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Contract Number

19-078

SAP Number

### County Administrative Office

Department Contract Representative Telephone Number Stephenie Shea 387-4919

Contractor Contractor Representative Telephone Number Contract Term Original Contract Amount Amendment Amount Total Contract Amount Cost Center Chino Basin Desalter Authority General Manager On File

Briefly describe the general nature of the contract: Approve agreement with Chino Basin Desalter Authority for the design, construction, permitting, operation and maintenance of certain treatment facilities and related groundwater extraction wells and conveyances for the Chino Airport Groundwater Remedial Project.

FOR COUNTY USE ONLY

Table with 3 columns: Approved as to Legal Form, Reviewed for Contract Compliance, Reviewed/Approved by Department. Includes signatures and dates.

## **AGREEMENT**

THIS AGREEMENT is made by and between the County of San Bernardino and the Chino Basin Desalter Authority, (collectively referred to herein as the “Parties,” and each of them singularly referred to herein as a “Party”) and shall be deemed entered and effective as of the Effective Date as defined below.

## **DEFINITIONS**

“Agreement” means this Agreement.

“Airport GAC Treatment Plant” means a treatment system onsite at the Chino Airport (to remove VOCs from the water pumped from the Onsite County Wells) that the County may in the future build and operate.

“Annual Operation Plan” means the operation plan(s) and budget to be developed by the Parties for the succeeding Fiscal Year pursuant to Section IV.B of this Agreement and in the form attached hereto as **Attachment “A.”**

“CAO” means Cleanup and Abatement Order No R8-2008-0064, as amended by R8-2017-0011 (concerning the Chino Airport Plume).

“Capital Costs” means the cost to design, permit and construct the treatment plants, conveyance lines, extraction wells and related infrastructure.

“CDA” means the Chino Basin Desalter Authority, a Joint Exercise of Powers Agency formed between its member agencies Jurupa Community Services District, the Santa Ana River Water Company, the Cities of Chino, Chino Hills, Norco and Ontario, Western Municipal Water District and the Inland Empire Utilities Agency.

“CDA Wells” means collectively the CDA Wells I-1, I-2, I-3, I-4, I-16, I-17 and I-18, as depicted generally on Figure 1.

“Chino Airport” means that general aviation facility, formerly known as Cal Aero Field located at 7000 Merrill Ave, Chino, CA 91710, which is owned and operated by the County and consists of approximately 1,100 acres of land, bounded by Merrill Avenue to the north, Grove Avenue to the east, Kimball Avenue to the south, and Euclid Avenue to the west.

“Chino Basin” means the Chino Groundwater Basin as described in the Judgment.

“Chino I Desalter” and “Chino I Desalter Plant” mean an existing brackish water desalination treatment system (including reverse osmosis, ion exchange, and air stripping) operated by CDA in the vicinity of the Chino Airport to remove TDS, nitrates, and other constituents from groundwater.

“CDA’s Chino I GAC Treatment Plant” means a GAC treatment system and associated on-site piping capable of removing VOCs from the water pumped by the Group I Wells to be designed, constructed and operated pursuant to the terms of this Agreement.

“Chino I GAC Treatment Plants” means the CDA’s Chino I GAC Treatment Plant and the County’s Chino I GAC Treatment Plant.

“Chino I Combined Treatment Plant” means the Chino I Desalter Plant and the Chino I GAC Treatment Plants.

“CBWM” means the Chino Basin Watermaster.

“Certificate of Project Completion” means the certificate issued when (i) all conditions for Project Completion have been met and (ii) all nonconforming work has been corrected. As used in this definition, “Project Completion” means when the contractor has completed all design and construction work, including correction of nonconforming work and completion of punchlist items (and if applicable, a certification from the project quality manager certifying conformity with the design; conditions of acceptance from other local agencies, utilities, have been satisfied). If so required in the CDA contract, Project Completion also includes the recording of a notice of completion pursuant to Civil Code section 8182 and 9200.

“Contaminants” means (a) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”) (42 U.S.C. §9601 et seq.) (as “hazardous substance” as now or hereafter defined in Section 101(14) of CERCLA or any regulations promulgated under, or as a pollutant or contaminant as now or hereafter defined in Section 101(33) of CERCLA or any regulations promulgated under CERCLA); under the Resource Conservation and Recovery Act, as amended (“RCRA”) (42 U.S.C. §6901 et seq.), the Hazardous Materials Transportation Act, Title 49 U.S.C. §1801, et seq., the Toxic Substances Control Act, Title 15 U.S.C. §2601, et seq.; the Clean Water Act, Title 33 U.S.C. §1251, et seq.; the California Hazardous Waste Control Act, Health and Safety Code §25100, et seq., the California Hazardous Substances Account Act, California Health & Safety Code §25249.5, et seq.; the California Hazardous Waste Management Act, California Health & Safety Code §25501, et seq. (Hazardous Materials Response Plan and Inventory); or the California Porter-Cologne Water Quality Control Act, California Water Code §1300, et seq., all as amended from time to time; (b) any additional substance, material or waste (A) the presence and concentration of within, about, at, below or from the Site that (i) requires reporting, investigation or remediation under any environmental laws, (ii) causes or threatens to cause a nuisance and poses or threatens to pose a hazard to the health and safety, or (iii) which, if emanated or migrated within, about, below at or from the Site, would constitute a trespass, or (B) which is determined by any governmental authority with jurisdiction thereof to pose a present or potential hazard to human health or the environment.

“County” means the County of San Bernardino.

“County’s Chino I GAC Treatment Plant” means a GAC treatment system and associated on-site piping capable of removing VOCs from the water pumped by the Group II Wells to be designed, constructed, and operated by CDA and owned by the County pursuant to the terms of this Agreement.

“County Wells” means the Onsite County Wells and Offsite County Wells.

“Days” means calendar days unless identified as business days.

“DDW” means the State Water Resources Control Board Division of Drinking Water.

“Effective Date” means the last day this Agreement is executed by a Party.

“Extraordinary Costs” means those O&M Costs anticipated to be in excess of \$50,000 for a particular repair or annual cost item.

“Financial Records” mean those books, records, accounts, data, computer records, files and data and supporting documents maintained for financial management of the design, construction and O&M of the facilities that are the subject of this Agreement.

“Fiscal Year” means the one-year period commencing on July 1 and continuing through June 30.

“GAC” means granular activated carbon used in filter vessels to treat water.

“GAC Costs” means the cost of the replacement GAC, labor for the change-out, and GAC disposal.

“GAC Treatment Costs” means costs which include, but are not limited to: (i) capital costs to design and construct the Chino I GAC Treatment Plants and connect the County Wells and CDA Wells thereto; (ii) permitting costs; and (iii) the costs to operate and maintain the South West Wells and Chino I GAC Treatment Plants to meet applicable regulatory levels for VOCs, but excludes costs of separate treatment of such water for TDS and/or nitrates.

“GAC Treatment Standards” means collectively, state and federal drinking water standards, including but not limited to those standards as specified by the DDW or such other agency as may be responsible to establish potable drinking water standards for TCE, TCP, 1,1-DCE, 1,2-DCA and c-1,2-DCE. GAC Treatment Standards do not include or address separate treatment for TDS or nitrates.

“GPM” means gallons per minute.

“Group I Wells” means CDA Wells I-1, I-2, I-3, and I-4.

“Group II Wells” means CDA Wells I-16, I-17 and I-18, the Offsite County Wells, and the Onsite County Wells.

“IRAP” means an Interim Remedial Action Plan implemented pursuant to the CAO and adopted by the RWQCB.

“Judgment” means the Chino Basin Watermaster Judgment, San Bernardino Superior Court Case No. RCV 51010 (dated October 26, 1989 formerly in Chino Basin Municipal Water District v. City of Chino, Superior Court of the State of California, County of San Bernardino, Case No. 164327).

“Lease” means the lease dated December 10, 1996 as last amended January 29, 2002 between the County and SAWPA for sites and easements pertaining to Wells I-1, I-2, I-3 and I-4, assumed by the CDA.

“Normal Operating Conditions” mean, operating on a reasonably continuous basis to produce sustainable well yield rates identified in this Agreement. Normal operating conditions also include scheduled plant shutdowns 10% of the year for maintenance activities. Wells I-1 thru I-4, I-16, I-17 and I-18 annual production with 10% downtime is 2,500 AF.

“O&M” means the activities of operating, monitoring, and maintaining any wells and/or treatment plants to ensure compliance with all permits, RWQCB mandates and DDW requirements as may be necessary now and/or in the future whose use and operation is related to or arising out of this

Agreement.

“O&M Costs” means the costs to perform O&M, including fully-burdened personnel costs and actual costs for electricity, testing, consumables, including but not limited to GAC filter media, disposal and other costs to operate the Project.

