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8 **COOPERATIVE AGREEMENT**
9 **FOR WATER PRODUCTION AND CONVEYANCE**

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11 **BETWEEN**

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13 **CITY OF RIVERSIDE**

14 **AND**

15 **WESTERN MUNICIPAL WATER DISTRICT**
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22 **Draft – January 27, 2009 v.5.0**
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**RIVERSIDE – WESTERN
COOPERATIVE AGREEMENT FOR
WATER PRODUCTION AND CONVEYANCE**

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**RIVERSIDE – WESTERN
COOPERATIVE AGREEMENT FOR
WATER PRODUCTION AND CONVEYANCE**

1. **PARTIES:** This Cooperative Agreement for Water Production and Conveyance (“Agreement”) is made and entered into by and between the **City of Riverside** (“Riverside”) and the **Western Municipal Water District** (“Western”), each municipal corporations organized and existing under the laws of the State of California and hereinafter sometimes referred to jointly as the “Parties” or individually as a “Party.”

2. **RECITALS:**

2.1 Riverside operates a municipal utility providing wholesale water and electric services to entities located within and outside of its service territory, and retail water and electric service to its customers located within its service territory.

2.2 Western operates a municipal water district providing wholesale and retail water and wastewater services to entities located within its service territory.

2.3 Each Party is subject to the terms of the judgment in *Western Municipal Water District v. East San Bernardino County Water District* (Riverside County Superior Court No. 78426) governing, among other things, the Parties’ respective rights and obligations related to the beneficial use and maintenance of the Bunker Hill Basin, Rialto/Colton Basin, Riverside North Basin and Riverside South Basin.

2.4 Pursuant to an August 23, 2001 “Reciprocal Use Agreement” between Western and the Elsinore Valley Municipal Water District, Western has the right to produce and export 4,208 acre feet of groundwater annually from the Bunker Hill Basin.

2.5 Western, from time to time, may have access to additional stored or conserved groundwater in the Bunker Hill Basin, Rialto/Colton Basin, Riverside North Basin and Riverside South Basin.

1 2.6 Riverside, from time to time, may have unused capacity in its groundwater
2 production, water transmission, and/or water distribution facilities.

3 2.7 Riverside owns and operates the Riverside Canal, a non-potable water
4 conveyance facility, and related production facilities.

5 2.8 Western owns and operates the Jefferson Pump Station and related non-potable
6 conveyance facilities which are capable of delivering water from the terminus of the Riverside
7 Canal into Western's service territory.

8 2.9 The Parties desire to optimize groundwater production for the maximum benefit
9 of their respective customers and region.

10 2.10 Western, from time to time, may request that Riverside provide Production
11 Services and/or Conveyance Services, and Riverside shall provide such services using its water
12 extraction and conveyance facilities to the extent that the provision of such services will not, in
13 Riverside's sole judgment, (i) adversely affect the quality, reliability or cost of service related
14 to water deliveries by Riverside to its retail customers, or (ii) cause Riverside to violate the
15 terms of any binding obligation it may otherwise have with respect to the production, treatment
16 or delivery of water.

17 2.11 Western has requested that Riverside provide the Production Services and
18 Conveyance Services described herein, and Riverside is willing to provide such services in
19 accordance with the rates, terms and conditions of this Agreement.

20 2.12 In order to attract high paying jobs to the region, Western and the City have a
21 mutual interest in providing adequate water service for the existing land uses for the area
22 described in the March Business Center Specific Plan adopted by the March Joint Powers
23 Authority on February 19, 2003, by Resolution JPA 03-01. The City has entered into this
24 Agreement to serve that goal. Any amendment to the current approved specific plan which
25 modifies or changes such existing land uses without the approval of the City may result in the
26 City exercising its discretion to terminate this agreement.

1 **3. AGREEMENT:** In consideration of the foregoing recitals that are incorporated herein by
2 this reference and the mutual terms and conditions herein, the Parties agree as follows:

3 **4. DEFINITIONS:** Terms used herein with initial capitalization, whether in singular or
4 plural, shall have the following meanings:

5 4.1 **1969 Judgment:** The judgment rendered by the court in *Western Municipal*
6 *Water District v. East San Bernardino County Water District* (Riverside County Superior Court
7 No. 78426) and governing, among other things, the Parties' respective rights and obligations
8 related to the beneficial use and maintenance of the Bunker Hill Basin, Rialto/Colton Basin,
9 Riverside North Basin and Riverside South Basin.

10 4.2 **Authorized Representative:** The representative designated by each Party, in
11 accordance with Section 12, to act on such Party's behalf with respect to those matters specified
12 herein to be the functions of such Authorized Representative.

13 4.3 **Bunker Hill Basin:** The groundwater basin so defined and described in the 1969
14 Judgment.

15 4.4 **Capital Component:** The component of the Service Rate intended to recover
16 Riverside's capital cost of providing Production Services and Conveyance Services

17 4.5 **Conveyance Services:** Riverside's use of its water treatment, transmission and
18 distribution systems to convey water from a Point of Receipt to a Point of Delivery.

