

**Agreement No. A0-5296 Among The Metropolitan Water District of Southern California,
Municipal Water District of Orange County, Orange County Water District, City of
Anaheim, City of Fullerton, and the City of Santa Ana
Regarding the Assignment of Extraordinary Supply from the Santa Ana River
Conservation and Conjunctive Use Program**

This Agreement among The Metropolitan Water District of Southern California (Metropolitan), Municipal Water District of Orange County (MWDOC), the Orange County Water District (OCWD), the City of Anaheim (Anaheim), the City of Fullerton (Fullerton), and the City of Santa Ana (Santa Ana) regarding the assignment of Extraordinary Supply from the Santa Ana River Conservation and Conjunctive Use Program (hereinafter "Agreement") is hereby entered into this _____ day of _____ 2024. Metropolitan, MWDOC, OCWD, Anaheim, Fullerton, and Santa Ana are collectively referred to as "Parties" and individually as a "Party" herein.

RECITALS

A. Metropolitan is a metropolitan water district organized under the Metropolitan Water District Act, codified at section 109-1, et seq. of West's Appendix to the California Water Code, and is engaged in developing, storing, and distributing water in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura. Metropolitan has a long-term contract with the California Department of Water Resources (DWR) which sets forth the terms and conditions of Metropolitan's participation in the State Water Project (SWP).

B. MWDOC is a municipal water district formed and existing under the California Municipal Water District Act of 1911, Sections 71000 et seq. of the California Water Code, for purposes that include providing its 28 member agencies in Orange County, with reliable, high quality supplies from Metropolitan and other sources to meet present and future needs, at an

equitable and economic cost, and to promote water use efficiency for all of Orange County.

MWDOC is a member agency of Metropolitan.

C. OCWD undertakes responsibilities associated with actively managing the Coastal Plain of Orange County Groundwater Basin (hereinafter “Orange County Groundwater Basin”). OCWD was formed by an act of the California State Legislature in 1933 for the purpose of protecting and managing the Orange County Groundwater Basin. OCWD is a member agency of MWDOC, and purchases imported water for replenishment purposes from MWDOC.

D. Anaheim is a California municipal corporation and a member public agency of Metropolitan. The city is located in northern and northeastern Orange County with its jurisdictional area overlying the Orange County Groundwater Basin. Anaheim is a member agency of OCWD.

E. Fullerton is a California municipal corporation and a member public agency of Metropolitan. The city is located in northern and northeastern Orange County with its jurisdictional area overlying the Orange County Groundwater Basin. Fullerton is a member agency of OCWD.

F. Santa Ana is a California municipal corporation and a member public agency of Metropolitan. The city is located in northern Orange County with its jurisdictional area overlying the Orange County Groundwater Basin. Santa Ana is a member agency of OCWD.

G. The Santa Ana River Conservation and Conjunctive Use Program (SARCCUP) is a multi-agency, watershed-wide groundwater storage and recovery project involving multiple basins in the Santa Ana River Watershed. The goal is to store available water during wet years in local groundwater basins throughout the watershed and extract the stored water during dry years to reduce the impacts from single and multi-year droughts.

H. The SARCCUP includes four water banking sites. Three of the sites are located within Metropolitan's service area. More specifically, the three aforementioned sites are in the Metropolitan member agency service areas of Eastern Municipal Water District (EMWD), Western Municipal Water District (WMWD), and MWDOC. The water banking facilities within MWDOC's service area are located within, owned, and operated, exclusively by OCWD. The fourth water banking site is within San Bernardino Valley Municipal Water District (Valley District)'s service area in the San Bernardino Basin Area (SBBA), which is located outside of Metropolitan's service area. The SARCCUP includes water delivery interconnections between SBBA and SARCCUP facilities in the Metropolitan service area.

I. OCWD undertakes all responsibilities associated with actively managing the SARCCUP banking program in the Orange County Groundwater Basin. A portion of MWDOC's service area overlies the Orange County Groundwater Basin and MWDOC's member agencies in this portion of its service area along with Anaheim, Fullerton, and Santa Ana pump groundwater from the Orange County Groundwater Basin in accordance with the Orange County Water District Act.

J. On June 15, 2021, Valley District and Metropolitan entered into a Coordinated Operating and Surplus Water Agreement whereby Valley District may offer to sell to Metropolitan, and Metropolitan may purchase from Valley District, surplus SWP water.

K. On November 9, 2021, Metropolitan, EMWD, WMWD, MWDOC, Inland Empire Utilities Agency (IEUA), and OCWD entered into an agreement (hereinafter "November 2021 SARCCUP Agreement") regarding SARCCUP. Under the November 2021 SARCCUP Agreement, Metropolitan agreed to "equally offer to WMWD, EMWD, and MWDOC for purchase an amount of water equivalent to 50% of the amount that Metropolitan purchases from

Valley District during a calendar year for delivery to the SARCCUP water banking facilities” (hereinafter, “SARCCUP Water”).