“Offsite County Wells” means wells to be installed and owned by the County located offsite of the Chino Airport including Wells EW-6, EW-7, EW-8, EW-9, EW-10, as generally depicted on figure 1.

“Onsite County Wells” means wells to be installed and owned by the County located onsite of the Chino Airport, including wells [EW-1, EW-2, EW-3, EW-4, and EW-5], as generally depicted on figure 1.

“Other treatment costs” include but are not limited to O&M Costs for the chlorination system referenced herein, O&M Costs for the Chino I Desalter, treatment for TDS and nitrates, the costs associated with standard drinking water monitoring, water delivery, and other costs.

“Peace II Agreement” means the Peace II Agreement: Party Support For Watermaster’s OBMP Implementation Plan, - Settlement And Release Of Claims Regarding Future Desalters dated in or about 2008.

“Project” means the design, construction, O&M of the project described in the IRAP, including any amendments to the IRAP, modifications made during the design phase as well as the treatment of water from CDA Wells I-16, I-17, and I-18 for VOCs, and any change orders associated therewith, which project activities include, but are not limited to, desalting portions of the Chino Basin and treatment and remediation of the Chino Airport Plume. The term “Project” shall include all projects that relate to, arise out of or supplement the work done pursuant to Project. Project also includes any expansion phases of the Project that may occur in the future, whether presently known or unknown.

“Project Records” means all records, plans, blueprints, work plans, diagrams, log books, data, sampling, testing and investigation records, computer records, files and data, reports, and all other information and documents relating to the location, design, construction and O&M of the Chino I GAC Treatment Plants and related conveyance lines, extraction wells and/or related infrastructure contemplated by this Agreement, and the supporting external systems including piping and environmental testing and/or quality assurance records, in compliance with DDW water quality standards and/or Regional Board requirements, and as normally kept for the purposes of design, construction and O&M for such Chino I GAC Treatment Plants and related conveyance lines, extraction wells and related infrastructure.

“RWQCB” means the Regional Water Quality Control Board Santa Ana Region.

“Replenishment Costs” means costs associated with “Replenishment Water”, as that term is defined by the Judgment, meaning “supplemental water used to recharge the Basin pursuant to the Physical Solution, either directly by percolating the water into the Basin or indirectly by delivering the water for use in lieu of production and use of safe yield or Operating Safe Yield”, and also includes those costs, charges, replenishment assessments, or fees the CBWM or other entity may seek or which is allocated to individual agencies, arising out of the extraction of groundwater from the Chino Basin and the need, if any, to replenish the water that has been extracted.

“SAWPA” means the Santa Ana Watershed Project Authority.

“Series Configuration System” means the GAC treatment system using primary and secondary carbon treatment vessels installed in series or lead/lag series orientation. Once carbon is spent in the lead vessel, it shall be replaced with fresh carbon and the orientation of the vessels shall be switched via a valving/piping header. After the change-out, the former lag vessel shall become the new lead vessel and vice versa.

“SouthWest Wells” means, collectively the Offsite County Wells and the CDA Wells.

“TCE” means trichloroethene.

“TCP” means 1,2,3-trichloropropane.

“TDS” means total dissolved solids.

“Treated Water” means water meeting the GAC Treatment Standards produced by the Project.

“VOCs” means, volatile organic compounds.

“VOC-treated water” means, groundwater treated to remove VOCs.

“1,1-DCE” means, 1,1-dichloroethene.

“1,2-DCA” means 1,2-dichloroethane.

“c-1,2-DCE” means, cis-1,2-dichloroethene.

### **RECITALS**

- A. Whereas, CDA purifies groundwater extracted from the lower Chino Basin and distributes the drinking water to member agencies. The mission of the CDA is to provide its member agencies with contract deliveries of potable water meeting contract-specified water quality objectives at an annually-approved cost.
- B. Whereas, CDA operates the Chino I Desalter to remove TDS, nitrates, and other constituents from groundwater.
- C. Whereas, CDA has installed and now operates extraction wells in the vicinity of the Chino Airport to remove TDS and nitrates from the Chino Basin, but CDA reports that certain of these wells (I-1, I-2, I-3, I-4, I-17 and I-18) now have some level of VOC contamination that requires treatment using GAC, and that well I-16 may in the future require treatment for VOCs.
- D. Whereas, the CDA previously assumed the Lease between the County and SAWPA on behalf of SAWPA for certain sites and easements. That Lease obligates the lessee to pay for the treatment of hazardous substances pumped from the wells that are the subject of the Lease, including but not limited to four wells located on or near Euclid Avenue (referred to herein as Wells I-1, I-2, I-3 and I-4). Consistent with that lease obligation, the County and CDA intend for CDA to be responsible for the costs of

treating VOCs and other substances requiring treatment in water pumped from Wells I-1, I-2, I-3 and I-4, to the extent such treatment is required.

- E. Whereas, the County is implementing a response action to respond to the release and threatened release of VOCs alleged to be emanating from the Chino Airport property, pursuant to the CAO and the County anticipates that the response action will involve the installation and operation of certain extraction wells both at the Chino Airport (the Onsite County Wells) and offsite of the Chino Airport (Offsite County Wells), following the adoption of the IRAP by the RWQCB.
- F. Whereas, the County anticipates that it will install and arrange for pumping and treating of water from County Wells as part of a County response action pursuant to the RWQCB CAO (concerning the Chino Airport Plume). The operation of the County Wells, together with CDA Wells, will aid CDA in adding raw water supply reliability for the Chino I Desalter.
- G. Whereas, the Parties intend that the SouthWest Wells and the County Onsite Wells will be connected to a new Chino I GAC Treatment Plant using GAC that will be capable of removing VOCs from the water pumped from those wells. If in the future, County elects to construct and operate a separate treatment system at the Chino Airport for the Onsite Wells, the water pumped from the Onsite County Wells will be treated at such a plant for VOCs.
- H. Whereas, the Parties intend to allocate the cost of treating the VOCs in groundwater with the County paying the GAC Treatment Costs incurred at the County's Chino I GAC Treatment Plant and CDA paying the GAC Treatment Costs incurred at the CDA's Chino I GAC Treatment Plant.
- I. Whereas, the Parties intend that, following the VOC treatment at the County's Chino I GAC Treatment Plant, the water extracted by the Group II Wells will be conveyed to the Chino I Desalter where CDA will treat the water to remove TDS and nitrates from the pumped and VOC treated groundwater. The Parties intend that the capital and O&M cost of such treatment shall be borne by the CDA at no cost to the County; provided, however, if the CDA demonstrates that the concentrations of TDS and/or nitrates from the County Wells is materially worse in quality than the water from the combined influent of the CDA (such that the cost of TDS and/or nitrate treatment would be substantially and materially higher than treating a similar volume of water from the CDA Wells), the Parties intend to meet and confer, pursuant to Section XIV.A of this Agreement, to reach agreement on an equitable cost share for such incremental costs, as set forth herein.
- J. Whereas, the County may in the future build and operate the Airport GAC Treatment Plant to be connected to the Onsite County Wells. If the County, at its sole election, decides to and does construct such a plant, the Parties intend that, as between CDA and the County, the County will pay the capital costs, pumping costs and all other O&M costs associated with operating the Onsite County Wells and treating VOCs from the Onsite County Wells connected to that system.

- K. Whereas, notwithstanding any provisions of this Agreement to the contrary, as of the Effective Date, CDA is not the named discharger in any order issued by the RWQCB.
- L. Whereas, the County shall be responsible for pumping costs for the Offsite County Wells and Onsite County Wells and CDA shall be responsible for the pumping costs for the CDA Wells.

NOW, THEREFORE, the Parties acting in good faith and desiring to reach an agreement, and in their mutual belief that this Agreement is in the public's best interest, and in consideration of the execution of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

**I. INCORPORATION OF RECITALS AND DEFINITIONS**

The Recitals and Definitions set forth above are incorporated by reference and made part of this Agreement as if set forth in full herein.

**II. DESIGN, CONSTRUCTION AND PERMITTING OF TREATMENT PLANTS, WELLS, INFRASTRUCTURE AND CONVEYANCE**

- A. The Parties expressly acknowledge and agree that the design, operation and maintenance of all facilities contemplated by this Agreement shall at all times be subject to review, approval and conformance with the permits and/or other requirements established by CDA, DDW and the RWQCB provided that CDA shall not unilaterally impose any requirements on the County that are inconsistent with the terms and provisions of this Agreement.
- B. Chino I GAC Treatment Plants
  1. CDA will design, permit and construct on approximately 0.2 acres of land owned by the CDA, the County's Chino I GAC Treatment Plant and associated infrastructure to remove VOCs from the water conveyed to the Chino I GAC Treatment Plant from the Group II Wells.
  2. CDA will design, permit and construct the CDA's Chino I GAC Treatment Plant and associated infrastructure and conveyances to connect the Group I CDA Wells to the CDA's Chino I GAC Treatment Plant.
  3. CDA will design, permit and construct infrastructure and conveyances to connect the Chino I GAC Treatment Plants to the Chino I Desalter Plant so as to form the Chino I Combined Treatment Plant.
  4. CDA shall design, permit and construct the Chino I GAC Treatment Plants, including a Series Configuration System with primary and secondary treatment vessels in a cost-effective manner and in a manner that minimizes the costs of the Project. The Parties agree to utilize the following information sharing to facilitate collaboration on construction issues and modifications.