19 4.6 **Delivery Month:** A month for which Western has submitted an Operating Plan
20 for Riverside's provision of Production Services or Conveyance Services.

21 4.7 **Fiscal Year:** The twelve (12) month period commencing each July 1 during the
22 term of this Agreement and ending the following June 30.

23 4.8 **O&M Component:** The component of the Service Rate intended to recover
24 Riverside's operating and maintenance cost of providing Production Services and Conveyance
25 Services.
26

1 4.9 Operating Plan: The written plan submitted by Western to Riverside specifying
2 the proposed timing of and quantities relating to Riverside's provision of Production Services
3 and/or Conveyance Services during a subsequent Delivery Month. Attached hereto as Exhibit
4 A and incorporated herein by the reference is an example Operating Plan, the form and content
5 of which may be altered by agreement of the Authorized Representatives.

6 4.10 Point of Delivery: The Point of Interconnection where water is delivered to
7 Western by Riverside in connection with Conveyance Services provided hereunder.

8 4.11 Point of Interconnection: A point where the water transmission and/or
9 distribution systems of Riverside and Western interconnect.

10 4.12 Point of Receipt: The Point of Interconnection where water is delivered to
11 Riverside by Western, or on Western's behalf, in connection with Conveyance Services
12 provided hereunder. With respect to Riverside's simultaneous provision of both Production
13 Services and Conveyance Services, the well head discharge block valve shall be deemed to be
14 the Point of Receipt.

15 4.13 Production Services: Riverside's extraction of groundwater for the benefit of
16 Western using Riverside's water well(s) in the Bunker Hill Basin, Rialto/Colton Basin,
17 Riverside North Basin, and/or Riverside South Basin.

18 4.14 Prudent Utility Practice: Any of the practices, methods, and acts which, in the
19 exercise of reasonable judgment in light of the facts (including but not limited to the
20 practices, methods, and acts engaged in or approved by a significant portion of the water
21 utility industry prior thereto) known at the time the decision was made, which would have
22 been expected to accomplish the desired result at the lowest reasonable cost consistent with
23 good business practices, reliability, safety, and expedition, taking into account the fact that
24 Prudent Utility Practice is not intended to be limited to the optimum practice, method, or act
25 to the exclusion of all others, but rather to be a spectrum of possible practices, methods, or
26 acts which could have been expected to accomplish the desired result. Prudent Utility

1 Practice includes due regard for manufacturers' warranties and requirements of agencies of
2 competent jurisdiction.

3 4.15 Rialto/Colton Basin: The groundwater basin so defined and described in the
4 1969 Judgment.

5 4.16 Riverside North Basin: The groundwater basin so defined and described in the
6 1969 Judgment.

7 //

8 4.17 Riverside South Basin: The groundwater basin so defined and described in the
9 1969 Judgment.

10 4.18 Service Rate: The rate, expressed in dollars per acre-foot and rounded to
11 nearest cent, to be paid by Western to Riverside in connection with Riverside's provision of
12 Production Services or Conveyance Services, or both.

13 4.19 Storage Services: The retention and storage of water using Riverside's
14 reservoir capability for later delivery of such water to Western.

15 4.20 Uncontrollable Force: Any cause or event which is beyond the control of the
16 Party affected, including, but not restricted to, failure of or threat of failure of facilities, flood,
17 earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor
18 dispute or strike, labor or material shortage, sabotage, restraint by court order or public
19 authority and action or non-action by or failure to obtain the necessary authorizations or
20 approvals from any governmental agency or authority which by exercise of due diligence
21 such Party could not reasonably have been expected to avoid and which by exercise of due
22 diligence it shall be unable to overcome.

23 **5. EFFECTIVE DATE AND TERM:**

24 5.1 This Agreement shall be effective on the date first written above and the
25 Agreement shall remain in effect until terminated pursuant to the provisions herein.
26

1 5.2 This Agreement shall terminate upon the earliest of any of the following to
2 occur:

3 5.2.1 Upon advance written notice by either Party at least one hundred eighty
4 (180) days prior to the specified date of termination; or

5 5.2.2 Upon ten (10) days advance written notice by the non-defaulting Party to
6 the defaulting Party following a material breach of this Agreement.

7 5.3 Obligations incurred hereunder but not satisfied prior to termination of this
8 Agreement shall survive such termination until fully discharged, including any payments due
9 by one Party to the other Party hereunder.

10 5.4 The Parties hereby agree to termination of the Water Supply Agreement, entered
11 into between Riverside and Western on October 21, 1996, concurrent with the effective date of
12 this Agreement. Any obligations incurred thereunder but not satisfied shall survive such
13 termination.

