
ACTION - Continued

7. WATER EFFICIENCY TACTICAL INCENTIVE FUNDING AUTHORIZATION – MCNULTY/SANCHEZ/WEGHORST

Recommendation: That the Board authorize the General Manager to allocate \$1,250,000 in funding to the FY 2016-17 rebate programs administered through the multi-year Water Conservation Participation Agreement Between MWDOC and IRWD using existing and future addendums to the agreement as may be necessary to allocate funds based on actual participation rates and regional program funding.

8. MEMORANDUM OF UNDERSTANDING FOR SMART TIMER DISTRIBUTION PROGRAM – MCNULTY/SANCHEZ/WEGHORST

Recommendation: That the Board authorize the General Manager to execute the Memorandum of Understanding between IRWD and Moulton Niguel Water District for the Smart Timer Distribution Program that commits funding in the amount of \$100,000 which will be reimbursed to IRWD through the Water-Energy Grant with the California Department of Water Resources.

OTHER BUSINESS

9. A. Directors' Comments

B. Adjourn

Availability of agenda materials: Agenda exhibits and other writings that are disclosable public records distributed to all or a majority of the members of the above-named Committee in connection with a matter subject to discussion or consideration at an open meeting of the Committee are available for public inspection in the District's office, 15600 Sand Canyon Avenue, Irvine, California ("District Office"). If such writings are distributed to members of the Committee less than 72 hours prior to the meeting, they will be available from the District Secretary of the District Office at the same time as they are distributed to Committee Members, except that if such writings are distributed one hour prior to, or during, the meeting, they will be available at the entrance of the meeting room at the District Office.

The Irvine Ranch Water District Committee Room is wheelchair accessible. If you require any special disability-related accommodations (e.g., access to an amplified sound system, etc.), please contact the District Secretary at (949) 453-5300 during business hours at least seventy-two (72) hours prior to the scheduled meeting. This agenda can be obtained in an alternative format upon written request to the District Secretary at least seventy-two (72) hours prior to the scheduled meeting.

January 12, 2017

Prepared and

submitted by: C. Compton 

Approved by: Paul Cook 

WATER RESOURCES POLICY AND COMMUNICATIONS COMMITTEE

2017 LEGISLATIVE UPDATE

SUMMARY:

This report provides an update on the 2017-2018 legislative session and IRWD priorities. As legislation develops, staff will provide updates and recommendations to the Water Resources Policy and Communications Committee and the Board, as appropriate.

BACKGROUND:

The 2017-2018 legislative session convened on December 5, 2016. New members of the Legislature were sworn into office that day. The Legislature then recessed until January 4, 2017, when the first year of the 2017-2018 legislative session was convened. Prior to the reconvening of the 2017-2018 session, 75 Assembly bills and 65 Senate bills had been introduced.

January 10 marked the day the proposed budget had to be submitted to the Legislature by the Governor. January 20 is the last day for bills to be submitted to the Office of the Legislative Counsel. The bill introduction deadline is February 17, though resolutions can be introduced after that date. First policy committee deadlines are in late April and early May.

A copy of the 2017 Legislative Matrix is attached as Exhibit "A". Exhibit "B" is the 2017 Legislative Update Report Links to Bill Texts, which contains links to the bills discussed below, unless a separate exhibit is noted.

State Budget Update:

November State Revenue Numbers Released:

Given the political implications that State revenues and the State's fiscal outlook can have on local government, staff continues to monitor the State's revenue and budget situation. On December 9, 2016, State Controller Betty Yee released her monthly report on the State's finances. She announced that the State took in \$7.98 billion in revenue during the month of November. This amount was \$556.9 million, or 7.5 percent, higher than the projections contained in the 2016-2017 Budget Act.

November's increased revenues were due in large part to personal income tax receipts outpacing budget estimates by \$559.7 million, or 14.0 percent. Fiscal-year-to-date, personal income tax revenues have come in \$560.7 million higher than estimates. Despite the more positive news on personal income tax receipts for November, the State Controller reported that

“Gross corporation tax collections of \$294.6 million for November beat projections by \$53.6 million. However, corporation tax refunds of \$399.7 million were \$110.7 million

higher than expected. In total, corporation tax receipts for November were in the red by \$105.1 million.

For the first five months of the fiscal year, total corporation tax receipts of \$1.46 billion are \$318.2 million lower than anticipated in the 2016-17 Budget Act—a shortfall of 17.9 percent.

Retail sales and use tax receipts of \$3.10 billion for November missed expectations by \$73.4 million. For the fiscal year-to-date, sales tax receipts of \$9.92 billion are \$238.3 million below estimates. For both the month and the fiscal year-to-date, sales tax receipts are 2.3 percent shy of budget projections.”

Fiscal-year-to-date, the State has received revenues of \$38.87 billion, which is 0.5 percent above budget estimates. Despite November’s revenue numbers showing a more positive State revenue picture than the first four months of the fiscal year, there is considerable uncertainty as to what revenue picture the remainder of Fiscal Year 2016-2017 will yield for the State.

Legislative Analyst’s Office Fiscal Outlook:

In November 2016, the Legislative Analyst’s Office (LAO) issued “*The 2017-18 Budget: California’s Fiscal Outlook*.” The outlook forecasts that the State will end Fiscal Year 2016-2017 with \$1 billion less in reserves than the \$8.5 billion included in the 2016-2017 Budget. This is due in large part to revenues in Fiscal Years 2015-2016 and 2016-2017 coming in at \$1.7 billion lower than budget estimates. Notwithstanding lower revenues in Fiscal year 2015-2016 and in early Fiscal Year 2016-2017, the LAO projects that revenues will increase for Fiscal Year 2017-2018, and cautions that the State could end Fiscal Year 2017-2018 with \$11.5 billion in reserves, if and only if the State makes no additional budget commitments and if there are no changes in federal policy that would impact the State’s expenditures or revenues.

Despite this more positive outlook for the Fiscal Year 2017-2018 budget, the LAO caveats its budget outlook and estimates on the fact that there is significant uncertainty surrounding the State’s revenues, California’s economy and stock market performance. Even with the LAO’s caution, there will undoubtedly be legislative pressure to increase State spending, especially if federal policy changes impact California.

Governor Jerry Brown, who has traditionally taken a less optimistic view of the State’s finances than the LAO, is scheduled to release his annual budget on January 10, 2017. Staff will provide the Committee with an update on the Governor’s proposed budget.

A copy of the LAO’s report can be viewed at <http://lao.ca.gov/reports/2016/3507/Fiscal-outlook-111616.pdf>.

2017 State Legislation and Regulatory Actions:

2017-2018 Bill Introduction Limit:

When the California State Legislature reconvened for the 2017-2018 Legislative Session in December 2016, it enacted its operating rules for the two-year legislative session. Both the State Senate and the Assembly established a limit on the number of bills each legislator may introduce during the two-year cycle. For many years, the bill limit has been set at 40 bills per two-year cycle for each member of Assembly and 40 bills per two-year cycle for each member the State Senate. The California State Assembly changed its bill limit for the 2017-2018 Legislative Session, when it adopted its house rules. For the 2017-2018 Legislative Session, each Assemblymember may introduce 50 bills. With 80 Assemblymembers, the 10-bill increase per member will allow for an additional 800 bills to be introduced. This means that over the next two years, the Assembly may put forth as many as 4,000 bills.

Park and Water Infrastructure Bond Proposals:

On the first day of the 2017-2018 Legislative Session, Senate President Pro Tem Kevin de León (D- Los Angeles) and newly appointed Assembly Water, Parks and Wildlife Committee Chairman Eduardo Garcia (D- Coachella) both introduced legislation proposing a general obligation park and water infrastructure bond.

Assemblymember Garcia proposes creation of the “California Clean Water, Climate, and Coastal Protection and Outdoor Access for All Act of 2018,” a \$3.005 billion general obligation bond in AB 18. AB 18 proposes \$3.005 billion for parks with limited funding opportunities for stormwater capture and groundwater recharge projects. The bill proposes funding in the following categories:

AB 18 Proposed Funding:

- \$900 million for safe neighborhood parks in park-poor neighborhoods;
- \$600 million for climate adaption and resiliency;
- \$540 million for local and regional parks;
- \$330 million for restoration and preservation of existing state park facilities;
- \$225 million for river recreation, creek, stormwater and waterway improvements, including \$5 million for the Santa Ana River Conservancy;
- \$180 million for ocean, bay and coastal protection;
- \$145 million for State conservancy and authority funding;
- \$45 million for trails and greenway investments; and
- \$40 million for rural recreation, tourism and economic enrichment.

Senator de León proposed creation of the “California Drought, Water, Parks Climate, Coastal Protection, and Outdoor Access for All Act of 2018,” a \$3 billion general obligation bond in SB 5. SB 5 proposes \$1.5 billion for parks and \$1.5 billion for drinking water and drought preparedness. The bill proposes funding in the following categories:

SB 5 Park Funding:

- \$600 million for safe neighborhood parks in park-poor neighborhoods;
- \$400 million for climate adaption and resiliency;
- \$125 million for river recreation, creek and waterway improvements, including \$75 million for the Santa Monica Mountains Conservancy and with no less than \$3.75 million for the Santa Ana River Conservancy;
- \$120 million for State conservancy and authority funding;
- \$100 million for restoration and preservation of existing state park facilities;
- \$80 million for ocean, bay and coastal protection;
- \$30 million for local and regional parks;
- \$25 million for trails and greenway investments; and
- \$20 million for rural recreation, tourism and economic enrichment.

SB 5 Drinking Water and Drought Funding:

- \$375 million for water quality and clean, safe and reliable drinking water;
- \$375 million for integrated regional water management;
- 375 million for water recycling; and
- \$375 million for ground water cleanup.

State Water Resources Control Board Emergency Regulations:

In response to the five-year statewide drought, Governor Brown issued Executive Order B-29-15 on April 1, 2015, mandating a 25 percent reduction in statewide potable water use between June 2015 and February 2016. On May 5, 2015, the State Board first adopted an Emergency Regulation to implement the provisions of the Executive Order requiring percentage reductions in potable water use for each urban water supplier. On November 13, 2015, Governor Brown issued Executive Order B-36-15 which directed the State Board to extend the May 2015 Emergency Regulation, if drought conditions persisted. Drought conditions continued and the Emergency Regulation was extended in February 2016.

In response to water supply conditions throughout the state improving, the State Board adjusted the Emergency Regulation in May 2016. The adjustment eliminated the percentage reduction and implemented a self-certification process. The self-certification process asked each urban water supplier to determine if it would have a water supply shortage during the next three years if the drought were to continue. The May 2016 Emergency Regulation will expire on February 28, 2017, unless the State Board takes further action.

On May 9, 2016, Governor Brown issued his most recent drought-related executive order, Executive Order B-37-16, which requires the State Board “to develop, by January 2017, a proposal to achieve a mandatory reduction in potable urban water usage that builds off of the mandatory 25% reduction called for in earlier executive orders and lessons learned through 2016.” In order to comply with the Executive Order, the State Board will hold a workshop on January 18, 2017, to solicit input as it considers readoption of the Emergency Regulation through October 2017.

Staff will discuss the upcoming workshop and potential State Board action on the Emergency Regulation with the Committee.

Long-Term Conservation Framework:

On November 30, 2016, the Department of Water Resources (DWR) and the State Board released a draft plan/framework for achieving long-term water use efficiency and outlining drought preparedness goals for California. The draft framework, entitled “Making Water Conservation a California Way of Life,” was developed in response to the Governor’s Executive Order B-37-16, which directed the state agencies to build on the significant conservation achieved during the drought by developing a long-term conservation framework. Comments on the draft framework were due on December 19.

Throughout the fall staff worked with various stakeholders and the Association of California Water Agencies (ACWA) to provide comments to the state agencies on the development of the draft framework. The District also signed onto a comment letter on the draft framework developed by ACWA and signed by 114 water agencies and associations from throughout the state. That coalition letter was submitted on December 19.

Since the comment deadline, staff has continued to work with various stakeholders and ACWA on the long-term conservation framework. Because legislation will be needed to implement significant portions of the long-term conservation framework, several of the stakeholders, with whom staff has been collaborating, have developed potential policy positions on the various topics covered by the long-term conservation framework. A copy of the draft policy statements developed by these stakeholders is attached as Exhibit “C”.

Staff will discuss the draft policy statements with the Committee and provide an oral update on discussions related to the long-term conservation framework.

Report to the Legislature on the Feasibility of Developing Uniform Water Recycling Criteria for Direct Potable Reuse:

On December 30, 2016, the State Board delivered its report to the Legislature on the “Feasibility of Developing Uniform Water Recycling Criteria for Direct Potable Reuse.” The report found that it is possible for the State Board to develop uniform water recycling criteria for direct potable reuse protective of public health, and that the uniform criteria can be developed concurrently with ongoing research on issues related to potable reuse. A copy of the report can be viewed at http://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/rw_dpr_criteria.shtml.

With the issuance of the final report to the Legislature, discussions are taking place throughout the state on how to move potable reuse forward in California. Staff will update the Committee on these discussions.

2017 Federal Legislation:

Trump Administration Infrastructure Proposal:

As has been widely reported, President-Elect Donald Trump has indicated that he is interested in moving forward an infrastructure funding package to rebuild America's infrastructure and to get Americans back to work. While details surrounding the new Administration's infrastructure proposal are limited, it appears that the proposal will likely have limited direct funding and will instead propose the use of tax credit bonds and direct tax credits for private party participants in Public-Private Partnerships to encourage investments in the country's infrastructure.

Staff is working with a coalition of California water agencies to develop a policy statement on which federal policies or funding would encourage investment in the nation's water infrastructure. The policy statement will likely:

- State the coalition's opposition to elimination or devaluing of tax exempt municipal bonds;
- Comment on the potential benefits tax credit bonds could provide for water supply infrastructure;
- State that future investments in water infrastructure must include new water supply infrastructure, as well as existing water infrastructure; and
- State the importance of maintaining and appropriately funding direct funding programs, including Title XVI and the Water Resources Development Act.

Staff is also in the process of developing a list of projects for which IRWD may want to seek federal funding if an infrastructure funding package moves forward. Staff will update the Committee on any new developments related to a Trump Administration infrastructure funding proposal.

FISCAL IMPACTS:

Not applicable.

ENVIRONMENTAL COMPLIANCE:

Not applicable.

RECOMMENDATION:

Receive and file.

LIST OF EXHIBITS:

Exhibit "A" – IRWD Legislative Matrix

Exhibit "B" – 2016 Legislative Update Report Links to Bill Texts

Exhibit "C" – Draft "Making Conservation a Way of Life: Water Suppliers and Associations Position on Legislation to Implement Executive Order B-37-16"

EXHIBIT "A"
IRWD 2017 LEGISLATIVE MATRIX
Updated 01/05/2017

Bill No. Author	Title	IRWD Position	Summary/Effects	Status
AB 18 Garcia E (D)	Clean Water, Climate, and Coastal Protection Act		Enacts the California Clean Water, Climate, and Coastal Protection and Outdoor Access For All Act, which would authorize the issuance of bonds to finance a clean water, climate, and coastal protection and outdoor access for all program. Provides for the submission of these provisions to the voters at the statewide direct primary election.	12/05/2016 - INTRODUCED.
AB 47 Ting (D)	Budget Act of 2016		Expresses the intent of the Legislature to enact legislation that would amend the Budget Act of 2016.	12/05/2016 - INTRODUCED.
AB 48 Ting (D)	Budget Act of 2016		Expresses the intent of the Legislature to enact legislation that would amend the Budget Act of 2016.	12/05/2016 - INTRODUCED.
AB 49 Ting (D)	Budget Act of 2016		Expresses the intent of the Legislature to enact legislation that would amend the Budget Act of 2016.	12/05/2016 - INTRODUCED.
AB 50 Ting (D)	Budget Act of 2016		Expresses the intent of the Legislature to enact legislation that would amend the Budget Act of 2016.	12/05/2016 - INTRODUCED.
AB 51 Ting (D)	Budget Act of 2016		Expresses the intent of the Legislature to enact legislation that would amend the Budget Act of 2016.	12/05/2016 - INTRODUCED.
AB 52 Cooper (D)	Public Employee: Orientation And Informational Programs		Requires the public employers regulated by specified acts to provide all employees an orientation and to permit an exclusive representative to participate.	12/05/2016 - INTRODUCED.
SB 5 de Leon (D)	California Drought, Water, Parks, Climate		Enacts the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018. Authorizes the issuance of bonds in an amount of \$3,000,000,000 pursuant to the State General Obligation Bond Law to finance a drought, water, parks, climate, coastal protection, and outdoor access for all program.	12/05/2016 - INTRODUCED.

IRWD 2017 LEGISLATIVE MATRIX
Updated 01/05/2017

Bill No. Author	Title	IRWD Position	Summary/Effects	Status
SB 24 Portantino (D)	Political Reform Act of 1974: Economic Interest		Amends the Political Reform Act which requires certain disclosures to include a statement indicating the fair market value of investments or interests in real property and the aggregate value of income received from each reportable source. Revises the dollar amounts associated with these ranges.	12/05/2016 - INTRODUCED.
SB 45 Mendoza (D)	Political Reform Act of 1974: Mass Mailing		Prohibits a mass mailing from being sent within 90 days preceding an election by or on behalf of a candidate whose name will appear on the ballot.	12/05/2016 - INTRODUCED.
SB 47 de Leon (D)	Budget Act of 2016		Expresses the intent of the Legislature to enact statutory changes relating to the Budget Act of 2016.	12/05/2016 - INTRODUCED.
SB 48 de Leon (D)	Budget Act of 2016		Expresses the intent of the Legislature to enact statutory changes relating to the Budget Act of 2016.	12/05/2016 - INTRODUCED.
SB 49 de Leon (D)	Budget Act of 2016		Expresses the intent of the Legislature to enact statutory changes relating to the Budget Act of 2016.	12/05/2016 - INTRODUCED.
SB 50 de Leon (D)	Budget Act of 2016		Expresses the intent of the Legislature to enact statutory changes relating to the Budget Act of 2016.	12/05/2016 - INTRODUCED.
SB 51 de Leon (D)	Budget Act of 2016		Expresses the intent of the Legislature to enact statutory changes relating to the Budget Act of 2016.	12/05/2016 - INTRODUCED.
SB 57 Wilk (R)	Water Resources: Permit to Appropriate: Application		Provides that, if the State Water Resources Control Board has not rendered a final determination on an application for a permit to appropriate water within 25 years, the board is required to issue a notice and provide an opportunity for protests before rendering a final determination.	12/08/2016 - INTRODUCED.
SB 62 Jackson (D)	Unlawful Employment: Family Care and Medical Leave		Amends the Moore-Brown-Roberti Family Rights Act. Makes various changes to definitions, thereby expanding the persons and purposes for which leave is required to be provided under the act.	12/22/2016 - INTRODUCED.

