the development of the BDCP HCP-NCCP, beginning in 2012 and continuing until the BDCP-DHCCP Planning Phase is completed, December 31, 2014, or the date when the Department's Share of the BDCP-DHCCP Planning Phase costs, 50 million dollars (\$50,000,000) has been spent, whichever is earlier.
3. **"BDCP Supplemental Funding Charge"** means the charge to the Contractor pursuant to this Agreement included in its Annual Statement of Charges to recover the Contractor's allocation of Department's Share of the BDCP Planning Phase Supplemental Costs beginning after execution of this Agreement, and continuing until the BDCP and DHCCP Planning Phase is completed, December 31, 2014, or the date when the Department's Share of the BDCP-DHCCP Planning Phase Supplemental Costs, 50 million dollars (\$50,000,000) have been spent, whichever is earlier.
4. **"BDCP and DHCCP Planning Phase" or "Program Planning Phase"** means the development and completion of the BDCP HCP-NCCP and EIR/EIS and certain preliminary engineering.
5. **"DHCCP Planning Phase Supplemental Costs"** means the costs associated with the development of the BDCP EIR/EIS and preliminary engineering, beginning after the existing 140 million dollars (\$140,000,000) of DHCCP funds have been expended, and continuing until the Program's Planning Phase is completed, December 31, 2014, or the date when the Department's Share of the BDCP and DHCCP Planning Phase Costs, 50 million dollars (\$50,000,000), has been spent, whichever is earlier.

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6. **"BDCP and DHCCP Supplemental Funding Agreement" or "Agreement"** means this Agreement and agreements substantially the same as this Agreement signed by a Supplemental Funding Contractor and DWR.
7. **"Calendar Year"** means the period January 1 through December 31.
8. **"Central Valley Project Contractors"** means the CVP contractors that are involved in funding the BDCP and DHCCP Planning Phase, which are a subset of the total CVP contractors group.
9. **"Contractor"** means the Water Supply Contractor that is a signatory to this Agreement.
10. **"CVP Supplemental Funding Agreement"** means the "Agreement for Funding Between the Department of Water Resources and the San Luis & Delta Mendota Water Authority for the Costs of Environmental Analysis, Planning and Design of Delta Conservation Measures, Including Delta Conveyance Options" (March 2009, as amended June 2010.)
11. **"Department" or "DWR"** means the California Department of Water Resources.
12. **"Department's Share of the BDCP and DHCCP Planning Phase Costs"** means 50 million dollars (\$50,000,000), which is DWR's 50 percent share of the total 100 million dollars (\$100,000,000) of BDCP-DHCCP Planning Phase Supplemental Costs funded by the SWP Water Contractors.
13. **"DHCCP Supplemental Funding Pay-Go Charge"** means the charge to the Contractor pursuant to this Agreement included in its Annual Statement of Charges to recover the Contractor's allocation of the Department's Share of the DHCCP Planning Phase Supplemental Costs beginning after the existing 140 million dollars (\$140,000,000) of DHCCP funds have been expended and continuing until the BDCP and DHCCP Planning Phase is completed, December 31, 2014, or the date when the Department's Share of the BDCP and DHCCP Planning Phase Supplemental Costs, 50 million dollars (\$50,000,000) have been spent, whichever is earlier.
14. **"DHCCP SWP Funding Agreement"** means the original DHCCP Funding Agreements between DWR and the Participating SWP Contractors listed in Exhibit 3 hereto.

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15. **"First Amended MOA"** means the "First Amended, Memorandum of Agreement Regarding Collaboration on the Planning, Preliminary Design and Environmental Compliance for the Delta Habitat Conservation and Conveyance Program in Connection with the Development of the Bay Delta Conservation Plan, [date]." DWR and the Contractor are parties to the First Amended MOA.
16. **"Participating SWP Contractor"** means an SWP Water Supply Contractor that has executed an original DHCCP SWP Funding Agreement.
17. **"Party"** or **"Parties"** means DWR and/or Contractor.
18. **"Public Water Agency"** or **"Public Water Agencies"** means Kern County Water Agency; The Metropolitan Water District of Southern California; San Luis & Delta Mendota Water Authority; Westlands Water District; State Water Project Contractors Authority ("SWPCA"), and its member agencies as identified in Exhibit 2; Santa Clara Valley Water District; and the State and Federal Contractors Water Authority ("SFCWA"). Contractor is a Public Water Agency as defined in the First Amended MOA and this Agreement, being either an entity specifically mentioned above or a member agency of SWPCA identified in Exhibit 2.
19. **"Reclamation"** means the U.S. Department of the Interior, Bureau of Reclamation.
20. **"Supplemental Funding Contractor"** means a Water Supply Contractor that has executed this Agreement or an agreement substantially the same as this Agreement.
21. **"SWP"** means the State Water Project operated by DWR. The SWP generally includes the State Water Facilities, as defined in California Water Code section 12934(d), and certain facilities found in the Central Valley Project Act at section 11100 *et. seq.*
22. **"Water Supply Contract"** means the long-term water supply contract, as amended, between the Contractor and DWR, and similar contracts entered into by DWR and other SWP Water Contractors.
23. **"SWP Water Contractors"** means the water agencies or districts that signed long-term water supply contracts with DWR.

**B. Purposes of the Agreement**

1. The purposes of this Agreement are (i) to establish the terms and conditions under which the Contractor will provide supplemental funding to DWR that will provide all funds needed to pay the actual remaining costs of the Department's Share of the BDCP and DHCCP Planning Phase costs; (ii) to state the intent of the Parties to establish, through future agreements, the terms and conditions for funding, financing and implementing the BDCP and DHCCP, and for allocating BDCP and DHCCP costs and benefits among Supplemental Funding Contractors; and (iii) to state the intent and to establish the terms under which a HCP-NCCP, EIR/EIS and preliminary engineering will be developed.
2. Funding pursuant to this Agreement addresses only the BDCP and DHCCP Planning Phase. After completing the BDCP and DHCCP Planning Phase, if the Parties determine to proceed with actions beyond the BDCP and DHCCP Planning Phase, including the implementation and construction phases of the BDCP and DHCCP, the Parties may enter into additional funding agreements.

**C. Term of Agreement**

This Agreement will take effect upon execution of the Parties and except as provided in Section F hereof, will remain in effect until the earlier of (a) the date revenue bonds are issued pursuant to Section H of this Agreement, (b) completion of the BDCP and DHCCP Planning Phase, (c) the date the Department's Share of the BDCP Planning Phase Supplemental Costs, 50 million dollars (\$50,000,000) is spent, (d) or December 31, 2014, whichever comes first, unless extended by written amendment. No DHCCP Supplemental Funding Pay-Go Charge will be made pursuant to the Agreement until the 140 million dollars (\$140,000,000) made available through the agreements listed in Exhibit 3 has been fully committed.

**D. Program Management**

1. This Agreement is intended to be consistent with the First Amended MOA, and to further clarify the management and funding responsibilities of the Parties. If there is a conflict between the terms of the First Amended MOA and this Agreement, the terms of this Agreement shall prevail.
2. The Parties hereby reiterate and explicitly incorporate into this Agreement certain sections of the First Amended MOA which are listed below, although the lettering and numbering identifying these sections have been changed to follow the formatting of this Agreement. By incorporating



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these provisions of the First Amended MOA into this Agreement, the Parties are reaffirming their commitment to the management structure initially established in the First Amended MOA. The sections of the First Amended MOA incorporated herein are: Roles and Responsibilities, Sections II(A), (C), (D), (E), (F)-(I), and (K)-(P); Program Funding, Sections III(C), (D) (G), (H), and (I); Withdrawal and Termination, Sections IV(C) and (D); and Miscellaneous Provisions, Section V(A).

- a. The Parties shall work jointly to meet the objectives of this First Amended MOA and the planning goals of the BDCP, as presented in the Planning Agreement Regarding the Bay Delta Conservation Plan.
- b. Exhibits 1 and 1A to this First Amended MOA are two schedules, incorporated herein by this reference, which describes the tasks to be performed and a schedule for performance of the identified tasks to complete, respectively, the EIR/EIS for the BDCP and Chapter 5 (Effects Analysis) of the BDCP. The Parties recognize refinement of Exhibits 1 and 1A may be necessary to conform to developing information, permitting and other requirements. Therefore, Exhibits 1 and 1A may be revised from time to time, without constituting an amendment to this First Amended MOA, but only after the Director of DWR consults with and provides written notice to the Parties. (Hereinafter reference to "Exhibits 1 and 1A" includes any revisions as provided by this subsection.)
- c. The Parties are committed to completing tasks pursuant to the schedules described in Exhibits 1 and 1A, which will result in a ROD by February 15, 2013. Furthermore, the Parties shall work cooperatively and use best efforts to release the public draft of the EIS/EIR in May 2012.
- d. DWR is taking the lead role in preparing and, after consultation with the Parties, shall direct the consultants regarding the content of the BDCP, including those elements of the BDCP intended to be incorporated in the EIS/EIR. DWR has also contracted with the consultants preparing the EIS/EIR and shall continue to administer the contract. DWR shall solicit, in a timely manner, from the Department of Fish and Game ("DFG"), the Public Water Agencies, and the NEPA Co-lead Agencies, comments on the draft work products in support of the completion of tasks, pursuant to the schedules in Exhibits 1 and 1A. As set forth in Paragraph B, above, Reclamation shall be responsible for coordinating with the NEPA Co-lead Agencies and coordinating with DWR and the NEPA

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Co-lead Agencies comments that DWR shall submit to the consultants in accordance with the schedules in Exhibits 1 and 1A. In the event agency comments are not received consistent with the schedules in Exhibits 1 and 1A, DWR may proceed with preparation of the BDCP and DWR, and Reclamation may proceed with the preparation of the EIS/EIR. DWR shall direct the Program Manager on preparation of the BDCP and EIS/EIR as necessary to maintain the schedule or consider necessary revisions as described in subsection II.C. The DWR Director shall concurrently advise the Parties of the direction provided to the Program Manager. Nothing in this section or elsewhere in this First Amended MOA modifies the federal responsibilities for the content of the draft and final EIS and preparation of the ROD.