14 **6. PRODUCTION AND CONVEYANCE SERVICES:**

15 6.1 Production Services: Riverside shall utilize its water production facilities during
16 each Delivery Month as required to extract groundwater on Western's behalf from the Bunker
17 Hill Basin, Rialto/Colton Basin, Riverside North Basin and/or Riverside South Basin as set
18 forth in a duly executed Operating Plan established pursuant to Section 6.3. For each acre-foot
19 of water extracted by Riverside on Western's behalf, Western shall pay Riverside the rate
20 determined in accordance with Section 10.

21 6.2 Conveyance Services: Riverside shall utilize its water treatment, transmission,
22 canal, and/or distribution facilities during each Delivery Month as required to simultaneously
23 deliver to Western an equal amount of water to a Point of Delivery, as set forth in a duly
24 executed Operating Plan established pursuant to Section 6.3. For each acre-foot of water
25 produced and conveyed by Riverside on Western's behalf, Western shall pay Riverside the rate
26 determined in accordance with Section 10.

1 **6.3 Operating Plan:**

2 6.3.1 In the event that Western desires Riverside to provide Production
3 Services or Conveyance Services in accordance with this Agreement, Western shall provide to
4 Riverside two (2) original copies of a proposed Operating Plan setting forth the services
5 requested. The proposed Operating Plan shall be submitted to the Riverside Public Utilities
6 Department's Assistant General Manager – Water, or his designee, no later than the 15th day of
7 the month prior to the proposed Delivery Month and shall specify the services requested by
8 Western, including, but not limited to, the date(s) of service, the quantities of water involved,
9 the origin of any water to be conveyed by Riverside, the groundwater basin of origin in the case
10 of Production Services, and the Points of Receipt and Points of Delivery.

11 6.3.2 If Riverside's Assistant General Manager – Water, or his designee,
12 determines that Western's proposed Operating Plan is feasible and consistent with Prudent
13 Utility Practice and the operation of Riverside's water extraction, transmission, distribution and
14 treatment systems, Riverside's Assistant General Manager – Water, or his designee, shall
15 countersign both copies of the proposed Operating Plan and return one (1) fully executed copy
16 to Western. Unless otherwise communicated in writing to Western, Riverside shall provide the
17 Production Services and/or Conveyance Services specified in the fully executed Operating
18 Plan, subject to the terms of this Agreement.

19 **7. MEASUREMENT OF WATER PRODUCED OR CONVEYED:**

20 7.1 Any metering devices used to measure the delivery of water under this
21 Agreement at a Point of Interconnection shall be owned by Riverside and shall be installed,
22 operated, calibrated, and maintained in accordance with Riverside's standard requirements.
23 Any such metering devices shall be maintained directly by Riverside or by agents or
24 subcontractors directly under Riverside's control.

25 7.2 Riverside shall arrange the inspection and testing of the metering devices at least
26 once per calendar year, unless more frequent testing and inspection is appropriate as a result of

repairs to or replacements of a metering device. Riverside shall provide reasonable advance notice to Western of any such testing or inspection activities in order to permit a representative of Western to witness such activities, and shall provide Western with copies of any periodic or special inspection or testing reports relating to the metering devices upon request by Western. Western, at its own expense, may request in writing that Riverside initiate additional testing and inspection of the metering devices, and Riverside shall comply with any such request as soon as practical after the request is made.

8. WATER RIGHTS USE:

8.1 Western shall reserve, for Riverside's use, 1,000 acre feet per year of groundwater export rights from the Bunker Hill Basin area, represented by Western's interest through Western's "Reciprocal Use Agreement" with the Elsinore Valley Municipal Water District.

8.2 Riverside shall, prior to October 1 of each year, notify Western of the volume of water to be used.

8.2.1 Riverside shall pay the sum of \$180 per acre foot for each acre foot of water declared in accordance with Paragraph 8.2, regardless of actual production.

8.2.2 The cost of water leased shall be annually adjusted upward (but not downward) to reflect the percentage increase, if any, in the Consumer Price Index for all Urban Consumers for the Los Angeles-Anaheim-Riverside area published by the United States Department of Labor, Bureau of Labor Statistics (1982/84=100) ("CPI").

8.3 All water not declared by October 1 of each year shall be available for production and conveyance to Western in accordance with the terms of this Agreement.

9. CONTINUITY OF SERVICE:

9.1 Riverside reserves the right to temporarily interrupt or curtail Production Services and/or Conveyance Services hereunder; (i) upon reasonable advance notice to Western to make repairs, replacements, modifications, or to perform maintenance work, all for the

1 purpose of maintaining continuity of Production Services and/or Conveyance Services, or (ii)
2 without notice to Western because of an existing or impending Uncontrollable Force, as
3 determined in Riverside's sole judgment.

4 9.2 Notwithstanding the provisions of Section 9.1, Riverside may interrupt or curtail
5 Production Services and/or Conveyance Services to the extent that the continued provision of
6 such services could, in Riverside's sole judgment, (i) adversely affect the quality, reliability or
7 cost of service related to water deliveries by Riverside to its retail customers, (ii) cause
8 Riverside to violate the terms of any rule, regulation, or binding obligation it may otherwise
9 have with respect to the production, treatment or delivery of water, or (iii) in accordance with
10 Prudent Utility Practice.