- a. CDA shall provide draft reports and designs to the County for the 30% design, 60% design and 90% design stages of the County's Chino I GAC Treatment Plant and provide the County 15 business days to review and comment on each.
  - b. Following completion of the construction, CDA shall provide as-built drawings of the County's Chino I GAC Treatment Plant to the County.
  - c. CDA agrees to consider the County comments on the draft reports and designs provided pursuant to Section II.B.4.a, above in good faith. If CDA does not agree with comments provided by the County, CDA and the County shall meet and confer, pursuant to Section XIV.A and, if the Parties fail to resolve their dispute, either party may terminate this Agreement pursuant to Section XIV.C hereof.
5. The County will design, permit and construct the Offsite County Wells, the Onsite County Wells, as well as the conveyance and other infrastructure necessary to connect such wells to the Chino I GAC Treatment Plant. The County agrees to provide CDA 15 business days to review and approve such design, which approval shall not be unreasonably withheld.
  6. CDA and the County will complete the design, construction and permitting as required by this section by no later than January 31, 2022, subject to the Force Majeure provisions of this Agreement.
  7. The final design of the Project and each constituent element thereof shall be subject to review and approval by CDA, DDW and the RWQCB and permitting by DDW. If RWQCB comments on the design would lead to incremental capital costs beyond the requirements of DDW, the Parties shall meet and confer to resolve how to address such comments.

C. Airport GAC Treatment Plant

1. If and when the County decides to construct and operate the Airport GAC Treatment Plant to treat the Onsite County Wells at such plant rather than at the County's Chino I GAC Treatment Plant, as between CDA and the County, the County shall be responsible to:
  - a. provide no less than 180 days' notice to CDA prior to initiating such treatment;
  - b. design, permit and construct the Airport GAC Treatment Plant at the Chino Airport, using GAC treatment to remove VOCs from the water conveyed to the Airport GAC Treatment Plant from the Onsite County Wells;
  - c. Any disputes arising under this Section II shall be resolved pursuant to the Dispute Resolution provisions of Section XIV of this Agreement.

### III. O&M OF TREATMENT PLANTS, INFRASTRUCTURE, WELLS, AND CONVEYANCES

#### A. County's Chino I GAC Treatment Plant

1. Once the County's Chino I GAC Treatment Plant is constructed and operational, CDA will perform O&M on the Group II Wells and County's Chino I GAC Treatment Plant under Normal Operating Conditions to treat water produced by the Group II Wells as follows and in the following priority:
  - a. The Offsite County Wells and Onsite County Wells at the rates specified in the final Remedial Design for the County Interim Remedy (and as those rates are modified over time); and
  - b. Well I-17 at a rate of no more than 225 GPM and Well I-18 at a rate of no more than 180 GPM.
2. In the event that CDA cannot operate the County's Chino I GAC Treatment Plant under Normal Operating conditions (for example during GAC changeouts), CDA will use best efforts to restore the system to Normal Operating Conditions as soon as feasible.
3. CDA will operate the County's Chino I GAC Treatment Plant in a manner that removes TCE, TCP, and other contaminants such as 1,1-DCE, c-1,2-DCE, and 1,2-DCA to meet GAC Treatment Standards.
4. If the County elects to construct the Airport GAC Treatment Plant, the County will be responsible to perform O&M on the County Onsite Wells and Airport GAC Treatment Plant.

#### B. Airport GAC Treatment Plant and Onsite County Wells

1. If the County elects to construct the Airport GAC Treatment Plant:
  - a. Once the plant is operational, the County will be responsible for performing the O&M of the Airport GAC Treatment Plant and Onsite County Wells.
  - b. CDA will remain responsible for performing the O&M of the SouthWest Wells, Chino I GAC Treatment Plants and Chino I Desalter Plant.
  - c. County shall not have the right to convey and CDA shall not have the obligation to accept at any CDA asset or facility any of the Treated Water produced by the Airport GAC Treatment Plant.

#### C. Operation of the Chino I Desalter and Distribution of Water from the Chino I Desalter

1. CDA will perform O&M of the Chino I Desalter Plant, and remove TDS and nitrates from water delivered to that system from the County Wells, as long as (i) CDA continues to operate and maintain the County Wells, and (ii) the concentrations of TDS and nitrates from the County Wells are not materially worse in quality than the combined influent water from the CDA Wells (such that the cost of TDS and nitrate treatment would be substantially and materially higher than treating a similar volume of water from the CDA Wells). If the TDS and nitrates from the County Wells are materially worse in quality than the water from the CDA Wells, the Parties will meet and confer pursuant to Section XIV.A of this Agreement, to develop an equitable cost share for such incremental costs.
2. Distribution of Treated Water
  - a. CDA Wells: As between CDA and the County, CDA is entitled to distribute the Treated Water and is entitled to the proceeds, if any, from the transfer or use of such water.
  - b. County Wells:
    - (i) CDA will accept all water produced by the County from the Onsite County Wells and Offsite County Wells, subject to paragraphs (ii) and (iii) below. If the County is treating the Onsite County Wells at the Airport GAC Treatment Plant, CDA is not obligated to accept water from the Airport GAC Treatment Plant.
    - (ii) In February prior to each Fiscal Year, the County and CDA will meet and confer, pursuant to Section XIV.A of this Agreement, and agree to an Annual Operation Plan in the form attached hereto as **Attachment "A,"** including, but not limited to the volume of water each month of the upcoming fiscal year that the County intends to use on its own property using its own water rights and for which County shall be responsible for any and all Replenishment Costs. As part of this meet and confer, the Parties will discuss and evaluate ways to reduce O&M Costs from year to year.
    - (iii) The County can elect to reduce or terminate the volume of water from some or all of the County Wells that it provides to CDA by providing 180-day notice to CDA of such reduction or termination.

D. Project Monitoring

1. CDA shall be responsible for performing the monitoring that is required at the Chino I Combined Treatment Plant and at any production wells sending water to the Chino I GAC Treatment Plants, pursuant to its permits and as otherwise required.

2. The County shall be responsible for performing the monitoring of its groundwater monitoring wells as required by the CAO.
  3. If and to the extent CDA installs such wells in the future, CDA shall be responsible for performing the monitoring of its groundwater monitoring wells and as otherwise required for the Project.
  4. The Parties recognize that it may be in the joint interest of the Parties to coordinate the data collection through a single contractor. The Parties may elect to negotiate such an arrangement, as appropriate, during the course of this agreement.
- E. Any disputes arising under this Section III shall be resolved pursuant to the Dispute Resolution provisions of Section XIV of this Agreement.
- F. CDA will use reasonable efforts to operate and maintain the facilities described in this Agreement efficiently, and to minimize the costs of operation and maintenance where feasible.

#### **IV. MANAGEMENT OF PUMPING**

- A. Replenishment Costs for the groundwater extracted and provided to CDA are governed by the Peace II Agreement related to the management of the Chino Groundwater Basin.
- B. Neither CDA nor the County anticipate that Replenishment Costs will be owed as a result of the pumping and treating of water as contemplated by this Agreement.
- C. CDA shall manage pumping of its wells to the maximum extent reasonably feasible and practicable to seek to avoid risk to the County of paying for Replenishment Costs for the wells pumped pursuant to this Agreement.
- D. In order to avoid the possibility of the County being responsible for Replenishment Costs as a result of CDA pumping and treating water pursuant to this Agreement, CDA will monitor and report to the County on a monthly basis the amount of water CDA has extracted for all of its operations (“Production Reports”).
- E. If CDA determines based on the Production Reports that pumping required by this Agreement would trigger the need for the payment of Replenishment Costs, CDA shall notify the County, and provide the opportunity to the County to either (i) pay to CBWM, within the timeframe set by CBWM in its written notice or invoice therefor, the amount of such Replenishment Costs (or take responsibility to dispute such costs and pay them if payment is required following the resolution of such dispute); or (ii) provide written notice to CDA of its election to reduce or cease the pumping of the County Wells (“Reduction Notice”). Within thirty (30) days of CDA’s receipt of a Reduction Notice, CDA will (a) reduce or cease pumping of Wells per the terms of the Reduction Notice; (b) temporarily reduce pumping from other wells in the Chino I Desalter wellfield; or (c) elect to pay the Replenishment Costs itself.

- F. Any disputes arising under this Section IV shall be resolved pursuant to the Dispute Resolution provisions of Section XIV of this Agreement.