L. On December 9, 2021, EMWD, WMWD, MWDOC, OCWD and IEUA entered into an additional SARCCUP agreement (hereinafter “December 2021 SARCCUP Agreement”) governing MWDOC’s access to SARCCUP Water (which is referred to in the December 2021 SARCCUP Agreement as “Allocated Water”) for its own water supply purposes and prescribing the priority and process for the parties to the agreement to access SARCCUP Water and placing conditions on how, when, and where MWDOC may use SARCCUP Water.

M. Under Section 1.B of the November 2021 SARCCUP Agreement, MWDOC will purchase SARCCUP Water offered by Metropolitan on behalf of, and whenever requested by, OCWD for the SARCCUP water banking program. Also under Section 1.B of the November 2021 SARCCUP Agreement, as the owners and operators of the SARCCUP water banking facilities, WMWD, EMWD, and OCWD will determine the delivery amounts to the SARCCUP water banking sites and may designate deliveries to IEUA or MWDOC on their behalf. Under Section 4 of the November 2021 SARCCUP Agreement, if SARCCUP Water purchased and stored within the Santa Ana River Watershed during the same calendar year otherwise complies with Metropolitan’s Water Supply Allocation Plan last revised in December 2014 (or as any successor to such plan), then it will qualify as extraordinary local supply production (hereinafter: “Extraordinary Supply”).

N. As a wholesale member agency of Metropolitan, MWDOC has developed and adopted its own Water Supply Allocation Plan (hereinafter “MWDOC WSAP”) for its retail member agencies, including OCWD. The plan largely reflects the implementation terms and conditions of Metropolitan’s Water Supply Allocation Plan but is tailored to the MWDOC

service area. Notably, MWDOC's WSAP tracks individual retail agency supplies and demands but utilizes an aggregate approach whereby credits and adjustments are prorated to best match MWDOC's allocation from Metropolitan. MWDOC's current policy under the MWDOC WSAP is not to subject its member agencies to allocation surcharges if its member agencies' combined imported water usage by the end of the Allocation Period is below the allocation established by Metropolitan for MWDOC's service area.

O. MWDOC acknowledges that under the MWDOC WSAP, the SARCCUP Water MWDOC purchases on behalf of OCWD, that is stored and pumped from the Orange County Groundwater Basin, and approved by Metropolitan as certified Extraordinary Supply, shall be exclusively allocated to MWDOC's member retail water agencies that produced the SARCCUP Water from the Orange County Groundwater Basin.

P. Under Section 5 of the November 2021 SARCCUP Agreement, Metropolitan agreed to assign any Extraordinary Supply benefit that would accrue to MWDOC as a result of actions taken by OCWD in accordance with a separate written agreement among Metropolitan, MWDOC, OCWD, Anaheim, Fullerton, and Santa Ana. Accordingly, the purpose of this Agreement is to provide the mechanism for MWDOC, on behalf of its member retail water agencies that pump water from the Orange County Groundwater Basin, and for Anaheim, Fullerton, and Santa Ana (which also overlie and pump water from the Orange County Groundwater Basin), to receive Extraordinary Supply credits from Metropolitan under Metropolitan's adopted Water Supply Allocation Plan where SARCCUP Water is pumped and used as extraordinary local supply during a Metropolitan declared allocation.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the representations, warranties, covenants, and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree to the following terms and conditions.

1. Declaration of a Metropolitan Allocation

Should Metropolitan's Board of Directors take action to declare an allocation and set an allocation amount to be in effect ("Allocation Period") under its Water Supply Allocation Plan, OCWD and MWDOC will confer with MWDOC's member retail water agencies that pump water from the Orange County Groundwater Basin, and Anaheim, Fullerton, and Santa Ana (hereinafter the "Groundwater Producers"). The purpose of this consultation will be, among other things, for OCWD to discuss the amount of SARCCUP Water it has in storage and to obtain information regarding the Groundwater Producers' need for Extraordinary Supply from the SARCCUP program to comply with Metropolitan's imported water allocation.

2. Pumping of Stored SARCCUP Water

A. Based upon the consultation with the Groundwater Producers and MWDOC, and prior to the commencement of Metropolitan's Allocation Period, OCWD may act to incrementally increase its groundwater Basin Production Percentage (hereinafter "BPP") to incentivize the pumping of SARCCUP Water in storage by the Groundwater Producers. OCWD may also incentivize additional pumping of SARCCUP Water by the Groundwater Producers through other basin management tools authorized under the OCWD Act, including, but not limited to, the use of the Basin Equity Assessment, production limitations, and surcharges.