11 **10. RATES AND CHARGES:**

12 10.1 For Potable Production Services and Conveyance Services rendered by
13 Riverside to Western hereunder, Western shall pay the associated rate(s) per acre-foot of
14 water, or portion thereof, applicable to the service provided.

15 10.1.1 Energy Component: The Energy Component of the rates for Potable
16 Production Services and Conveyance Services shall be in accordance with Sections 10.1.1.1
17 and 10.1.1.2. Attached hereto as Exhibit B and incorporated herein by this reference is an
18 example of the methodology to be used by Riverside in determining the Energy Component
19 for Potable Production Services and Conveyance Services.

20 10.1.1.1 Production Services: For each acre foot, or portion
21 thereof, of water produced, Western shall pay the actual average unit cost of Riverside's
22 Waterman System production facilities, including the Grand Terrace and Iowa Avenue
23 pumping plants.

24 10.1.1.2 Conveyance Services: For each acre foot, or portion
25 thereof, of water conveyed to the City's 1200 foot pressure zone, Western shall pay the sum
26 of the actual average unit cost of operation for Riverside's Mockingbird, and Jackson booster

1 stations. For water delivered to higher pressure zones, incremental Energy Component shall
2 be calculated by adding the actual average unit cost for applicable booster stations, as
3 determined by Riverside.

4 10.1.2 O&M Component: The O&M Component of the rates for Potable
5 Production Services and Conveyance Services shall be in accordance with Sections 10.1.2.1
6 and 10.1.2.2. The O&M component shall be annually adjusted upward (but not downward)
7 to reflect the percentage increase, if any, in the Consumer Price Index for all Urban
8 Consumers for the Los Angeles-Anaheim-Riverside area published by the United States
9 Department of Labor, Bureau of Labor Statistics (1982/84=100) ("CPI"). At least every 5
10 years, Parties agree to review the cost elements and, if warranted by mutual consent of the
11 Parties, reset the O&M Component to reflect then current costs. Attached hereto as Exhibit B
12 and incorporated herein by this reference is an example of the methodology to be used by
13 Riverside in determining the O&M Component for Production Services and Conveyance
14 Services.

15 10.1.2.1 Production and Conveyance Services: For each acre
16 foot, or portion thereof, of water produced and conveyed, Western shall pay the sum of
17 Three Hundred Twenty Four dollars (\$324.00), adjusted annually for inflation as described in
18 Paragraph 10.1.2.

19 10.2 For Non-Potable Production Services and Conveyance Services rendered by
20 Riverside to Western hereunder, Western shall pay the associated rate(s) per acre-foot of
21 water, or portion thereof, applicable to the service provided.

22 10.2.1 Energy Component: The Energy Component of the rates for Non-
23 Potable Production Services and Conveyance Services shall be in accordance with Paragraph
24 10.2.1.1. Attached hereto as Exhibit C and incorporated herein by this reference is an
25 example of the methodology to be used by Riverside in determining the Energy Component
26 for Non-Potable Production Services and Conveyance Services.

1 10.2.1.1 Production Services: For each acre foot, or portion
2 thereof , of water produced, Western shall pay the actual average unit cost of Riverside's First
3 Street, Mulberry, and Eleventh Street production facilities.

4 10.2.2 O&M Component: The O&M Component of the rates for Non-Potable
5 Production Services and Conveyance Services shall be in accordance with Paragraph
6 10.2.2.1. The O&M component shall be annually adjusted upward (but not downward) to
7 reflect the percentage increase, if any, in the Consumer Price Index for all Urban Consumers
8 for the Los Angeles-Anaheim-Riverside area published by the United States Department of
9 Labor, Bureau of Labor Statistics (1982/84=100) ("CPI"). At least every 5 years, Parties
10 agree to review the cost elements and, if warranted by mutual consent of the Parties, reset the
11 O&M Component to reflect then current costs. Attached hereto as Exhibit C and
12 incorporated herein by this reference is an example of the methodology to be used by
13 Riverside in determining the O&M Component for Production Services and Conveyance
14 Services.

15 10.2.2.1 Production and Conveyance Services: For each acre
16 foot, or portion thereof , of water produced and conveyed through the Riverside, Western
17 shall pay the sum of Ninety dollars (\$90.00), adjusted annually for inflation as described in
18 Paragraph 10.1.3.

19 10.2.3 Capital Recovery Component: For Each acre foot, or portion thereof produced
20 through Riverside production facilities for delivery through the Riverside Canal, the Capital
21 Recovery Component for Non-Potable Water shall be Forty Dollars (\$40.00); fixed for the
22 term of the Agreement.