## V. COST ALLOCATION

### A. Capital Costs

1. Capital Costs for the Chino I GAC Treatment Plants:
  - a. The County and CDA will allocate the Capital Costs for the Chino I GAC Treatment Plants as follows:
    - (i) CDA will pay the costs for CDA's GAC Chino I Treatment Plant and associated piping from the CDA Wells I-1, I-2, I-3 and I-4.
    - (ii) The County will pay the costs for the County's Chino I GAC Treatment Plant and associated piping from the Offsite County Wells, the Onsite County Wells, and new piping as needed for CDA Wells I-16, I-17 and I-18. The County will also pay the costs of piping from the County's Chino I GAC Treatment Plant to the Chino I Desalter Plant.
  - b. A preliminary Capital Cost budget for the Chino I GAC Treatment Plants is attached to this agreement as **Attachment "B."** This budget is an engineer's estimate of probable costs. The Capital Cost budget will be finalized in response to the awarded contract.
2. Capital Costs for the Onsite County Wells and Offsite County Wells: The County will be responsible for all costs associated with installing the Onsite County Wells and Offsite County Wells.

### B. O&M Costs of Chino I GAC Treatment Plant

1. The Parties will allocate the GAC Costs based on the following:
  - a. The County will pay the GAC Costs for County's Chino I GAC Treatment Plant;
  - b. CDA will pay the GAC Costs for CDA's Chino I GAC Treatment Plant.

### C. The form of annual budget for the GAC Costs, and the anticipated GAC Costs are included in the initial Annual Operation Plan attached to this Agreement as **Attachment "A"**.

1. Allocation of other GAC Treatment Costs (excluding the Capital Costs as allocated in Section V.A and GAC Costs as allocated in Section V.B.1, above):

- a. The County will pay the costs to operate the County's Chino I GAC Treatment Plant
  - b. CDA will pay the costs to operate the CDA's Chino I GAC Treatment Plant.
  - c. The foregoing costs exclude any costs that CDA would otherwise incur in operating the Chino I Desalter Plant and CDA Wells.
- 2. Costs of the County Wells: The County will pay the cost of the Onsite County Wells and Offsite County Wells, including but not limited to the cost of operating and maintaining the wells and all monitoring and pumping costs.
  - 3. Costs of CDA Wells: CDA will pay costs of operating and maintaining Well I-16, I-17 and Well I-18 (excluding GAC Treatment costs) and the CDA Wells I-1, I-2, I-3 and I-4, including but not limited to the cost of operating and maintaining the wells, monitoring and pumping costs.
  - 4. Other Treatment Costs: CDA will pay the cost of operating and maintaining the chlorination system, operating and maintaining the Chino I Desalter, separately treating for TDS and nitrates, and performing and paying for standard drinking water monitoring costs of produced water, water delivery, among other costs.
  - 5. Within each above category, the costs include replacement costs associated with long-term depreciation of those systems.
- D. The County will contribute \$350,000.00 toward the capital cost of drilling and equipment for Well I-17 and Well I-18, which costs the Parties expressly acknowledge CDA has already incurred. This payment shall be made within 90 days of the Effective Date of this Agreement.
  - E. The County will pay the cost of operating and maintaining the Airport GAC Treatment Plant, if any.
  - F. If RWQCB or DDW mandates will cause incremental O&M costs over and above the obligations otherwise set forth in this Agreement, the Parties will meet and confer to resolve how to respond to and fund such mandates.
  - G. Any disputes arising under this Section V shall be resolved pursuant to the Dispute Resolution provisions of Section XIV of this Agreement.

## **VI. PAYMENT MECHANISM**

- A. Capital Costs. Following execution of this Agreement, County will deposit 110% of its share of the estimated Capital Costs in response to an invoice from CDA for such amount, sent after bids are received and prior to CDA Board award of the contract for such work. Upon request from the County, CDA shall provide appropriate backup documentation. Within 90 days after issuance of the Certificate of Project

Completion by CDA, CDA shall provide a reconciliation of actual costs to the County, together with a refund of any amounts deposited in excess of actual costs (including any and all approved change orders) or an invoice reflecting the County's share due in excess of its deposit, which invoice the County shall pay within 30 days of receipt.

1. **Change Orders.** In the event CDA determines that a change order in excess of five percent (5%) of the total preliminary capital cost budget attached hereto as **Attachment "B"** ("Approved Change Order") is necessary, CDA shall provide notice to the County of the same, together with reasonable backup documentation establishing the need and propriety of the proposed Approved Change Order. County shall review and reasonably approve or disapprove the proposed Approved Change Order within five (5) business days of receipt thereof. In the event County disapproves the proposed Approved Change Order, County shall provide a detailed explanation of the reasons for its disapproval. Should County fail to approve or disapprove such proposed Approved Change Order within five (5) business days of receipt thereof, such proposed Approved Change Order shall be deemed approved. Within sixty (60) days of County's approval or deemed approval of an Approved Change Order, County shall pay to CDA its share of such Approved Change Order allocated in accordance with Section V.A. hereof.
- B. **Operating Costs.** County will pay O&M Costs for the County's Chino I GAC Treatment Plant in two installments annually. The County shall pay CDA in advance, based on annual budgeted costs in response to invoices from CDA, following the completion of the budgeting process and reconciliation process, respectively.
1. No later than one hundred twenty (120) days prior to the start of each Fiscal Year, CDA shall prepare a reasonably detailed annual budget for routine and planned maintenance, pursuant to the Annual Operation Plan and provide such budget to the County for a 30-day review.
  2. CDA agrees to consider any comments submitted by the County in good faith, and to meet and confer with the County, pursuant to Section XIV.A. of this Agreement, in the case of any disagreements on the proposed budget.
  3. Following each Fiscal year, CDA shall provide an annual reconciliation for all costs applied to advance payments required to be paid by the County. The annual reconciliation shall be reasonably detailed. Upon request from the County, CDA shall provide appropriate backup documentation for the annual reconciliation statement, including but not limited to supporting invoices and time sheets and information to reasonably support the amounts claimed.
  4. By May 1 of each year, CDA will provide County with an invoice for one-half of the annual budgeted O&M Costs, which invoice will be due by June 30. By November 1 of each year, CDA will provide County with an invoice for the other one-half of the annual budgeted O&M Costs, which will include a credit to the County for any unused funds from advance payment from the prior fiscal year or a debit of amounts due from the County for any amounts in excess of

the budgeted amounts from the prior fiscal year, which invoice will be due by December 31.

5. Budget adjustments. In the event actual costs exceed budgeted amounts by 10% as of September 1 of any year, CDA may present a mid-year budget adjustment to County no later than September 15 of that year for a 30-day review. CDA agrees to consider any comments submitted by County in good faith, and to meet and confer with County, pursuant to Section XIV. A of this Agreement, in the case of any disagreements on the mid-year budget adjustment. Any amounts due from County pursuant to such budget adjustment shall be included in and paid by County as part of the November 1 invoice due to be paid on or before December 31.
- C. In the event that CDA stops operating the County's GAC Treatment Plant, CDA will refund the unused portion of any advance payment made by the County.
- D. For Extraordinary Costs for a particular repair or annual cost item that would be at least in part the obligation of the County under this Agreement, CDA shall provide a reasonable opportunity, consistent with the circumstances requiring the expenditure of the Extraordinary Costs, for the County to comment on same. CDA agrees to consider any comments submitted by the County in good faith, and to the extent possible in light of the circumstances requiring the Extraordinary Costs expenditure, to meet and confer with the County pursuant to Section XIV.A of this Agreement, in the case of any disagreements.
- E. CDA shall develop a replacement plan to address standard depreciation of County's Chino I GAC Treatment Plant and provide a reasonable opportunity for the County to comment on such plan. CDA agrees to consider any comments submitted by the County in good faith, and to meet and confer with the County pursuant to Section XIV.A of this Agreement in the case of any disagreements on such plan.
- F. Any disputes under this Section VI shall be resolved pursuant to the Dispute Resolution provisions of Section XIV of this Agreement.

## **VII. TERM**

- A. County's Chino I GAC Treatment Plant
  1. CDA will operate the County's Chino I GAC Treatment Plant as long as any of the following conditions remain:
    - a. The operation is required for the CAO unless and until the County has developed and implemented a different response action under the CAO that does not require the operation of the County's Chino I GAC Treatment Plant.
    - b. CDA is pumping or seeks to pump from either Well I-17 and/or Well I-18 and the pumped water from either Well I-17 and/or Well I-18 exceeds GAC Treatment Standards.



- c. If the County's Chino I GAC Treatment Plant is no longer needed, the County shall remove it and restore the property to its prior condition unless CDA, at its sole and absolute discretion, notifies County in writing that it elects to purchase the equipment for a price to be negotiated in good faith and be responsible for its removal and/or disposition. In such an instance where the Parties reach such an agreement, the Parties will execute such documentation as is necessary to effectuate such a transfer.