IRWD 2017 LEGISLATIVE MATRIX
Updated 01/05/2017

Bill No. Author	Title	IRWD Position	Summary/Effects	Status
			Redefines the term "child" to include a biological, adopted, or foster son or daughter, a stepchild, a legal ward, a son or daughter of a domestic partner, or a person to whom the employee stands in loco parentis. Extends the definition of leave to also include leave to care for a grandparent or grandchild.	
SB 63 Jackson (D)	Unlawful Employment Practice: Parental Leave		Prohibits an employer from refusing to allow certain employees to take up to 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement. Prohibits an employer from refusing to maintain and pay for coverage under a group health plan for an employee who takes this leave.	12/22/2016 - INTRODUCED.
HR 23 Valadao (R)	Drought Relief in the State of California		Provides drought relief in the State of California	01/03/2017 - INTRODUCED.;01/03/2017 - To HOUSE Committee on NATURAL RESOURCES.;01/03/2017 - To HOUSE Committee on AGRICULTURE.

Exhibit “B”

2017 Legislative Update Report:
Links to Bill Texts
(as of January 9, 2017)

Bill Number/Version Date	Link to Bill Text
AB 18 (Garcia), as introduced	http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB18
SB 5 (de León), as introduced	http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB5

EXHIBIT “C”

DRAFT

Making Conservation a Way of Life: Water Suppliers and Associations Position on Legislation to Implement Executive Order B-37-16

January 4, 2017

Background

Governor Brown issued Executive Order B-37-16 on May 9, 2016. Included in the Executive Order were various mandates to the State Water Resources Control Board and the Department of Water Resources to develop recommendations for updating water use efficiency requirements promulgated by SB x7-7 of 2009 (Water Code 10608 et seq.) and water shortage contingency plan requirements of the Urban Water Management Planning Act. In November 2016, DWR and the SWRCB (and other Executive Order agencies) released their draft report in response to the Executive Order. A number of recommendations contained in the draft report will require legislation to implement. The position on such legislation of 114 California public water suppliers and associations, signatories to the December 19, 2016 joint comment letter, is described below.

Water Use Efficiency

Multiple Compliance Methods – SB x 7-7 established four methods that water suppliers can use to determine compliance with efficiency requirements. A single method does not account for the diversity within the state, and additional compliance methods that are based on the alternatives provided in SB x7-7 should be included. Additionally, the regional compliance option should be maintained.

No Impact on Water Rights – Water Code Section 1011, allowing water right holders to use or transfer conserved water, must continue to apply. The new legislation should not adversely impact water supply contracts or water rights.

Sustainable Water Management – as described in the California Water Action Plan, both water use efficiency measures and development of additional resilient water supplies will be required to sustainably manage California’s water. New laws or regulations must not result in stranded water resource assets nor discourage continued regional or local investments in these critical new water supplies.

Legislative Role in Updates – any revisions of standards or performance measures beyond the initially adopted standards must be approved by the Legislature.

Enforcement Measures – the current sanction for failure to meet efficiency targets – ineligibility for state water grant funds – should be maintained.

Compliance Reporting - we support reporting on compliance with the 2025 targets in the 2025 Urban Water Management Plan. We do not support annual reporting on targets either before or after the 2025 Plan.

Efficiency Standards – for a water budget based compliance method, we support 55 gallons per capita per day as the indoor standard and the Model Water Efficient Landscape Ordinance (MWELO) standard in place when landscapes were installed for irrigable areas. We support a stakeholder consultation process for developing efficiency standards for commercial, industrial and institutional uses, for developing variances for unique uses, and for any recommendations for changes to indoor or landscape standards.

Landscape Area Data – the state shall provide validated land use data of the irrigable area at the parcel level to each water supplier in a timely manner, and will defer to water suppliers that choose to utilize their own validated data sets.

Recycled Water – consistent with existing law, recycled water (including potable reuse) should be excluded from calculations of water budgets and corresponding efficiency standards, as it is already an efficient beneficial use.

Water Loss Requirements – we do not support including water loss standards in efficiency standards, as they will already be addressed through separate regulatory requirements and provisions of SB 555 of 2015 (Water Code 10608.34 et seq).

Water Shortage Contingency Plans


Plan Enhancements – we support the transition to a five-year drought planning sequence in the Urban Water Management Plan, and the additional components proposed for the Water Shortage Contingency Plans – communication plan, specific compliance and exemption procedures, monitoring and reporting protocols and a regular review process.

Annual Water Budget Forecast – we support providing State agencies with our annual supply and demand assessments, to facilitate better understanding of hydrologic and local supply conditions throughout the state.

Additional Dry Year Analyses - we support an analysis of one additional dry year in the annual water budget forecast, if conditions require a water supplier to implement its water shortage contingency plan.

SGMA Implementation - GSAs must consider the interests of all water users, but they do not have an explicit obligation to ensure water supply reliability for any and all users within the GSA jurisdiction. Additional requirements for Groundwater Sustainability Plans should be considered only within SGMA implementation stakeholder processes, and are inappropriate as part of this framework.

Small Supplier and Rural Community Drought Planning - those small water systems which have already established their own shortage plans should retain the flexibility to maintain the authority to implement their shortage plans and coordinate with their respective water wholesaler or County and not be subject to a new duplicative countywide effort.

January 12, 2017
Prepared by: A. McNulty
Submitted by: F. Sanchez/P. Weghorst
Approved by: Paul Cook 

WATER RESOURCES POLICY AND COMMUNICATIONS COMMITTEE

VARIANCE NO. 2 TO AGREEMENT WITH SYNERGY COMPANIES

SUMMARY:

In October 2015, IRWD was awarded a Water-Energy Grant from the California Department of Water Resources (DWR). The grant provides funding for a program that offers customers in single-family homes with the opportunity to upgrade their homes with efficient energy and water fixtures. IRWD has an agreement with Synergy Companies to install indoor water efficient fixtures for the program. An initial pilot phase of the program has been completed that installed water efficient fixtures in a small mobile home park. The next phase of the project will be to install water efficient fixtures in 350 single-family homes in IRWD's service area. Staff recommends that the Board authorize the General Manager to execute Variance No. 2 to the agreement with Synergy Companies in the amount of \$500,000 to fund the next phase of the program. IRWD's expenditures through the Synergy Companies agreement will be fully reimbursed to IRWD by DWR from the grant funds.

BACKGROUND:

A Water-Energy Grant was awarded to IRWD in October 2015 in the amount of \$1,932,621 for the development and implementation of a water and energy efficiency device installation program. Upon receiving the grant, staff has worked in collaboration with Southern California Edison (SCE) and Southern California Gas Company (SoCalGas) in the development of a program that provides customers in single-family homes with the opportunity to upgrade their homes with efficient energy and water fixtures. This program is called the "One-Stop Shop for Water and Energy Efficiency Program".

The grant from DWR is used to reimburse IRWD for the cost of installing toilets, showerheads and faucet aerators. Funding for the energy efficient devices is provided by SCE and SoCalGas. All devices are being installed under contract with Synergy Companies which is a full-service energy management organization that assists in controlling energy demands. IRWD, SCE and SoCalGas maintain separate contracts with Synergy Companies for the installation of utility-specific devices under the program. The program flyer announcing the program to utility customers is included as Exhibit "A".

Agreement with Synergy Companies:

In August 2015, IRWD entered into an agreement with Synergy Companies to install water efficient toilets, showerheads and aerators as a pilot program for customers in a small mobile home park in the District's service area. The Agreement for Non-Consultant Services Between IRWD and Synergy Companies is attached as Exhibit "B". The pilot was successful and the participating customers were satisfied with Synergy's installation work and gave positive feedback on the

program partnership. The next phase of the program will include installing water efficient fixtures in 350 single-family residences for a cost of \$500,000. The remaining grant funding will be used in future water efficient retrofit programs that will be facilitated through additional variances and/or new agreements.

Variance Request:

Variance No. 1 to the agreement with Synergy Companies was executed in October 2016 to extend the program to single-family customers and to accommodate requirements of the DWR grant without increasing costs. Variance No. 2 has been prepared that would increase the program budget by \$500,000 to provide funding for next phase of the program which will include installing water efficient fixtures at 350 single-family homes in IRWD's service area. Staff recommends the Board authorize the General Manager to execute Variance No. 2 which is provided as Exhibit "C".

FISCAL IMPACTS:

Funding for the One-Stop Shop for Water and Energy Efficiency Program is included in the FY 2016-17 Operating Budget. The District will be fully reimbursed for Synergy Companies' efforts through the DWR Water-Energy Grant.

ENVIRONMENTAL COMPLIANCE:

This program is not a project as defined in the California Environmental Quality Act (CEQA) as authorized under the California Code of Regulations, Title 14, Chapter 3, Section 15378.

RECOMMENDATION:

That the Board authorize the General Manager to execute Variance No. 2 to the Agreement for Non-Consultant Services between IRWD and Synergy Companies in the amount of \$500,000 to be reimbursed through the Water-Energy Grant with the California Department of Water Resources.

LIST OF EXHIBITS:

- Exhibit "A" – One-Stop Shop for Water and Energy Efficiency Program Flyer
- Exhibit "B" – Non-Consultant Services Agreement with Synergy Companies
- Exhibit "C" – Variance No. 2 to IRWD's Non-Consulting Services Agreement with Synergy Companies

EXHIBIT "A"
We are **Teaming Up**
to help you save **water,**
energy and **money.**

Q: What's **your** part in the **water-energy nexus**?
(Hint: a *nexus* is a series of connections linking two or more things.)

A: It takes energy to heat water,
energy to move water and
energy to clean water.

It takes water to make electricity.

It takes natural gas to make electricity.

Saving water saves energy
and it all starts with **you.**



You have the power to make a big difference
in the **water-energy nexus.**

For details, visit

RightscapeNow.com/nexus

Funding for this One-Stop Shop for Water and Energy Efficiency is provided by:



One-Stop Shop *for* water *and* energy efficiency

To take advantage of this unique opportunity **at no cost to you,***
visit: **RightscapeNow.com/nexus**

Irvine Ranch Water District can help you...



Replace 3.5 gallons per flush (gpf) toilets with 1.06 gpf or less



Install a smart irrigation timer**

Southern California Edison can help you...



Upgrade to a more efficient pool pump



Replace old, inefficient indoor and/or outdoor lighting

SoCalGas® can help you...



Replace faucet aerators and showerheads
with more energy-efficient models



The Water and Energy Residential Resource Saving Program is funded by a Water-Energy Grant Program: Agreement No. 4600011091 from the State of California Department of Water Resources. This program will continue until funding is exhausted or program is terminated. This program is subject to change without notice. Additional terms and conditions apply.

All other programs are funded by California energy utility customers and administered by Southern California Gas Company (SoCalGas®) and Southern California Edison Company (SCE) under the auspices of the California Public Utilities Commission. Rebates and upgrade incentives are available on a first-come, first-serve basis, until program funds are no longer available. All programs are subject to change without notice. Programs may be modified or terminated without notice. Additional terms and conditions may apply. SoCalGas and SCE are not responsible for any goods or services selected by the customer. The selection, purchase and ownership of goods and services are the sole responsibility of the customer. **SoCalGas, SCE and IRWD make no warranty, whether express or implied, including the warranty of merchantability or fitness for a particular purpose, of goods or services selected by customer.**

This material has been developed and is provided by the Irvine Ranch Water District.

*Certain home improvements may be available at a small fee. **Small optional fee for professional installation.

EXHIBIT "B"

AGREEMENT FOR NON-CONSULTANT SERVICES BETWEEN IRVINE RANCH WATER DISTRICT AND SYNERGY COMPANIES

This AGREEMENT FOR NON-CONSULTANT SERVICES ("Agreement") is made and entered into this 10 day of AUGUST, 2015 by and between the IRVINE RANCH WATER DISTRICT, a California Water District formed and existing pursuant to the California Water District Law ("District"), and SYNERGY COMPANIES ("Contractor"), who agree as follows:

1. Agreement. The following documents (if applicable) are incorporated into this Agreement by this reference:

Certificate(s) of Insurance, Endorsements and Payment Bond

In the event of conflict between any of the terms and conditions contained in the above-listed documents and any of the terms and conditions contained in this Agreement, the parties agree that the terms and conditions contained in this Agreement will control.

2. Services. Subject to the terms and conditions set forth in this Agreement, Contractor agrees to provide District the services described in the Scope of Services, attached hereto as Exhibit 1 ("Services"). Contractor must, at its sole cost and expense, furnish all equipment that may be required for furnishing the Services. Contractor will not be compensated for services outside the scope of the Services as described in Exhibit 1, and in the Contractor's proposal, unless prior to the commencement of such out of scope services: (a) Contractor notifies District and District agrees that such services are out of scope services; (b) Contractor estimates the additional compensation required for such out of scope services; and (c) District, after notice, approves in writing a variance in the form attached hereto as Exhibit 6, specifying such out of scope services and amount of compensation for performing those out of scope services. District does not have any obligations whatsoever under this Agreement and/or any variance unless and until this Agreement and/or any variance is approved by the District's General Manager or authorized designee. Specific authorization to proceed with the Services shall be granted in writing by District. Contractor shall not proceed with the Services unless authorized. If it is specified in the Scope of Services as described in Exhibit 1 that the Services are to be performed in phases as authorized, Contractor shall not proceed with any phase unless it is separately authorized.

3. Exhibits. The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

- ___ Exhibit 1 – Scope of Services
- ___ Exhibit 2 – Fee Schedule (including Schedule of Charges for Services)
- ___ Exhibit 3 – Insurance Requirements
- ___ Exhibit 4 – Public Works Requirements
- ___ Exhibit 5 – Special Provisions
- ___ Exhibit 6 – Non-consultant Services Variance

4. Payment. District must pay Contractor for the Services in the manner specified in Exhibit 2. The payments specified in Exhibit 2 are the only payments to be made to Contractor for the services rendered pursuant to this Agreement unless pursuant to Section 1, above, District approves additional compensation for additional services. Contractor must submit all billings for said services to District in the manner specified in Exhibit 2.

5. No Guarantee of Compensation for On-Call Services. If this Agreement is an agreement for “on-call” Services, District makes no guarantee to Contractor as to the amount of Contractor-provided on-call Services will be requested by the District or the amount of compensation that will be provided Contractor pursuant to this Agreement. Under no circumstances, will Contractor or any of its subcontractors be entitled to or compensated for any direct or indirect loss arising from or relating to District’s failure to authorize performance of services under this Agreement. Such direct and indirect loss includes, but is not limited to, loss of expected profits, business overhead, loss of productivity, and loss of opportunity to work on other projects.

6. Standards of Performance. Contractor must perform all Services required pursuant to this Agreement in the manner and according to the standards currently observed by a competent practitioner of Contractor’s industry in California. Contractor must prepare all deliverables provided to District pursuant to this Agreement in a professional manner and conform to the standards of quality normally observed by a person currently practicing in Contractor’s industry, and must be provided in accordance with any schedule of performance specified in Exhibit 1. Contractor must assign only competent personnel to perform Services. Contractor must also devote such time and effort to the performance of Services as is necessary for the satisfactory and timely performance of Contractor’s obligations under this Agreement. Neither party will be deemed in default of this Agreement, to the extent that party’s performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

7. Independent Contractor. It is understood and agreed that Contractor (including Contractor’s employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever.

Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of District. District is not required to make any deductions or withholdings from the compensation payable to Contractor under the provisions of this Agreement. It is further understood and agreed by the parties hereto that Contractor, in the performance of its obligations hereunder, is subject to the control and direction of District as to the designation of tasks to be performed and the results to be accomplished under this Agreement, but not as to the means, methods, or sequence used by Contractor for accomplishing such results. To the extent that Contractor obtains permission to, and does, use District facilities, space, equipment or support services in the performance of this Agreement, this use is at the Contractor's sole discretion based on the Contractor's determination that such use will promote Contractor's efficiency and effectiveness. Except as may be specifically provided elsewhere in this Agreement, the District does not require that Contractor use District facilities, equipment or support services or work in District locations in the performance of this Agreement. If, in the performance of this Agreement, any third persons are employed by Contractor, then Contractor must ensure that such persons are entirely and exclusively under Contractor's direction, supervision, and control.

8. Contractor Not Agent of District. Except as District may specify in writing, Contractor and Contractor's personnel do not have authority, express or implied, to act on behalf of District in any capacity whatsoever as an agent. Contractor and Contractor's personnel do not have the authority, express or implied, to bind District to any obligations whatsoever.

9. Conflicts of Interest. Contractor covenants that neither it, nor any officer or principal of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the interests of District or that would in any way hinder Contractor's performance of the Services. Contractor further covenants that in the performance of this Agreement, no person having any such interest will be employed by Contractor as an officer, employee, agent or subcontractor, without the written consent of District. Contractor agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of District at all times during the performance of this Agreement.

10. Licenses and Permits. Except for any licenses, permits, or approvals which are expressly provided by the Scope of Services to be obtained by the District, Contractor represents and warrants that Contractor has all licenses, permits, qualifications, and approvals that are legally required for Contractor to provide the Services. Contractor represents and warrants that Contractor will, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and

approvals that are legally required for Contractor to provide the Services. Without limiting the generality of the foregoing, if Contractor is an out-of-state corporation, Contractor warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

11. Indemnification. Contractor agrees to defend, hold harmless and indemnify District, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably attorney fees and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with performance of or failure to perform this Agreement by Contractor, any subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the negligence or willful misconduct of District.