23 10.3 Basis of Billing: All costs shall be accrued based on the reading of
24 Riverside's meter(s) in accordance with Sections 10.3.1 and 10.3.2.

25 10.3.1 Potable Production and Conveyance: All water produced and
26 conveyed through Riverside's water system shall be billed based on the meter reading at the

1 Point of Interconnection.

2 10.3.2 Non-Potable Production and Conveyance: All water produced and
3 conveyed through the Riverside Canal shall be billed based on the summation of Riverside's
4 non-potable well meters less Riverside's delivery to the Gage Canal through the Olivewood
5 pump station. Western shall bear responsibility for water losses through evaporation or canal
6 overflow at the Jefferson Turnout

7 10.4 Production Assessment: Western shall be responsible for payment of any
8 groundwater production assessments, taxes, or other charges levied by any governmental
9 agency, for each acre foot, or portion thereof, produced in accordance with this agreement.

10 **11. BILLING AND PAYMENT:**

11 11.1 Riverside shall bill Western for charges due hereunder by the fifteenth (15th)
12 day of each month for services rendered during the prior month, including any required
13 adjustments to bills previously paid by Western. Western shall pay such bills not later than
14 the fifth (5th) day of the month following the month in which bill is issued, or on the first
15 business day thereafter if the fifth (5th) day falls on a Saturday, Sunday, or holiday. Payments
16 which are not made in full by said due dates shall thereafter accrue interest at the lesser of (i)
17 one percent (1%) per month of the unpaid balance, or (ii) the maximum rate otherwise
18 permitted by law applicable to this Agreement, prorated by days until payment is sent by
19 Western.

20 11.2 In the event any portion of any bill is disputed, Western shall pay the bill,
21 including the disputed amount, under protest when due. If the protested portion of the
22 payment is found to be incorrect, Riverside shall promptly refund the protested portion,
23 including interest at the lesser of (i) one percent (1%) per month, or (ii) the maximum rate
24 otherwise permitted by law applicable to this Agreement, prorated by days from the date of
25 payment by Western to the date the refund check is sent or the refund payment is otherwise
26 made by Riverside.

1 11.3 If Western does not dispute in writing any billing within one hundred eighty
2 (180) days after the bill was rendered by Riverside, Western shall be deemed to have waived
3 any further or continuing right to dispute such bill.

4 11.4 Unless otherwise agreed by the Authorized Representatives, bills shall be
5 rendered and remittances made by their submission to the following addresses:

6 Bills rendered by Riverside to Western:

7 Western Municipal Water District
8 450 Alessandro Blvd.
9 Riverside, CA 92508

10 Payments made by Western to Riverside:

11 City of Riverside
12 Accounts Receivable
13 3900 Main Street
14 Riverside, CA 92522

15 11.5 If the Parties are each required to pay an amount to each other in the same
16 calendar month under this Agreement, then such amounts with respect to each Party may be
17 aggregated and the Parties may discharge their obligations to pay through netting of the
18 respective amounts due, in which case the Party, if any, owing the greater aggregate amount
19 may pay to the other Party the difference between the amounts owed.

20 12. **AUTHORIZED REPRESENTATIVES:** The Parties warrant that their Authorized
21 Representatives, or their designees, have the authority to bind the respective Party to all
22 relevant commitments under this Agreement. Initially, the Parties' Authorized
23 Representatives shall be the individuals holding the positions set forth in the notice provisions
24 of Section 27. Any Party may at any time change the designation of its Authorized
25 Representative by written notice to the Authorized Representatives of the other Party. Each
26 Party's Authorized Representative is authorized to act on its behalf in the implementation of
this Agreement and with respect to those matters contained herein which are the functions
and responsibilities of the Authorized Representatives. Each Authorized Representative may

1 delegate actual performance of such functions and responsibilities; provided, that any
2 agreement of the Authorized Representatives required to be in writing shall be signed by the
3 Authorized Representatives.

4 **13. LIABILITY AND INDEMNIFICATION:**

5 13.1 Limitation of Liability: Except as to the gross negligence or Willful
6 Misconduct of a Party, each Party shall release and hold harmless the other Party from and
7 against any and all liability, loss, damage, and expense arising from, alleged to arise from, in
8 connection with, or incident to the services rendered under this Agreement.

9 13.2 Limitation on Damages: No Party shall be liable for any consequential,
10 incidental, punitive, special, or exemplary damages or lost opportunity costs, lost profit, or
11 other business interruption damages, by statute or in tort or contract, under any provision of
12 this Agreement.

13 13.3 Indemnification: Notwithstanding Section 13.1, each Party shall indemnify,
14 defend, and hold harmless the other Party, its directors, members, officers, employees, and
15 agents from and against any and all third-party claims, suits, or actions instituted on account
16 of personal injuries or death of any person (including but not limited to workers and the
17 public) or physical damage to property resulting from or arising out of the indemnitor's
18 Willful Misconduct or grossly negligent act or omission while engaged in the performance of
19 obligations or exercise of rights under this Agreement.