- e. DWR has retained a consultant with extensive project management experience to be the BDCP and DHCCP Program Manager. The Program Manager shall report to and be directed by the Director of DWR. The Director of DWR shall implement the responsibilities of DWR as set forth in Section II.E above [Section D(2)(d) in this Agreement]. The Director of DWR may fulfill this responsibility through the Program Manager, who is designated to carry out the day-to-day management activities of the BDCP and to closely coordinate with Reclamation regarding preparation of the EIS/EIR. Work performed by DWR consultants or staff shall not be charged to the BDCP Planning Phase unless approved by the Director of DWR, or his delegate pursuant to DWR delegation orders, after discussion with the Program Manager.
- f. At its discretion and after coordination with Reclamation, DWR may designate SFCWA as a consultant contract administrator, with all or some of the consultants contracting directly with SFCWA to complete all or part of the BDCP. In the event DWR designates SFCWA as a consultant contract administrator, the Program Manager shall continue to report to the Director of DWR and carry out his responsibilities under Subsection II.F [Section D(2)(e) in this Agreement], including management of the consultants under contract with SFCWA, as described in Subsection II.F [Section D(2)(e) in this Agreement].
- g. The Parties shall support listing the Public Water Agencies, including but not limited to the member agencies identified in Exhibit 2, as "applicants" and "permittees" along with DWR pursuant to Section 10 of the federal ESA, and "plan participants" and "permittees" under the NCCPA, California Fish and Game

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Code, section 2800 *et. seq.* Support by the Parties does not grant the Public Water Agencies permittee status. Ultimate decision making authority on the granting of any Section 10 permit application rests with the USFWS and NMFS, and on the granting of any permit under NCCPA rests with DFG, and the HCP and NCCP permits and accompanying Implementing Agreement can provide the vehicle for defining the permittee relationship. If permittee status is ultimately granted, the Public Water Agencies would not be granted any new authority over water project operational decisions or result in the delegation of authority from any state or federal agency.

- h. The Parties acknowledge that the Public Water Agencies are responsible agencies pursuant to CEQA.
- i. The Public Water Agencies shall be provided all draft consultant work product in accordance with the agency review schedules in Exhibits 1 and 1A. This provision does not limit the ability of DWR or Reclamation from making draft consultant work product available to other cooperating agencies and members of the interested public.
- j. The Parties shall meet at least once monthly to discuss BDCP and DHCCP Planning Phase management, including the status of the BDCP and EIS/EIR, consultant scope, direction, and work product; sources of funds; commitments; obligations; encumbrances; expenditures; projected expenditures to completion; and a comparison of actual budgeted expenditures. If it appears to the Program Manager or any of the Parties that a task included in the schedule in Exhibits 1 and 1A will not be completed in a timely manner, the Director of DWR shall consult with Reclamation and the Public Water Agencies on actions necessary to maintain the schedule or potential revisions to the schedule. If an agreement cannot be reached, any Party may invoke the provisions of this First Amended MOA, Section IV, for withdrawal, substitution, or termination.
- k. In the event that DWR has not provided direction to the Program Manager and/or the consultant when required to maintain the schedule presented in Exhibits 1 and 1A, the Director of DWR shall consult with Reclamation and the Public Water Agencies, which shall recommend to the Director the decision and/or direction needed to maintain or revise the schedule as described in subsection II.C [Section D(2)(b) in this Agreement].

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- l. The Parties shall coordinate all activities related to fulfillment of the purpose of this First Amended MOA. The Parties shall cooperate with one another and work as efficiently, expeditiously, and effectively as possible in the pursuit of all activities and decisions described in this First Amended MOA and those that are not particularly described but which are related to or arise out of the activities that are described.
- m. As requested by the Director of DWR, each of the Parties shall provide expertise, guidance, and data on those matters for which it has specific expertise or authority, as needed to carry out the work and meet the purpose of this First Amended MOA and the then current Planning Agreement Regarding the Bay Delta Conservation Plan.
- n. Consistent with Subsection II.F, above [Subsection D(2)(e) in this Agreement], the Director of DWR shall ensure that appropriate staffing is available to complete the BDCP and DHCCP Planning Phase, including the BDCP and EIS/EIR.
- o. DWR shall provide Reclamation and the Public Water Agencies with copies of all draft task work orders for any work performed during the BDCP and DHCCP Planning Phase, including on the BDCP HCP-NCCP, EIS/EIR and preliminary engineering for review by the Public Water Agencies prior to approval of DWR. DWR shall also provide to the Public Water Agencies draft Notice-to-Proceed ("NTP") agreements for review and comment for those task work orders that have been approved by DWR, but for which an NTP is required to authorize all or a portion of the work specified in the task order.
- p. Participating SWP and CVP water contractors have agreed among themselves that the costs of the BDCP and DHCCP Planning Phase should be shared equally: 50 percent by Public Water Agencies that receive water from the SWP and 50 percent by Public Water Agencies that receive water from the CVP. Additionally the Public Water Agencies have agreed that in-kind services or any funds provided to DWR via a financial assistance agreement with Reclamation shall also be credited towards the portion of the BDCP and DHCCP Planning Phase costs assigned to Public Water Agencies that receive water from the CVP.



- q. The BDCP and DHCCP Planning Phase will be completed in three parts referred to as milestones. The planning milestones are the following:

- 1) Administrative Draft HCP/NCCP and EIR/EIS;
- 2) Public Draft HCP/NCCP and EIR/EIS; and
- 3) Final HCP/NCCP and EIR/EIS.

In addition, preliminary engineering may proceed as a concurrent activity during or subsequent to any part of the BDCP and DHCCP Planning Phase. Reclamation requires specific authorization before any Reclamation funds may be used for preliminary engineering tasks not required for the EIR/EIS.

- i. The Public Water Agencies agree to fund the first milestone identified above pursuant to their BDCP and DHCCP Planning Phase funding agreements.
  - ii. The Public Water Agencies will consider funding the additional milestones, identified above as milestones 2 and 3, and preliminary engineering. DWR shall not commence work on milestones identified above as 2 and 3 or on preliminary engineering using funds provided by the Public Water Agencies until the Public Water Agencies provide the Director of DWR with written authorization to proceed. In determining whether to proceed, the Public Water Agencies shall consider, but are not limited to, the following: (1) adherence to the schedule in Exhibit 1; (2) adherence to the agreed upon program budget; and 3) adherence to the project management and planning principles set forth in the Planning Agreement Regarding the Bay-Delta Conservation Plan, this First Amended MOA, and the BDCP-DHCCP Planning Phase funding agreements with the Public Water Agencies.
- r. Upon completion of the Planning Phase, and if the BDCP proceeds to implementation, a mechanism shall be established between the Public Water Agencies, including but not limited to those member agencies identified in Exhibit 2, and DWR for reapportionment of BDCP and DHCCP Planning Phase costs based on calculated benefits conferred from the implementation of the BDCP. Any funds or in-kind services provided by Reclamation during the DHCCP Planning Phase are considered such costs and are not available for reapportionment as described above, but shall

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continue to be credited toward the obligation of the Public Water Agencies that receive water from the CVP as described in Subsection III(D), above [Section D(2)(p) in this Agreement].

- s. In the event DWR designates SFCWA as a consultant contract administrator, DWR shall continue collecting funds from the Public Water Agencies, including but not limited to those member agencies identified in Exhibit 2, pursuant to BDCP and DHCCP Planning Phase funding agreements, and DWR shall distribute those funds to SFCWA to fund the consultants that are contracting directly with SFCWA for the completion of the BDCP and DHCCP Planning Phase.
- t. In the event of termination of the First Amended MOA prior to any of the following, certification of the joint EIR/EIS, issuance of a ROD for the BDCP, or issuance of an NOD for the BDCP, (1) unless prohibited by law, DWR shall provide to the Public Water Agencies and Reclamation copies of the draft BDCP, draft EIS/EIR and all documents that comprise the work product for the draft BDCP and for the draft EIS/EIR, including preliminary engineering, and (2) the Parties agree that the Public Water Agencies and Reclamation will have the right to use the documents, in whole or in part, unless prohibited by law. For purposes of this section, copies of the "draft BDCP," "draft EIR/EIS and all documents that comprise the work product" include, but are not limited to, technical tools, work products and data such as computer models and results of modeling, geotechnical and other survey data, and preliminary engineering plans. If the Parties determine there are documents that may not be legally disclosed, DWR, Reclamation, and the Public Water Agencies shall meet to negotiate to develop an appropriate process to provide them such documents to the extent permitted by law. The intent of this provision is to enable the Public Water Agencies to use documents as part of the BDCP and DHCCP, or for a project or projects with similar purposes and planning goals.
- u. If the First Amended MOA terminates prior to completion of the BDCP and DHCCP Planning Phase, and there are unspent funds that have been previously collected from the Public Water Agencies by DWR to fund the BDCP and DHCCP Planning Phase, DWR shall return the unspent funds to the appropriate Public Water Agencies. If DWR is precluded by law from returning unspent funds, DWR shall provide each appropriate Public Water Agency a credit that can be applied to any charges levied by DWR against

the Public Water Agency. Reclamation's unspent funds should be handled in a manner consistent with the appropriate assistance agreement with DWR.

