

**MEMORANDUM OF AGREEMENT CONCERNING DEVELOPMENT OF RECYCLED WATER RESOURCES IN THE PORT OF LONG BEACH AREA BY AND BETWEEN THE CITY OF LOS ANGELES, ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER, AND THE BOARD OF WATER COMMISSIONERS OF THE CITY OF LONG BEACH, FOR AND ON ITS OWN BEHALF AND ON BEHALF OF THE CITY OF LONG BEACH**

**AGREEMENT**

This Memorandum of Agreement (“MOA”) is entered into by and between the City of Los Angeles, acting by and through the Department of Water and Power (“LADWP”), and the Board of Water Commissioners of the City of Long Beach, for and on its own behalf and on behalf of the City of Long Beach, acting through the Long Beach Water Department (“LBWD”), for the LADWP LBWD Joint Port of Long Beach (“PoLB”) Area Recycled Water Infrastructure Feasibility Study for subsequent planning, design and construction, as described below. The LADWP and LBWD are sometimes collectively referred to as “Parties” or individually as “Party.”

**WITNESSETH**

WHEREAS, LADWP and LBWD both rely heavily on imported water supplies; and

WHEREAS, LADWP and LBWD recognize that imported water supplies are susceptible to the negative impacts brought on by climate change or earthquakes; and

WHEREAS, LADWP and LBWD individually and collectively seek to increase the reliability of their water supply by increasing local water supplies through recycled water; and

WHEREAS, LADWP currently has recycled water supplies available in the Los Angeles Harbor Area, and is planning to significantly increase its capacity to provide recycled water to customers within and outside the City of Los Angeles following the implementation of the Operation NEXT Water Supply Program; and

WHEREAS, LADWP owns and operates existing recycled water infrastructure in the Los Angeles Harbor Area and, and its recycled water system is in close proximity to the LBWD recycled water system; and

WHEREAS, LBWD has identified bringing recycled water to the PoLB area as a priority within its Water Resources Plan and the LBWD West Long Beach Advanced Treated Recycled Water Feasibility Study identified a connection point to existing LADWP infrastructure in the Los Angeles Harbor Area located at West Anaheim and West 9<sup>th</sup> Streets as the preferred alternative to deliver recycled water supply and offset potable water demands for large customers in the PoLB area; and

WHEREAS, LBWD and LADWP determined that a feasibility study would be needed to evaluate the feasibility of recycled water supply and conveyance possibilities prior to subsequent planning, design, and construction; and

WHEREAS, LBWD and LADWP recognize that supplying recycled water to the PoLB saves precious potable water supplies; and

WHEREAS, the Parties' obligations with respect to this MOA are limited to the Parties' participation in the manner prescribed herein.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the Parties, it is hereby agreed as follows:

I. PURPOSE OF MOA

- a. To facilitate cooperation among the Parties to initiate and complete a feasibility study which will specify the costs, risks, opportunities, and overall feasibility of constructing the necessary recycled water infrastructure to convey recycled water to the PoLB area ("Feasibility Study");
- b. To establish regular working communications in support of the Feasibility Study by having staff working groups meet monthly or on an alternate mutually agreeable frequency, as needed to support ongoing efforts.

II. TERM

- a. This MOA shall take effect upon the signature of officials of both parties authorized to enter into such agreements ("Effective Date") and shall remain in effect until the earlier of 18 months after the Effective Date or until completion of the Feasibility Study. Subject to the results of the Feasibility Study, the MOA may be amended in writing, signed by both parties, to include additional terms related to the proposed planning, design, and construction of recycled water infrastructure in the PoLB Area.

III. RESPONSIBILITIES OF THE PARTIES

- a. Parties hereby agree to perform the following tasks:
  - i. LBWD will prepare a Request for Proposals (RFP) with input from LADWP for a consultant to conduct the Feasibility Study.
  - ii. LBWD and LADWP will participate in the evaluation of proposals for the selection of a consultant.

- iii. LBWD will be responsible for contracting with, managing and making payments to the consultant. LADWP will have no contractual obligations to the consultant.
- iv. LADWP will be invited to all meetings associated with the Feasibility Study between LBWD and the consultant.
- v. LADWP shall have the right to access and view all work product prepared by the consultant and LBWD related to the Feasibility Study.
- vi. Any costs associated with additional scope of work related to study to be included and amended under agreement must be agreed upon between both Parties prior to implementation.
- vii. Amendments to this MOA may be subject to approval by the General Managers and/or Boards of either or both Parties.

#### IV. FINANCIAL REIMBURSEMENT PROVISIONS

- a. Parties agree that notwithstanding the uncertainty of RFP responses and outside contractor interest, the estimated total feasibility study project costs is \$280,000.
- b. LADWP and LBWD agree to each pay 50% share of the consultant costs for the Feasibility Study up to a maximum amount of \$140,000 per Party.
- c. LBWD shall provide LADWP with monthly invoices detailing all consultant costs. Each reimbursement request under this Agreement shall include supporting documentation and reference MOA WD-XXXX between LADWP and LBWD and be sent to:

Los Angeles Department of Water and Power  
Water Resources Division  
111 North Hope Street, Room 314  
Los Angeles, CA 90012  
ATTN: Jesus Gonzalez  
Manager of Recycled Water Policy

#### V. STATUS REPORTS

- a. LBWD shall provide monthly status reports. These reports shall accompany any reimbursement request in accordance with the payment schedule above and are a condition precedent to any disbursement.

b. LBWD shall provide the following information to LADWP within the status reports:

- i. A summary of progress to date including a description of progress since the last report, percent complete, percent contractor invoiced, and percent schedule elapsed;
- ii. A listing of all pending and approved change orders including amount, description of work, and change in contract amount and schedule;
- iii. Any problems encountered, proposed resolution, schedule for resolution, and status of previous problem resolutions; and
- iv. Any information required for the final Feasibility Study to be submitted to the Parties.