This Agreement will be open for renegotiation prior to the expiration of the Peace II Agreement subject to the provisions of Section XXXI of this Agreement.

## **VIII. REPORTING**

- A. CDA will report data to the County on a quarterly basis, unless more frequent reporting is needed for the RWQCB by the County, including data regarding the volume treated, water quality data, utilities (annually), and other operational information as reasonably determined by the County. If such data is required more frequently than quarterly by the County due to RWQCB requirements, the County shall pay incremental costs of such more frequent reporting to CDA, unless such reporting requires CDA to change its operations or staffing in a material way. If the County monitoring request requires CDA to change its operations or staffing in a material way, the Parties agree to meet and confer about the request for more frequent monitoring.

## **IX. COOPERATION**

- A. The County and CDA will each, respectively, ensure that knowledgeable representatives are available to consult with DDW staff prior to and during the predesign activities for the Chino I GAC Treatment Plants.
- B. CDA and the County recognize that implementation of the Chino I GAC Treatment Plants will require coordination and cooperation amongst them. The Parties will strive to coordinate and communicate with each other as reasonably necessary with respect to these activities.
- C. The Parties acknowledge that in designing, constructing and/or operating the Chino I GAC Treatment Plants, the Chino I Desalter Treatment Plant, the SouthWest Wells or Onsite County Wells, or in taking any other actions pursuant to this Agreement, they will reasonably cooperate so as not to cause the other to be in violation of or out of compliance with RWQCB Order(s) or DDW operating permits.

## **X. INSURANCE**

- A. CDA's Insurance Obligations
  - 1. CDA shall secure insurance coverage, to the extent comparable insurance is not already in place (including self-insurance, to extent permitted by Government Code sections 990.4, 990.8 and similar or successor legislation), as follows:

- a. Occurrence-based Commercial General Liability insurance coverage:
  - (i) to be secured no later than 15 days following the Effective Date and maintained until the first anniversary of CDA's termination of its participation in this Agreement;
  - (ii) with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
  - (iii) that includes the County as an additional insured (including coverage within the products-completed operations hazard);
  - (iv) under which the insurer waives any right to subrogation as to claims against the County; and
  - (v) which applies on a primary and non-contributory basis.
- b. Occurrence-based Automobile Liability insurance coverage (to the extent that CDA does not operate any vehicles, this requirement shall not apply to CDA (but it shall apply to its agents if such agents operate such vehicles):
  - (i) to be secured no later than 15 days following the Effective Date and maintained until the first anniversary of CDA's termination of its participation in this Agreement;
  - (ii) with a per occurrence combined single limit of \$2,000,000;
  - (iii) with each other Party included as an additional insured;
  - (iv) under which the insurer waives any right to subrogation as to claims against each other Party; and
  - (v) which applies on a primary and non-contributory basis.
- c. Worker's Compensation insurance: To be secured and maintained as required by all applicable laws and regulations.
- d. Contractor's Pollution Liability insurance:
  - (i) to be secured within 15 days following the Effective Date and maintained until termination of this Agreement;
  - (ii) with a per-occurrence combined single limit of \$5,000,000.
- e. Professional Liability insurance: In the event CDA or its agents uses professional engineering or land surveyor services in connection with the design, permitting, construction, and physical modification intended by this Agreement, CDA or its agents shall require the

providers of such services to secure and maintain professional liability insurance with limits not less than \$5,000,000 per claim covering negligent acts, errors, or omissions in the performance of such services. For a period of three years after the completion of its services, the professional engineering or land surveying contractor shall either maintain coverage or purchase an extended reporting period on the policy required by this Paragraph.

- f. First-Party Property insurance:
  - (i) to be secured no later than 15 days following the Effective Date and maintained until the first anniversary of the CDA's termination of its participation in this Agreement;
  - (ii) covering equipment and facilities contemplated as owned by CDA, including but not limited to the Chino I Combined Treatment Plant and CDA Wells and conveyances, in sufficient amounts to cover replacement value of the property involved.

B. County's Insurance Obligations

- 1. The County shall secure insurance coverage, to the extent comparable insurance not already in place (including self-insurance, to extent permitted by Government Code sections 990.4, 990.8 and similar or successor legislation), as follows:
  - a. Occurrence-based Commercial General Liability insurance coverage:
    - (i) to be secured no later than 15 days following the Effective Date and maintained until the first anniversary of the County's termination of its participation in this Agreement;
    - (ii) with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
    - (iii) that includes each other Party as an additional insured (including coverage within the products-completed operations hazard);
    - (iv) under which the insurer waives any right to subrogation as to claims against each other Party; and
    - (v) which applies on a primary and non-contributory basis.
  - b. Occurrence-based Automobile Liability insurance coverage (to the extent that the County does not operate any vehicles, this requirement

shall not apply to the County (but it shall apply to its agents if such agents operate such vehicles):

- (i) to be secured no later than 15 days following the Effective Date and maintained until the first anniversary of the County's termination of its participation in this Agreement;
  - (ii) with a per occurrence combined single limit of \$2,000,000;
  - (iii) with each other Party included as an additional insured;
  - (iv) under which the insurer waives any right to subrogation as to claims against each other Party; and
  - (v) which applies on a primary and non-contributory basis.
- c. Worker's Compensation insurance: To be secured and maintained as required by all applicable laws and regulations.
- d. Contractor's Pollution Liability insurance:
- (i) to be secured, in the event that the County performs construction, operation, and/or maintenance activities on any portion of the Airport GAC Treatment Plant, the County Wells, or any infrastructure or conveyance, at least 15 days prior to the commencement of such activities, and maintained until the completion of such activities;
  - (ii) with a per-occurrence combined single limit of \$5,000,000.
- e. Professional Liability insurance: In the event the County or its agents uses professional engineering or land surveyor services in connection with the design, permitting, construction, and physical modification intended by this Agreement, the County or its agents shall require the providers of such services to secure and maintain professional liability insurance with limits not less than \$5,000,000 per claim covering negligent acts, errors, or omissions in the performance of such services. For a period of three years after the completion of its services, the professional engineering or land surveying contractor shall either maintain coverage or purchase an extended reporting period on the policy required by this Paragraph.
- f. First-Party Property insurance:
- (i) to be secured no later than 15 days following the Effective Date and maintained until the first anniversary of the County's termination of its participation in this Agreement;

- (ii) covering equipment and facilities contemplated as owned by the County, including but not limited to the Airport GAG Treatment Plant and County Wells and conveyances in sufficient amounts to cover replacement value of the property involved.

## **XI. INDEMNITIES**

- A. The County shall defend (with counsel approved by CDA) indemnify and hold harmless CDA, its officials or officers, agents, employees, or successors, from claims made by third-parties as a result of (a) any failure of County to fulfill its obligations of this Agreement, the CAO, or any controlling order of the RWQCB directed at the County or (b) CDA's operation of the County Offsite Wells consistent with direction from the County resulting in a third party claim against CDA alleging contaminant plume/contaminant migration. Notwithstanding the foregoing, the County is not obligated to provide the foregoing indemnities for CDA's, its officials or officers', agents', or employees', gross negligence or willful misconduct.
- B. CDA shall defend (with counsel approved by County) indemnify the County, its officials or officers, agents, employees, or successors from claims made by third-parties as a result of any failure of CDA to fulfill its obligations under this Agreement or to comply with a requirement of its DDW permit. Notwithstanding the foregoing, the CDA is not obligated to provide the foregoing indemnities for the County's, its officials' or officers', agents', or employees', gross negligence or willful misconduct.
- C. The indemnities covered herein and contemplated by this Agreement are not intended to create any duty, obligation or right to any first-party indemnity, whether brought under contractual, equitable, or implied theories, and the Parties expressly waive any right to claim first-party indemnity against the other Party.
- D. The rights, obligations, and agreement to indemnify regarding the Chino Airport and as contemplated by this Agreement and set forth in this section between CDA and the County, shall not supersede any prior rights, obligations, and agreements regarding indemnification regarding the Chino Airport between the Parties to the extent set forth in any other agreement, but are supplemental thereto.

## **XII. RELEASES**

- A. Except as otherwise set forth in this Agreement, CDA on behalf of itself and its officials or officers, agents, employees, or successors, for and in consideration of the covenants and agreements set forth herein, irrevocably releases, absolves and forever discharges the County, including its employees, officers, shareholders, representatives, agents, consultants, attorneys, and law firms, from (a) any past costs arising prior to the Effective Date incurred in connection with preparation of this Agreement and (b) any costs incurred in connection with this Agreement, subject to the reservation in XII.C, below.
- B. County on behalf of themselves and their officials or officers, agents, employees, or successors, for and in consideration of the covenants and agreements set forth herein,

irrevocably releases, absolves and forever discharges the CDA, including their employees, officers, shareholders, representatives, agents, consultants, attorneys, and law firms, from (a) any past costs arising prior to the Effective Date incurred in connection with the preparation of this Agreement and (b) any costs incurred in connection with this Agreement, subject to the reservation in XII.C, below.