- v. Within 45 days of this First Amended MOA becoming effective, DWR shall review its existing contracts with environmental consultant(s) retained to complete this BDCP and DHCCP Planning Phase to determine if any terms of this First Amended MOA may be inconsistent with these contracts such that the Parties shall consider amending these contracts. If any Party believes that these contracts may need amending, the Parties shall meet to discuss how best to proceed.

**E. Program Funding**

1. Exhibit 4 to this Agreement is a budget herein incorporated by this reference, which describes the budget for the BDCP and DHCCP Planning Phase milestones, preliminary engineering, and contingency. It is recognized that refinement of Exhibit 4 may be necessary to conform to developing information, permitting and other requirements. Exhibit 4 may be revised from time to time and attached hereto as an exhibit without constituting an amendment to this Agreement, provided the revised budget for the BDCP and DHCCP Planning Phase does not exceed 100 million dollars (\$100,000,000). The Public Water Agencies, on behalf of the Contractor, must provide written authorization within 30 days of being notified before DWR may amend the budget in Exhibit 4 to reallocate BDCP and DHCCP Planning Phase funds between milestones or between milestones and engineering.
2. To ensure the Contractor can meaningfully contribute as an Applicant and Responsible Agency, the Public Water Agencies and DWR will collaborate to complete the BDCP and DHCCP Planning Phase. DWR will meet regularly with Public Water Agencies to discuss and consider all elements of the BDCP and DHCCP Planning Phase. DWR will provide the Contractor, through the Public Water Agencies, all work-product (including working drafts) related to the HCP/NCCP and EIS/EIR, including engineering.
3. DWR shall provide to the Contractor, through the Public Water Agencies, an engineering project plan and engineering schedule before the Contractor, through the Public Water Agencies, shall provide funding approval for preliminary engineering. Within 10 days of issuing a Record of Decision and Notice of Determination on the BDCP and DHCCP EIR/EIS, DWR shall convene a meeting of the Supplemental Funding

Contractors to review the status of the project and to determine whether there is continued interest and willingness to fund the BDCP and DHCCP Planning Phase, including any additional engineering work.

4. DWR charges to the Contractor for any and all activities or services related to or supporting the BDCP and DHCCP components of the BDCP and DHCCP Planning Phase, regardless of whether performed by a consultant, by DWR staff or by another agency, shall be pursuant to the budget contained in Exhibit 4, and shall not exceed DWR's share of the BDCP and DHCCP Planning Phase costs: 50 million dollars (\$50,000,000).
5. In addition to the items DWR shall provide to the Contractor, through the Public Water Agencies, pursuant to Section D(2)(n), above, DWR shall also provide all draft work orders and contracts for any work to be performed, including agreements between DWR and a consultant and DWR and another government agency, during the BDCP and DHCCP Planning Phase, including on the BDCP HCP-NCCP, EIS/EIR and preliminary engineering for review by the Public Water Agencies prior to approval by DWR.
6. DWR shall collect no more than 34 million dollars (\$34,000,000) from the Supplemental Funding Contractors in 2012 and DWR shall collect the remaining funds in 2013 and/or 2014 up to 50 million dollars (\$50,000,000).

At the end of the Planning Phase, if there are unspent funds that have been previously collected from the Public Water Agencies by DWR to fund the BDCP and DHCCP Planning Phase, DWR shall return the unspent funds to the appropriate Public Water Agencies. If DWR is precluded by law from returning unspent funds, DWR shall provide each appropriate Public Water Agency a credit that can be applied to any charges levied by DWR against the Public Water Agency. Reclamation's unspent funds should be handled in a manner consistent with the appropriate assistance agreement with DWR.

**F. DHCCP Supplemental Funding Pay-Go Charge**

1. Before DWR may expend any DHCCP Supplemental Funding Pay-Go Charge Funds provided pursuant to this Agreement, the following conditions must be satisfied: (i) this Agreement is fully executed by the Parties; (ii) all BDCP and DHCCP Supplemental Funding Agreements are fully executed by Supplemental Funding Contractors that receive their water from the SWP and have agreed to pay the Department's Share of



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the BDCP and DHCCP Planning Phase costs; (iii) the First Amended MOA is in full force and effect; and (iv) amended agreements with the Public Water Agencies that receive water from the CVP have been fully executed by all parties in which they have agreed to pay the federal share of the BDCP-DHCCP Planning Phase costs, and (v) the 140 million dollars (\$140,000,000) made available through the original DHCCP SWP Funding Agreement, through the federal water users agreement, and from Reclamation, has been fully committed.

2. DWR shall recover the Department's share of the DHCCP Planning Phase Supplemental Costs through the DHCCP Supplemental Funding "Pay-Go Charge." The DHCCP Supplemental Funding Pay-Go Charge shall recover these costs incurred, or to be incurred, by DWR for the DHCCP Planning Phase costs beginning after the 140 million dollars (\$140,000,000) has been committed, and unless terminated pursuant to Section I, below, shall continue until the BDCP-DHCCP Planning Phase is completed, the date that the Department's Share, 50 million dollars (\$50,000,000) of the BDCP Planning Phase Supplemental Costs are spent, or December 31, 2014, whichever is earlier.
3. To facilitate billing on a calendar year basis, the DHCCP Supplemental Funding Pay-Go Charge shall be computed and included in the Contractor's and other Supplemental Funding Contractor's Annual Statements of Charges as long as this Agreement is in effect under the Transportation Minimum Component, and shall be collected in equal monthly payments as described in the Contractors' Water Supply Contract. The DHCCP Supplemental Funding Pay-Go Charges shall initially be based on estimates of costs determined pursuant to Exhibits 4 and 5. Notwithstanding the termination of this Agreement, the Parties recognize that any final adjustment will be made subsequent to this Agreement.
4. The DHCCP Supplemental Funding Pay-Go Charge will be allocated to each Supplemental Funding Contractor in proportion to the ratio of its Annual Supplemental Funding Table A Amount to the sum of all Contractor's Annual Supplemental Funding Table A Amounts. Attached hereto as Exhibit 5 are tables showing each Supplemental Funding Contractor's percent share of the Supplemental DHCCP Planning Phase Supplemental Costs for the term of this BDCP and DHCCP Supplemental Funding Agreement. As these charges are adjusted, or should there be a change in the ratio due to a withdrawal of a Supplemental Funding Contractor from the BDCP-DHCCP Planning Phase, revised versions of Exhibit 5 shall be attached hereto, without constituting an amendment of this Agreement.

5. The combined total of the Department's Share of DHCCP Planning Phase Supplemental Costs and BDCP Planning Phase Supplemental Costs funded through the BDCP and DHCCP Supplemental Funding Agreement shall not exceed 50 million dollars (\$50,000,000).

**G. BDCP Supplemental Funding Charge**

1. DWR shall recover the Department's share of the BDCP Planning Phase Supplemental Costs through the BDCP Supplemental Funding Charge. The BDCP Supplemental Funding Charge shall recover costs incurred by DWR for the BDCP component of the BDCP and DHCCP Planning Phase beginning in January, 2012, and unless terminated pursuant to Section I, below, shall continue until the BDCP-DHCCP Planning Phase is completed, the date that the Department's Share, 50 million dollars (\$50,000,000) of the BDCP Planning Phase Supplemental Costs are spent, or December 31, 2014, whichever is earlier.
2. To facilitate billing on a calendar year basis, the BDCP Supplemental Funding Charge shall be computed and included in the Contractor's and other Supplemental Funding Contractor's Annual Statements of Charges as long as this Agreement is in effect under the Transportation Minimum Component, and shall be collected in equal monthly payments as described in the Contractors' Water Supply Contract. The BDCP Supplemental Funding Charge shall initially be based on estimates of costs determined pursuant to Exhibit 4. Notwithstanding the termination of this Agreement, the Parties recognize that any final adjustment will be made subsequent to this Agreement.
3. The BDCP Supplemental Funding Charge will be allocated to each Supplemental Funding Contractor in proportion to the ratio of its Annual Supplemental Funding Table A Amount to the sum of all Contractors' Annual Supplemental Funding Table A Amounts. Attached hereto as Exhibit 5 are tables showing each Supplemental Funding Contractor's percent share of the BDCP Planning Phase Supplemental Costs for the term of this BDCP and DHCCP Supplemental Funding Agreement. As these charges are adjusted, or should there be a change in the ratio due to a withdrawal of a Supplemental Funding Contractor from the BDCP-DHCCP Planning Phase, revised versions of Exhibit 5 shall be attached hereto, without constituting an amendment of this Agreement.
4. This Agreement includes BDCP and DHCCP related costs incurred by the Department of Environmental Services ("DES"), the Attorney General's Office, the Office of the Chief Counsel, and, if needed DFG. To the extent these costs were previously billed to the SWP Water Contractors as

BDCP charges for 2012, DWR will issue a re-bill reallocating these costs to the Supplemental Funding Contractors.

5. The combined total of the Department's Share of DHCCP Planning Phase Supplemental Costs and BDCP Planning Phase Supplemental Costs funded through the BDCP and DHCCP Supplemental Funding Agreement shall not exceed 50 million dollars (\$50,000,000).