12. Insurance Requirements. During the entire term of this Agreement, Contractor must maintain the insurance coverage described in Exhibit 3.

13. Public Works Requirements. If the Services include "public work" subject to the requirements of the California Labor Code or other applicable statutes (generally, any of the following paid for by the District, with a contract amount of \$1,000 or more: construction work (including inspection and land surveying), alteration work, demolition work, installation work, street or other improvement work, repair work, certain refuse hauling for disposal, and maintenance work other than routine or recurring janitorial or custodial work), Contractor shall comply with the requirements set forth in Exhibit 4, to the extent applicable to any of the Services.

14. Non-Discrimination. Contractor represents and warrants that it has and adheres to a policy of equal opportunity non-discrimination, and non-harassment of all persons regardless of race, religion, color, national origin, ancestry, disability, medical condition, marital status, gender, age, veteran status, or sexual orientation. Such policy must be in conformance with applicable State and Federal guidelines including the California

Government Code "Section 12940(h), 12940(i)," and the Federal Equal Opportunity Clause "Section 60-1.4 of Title 41, Part 60 of the Code of Federal Regulations" and must apply to all employment practices including recruitment, candidate selection, training, compensation, promotion, demotion, and recreation. Contractor will designate a specific person responsible for assuring nondiscrimination and non-harassment as provided in the Agreement. That named individual will be responsible for investigating all complaints directed to him/her by District. District will refer complaints in writing, and investigations will be deemed concluded only upon submission of a written investigation report from the Contractor to the District. The scope of such investigations includes not only officers, employees, and agents of the Contractor, but also all subcontractors, subcontractors, material, men, and suppliers of the Contractor. In cases where such investigation results in a finding of discrimination, harassment, or hostile work environment, Contractor must take prompt, effective disciplinary action against the offender. Failure to take appropriate action may be considered a material breach of the Agreement.

15. Compliance with Laws. In the performance of this Agreement, Contractor must at all times comply with all applicable governmental laws, statutes, ordinances, rules, codes, regulations, orders and other requirements. Upon the District's request, Contractor must provide the District with documentation demonstrating Contractor's compliance with such governmental requirements. After reasonable notice and under reasonable conditions, Contractor agrees that the District has the right to inspect and copy any records of Contractor regarding such compliance. Contractor represents and warrants that neither Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any government department or agency.

16. Term; Suspension; Termination. This Agreement will become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and continues in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein. District must have the right at any time to temporarily suspend Contractor's performance hereunder, in whole or in part, by giving a written notice of suspension to Contractor. If District gives such notice of suspension, Contractor must immediately suspend its activities under this Agreement, as specified in such notice. District may terminate this Agreement at any time by giving at least 10-days prior written notice of termination to Contractor. If District gives such notice of termination, Contractor must immediately cease rendering Services pursuant to this Agreement. If District terminates this Agreement, Contractor must, no later than five days after such notice of termination, deliver to District all Work Product

prepared pursuant to this Agreement. District must pay Contractor the reasonable value of Services rendered by Contractor prior to termination.

17. Confidentiality of District Information. During performance of this Agreement, Contractor may gain access to and use District information regarding personnel, future plans, business affairs, governmental affairs, processes, trade secrets, security of facilities, customer account information, and other sensitive information (hereafter collectively referred to as "District Information"). Contractor agrees to protect all District Information and treat it as strictly confidential, and further agrees not at any time, either directly or indirectly, to divulge, disclose or communicate in any manner any District Information to any third party without the prior written consent of District. A violation by Contractor of this Section is a material violation of this Agreement and must justify legal and/or equitable relief.

18. Ownership of Work Product. Contractor agrees that District has full ownership and control, including ownership of any copyrights, of all information prepared, produced, or provided by Contractor pursuant to this Agreement ("Work Product"). Contractor is not responsible for any unauthorized modification or use of such Work Product for other than its intended purpose by District. Contractor agrees to fully defend, indemnify and hold harmless District, its officers and employees, and each and every one of them, from and against any and all claims, actions, lawsuits or other proceedings alleging that all or any part of the information prepared, produced, or provided by Contractor pursuant to this Agreement infringes upon any third party's trademark, trade name, copyright, patent or other intellectual property rights.

19. California Public Records Act. All proprietary and other information received from Contractor by District, whether received in connection with Contractor's proposal to District or in connection with any Services performed by Contractor, will be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided, however, that, if any information is set apart and clearly marked "trade secret" when it is provided to District, District must give notice to Contractor of any request for the disclosure of such information. The Contractor has five (5) days from the date it receives such notice to enter into an agreement with the District, satisfactory to the District Counsel, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by District in any legal action to compel the disclosure of such information under the California Public Records Act. The Contractor has sole responsibility for defense of the actual "trade secret" designation of such information. The failure of Contractor to respond to the notice provided by District constitutes a complete waiver by Contractor of any rights regarding

the information designated "trade secret" by Contractor, and such information will be disclosed by District pursuant to the California Public Records Act.

20. Severability. The parties agree that if any portion of this Agreement or the application thereof to any person or circumstance is held invalid or unenforceable, then the remainder of this Agreement will remain effective and is enforceable to the greatest extent permitted by law.

21. Waiver. Neither District acceptance of, or payment for, any Service or Additional Service performed by Contractor, nor any waiver by either party of any default, breach or condition precedent, may be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

22. Choice of Law and Venue. The parties agree that this Agreement is to be governed, construed and enforced in accordance with the laws of the State of California. The parties also agree that the venue of any litigation arising out of or connected with this Agreement will lie exclusively in the state trial court or Federal District Court located in Orange County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

23. No Assignment. The expertise and experience of Contractor are material considerations for this Agreement. District has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on Contractor under this Agreement. In recognition of this interest, Contractor must not assign any right or obligation pursuant to this Agreement without the written consent of the District. Any attempted or purported assignment without District's written consent is void and of no effect.

24. Survival of Terms. The provisions of Section 5, 7, 8, 9, 10, 11, 15, and 17 through 26, survive termination of this Agreement.

25. Binding Effect. This Agreement is binding on the heirs, executors, administrators, successors and assigns of the parties.

26. Entire Agreement. This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement is valid unless approved in the form of a written variance signed by an authorized representative of Contractor and District.

27. Authority. The person signing this Agreement for Contractor hereby represents and warrants that he/she is fully authorized to sign this Agreement on behalf of Contractor and to bind Contractor to the performance of its obligations hereunder.

EXECUTED AS OF THE DATE FIRST STATED ABOVE.

IRVINE RANCH WATER DISTRICT

Approved as to form:

Name: Paul Cook

Title: General Manager

Signature: 



Contractor:

Name of Firm: Synergy Companies

Federal I.D. No.: 87-0389611

State I.D. No.: C2420016

Type of Business Entity (check one):

Individual/Sole Proprietor

Partnership

Corporation (i.e. either corporate president must sign or two corporate officers)

Limited Liability Company

Other (please specify: _____)

Name of Firm's Authorized Representative: Steve Shallenberger

Title: President

Signature: 

(If the firm is a corporation and its president did not sign above, then another corporate officer must sign below)

Name of Firm's Authorized Representative: David Shallenberger

Title: Legal Counsel

Signature: 

**EXHIBIT 1
SCOPE OF SERVICES**

1. Representatives.

a. The District Representative for this Agreement is:

Amy McNulty, Water Efficiency Manager
15600 Sand Canyon Avenue
Irvine, CA 92618
(949) 453-5634
mcnulty@irwd.com

All Contractor questions pertaining to this Agreement must be referred to the District Representative or the District Representative's designee.

b. The Contractor Representative for this Agreement is:

Matthew Clark, Project Director
90 Business Park Drive
Perris, CA 92571
(951) 230-6425
matt.clark@synergycompanies.org

All District questions pertaining to this Agreement must be referred to the Contractor Representative. All correspondence to Contractor must be addressed to the address set forth on page one of this Agreement. Unless otherwise provided in this Agreement, all correspondence to the District must be addressed to the District Representative.

2. Scope of Services.

The scope of services for the Water-Energy Combined Manufactured Homes Direct Install Program and One-Stop Shop Program will consist of the direct installation of high efficiency toilets, low-flow showerheads, and kitchen and bathroom faucet aerators within the manufactured homes and single-family homes of Irvine Ranch Water District customers. The program will consist of multiple phases depending on customer participation rates. Each phase will have a not-to-exceed amount of \$80,000. Each phase requires separate authorization by the District to proceed. Any additional phases will be considered sequentially, when the prior phase is completed, and the determination to authorize each such phase will be at the District's sole discretion. The District's authorization to proceed with a subsequent phase will include a Notice to Proceed for such phase.

Manufactured Homes Direct Install Program

The Contractor will engage in the following activities to acquire customer participation: manufactured housing clubhouse presentations, direct outreach and customer

enrollment. Clubhouse presentations consist of collaboration with manufactured housing community managers to promote the event through flyers, newsletters and manufactured housing television channels. The presentation will be given by trained presenters with audiovisual slide show and video to educate the attendees and answer questions courteously and thoughtfully. Attendees are encouraged to enroll in the program throughout the presentation.

After the presentation, marketing associates politely contact community residents through door-to-door and phone outreach. Interested residents are educated by the marketing associate, enrolled electronically on the program and given an appointment date and time with reminder card. Contractor will work with IRWD to develop a customer participation form.

Contractor replaces the existing 3.5 gallon per flush (gpf) or greater toilet with a more water efficient model. The existing toilet is also removed from the site and recycled. The contractor installs a 0.8 gpf toilet including the toilet seat, wax ring, seal and hose. If site conditions prohibit the installation of the 0.8 gpf toilet model, IRWD staff will be contacted to approve the installation of the 1.28 gpf model as an alternative.

Single-Family One-Stop Shop Program

The Contractor will manage the customer intake process via the program web portal developed by IRWD. The Contractor will be responsible for contacting customers who register via the portal to schedule an on-site appointment to determine customer's eligibility for the direct installation of high efficiency toilets, low-flow showerheads, and kitchen and bathroom faucet aerators within the single-family homes. After performing the installation for qualified customers, the Contractor will leave behind outreach materials for rebates and other programs for additional outdoor direct installation measures as determined by IRWD. The Contractor will provide the names and addresses of customers interested in outdoor measures to IRWD.

The Contractor will replace eligible showerheads with low-flow 1.8 gallon per minute (gpm) or higher efficiency model, kitchen faucet aerator with 1.5 gpm or higher efficiency model, bathroom faucet aerator with 0.5 gpm or higher efficiency model. The Contractor will remove the existing showerhead and aerators from the site and recycle if able. The contractor performs post installation tests to ensure the new water efficient toilets, kitchen and bath faucet aerators, and showerheads are functioning properly.

Invoices will be submitted routinely and include information on the customer name, address, old toilet gpf, new toilet gpf, **old bath and kitchen faucet aerator gpm, new bath and kitchen faucet aerator gpm, old showerhead gpm, new showerhead gpm,** quantity of toilets installed, **quantity of bath and kitchen faucet aerators installed, quantity of showerheads installed,** installation date, customer water account number, and the signed customer participation agreement.

3. Time of Performance.

The time from the onset of program marketing to complete installation varies depending on customer participation. Payments are made for completed installations only.

4. Additional Services. If the District requests Contractor to provide services in addition to those specified above, Contractor shall develop a scope of work detailing the specific tasks to be completed and the estimated costs to complete those tasks. Contractor shall not perform any additional services unless authorized to provide those additional services are specified in a variance to this Agreement signed by both parties.

EXHIBIT 2

FEE SCHEDULE

1. **Contractor's Compensation.** The parties agree that the total of all fees paid to the Contractor for the performance of all services set forth in Exhibit 1, including normal revisions (hereafter the "Services"), and for all authorized reimbursable expenses, must not exceed the total sum of \$80,000.
2. **Billable Rates.** Contractor must be paid for the performance of Services on an hourly rate, daily rate, flat fee, lump sum or other basis, as set forth in the Schedule of Charges for Services, attached hereto and incorporated by this reference.
3. **Contractor's Reimbursable Expenses.** Reimbursable expenses are limited to actual expenditures of Contractor for expenses that are necessary for the proper completion of the Services and are only be payable if specifically authorized in writing in advance by District.
4. **Payments to Contractor.**
 - a. Undisputed invoices must be paid by the District within 30 days after receipt of such invoices. Contractor must be responsible for the cost of supplying all documentation necessary to verify the invoiced amounts to the satisfaction of District.
 - b. All invoices submitted by Contractor must contain the following information:
 - i. Date of Invoice Issuance
 - ii. Sequential Invoice Number
 - iii. Purchase Order Number
 - iv. Total Agreement Not-to-Exceed Amount
 - v. Amount of this Invoice (Itemize all reimbursable expenses, if any)
 - vi. Database with customer address, name, water account number, model and gallons per flush of toilet installed, model and gallons per minute of showerhead installed model and gallons per minute of faucet aerator installed, and the installation date.

c. Billings that do not conform to the format outlined above must be returned to Contractor for correction. District must not be responsible for delays in payment to Contractor resulting from Contractor's failure to comply with the invoice format described below.

d. Requests for payment must be sent to the District Representative.

5. Contractor's Accounting Records. During performance of this Agreement and for a period of three (3) years after completing all Services and Additional Services hereunder, Contractor must maintain all accounting and financial records related to this Agreement, including, but not limited to, records of Contractor's costs for all Services and Additional Services performed under this Agreement and records of Contractor's Reimbursable Expenses, in accordance with generally accepted accounting practices, and must keep and make such records available for inspection and audit by representatives of the District upon reasonable written notice.

SCHEDULE OF CHARGES FOR SERVICES FOR IRVINE RANCH WATER DISTRICT

PRICE PER INSTALLATION
 (INCLUDES EQUIPMENT, INSTALLATION, TOILET RECYCLING, TAXES AND ANY
 ADDITIONAL FEES)

	COST EACH	MaP SCORE
Tank-Style High Efficiency Toilet	\$ 487.92	
Make and Model: Niagara Stealth .8 GPF		600
Tank-Style High Efficiency Toilet	\$ 437.92	
Make and Model: Western Pottery 1.28 GPF		900
<u>Handheld Low-Flow Showerhead</u>	<u>\$ 34.95</u>	
<u>Make and Models: Earth N2945CH or N2945 1.5 GPM</u>		
<u>Evolve EV3030-CP150-SB or EV3040-CP150-SB 1.5 GPM</u>		
<u>Evolve EV3030-CP175-SB or EV3040-CP175-SB 1.75 GPM</u>		
<u>Standard Low-Flow Showerhead</u>	<u>\$ 19.95</u>	
<u>Make and Models: Evolve EV3010-CP150-SB or EV3020-CP150-SB 1.5 GPM</u>		
<u>Evolve EV3010-CP175-SB or EV3020-CP175-SB 1.75 GPM</u>		
<u>Swivel Kitchen Faucet Aerator</u>	<u>\$ 13.95</u>	
<u>Make and Model: Niagara Conservation N3115-P 1.5 GPM</u>		
<u>Standard Kitchen Faucet Aerator</u>	<u>\$ 9.95</u>	
<u>Make and Models: AM Conservation FA014CPB1 1.0 GPM</u>		
<u>AM Conservation FA012CPB1 1.5 GPM</u>		
<u>Bathroom Faucet Aerator</u>	<u>\$ 9.95</u>	
<u>Make and Model: Niagara Conservation N3205N-PC 0.5 GPM</u>		

EXHIBIT 3

INSURANCE REQUIREMENTS

1. **General.** CONTRACTOR shall not commence or continue to perform any Services unless they, at their own expense, have in full force and effect all required insurance. CONTRACTOR shall not permit any Subcontractor to perform Services on this project until the same insurance requirements have been complied with by such Subcontractor.
2. **Types of Insurance.** CONTRACTOR shall obtain and maintain for the full period of the Agreement are Worker's compensation insurance, commercial general liability insurance, and business automobile liability insurance.
3. **Insurer Rating.** Insurers shall have financial and size ratings of at least an "A", VIII in accordance with the most current Best's Key Rating Guide, Property Casualty.
4. **Evidence of Insurance.** As evidence that specified insurance coverage has been obtained for the period of the Agreement, the CONTRACTOR shall provide, on forms satisfactory to District, including endorsements providing that policies cannot be canceled or reduced except on thirty (30) calendar days written notice by the insurance carrier of cancellation or non-renewal (ten (10) calendar days notice for non-payment of premium). Industry standard forms for "certificate on insurance" from ACORD are accepted, provided that appropriate language regarding notice of non-renewal or cancellation is provided on the form. Contractor shall provide proof that policies of insurance required herein expiring or terminated during the term of this Agreement have been renewed or replaced with other policies providing coverage meeting the requirements hereof. Such proof will be furnished at least fourteen (14) calendar days prior to the expiration of termination of the coverages. No alteration or substitution of said forms will be allowed. Certified copies of insurance policies from the insurance company affording coverage shall be provided by CONTRACTOR upon request.
5. **Noncompliance.** DISTRICT reserves the right to withhold payments to CONTRACTOR in the event of material noncompliance with insurance requirements.
6. **Limitation of Contractor liability.** The requirements set forth herein as to the types and limits of insurance coverage to be maintained by the CONTRACTOR and any approval of said insurance by the DISTRICT or its insurance consultant(s) is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the CONTRACTOR pursuant to the Agreement, including but not limited to the provisions concerning indemnification.
7. **Worker's Compensation Insurance.** CONTRACTOR shall provide worker's compensation insurance coverage for no less than the statutory limits and employer's liability insurance coverage, with limits not less than those listed in 7.A, for all persons

whom CONTRACTOR employs or may employ in carrying out the Services. This insurance shall be in strict accordance with the requirements of the most current and applicable state worker's compensation insurance laws.