- C. Notwithstanding any other provision of this Agreement, the Parties expressly reserve the rights to enforce this Agreement and claims for breach of same.
- D. IN ADDITION, EACH PARTY HEREBY ACKNOWLEDGES THAT THEY HAVE BEEN ADVISED BY THEIR LEGAL COUNSEL, RESPECTIVELY, AND ARE FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

CDA AND THE COUNTY BEING AWARE OF THE FOREGOING CODE SECTION, HEREBY EACH EXPRESSLY WAIVE ANY RIGHTS THAT THEY MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 1542, AS WELL AS UNDER ANY SIMILAR PROVISIONS OF THE LAWS OF THIS OR ANY OTHER JURISDICTION WITHIN THE SCOPE OF THE RELEASE IN XII.A AND XII.B. THIS AGREEMENT SHALL IN ALL RESPECTS BE EFFECTIVE AND NOT SUBJECT TO TERMINATION OR RESCISSION BECAUSE OF ANY SUCH MISTAKEN BELIEF BY CDA OR THE COUNTY. CDA AND THE COUNTY ACKNOWLEDGE AND AGREE THAT THIS WAIVER IS AN ESSENTIAL AND MATERIAL TERM OF THIS AGREEMENT, AND THAT WITHOUT SUCH WAIVER, THIS AGREEMENT WOULD NOT HAVE BEEN ENTERED INTO BY THE PARTIES.

### **XIII. ACCESS**

- A. The County and all of its authorized representatives, agents, employees, contractors, and sub-contractors shall have the right to, during CDA’s regular business hours and while accompanied by CDA representative(s), enter and conduct such actions contemplated by this Agreement on CDA’s land at the County’s Chino I GAC Treatment Plant, and any access roads or appurtenances thereto at no cost to the County, its authorized representatives, agents, employees, contractors, and sub-contractors, or others upon reasonable prior notice to CDA.
- B. The County and all of its authorized representatives, agents, employees, contractors, and sub-contractors shall have reasonable access during CDA’s regular business hours, while accompanied by CDA representative(s) and upon reasonable prior notice, to observe and review the construction and operation of the County’s Chino I GAC Treatment Plant by the CDA so that the County can verify that the construction and

operations conform to the agreed design and specifications and the agreed operational requirements after plant construction. CDA will reasonably cooperate in the County's effort to obtain access as required herein at no cost.

- C. The CDA and all of its authorized representatives, agents, employees, contractors, and sub-contractors will have reasonable access during the County's regular business hours, while accompanied by County representative(s) and upon reasonable prior notice, to observe and review the construction of the County Wells and associated conveyance lines so that the CDA can verify that the construction conforms to the agreed design and specifications for such construction and take such actions contemplated by this Agreement, other than those identified in paragraph XIII.D, while accompanied by County representative(s) and upon reasonable prior notice, and
- D. The CDA and all of its authorized representatives, agents, employees, contractors, and sub-contractors will have reasonable access at all times during this Agreement (whether during the County's regular business hours or after such hours) for routine operation, monitoring and maintenance of the County Wells and associated conveyance pipelines. For such activities, no notice or escort will be required.
- E. For County Wells not located on the Chino Airport, the County will secure access for CDA consistent with paragraphs XIII.C and D. For such County Wells, CDA access rights shall be governed by the easement or other written agreement between the property owner and County.
- F. The CDA shall not allow any third-party (excluding its authorized representatives, agents, employees, contractors, and sub-contractors) access to the County Wells without the County's prior written consent, which consent shall not be unreasonably withheld or delayed, or conditioned.
- G. In the event of an emergency, CDA, and its authorized representatives, agents, employees, contractors and subcontractors will have immediate access to the County Wells as necessary to address the emergency, provided that CDA provides notice via telephone and e-mail promptly following the occurrence of such emergency access.
- H. The foregoing notwithstanding, CDA and its authorized representatives, agents, employees, contractors and subcontractors shall not enter the Chino Airport without first complying with the rules and regulations of the Chino Airport and the Federal Aviation Administration for access and activities thereon including, but not limited to, those related to airport security and airport operations.
- I. Any access agreements necessary to allow for the construction contemplated by this Agreement, including but not limited to wells, plants, infrastructure, conveyance, or pipelines, will be negotiated in good faith by the Parties, will not require any additional payment not set forth in this Agreement as between the County and CDA, and upon execution in writing will be made part of this Agreement as of the Effective Date.

#### XIV. MEET AND CONFER AND DISPUTE RESOLUTION

- A. If there is any disagreement between the Parties, or if this agreement otherwise provides for the Parties to meet and confer, the Parties shall meet and confer and make good faith efforts to resolve the disagreement without it rising to the level of a formal dispute. The Parties may meet and confer as long and as many times as necessary in an attempt to resolve the issue or disagreement, so long as both Parties agree to continue to meet and confer. In the event the Parties cannot resolve the issue or disagreement, the matter shall be elevated to management for each Party, who will meet and confer in person in a continued good faith effort to resolve the issue or disagreement.
- B. Any dispute arising under this Agreement shall be resolved as follows:
1. A dispute shall arise only upon one Party sending to the other Party a written Notice of Dispute, a copy of which must be delivered in accordance with the Section XV of this Agreement. A written Notice of Dispute shall be deemed received on the day personally served or, if served by mail, five business days after delivering to the United States Postal Service for delivery, postage prepaid. Such Notice of Dispute can only be sent following the completion of the meet and confer process identified in Section XIV.A, above.
  2. The sending of a Notice of Dispute shall begin a period of for informal negotiations, which shall remain open for twenty-one (21) days from the date the Notice of Dispute is deemed received but including the first business day if the twenty-one (21) day period ends on a weekend or federal or state holiday in which the County offices are closed. This period may be extended by mutual written agreement of the Parties but may not be extended unilaterally.
  3. During the initial twenty-one (21) day period for informal negotiations, and at least one-time every thirty (30) days during any extension of the period for negotiations, the Parties shall meet and confer in person, with knowledgeable representatives as to the formal dispute, in an attempt to resolve the formal dispute.
  4. Informal negotiations shall terminate either (a) when the Parties enter a written agreement mutually resolving formal dispute signed by all Parties, or (b) at the end of any period for informal negotiations in which the Parties have not during that period mutually agreed to extend the deadline for informal negotiations. If informal negotiations terminate without the Parties reaching a written signed agreement they shall proceed under the Formal Dispute Resolution procedures as set forth in **Attachment "C"** hereto.
  5. If a dispute arises or any action or claim is brought by any Party to this Agreement for breach of this Agreement or its terms, or to interpret or enforce this Agreement, whether informal negotiations, mediation, arbitration, through a court of law, or otherwise, each Party shall bear its own attorneys' fees, expert witness fees and other costs incurred therein, including all attorneys' fees and



costs of suit incurred in connection with executing and collecting upon a final judgment in that litigation, in addition to any other available relief.

- C. In the event the Parties enter into meet and confer pursuant to Section XIV.A, above, with regard to a dispute arising pursuant to Section II.B hereof only (a “Design Dispute”) and fail to reach a resolution of the Design Dispute pursuant to the meet and confer process, then either party may terminate this Agreement by giving ten (10) days written notice to the other Party. Neither Party shall have any further liability to the other pursuant to the terms hereof from and after the effective date of such notice.

**XV. NOTIFICATION**

- A. Whenever, under the terms of this Agreement, written notice is required to be given or a document is required to be sent by on Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Unless otherwise set forth in this Agreement, all notices and submissions shall be considered served effective upon receipt.
- B. Notice shall be delivered to the persons listed below and such notice must be sent in any two of the following methods: (1) electronic mail, (2) United States mail, hand delivery (personal service), or (3) overnight service such as, but not limited to, Fed Ex., to:

- 1. As to CDA: Chino Basin Desalter Authority  
General Manager  
2151 South Haven Avenue, Suite 202  
Ontario, CA 91761  
Email: [toneill@chinodesalter.org](mailto:toneill@chinodesalter.org)  
  
With a copy to: Allison E. Burns  
Stradling Yocca Carlson & Rauth  
660 Newport Center Drive, Suite 1600  
Newport Beach, CA 92660  
Email: [aburns@sycr.com](mailto:aburns@sycr.com)
- 2. As to the County: San Bernardino County  
James Jenkins, Director of Airports  
777 East Rialto Avenue San Bernardino, CA 92415-0831  
Email: [jjenkins@airports.sbcounty.gov](mailto:jjenkins@airports.sbcounty.gov)

With a copy to: San Bernardino County  
Office of County Counsel  
Penny Alexander-Kelley  
Kristina M. Robb  
385 N Arrowhead Avenue, Fourth Floor  
San Bernardino, CA 92415  
[palexander-kelly@cc.sbcounty.gov](mailto:palexander-kelly@cc.sbcounty.gov)  
[krobb@cc.sbcounty.gov](mailto:krobb@cc.sbcounty.gov)

With a copy to: Thomas A. Bloomfield  
Kaplan Kirsch & Rockwell  
1675 Broadway, Suite 2300  
Denver, CO 80202  
[tbloomfield@kaplankirsch.com](mailto:tbloomfield@kaplankirsch.com)

## **XVI. REPRESENTATIONS AND WARRANTIES**

- A. The County represents and warrants that it is, as of the Effective Date, taking reasonable steps to maintain compliance with the relevant Regional Board Orders pertaining under the CAO.
- B. CDA represents and warrants that it will comply with this Agreement and use best efforts to operate and maintain the wells and Chino I Combined Treatment Plan so as to best effectuate the substance of this Agreement and to minimize the risk that the County will be in violation of the CAO.