**H. Reimbursement for Supplemental Program Costs**

1. If the BDCP is approved to proceed with construction, DWR intends to issue Revenue Bonds to pay for such construction. DWR shall include in the first issue of Revenue Bonds, pursuant to and consistent with Treasury Regulation 1.150-2, an amount sufficient to reimburse the Contractor and all other Participating SWP Contractors and Supplemental Funding Contractors for all planning costs paid through the DHCCP Supplemental Funding Pay-Go Charges, for the DHCCP Planning Phase Supplemental Costs (Pay-Go Charge), and the BDCP Supplemental Funding Charge. DWR has adopted the necessary documents to conform to the IRS requirements to allow such costs to be included in a future revenue bond issue.
2. If the BDCP and DHCCP is not approved to proceed with construction, no reimbursements of BDCP and DHCCP Planning Phase Supplemental Costs will occur. The Contractor recognizes that, should the BDCP not be approved to proceed with construction, the Contractor may pay costs for the BDCP and DHCCP Planning Phase that are greater than the amount it would have paid if other means of funding the Program, including under the Water Supply Contract, had been utilized. The Contractor waives any claims it may have with respect to the greater amount that may be paid by it under this Agreement.
3. Notwithstanding anything set forth in this Agreement or decided pursuant to the terms of the First Amended MOA, the maximum amount of the Department's Share of the BDCP and DHCCP Planning Phase costs funded through this Agreement shall not exceed 50 million dollars (\$50,000,000).
4. The provisions of this Section H of this Agreement shall survive termination of this Agreement and/or the First Amended MOA.

**I. Withdrawal and Termination**

1. If DWR and/or all of the Public Water Agencies withdraw from the First Amended MOA, all BDCP and DHCCP Supplemental Funding Agreements shall terminate. If Reclamation or any of the individual Supplemental Funding Contractors withdraw from the First Amended MOA and/or the BDCP and DHCCP Supplemental Funding Agreement, the Contractor shall notify DWR within seven days of the effective date of the withdrawal as to whether it intends to continue operating under the BDCP and DHCCP Supplemental Funding Agreement. Failure to provide such notice shall be deemed an agreement to continue as a Party to the BDCP and DHCCP Supplemental Funding Agreement.
2. The Contractor or the Department may withdraw from the First Amended MOA and the BDCP and DHCCP Supplemental Funding Agreement upon 30 days written notice to the remaining Supplemental Funding Contractors and the Department. If the Contractor or DWR intends to withdraw it shall, coincident with providing notice, provide a detailed written explanation explaining why the Contractor or the Department intends to withdraw. The entity providing notice may rescind that notice or extend the date on which withdrawal is effective.
3. If the First Amended MOA terminates, this Agreement shall terminate. However, notwithstanding anything to the contrary set forth in the First Amended MOA, the Department agrees that it will not withdraw from the First Amended MOA as long as the Department's Share of the BDCP and DHCCP Planning Phase costs remains fully funded. The Department shall remain responsible for administering the provisions of this Agreement that survive termination or withdrawal.
4. If the Contractor is a Party to the First Amended MOA, the Contractors' withdrawal from this Agreement shall be deemed a withdrawal from the First Amended MOA.
5. If one or more Supplemental Funding Contractors' withdraw from their Agreement, and the Contractor decides to continue operating under this Agreement, then the Contractor's cost allocation share and the cost allocation shares of all other remaining SWP Water Supply Contractors will be changed to reflect the new ratios of their DHCCP and BDCP Table A Amounts. Such adjustment shall be made through a revised billing payable in equal installments over the remainder of the then current calendar year or six months from the date the revised billing is received by the Contractor, whichever is longer. The Department shall transmit the



revised billing to the Contractor within 60 days of the effective date of the withdrawal that triggered the revised cost allocation.

6. In the event of the termination of this Agreement or the Contractor's noticed withdrawal from this Agreement, the Contractor shall no longer be obligated to fund any costs related to elements of the BDCP and DHCCP Planning Phase that are subsequently approved by the Department or that were approved by the Department less than 60 days prior to the date the notice of withdrawal was transmitted to the Department pursuant to Section I.2. However, the Contractor shall remain responsible for its share of the costs of completing any BDCP-DHCCP Planning Phase element approved prior to the dates set forth above. In the event that the Contractor terminates this Agreement, DWR shall provide a detailed statement to the Contractor within 60 days of termination indicating which BDCP and DHCCP Planning Phase charges the Contractor is responsible; and DWR shall refund or credit the Contractor for any overpayments within 90 days of termination.
7. If termination of the First Amended MOA occurs concurrent with or after the Contractor's notice of withdrawal from this Agreement but prior to the effective date of the Contractor's withdrawal from this Agreement, the Contractor is obligated to pay its share of the reasonable termination costs incurred in fulfillment of the BDCP and DHCCP Planning Phase or the objectives of the First Amended MOA. The total termination costs will be shared on an equal 50-50 basis between the State and federal interests. As used in this subsection, termination costs are those costs associated with early termination of consultant contracts.
8. The provisions of Section I shall survive termination of this Agreement and the First Amended MOA.

**J. Recovery Of Contributed Funds If Contractor Withdraws And Future Processes**

1. In the event the Contractor or a Supplemental Funding Contractor provides a notice of withdrawal that terminates this Agreement, the Parties agree that such withdrawal shall not affect the Contractor's rights or responsibilities under Section J of this Agreement.
2. Subsequent to execution of this Agreement, the Parties agree to promptly commence discussions, in conjunction with all other Public Water Agencies, regarding the terms and conditions for funding, financing, and implementing the BDCP and DHCCP. The Parties intend that such discussions shall result in an agreement of principles for funding,

financing, and implementing the BDCP and DHCCP ("Implementation Principles Agreement"). Among other things, the Implementation Principles Agreement shall establish how the costs and benefits of the BDCP and DHCCP are to be determined and allocated, and shall provide that: (1) if the BDCP and DHCCP is approved and implemented, then the Parties to the DHCCP SWP Funding Agreements or the BDCP and DHCCP Supplemental Funding Agreements who do not participate in implementation of the new conveyance will be reimbursed the funds they contributed under those agreements, and (2) if any SWP Water Contractor does not participate in implementation of the new conveyance, it shall not be entitled to any benefits provided by the new conveyance, including any new, existing, additional, or incremental water supplies attributable to or made available by the BDCP and DHCCP in any given year.

3. All SWP Water Supply Contractors, whether or not they were original parties to the DHCCP SWP Funding Agreements or the BDCP and DHCCP Supplemental Funding Agreements and whether or not they have withdrawn from either or both of those agreements, shall be entitled to fully participate in the discussions and development of the Implementation Principles Agreement.

**K. Invoices, Notices Or Other Communications**

1. All invoices, notices, or other communications required under this Agreement will be in writing, and will be deemed to have been duly given upon the date of service, if: (i) served personally on the Party to whom notice is to be given; (ii) sent by electronic mail, and the Party to whom notice is to be given confirms receipt; or (iii) on the third day after mailing, if mailed to the Party to whom invoice, notice or other communication is directed, by first-class mail, postage prepaid, and properly addressed to the designated representative(s) of the Party set forth below.

DWR: Chief, State Water Project Analysis Office  
Department of Water Resources  
State Water Project Analysis Office  
Department of Water Resources  
1416 Ninth Street, Room 1620  
Post Office Box 942836  
Sacramento, California 94236-0001

Contractor: Palmdale Water Agency

2. The time for providing any payments, notices, or other communications specified in this Agreement may be extended within the term of this Agreement with the consent of the Parties, confirmed in writing, without requiring an amendment to this Agreement.

**L. No Delegation of Authorities**

1. Nothing in the BDCP and DHCCP Supplemental Funding Agreements constitutes a delegation by any Party of its existing authority to make any decision it is mandated to make.
2. Nothing in the BDCP and DHCCP Supplemental Funding Agreements shall limit DWR's final decision-making authority at the time of project approval or issuance of a Notice of Determination.
3. All provisions of this Agreement are intended and will be interpreted to be consistent with all applicable provisions of State and federal law. The undersigned recognize that public agency signatories to the BDCP and DHCCP Supplemental Funding Agreements have specific statutory responsibilities, and that actions of these public agencies must be consistent with applicable procedural and substantive requirements of State and federal law. Nothing in this Agreement is intended to, nor will have the effect of, constraining or limiting any public entity in carrying out its statutory responsibilities. Nothing in this Agreement constitutes an admission by any party as to the proper interpretation of any provision of law, nor will it have the effect of, waiving or limiting any public entity's rights and remedies under applicable law.
4. Execution of this Agreement does not constitute a waiver by any signatory of any rights or remedy it may have, nor does execution constitute pre-approval of any project or preferred project alternative, or waive or otherwise abridge responsible trustee duties required, or discretion authorized, under State and federal law.

**M. Amendments**

Except for the addition of exhibits as authorized herein, this Agreement may be amended or modified only by a subsequent written agreement approved and executed by the Parties.

**N. Agreement Conformity**

All BDCP and DHCCP Supplemental Funding Agreements entered into by DWR and Supplemental Funding Contractor shall be substantially uniform.

**O. No Amendment to Water Supply Contract**

This Agreement does not amend, abridge, or modify the Water Supply Contract in any way.

**P. Applicable Law**

This Agreement will be construed under and will be deemed to be governed by the laws of the United States and the State of California.

**Q. Complete Contract**

This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this Agreement among the Parties concerning the subject matter, and supersedes all prior negotiations, representations or agreement, either oral or written, that may be related to the subject matter of this BDCP-DHCCP Supplemental Funding Agreements, except as to those other agreements that are expressly referred to in this Agreement.

**R. Execution in Counterparts**

This Agreement may be executed in counterpart, each of which shall constitute an original, but all of which shall constitute one and the same Agreement. Each signing Party shall have received a copy of the signature page signed by every other Party.



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**IN WITNESS WHEREOF**, the Parties hereto, by their authorized representatives,  
have executed this Agreement on the last date set forth below.