A. Employer's Liability Insurance shall be for not less than:

\$1,000,000 Each Accident
\$1,000,000 Each Disease – Policy Limit
\$1,000,000 Each Disease – Each Employee

B. Notwithstanding the requirements of Section 3, above, DISTRICT will accept Workers Compensation Insurance from the State Compensation Fund (State Fund) that is not rated and that is evidenced on the State Fund's certificate form. Except as provided above with respect to State Fund, all other insurance shall comply with all requirements of this Exhibit.

8. Waiver of right of subrogation. The worker's compensation insurance shall include a waiver of right of subrogation against the DISTRICT, the District Board of Directors, DISTRICT's Representative, the Engineer/Architect, owners of record of all private properties on which entry will be made, and their consultants, and each of their officers, agents, and employees but only while acting in their capacity as such and only in respect to operations of the original named insured, their Subcontractors, agents, officers, and employees in the performance of the Services.

9. Commercial General Liability Insurance. CONTRACTOR shall provide commercial general liability insurance coverage equivalent to Insurance Services Office Form CG 00 01, with limits not less than those specified in 9.A.

A. Commercial General Liability Insurance shall be for not less than:

Bodily Injury	Products/Completed
Property Damage	Completed
Personal Injury	Operations
<u>(Occur/Aggr)</u>	<u>(Occur/Aggr)</u>
\$1M/\$2M	\$1M/\$2M

B. Included in such insurance shall be blanket contractual liability coverage and severability of interests (no cross suits exclusion).

C. The commercial general liability insurance shall be primary and non-contributory and include as additional insureds: DISTRICT, the District Board of Directors, DISTRICT's Representative, the State of California, its officers, agents, and employees, the Engineer/Architect, owners of record of all private properties on which entry will be made, and their consultants, and each of their officers, agents, and employees but only while acting in their capacity as such and only in respect to

operations of the original named insured, their Subcontractors, agents, officers, and employees in the performance of the Services and shall be evidenced by ISO CG 20 33 07 04 endorsement form or equivalent.

D. Such insurance shall have a deductible or self insured retention not to exceed \$25,000.

10. Automobile Liability Insurance. CONTRACTOR shall provide business automobile liability insurance coverage equivalent to Insurance Services Office Form CA 00 01, with limits not less than those specified in 10 A. Business automobile liability insurance coverage shall be provided for all owned, non-owned and hired vehicles.

A. Automobile liability insurance shall be for not less than:

\$2,000,000 Bodily injury and property damage each occurrence.

B. The same requirements stated in 9.C shall apply to the automobile liability insurance.

11. CONTRACTOR's Responsibility Not Limited by Insurance. Nothing contained in these insurance requirements is to be construed as limiting the extent of the liability of CONTRACTOR or CONTRACTOR's sureties.

12. Maintaining Insurance. The maintenance of proper insurance in conformity with the Contract Documents is a material element of this Agreement. If at any time during the life of the Agreement, including the guarantee period, or any extension, CONTRACTOR fails to maintain the required insurance in full force and effect, the Services shall be discontinued immediately and all payments due or that become due to CONTRACTOR shall be withheld until notice is received by DISTRICT that the required insurance has been restored to full force and effect and that the premiums have been paid for a period satisfactory to DISTRICT. Failure to maintain or renew coverage or to provide evidence of renewal upon request of DISTRICT may be treated by DISTRICT as a material breach of contract.

EXHIBIT 4

SUPPLEMENTARY CALIFORNIA PUBLIC WORKS REQUIREMENTS

If the Scope of Work includes construction work to be performed during the construction phase or design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, or work to be performed during the post-construction phases of construction, including, but not limited to, all cleanup work at the jobsite, or any other work that has been determined by the California Director of Industrial Relations to constitute "public work," that portion of the Scope of Work is subject to the following provisions which amend and supplement the contract, or to the extent of any inconsistency supersede and take precedence over the contract.

SECTION 1. Bidding Requirements. The requirements of this Section apply to the public work portion of the Scope of Work if the contract is to be obtained by competitive bidding.

1.01 *Additive and Deductive Bid Items.* (applicable if a bid contains additive or deductive items – Public Contract Code 20103.8)

If a schedule of work items includes bid items or schedule(s) of bid items that may be added to ("Additive Items") or deducted from ("Deductive Items") the bids, the lowest responsible bidder will be determined by adding all Additive Items to, and deducting all Deductive Items from, the total of the base bid, unless another method is provided in the bid documents. IRWD reserves the right to award the Work to the lowest responsible bidder based on any single schedule or combination of schedules of bid items deemed by IRWD, in its sole discretion, to be in IRWD's best interest.

1.02 *Listing of Subcontractors.* (applicable if bids are taken – Public Contract Code 4104)

The name, State of California license number, and location of place of business of each subcontractor who will perform work or labor or render service to the bidder in or about the construction of the Work, or improvements, in an amount in excess of 1/2 of 1 percent (0.5%) of the bidder's total Bid, and the portion of the Work which will be done by each subcontractor shall be set forth in the bid. CONTRACTOR agrees that except to the extent that subcontractors were set forth in its bid, that all work in excess of one-half of one percent shall be performed by CONTRACTOR. It is agreed and acknowledged that should CONTRACTOR fail to conform hereto or with any of the requirements of Section 4100 through and inclusive of Section 4114 of the Public Contract Code, Contractor shall be subject to the requirements and penalties of Section 4106 of the Public Contract Code.

1.03 *Registration.* (applicable if bids are taken – Labor Code 1725.5)

Qualification to bid on this project or to be listed as a subcontractor (if required by Section 1.02), or to engage in the performance of any of the work requires proof of the contractor's or subcontractor's current registration and qualification to perform public work pursuant to Labor Code Section 1725.5. A bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor's or subcontractor's current registration.

1.04 *Non-Collusion Affidavit.* (applicable if bids are taken – Public Contract Code 4104)

SECTION 2. Bonding. This Section applies to the direct contractor awarded a public works contract exceeding \$25,000. This requirement does not apply to a design professional.

2.01 *Payment and Performance Bond.* Before commencing performance of the work, CONTRACTOR shall furnish a payment bond and a faithful performance bond approved by IRWD, each in an amount not less than one hundred (100%) percent of the Contract Price, from a surety company satisfactory to IRWD and who is authorized to transact business in California. CONTRACTOR shall use the bond forms provided by IRWD. A certified copy of power of attorney must be attached to each bond.

SECTION 3. Labor. The requirements of this Section apply to the public work portion of the Scope of Work, if more than \$1,000 (Labor Code 1771).

3.01 *Compliance Monitoring; Registration; Notices.* The project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Qualification to engage in the performance of any of the work requires that CONTRACTOR and subcontractors maintain their current registration to perform public work pursuant to Labor Code Section 1725.5.

CONTRACTOR shall post on the jobsite all notices as prescribed by law or regulation.

3.02 *Prevailing Wage Requirements.* Under the provisions of the California Labor Code, the Director of the Department of Industrial Relations has determined the prevailing rate of wages for the locality in which the Work is to be performed and IRWD has adopted said prevailing rate of wages. A copy of these prevailing rates is on file at the office of IRWD and shall be made available to any interested party on request. A copy of such prevailing wage rates shall be posted on the jobsite by CONTRACTOR.

CONTRACTOR shall comply with Labor Code Section 1775. In accordance with said Section 1775, CONTRACTOR shall forfeit as a penalty to IRWD, up to two hundred dollars (\$200), as determined by the Labor Commissioner, for each calendar day or

portion of a day for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed for any work done under the contract by them or, except as provided by the Labor Code, by any Subcontractor under them in violation of the provisions of the Labor Code, and in particular, Labor Code Sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to Section 1775, the difference between the stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion of a day for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by CONTRACTOR.

CONTRACTOR shall forfeit as a penalty to IRWD \$25 for each worker employed in the execution of the Work by CONTRACTOR or any Subcontractor under them for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, in particular, Section 1810 to Section 1815 thereof, inclusive, except that work performed by employees of CONTRACTOR in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one half (1 1/2) times the basic rate of pay as provided in said Section 1815.

3.03 Payroll Records. CONTRACTOR and each of their Subcontractors shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Work. The records shall be in a format prescribed by the Labor Commissioner. The records may consist of printouts of payroll data maintained as computer records, if the printouts are in a format prescribed by the Labor Commissioner and are verified as required under this paragraph. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating that (1) the information contained in the payroll record is true and correct, and (2) CONTRACTOR (or the Subcontractor, as the case may be) has complied with the requirements of Sections 1771, 1811 and 1815 of the Labor Code for any of the work performed by their employees. The payroll records shall be submitted monthly to IRWD and directly to the Labor Commissioner and shall be available for inspection at all reasonable hours at the principal office of CONTRACTOR (or the Subcontractor, as the case may be) to the employee or their authorized representative on request, to the Division of Labor Standards Enforcement on request, and the public, provided that requests by the public must be made through IRWD or the Division of Labor Standards Enforcement in accordance with the requirements of Labor Code Section 1776. Copies shall be provided to the requesting entity within ten (10) days after receipt of a written request. Any copy of a payroll record made available to the public or any public agency by IRWD shall be marked or obliterated to prevent disclosure of individual workers' names, addresses and social security numbers. CONTRACTOR shall inform IRWD of the location address of payroll records of CONTRACTOR and each Subcontractor and notify

IRWD of a change in any such location within five (5) working days. In the event CONTRACTOR or a subcontractor fails to comply with the above-specified 10-day period, CONTRACTOR or the subcontractor shall forfeit as a penalty to IRWD one hundred dollars (\$100) for each calendar day or portion of a day for each worker until strict compliance is effectuated. CONTRACTOR is not subject to a penalty under this paragraph due to the failure of a subcontractor to comply with this paragraph.

3.04 Apprentices. (applicable if contract is \$30,000 or more) CONTRACTOR and any Subcontractor under them shall comply with the requirements of Sections 1777.5 and 1777.6 of the Labor Code in the employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Department of Industrial Relations. Willful violations of Section 1777.5 will result in forfeiture of one hundred dollars (\$100) for each calendar day of noncompliance, or up to three hundred dollars (\$300) for each calendar day of noncompliance for second and subsequent violations within a three-year period that result in apprenticeship training not being provided as required by the Labor Code, and may also result in debarment sanctions in the case of violations, as determined by the Labor Commissioner pursuant to Section 1777.7. Section 1777.7 also imposes requirements that, if not observed by CONTRACTOR, will result in CONTRACTOR's liability for Subcontractor violations of Section 1777.5.

3.05 Subcontracting. CONTRACTOR is prohibited from performing any of the work with a subcontractor who is ineligible to perform such Work pursuant to Section 1777.1 or 1777.7 of the Labor Code. CONTRACTOR agrees that in accordance with Public Contract Code Section 6109, a subcontract with an ineligible subcontractor is void as a matter of law, amounts paid to the subcontractor shall be returned to IRWD, and CONTRACTOR is responsible for paying wages of the subcontractor's employees if the subcontractor is allowed to perform any part of the work.

3.06 CONTRACTOR'S Certificate Regarding Workers' Compensation (Labor Code Section 1861): I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract.

SECTION 4. Site Conditions. The requirements of this Section apply to the public work portion of the Scope of Work, subject to the applicability further specified below.

4.01 Utilities (applicable if the contract with IRWD is made pursuant to an invitation for bids and includes removal, relocation or protection of main or trunkline utility facilities – Government Code Section 4215)

CONTRACTOR shall be compensated by IRWD for the costs of locating, repairing damage not due to the failure of CONTRACTOR to exercise reasonable care, and removing, relocating, protecting, or temporarily maintaining main or trunk line utility facilities not indicated with reasonable accuracy in the plans and specifications, and for equipment in the project necessarily idled during such work. Alternatively IRWD may change the project grade or alignment to avoid such removal, relocation or protection or make arrangements with the owner of the utility for such work to be done at no cost to CONTRACTOR. No forfeiture due to delay shall be made because of any delays in the completion of the Work due to the failure of IRWD or the owner of a utility to provide for removal or relocation of main or trunk line facilities not indicated in the plans or specifications with reasonable accuracy.

IRWD is not responsible for removal, relocation or temporary maintenance of (i) main or trunk line utilities or other structures which are in the position shown on the plans, or (ii) service connections, and CONTRACTOR shall bear all expenses incidental thereto. Such work shall be done in a manner satisfactory to the owner of the utility or service connection, it being understood that the owner has the option of doing such work with their own forces or permitting the work to be done by CONTRACTOR. It shall be the responsibility of CONTRACTOR to investigate to find out whether or not this cost is required to be borne by the owner of the utility.

4.02 *Excavation Plans for Worker Protection* (applicable if the public work portion is over \$25,000, and involves excavation of any trench five (5) feet or more in depth – Labor Code Section 6705)

CONTRACTOR shall submit to IRWD for acceptance, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five (5) feet or more in depth. The plan shall be prepared specifically for the work by a registered civil or structural engineer who is licensed by the State of California. The plan shall be in an original format, not a reproduced copy, and shall include the engineer's original signature and seal. As a part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with the CAL OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the safety orders.

All shoring submittals shall include surcharge loads from adjacent embankments, construction loads and spoil bank. The submittal shall indicate the minimum horizontal distance from the top of trench to the edge of all surcharge loads for all cases of shoring and side slopes.

The detailed plan showing the design of shoring, etc., which CONTRACTOR is required to submit to IRWD for acceptance in advance of excavation, will not be accepted if the plan

is based on subsurface conditions which are more favorable than those revealed by the investigations made by IRWD or the Engineer/Architect or their consultants; nor will the plan be accepted if it is based on soils related design criteria that are less restrictive than the criteria set forth in the report on the investigations of subsurface conditions.

Nothing contained in this paragraph shall be construed as relieving CONTRACTOR of the full responsibility for providing shoring, bracing, sloping, or other provisions which are adequate for worker protection.

4.03 Differing Physical Conditions. (applicable if the public work portion involves excavation more than four (4) feet in depth – Public Contract Code Section 7104)

CONTRACTOR shall promptly notify IRWD of the following work site conditions (hereinafter called differing physical conditions), in writing, upon their discovery and before they are disturbed: (1) any material that CONTRACTOR believes may be material that is a hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) subsurface or latent physical conditions differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids; (3) unknown physical conditions of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character being performed.

IRWD will promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in CONTRACTOR's cost of, or the time required for, performance of any part of the work, shall issue a change order under the procedures described in the Contract.

In the event that a dispute arises between IRWD and CONTRACTOR whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in CONTRACTOR's cost of, or time required for, performance of any part of the work, CONTRACTOR shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. CONTRACTOR shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

CONTRACTOR shall not be required to resume work in connection with a condition involving hazardous waste until after IRWD has obtained any required permits related thereto and delivered to CONTRACTOR written notice specifying any special conditions under which such work may be resumed safely.

SECTION 5. Materials. The requirements of this Section apply to the public work portion of the Contract, pursuant to Public Contract Code §3400.

5.01 Substitutions. Whenever materials or equipment are specified or described in the Plans or specifications by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, the name shall be deemed to be followed by the words "or approved equivalent" and materials or equipment of other suppliers may be accepted by IRWD if sufficient information is submitted by CONTRACTOR to allow IRWD to determine that the material or equipment proposed is equivalent to that named. Approval of proposed equivalent materials or equipment is at the sole discretion of IRWD. No substitute shall be ordered or installed without IRWD's prior written acceptance.

CONTRACTOR assumes sole responsibility for verifying the proposed substitute items are in accordance with the requirements of the contract documents, and that the dimensions, arrangement, design and construction details and all other features of substitute items are suitable for their intended purpose.

In the event that a substitute item, and said difference was not expressly identified in CONTRACTOR's request for the substitution, or the incorporation of the substitute into the work results in a change(s) to the work or in the function or general design of the project, which was not expressly identified in CONTRACTOR's request for the substitution, IRWD may require the removal and replacement of the substitute at CONTRACTOR's sole expense.

CONTRACTOR may submit data substantiating requests for substitutions of equivalent items at any time after notice of award. Under no circumstances shall CONTRACTOR be entitled to an increase in Contract Time as a result of the submission or review of a substitution request.

SECTION 6. Claims. The requirements of this Section apply to the public work portion of the Contract, pursuant to Public Contract Code §20104.

6.01 *Resolution of Construction Claims.* (applicable to a claim meeting the below-described criteria – Public Contract Code Section 20104)

This Section is intended as a summary of the provisions of Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code ("Claims Resolution Statute") and is subject to the actual provisions of the Claims Resolution Statute. This Section shall govern the resolution of any claim of \$375,000 or less which may be made by CONTRACTOR.

"Claim" is defined as CONTRACTOR's demand for (i) a time extension, (ii) money or damages arising from the work, payment for which is not otherwise expressly provided for or CONTRACTOR is not otherwise entitled to, or (iii) an amount disputed by IRWD.

CONTRACTOR shall make all claims in writing and include the necessary substantiating documents. Any claim which is intended to invoke the procedures under the Claims Resolution Statute shall specify that the claim is being made pursuant to the Claims Resolution Statute. All claims by CONTRACTOR must be filed on or before the date of final payment.

IRWD shall respond in writing, within forty-five (45) days of receipt of a claim less than \$50,000 and within sixty (60) days of receipt of a claim over \$50,000 and less than \$375,000, or IRWD may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims IRWD may have against CONTRACTOR. If additional information is thereafter required, it shall be requested and provided upon mutual agreement of IRWD and CONTRACTOR. If IRWD requests additional documentation, IRWD's written response to the claim shall be submitted to CONTRACTOR, (i) within fifteen (15) days after receipt of the additional documentation for a claim less than \$50,000 and within thirty (30) days after receipt of the additional documentation for a claim over \$50,000 and less than \$375,000, or (ii) within the same time period as used by CONTRACTOR in producing the additional documentation, whichever is greater.

If CONTRACTOR disputes IRWD's written response, or IRWD fails to respond within the time prescribed, CONTRACTOR may, by giving written notice to IRWD within fifteen (15) days of receipt of IRWD's response (or within fifteen (15) days of IRWD's failure to respond), demand an informal conference to meet and confer for settlement of the issues in dispute. Upon such demand, IRWD shall schedule a "meet and confer" conference within thirty (30) days.