## VI. INDEMNITY

- a. Except for the sole or gross negligence of the other Party, LADWP and LBWD each agree to indemnify and hold the other harmless from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, or damage or destruction to any property of either party hereto, or third persons directly caused by the negligent acts, errors, omissions or willful misconduct directly related to the performance of this contract on the part of the other Party ("Indemnifying Party"). However, each Party shall retain all liability for the acts, errors or omissions of its consultants/contractors, or the contractor's officers, agents, employees, or subcontractors of any tier. The provisions of this section shall survive expiration or termination of this MOA.

## VII. TERMINATION

- a. This MOA may be terminated at any time by either Party by giving 30 days written notice to the other Party.
- b.

If this MOA is terminated by either Party, LADWP shall pay LBWD all amounts due and not previously paid to LBWD for work completed in accordance with this MOA prior to such notice of termination, and for work thereafter completed as specified in such notice, up to but not exceeding the value for the work using the progress schedule, schedule of values and other project controls as applicable.

## VIII. IT IS MUTUALLY UNDERSTOOD AND AGREED

- a. Parties shall work together in good faith to accomplish their mutually shared goals expressed in this MOA. Each Party shall designate a representative or representatives to participate on its behalf on an advisory panel for the purpose of providing joint updates. The advisory panel shall meet at least quarterly or according to any alternative schedule to which the representatives mutually agree.
- b. The Parties shall provide data and information to their respective teams, as reasonable and necessary to support their initiatives. No Party, however, shall be obligated to provide data or information that it deems in its sole discretion to be confidential or privileged.
- c. LADWP and LBWD shall make staff reasonably available, if requested by the other Party, to participate and provide input at scheduled meetings, community meetings, workshops and other events relevant to the purposes of this MOA.
- d. The Parties shall include in all material, publications, press releases, signage, and communications pertaining to the Parties efforts under this MOA that LADWP and LBWD are project partners.
- e. Neither Party shall have any financial obligation to the other Party under this MOA, except as herein expressly provided.
- f. This MOA shall not preclude either Party from exploring or engaging in partnerships with other agencies or other third parties.

## IX. NOTICES

All notices provided under this MOA must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date either: (1) personally delivered to the address indicated below; (2) on the third business day following deposit, postage prepaid, using certified mail, return receipt requested, in any United States Postal mailbox or at any United States Post Office; or (3) on the date of transmission by facsimile to the number provided below. All notices, demands, or requests shall be addressed to the following:

LADWP: Mr. David R. Pettijohn  
Director of Water Resources  
Los Angeles Department of Water and Power  
111 North Hope Street, Room 1460  
Los Angeles, California 90012

Phone: (213) 367-0899  
[David.Pettijohn@ladwp.com](mailto:David.Pettijohn@ladwp.com)

DRAFT

LBWD: Christopher J. Garner  
General Manager  
Long Beach Water Department  
1800 E. Wardlow Road  
Long Beach, CA 90807  
Phone: (562) 570-2318  
[Chris.Garner@lbwater.org](mailto:Chris.Garner@lbwater.org)

X. AMENDMENTS AND WAIVER

No amendment or waiver of any provision of this MOA, nor consent to any departure from any provision of this MOA, shall be effective unless in writing and signed by each Party, and then such waiver or consent shall be effective only in the specific instances and for the specific purpose given.

XI. RELATIONSHIP OF THE PARTIES

The Parties shall remain at all times as to each other wholly independent entities. No Party shall have the authority to incur any debt, obligation, or liability on behalf of another Party unless expressly provided by written agreement of the Parties. No employee, agent, or officer of any Party shall be deemed for any purpose whatsoever to be an agent, employee or officer of another Party.

XII. GOVERNING LAW

This MOA shall be interpreted, construed, and governed according to the laws of the State of California without regard to conflict of law principles.

XIII. VENUE

Any suit, action, or proceeding brought under the scope of this MOA shall be filed in the County of Los Angeles, State of California. The foregoing, however, shall not limit any Party's right to seek a change of venue under applicable law.

XIV. NO ATTORNEY'S FEES

The Parties agree that, in any action to enforce the terms of this MOA, each Party shall bear its own attorneys' fees and costs.

XV. JOINTLY DRAFTED

Each Party acknowledges that it was represented during the negotiation and execution of this MOA, and that it has had a full and fair opportunity to review and revise the terms of this MOA. Each Party further agrees that this MOA has been

jointly drafted, and that no term contained herein shall be construed against or in favor of another Party.

**XVI. NO THIRD PARTY BENEFICIARIES**

This MOA is not intended, and will not be construed, to confer a benefit or create any right on a third party or the power or right to bring an action to enforce any of its terms.

**XVII. COMPLETE AGREEMENT**

THE MOA contains the full and complete agreement between LBWD and LADWP. No verbal agreement or conversation with any officer or employee of either Party shall affect or modify any of the terms and conditions of MOA.



XVIII. EXECUTION

IN WITNESS WHEREOF, each Party hereto has caused MOA to be executed by their duly authorized representatives.

DEPARTMENT OF WATER AND POWER  
OF THE CITY OF LOS ANGELES

By: \_\_\_\_\_  
Martin L. Adams  
General Manager and Chief Engineer

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

IN WITNESS WHEREOF, each Party hereto has caused MOA to be executed by their duly authorized representatives.

THE BOARD OF WATER COMMISSIONERS OF THE  
CITY OF LONG BEACH, FOR AND ON ITS OWN  
BEHALF AND ON BEHALF OF THE CITY OF LONG  
BEACH

By: \_\_\_\_\_  
Christopher J. Garner  
General Manager

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

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