## **XVII. FORCE MAJEURE**

- A. For purposes of this Agreement, "Force Majeure" means any event arising from causes beyond the control of a Party or its contractors that delays or prevents the performance of any obligation under this Agreement despite that Party's best efforts to fulfill the obligation or avoid the event. Force Majeure includes but is not limited to: acts of God; fire, flood, windstorm, or earthquake; explosion, riot, or sabotage; war, terrorism, threat of terrorism, or any resulting security measures; strikes, lockouts, or other concerted work stoppages; injunctions; inability to obtain raw material, supplies, or energy; or unscheduled outages, shutdowns, or other loss of any necessary utility.
- B. The Party whose performance is delayed or prevented by Force Majeure shall inform the other Parties: (1) orally as soon as possible but no later than 48 hours of learning of the possible delay; and (2) in writing no more than five working days from the commencement of the Force Majeure.
- C. The Party whose performance is delayed or prevented by Force Majeure shall use best efforts to minimize the effect and duration of such Force Majeure.
- D. Any delay in or failure to perform any obligation under this Agreement by a Party caused by Force Majeure shall not constitute a breach of this Agreement or give rise to any claim for damages.

## **XVIII. RETENTION OF RECORDS**

### **A. Financial Records**

1. CDA shall maintain Financial Records. These Financial Records shall be maintained in accordance with generally accepted accounting principles and shall be kept for no less than 10 years after each record is generated. The Financial Records are to be made available to any Party hereto on reasonable notice by the Party maintaining them.

### **B. Project Records**

1. Notwithstanding the records retention policies of CDA or the County to the contrary, the Parties shall preserve and retain all Project Records and each Party shall instruct its contractors, subcontractors and agents to preserve and retain all such Project Records and documents until the later of ten years after the Effective Date of this Agreement, or as may be necessary under law.
2. Each Party shall bear its own costs for the retention of their Project Records and Financial Records and said records may be kept by the Parties in any format they so desire.
3. Any Party requesting Financial and/or Project Records from any other Party shall pay for the reasonable costs of such duplication prior to the delivery of the requested documents.

## **XIX. HEADINGS**

All paragraph headings in this Agreement are for convenience of reference only and shall have no effect on the interpretation of any paragraph or provision of this Agreement.

## **XX. CONSTRUCTION**

The language of this Agreement shall be construed as a whole according to its fair meaning and without regard to or aid of Civil Code Section 1654 or similar judicial rules of construction. Each Party acknowledges that it has had the opportunity to seek the advice of experts and legal counsel prior to executing this Agreement, and that it is fully aware of and understands all of the terms herein and the legal consequences thereof. Any judicial rule of construction requiring or allowing an instrument to be construed to the detriment of or against the interests of the maker thereof shall not apply to this Agreement.

## **XXI. GOOD FAITH AND FAIR DEALING**

The Parties shall deal with each other in good faith and fairly in all matters arising under this Agreement. The presence or absence of a specific reference to good faith in any paragraph of this Agreement does not affect the obligation of the Parties to deal with each other in good faith and fairly in all matters arising under this Agreement.

## **XXII. NO WAIVER**

No waiver by any Party of any default or breach by another Party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default or breach, whether like or different in character. Any failure by a Party at any time to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, or to exercise a right hereunder, shall not constitute a waiver of such terms, conditions, or rights and shall not affect or impair same, or the right of either Party to enforce the terms of this Agreement.

## **XXIII. CHANGED CONDITIONS**

### **A. New Standards for Known Contaminants and New Chemicals**

1. This section addresses how this Agreement will operate if (a) the state or federal government adopts drinking water or treatment standards that are more stringent than those that exist at the time of execution of this Agreement for TCE, TCP, 1,1-DCE, c-1,2-DCE, 1,2-DCA, nitrates or TDS, or (b) if new chemicals (other than TCE, TCP, 1,1-DCE, c-1,2-DCE, 1,2-DCA, nitrates or TDS) are identified that require treatment:
2. If such new standards or new chemicals do not trigger a requirement to change the treatment technology or construct or operate any new treatment facilities, the terms of this Agreement shall continue to apply and the system will be operated to treat the same, using the cost and work allocations outlined herein.
3. If such new standards or new chemicals do trigger a requirement to change treatment technologies or construct or operate new treatment facilities, the Parties will meet and confer pursuant to Section XIV.A of this Agreement, in an effort to develop an appropriate cost allocation for the capital and O&M costs associated with the new standards or chemicals. Absent such agreement, this Agreement shall not obligate either party to treat using such new standards or such new chemicals.

### **B. Changed conditions for CAO or County Response Action**

1. It is possible that new conditions or new information will develop during the course of this Agreement that will cause the County to modify the response action for the CAO, including a reduction in production at certain County Wells, an increase in production at the County Wells, the installation of new wells or other changes. In such an instance, CDA agrees reasonably to accommodate requested reductions or increases by the County in production rates at the County Wells. If the County installs new wells or modifies its existing wells to be connected to the County's Chino I GAC Treatment Plant, the County shall be responsible for the design, permitting and construction of such changes, subject to review and approval or disapproval by CDA and DDW of such design. If needed, the Parties agree to cooperate to develop changes to the cost allocation set forth in this Agreement, for the O&M changes associated with such modification, including to meet and confer pursuant to Section XIV.A of this Agreement.

C. Conveyance of Water from Airport GAC Treatment Plant

1. If the County determines that it is interested in constructing the Airport GAC Treatment Plant to treat VOC's from the Onsite County Wells, and if the County further determines that it desires to convey some water from that system to CDA, CDA and the County agree to meet and confer to determine whether or under what circumstances and arrangements CDA could accept the treated water from the Airport GAC Treatment Plant; provided, however, that this Agreement does not impose on CDA any obligation to accept such water.

**XXIV. GOVERNING LAW**

This Agreement shall be construed in accordance with the laws of the State of California, without giving effect to conflict of law principles.

**XXV. SIGNATORIES**

- A. The decision to enter into this Settlement Agreement has been made solely by the Parties, and each of them, upon advice and representations of the attorneys representing each said Party, and not upon any representations or advice of the other Parties, their representatives or attorneys.
- B. In signing below, each Party represents and warrants to the other Party that each is a duly organized or constituted entity, with all requisite power to carry out its obligations under this Agreement, and that the execution, delivery and performance of this Agreement have been duly authorized by all necessary action(s) of the governing board or other governing body of such Party and shall not result in a violation of such Party's organizational documents.
  1. The Parties acknowledge that execution of this Agreement by the County is conditioned upon any necessary approval of the terms of the Agreement by its Board of Supervisors.

**XXVI. MULTIPLE COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original.

**XXVII. EFFECT OF THIS AGREEMENT ON OTHER AGREEMENTS AMONG THE PARTIES**

Nothing in this Agreement supersedes, abrogates, amends, or modifies the provisions of any prior agreement between the County and CDA on matters not addressed herein, the terms of which are preserved, except as expressly set forth herein.

**XXVIII. NO LIQUIDATED DAMAGES**

Nothing herein shall be construed as in any way inferring or establishing that this Agreement represents a liquidation of damages incurred or to be incurred in the future by the County and/or CDA as a result of, but not limited to, the Contaminants, or any matter contemplated by this Agreement.

**XXIX. NO ADMISSION**

This Settlement Agreement is a compromise of disputed claims and is not evidence or an admission of fault or liability on the part of any Party, such liability being expressly denied.

**XXX. ADDITIONAL DOCUMENTS**

The Parties agree to enter into further agreements as may be necessary to further effectuate the objectives of this Agreement.

**XXXI. AMENDMENT**

This Agreement may be amended at any time, but only by written agreement executed by all Parties then participating in the Agreement.

**XXXII. BINDING AGREEMENT**

This Agreement shall be binding upon the successors of CDA and the County. However, no Party shall assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of all of the other Parties, which consent shall not be unreasonably withheld. No third party shall be entitled to claim or enforce any rights under this Agreement.