If after the "meet and confer" conference, any portion of the claim remains in dispute, CONTRACTOR may file a claim pursuant to Government Code Section 900 *et seq.* If a court action is thereafter filed to resolve the claim, the court must, within the time specified by law, submit the matter to nonbinding mediation unless waived by mutual stipulation of IRWD and CONTRACTOR. If after the mediation process, the matter remains in dispute, the case must then be submitted to judicial arbitration pursuant to the applicable law.

6.02 *Third Party Claims.* In accordance with Public Contract Code Section 9201, IRWD shall timely notify CONTRACTOR if IRWD receives any third-party claim relating to the Work. IRWD shall be entitled to recover from CONTRACTOR the reasonable costs incurred by IRWD in providing such notification.

SECTION 7. Payment and Retention. The requirements of this Section apply to construction contracts.

7.01 *Progress Payments.*

The following is a summary of the provisions of Article 1.7 of Chapter 1 of Part 3 of Division 2 (commencing with Section 20104.50) of the Public Contract Code, regarding progress payments, and is subject to the actual provisions of that statute. For purposes of this Section, a "progress payment" includes all payments due CONTRACTOR, except that portion of the final payment designated under this Agreement as retention.

If IRWD fails to make any progress payment within thirty (30) days after receipt of an undisputed and properly submitted progress payment request from CONTRACTOR, IRWD shall pay interest to CONTRACTOR equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Civil Code of Procedure.

Upon receipt of a progress payment request, IRWD shall (i) review each payment request as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request, and (ii) return to CONTRACTOR, as soon as practicable but not later than seven (7) days after receipt, any payment request determined not to be a proper payment request suitable for payment. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing why the payment request is not proper. The number of days available to IRWD to make a payment without incurring interest shall be reduced by the number of days by which IRWD exceeds the seven (7) day return requirement.

7.02 *Progress Payment Retention.* (Applies if performance retention will apply.) IRWD shall retain five (5) percent of such estimated value as part security for fulfillment of the Contract by CONTRACTOR and shall pay to CONTRACTOR the balance of such estimated value after deducting all previous payments and all sums to be kept or retained under the terms of the Contract. Nothing herein shall require payment of a disputed amount or limit IRWD's ability to withhold an amount in respect of a disputed amount as provided for in Section 7107 of the Public Contract Code. The retention payment shall not be due and payable until the expiration of thirty-five (35) days from the date of IRWD's recording of a notice of completion of the work in the office of the County Recorder.

7.03 *Substitution of Securities for Amounts Withheld.* Pursuant to Section 22300 of the Public Contract Code, CONTRACTOR may substitute securities for any monies withheld by IRWD to ensure performance of the Work. At the request and expense of CONTRACTOR, securities equivalent to the amount withheld shall be deposited with IRWD or with a state or federally chartered bank in California as the escrow agent. Such securities shall be released to CONTRACTOR at the same time as amounts retained would be released upon satisfactory completion of the work, to the extent such

securities have not previously been utilized or are not then being held by IRWD or the escrow agent for purposes as provided in this Contract. Alternately, CONTRACTOR may request, and IRWD shall make, payment of retention earned directly to the escrow agent at the expense of CONTRACTOR.

If the securities are deposited with IRWD, IRWD shall determine their value. IRWD shall also be entitled in their discretion to sell, redeem, or otherwise convert them or portions thereof to cash in order to apply them to any of the purposes set forth in the Contract for which amounts may be withheld from CONTRACTOR and used. CONTRACTOR shall furnish such documents as are deemed necessary by IRWD to enable IRWD to make such sales, redemptions, or conversions. If the securities are deposited with an escrow agent, CONTRACTOR, escrow agent and IRWD shall execute IRWD's form entitled "Escrow Agreement for Security Deposits in Lieu of Retention."

SECTION 8. Miscellaneous. The requirements of this Section apply as specified.

8.01 *Audit.* (applicable if the contract exceeds \$10,000 – Government Code 8546.7)

Pursuant to Government Code Section 8546.7, this contract, and CONTRACTOR and IRWD as the contracting parties, are subject to the examination and audit of the California State Auditor, at the request of IRWD or as part of any audit of IRWD, for a period of three years after the final payment under the contract.

8.02 *Notice of Taxable Possessory Interest.*

The terms of this contract may result in the creation of a possessory interest. If such a possessory interest is vested in CONTRACTOR, CONTRACTOR may be subjected to the payment of property taxes levied on such interest.

8.03 *Antitrust Claims Assignment.* (applicable if contract is awarded by competitive bidding)

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, CONTRACTOR or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to CONTRACTOR, without further acknowledgment by the parties.

8.04 *License.*

CONTRACTOR shall possess a State of California license for the contracting class(es) applicable to the work.

8.05 *Delays.* (Applies if contract documents specify damages for failure to complete work by applicable contract times.)

No forfeiture due to delay shall be made because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR (including but not restricted to acts of God or of the public enemy, acts of the government, acts of IRWD, or acts of another contractor in the performance of a contract with IRWD, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays caused by the failure of IRWD, or the owner of a utility to provide for removal or relocation of main or trunk line facilities not indicated in the plans or specifications with reasonable accuracy). Any such delays shall not entitle CONTRACTOR to any additional compensation, and the sole remedy of CONTRACTOR shall be an extension of time obtained in accordance with the contract; the only exception shall be if the delay has been caused solely by acts for which IRWD is responsible and which delay is unreasonable under the circumstances involved, is not within the contemplation of the parties, and continues after CONTRACTOR's notice to IRWD of such acts.

8.06 DRUG-FREE WORKPLACE CERTIFICATION

Certification of Compliance: By signing the Agreement For Non-Consultant Services Between Irvine Ranch Water District and Synergy Companies, dated August 10, 2015 ("Agreement"), Contractor, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

- a) **Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code Section 8355(a)(1).**
- b) **Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:**
 - i) **The dangers of drug abuse in the workplace,**
 - ii) **Contractor's policy of maintaining a drug-free workplace,**
 - iii) **Any available counseling, rehabilitation, and employee assistance programs, and**
 - iv) **Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.**
- c) **Provide, as required by Government Code Sections 8355(a)(3), that every**

employee, contractor, and/or subcontractor who works under this Grant Agreement:

- i) Will receive a copy of Contractor's drug-free policy statement, and
- ii) Will agree to abide by terms of Contractor's condition of employment, contract or subcontract.

8.07 Right to Inspection

The State of California shall have the right to inspect the work being performed under this Agreement and any subcontracts at any and all reasonable times during the term of the District's agreement with the State to obtain grant funding for the Services. This right shall extend to any subcontracts entered into pursuant to this Agreement.

EXHIBIT 5

SPECIAL PROVISIONS

(e.g., project schedule, form of customer participation releases and other items not covered elsewhere)

EXHIBIT "C"

IRVINE RANCH WATER DISTRICT

PROFESSIONAL SERVICES VARIANCE

Project Title: DWR Water-Energy Grant 4600011091; One-Stop Shop for Water and Energy Efficiency

Project No.: 6703 Date: January 12, 2017
 Purchase Order No.: 527414 Variance No.: 2

Originator: IRWD ENGINEER/CONSULTANT Other (Explain) _____

Description of Variance (*attach any back-up material*):
Increase to agreement amount of \$500,000 to expand the One-Stop Shop for Water and Energy Efficiency Program to approximately 350 single-family homes. Funding is provided by a grant from the Department of Water Resources.

Engineering & Management Cost Impact:

Classification	Manhours	Billing Rate	Labor \$	Direct Costs	Subcon. \$	Total \$
Agreement increase amount for program expansion.						500,000
Total \$=						500,000

Schedule Impact:

Task No.	Task Description	Original Schedule	Schedule Variance	New Schedule

Required Approval Determination:

Total Original Contract <u>\$ 80,000</u>	<input type="checkbox"/> Director: Cumulative total of Variances less than or equal to \$50,000. <input type="checkbox"/> Executive Director: Cumulative total of Variances less than or equal to \$75,000. <input type="checkbox"/> General Manager: Cumulative total of Variances less than or equal to \$100,000. <input checked="" type="checkbox"/> Board: Cumulative total of Variances greater than \$100,000.
Previous Variances \$ <u>0</u> This Variance <u>\$ 500,000</u>	
Total Sum of Variances <u>\$ 500,000</u> New Contract Amount <u>\$ 580,000</u>	
Percentage of Total Variances to Original Contract <u>625 %</u>	

ENGINEER/CONSULTANT: Synergy Companies IRVINE RANCH WATER DISTRICT

 Project Engineer/Manager Date Department Director Date


 Engineer's/Consultant's Management Date General Manager/Board Date

**IRVINE RANCH WATER DISTRICT
PROFESSIONAL SERVICES VARIANCE REGISTER**

Project Title: DWR Water-Energy Grant 4600011091; One-Stop Shop for Water and Energy Efficiency

Project No.: 6703 Project Manager: Amy McNulty

Variance No.	Description	Dates		Variance Amount
		Initiated	Approved	
1	Changes to Exhibit 1	10/20/16	10/25/16	\$0; extend eligibility to single-family homes
1	Changes to Exhibit 2	10/20/16	10/25/16	\$0; include pricing for installation and materials of showerheads and aerators
1	Changes to Exhibit 3, Section 9.C and 10.B	10/20/16	10/25/16	\$0; extend liability insurance coverage to State and make conforming change to auto liability coverage requirements
1	Changes to Exhibit 4, Section 8.06	10/20/16	10/25/16	\$0; add drug-free workplace certification
1	Changes to Exhibit 4, Section 8.07	10/20/16	10/25/16	\$0; add State right of inspection
2	Agreement increase amount to expand program	01/12/17		\$500,000

January 12, 2017
Prepared by: A. McNulty
Submitted by: F. Sanchez/P. Weghorst
Approved by: Paul Cook 

WATER RESOURCES POLICY AND COMMUNICATIONS COMMITTEE

WATER EFFICIENCY TACTICAL INCENTIVE
FUNDING AUTHORIZATION

SUMMARY:

IRWD's Water Use Efficiency Program includes a "Tactical Incentives" element to encourage customers to install water conservation devices. In 2015, IRWD executed a multi-year agreement with the Municipal Water District of Orange County (MWDOC) to administer IRWD's incentives for regional rebate programs. The Fiscal Year 2016-17 operating budget includes funding for IRWD's tactical incentive programs. Staff recommends that the Board authorize the General Manager to allocate \$1,250,000 in funding to the FY 2016-17 rebate programs administered through the multi-year agreement with MWDOC using existing and future addendums to the agreement as may be necessary to allocate funds based on actual participation rates and regional program funding.

BACKGROUND:

Tactical Incentives are one of the key elements of IRWD's Water Use Efficiency Program. The financial incentives provided by IRWD are used to supplement existing regional rebate programs administered by Metropolitan Water District of Southern California or MWDOC. The incentives are cost effective and are provided taking into consideration costs that are avoided as a result of the installation of the various water conservation devices.

In July 2015, the Board approved the multi-year Water Conservation Participation Agreement with MWDOC that is provided as Exhibit "A". Addendums to the agreement have been prepared for the Residential, Commercial, and Turf Removal programs that specify the device rebate funding levels for FY 2016-17. These addendums are provided as Exhibit "B", Exhibit "C", and "Exhibit "D", respectively. Based on prior customer participation rates and regional funding, the addendums allocate IRWD's tactical incentive funding among the programs, as shown in Exhibit "E".

Program funding in the amount of \$1,250,000 is included in the adopted FY 2016-17 Operating Budget. Financial incentives have been provided during the first half of the fiscal year from accruals of the previous year's funding. The Board's authorization to allocate funds to the agreement with MWDOC is needed to continue providing program incentives through the remainder of the fiscal year.

FISCAL IMPACTS:

Funding from over-allocation revenues for tactical incentives in the amount of \$1,250,000 is included in the adopted FY 2016-17 Operating Budget.

ENVIRONMENTAL COMPLIANCE:

This item is not a project as defined in the California Environmental Quality Act (CEQA) as authorized under the California Code of Regulations, Title 14, Chapter 3, Section 15378.

RECOMMENDATION:

That the Board authorize the General Manager to allocate \$1,250,000 in funding to the FY 2016-17 rebate programs administered through the multi-year Water Conservation Participation Agreement Between MWDOC and IRWD using existing and future addendums to the agreement as may be necessary to allocate funds based on actual participation rates and regional program funding.

LIST OF EXHIBITS:

- Exhibit "A" – Water Conservation Participation Agreement with MWDOC
- Exhibit "B" – Addendum 2A: FY 16-17 Residential Program, Participant Agency Supplemental Funding Authorization
- Exhibit "C" – Addendum 2B: FY 16-17 CII Program, Participant Agency Supplemental Funding Authorization
- Exhibit "D" – Addendum 3B1: FY 16-17 Turf Removal Rebate Program, Participant Agency Using MWDOC as Turf Removal Rebate Vendor Fully Funded by Participant Agency
- Exhibit "E" – Device Funding Levels FY 2016-2017

EXHIBIT "A"

Water Conservation Participation Agreement between the Municipal Water District of Orange County and Irvine Ranch Water District

This Water Conservation Participation Agreement ("Agreement") is made between the Municipal Water District of Orange County ("MWDOC") and Irvine Ranch Water District ("Participant Agency"). MWDOC and Participant Agency may be collectively referred to as "Parties" and individually as "Party."

Recitals

- A. The Metropolitan Water District of Southern California ("Metropolitan") provides incentive funding to residential, commercial, and industrial water users in its service area for a variety of water conservation activities, including, but not limited to, rebates for the purchase and installation of water-saving devices ("Metropolitan Base Incentives").
- B. MWDOC is a member agency of Metropolitan and has agreements with Metropolitan that enable residential, commercial, and industrial water users in MWDOC's service area, and for the benefit of MWDOC's member agencies, to participate in and take advantage of Metropolitan's Base Incentives.
- C. Participant Agency, as a MWDOC member agency or a direct Metropolitan member agency, may elect to participate in Metropolitan's program to replace non-conserving items within its service area.
- D. The Metropolitan Base Incentives amounts for each eligible device or program available to MWDOC and Metropolitan member agencies are listed in the attached Addendums 1A and 1B. It is expected that Metropolitan will establish funding for additional water conservation items and to change some or all of the existing funding rates throughout the term of this Agreement. Any such changes will be incorporated herein by amendment to Addendums 1A and 1B.
- E. Metropolitan and MWDOC each have fiscal responsibility to manage their individual budgets, and hence may have a need to limit availability of funds.
- F. MWDOC and Metropolitan member agencies may also choose to provide additional supplemental funding of their own to augment the Metropolitan Base Incentives. Based on the terms and conditions of this Agreement, MWDOC will facilitate supplemental funding for Participant Agency through the Metropolitan rebate contractor ("Rebate Contractor") or MWDOC directly. Metropolitan member agencies will coordinate any supplemental funding directly with Metropolitan.
- G. In addition to the Metropolitan Base Incentives, MWDOC has developed and arranged additional local, state, and federal grant funding ("Grant Funding") for eligible devices in a number of water conservation programs ("MWDOC Administered Programs") that MWDOC offers to Participant Agency and Metropolitan member agencies. This grant funding may be used to enhance the Metropolitan Base Incentives. Granting agencies

include, but are not limited to, the Department of Water Resources and the United States Bureau of Reclamation.

- H. Participant Agency may also operate customized, local water conservation incentive programs in their respective service areas (“Participant Agency Administered Programs”) and may have access to the Metropolitan Base Incentives and Grant Funding for such, subject to MWDOC and Metropolitan approval and the terms and conditions of this Agreement and any MWDOC and/or Metropolitan agreements.
- I. The purpose of this Agreement is to create a master water conservation participation agreement between MWDOC and Participant Agency that combines all of the conservation programs and incentives (“Programs”) into one agreement. Addendums to this Agreement will be issued for changes involving Metropolitan approved items, MWDOC Board approved items, Grant Funding, adding and subtracting MWDOC Administered Programs and Participant Agency Administered Programs as identified in Section 2, and changes to incentive programs, including funding and incentive levels.

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

Section I: Agreement Term and Administration

- 1.1 This Agreement will be effective on July 1, 2015 or upon execution of this Agreement by all Parties, whichever is later, and shall terminate on June 30, 2025 (“Term”). Continuance of this Agreement will be subject to annual budget approval by MWDOC’s Board of Directors.
- 1.2 This Agreement may be amended at any time by written mutual agreement of the Parties, or by Addendums issued by MWDOC as set forth in Recital I.
- 1.3 This Agreement may be terminated by either Party for any reason upon thirty (30) days written notice to the other Party.
- 1.4 All Addendums are enforced for the duration of this Agreement unless the Addendums are amended or terminated by either Party.
- 1.5 In the event the Agreement is terminated early, Participant Agency is responsible for payment of any funding contributions required by this Agreement that that were initiated prior to the effective date of the termination. For purposes of this Agreement, an application is deemed initiated when an application has been received by Metropolitan’s rebate vendor, EGIA, by MWDOC, or a reservation has been made within any of MWDOC’s online application portals that is pursuant to any of the programs described within this Agreement and the attached Addendums.
- 1.6 Notwithstanding any other provision in this Agreement, funds for all of the programs described within this Agreement and the attached Addendums are conditioned upon the

availability of funds and MWDOC is under no obligation to provide funding for any of the programs if MWDOC determines, in its own discretion, that such funding is exhausted, reduced, eliminated, or unavailable from any funding source, for any reason.

Section 2: Program Funding

2.1 Supplemental Funding

2.1.1 In addition to the Metropolitan Base Incentives, Participant Agency may provide additional funding to augment the Metropolitan Base Incentives amounts for those programs and devices that Participant Agency identifies, and in the amounts indicated, in the appropriate locations in Addendums 2A, 2B, and 2C (“Supplemental Funding”). The Supplemental Funding listed in Addendums 2A through 2C shall specify the amount of Supplemental Funding Participant Agency will provide per device or program, as well as the total maximum Supplemental Funding amount committed to each category of device or program. If the Participant Agency does not complete, sign, and return Addendums 2A through 2C to MWDOC, notwithstanding any other provision of this Agreement, the Participant Agency will not be bound by this Section or the provisions in Addendums 2A through 2C. In general, Supplemental Funding Addendums submitted by the 15th of a month will become effective the first of the following month.

