

## **FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE OF RECYCLED WATER**

This First Amendment to the Agreement for Purchase and Sale of Recycled Water (the “**First Amendment**”) is dated \_\_\_\_\_, 2023 (the “**Amendment Effective Date**”) and is between County Sanitation District No. 2 of Los Angeles County, a county sanitation district organized and existing pursuant to the County Sanitation District Act, California Health and Safety Code Section 4700, *et. seq.* (the “**District**”) and the Water Replenishment District of Southern California (“**WRD**”). The District and WRD are sometimes hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”.

On July 1<sup>st</sup>, 2013, the Parties entered into an Agreement for Purchase and Sale of Recycled Water (the “**Agreement**”). All capitalized terms used in this First Amendment will have the same meaning as in the Agreement, unless specifically defined below.

The purposes of this First Amendment are: 1) To revise recycled water allotments and pricing such that a single allotment of tertiary recycled water is provided to WRD for direct groundwater recharge and for supplying the Albert Robles Center for Water Recycling and Environmental Learning (“**ARC Facility**”); 2) To terminate the previous allotment for the Leo J. Vander Lans Water Treatment Facility; 3) To document the simplified recycled water pricing calculations; 4) To provide a discounted price for recycled water supplied to the ARC Facility, which provides water quality and supply benefits to groundwater recharge activities; and 5) To confirm certain other agreements reached between the Parties, all subject to the terms and conditions set forth below.

The Parties therefore amend the Agreement as follows:

1. Recital H of the Agreement is hereby deleted in its entirety and replaced with the following:
  - H. As documented in the District No. 2 Connection Fee Ordinance, adopted on November 18, 2018, payments for the connection fee charged to WRD for discharge of brine from the ARC Facility to the District’s sewerage system were used to establish the Joint Outfall System Water Recycling Fund. On April 18, 2023, the Parties agreed that WRD payments to the Joint Outfall System Water Recycling Fund have been allocated to those District capital improvement projects that provide a benefit to recycled water supply and/or recycled water quality for the District’s Joint Outfall System water reclamation plants.
2. Recital I of the Agreement is hereby deleted in its entirety and replaced with the following:
  - I. In order to utilize the full amount of recycled water contemplated in this Agreement, either tertiary or advanced treated water, new WRRs for the Rio Hondo and San Gabriel Coastal Spreading Grounds will be required. The District and WRD will cooperate, to apply for and obtain new WRRs, including the preparation of any required engineering reports or other technical documents. The Parties have agreed to split all costs associated with the efforts on the new WRRs evenly.
3. Recital K of the Agreement is hereby deleted in its entirety and replaced with the following:
  - K. The District and WRD are coordinating efforts on the Groundwater Reliability Improvement Program (“**GRIP**”), which will replace up to 21,000 acre-feet per year of imported water with recycled water, some of which may receive advanced treatment. WRD completed construction of the Albert Robles Center for Water Recycling and Environmental Learning (the “**ARC Facility**”) located near the San Jose Creek Plant.

The purpose of the ARC Facility is to provide for the advanced treatment (“**Advanced Water Treatment Facility**” or “**AWTF**”) of recycled water.