Approved as to Legal Form  
and Sufficiency

State of California  
Department of Water Resources

\_\_\_\_\_  
Cathy Crothers  
Chief Counsel

\_\_\_\_\_  
Mark W. Cowin  
Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Legal Form  
and Sufficiency

Palmdale Water Agency

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# EXHIBIT 1

## BDCP EIR/EIS Schedule 8/9/11

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Task	Date to Agencies	Review Complete
<b>BDCP: EIR/EIS Work Plan and Section Review</b>		
Prepare Work Plan and Schedule	12-Aug-11	26-Aug-11
<b>BDCP: Alternatives Descriptions</b>		
Prepare Alternatives Description	2-Sep-11	16-Sep-11
<b>BDCP: Admin Draft EIR/EIS</b>		
Prepare Batch A Chapters (e.g., Social Environment)	11-Nov-11	9-Dec-11
Prepare Batch B Chapters (e.g., Physical Environment)	7-Dec-11	4-Jan-12
Prepare Batch C Chapters (e.g., Aquatics, Terrestrial, Surface Water, Water Quality, and Supply)	27-Feb-12	27-Mar-12
1st Admin Draft and Review (Includes comments on batches A & B)	27-Feb-12	26-Apr-12
2nd Admin Draft and Review	9-May-12	4-Jun-12
Check Copy	11-Jun-12	17-Jun-12
File Public Draft EIR/EIS with EPA	22-Jun-12	28-Jun-12
EPA Publishes Draft EIS	29-Jun-12	
<b>BDCP: Draft Public Review Period</b>		
Public Review and Conduct Hearings (90 days)	29-Jun-12	26-Sep-12
<b>BDCP: Response to Comments on Draft EIR/EIS</b>		
Prepare Responses to Comments	12-Oct-12	26-Oct-12
Initiate Formal Consultation	2-Oct-12	
<b>BDCP: Prepare Final EIR/EIS</b>		
Prepare Admin Draft Final EIR/EIS	15-Nov-12	29-Nov-12
Prepare Final EIR/EIS	20-Dec-12	20-Dec-12
<b>BDCP: Final EIR/EIS Review</b>		
Public Review and Conduct Hearings (30 days)	20-Dec-12	18-Jan-13
Prepare Responses to Comments	4-Feb-13	15-Feb-13
Prepare ROD (Final EIR/EIS Complete)	15-Feb-13	

# EXHIBIT 1

## BDCP Chapter 5 (Effects Analysis) Schedule 8/9/11

Page 2 of 2

Task	Date to Agencies	Review Complete
<b>BDCP: Chapter 5: Conceptual Foundation &amp; Analytical Framework</b>		
Technical Appendix (Conceptual Foundation)	8-Aug-11	24-Aug-11
Technical Appendix (Analytical Framework)	8-Aug-11	24-Aug-11
<b>BDCP: Chapter 5: Entrainment</b>		
Technical Appendix (Entrainment)	24-Aug-11	14-Sep-11
Delta Science Review (C. Foundation, A. Framework, Entrainment)	15-Sep-11	14-Oct-11
<b>BDCP: Chapter 5: Flow, Passage, &amp; Salinity</b>		
Technical Appendix (Flow, Passage & Salinity)	30-Sep-11	21-Oct-11
<b>BDCP: Chapter 5: Water Quality</b>		
Technical Appendix (Water Quality)	14-Oct-11	4-Nov-11
<b>BDCP: Chapter 5: Fish Population Analysis</b>		
Technical Appendix (Fish Population Analysis)	25-Nov-11	16-Dec-11
<b>BDCP: Chapter 5: Habitat Restoration</b>		
Technical Appendix (Habitat Restoration)	16-Dec-11	6-Jan-12
<b>BDCP: Chapter 5: Ecological Effects</b>		
Technical Appendix (Ecological Effects)	16-Dec-11	20-Jan-12
<b>BDCP: Chapter 5: Appendix - Analysis Not Used</b>		
Technical Appendix (Analysis Not Used)	16-Dec-11	6-Jan-12
<b>BDCP: Chapter 5: Terrestrial Species Analysis</b>		
Technical Appendix (Terrestrial Species Analysis)	16-Nov-11	16-Jan-12
<b>BDCP Chapter 5 (Roll-up)</b>		
Agency and Delta Science Review	27-Feb-12	27-Mar-12
<b>BDCP Chapter 5 (Effects Analysis)</b>		
Chapter 5 Complete	9-Apr-12	

## **EXHIBIT 2**

### **STATE WATER PROJECT CONTRACTORS AUTHORITY ("SWPCA") MEMBERS**

ALAMEDA CO FC&WCD - ZONE 7

ALAMEDA COUNTY WD

ANTELOPE VALLEY-EAST KERN WA

CASTAIC LAKE WA

COACHELLA VALLEY WD

COUNTY OF KINGS

CRESTLINE-LAKE ARROWHEAD WA

DESERT WATER AGENCY

DUDLEY RIDGE WD

KERN COUNTY WATER AGENCY

METROPOLITAN WD OF SC

MOJAVE WATER AGENCY

NAPA COUNTY FC&WCD

PALMDALE WD

PLUMAS COUNTY FC&WCD

SAN BERNARDINO VALLEY MWD

SAN GABRIEL VALLEY MWD

SAN GORGONIO PASS WA

CENTRAL COAST WATER AUTH.

SANTA CLARA VALLEY WD

SOLANO COUNTY WA

TULARE LAKE WSD



### EXHIBIT 3

#### Participating SWP Contractors That Have Executed An Original DHCCP Funding Agreement

Contract No.	SWP Contractor/Agency
09900	Metropolitan Water District of Southern California
09901	Kern County Water Agency
09902	Antelope Valley-East Kern Water Agency
09903	Coachella Valley Water District
09904	San Bernardino Valley Municipal Water District
09905	Santa Clara Valley Water District
09906	Tulare Lake Basin Water Storage District
09907	Castaic Lake Water Agency
09908	Alameda County Flood Control & Water Conservation District-Zone 7
09909	Mojave Water Agency
09911	Desert Water Agency
09912	Solano County Water Agency
09913	Santa Barbara County Flood Control & Water Conservation District
09914	Alameda County Water District
09915	Napa County Flood Control & Water Conservation District
09916	San Gabriel Valley Municipal Water District
09917	San Luis Obispo Co. Flood Control & Water Conservation District
09918	Palmdale Water Agency
09919	San Geronio Pass Water Agency
09920	Crestline-Lake Arrowhead Water Agency

**Exhibit 4**

Phase	Amount
Admin Draft Phase	12,165,353
Public Draft Phase	5,481,600
Final Draft Phase	22,029,954
Engineering Allowance	48,653,562
Contingency	11,669,531
<b>Total</b>	<b>100,000,000</b>

Contingency - 20% of Phase

Contingency - 20% of Phase

**Estimated Supplemental BDCP-DHCCP Proportional Factors and Charges for 2012, 2013 and 2014**  
**For Participating State Water Project Contractors**

Agency	2012			2013			2014			Estimated Total Charges [3+6+9]
	Annual Table A	Percent of Table A	Estimated Charge	Annual Table A	Percent of Table A	Estimated Charge	Annual Table A	Percent of Table A	Estimated Charge	
	[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]	[10]
<b>PARTICIPATING CONTRACTORS</b>										
Napa	29,025	0.0071450	242,930	29,025	0.007145	71,450	29,025	0.007145	42,870	357,250
Solano	47,606	0.0117190	398,446	47,656	0.011731	117,310	47,706	0.011744	70,464	586,220
Zone 7	80,619	0.0198460	674,764	80,619	0.019846	198,460	80,619	0.019846	119,076	992,300
ACWD	42,000	0.0103390	351,526	42,000	0.010339	103,390	42,000	0.010339	62,034	516,950
Santa Clara	100,000	0.0246170	836,978	100,000	0.024617	246,170	100,000	0.024617	147,702	1,230,850
San Luis	25,000	0.0061540	209,236	25,000	0.006154	61,540	25,000	0.006154	36,924	307,700
Santa Barbara	45,486	0.0111970	390,698	45,486	0.011197	111,870	45,486	0.011197	67,182	559,850
KCWA - M&I	134,600	0.0331350	1,126,590	134,600	0.033134	331,340	134,600	0.033134	198,804	1,656,734
KCWA - AG	848,130	0.2087860	7,098,724	848,130	0.208784	2,087,840	848,130	0.208781	1,252,686	10,439,250
Tulare	88,922	0.0218900	744,260	88,922	0.021890	218,900	88,922	0.021890	131,340	1,094,500
AV-EK	141,400	0.0348090	1,183,506	141,400	0.034808	348,080	141,400	0.034808	208,848	1,740,434
Castaic	95,200	0.0234360	796,824	95,200	0.023435	234,350	95,200	0.023435	140,610	1,171,784
Coachella	138,350	0.0340580	1,157,972	138,350	0.034058	340,580	138,350	0.034057	204,342	1,702,894
Crestline	5,800	0.0014280	48,552	5,800	0.001428	14,280	5,800	0.001428	8,568	71,400
Desert	55,750	0.0137240	466,616	55,750	0.013724	137,240	55,750	0.013724	82,344	686,200
Mojave	82,800	0.0203830	693,022	82,800	0.020383	203,830	82,800	0.020383	122,298	1,019,150
Palmdale	21,300	0.0052430	178,262	21,300	0.005243	52,430	21,300	0.005243	31,458	262,150
San Bernardino	102,600	0.0252570	856,738	102,600	0.025257	252,570	102,600	0.025257	151,542	1,262,850
San Gabriel	28,800	0.0070900	241,060	28,800	0.007090	70,900	28,800	0.007090	42,540	354,500
San Geronimo	17,300	0.0042590	144,806	17,300	0.004259	42,590	17,300	0.004259	25,554	212,950
MWDSC	1,911,500	0.4705620	15,999,108	1,911,500	0.470555	4,705,550	1,911,500	0.470546	2,823,276	23,527,934
Ventura	20,000	0.0049230	167,392	20,000	0.004923	49,230	20,000	0.004923	29,538	246,150
<b>Subtotal</b>	<b>4,062,188</b>	<b>1.0000000</b>	<b>34,000,000</b>	<b>4,062,238</b>	<b>1.0000000</b>	<b>10,000,000</b>	<b>4,062,288</b>	<b>1.0000000</b>	<b>6,000,000</b>	<b>50,000,000</b>
<b>NON-PARTICIPATING</b>										
Dudley Ridge	50,343	0	0	50,343	0	0	50,343	0	0	0
Empire	3,000	0	0	3,000	0	0	3,000	0	0	0
Kings County	9,305	0	0	9,305	0	0	9,305	0	0	0
Oak Flat	5,700	0	0	5,700	0	0	5,700	0	0	0
Litterock	2,300	0	0	2,300	0	0	2,300	0	0	0
Yuba	9,600	0	0	9,600	0	0	9,600	0	0	0
Butte	27,500	0	0	27,500	0	0	27,500	0	0	0
Plumas	2,320	0	0	2,410	0	0	2,500	0	0	0
<b>Subtotal</b>	<b>110,068</b>	<b>0</b>	<b>0</b>	<b>110,158</b>	<b>0</b>	<b>0</b>	<b>110,248</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Grand Total</b>	<b>4,172,256</b>	<b>N/A</b>	<b>34,000,000</b>	<b>4,172,396</b>	<b>N/A</b>	<b>10,000,000</b>	<b>4,172,536</b>	<b>N/A</b>	<b>6,000,000</b>	<b>50,000,000</b>