2.1.2 If Participant Agency elects to provide Supplemental Funding or enhanced incentives under this Agreement for any device or program, Participant Agency is responsible for tracking the use of and the remaining availability of those funds. MWDOC will assist, in every way possible, but the ultimate responsibility for tracking all Participant Agency funding is the responsibility of Participant Agency. Participant Agency will ultimately be responsible for any overuse of Participant Agency Supplemental Funding.

2.1.3 Any requests for changes or revisions to Participant Agency’s Supplemental Funding, including funding transfers between Programs, must be submitted by Participant Agency to MWDOC in the form of revised Addendum 2s listing the new funding amounts/limits.

2.1.4 The Participant Agency may elect to participate in the Supplemental Funding Program and be bound by the provisions of this Section 2.1, Sections 3, 5, 6, 7, and 8 of this Agreement, and Addendum 2A through 2C by having its authorized representative complete and sign Addendum 2A through 2C in the spaces provided.

2.2 MWDOC Administered Programs

2.2.2 Participant Agency may elect to take advantage of the MWDOC Administered Programs by having its authorized representative complete and sign Addendums 3A through 3C in the spaces provided. If Participant Agency completes and signs Addendums 3A through 3C, Participant Agency agrees to be bound by the provisions of this Section 2.2, Sections 3, 5, 6, 7, and 8 of this Agreement, and Addendums 3A through

3C. If the Participant Agency does not complete, sign, and return Addendums 3A through 3C, notwithstanding any other provision of this Agreement, the Participant Agency will not be bound by this Section or the provisions in Addendums 3A through 3C.

2.3 Participant Agency Administered Programs

2.3.1 From time to time, funding may be made available for Participant Agency to operate a customized member agency administered local water conservation incentive program or programs (“Participant Agency Administered” “PA” or “MAA Program”) in its service area and access the Metropolitan Base Incentives for such, subject to MWDOC approval of the program and the terms and conditions of this Agreement and Addendum 4. The Participant Agency Administered Program(s) and requirements in connection with it are described in more detail in Addendum 4.

2.3.2 Upon receipt of approval of a Participant Agency Administered Program by MWDOC, Participant Agency is bound by the provisions of Sections 3, 5, 6, 7, and 8 of this Agreement and Addendum 4.

2.4 Exhaustion of Funding

2.4.1 In the event Participant Agency provided funding for any Program or device is exhausted, and Participant Agency does not elect to add additional funding or transfer available funding from another Program or device, MWDOC will discontinue offering the additional rebate funding for that Program or device in Participant Agency’s service area. Notwithstanding any other provision in this Agreement, MWDOC may terminate this Agreement as it relates to Section 2 at any time without prior notice in the event that MWDOC determines that funding for any device or program on Addendums 2 through 4 or MWDOC Grant Funding is exhausted, reduced, eliminated, or unavailable from any funding source, for any reason.

Section 3: Participant Agency Responsibility and Ownership

- 3.1 Participant Agency, at its sole discretion, may independently contract with its own agents under separate agreements for program administration and management for any Participant Agency Administered Program provided that doing so does not compromise program performance, create or present a conflict of interest, or violate the terms of this Agreement.
- 3.2 Participant Agency and/or its agent shall provide all necessary services and materials for such Participant Agency Administered Programs including, but not limited to the following: program administration, promotion, marketing materials, data collection, and analysis, installation verification, and reporting.
- 3.3 All materials and supplies necessary to implement a Participant Agency Administered Program shall be the exclusive property of Participant Agency. MWDOC shall have no

ownership, right, title, security interest, or other interest in any Participant Agency Administered Program materials or supplies, nor any rights duties, or responsibilities, therefor.

- 3.4 Participant Agency is responsible for assuring that any Participant Agency Administered Program complies with all federal, state, and local requirements.
- 3.5 Participant Agency agrees to cooperate with MWDOC's data management activities related to assessing device saturation and program success.
- 3.6 As part of any Participant Agency Administered Program, Participant Agency shall use, maintain, and submit to MWDOC within the designated timeframe an electronic database, to be approved by MWDOC prior to use, for any conservation items installed, distributed, or rebated by Participant Agency or its agents to avoid duplicate distributions and to determine the saturation rate of items by the appropriate geographic delineation.
- 3.7 Participant Agency is solely responsible for the performance of its staff or representatives in complying with the terms of this Agreement and for the proper allocation and appropriate use of funds provided by Metropolitan and/or MWDOC for the purpose of achieving water conservation savings under this Agreement.

Section 4: MWDOC's Obligations

- 4.1 MWDOC will be response to Participant Agency for ensuring that timely reports on the Programs' results are prepared by MWDOC's staff.
- 4.2 MWDOC will develop a database of information regarding participation in the Programs and provide monthly electronic and/or written reports of activity to Participant Agency.
- 4.3 MWDOC will invoice Participant Agency for any Participant Agency funding obligations on a monthly basis for rebates issued in the previous month.
- 4.4 MWDOC does not guarantee any minimum number of rebates will be available for Participant Agency's service area.

Section 5 Marketing.

- 5.1 Participant Agency agrees to assist in the marketing of programs it participates in under this Agreement. With regard to Participant Agency Administered Programs, Participant Agency will be solely responsible for marketing its Participant Agency Administered Program to customers in its service area.

Section 6: Installation Verification

- 6.1 Participant Agency shall be responsible for conducting installation verifications of items installed, distributed, and/or rebated by Participant Agency under Participant Agency

Administered Programs, and/or for paying all costs associated with this verification. Installation verification measures for program devices must be designed to ensure that materials, installation verifications of eligible program devices, and services meet requirements established by Metropolitan, which requirements will be provided to Participant Agency by MWDOC.

- 6.2 Participant Agency may be responsible for conducting installation verifications of items installed, distributed, and/or rebated by Participant Agency or MWDOC under MWDOC Administered Programs, and/or for paying all costs associated with this verification. Installation verification measures for program devices must be designed to ensure that materials, installation verifications of eligible program devices, and services meet requirements established by Metropolitan, which requirements will be provided to Participant Agency by MWDOC.
- 6.3 MWDOC reserves the right to conduct installation verification of items within Participant Agency's service area.
- 6.4 Participant Agency acknowledges that any device receiving funding from Metropolitan may be subject to an installation verification to be performed by Metropolitan, or its agent(s), at Metropolitan's discretion.
- 6.5 Participant Agency shall promptly refund to MWDOC any amounts paid under any Participant Agency Administered Program or MWDOC Administered Program for installed or distributed devices in the event MWDOC or Metropolitan establishes via installation verification that the program devices were not installed.

Section 7: Reporting and Invoicing

- 7.1 For any and all Supplemental Funding provided by Participant Agency and/or Participant Agency provided funding or inspection costs under the MWDOC Administered Programs pursuant to Section 2 of this Agreement, and as more particularly described in Addendums 2 and 3, MWDOC will invoice Participant Agency on a monthly basis for the cost of such funding, and Participant Agency must pay the full amount of such invoice within thirty (30) days of receipt of any such invoice.
- 7.2 For any and all Participant Agency Administered Program(s), Participant Agency will invoice MWDOC on a monthly basis, by the 10th of each month, for any approved funding and costs associated with the Participant Agency Administered Program(s) as indicated in and subject to the provisions of Addendum 4. MWDOC is under no responsibility to reimburse Participant Agency for any costs incurred by Participant Agency that are not approved by MWDOC consistent with the terms and conditions of this Agreement and Addendum 4. The invoice package shall include a fully completed, to the satisfaction of MWDOC, Excel customer/applicant spreadsheet showing program activity, and an invoice, signed by the General Manager or designee of Participant Agency, certifying the information provided as accurate. Participant Agency shall use the Excel customer/applicant spreadsheet and Invoice forms approved by MWDOC.

- 7.3 Participant Agency shall maintain all Participant Agency Administered Program information, including Participant Agency applications, water bills, and purchase receipts, for a period of seven years from the end date of this Agreement.
- 7.4 Payment of Participant Agency invoices shall be in the form of either a credit on MWDOC's water bill to Participant Agency or a check made payable to Participant Agency. Method of payment shall be at MWDOC's discretion.

Section 8: Confidentiality

- 8.1 MWDOC agrees to maintain the confidentiality of Participant Agency's customer names, addresses, and other information gathered in connection with this Agreement. MWDOC will not cause or permit the disclosure of such information except as necessary to carry out any of the MWDOC Administered or Participant Agency Administered Programs, or as required by law. To the extent that MWDOC contracts with third party contractors to carry out all or any portion of any of the Programs, MWDOC will require such contractors to maintain the confidentiality of such customer information.
- 8.2 Notwithstanding anything to the contrary in this Agreement, Participant Agency acknowledges and agrees that MWDOC may request and use historical water consumption data for purposes of satisfying any grant water use and water quality evaluation requirements of any of the Programs. Participant Agency also acknowledges and agrees that MWDOC may also request to use Program applicant information, such as name, mailing address, site photos, and email address to market other water use efficiency programs to past applicants. A similar provision will be required of every individual applicant.

Section 9. Indemnification.

- 9.1 The parties agree that each Party shall be responsible for its own actions, and the actions of its officers, employees, and agents, in performing services under this Agreement. Except as provided in this Agreement and its Addendums, each Party agrees to indemnify and hold the other Party and its officers and agents harmless and agrees to defend the other Party against any claim or asserted liability arising out of its actions, either willful or negligent, or the actions of its officers, employees, and agents, in performing services pursuant to this Agreement. Such indemnity will include any losses relating to any claim made, whether or not a court action is filed, and will include attorney fees and administrative and overhead costs related to or arising out of such claim or asserted liability.
- 9.2 Participant Agency shall include the following language in its agreement with any consultant or contractor retained by Participant Agency to work on any of the Program”
“(Consultant) agrees at is sole cost and expense to protect, indemnify, defend, and hold harmless Metropolitan, MWDOC, and their associated Boards of Directors, officers, representatives, agents and employees from and against any and all claims and liability

of any kind (including, but not limited to, any claims or liability for injury or death to any person, damage to property, natural resources or to the environment, or water quality problems) that arise out of or related to Participant Agency's approval, construction, operation, repair, or ownership of any Program. Such indemnity shall include all damages and losses related to any claim made, whether or not a court action is filed, and shall include attorneys' fees, administrative and overhead costs, engineering and consulting fees, and all other costs related to our arising out of such claim or asserted liability."

Section 10. Certification re Lobbying (43 CFR 18)

- 10.1 The undersigned hereby certifies on behalf of Participant Agency that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Participant Agency, to any person for influencing or attempting to influence an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions. To the extent federal funds are involved, the Participant Agency shall require that the language of this certification be included in the awards documents for any sub-awards by the Participant Agency at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that sub-recipients, if any, shall certify accordingly.

Section 11. Other Terms

- 11.1 Any alteration or variation of the terms of this Agreement will not be valid unless made in writing and signed by both Parties.
- 11.2 This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors.
- 11.3 The partial or total invalidity of one or more parts of this Agreement will not affect the intent or validity of this Agreement.
- 11.4 This agreement shall be deemed a contract made under the laws of the State of California, and for all purposes will be interpreted in accordance with such laws. The Parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California, and that the venue of any action brought hereunder will be in Orange County, California.


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11.5 This Agreement constitutes the entire agreement between the Parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.


MUNICIPAL WATER DISTRICT
OF ORANGE COUNTY

IRVINE RANCH WATER DISTRICT

By: 
Robert J. Hunter
General Manager
Date: 7-14-15

By: 
Paul Cook
General Manager
Date: 7-9-15

Approved as to Form:
Bowie, Arneson, Wiles & Giannone


Joan C. Arneson
Legal Counsel
Date: 6/25/15

FIRST AMENDMENT TO WATER CONSERVATION PARTICIPATION AGREEMENT

This First Amendment to Water Conservation Participation Agreement ("First Amendment") is effective on July 1, 2016 ("Effective Date"), by and between the Municipal Water District of Orange County ("MWDOC") and Irvine Ranch Water District ("Participant Agency") MWDOC and Participant Agency may be collectively referred to as "Parties" and individually as "Party."

RECITALS

- A. MWDOC and Participating Agency entered into a Water Conservation Participation Agreement regarding the Participating Agency's participation in certain water conservation programs ("Agreement").
- B. The Parties now desire to amend the Agreement to make certain changes to provisions regarding verification of the installation of items and devices installed as part of certain water conservation incentive programs.

TERMS

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. **Amendment.** Section J is added to the Recitals to read as follows:
 - "J. The purpose of this Agreement is also to acknowledge that Participating Agency is participating in MWDOC's Choice Water Use Efficiency Program ("WUE Program") and in doing so is agreeing to pay for its proportionate share of MWDOC's administrative and direct program costs of the WUE Program."

2. **Amendment.** Section 1.7 is added to the Agreement to read as follows:
 - "1.7 Participating Agency understands that by entering into this Agreement it is participating in MWDOC's Choice Water Use Efficiency Program ("WUE Program") and agrees to pay MWDOC for its proportionate share of MWDOC's costs for administering the WUE Program based on Participating Agency's level of participation in the WUE Program. MWDOC will annually invoice Participating Agency.

3. Amendment. Section 6 is amended in its entirety to read as follows:

“Section 6: Installation Verification/Inspection

- 6.1 Participant Agency shall be responsible for conducting installation verifications/inspections of items and devices installed, distributed, and/or rebated by Participant Agency under Participant Agency Administered Programs to ensure compliance with program requirements, and/or for paying all costs associated with this verification/inspection. Installation verification/inspection measures must be designed to ensure that materials, installation verifications/inspections of eligible program items and devices, and services meet requirements established by Metropolitan and MWDOC, which requirements will be provided to Participant Agency by MWDOC as Attachment A.
- 6.2 Participant Agency shall be responsible for conducting installation verifications/inspections of items or devices installed, distributed, and/or rebated by Participant Agency or MWDOC under MWDOC Administered Programs to ensure compliance with program requirements, and/or for paying all costs associated with this verification/inspection. Installation verification/inspection measures for program items and devices must be designed to ensure that materials, installation verifications/inspections of eligible program items and devices, and services meet requirements established by Metropolitan and MWDOC, which requirements will be provided to Participant Agency by MWDOC as Attachment A.
- 6.3 Participant Agency may elect to (1) conduct its own installation verifications/inspections by either utilizing its in-house staff or contracting with a third party vendor of its choice; or (2) utilize MWDOC’s installation verification/inspection contractor to conduct the installation verification/inspections. If Participant Agency elects to utilize MWDOC’s verification/inspection vendor, Participant Agency may elect to contract directly with MWDOC’s verification/inspection vendor. If Participant Agency elects not to enter into such contract, MWDOC, in MWDOC’s sole discretion, may require that Participant Agency contract directly with MWDOC’s verification/inspection vendor.
- 6.3.1 Notwithstanding any other provision in this Agreement, Participant Agency understands and agrees that if Participant Agency utilizes MWDOC’s verification/inspection vendor, Participant Agency must still comply with all of the requirements of this Agreement, including the refund requirements in Section 6.6, and MWDOC is in no way liable or responsible for the acts or omissions of such vendor and makes no

representations or warranties regarding the quality of such vendor's work. Participant's sole recourse as to any action, claims or damages arising out of the acts or omissions of MWDOC's verification/inspection vendor is with the vendor and not with MWDOC.

- 6.4 MWDOC reserves the right to conduct installation verification/inspection of items and devices within Participant Agency's service area.
- 6.5 Participant Agency acknowledges that any item or device receiving funding from Metropolitan may be subject to an installation verification/inspection to be performed by Metropolitan, or its agent(s), at Metropolitan's discretion.
- 6.6 Participant Agency shall promptly refund to MWDOC any amounts paid under any Participant Agency Administered Program or MWDOC Administered Program for installed or distributed items or devices, including any grant funds, in the event MWDOC or Metropolitan establishes via installation verification/inspection and/or audit that the program items or devices were not installed in compliance with the requirements established by Metropolitan and MWDOC pursuant to this Agreement. If such a refund is not provided to MWDOC within thirty (30) days of request, the requested amount may be debited by MWDOC on Participating Agency's next water service invoice.
- 6.7 "Items" and "devices" includes, but is not limited to, plumbing fixtures, irrigation devices, turf (removal and replacement), and any other items, devices or materials that are installed in connection with a program covered by this Agreement.

4. Authority to enter into First Amendment. Each Party represents to the other that the person executing this First Amendment has the requisite power and authority to execute the First Amendment and to bind each respective Party.

5. Continuing Effect of Agreement. Except as amended by this First Amendment, all other provisions of the Agreement remain in full force and effect. From and after the date of this First Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this First Amendment.

6. Execution in Counterparts. This First Amendment may be executed in duplicate counterparts, each of which shall be deemed an original.


MWDOC and Participating Agency have each caused this First Amendment to be executed by its duly authorized representative as of the date set forth below the authorized signature.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment.

MUNICIPAL WATER DISTRICT
OF ORANGE COUNTY

PARTICIPANT AGENCY

By: _____
Robert Hunter
General Manager

By: 
Name: Paul Cook
Title: General Manager

Date: _____

Date: 18 OCTOBER 2016

Approved as to Form:

Approved as to Form:

Joseph Byrne
General Counsel



Joan C. Arneson
General Counsel

Date: _____

Date: September 8, 2016

EXHIBIT "B"
Addendum 2A FY 16-17

September 2016

Residential Program

Participant Agency Supplemental Funding Authorization (as of September 7, 2016)

Regional Incentive Program	Metropolitan Incentive	Participant Agency Incentive	Total Incentive	Authorized Funding
High Efficiency Clothes Washer (HECW)	\$85	\$165	\$250	See below
Premium High Efficiency Toilet (4 Liter) (Single-family)	\$40	\$110	\$150	See below
Rotating Nozzles (minimum 30)	\$2	\$	\$2	\$
Rain Barrels	\$75	\$	\$75	\$
Cistern	\$300	\$	\$300	\$

Select one: **Check here** if the supplemental incentives are flat regardless of actual device cost
Check here if the supplemental incentives are limited to the actual device cost
 (Actual device cost is the retail price of the device excluding tax, shipping, labor or other charges)

If Participant Agency has complex or more detailed requirements, please check this box, sign this form and attach a spreadsheet or other documentation showing funding details.