4. New Recital L is hereby inserted in the Agreement to read as follows:
  - L. The Parties have agreed that any recycled water from the San Jose Creek Plant that supplies the ARC Facility will be invoiced at a lower rate, in accordance with the terms of this Agreement. The lower rate is offered to incentivize continued operation of the ARC Facility and in recognition of the water quality benefits derived from the recharge of advanced treated water and the potential to increase the proportion of recycled water recharged at the Rio Hondo and San Gabriel Coastal Spreading Grounds.
5. The following subsections in Section 1 of the Agreement are hereby deleted in their entirety:
  - 1.2. “AWTF Allotment”
  - 1.4. “Additional Tertiary Allotment”
  - 1.5. “Alternative Water”
  - 1.10. “GRIP Allotment”
  - 1.12. “LVL Allotment”
  - 1.25. “Water Rate”
6. Sub-Section 1.1 of the Agreement is hereby deleted in its entirety and replaced with the following:
  - 1.1. “**ARC Facility**” means the Albert Robles Center for Water Recycling and Environmental Learning. The ARC Facility provides for the advanced treatment (“**Advanced Water Treatment Facility**” or “**AWTF**”) of approximately 10,000 acre-fee per year (“**AFY**”) of tertiary recycled water produced by the San Jose Creek Plant.
7. Sub-Section 1.22 of the Agreement is hereby deleted in its entirety and replaced with the following:
  - 1.22. “**Rio Hondo Spreading Grounds**” means the Los Angeles County Department of Public Works operated spreading basins located adjacent to the Rio Hondo immediately south of the Whittier Narrows Dam and includes 20 off-channel spreading basins located on the east and west side of Rio Hondo.
8. Sub-Section 1.24 of the Agreement is hereby deleted in its entirety and replaced with the following:
  - 1.24. “**San Gabriel Coastal Spreading Grounds**” means the Los Angeles County Department of Public Works operated spreading basins located adjacent to and within the San Gabriel River immediately south of the Whittier Narrows Dam and includes three off-channel and seven in-channel spreading basins.
9. Sub-Section 4.2 of the Agreement is hereby deleted in its entirety.

10. Sub-Section 4.3 of the Agreement is hereby deleted in its entirety and replaced with the following:

4.3. WRD may draw from the District only the volume of recycled water that WRD can put to beneficial use.

11. Sub-Section 5.3 of the Agreement are hereby deleted in its entirety and replaced with the following:

5.3. Points of Connection – Groundwater Recharge. Recycled water used for direct groundwater recharge is discharged from the Plants into the river channels and either routed to the spreading grounds for recharge or can recharge the groundwater directly through infiltration in the unlined portions of the rivers. Additionally, recycled water from the San Jose Creek Plant that is used for direct groundwater recharge can be discharged from the District's operated and maintained outfall pipeline between the San Jose Creek Plant and the San Gabriel River ("**SJC Outfall**"). The Parties may, at some point in the future, identify additional points of connection as they become available and accessible.

A. San Gabriel Coastal Spreading Grounds. New spreading ground connection points and treatment plant discharge points may be permitted by the applicable regulatory agencies for future use, but recycled water is currently directed to the San Gabriel Coastal Spreading Grounds as follows:

- From the San Jose Creek Plant
  - At discharge point SJC002 via the San Jose Creek to the San Gabriel River;
  - At discharge point SJC003 directly to the San Gabriel River;
  - At discharge point SJC001A directly to the San Gabriel River via the SJC Outfall;
  - At discharge point SJC001B directly to the San Gabriel River via the SJC Outfall;
  - Directly to the San Gabriel Coastal Spreading Grounds at the headworks via the SJC Outfall; and
  - Directly to the San Gabriel Coastal Spreading Grounds at Basin 2 via the SJC Outfall.
- From the Pomona Plant via the San Jose Creek; and
- From the Whittier Narrows Plant discharge point WN001 directly to the San Gabriel River
- Recycled water can also be directed to the San Gabriel Coastal Spreading Grounds from the Rio Hondo Spreading Grounds through interconnection piping linking the two.

B. Rio Hondo Spreading Grounds. New spreading ground connection points and treatment plant discharge points are contemplated and may be permitted by the applicable regulatory agencies for future use, but recycled water is currently directed

to the Rio Hondo Spreading Grounds as follows:

- From the Whittier Narrows Plant:
  - At discharge point WN002 via the Zone 1 Ditch; and
  - At discharge point WN004 directly to the Rio Hondo; and
- From the San Jose Creek and Pomona Plants, if diverted from the San Gabriel River to the Rio Hondo via the Zone 1 Ditch.
- Recycled water can also be directed to the Rio Hondo Spreading Grounds from the San Gabriel Coastal Spreading Grounds through interconnection piping linking the two.