20 13.4 For purposes of this Agreement, Willful Misconduct shall be defined as:

21 13.4.1 Action taken or not taken by a Party at the direction of its directors or
22 other governing body, officers, or employees having management or administrative
23 responsibility affecting its performance under this Agreement, which:

24 13.4.1.1 Is knowingly or intentionally taken or not taken with
25 conscious indifference to the consequences thereof or with intent that injury or damage would
26 result or would probably result therefrom;

1 13.4.1.2 Has been determined by final arbitration award or
2 judgment or judicial decree to be a material default under this Agreement, and which action
3 occurs or continues beyond the time specified in such arbitration award or judgment or
4 judicial decree for curing such default, or, if no time to cure is specified therein, occurs or
5 continues thereafter beyond a reasonable time to cure such default; or

6 13.4.1.3 Is knowingly or intentionally taken or not taken with the
7 knowledge that such action taken or not taken is a material default under this Agreement.

8 13.4.2 As used in this definition:

9 13.4.2.1 Willful Misconduct does not include any act or failure
10 to act which is merely involuntary, accidental, or negligent.

11 13.4.2.2 The phrase "employees having management or
12 administrative responsibility" means those employees of a Party who are responsible for one or
13 more of the executive functions of planning, organizing, coordinating, directing, controlling,
14 and supervising such Party's performance under this Agreement, with responsibility for results.

15 **14. RELATIONSHIP OF THE PARTIES:** The covenants, obligations, and liabilities
16 of the Parties are intended to be several and not joint or collective, and nothing herein
17 contained shall ever be construed to create an association, joint venture, trust, or partnership,
18 or to impose a trust or partnership covenant, obligation, or liability on or with regard to any
19 Party. Each Party shall be individually responsible for its own covenants, obligations, and
20 liabilities as herein provided. No Party shall be under the control of or shall be deemed to
21 control the other Party. Neither Party shall be the agent of or have a right or power to bind
22 the other Party without such other Party's express written consent, except as provided in this
23 Agreement.

24 **15. UNCONTROLLABLE FORCES:** If the existence of an Uncontrollable Force
25 disables a Party from performing its obligations under this Agreement (except for such
26 Party's obligations to make payments hereunder), such Party shall not be considered to be in

1 default in the performance of any such obligations while such disability of performance
2 exists. A Party rendered unable to fulfill any of its obligations under this Agreement by
3 reason of an Uncontrollable Force shall exercise due diligence to remove such inability with
4 all reasonable dispatch. Nothing contained herein shall be construed so as to require a Party
5 to settle any strike or labor dispute in which it may be involved.

6 **16. AUDITS:** Each Party shall have the right to audit any costs, payments, settlements,
7 or other supporting information pertaining to this Agreement. Any such audit shall be
8 undertaken by the requesting Party or its representative at reasonable times and in
9 conformance with generally accepted auditing standards. The audited Party shall fully
10 cooperate with any such audit, the cost of which shall be paid by the requesting Party. The
11 right to audit a billing shall extend for a period of three (3) years following the rendering of
12 the bill. Each Party shall retain all necessary records or documentation for the entire length
13 of such three (3) year period and shall, to the extent permitted by law, take all steps
14 reasonably available to assure the confidentiality of the audited Party's accounting records
15 and supporting documents.

16 **17. THIRD PARTY BENEFICIARIES:** Unless otherwise specified in this Agreement,
17 there are no third party beneficiaries to this Agreement. This Agreement shall not confer any
18 right or remedy upon any person or entity other than the Parties and their respective successors
19 and assigns permitted under Section 19. This Agreement shall not release or discharge any
20 obligation or liability of any third party to any Party or give any third party any right of
21 subrogation or action over or against any Party.

22 **18. DISPUTE RESOLUTION:** The Parties' Authorized Representatives shall attempt
23 to amicably and promptly resolve any dispute arising between the Parties under this
24 Agreement. Nothing in this Agreement shall preclude either Party from taking any lawful
25 action it deems appropriate to enforce its rights under this Agreement.

26 **19. ASSIGNMENT OF INTERESTS:**

1 19.1 Neither Party shall assign this Agreement without the prior written consent of
2 the other Party, which consent shall not be unreasonably withheld or delayed. Western
3 expressly understands and agrees that it shall not be unreasonable for Riverside to withhold or
4 delay its consent to any proposed or purported assignment by Western to any person or entity
5 (“Assignee”) that has not demonstrated to Riverside’s reasonable satisfaction that Riverside’s
6 interests as contemplated herein will not be adversely effected thereby.

7 19.2 Any assignment by a Party of its interest in this Agreement which is made
8 without the prior written consent of the other Party shall not relieve the assigning Party from
9 primary liability for any of its duties and obligations under this Agreement, and in the event of
10 any such assignment, the assigning Party shall continue to remain primarily liable for payment
11 of any and all money due the other Party as provided under this Agreement, and for the
12 performance and observance of all covenants, duties, and obligations to be performed and
13 observed under this Agreement by the Party to the same extent as though no assignment had
14 been made.