To STOP any or all Supplemental Funding, please check this box, sign form, and submit to MWDOC.

Participant Agency Name Irvine Ranch Water District
Authorized Funding \$ 300,000
Add/Subtract Additional Funds¹ \$ 205,000 (FY 15/16 carryover)
Total Authorized Funding \$ 505,000
Start Date: September 7, 2016
End Date: June 30, 2017

¹If this is not the first form this fiscal year, indicate amount of funding being added or subtracted.

This funding authorization is effective only for the period designated by the Participant Agency above, or until a new authorization is approved and implemented by Metropolitan's vendor. Each form submitted shall include the total authorization of the Agency for the specified time period. No funds will be carried over from prior forms.

Supplemental funding forms received by MWDOC by the 15th of a month will be sent to Metropolitan by the 20th of a month. Funding forms received by Metropolitan by the 20th of a month shall become effective on the first day of the following month unless a later Start Date is specified. Incentives will not be applied retroactively.

Participant Agency is obligated to pay supplemental funding for any on-line commitments/applications made while this authorization is in effect, even if final payment for these commitments is/are due after the End Date specified. **By signing, Participant Agency agrees to these terms.**

 13 SEPT 2016
 Authorizing Signature General Manager /Designee Date

MWDOC Use Only: Date received: _____ Approved by _____
 Date sent to Metropolitan: _____

Comments:

Addendum 2B FY 16-17

CII Program

Participant Agency Supplemental Funding Authorization (as of Sept. 7, 2016)

Regional Incentive Program	Metropolitan Incentive	Participant Agency Incentive	Total Incentive	Authorized Funding
Plumbing Flow Control Valve	\$ 5 each	\$0	\$5	\$
Laminar Flow Restrictors	\$ 10 per Restrictor	\$0	\$10	\$
Commercial Premium HET	\$ 40	\$60	\$100	See below
Multi-Family Premium HET	\$ 40	\$110	\$150	See below
Zero Water Urinals (ZWU)	\$ 200	\$100	\$300	See below
Ultra Low Water Urinal (ULWU)	\$ 200	\$100	\$300	See below
Large Rotary Nozzles	\$ 13 per Set	\$0	\$13	\$
Rotating Nozzles for Pop-up Spray Heads Retrofits	\$ 2 per Nozzle	\$0	\$2	\$
In-Stem Flow Regulator	\$ 1 per Regulator	\$0	\$1	\$
pH-Cooling Tower Controller (pH-CTC)	\$1,750	\$0	\$1,750	\$
Cooling Tower Conductivity Controller (CTCC)	\$ 625	\$0	\$625	\$
Dry Vacuum Pump	\$ 125 per 0.5 HP	\$0	\$125	\$
Connectionless Food Steamers	\$ 485 per compartment	\$485	\$970	See below
Ice-Making Machines	\$1,000	\$250	\$1,250	See below
Select one:	Check here <input type="checkbox"/> if the supplemental incentives are flat regardless of actual device cost			
	Check here <input checked="" type="checkbox"/> if the supplemental incentives are limited to the actual device cost (Actual device cost is the retail price of the device excluding tax, shipping, labor or other charges)			
<input type="checkbox"/>	If Participant Agency has complex or more detailed requirements, please check this box, sign this form and attach a spreadsheet or other documentation showing funding details.			
<input type="checkbox"/>	To STOP any or all Supplemental Funding, please check this box, sign form, and submit to MWDOC			
Participant Agency Name	Irvine Ranch Water District			
Authorized Funding	\$ 300,000			
Add/Subtract Additional Funds ¹	\$ 250,000 (FY 15/16 carrvoer)			
Total Authorized Funding	\$ 550,000			
Start Date:	September 7, 2016			
End Date:	June 30, 2017			

1. If this is not the first form for this fiscal year, indicate amount of funding being added or subtracted

This funding authorization is effective only for the period designated by the Participant Agency, or until a new authorization is approved and implemented by Metropolitan's vendor. Each form submitted shall include the total authorization of the Agency for the specified time period. No funds will be carried over from prior forms.

Supplemental funding forms received by MWDOC by the 15th of a month will be sent to Metropolitan by the 20th of a month. Funding forms received by Metropolitan by the 20th of a month shall become effective on the first day of the following month unless a later Start Date is specified. Incentives will not be applied retroactively.

Participant Agency is obligated to pay supplemental funding for any on-line commitments/applications made while this authorization is in effect, even if final payment for these commitments is/are due after the End Date specified.

By signing, Participant Agency agrees to these terms.

Participant Agency: Irvine Ranch Water District



Authorizing Signature General Manager
/Designee

13 SEPT 2016

Date

MWDOC Use Only: Date received: _____
Date sent to Metropolitan, if applicable: _____

Approved by: _____

Comments:

EXHIBIT "D"

**Addendum 3B1 FY 16-17
Turf Removal Rebate Program
Participant Agency Using MWDOC as Turf Removal Rebate Vendor
Fully Funded by Participant Agency
Participant Agency: Irvine Ranch Water District**

Incentive Funding Activated Upon Participant Agency Agreement to Fund Turf Removal Rebates (Per Square Foot)			
Turf Removal Rebate	Participant Agency Incentive Funding Per Square Foot	Participant Agency Rebating (X)	Admin Fees Per Application
Residential Turf Removal (One application per property address per lifetime)	\$2.00/sf Maximum of 3,000 sf	<input checked="" type="checkbox"/>	\$65.00 per app
Commercial Turf Removal (One application per customer per year)	\$1.00/sf Maximum of 25,000 sf	<input checked="" type="checkbox"/>	\$65.00 per app
Public Agency Turf Removal (One application per customer per year)	\$2.00 sf up to 3,000 sf \$1.00 sf up to 44,000 sf Maximum of 47,000 sf	<input checked="" type="checkbox"/>	\$65.00 per app

Site Inspection. Participant Agency must conduct mandatory, onsite pre-turf and post-turf removal verifications/inspections, as described in Amendment 1 to the Water Conservation Participation Agreement and the MWDOC Inspection and Verification Procedures document. Participant Agency may elect to (1) conduct its own installation verifications/inspections by either utilizing its in-house staff or contracting with a third party vendor of its choice; or (2) utilize MWDOC's installation verification/inspection contractor to conduct the installation verification/inspections. An authorized representative(s) of Participant Agency must approve all pre-turf and post-turf removal inspections work orders, whether conducted by Participant Agency or a third-party vendor. Participant Agency shall designate its authorized representative(s) by completing Table 1 below. All authorized representative(s) identified in Table 1 must have signing authority with Participant Agency to certify that all information contained in the pre-turf and post-turf removal work orders is true and correct and to approve all rebate funding amounts.

**Table 1
Designation by Participant Agency of Authorized Representative(s)**

Name	Title
Amy McNulty	Water Efficiency Manager
Shavonne Mays	Sr. Water Efficiency Specialist

If Participant Agency elects to utilize MWDOC's verification/inspection vendor, Participant Agency may elect to contract directly with the inspection vendor. Participant Agency understands and agrees that if Participant Agency utilizes MWDOC's verification/inspection vendor, Participant Agency must still comply with all of the requirements of the Water Conservation Participation Agreement, including the refund requirements in Section 6.6, and MWDOC is in no way liable or responsible for the acts or omissions of such vendor and makes no representations or warranties regarding the quality of such vendor's work. Participant's sole recourse as to any action, claims or

damages arising out of the acts or omissions of MWDOC's verification/inspection vendor is with the vendor and not with MWDOC.

By its initials below, Irvine Ranch Water District hereby elects to either:
 Name of Participant Agency

(1) Conduct its own inspections:

P. G. S.
 Initials Here

or

(2) Provide funding to MWDOC to conduct inspections:

 Initials Here

By signing below, Participant Agency agrees to the following: Participating Agency is electing to use MWDOC as the vendor to provide rebates. Participant Agency will be fully-funding rebates and must pay associated administrative fees, as described herein. Participant Agency acknowledges that it is responsible for managing its own rebate funding and administrative fees budget(s) via the Droplet online portal. MWDOC will not be tracking the status of Participant Agency's funding. Participant Agency also acknowledges that any application originating under the term of this Addendum 3B1 shall be fully funded by Participant Agency and not eligible for funding from any other source. Furthermore, Participant Agency understands that it is obligated to pay all rebate amounts and administrative fees for any applications initiated during the term of this Addendum 3B1, regardless of when the project is completed and the rebate check is issued. Additionally, Participant Agency acknowledges that should MWDOC, Grant, and/or Metropolitan funding become available and Participant Agency elects to participate in that funding for new applications received at that time, that Participant Agency will be subject to and adhere to any square footage caps and rebate levels (as base rebate levels; supplemental funding will be allowed) established by MWDOC for said funding.

This funding authorization is effective for applications received by MWDOC on or after July 1, 2016 and continues through June 30, 2017 or until a replacement Addendum is approved and implemented by MWDOC, whichever comes first. All invoicing shall be pursuant to the terms of the Water Conservation Participation Agreement. Incentives will not be applied retroactively.

By signing, Participant Agency agrees to these terms.

Participant Agency Irvine Ranch Water District

[Signature]
 Authorizing Signature General Manager/Designee

20 Sept 2016
 Date

MWDOC Use Only:

 Date received

 Approved by


 Date sent to vendor

Comments:

Exhibit "E"

Device Funding Levels FY 2016-2017

Program	Maximum Funding	Devices	IRWD Rebate Funding Level Per Device
<u>SoCal WaterSmart</u> Residential Program	\$300,000	High Efficiency Clothes Washer	\$165
		High Efficiency Toilet Premium	\$110
		Residential Smart Timer	Up to \$75
<u>SoCal WaterSmart</u> Commercial Program	\$300,000	Commercial High Efficiency Toilet	\$60
		Multi-Family High Efficiency Toilet	\$110
		Zero Water/Ultra Low Water Urinals	\$100
		Connectionless Food Steamer	\$485 Per Compartment
		Commercial Ice Making Machine (Tier III)	\$250
		Water Savings Incentive Program	\$3 Per 1,000 gallons/ 1 year
Turf Removal Program	\$650,000	Turf Removal	Not to exceed \$2/sqft
Total Funding for All Programs	\$1,250,000		

January 12, 2017
Prepared by: A. McNulty
Submitted by: F. Sanchez/P. Weghorst
Approved by: Paul Cook 

WATER RESOURCES POLICY AND COMMUNICATIONS COMMITTEE

MEMORANDUM OF UNDERSTANDING
FOR SMART TIMER DISTRIBUTION PROGRAM

SUMMARY:

Staff proposes that IRWD participate with Moulton Niguel Water District (MNWD) and Santa Margarita Water District (SMWD) in implementing a Smart Timer Distribution Program that will be administered by MNWD. This program will benefit IRWD customers who participate in the One-Stop Shop for Water and Energy Efficiency Program which is supported by grant funding. Staff recommends that the Board authorize the General Manager to execute a Memorandum of Understanding (MOU) with MNWD in the amount of \$100,000 to implement the Smart Timer Distribution Program. IRWD's expenditures through the MOU will be reimbursed to IRWD from grant funds.

BACKGROUND:

Over-watering is one of the leading causes of customer over-allocation water use. Smart timers can help customers avoid over-watering by automatically making the appropriate schedule adjustments based on the current weather and season. Staff has been working with MNWD and SMWD in the development of a Smart Timer Distribution Program that will provide residential customers with a smart timer and the assistance of a landscape professional to ensure the devices are correctly programmed. The program would be administered by MNWD and IRWD's participation would be facilitated through an MOU.

Smart Timer Distribution Program:

The Smart Timer Distribution Program will provide IRWD customers who participate in the One-Stop Shop for Water and Energy Efficiency Program with a new smart irrigation timer, a detailed assessment of their landscapes and on-site customer training on how to install and program the smart timer. MNWD has entered into an agreement with Valley Soils, a professional landscape company, to provide the landscape assessments and training. The Rachio smart timer has been selected as the device to be distributed through the program.

Landscape Assessment and Training:

An accurate landscape assessment is vital to the proper setup of a smart timer. Participating customers will receive a landscape assessment conducted by Valley Soils to confirm that the customer's irrigation system is functional, to ensure adequate Wi-Fi is available and to collect all information necessary to program the smart timer. Valley Soils will also provide training to customers on how to program and operate the controller. If customers choose to not install the devices themselves, they will have the option to pay the contractor a fixed price for installation.

The inclusion of customer education, site-specific details and professional support will give customers a superior understanding of their new smart timers, thereby ensuring continued use and associated water savings.

Smart Timer Device:

The Rachio smart timer has been selected for the Smart Timer Distribution Program. Each smart timer provides information on anticipated run times and total gallons of water used, and allows customer control of the system from a smart phone. The Rachio device's features are illustrated in Exhibit "A".

Rachio smart timers also provide utility dashboards. The dashboards may be utilized by District staff to verify that all smart timers have been installed and are online. The utility dashboards will also allow staff to view participating customer irrigation usage. All IRWD customers must consent to staff viewing the data from their smart timers as a condition of program participation. The Customer Participation Agreement is attached as Exhibit "B".

Memorandum of Understanding:

The MOU with MNWD is attached as Exhibit "C" which defines the terms of IRWD's participation in the program, including the District's proposed funding commitment of \$100,000. The terms clarify that MNWD will pay contractors for work completed for IRWD customers who are participating in the Smart Time Distribution Program. MNWD will then invoice IRWD for the work. The MOU provides IRWD flexibility in establishing the terms for customer eligibility considering criteria such as size of landscape thresholds, size of turf areas or prior program participation requirements.

Grant Funding:

Within IRWD's service area, the program will be incorporated into the One-Stop Shop for Water and Energy Efficiency Program that relies on funding from the California Department of Water Resources (DWR) Water-Energy Grant which was awarded to IRWD in 2015. Staff plans to perform a random 10% onsite installation verification and conduct customer satisfaction surveys regarding the program. Depending on customer response, the program may be modified or expanded based on the availability of remaining grant funding and Board approval.

FISCAL IMPACTS:

Funding for the Smart Timer Distribution Program is included in the FY 2016-17 Operating Budget. IRWD will be reimbursed through the DWR Water-Energy Grant for payments paid to MNWD for its contractor's work in supporting IRWD customers participating in the program.

ENVIRONMENTAL COMPLIANCE:

This program is not a project as defined in the California Environmental Quality Act (CEQA) as authorized under the California Code of Regulations, Title 14, Chapter 3, Section 15378.

RECOMMENDATION:

That the Board authorize the General Manager to execute the Memorandum of Understanding between IRWD and Moulton Niguel Water District for the Smart Timer Distribution Program that commits funding in the amount of \$100,000 which will be reimbursed to IRWD through the Water-Energy Grant with the California Department of Water Resources.

LIST OF EXHIBITS:



- Exhibit "A" – Rachio Product Features
- Exhibit "B" – Customer Participation Agreement
- Exhibit "C" – Memorandum of Understanding for the Smart Timer Distribution Program

EXHIBIT "A" RACHIO SMART TIMER FEATURES

The Hardware

- Easy Install and setup.**
Under 30 minutes with no special tools or expertise required. Quickly connect to your home's Wi-Fi.
- Replaces almost any controller.**
Works with your current sprinkler system, up to 16 zones.
- Water directly from controller.**
Run zones right from controller. Manual access allows for local control.
- Make it waterproof.**
Our optional outdoor enclosure protects your controller in all weather situations. Hardwire option included.


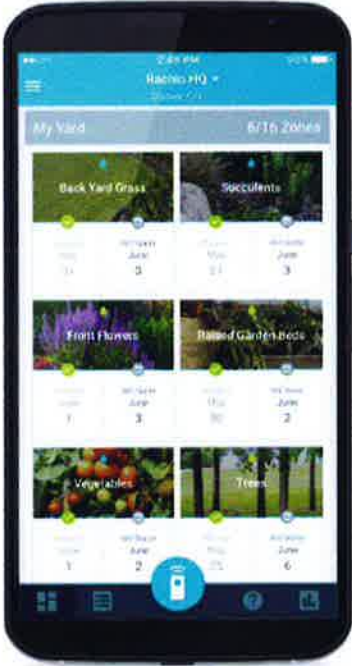
[Full Hardware Specs](#)



The App

- Remote control.**
Start, stop, and change your sprinklers from your phone or computer.
- Real-time notifications.**
The Rachio apps will let you know what's happening with your yard, from rain delays to faulty valves.
- Detailed water usage reporting.**
Know how much water you're using in your yard.
- Share access with others.**
Option to share full or limited access with your irrigation professional.

[Preview the App](#)





Scheduling

Customized for Each Zone

Get a tailored schedule based on specific plant types, soil types, nozzles and sun exposure.

Any Schedule You Want

Specify times and dates for when your schedules should run.

Eliminate Runoff

Smart Cycle breaks up your schedule into smaller periods to maximize soil absorption rate.

Certified and Tested

EPA WaterSense Certified and SWAT tested, Rachio is proven to save water while keeping your plants healthy.



Weather

Never Water In the Rain

Rachio connects to a network of thousands of weather stations to get the latest weather.

Forecasted Rain Skipping

Automatically skips watering due to forecasted rain, instead of just reacting to real-time rain.

Cold Weather Delays

Automatically skips watering due to low temperatures.

Weather Intelligence™

Waters automatically based on past, present, and future weather, plus seasonal adjustments. No need to worry about updating schedules.