**Note 1 -** Each SWPC participating in DHCCP will be charged a DHCCP Supplemental Funding "Pay-Go Charge" allocated in proportion to the ratio of its Table A Amount to the sum of all the Participating SWPC's Table A Amounts.

**Note 2 -** SWPC's Annual Table A, based on Bulletin 132-2017.

**Note 3 -** SWPC's Annual Table A could change as a result of a permanent transfer of Table A.

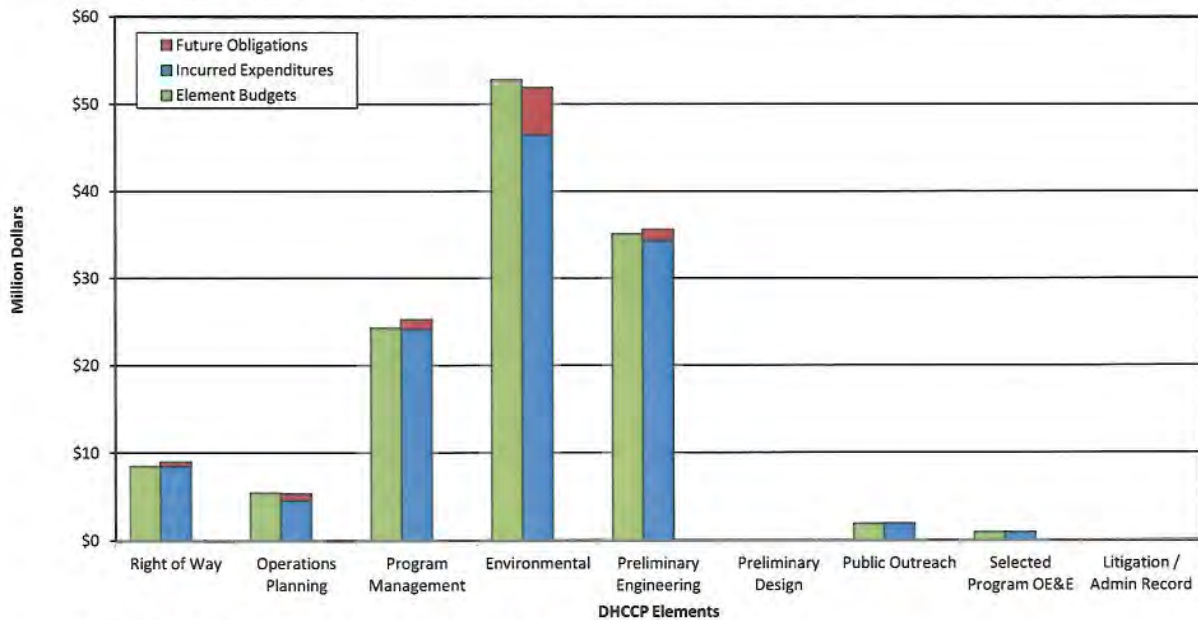
**Note 4 -** Estimated SWP's Share by Calendar year (2010-\$34m, 2013-\$10m, and 2014-\$5m)



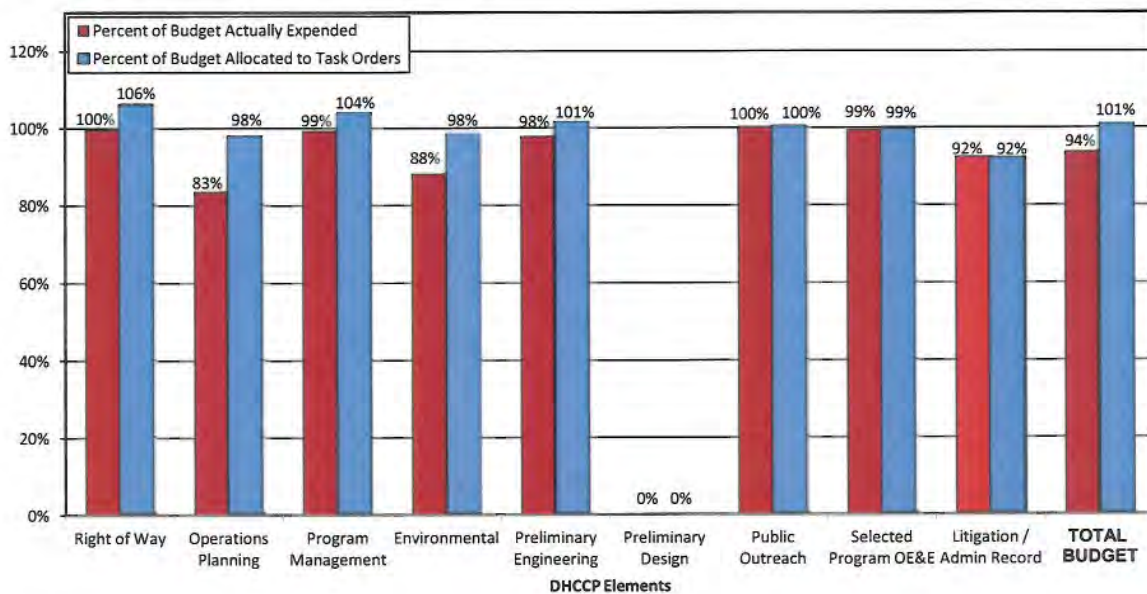
## DHCCP Element Budgets and Expenditures through November 30, 2011.

*Based a Current DHCCP Working Budget of \$129,024,450.*

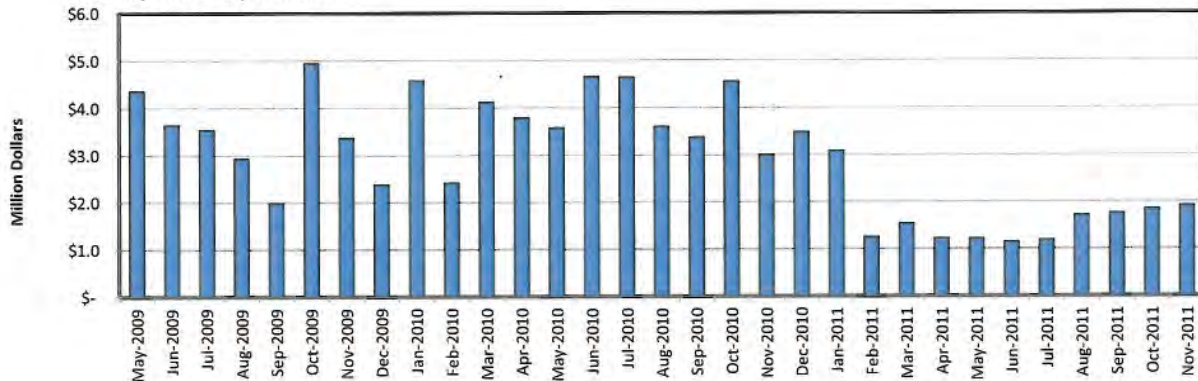
Incurred and Future Obligations Associated with Executed Task Orders Compared to Total DHCCP Element Budgets



Percentage of Executed Task Order Values Expended



Monthly DHCCP Expenditures





**State Water Project Contractors**  
**Summary of Expected DHCCP Supplemental Funding Agreement Participants**  
**As of January 5, 2012**