12. Sub-Section 5.5 of the Agreement is hereby deleted in its entirety.

13. Section 6 of the Agreement entitled “Quantity” is hereby deleted in its entirety and replaced with the following:

6. Quantity. The District shall provide up to 73,000 AFY of recycled water to WRD in one allotment, which formerly consisted of a tertiary groundwater recharge allotment (up to 50,000 AFY) and a separate allotment for GRIP (up to 23,000 AFY). A third allotment was previously included for the Leo J. Vander Lans Water Treatment Facility with tertiary recycled water coming from the Los Coyotes Plant (up to 10,000 AFY). An allotment from the Los Coyotes Plant will be included in a separate future agreement which will be mutually negotiated and agreed upon, in writing, by the Parties.

14. Sub-Section 6.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

- 6.1. Allotments of recycled water to WRD pursuant to this Agreement are subject to the following restrictions:
- A. The allotted recycled water will come from one or more of the District’s San Jose Creek, Whittier Narrows, and Pomona Plants at the sole discretion of District’s Chief Engineer. Allotments of recycled water originating from the San Jose Creek Plant for use either through direct groundwater recharge or the ARC Facility shall be used at WRD’s discretion.
  - B. Public Works will determine the amount of recycled water delivered via the Rio Hondo, the San Gabriel River, and the SJC Outfall that is recharged in either the spreading grounds or the unlined portions of the rivers, and this amount may be more or less than the total allotment as specified in this Agreement.
  - C. The District shall invoice WRD for the amount of recycled water delivered for direct groundwater recharge, as determined by Public Works, in accordance with Section 10 and WRD shall pay for that amount at the price described in Section 9.
  - D. The District shall invoice WRD for the amount of recycled water delivered to the ARC Facility, as determined by WRD, in accordance with Section 10 and WRD shall pay for that amount at the price described in Section 9.

- E. Annually, for the duration of this Agreement, the District shall make a minimum of 25,000 AFY of recycled water available to WRD for use in accordance with the terms, provisions, and limitations of this Agreement.

15. Sub-Sections 6.2 and 6.3 of the Agreement are hereby deleted in their entirety.

16. Sub-Section 6.4.A is hereby deleted in its entirety and replaced with the following:

- A. Other Contracts. The District may enter into contracts to sell recycled water from the Plants to other buyers that will not cumulatively exceed the Plants' potential production, inclusive of any collection system or treatment plant facility improvements or operational changes designed to increase the throughput of the plants. If additional water becomes available for sale from and after the Amendment Effective Date, then the District will meet and discuss with WRD the potential sale of some or all of such water prior to entering into contracts with other entities for the sale of water.

17. Sub-Section 6.5 of the Agreement is hereby deleted in its entirety and replaced with the following:

- 6.5. Additional Supply. The Chief Engineer may, from time to time, notify WRD of the temporary availability of additional volumes of recycled water in excess of the allotments. However, WRD's receipt of any volume in excess of its allotments will not increase WRD's allotments or offset the minimum delivery obligations of the District under this Agreement as provided in Section 6.1.E.

18. Sub-Section 6.6.B of the Agreement is hereby deleted in its entirety and replaced with the following:

B. Adjustments

- i. The maximum allotment of 73,000 AFY for WRD will be adjusted every five (5) years, with the first adjustment occurring five (5) years following the Amendment Effective Date (the "**Allotment Adjustment Review Period**"). Following each Allotment Adjustment Review Period, WRD's maximum allotment shall be adjusted to equal one hundred percent (100%) of WRD's highest usage of its recycled water allotment in any twelve (12) consecutive months during the five (5) years preceding the date of the adjustment subject to the following:
  - a. After the first adjustment, each successive adjustment may increase or decrease the allotment based on the data from the preceding Allotment Adjustment Review Period.
  - b. In no event will the allotment exceed 73,000 AFY nor be reduced below 25,000 AFY.
  - c. Upon written request of WRD, the District may extend the Allotment Adjustment Review Period by up to five (5) additional years, if necessary, to account for WRD's inability to spread recycled water for groundwater recharge for reasons beyond WRD's control. Reasons for an extension may include, without limitation, extensive periods of rainfall, unavailability of the spreading grounds due to unforeseen Public Works maintenance activities, and a lack of available recycled water. WRD shall provide data to the District to support any request for

an extension of the Allotment Adjustment Review Period. Any extension of the Allotment Adjustment Review Period shall be confirmed in writing and may be provided at the sole discretion of the District's Chief Engineer.