15 19.3 Whenever an assignment of a Party’s interest in this Agreement is made with
16 the written consent of the other Party, the assigning Party’s assignee shall expressly assume in
17 writing the duties and obligations under this Agreement of the assigning Party and, within
18 thirty (30) days after any such assignment and assumption of duties and obligations, the
19 assigning Party shall furnish, or cause to be furnished, to the other Party a true and correct
20 copy of such assignment and assumption of duties and obligations. Upon the effective date of
21 such assignment, the assigning Party shall be relieved of its obligations and duties under this
22 Agreement.

23 19.4 Subject to the foregoing restrictions on assignment, this Agreement shall be
24 binding upon, inure to the benefit of and be enforceable by the Parties and their respective
25 successors and assigns.

26 20. **NO DEDICATION OF FACILITIES:** Any undertaking by a Party to the other

1 Party under this Agreement shall not constitute the dedication of the system, or any portion
2 thereof, of that Party to the public or to the other Party, nor affect the status of that Party as an
3 independent system.

4 **21. COMPLETE AGREEMENT:** This Agreement contains the entire agreement and
5 understanding between the Parties as to the subject matter of this Agreement and supersedes
6 all prior commitments, representations, and discussions between the Parties.

7 **22. CONSTRUCTION OF AGREEMENT:** Ambiguities or uncertainties in the
8 wording of this Agreement shall not be construed for or against either Party, but shall be
9 construed in a manner that most accurately reflects the intent of the Parties when this
10 Agreement was executed and is consistent with the nature of the rights and obligations of the
11 Parties with respect to the matter being construed.

12 **23. NONDISCRIMINATION:** During the performance of this Agreement, neither Party
13 shall deny the Agreement's benefits to any person, nor shall either Party discriminate
14 unlawfully against any employee or applicant for employment, on the ground or because of
15 race, color, creed, national origin, ancestry, age, sex, sexual orientation, marital status, or
16 disability including the medical condition of Acquired Immune Deficiency Syndrome (AIDS)
17 or any condition related thereto. Each Party shall insure that the evaluation and treatment of
18 employees and applicants for employment are free of such discrimination.

19 **24. EVENTS OF DEFAULT:** In the event that a Party shall materially default in the
20 performance of its obligations under this Agreement, the Authorized Representative of the
21 non-defaulting Party may give written notice of the default to the Authorized Representative of
22 the defaulting Party. If within thirty (30) days after the non-defaulting Party's Authorized
23 Representative shall have given such written notice to the defaulting Party's Authorized
24 Representative, the defaulting Party shall have failed to cure the default in its performance of
25 this Agreement, or if such default requires more than thirty (30) days to cure and the defaulting
26 Party fails to commence such cure and diligently prosecute such cure to completion, in

1 addition to any other remedies provided by law, the non-defaulting Party may terminate this
2 Agreement by written notice of termination as provided for in Section 5.2.2. In addition to any
3 other cause of default arising hereunder, a Party shall be in default if:

4 24.1 It becomes insolvent; or

5 24.2 It makes a general assignment of substantially all of its assets for the benefit of
6 its creditors, files a petition for bankruptcy or reorganization or seeks other relief under any
7 applicable insolvency laws; or

8 24.3 It has filed against it a petition for bankruptcy, reorganization or other relief
9 under any applicable insolvency laws and such petition is not dismissed within sixty (60) days
10 after it is filed.

11 25. **AMENDMENTS:** This Agreement may be modified, supplemented or amended
12 only by a writing duly executed by the Parties.

13 26. **WAIVERS:** Any waiver at any time by any Party of its rights with respect to a
14 default under this Agreement, or with respect to any other matter arising in connection with
15 this Agreement, shall not be deemed a waiver with respect to any subsequent default or other
16 matter arising in connection therewith. Any delay, short of the statutory period of limitation
17 in asserting or enforcing any right, shall not be deemed a waiver of such right.

18 27. **SECTION HEADINGS:** All captions and headings appearing in this Agreement are
19 inserted to facilitate reference and shall not govern, except where logically necessary, the
20 interpretations of the provisions hereof.

21 28. **GOVERNING LAW:** This Agreement shall be interpreted, governed by, and
22 construed under the laws of the State of California or the laws of the United States as
23 applicable, as if executed and to be performed wholly within the State of California.

24 29. **NOTICES:**

25 29.1 Any notice, demand or request provided for in this Agreement, or served,
26 given or made in connection with it, shall be in writing and shall be deemed properly served,

given or made if delivered in person or sent by United States mail, postage prepaid, to the persons specified below, unless otherwise provided for in this Agreement:

To City of Riverside:

City of Riverside
Public Utilities Department
3901 Orange St.
Riverside, CA 92501

Attn: General Manager

To Western:

Western Municipal Water District
450 Alessandro Blvd.
Riverside, CA 92508

Attn: General Manager

29.2 Either Party may at any time, by written notice to the other Party, change the designation or address of the person so specified as the one to receive notices pursuant to this Agreement.