	Table A Amounts Maximum (acre-feet)	Cumulative % of		Expected DHCCP Share of \$50 million	Intent to Request Board to Consider	Expected Date of Board Consideration	Notified SWPCA of Board Approval
		Table A	Table A				
1	Alameda Co FC&WCD - Zone 7	80,619	1.93%	1.93%	✓	2011	✓
2	Alameda County WD	42,000	1.01%	2.94%	✓	2011	✓
3	Antelope Valley-East Kern WA	141,400	3.39%	6.33%	✓	1/24/2012	3
4	Castaic Lake WA	95,200	2.28%	8.61%	✓	2011	✓
5	Central Coast Water Authority	45,486	1.09%	9.70%	✓	1/26/2012	5
6	Coachella Valley WD	138,350	3.32%	13.01%	✓	1/10/2012	6
7	Crestline-Lake Arrowhead WA	5,800	0.14%	13.15%	✓	1/5/2012	7
8	Desert Water Agency	55,750	1.34%	14.49%	✓	1/3/2012	✓
9	Kern County Water Agency	982,730	23.55%	38.04%	✓	2011	✓
10	Metropolitan WD Of SC	1,911,500	45.81%	83.85%	✓	2011	✓
11	Mojave Water Agency	89,800	2.15%	86.00%	✓	1/26/2012	11
12	Palmdale WD	21,300	0.51%	86.51%	✓	1/25/2012	12
13	San Bernardino Valley MWD	102,600	2.46%	88.97%	✓	1/17/2012	13
14	San Gabriel Valley MWD	28,800	0.69%	89.66%	✓	2/13/2012	14
15	San Geronimo Pass WA	17,300	0.41%	90.07%	✓	1/3/2012	15
16	San Luis Obispo Co. FC&WCD	25,000	0.60%	90.67%	✓	2010	✓
17	Santa Clara Valley WD	100,000	2.40%	93.07%	✓	2011	✓
18	Tulare Lake Basin WSD	88,922	2.13%	95.20%	✓	2/7/2012	18
	Napa County FC&WCD	29,025	0.70%	95.90%	N/A	N/A	N/A
	Solano County WA	47,756	1.14%	97.04%	N/A	N/A	N/A
	Butte County	27,500	0.66%	97.70%	N/A	N/A	N/A
	Casitas Municipal WD (Ventura County WPD)	20,000	0.48%	98.18%	N/A	N/A	N/A
	City Of Yuba City	9,600	0.23%	98.41%	N/A	N/A	N/A
	County Of Kings	9,305	0.22%	98.63%	N/A	N/A	N/A
	Dudley Ridge WD	43,343	1.04%	99.67%	N/A	N/A	N/A
	Empire - West Side ID	3,000	0.07%	99.74%	N/A	N/A	N/A
	Littlerock Creek ID	2,300	0.06%	99.80%	N/A	N/A	N/A
	Oak Flat WD	5,700	0.14%	99.94%	N/A	N/A	N/A
	Plumas County	2,700	0.06%	100.00%	N/A	N/A	N/A
	<b>Total Table A</b>	<b>4,172,786</b>	<b>100.00%</b>			<b>50,000,000</b>	
	<b>Total Estimated Participating Table A</b>	<b>3,972,557</b>	<b>95.20%</b>				

**A** If CCWA's Board approves the agreement, the County of Santa Barbara will have to sign. It is undetermined at this point if the County will have to obtain approval from the Board of Supervisors (BOS) prior to executing. If approval is needed, it would be on the BOS agenda in early February.

**RE:     *AGENDA ITEM NO. 6.8 – STATUS REPORT ON CASH FLOW  
STATEMENT AND CURRENT CASH BALANCES***

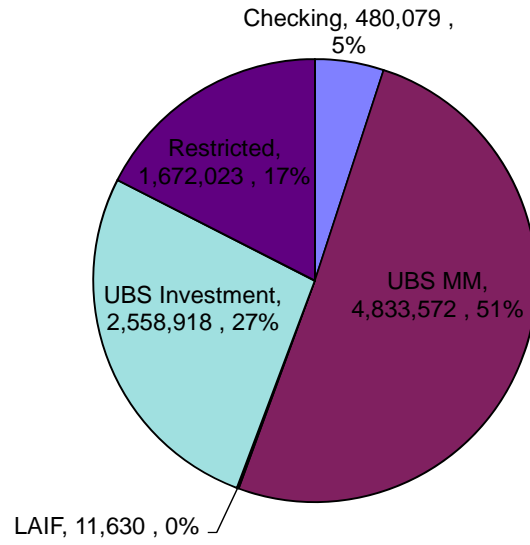
Obviously some of the budget assumptions may change affecting this presentation, and as they are determined I will update the cash flow reports. These reports will be discussed in more detail at the Board meeting.

PALMDALE WATER DISTRICT  
INVESTMENT FUNDS REPORT

				December 31, 2011		December-11	November-11
DESCR	A/C #					VALUE	VALUE
<b>CASH</b>							
0-0103	Citizens/US Bank - Checking					422,822.00	938,833.00
0-0104	Citizens- Merchant					53,557.00	82,882.00
					Bank cash	476,379.00	1,021,715.00
0-0119	PETTY CASH					300.00	300.00
0-0120	CASH ON HAND					3,400.00	3,400.00
	<b>TOTAL CASH</b>					<b>480,079.00</b>	<b>1,025,415.00</b>
<b>INVESTMENTS</b>							
0-0110	UBS ACCOUNT SS 11469 GG						
	UBS RMA Government Portfolio					3,862,434.91	1,025,920.55
	UBS Bank USA Dep acct					250,000.00	250,000.00
						4,112,434.91	1,275,920.55
0-1110	UBS ACCOUNT SS 11475 GG						
	UBS Bank USA Dep acct					721,137.11	721,275.67
	UBS RMA Government Portfolio					0.00	0.00
						721,137.11	721,275.67
0-0115	LAIF					11,630.12	11,630.12
0-0111	UBS ACCOUNT SS 11432 GG						
	UBS Bank USA Dep acct					0.00	0.00
	UBS RMA Government Portfolio					113,158.98	113,157.69
	Accrued interest					20,643.09	14,676.41
	US GOVERNMENT SECURITIES:						
	ISSUE	EXPIR				MARKET	MARKET
	DATE	ISSUER	DATE	RATE	PAR	VALUE	VALUE
		FNMA	04/11/12	5.375	500,000	506,250.00	508,210.00
		FHLB	01/20/15	3.00	500,000	500,520.00	501,495.00
		FHLB	04/16/15	2.90	400,000	402,536.00	403,360.00
		FHLB	10/26/15	1.625	500,000	512,405.00	510,125.00
		FNMA	07/27/16	2.00	500,000	503,405.00	503,425.00
					2,400,000.00	2,425,116.00	2,426,615.00
	<b>TOTAL MANAGED ACCOUNT</b>					2,558,918.07	2,554,449.10
	<b>TOTAL INVESTMENTS</b>					7,404,120.21	4,563,275.44
	<b>TOTAL UNRESTRICTED CASH</b>					<b>7,884,199.21</b>	<b>5,588,690.44</b>
<b>RESTRICTED CASH</b>							
0-1120	1998 Debt Reserve Fund						
	FHLB par 1.4Mil matures 10/18/13 3.625% interest					1,479,625.00	1,483,160.00
	Federated Treasury Obligation MM					182,106.67	182,106.67
	Accrued interest					10,290.97	6,061.80
	<b>TOTAL Restricted CASH</b>					<b>1,672,022.64</b>	<b>1,671,328.47</b>
	<b>GRAND TOTAL CASH AND RESTRICTED CASH</b>					<b>9,556,221.85</b>	<b>7,260,018.91</b>
		Checking		480,079			
		UBS MM		4,833,572			
		LAIF		11,630			
		UBS Investment		2,558,918			
		Restricted		1,672,023			
		Total		9,556,222			

PALMDALE WATER DISTRICT  
INVESTMENT FUNDS REPORT

December 31 2011 cash





<u>Palmdale Water Cash Flow</u>			Projected	budget		w/ adjustments	model
<u>PWD Cash flow from 1999 thru 2010</u>		2010	2011	2012		2012	2012
Operating Cash Beginning of Year		7,116,441	6,496,336	7,884,199		7,884,199	7,884,199
Operating Activities							
Net Operating Revenues		21,684,514	22,107,521	22,045,000		22,045,000	22,045,000
Net Operating Expenses		20,610,956	18,421,413	21,698,100		21,698,100	18,445,000
Increase in revenue or decrease in expenses						(1,114,230)	
Net cash provided by operating activities		1,073,558	3,686,108	346,900		1,461,130	3,600,000
						5.1% exp decr	
Other Sources and Uses of Cash							
Assessments received		5,790,877	4,826,074	5,500,000		5,500,000	5,500,000
Payments for State Water Project		(2,535,815)	(2,247,307)	(2,261,286)		(2,261,286)	(2,261,286)
Capital Improvement Fees Received		55,967	1,225,519	1,286,848		1,286,848	1,286,848
Infrastructure expenditures		(3,514,159)	(3,079,830)	(2,550,500)		(2,550,500)	(2,550,500)
Principal paid on Long Term Debt		(1,125,000)	(1,170,000)	(1,220,000)		(1,220,000)	(1,220,000)
Interest Paid on Long Term Debt		(2,561,976)	(2,465,142)	(2,414,192)		(2,414,192)	(2,414,192)
Capital leases				(212,000)		(212,000)	(212,000)
State Grants and Other Income		2,115,264	533,944	350,000		350,000	350,000
Interest on Investments		81,179	78,497	60,000		60,000	60,000
Net Cash Provided by Other Sources and Uses		(1,693,663)	(2,298,245)	(1,461,130)		(1,461,130)	(1,461,130)
Net Increase (Decrease) in Cash		(620,105)	1,387,863	(1,114,230)		0	2,138,870
Operating Cash End of Year		6,496,336	7,884,199	6,769,969		7,884,199	10,023,069
Restricted Cash		1,626,295	1,672,023	1,695,000		1,695,000	1,695,000
Total Cash		8,122,631	9,556,222	8,464,969		9,579,199	11,718,069