Additional pumping of SARCCUP Water in storage undertaken by the Groundwater Producers would be above the planned local supply production baseline amount for the Metropolitan Allocation Period.

B. During Metropolitan's Allocation Period, OCWD may consult with MWDOC and the Groundwater Producers regarding those agencies' consumption of imported water relative to their Metropolitan allocation amount, and further adjust the BPP or take other actions as it deems necessary to modify the pumping of SARCCUP water in storage by those agencies.

3. Documentation of SARCCUP Water Produced

On a monthly basis, and upon completion of Metropolitan's Allocation Period, OCWD will work with MWDOC, Anaheim, Fullerton, and Santa Ana, to provide any relevant documentation required. OCWD will provide to MWDOC the amount of SARCCUP Water that the Groundwater Producers each pump from storage from the Orange County Groundwater Basin, including :

A. The quantity of SARCCUP Water produced by the Groundwater Producers in excess of each Groundwater Producer's originally planned local supply production amount.

B. An accounting of the change in storage and storage balance of SARCCUP Water in the Orange County Groundwater Basin during the Allocation Period.

C. Other documentation as needed by MWDOC, Anaheim, Fullerton, and Santa Ana to comply with the applicable requirements of Metropolitan's Water Supply Allocation Plan and to certify the eligible Extraordinary Supply amounts.

4. Extraordinary Supply Certification and Crediting

A. MWDOC, Anaheim, Fullerton, and Santa Ana shall review and incorporate the documentation provided by OCWD as specified in Section 3 into any submitted certifications of Extraordinary Supply and other submissions to Metropolitan for compliance with Metropolitan's Water Supply Allocation Plan. If Metropolitan determines that certifications and other supporting documentation submitted by MWDOC, Anaheim, Fullerton, and Santa Ana are in accordance with the applicable requirements of Metropolitan's Water Supply Allocation Plan for such certifications, Metropolitan will qualify the water as Extraordinary Supply and will assign the benefit accordingly to MWDOC, Anaheim, Fullerton, and Santa Ana.

B. Under MWDOC's WSAP, SARCCUP Water that is pumped by MWDOC's retail member agencies in the Orange County Groundwater Basin, and is certified by Metropolitan as Extraordinary Supply, shall be proportionally credited exclusively to those MWDOC retail member agencies that pumped the SARCCUP Water. MWDOC shall base such crediting upon documentation submitted by OCWD and MWDOC's retail member agencies in the Orange County Groundwater Basin.

5. Records and Inspection

Metropolitan, MWDOC, OCWD, Anaheim, Fullerton, and Santa Ana will keep records of SARCCUP Water storage and production pursuant to this Agreement. The SARCCUP Water storage and production records of each agency will be open to inspection by the other agencies upon reasonable notice. The agencies will cooperate to develop coordinated administrative procedures for the tracking required under this Agreement.

6. Changes to Metropolitan Water Supply Allocation Plan

Metropolitan, MWDOC, OCWD, Anaheim, Fullerton, and Santa Ana acknowledge that Metropolitan's Water Supply Allocation Plan is established by Metropolitan's Board of Directors and is subject to change. Should Metropolitan's Board of Directors take actions to change the Water Supply Allocation Plan in a manner that materially affects the terms of the Agreement, the Parties will work together in good faith to develop procedures to fulfill the intent of this Agreement in a manner that is consistent with any changes to Metropolitan's Water Supply Allocation Plan.

7. Severability

In the event that a court of competent jurisdiction determines that a provision included in this Agreement is legally invalid or unenforceable and such decision becomes final, the Parties to this Agreement shall use their best efforts to (i) within thirty (30) days of the date of such final decision, identify by mutual agreement the provisions of this Agreement which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the Parties. Pending the completion of the actions designated above, to the extent it is reasonably practical and can be done without violating any applicable provisions of law, the provisions of this Agreement, which were not found to be legally invalid or unenforceable in the final decision, shall continue in effect. If the Parties cannot agree on appropriate revisions, this Agreement shall be terminated.

8. Further Assurances

Each Party hereto, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the

provisions of this Agreement. The Parties agree to perform such further acts timely when performing all obligations under this Agreement.

9. Counterparts

This Agreement may be executed in two or more counterparts, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

10. Dispute Resolution

In the event of a dispute between the Parties regarding this Agreement, the Parties may attempt to resolve the dispute by using the services of a mutually acceptable mediator before a third-party neutral prior to initiating litigation in court. If the Parties decide to use a mediator, they will equally share the mediator's fees and expenses.