**XXXIII. SEVERABILITY**

In the event that any provision of this Agreement is determined by a court to be invalid, the court shall reform the provision in a manner that is both consistent with the terms of this Agreement taken as a whole and legally valid. The remainder of this Agreement shall not be affected thereby.

**XXXIV. INTEGRATION**

As between the Parties, this Agreement sets forth all of the covenants, provisions, agreements, conditions and understandings with respect to the matters addressed in this Agreement and constitutes the final and complete Agreement of the Parties with respect to such matters and supersedes all previous negotiations between them and all drafts or other documents previously exchanged by them with respect to such matters. Each Party acknowledges that no other Party, or agent or attorney of any other Party, has made any promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the matters addressed in this Agreement, to induce it to authorize the execution of this Agreement, and acknowledges that it has not authorized the execution of this Agreement in reliance upon any such promise, representation, or warranty not contained herein.

IN WITNESS WHEREOF this Agreement is agreed to between the signatories below.

COUNTY OF SAN BERNARDINO

*Curt Hagman*

Curt Hagman, Chairman, Board of Supervisors

Dated: OCT 08 2019

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By *Lynna Monell*  
Lynna Monell  
Clerk of the Board of Supervisors  
of the County of San Bernardino



By *Lynna Monell*  
Deputy

CHINO BASIN DESALTER AUTHORITY

(Print or type name of corporation, company, contractor, etc.)

By *Thomas O'Neill*  
(Authorized signature - sign in blue ink)

Thomas O'Neill

Name \_\_\_\_\_  
(Print or type name of person signing contract)

Title General Manager/CEO  
(Print or Type)

Dated: October 1, 2019  
2151 S. Haven Avenue, Suite 202  
Address Ontario, CA 91761

**FOR COUNTY USE ONLY**

Approved as to Legal Form

*Kristina Robb*  
Kristina Robb, Deputy County Counsel

Date 10/3/19

Reviewed for Contract Compliance

Date \_\_\_\_\_

Reviewed/Approved by Department

Date \_\_\_\_\_

Name of Party: Chino Basin Desalter Authority

By: *Thomas O'Neill*

Name: Thomas O'Neill

General Manager/CEO

Title:

October 1, 2019

Date:

## ATTACHMENT "A"

### CDA/San Bernardino Airport Annual Operation Plan

#### Planning

- Both parties to meet in February to establish water production schedule for upcoming Fiscal Year.
- Planned water deliveries to Chino I GAC Treatment Plant

CDA Wells	GPM	AFY	County* Wells	GPM	AFY
I-1	330	479.096	EW - 1	100	145.181
I-2	150	217.771	EW - 2	100	145.181
I-3	420	609.758	EW - 3	150	217.771
I-4	100	145.181	EW - 4	50	72.590
I-16	175	254.066	EW - 5	100	145.181
I-17	225	326.656	EW - 6	150	217.771
I-18	180	261.325	EW - 7	50	72.590
			EW - 8	50	72.590
			EW - 9	100	145.181
			EW - 10	50	72.590
Total		2293.852			1306.625

Production based on 10% downtime

\*These are preliminary values available as of the Effective Date. The capacity needed for the County's response action will be determined by the County based on additional investigation and analysis, and may increase above the values shown for the County Wells, individually or collectively.

- Planned water deliveries to Airport GAC Treatment Plant

On-Site Airport Wells	GPM	AFY
EW - 1	0	0.000
EW - 2	0	0.000
EW - 3	0	0.000
EW - 4	0	0.000
EW - 5	0	0.000
EW - 6	0	0.000
EW - 7	0	0.000
EW - 8	0	0.000
EW - 9	0	0.000
EW - 10	0	0.000
		0.000



Historical deliveries

- Previous program year delivery

CDA Wells	AFY	County Wells	Chino I GAC AFY	Airport GAC AFY
I-1	0.000	EW - 1	0.000	0.000
I-2	0.000	EW - 2	0.000	0.000
I-3	0.000	EW - 3	0.000	0.000
I-4	0.000	EW - 4	0.000	0.000
I-16	0.000	EW - 5	0.000	0.000
I-17	0.000	EW - 6	0.000	0.000
I-18	0.000	EW - 7	0.000	0.000
		EW - 8	0.000	0.000
		EW - 9	0.000	0.000
		EW - 10	0.000	0.000
Total	0.000			0.000

Planned maintenance and repairs

Previous unplanned maintenance and repairs

Communication

CDA Contacts

County Contacts

CDA Reporting of Groundwater Production

Monthly to County (by the 10<sup>th</sup>)

Quarterly to Chino Basin Watermaster

**ATTACHMENT "B"**

**Chino 1 GAC Treatment Plants  
Engineering Cost Estimate -- Capital Costs\***

Item	Quantity	Unit Cost	Total
<b>Site</b>			
Miscellaneous Site Work	1	\$20,000 LS	\$20,000
Yard Piping	1	\$100,000 LS	\$100,000
<b>Equipment</b>			
2 Pressure Filters, Piping and Valves HP1020SYS	2	\$400,000 EA	\$800,000
Backwash Pumps	4	\$15,000 EA	\$60,000
Bolted Steel Backwash Tank - 20,000 gal 32' Tall x 15' Dia.	1	\$100,000 LS	\$100,000
Pressure Filters Structural Concrete and Steel	1	\$100,000 LS	\$100,000
Electrical	1	\$50,000 LS	\$50,000
Instrumentation and Controls	1	\$25,000 LS	\$25,000
Painting and Coatings	1	\$30,000 LS	\$30,000
General Conditions	1	\$50,000 LS	\$50,000
		<b>Subtotal</b>	<b>\$1,335,000</b>
		Insurance and Bonds @ 2%	\$26,700
		Contractor's Overhead and Profit @ 10%	\$133,500
		<b>Subtotal Construction Cost</b>	<b>\$1,495,200</b>
		Contingency @ 30%	\$448,600
		<b>Total Capital Cost</b>	<b>\$1,943,800</b>

\*The treatment plant capacity for the County's Chino I GAC Treatment Plant are preliminary values available as of the Effective Date. The capacity needed for the County's response action will be determined by the County based on additional investigation and analysis, and may require additional treatment plant capacity, to be funded by the County.

## ATTACHMENT "C"

### Formal Dispute Resolution

#### 1. **Non-Binding Mediation:**

A. If the Parties' representatives are unable to resolve the formal dispute through informal negotiations as provided in the Agreement, any Party may seek non-binding mediation before a Mediator by written "Notice of Election to Proceed To Mediation" served on all Parties within ten (10) days of the termination of informal negotiations.

B. If both Parties do not agree to Mediation, the dispute may be resolved through litigation, as set forth in section 2, entitled Resolution through Litigation, below.

C. The Mediation Period shall be for a period of no more than 45 days after date the Notice of Election to Proceed To Mediation was sent, unless extended by written agreement of the Parties.

D. The Mediator shall be selected by agreement of the Parties. The Parties will meet and confer either in-person or telephonically to discuss, in good faith, the selection of the Mediator. However, if Parties are unable to agree on a Mediator after having met and conferred, the Parties shall, within two (2) days thereafter, meet in-person and simultaneously exchange their list of four (4) potential Mediators. If the exchanged lists contain the matched name of any Mediator, that match-named Mediator shall be deemed agreed upon. If the exchanged lists contain the matched-names of more than one (1) potential Mediator, the Party first served with the Notice of Election to Proceed To Mediation which is a subject of this mediation will choose the Mediator from the matched-names. If there are no matched-names on the provided lists each Party shall pick two potential mediators from their respective list and write each of the four (4) names separately on the back of identical business cards provided by the Party serving the Notice of Election to Proceed To Mediation. The Party having been served with Notice of Election to Proceed To Mediation shall select the names at random and the order of selection shall be the order in which the potential Mediators are to be contacted to determine if they can perform such mediation in the time required.

E. The Parties shall either jointly or individually summarize the nature of the dispute in writing, provide all pertinent and relevant technical and legal arguments and shall also include, if appropriate, a reasonable estimate of the dollar amount in controversy to the Mediator no less than seven (7) days prior to the mediation.

F. A date for the mediation shall be selected by the Parties and the Mediator. If the Parties cannot agree on a mediation date it shall be selected unilaterally by the Mediator to fall within the time prescribed for the mediation. Each Party may have counsel present at the mediation and any and all other persons as it deems necessary. The mediation is intended to allow the Parties to reach a reasonable resolution of the controversy with the aid of the Mediator.

The mediation shall be considered terminated when one or both Parties or the mediator, provide written notice that the mediation should be terminated.

## **2. Resolution through Litigation**

In the event the Parties are unable to resolve the dispute through mediation, either with or without attempting mediation, either Party may proceed with litigation, as permitted under law.