REVISED 01/12/12	<u>2011</u>	<u>2011</u>	<u>2011</u>	<u>2011</u>	<u>2011</u>	<u>2011</u>	<u>2011</u>	<u>2011</u>	<u>2011</u>	<u>2011</u>	<u>2011</u>	<u>2011</u>	
	January	February	March	April	May	June	July	August	September	October	November	December	YTD
Water Sales	1,459,054	1,489,425	1,594,411	1,519,930	1,638,144	1,876,045	2,099,158	2,384,486	2,307,915	1,960,477	1,918,498	1,538,655	21,786,198
	1,459,054	1,489,425	1,594,411	1,519,930	1,638,144	1,876,045	2,099,158	2,384,486	2,307,915	1,960,477	1,918,498	1,538,655	
Beginning Balance	8,162,970	8,838,774	8,297,207	6,943,401	8,069,745	8,131,725	8,013,331	7,522,761	7,222,616	6,350,964	6,862,937	7,260,019	
Water Receipts	2,084,416	1,459,787	1,925,164	1,374,233	1,590,858	1,780,885	2,009,913	2,270,355	2,338,543	2,099,452	1,935,290	1,690,592	22,559,487
Other													
Total Operating Revenue	2,084,416	1,459,787	1,925,164	1,374,233	1,590,858	1,780,885	2,009,913	2,270,355	2,338,543	2,099,452	1,935,290	1,690,592	
Operating Expenses:													
Total Operating Expenses	1,750,319	1,953,541	1,792,604	1,696,748	1,635,685	1,705,689	2,114,887	2,210,426	1,567,197	1,625,101	1,556,771	1,478,907	21,087,875
													1,471,612
Non-Operating Revenue Expenses:													
Assessments, net	507,568	154,799	6,585	1,597,302	252,354	8,694	225,057	122,827			114,247	1,836,641	4,826,074
Special Avek CIF Payment									686,848				686,848
Interest	10	10	10	23,950	21,335	580	9,761	21,854	0	(48)	200	835	78,497
Grant Re-imbursement				76,200			29,562						105,762
Capital Improvement Fees	492,317	0	0	11,955			27,960			4,774			537,006
													0
DWR Refund	17,417			97,567	23,194	15,343	591,517			237,150	80,405	317,077	1,379,670
Other /Palmdale Redevel Agency	20,607	(1,363)	27,474	23,277	7,966	2,937	10,935	8,276	312,085	6,439	9,182	367	428,182
Total Non-Operating Revenues	1,037,919	153,446	34,069	1,830,251	304,849	27,554	894,792	152,957	998,933	248,315	204,034	2,154,920	8,042,039
Capital Expenditures	(215,396)	(97,151)	(159,142)	(277,284)	(93,934)	(117,036)	(115,187)	(145,801)	(58,286)	(64,943)	(29,915)	(16,952)	(1,391,027)
Deposit refunds									(19,283)	(33,883)			(53,166)
SWP Capitalized	(586,624)	(104,108)	(131,379)	(104,108)	(104,108)	(104,108)	(586,620)	(104,107)	(154,031)	(104,107)	(133,056)	(30,951)	(2,247,307)
Prepaid Insurance (paid) refunded	105,808		2,658					(244,240)					(135,774)
Bond Payments Interest			(1,232,571)						(1,232,571)				(2,465,142)
Principal									(1,170,000)				(1,170,000)
System Work for AVEK													0
5,000 AF banked Water										0			0
Capital leases							(11,406)	(18,883)	(7,760)	(7,760)	(22,500)	(22,500)	(90,809)
Legal adjudication fees							(567,175)						(567,175)
													(8,120,400)
Total Cash Ending Balance	8,838,774	8,297,207	6,943,401	8,069,745	8,131,725	8,013,331	7,522,761	7,222,616	6,350,964	6,862,937	7,260,019	9,556,221	1,393,251

REVISED 01/12/12	<u>2012</u>	<u>2012</u>	<u>2012</u>	<u>2012</u>	<u>2012</u>	<u>2012</u>	<u>2012</u>	<u>2012</u>	<u>2012</u>	<u>2012</u>	<u>2012</u>	<u>2012</u>	
	January	February	March	April	May	June	July	August	September	October	November	December	YTD
Water Sales	1,515,000	1,500,000	1,595,000	1,520,000	1,750,000	1,956,000	2,275,000	2,275,000	2,275,000	2,126,500	1,660,000	1,597,500	22,045,000
	1,515,000	1,500,000	1,595,000	1,520,000	1,750,000	1,956,000	2,275,000	2,275,000	2,275,000	2,126,500	1,660,000	1,597,500	
Beginning Balance	9,556,221	9,805,632	9,238,103	7,533,724	10,187,442	10,168,754	10,015,866	9,518,351	9,703,323	6,880,011	6,678,384	6,790,577	
Water Receipts	1,524,462	1,506,000	1,557,000	1,550,000	1,658,000	1,873,600	2,147,400	2,275,000	2,275,000	2,185,900	1,846,600	1,622,500	22,021,462
Other													
Total Operating Revenue	1,524,462	1,506,000	1,557,000	1,550,000	1,658,000	1,873,600	2,147,400	2,275,000	2,275,000	2,185,900	1,846,600	1,622,500	
Operating Expenses:													
Total Operating Expenses	1,767,658	1,887,658	1,652,658	1,647,658	1,657,658	1,717,658	2,105,658	1,722,658	2,321,698	2,067,658	1,564,958	1,570,458	21,684,036
													337,426
Non-Operating Revenue Expensess:													
Assessments, net	607,200	134,001	8,280	1,904,400	300,840	11,040	269,100	172,500			150,420	1,942,219	5,500,000
Special Avek CIF Payment	686,848												686,848
Interest	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
Grant Re-imbursement													0
Capital Improvement Fees	10,000	10,000	10,000	1,176,848	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	1,286,848
													0
DWR Refund													0
Other /Palmdale Redevel Agency													0
Total Non-Operating Revenues	1,309,048	149,001	23,280	3,086,248	315,840	26,040	284,100	187,500	15,000	15,000	165,420	1,957,219	7,533,696
Capital Expenditures	(212,500)	(212,500)	(212,500)	(212,500)	(212,500)	(212,500)	(212,500)	(212,500)	(212,500)	(212,500)	(212,500)	(212,500)	(2,550,000)
Deposit refunds													0
SWP Capitalized	(586,283)	(104,714)	(129,747)	(104,714)	(104,712)	(104,712)	(593,199)	(104,712)	(134,360)	(104,711)	(104,711)	(104,711)	(2,281,286)
Prepaid Insurance (paid) refunded			(65,000)					(220,000)					(285,000)
Bond Payments Interest			(1,207,096)						(1,207,096)				(2,414,192)
Principal									(1,220,000)				(1,220,000)
System Work for AVEK													0
5,000 AF banked Water													0
Capital leases	(17,658)	(17,658)	(17,658)	(17,658)	(17,658)	(17,658)	(17,658)	(17,658)	(17,658)	(17,658)	(17,658)	(17,658)	(211,896)
Legal adjudication fees													0
													0
Total Cash Ending Balance	9,805,632	9,238,103	7,533,724	10,187,442	10,168,754	10,015,866	9,518,351	9,703,323	6,880,011	6,678,384	6,790,577	8,464,969	(8,962,374)

Dawn Deans

**From:** Katie Dahl [KatieD@acwa.com]  
**Sent:** Monday, January 09, 2012 3:15 PM  
**To:** Katie Dahl  
**Subject:** ACWA Informational Forums: 2012 Water Bond, Financing Issues, Strategic Plan

## ACWA Regional Informational Forums Focus on 2012 Water Bond, Financing Issues and Strategic Plan

With a Water Bond slated for the November 2012 Ballot, signals in the Governor's budget that water will be a priority and all eyes on a dry winter, water will be a major focus of the California Legislature and the Governor this year. Additionally, a special ACWA Task Force, "The California Water Finance Task Force" has been working over the past few months to develop concepts around the long-term financing of public benefits as part of the implementation of the 2009 Comprehensive Legislative Package.

We want to update members on all of these important issues and get your input as the ACWA Board begins to develop its 2012-'13 Strategic and Business Plan. Timing is very critical, so a series of informational forums have been set to engage water agency members in the regions. We hope you will take advantage of this opportunity to get the latest on what is shaping up to be a big year for California water.

The following is the list of dates available for your region to attend the forum:

<b>Regions 1 &amp; 5:</b>	January 24, 2012	1 p.m. – 3:30 p.m.	Contra Costa Water District 1331 Concord Ave., Concord
<b>Regions 2, 3 &amp; 4:</b>	January 19, 2012	1 p.m. – 3:30 p.m.	ACWA 910 K Street, Sacramento
<b>Regions 6 &amp; 7:</b>	February 16, 2012	1 p.m. – 3:30 p.m.	Fresno County Farm Bureau 1274 W Hedges Ave., Fresno
<b>Regions 8, 9 &amp; 10:</b>	February 17, 2012	1 p.m. – 3:30 p.m.	Western Municipal Water District 14205 Meridian Pkwy, Riverside

Register Online For Your Regional Forum Here:

**<http://acwa.eventready.com/events/RegForum>**

There is no cost to attend these forums.

If you have any questions about the forum in your region, please contact your ACWA Regional Affairs Representative:

Regions 1, 2, 3 & 5: Marcia Wulff, [marciaw@acwa.com](mailto:marciaw@acwa.com)  
 Regions 4, 6 & 7: Ravi Kahlon, [ravik@acwa.com](mailto:ravik@acwa.com)  
 Regions 8, 9 & 10: Tiffany Giammona, [tiffanyg@acwa.com](mailto:tiffanyg@acwa.com)





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The following is the list of dates available for your region to attend the forum:

Regions 1 & 5: January 24 at Contra Costa Water District, *Concord, CA*

Regions 2, 3 & 4: January 19 at ACWA, *Sacramento, CA*

Regions 6 & 7: February 16 at Fresno County Farm Bureau, *Fresno, CA*

Regions 8, 9 & 10: February 17 at Western Municipal Water District, *Riverside, CA*

*There is no cost to attend these forums.*

**Questions?** Call 916.441.4545 or email [katied@acwa.com](mailto:katied@acwa.com).

See the forum flyer with detailed time and location information [HERE](#).

Begin registration to attend a forum below.

\*Last Name:

\*Email Address:

[Begin Registration >](#)

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