19. Sub-Section 6.7 of the Agreement is hereby deleted in its entirety and replaced with the following:

6.7. Mandatory Reductions of Interruption of Service. WRD acknowledges that circumstances beyond the control of the District may result in temporary or permanent decrease in the volume of recycled water available to WRD, such as decreases in influent flows to the Plants or operational difficulties or other constraints at the Plants resulting in the production of recycled water that does not meet the water quality requirements described in Section 8.1. If any of these circumstances occurs, even though it may only be on a rare occasion, the Chief Engineer may temporarily limit availability of recycled water from any affected Plant. The District will not be liable for any costs or damages incurred by WRD arising out of or relating to any interruption in service or limitation of availability due to either decreased influent flows, operational difficulties, or an inability of the District to meet the water quality requirements described in Section 8.1. The District shall use reasonable efforts to re-establish the availability of recycled water to WRD as soon as possible, but WRD acknowledges that a standby water supply may be necessary to prevent any damages that might result from an interruption in the supply of recycled water from the Plants. WRD hereby releases and covenants not to sue the District from or for any and all claims and actions arising out of an interruption in service. In the event of a decrease in availability, the Chief Engineer shall promptly notify WRD and allot the available supply of recycled water from the plants in the following manner:

- A. The Chief Engineer shall ensure that the District receives an adequate supply of recycled water to meet District needs at the Plants and at any other District-owned or District-operated facilities, along with any use of recycled water required of the District by state or federal law or regulation.
- B. The Chief Engineer shall then allot the remaining supply of the recycled water among WRD with priority to the delivery obligations of 6.1.E and then to the other third-party contractors for recycled water in proportion to their actual use during the previous fiscal year.

20. Sub-Section 7.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

7.1. Monthly Reports.

- A. WRD shall submit to the District within ten (10) working days after receipt all reports from Public Works describing the total volume of recycled water delivered or distributed during that month for recharge to each Reuse Site.
- B. WRD shall submit to the District within five (5) working days after the end of each month the total volume of recycled water drawn during that month by the ARC Facility and the relevant meter readings.

- C. Upon knowledge, WRD shall submit to the District within five (5) working days any adjustments to volumes previously reported pursuant to Sections 7.1.A and 7.1.B.

21. Sub-Section 7.2.A of the Agreement is hereby deleted in its entirety.

22. Sub-Section 8.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

- 8.1. Applicable Water Recycling Requirements. The District shall make available to WRD recycled water that conforms to applicable requirements contained in the then applicable and effective permit(s) (NPDES permit, Waste Discharge Requirements, and/or Water Recycling Requirements) issued to the District by the Regional Board for discharges to the location to which the recycled water is conveyed.

23. Sub-Section 8.4.A of the Agreement is hereby deleted in its entirety and replaced with the following:

- A. Recycled water delivered to the ARC Facility shall meet the permit requirements identified in Section 8.1.

24. Sub-Section 8.5 of the Agreement is hereby deleted in its entirety.

25. Sub-Sections 9.1, 9.2, 9.3, and 9.4 of the Agreement are hereby deleted in their entirety.

26. Sub-Section 9.5 of the Agreement is hereby deleted in its entirety and replaced with the following:

- 9.5. Pricing Plan – Tertiary Recycled Water for Direct Groundwater Recharge. The annual unit price for the recycled water supplied from the San Jose Creek, Whittier Narrows, and Pomona Plants to WRD for direct groundwater recharge uses shall be calculated as follows:

- A. Initial Price for Recycled Water. Beginning on the Effective Date, the unit price for recycled water will be equal to the current calculated unit price for recycled water from the San Jose Creek Plant, as described in the May 8, 1968 contract referenced in Section 2 of this Agreement (“**Initial Recycled Water Rate**” or “**IRWR**”).
- B. Transition Period. Beginning on the Effective Date, the District will allow for a gradual transition from the IRWR to the ongoing price for recycled water (“**Rate Transition Period**”), as defined in Section 9. 5.C. During this Rate Transition Period, the unit price for recycled water will increase by 12% each year until the unit price is equal to that determined according to Section 9.5.C.
- C. Ongoing Price for Recycled Water. Following the Transition Period, the annual unit price for each acre-foot of the recycled water supplied to WRD for direct groundwater recharge will equal 30% of the District’s projected unit cost of operation and maintenance of the JOS Inland Plants, for the fiscal year in which the recycled water was drawn, rounded to the nearest cent. The District’s unit cost of operation and maintenance of the JOS Inland Plants will be projected based on the District’s accounting and other regularly maintained records and information. The District’s unit cost is determined based on the local operation and maintenance costs of the JOS Inland Plants during the fiscal year and divided by the number of acre-feet of treated

