

**FIRST AMENDMENT TO AGREEMENT
REGARDING GAC TREATMENT PLANTS**

THIS FIRST AMENDMENT TO AGREEMENT REGARDING GAC TREATMENT PLANTS (the “Amendment”), is made by and between the **COUNTY OF SAN BERNARDINO** (“County”) and **CHINO BASIN DESALTER AUTHORITY**, a joint powers authority (“CDA”) (collectively, referred to herein as the “Parties”).

R E C I T A L S

A. The Parties entered into that certain Agreement dated October 8, 2019 (the “Agreement”) regarding the Chino I GAC Treatment Plants.

B. The Parties desire to extend the time for completion of the design, construction and permitting of the Chino I GAC Treatment Plants.

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the Parties hereby agree as set forth below.

1. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

2. The recitals and definitions set forth above are incorporated by reference and made part of this Amendment as if set forth in full herein.

3. Section II.B.6. of the Agreement is hereby deleted in its entirety and replaced with the following:

II.B.6. “CDA and the County will complete the design, construction and permitting as required by this section by no later than January 31, 2023, subject to the Force Majeure provision of this Agreement.”

4. Section VI.A. and B. of the Agreement are hereby deleted in their entirety and replaced with the following:

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 60 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 within 60 days of receipt. 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 within 60 days of receipt.
 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 within 60 days of receipt.

5. Except as expressly amended herein, all terms and provisions of the Agreement shall remain unamended and in full force and effect as originally executed and the Agreement is hereby ratified and reaffirmed. From and after the date hereof, the term “this Agreement” shall be deemed to refer to the Agreement, as amended by this Amendment. In the event there is a conflict between the terms and provisions of this Amendment and the terms and provisions of the Agreement, the terms and provisions of this Amendment shall control. This Amendment cannot be changed in any manner except by a written agreement signed by County and CDA.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this amendment is agreed to by the parties below.

COUNTY OF SAN BERNARDINO

Chino Basin Desalter Authority

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

Curt Hagman, Chairman, Board of Supervisors

By  _____
(Authorized signature - sign in blue ink)

Thomas O'Neil

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

Name _____
(Print or type name of person signing contract)

Title General Manager/CEO

(Print or Type)

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

By _____
Deputy

Dated: _____
2151 S. Haven Avenue, Suite 202
Address Ontario, CA 91761

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
 _____ Kristina Robb, Principal Assistant County Counsel	 _____	 _____
Date _____	Date _____	Date _____