EXHIBIT "B"

Customer Participation Agreement

Water District

Smart Timer Distribution Program

The Smart Timer Distribution Program ("Program") is a partnership between the _____ Water District ("District") and the Moulton Niguel Water District. The District and Moulton Niguel Water District are sometimes referred to as "Agencies" or "Agency." The goal of the Program is to provide customers with a simple, time-saving approach to Smart Timer installation and achieve measurable water savings. Customers receive: (i) an irrigation system audit, (ii) up to two Smart Timers, (iii) the option to self-install or receive installation of the Smart Timer(s) (iv) programming instruction by a landscape professional ("Contractor") or a landscape professional of his/her own choosing, and (v) training on the operation and maintenance of the device(s). The audit, programming instruction and training will be provided by a Contractor selected for the Program by the District. Applicant will have the option to hire Contractor to install the Smart Timer(s) at a price that has been negotiated by District, to hire a landscape professional of his/her own choosing, or to self-install. The anticipated benefits of this Program are reduced water use, improved irrigation efficiency, and money savings on the water bills.

Program Eligibility Requirements Applicants are required to meet certain criteria in order to participate in the Program. Eligibility requirements will include, but are not necessarily limited to, the following, as determined from time to time in the sole discretion of the Agencies:

1. Applicant must be a residential customer of District in good financial standing. (No delinquencies on District bills in the last 12 months.)
2. Applicant must own the home located at the service address requesting the Smart Timer.
3. Applicant must not have received a prior rebate for turf removal, synthetic turf, or Smart Timers.
4. Applicant must currently have an existing in-ground irrigation system and non-weather-based automatic sprinkler timer installed at the property.
5. Applicant must have live irrigated landscape of 2,500 square feet or larger (subject to change by District).
6. Applicant must have used a minimum of 15 billing units (BU's) on average (1 billing unit = 100 cubic feet of water) per month for the previous 12 months (subject to change by District).
7. Applicant is limited to 2 Smart Timers per service address.

8. Applicant will be required to be present during the landscape audit when the Contractor will make a determination if Applicant qualifies for the Program and installation of the Smart Timer and also receive instruction and training from Contractor on programming and maintenance of the Smart Timer device. Applicant will have the option to: (i) hire Contractor to install the Smart Timer(s); (ii) self-install; or (iii) hire a third party contractor of his/her own choosing to perform the installation.

9. Applicant must consent to receive a pre-installation irrigation system audit, as well as post-installation verification. (Any Applicant not allowing a post-installation verification will be subject to a reimbursement fee applied to their monthly water bill equal to the cost of the Smart Timer and installation charge.)

10. Applicant shall provide District and Contractor, all as defined herein, with the right of ingress and egress to and from Applicant's property and access to Applicant's property for the pre-installation audit, post-installation verification and access to Applicant's irrigation system including, but not limited to, electrical lines and outlets, Wi-Fi internet access, irrigation lines, valves and sprinkler heads ("Irrigation System").

11. Applicant further consents to monitoring of the Smart Timer(s) through data which is collected and reported back to District. District will have the right to make use of such data for any purpose, subject to District's privacy policy for Smart Timer data collection.

Pre-Installation Irrigation System Audit Prior to installation of the Smart Timer at the service location, Applicant shall allow Contractor to inspect and audit the service location to confirm the site satisfies the minimum eligibility requirement of the Program. Contractor will make a determination in the audit whether the proper installation and operation of the Smart Timer is possible at the service location. Pre-installation procedures are listed below.

1. Applicant will be contacted by Contractor to schedule the irrigation audit of the existing system and installation eligibility of the Smart Timer. At the appointed date and time, Contractor will meet Applicant at Applicant's service address and perform the irrigation audit.

2. If Contractor determines that the property does not qualify for the Program, Applicant will have 60 days to make the necessary repairs and corrections and may then contact Contractor for a follow-up appointment to reconsider the eligibility determination. Site conditions that may prevent participation in the Program include, but are not limited to, broken irrigation lines, broken sprinkler heads, broken nozzles, broken valves, or the absence of Wi-Fi.

Eligibility for Smart Timer If the irrigation system audit concludes that Applicant is eligible for a Smart Timer, then Applicant will be required to acknowledge his or her approval of the terms of the Program in writing and Contractor will provide the following:

1. At the request of Applicant, Contractor will perform the installation of the smart timer(s) for the fee of ___ to be paid by the customer either at the time of application or the time of the audit.
2. Certain Smart Timers require an enclosure if placed outdoors. If the wiring and outlet for the timer is outdoors, an enclosure will be provided by Contractor.
3. The Agencies will not pay for, nor be responsible for, sub-standard work. District's Conservation staff will perform quality control inspections after Smart Timers are installed and programmed to insure proper installation and programming.
4. Contractor will provide training to Applicant on how to program and maintain the Smart Timer. Contractor will leave with Applicant a copy of manufacturers' warranty documentation, user manual for the Smart Timer, phone number for technical assistance and/or product malfunction.
5. Applicant agrees to operate and maintain the Smart Timer for at least 4 years or reimburse District the full amount of the device. Proper use of the Smart Timer requires the device to be connected to the Internet at all times via a Wi-Fi connection provided by Applicant and Applicant consents to the collection of data from the Smart Timer by District. Said reimbursement may be made by adding the amounts due and owing to Applicant's account with the District. [Proper use of the Smart Timer requires the device to be connected to the Internet at all times via a Wi-Fi connection provided by Applicant and Applicant consents to the collection of data from the Smart Timer by District for a period of 4 years. Upon expiration of said 4-year period, Applicant's consent will be required for further collection of data.](#)

Applicant Responsibility

1. Participation in the Program is voluntary. Regular supervision of landscape water use or the day-to-day operation of the installed equipment remains the responsibility of Applicant.
2. The Smart Timer will be programmed with default or estimated scheduling criteria based on a professional assessment of the existing landscape. To ensure appropriate water is applied to the landscape, Applicant is responsible for fine-tuning and adjusting all Smart Timer scheduling criteria including but not limited to: plant type, climate exposure, soil type, root depth, precipitation rate, irrigation efficiency, and degree of slope.
3. Upon installation, ownership and operation of the new Smart Timer and all peripheral equipment becomes the responsibility of Applicant. The controller(s), replaced by the Smart Timer(s), along with any and all existing mounting components will remain with Applicant. Applicant will be responsible for properly disposing of the removed materials.

Agreement By signing below and participating in the Program, you (“Applicant”) agree to all of the terms in this Customer Participation Agreement and applicable policies and documents of the Agencies which apply to this Program, as said materials may be revised from time to time.

1. You agree that any and all equipment, including the Smart Timer(s), (“Equipment”), which you obtain through the Program, shall be deemed to be solely owned by you and are not the Agencies’ property. The Agencies do not make any representation or warranty as to the condition or performance of the Equipment.
2. You agree that you are solely responsible for the proper installation, operation, maintenance and repair of your irrigation system and the Equipment received through this Program. You agree that it will be your responsibility to contact the product manufacturer, distributor or installer for any assistance or regarding any defect, failure of performance or warranty.
3. You understand that you are solely liable for any damage to you and your property and any other person(s) or property(ies) which may be caused by the installation, maintenance, operation or repair, improvement, alteration or use of the Equipment.
4. You agree that the Agencies have no liability associated with your voluntary participation in this Program.
5. You understand that the Agencies do not endorse, recommend or make any representations as to specific brands, products, contractors or dealers nor do they guarantee material or workmanship.
6. You agree to waive and release the Agencies and their respective officers, agents and employees from, and agree to indemnify, defend and hold the Agencies and their respective officers, agents and employees harmless from, any and all claims and causes of action, damages, injuries or other liabilities related to or arising out of the installation, improvement, alteration, use, maintenance or repair of the Equipment distributed as part of this Program, or any other activities in connection with this Program. Such indemnification may include, for example and not by way of limitation, alleged liability or damages in connection with you or third parties. You acknowledge that you may wish to consult an attorney in regard to the terms of this Agreement and that your participation and execution of this Agreement are completely voluntary.
7. You agree that it is your responsibility to keep the Smart Timer(s) connected to the Internet via a local Wi-Fi network and that District has the right to collect and use data from the Smart Timer(s).
8. You understand that the Contractor has been selected to conduct the audit for Agencies and any use of the Contractor for installation is at your sole risk and expense. Agencies are not responsible for the acts of Contractor or its personnel while present on your property.

Name of Applicant: _____

Service Address: _____

Account Number: _____

Signature: _____

Date: _____

EXHIBIT "C"

Memorandum of Understanding

**Moulton Niguel Water District ("MNWD")
and**

_____ Water District ("Participant")

Participation In Smart Timer Distribution Program ("Program")

Program:

1. MNWD and Participant hereby enter into this Memorandum of Understanding ("MOU") in order to partner for the sole purpose of extending MNWD's Program to the residential customers within Participant's service area.
2. Implementation of the Program within Participant's service area, funded by Participant, will seek to incentivize the installation and programming of smart irrigation timers ("Smart Timers"), pre-installation irrigation audits and customer training for long term operation of Smart Timers to assist Participant's customers in efficient outdoor water usage. The Program offering period will be from _____, 2016 to _____, 201_.
3. Participant shall notify MNWD by [date TBD] as to the maximum budget ("Maximum Amount") it is willing to commit to participation in the Program which will take into account the number of Participation Agreements submitted to Participant by its customers prior to said deadline. However, if Participant modifies its Maximum Amount for its Participation Agreements after the above-mentioned deadline, Participant shall notify MNWD promptly in writing of any increase or decrease in the Maximum Amount and shall be responsible for any additional payments.
 - a. The maximum budget, not to be exceeded shall be \$_____.
4. A sample Participation Agreement to be used by Participant is attached hereto as Exhibit A. Participant shall decide the eligibility criteria for its customers, which information Participant will provide to MNWD and such criteria will be included by Participant in the Participation Agreement. In no event shall MNWD be responsible for obtaining information from or otherwise implementing the Participation Agreements with Participant's customers, and MNWD's sole source of contact shall be Participant. MNWD and Participant hereby agree to work together and coordinate the implementation of the Program as described in this MOU and as further set forth in applicable MNWD policies and documents ("Informational Materials") as said Informational Materials may be revised from time to time.

5. Nothing in this MOU shall be deemed to be the provision of any service or other activity outside of each party's respective service area, and to the extent the performance of any aspect of this MOU can be considered a "service," California Government Code Section 54981 permits a local agency to contract with another local agency for performance by the latter of municipal services or functions within the territory of the former. The purpose of this MOU is to facilitate implementation of the Program in order to further each party's conservation goals. In addition, in consideration of efficiencies and economies of scale that can be fostered by extending MNWD's Program to Participant and its service area, MNWD desires to enter into this MOU in order to obtain funding and other operational support toward recovery of the cost and requirements for implementation of the Program.

Understandings and Agreements:

1. MNWD's website and a web-based customer and utility portal will be utilized to administer the Program and will include the Informational Materials. MNWD also plans to promote the Program to specific customers through its participation in the California Data Collaborative which is a partnership project with other private and public entities consisting of a study on targeted digital advertising. In addition to the details of the Program set forth in the Informational Materials, the Program is described as follows.
2. The current version of the Program offers a rebate program which is administered by the Municipal Water District of Orange County ("MWDOC") through the SoCal WaterSmart website, with funding provided by MNWD, MWDOC and the Metropolitan Water District of Southern California ("Metropolitan"). Under this current version of the Program, MNWD offers rebates up to \$150 per Smart Timer in addition to the base Metropolitan rebate of \$85, for a maximum of two devices per residential property. Eligible residential properties under the Program must be less than 1 acre in size.
3. MNWD will retain a contractor (the "Contractor") for the purpose of performing pre-installation audits of the landscaping of customers identified to MNWD by Participant. In the event the audit concludes that a participating customer's site qualifies for the Program, the customer will have the following options for installation and programming of the Smart Timer: (a) customer may contract separately with the Contractor for performance of such work; (b) customer may contract separately with an installation contractor of its own choosing for performance of such work; or (c) e customer may perform such work on a do-it-yourself basis. Neither MNWD nor Participant will pay for, nor be responsible for, sub-standard work. The customer

shall be solely responsible for, and/or shall look solely to the Contractor or customer's own contractor, whichever performs installation and programming, for correcting any errors in programming, at no expense to MNWD nor Participant. The Contractor or customer's own contractor, as applicable, will provide training to the customer on how to program and maintain the Smart Timer. The customer must agree to operate and maintain the Smart Timer for at least 4 years or reimburse the Participant the full amount of the device.

4. For every audit which is performed and Smart Timer distributed under the Program, MNWD will invoice Participant, and Participant shall pay the amounts shown in the applicable fee schedule of Contractor or any other amounts which may be in effect as of the date of the applicable invoice as determined by MNWD under the Program. The amount payable by Participant shall not exceed the Maximum Amount set forth in this MOU, provided that Participant has promptly notified MNWD of any change in the Maximum Amount.
5. MNWD will, on a monthly or quarterly basis, as determined by MNWD, prepare a fully documented invoice, stating the amount due for the number of audits performed and devices distributed during the previous period. Participant shall pay each invoice within thirty (30) days from the date of said invoice.
6. Participant will coordinate and participate in the overall administrative oversight of, and foster the multiple-agency participation in, the Program within the Participant's service area. Participant will be responsible for providing information as may be requested by customers.
7. The term of this MOU shall extend from the date of full execution until _____, 20___. This MOU shall remain in effect during the term unless earlier terminated under the following procedures:
 - (a) If either party believes that the other party has failed to perform any obligation of that party in accordance with the terms of this MOU ("Default"), the party alleging the Default shall provide written notice ("Default Notice") to the other party, setting forth the nature of the alleged Default. The party claimed to be in Default shall have: (i) With respect to a Default involving the payment of money, ten (10) days after its receipt of the Default Notice to completely cure such Default; and (ii) With respect to any other type of Default, thirty (30) days from the receipt of the Default Notice to completely cure such Default or, if such Default cannot reasonably be cured within such thirty (30) day period, to commence the cure of such Default within the thirty (30) day period and diligently prosecute the cure to completion thereafter. If the party claimed to be in Default does not cure such Default within the time periods and procedures as

set forth herein, the party alleging Default may then pursue the applicable legal and equitable remedies. In the event such results in termination, the parties will remain obligated to perform and pay for any obligation incurred prior to the effective date of said termination unless otherwise prohibited by law or regulation.

(b) In the event either party determines it is not feasible or permissible to continue to perform this MOU due to legal or regulatory restrictions, either party may terminate this MOU upon ten (10) days prior written notice to the other party. In the event of any such termination, the parties will remain obligated to perform and pay for any obligation incurred prior to the effective date of said termination unless otherwise prohibited by law or regulation.

(c) Either party may terminate this MOU for convenience at any time upon thirty (30) days written notice. In the event of any such termination, the parties will remain obligated to perform and pay for any obligation incurred prior to the effective date of said termination unless otherwise prohibited by law or regulation.

(d) Upon termination of this MOU, MNWD shall immediately stop using any data provided by Participant to MNWD and shall, as directed by Participant, return or destroy such data and certify the destruction of same. In the event Participant exercises its right to terminate its participation in the Program, MNWD will be compensated for costs incurred up to the effective date of such termination. Obligations with respect to confidentiality, use, and destruction of data, indemnification, and payment shall survive the termination of this Agreement.

8. Confidentiality and Usage of Data.

(a) Pursuant to California Government Code Section 6254.5(e), Participant agrees to provide MNWD with Participant's customer names, addresses and account numbers ("Confidential Data") solely for the purpose of allowing Participant's customers to participate in the Program ("Authorized Use"). Confidential Data will remain the property of Participant and its customers. MNWD shall use Confidential Data solely for the Authorized Use. MNWD shall not use Confidential Data for commercial purposes or for any use other than the Authorized Use.

(b) Any confidential information, including Confidential Data, disclosed by the disclosing party (the "Disclosing Party") to the receiving party (the "Receiving Party") shall be treated as confidential and maintained in confidence by the Receiving Party. The Receiving Party shall not disclose any confidential

information of the Disclosing Party except to its own personnel who have a need to know. Without limiting the foregoing, the Receiving Party shall take at least the same steps and use the same methods to prevent the unauthorized use or disclosure of any confidential information of the Disclosing Party as it takes to protect its own confidential or proprietary information.

(c) In the event a public records request is made to the Receiving Party for the Disclosing Party's Confidential Data, or to the Receiving Party for other information obtained from the Disclosing Party, the Receiving Party shall provide notice to the Disclosing Party in order to provide the Disclosing Party with the opportunity to pursue actions as it may deem appropriate for withholding any such records from disclosure.

9. General Provisions

(a) Indemnification Each party ("Indemnitor") hereby agrees to defend, indemnify and hold free and harmless the other party, its officers, employees and agents (collectively, the "Indemnitees") from and against any and all liability, including legal fees, and claims for damages of any nature whatsoever, arising from or connected with Indemnitor's activities under this MOU, including any Worker's Compensation suits, liability, or expense. Indemnitor's duty to indemnify the Indemnitees shall survive the expiration or other termination of this MOU as to any injuries, occurrences or claims occurring or alleged to have occurred prior to its expiration or termination.

(b) Relationship of the Parties Nothing contained in this MOU shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent, or partnership or joint venture, or any association between the parties, and none of the provisions contained in this MOU or any act of the parties shall be deemed to create any relationship other than as specified herein, nor shall this MOU be construed, except as expressly provided herein, to authorize either of the parties to act as the agent for the other.

(c) Notices All notices or other communications to either party by the other will be deemed given when made in writing and delivered or mailed to such party at their respective addresses as follows:

To MNWD:

To Participant:

(d) Incorporation of Recitals The Recitals set forth above are incorporated herein and made an operative part of this MOU.

(e) Complete Agreement This MOU constitutes the entire agreement between the parties, both written and oral, with respect to the subject matter hereof. Any prior agreements respecting the subject matter hereof, written or oral, express or implied, between the parties, are hereby canceled.

[signatures are on the following page]

"MNWD"

MOULTON NIGUEL WATER DISTRICT

By: _____

Title: _____

Date: _____

"PARTICIPANT"

_____ WATER DISTRICT

By: _____

Title: _____

Date: _____