effluent discharged from the JOS Inland Plants during the fiscal year. At the request of WRD, the Parties may discuss an amendment to the pricing provisions of this Agreement if the unit price for recycled water reaches 75% of the Metropolitan Water District of Southern California untreated imported water rate.

27. Sub-Section 9.6 of the Agreement is hereby deleted in its entirety and replaced with the following:

9.6. Pricing Plan –ARC Facility. Beginning on the Amendment Effective Date, the unit price for recycled water delivered to the ARC Facility will be equal to the applicable Rate Transition Period unit price for the previous fiscal year, calculated in accordance with Section 9.5.B, increased by the percent change in the Consumer Price Index for All Urban Consumers for the Los Angeles – Long Beach – Anaheim area for September of the previous fiscal year. The unit price for recycled water will increase each year by the Consumer Price Index, as detailed above. If the Consumer Price Index for the previous fiscal year is less than zero, the recycled water unit price for the subject fiscal year will remain the same as the previous fiscal year.

28. Sub-Section 9.7 of the Agreement is hereby deleted in its entirety.

29. New Section 9.9 is hereby inserted in the Agreement to read as follows:

9.9. Notice of Pricing. Thirty (30) days prior to the beginning of each fiscal year, the District will establish and provide written notice of the rates for the upcoming fiscal year in accordance with Sections 9.5 and 9.6 of this Agreement.

30. New Section 9.10 is hereby inserted in the Agreement to read as follows:

9.10. Renegotiation of Pricing. Every ten (10) years following the Amendment Effective Date the Parties will meet and discuss the recycled water pricing provisions of this Agreement. The Parties may elect to negotiate changes or adjustments to the pricing provisions of this Agreement. Any changes to the pricing provisions of this Agreement will only be effective upon mutual approval and execution by both Parties of a written amendment to this Agreement.

31. Sub-Section 10.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

10.1. Monthly Usage Payment. Within thirty (30) days after the end of each calendar month, the District will invoice WRD for the “**Monthly Usage Payment**” calculated as the estimated usage by WRD for the month multiplied by the applicable recycled water unit price for the current fiscal year, as defined in Section 9.

32. Sub-Section 10.2 of the Agreement is hereby deleted in its entirety and replaced with the following:

10.2. Adjustments to Usage. Any adjustments to usage reported pursuant to Section 7.1.C, that have not been accounted for in a previous Monthly Usage Payment, shall be reconciled and adjusted in the next Monthly Usage Payment.