11. Successors and Assigns

This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties; provided, however, no Party shall assign any of its rights or obligations under this Agreement without the prior written consent of the other Parties. Nothing in this Agreement is intended to confer any right or remedy under this Agreement on any person other than the Parties to this Agreement and their respective successors and permitted assigns, or to relieve or discharge any obligation or liability of any person to any Party to this Agreement, or to give any person any right of subrogation or action over or against any Party to this Agreement.

12. Waiver/Cure of Defaults

The failure of any Party to enforce against another Party a provision of this Agreement shall not constitute a waiver of that Party's right to enforce such a provision at a later time. No Party shall be deemed to be in default of any provision of this Agreement unless the other Party

has given written notice specifically stating the alleged default and the Party in default fails to cure the default within sixty (60) days of receipt of such written notice.

13. No Obligation to Third Parties

The approval, execution and performance of this Agreement does not confer any rights upon any person or entity other than the Parties to this Agreement.

14. Termination

This Agreement will terminate on December 31, 2085.

15. Late Arising Claims

If a claim arising under or with respect to one or more terms of this Agreement has not been resolved when such term terminates, or if such a claim is brought after this Agreement has terminated, but within the period of time for bringing such a claim under California law (Late Arising Claim), the provisions of this Agreement shall continue in full force and effect for such additional period of time as is necessary to resolve such claims and to satisfy the rights and obligations of the Parties hereto with respect thereto.

16. Entire Agreement

This Agreement constitutes the final, complete and exclusive statement of the terms of the agreement among the Parties pertaining to the matters provided herein during the term and supersedes all prior and contemporaneous understandings or agreements of the Parties related thereto. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

17. Notices

All notices, requests, and demands hereunder (Notices) shall be in writing, including electronic communications, and shall be deemed to have been duly given when delivered (or, if

mailed, postage prepaid, on the third business day after mailing, if that date is earlier than actual delivery). Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice of a change of that address as herein provided, to the address of that Party most recently so furnished.

Metropolitan Water District of Southern California
Attention: General Manager
P.O. Box 54153
Los Angeles, CA 90054-0153

Municipal Water District of Orange County
Attention: General Manager
P.O. Box 20895
Fountain Valley, CA 92708

Orange County Water District
Attention: General Manager
18700 Ward St
Fountain Valley, CA 92708

City of Anaheim
Public Utilities Department
201 S. Anaheim Blvd., Suite 1101
Anaheim, CA 92805

City of Fullerton
Attention: Public Works Director
303 W. Commonwealth Avenue
Fullerton, CA 92832

City of Santa Ana
Attention: Public Works Director
220 S. Daisy Avenue, M-85
Santa Ana, CA 92703

18. Governing Law

The validity, construction, and enforceability of this Agreement shall be governed in all respects by the laws of the State of California.

19. Electronic Signatures

Any Party may execute this Agreement using an “electronic signature,” as that term is defined in California Civil Code Section 1633.2, or a “digital signature,” as defined by California Government Code Section 16.5. An electronic or digital signature will have full legal effect and enforceability.

[Signatures on Following Page]

In WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the following duly authorized representatives.

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Adel Hagekhalil
General Manager

By: _____
Brad Coffey
Manager, Water Resource Management

Dated

APPROVED AS TO FORM:

Marcia L. Scully
General Counsel

By: _____
Michael W. Hughes
Senior Deputy General Counsel

MUNICIPAL WATER DISTRICT OF ORANGE COUNTY

By: _____
Harvey De La Torre
General Manager

Dated

APPROVED AS TO FORM:

Best, Best & Krieger

By: _____
Joseph Byrne

ORANGE COUNTY WATER DISTRICT

By: _____
John Kennedy
General Manager

Dated

APPROVED AS TO FORM:

Rutan &Tucker LLP

By: _____
Jeremy Jungreis

CITY OF ANAHEIM

By: _____
Dukku Lee
Public Utilities General Manager

Dated

APPROVED AS TO FORM:

Office of City Attorney

By: _____
Andrew Lee
Deputy City Attorney

CITY OF FULLERTON

By: _____
Eric Levitt
City Manager

Dated

APPROVED AS TO FORM:

Office of City Attorney

By: _____
Richard D. Jones
City Attorney

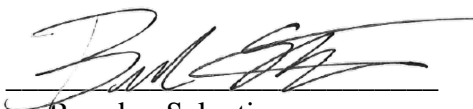
CITY OF SANTA ANA

By: _____
Alvaro Nuñez
Acting City Manager

Dated

APPROVED AS TO FORM:

Sonia R. Carvalho, City Attorney

By: 
Brandon Salvatierra
Deputy City Attorney

Attest:

By: _____
Jennifer L. Hall
City Clerk