33. Sub Section 10.3 of the Agreement is hereby deleted in its entirety.



34. Sub-Section 10.4 of the Agreement is hereby deleted in its entirety and replaced with the following:
- 10.4. Minimum Payment. WRD shall be responsible for paying the District for the 25,000 AFY minimum allotment on an annual basis, regardless of whether such minimum amount is delivered to WRD (the “**Minimum Annual Payment**”). The only exception to the requirement for the Minimum Annual Payment is if a mandatory reduction below 25,000 AFY occurs in accordance with Section 6.7 of this Agreement in which case the Minimum Annual Payment will be adjusted to reflect the cost of the reduced delivery.
35. Sub-Section 10.5 of the Agreement is hereby deleted in its entirety and replaced with the following:
- 10.5. Payment. WRD shall pay the full amount of the Monthly Usage Payment within 45 days after the date of the District’s invoice.
36. Sub-Section 11.1 of the Agreement is hereby deleted in its entirety and replaced with the following:
- 11.1. Distribution. WRD may not sell or transfer any portion of its allotment of recycled water purchased from the District under this Agreement to any third parties.
37. Sub-Section 11.3.A of the Agreement is hereby deleted in its entirety and replaced with the following:
- A. Legal and Regulatory Responsibility. Unless otherwise specifically stated in the applicable regulatory permits, WRD shall bear all legal and regulatory responsibility associated with its use of recycled water purchased pursuant to this Agreement. WRD shall promptly notify the District of any pending or final enforcement activities, by any regulatory agency with legal authority, which involve WRD’s use of recycled water drawn from the Plants.
38. Sub-Section 12.1 of the Agreement is hereby deleted in its entirety and replaced with the following:
- 12.1. General Indemnity. WRD shall indemnify the District, the other County Sanitation Districts of Los Angeles County, the County of Los Angeles, and any city tributary to the Plants, and each of their respective officer, directors, agents and employees from and against any and all claims, actions, suits, causes of action (whether legal, equitable, or administrative), liabilities, losses, costs, demands, damages, attorneys’ fees and other expenses that arise out of or are otherwise related to a) the use of recycled water drawn from the Plants by WRD that meets the quality standards described in Section 8.1 of this Agreement, including any claims for interruption of service to WRD as provided in Section 6.6 of this Agreement; and b) the operation and maintenance of any On-Plant Facilities by either WRD or the District. This indemnity includes, but is not limited to, causes of action based on strict liability for defective products, breach of warranty, strict liability for abnormally dangerous activities, dangerous condition of public property, inverse condemnation, trespass, nuisance, and negligence.
39. Exhibit B of the Agreement is hereby deleted in its entirety.

#### 40. Miscellaneous

- a. Except only as expressly stated in this First Amendment, no provisions of the Agreement are being modified by this First Amendment. All provisions of the Agreement not otherwise modified or replaced herein shall remain in full force and effect.
- b. In the event of any conflict or inconsistency between the Agreement and this First Amendment, this First Amendment shall prevail. The Agreement as modified by the First Amendment constitutes the entire agreement between the Parties.
- c. If any portion or provision of this First Amendment is adjudicated to be invalid, illegal, or unenforceable, in whole or part, such portion shall be excised from this First Amendment to that extent and all other provisions of this First Amendment shall remain in full force and effect.
- d. This First Amendment may be executed in duplicate counterpart originals, one for each Party, and each duplicate original can be deemed to be an original, but all of which will constitute one and the same agreement.
- e. This First Amendment is made and executed under the laws of the State of California.
- f. The Parties represent and warrant to one another that each of them has had the full opportunity of consulting counsel of their own choosing in connections with the preparation of the Agreement and this First Amendment, that each of them has read and understood the provisions of the Agreement and this First Amendment and is fully aware of the contents and legal effect thereof.
- g. Each individual signing this First Amendment warrants and represents that he or she has the full authority to execute this First Amendment on behalf of the Party on whose behalf he or she so signs, that he or she is acting within the scope of their delegated authority, and that this First Amendment shall be binding upon and enforceable against the Party on whose behalf he or she so signs by virtue of such signature.
- h. In the event any action is instituted by a Party to interpret or enforce the Agreement or this First Amendment, the prevailing party in such action (as determined by the court, agency, or other authority before which such suit or proceeding is commenced), shall be entitled to such reasonable attorneys' fees, costs, and expenses as may be fixed by the decision maker.

*[Signatures on following page]*

The Parties are signing this First Amendment as of the Execution Date.

**WATER REPLENISHMENT DISTRICT OF  
SOUTHERN CALIFORNIA**

**COUNTY SANITATION DISTRICT NO. 2  
OF LOS ANGELES COUNTY**

**By:** \_\_\_\_\_  
President, Board of Directors

**By:** \_\_\_\_\_  
Chairperson, Board of Directors

**ATTEST:**

**ATTEST:**

**By:** \_\_\_\_\_  
Secretary to the Board

**By:** \_\_\_\_\_  
Secretary to the Board

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**  
LEWIS BRISBOIS BISGAARD & SMITH, LLP

**By:** \_\_\_\_\_  
WRD Counsel

**By:** \_\_\_\_\_  
District Counsel