30. SIGNATURE CLAUSE: The signatories hereto represent that they have been appropriately authorized to enter into this Cooperative Agreement for Water Production and Conveyance on behalf of the Party for whom they sign.

Executed as of this 30th day of March, 2009.

CITY OF RIVERSIDE

WESTERN MUNICIPAL WATER DISTRICT

By: Belinda J. Graham
~~Bradley J. Hudson~~ Belinda J. Graham
~~City Manager~~ Assistant City Manager

By: John V. Rossi
John V. Rossi
General Manager

Date: 3-30-09

Date: 2/6/09

Attest:

By: Colleen J. Nicol
Colleen J. Nicol
City Clerk

Date: April 1, 2009

APPROVED AS TO FORM

Susan Wilson
DEPUTY CITY ATTORNEY

1 APPROVED AS TO FORM:
2

3 By: _____

4 Susan D. Wilson
5 Deputy City Attorney
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1 **RIVERSIDE – WESTERN**
2 **COOPERATIVE AGREEMENT FOR**
3 **WATER PRODUCTION AND CONVEYANCE**

4 **EXHIBIT A**

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12 **EXAMPLE OPERATING PLAN**
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City of Riverside Public Utilities – Western Municipal Water District of Riverside County

**Water Production and Conveyance Cooperative Agreement
Monthly Operating Plan**

For the Period _____ through _____

Potable Production and Conveyance Services Requested:

_____ cfs beginning (date) _____ through _____ (_____ Acre Feet for the
production period) for delivery at _____

*For deliveries (simultaneous or consecutive) to multiple delivery points, identify delivery amount
and period.*

Non-Potable Production and Conveyance Services Requested:

_____ cfs beginning (date) _____ through _____ (_____ Acre Feet for the
production period) for delivery at Riverside Canal Jefferson Pump Station..

For Western Municipal Water District:

Assistant General Manager

Date

For City of Riverside Public Utilities

☐ Approved

☐ Rejected

☐ Modification Requested (see attached)

Assistant General Manager – Water

Date

1 **RIVERSIDE – WESTERN**
2 **COOPERATIVE AGREEMENT FOR**
3 **WATER PRODUCTION AND CONVEYANCE**

4 **EXHIBIT B**

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12 **POTABLE RATE METHODOLOGY**
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City of Riverside Public Utilities – Western Municipal Water District of Riverside County

Cooperative Agreement for Water Production and Conveyance

Pricing Methodology – Potable Water Production and Conveyance

EXHIBIT B

1. Energy Cost
 - A. Wells
 - i. Total electrical charges for Waterman Wells divided by total water production for Waterman Wells
 - B. Grand Terrace & Iowa Booster Stations
 - i. Total electrical charges for the Grand Terrace Booster Station divided by total water production for the station
 - ii. Total electrical and gas charges for the Iowa Booster Station divided by total water production for the station
 - C. Jackson and Mockingbird Pump Stations
 - i. Total electrical charges for the Jackson Booster Station divided by total water production for the station
 - ii. Total electrical charges for the Mockingbird Booster Station divided by total water production for the station
2. Operation and Maintenance
 - A. Operation and Maintenance costs for Production Services will be billed at the average system cost of \$324.00 per acre foot for calendar year 2009
 - B. Cost components for the O&M charges are assume to be as follows:
 - i. Water Fund Cost Center 6200000 less line item accounts:
 1. 422200 (Electric)
 2. 422300 (Gas)
 3. 422921 (Purchased Water)
 4. 447100 (Taxes and Assessments)
 - ii. Water Fund Cost Center 6205000
 - iii. Water Fund Cost Center 6215000
 - C. The sum of the cost components divided by the budgeted annual potable water sales will be the basis for the potable O&M cost.

1 **RIVERSIDE – WESTERN**
2 **COOPERATIVE AGREEMENT FOR**
3 **WATER PRODUCTION AND CONVEYANCE**

4 **EXHIBIT C**

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12 **NON-POTABLE RATE METHODOLOGY**
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City of Riverside Public Utilities – Western Municipal Water District of Riverside County

Cooperative Agreement for Water Production and Conveyance

Pricing Methodology – Non-Potable Water Production and Conveyance

EXHIBIT C

1. Energy Cost
 - A. Wells
 - i. Total electrical charges for non-potable well system on Riverside Canal divided by total water production for same wells
2. Operation and Maintenance
 - A. Operation and Maintenance costs for Production Services will be billed at the average system cost of \$90.00 per acre foot for calendar year 2009
 - B. Cost components for the O&M charges are assume to be as follows:
 - i. Water Fund Cost Center 6200000:
 1. 5% of Personnel Services Total
 2. 5% of 428400 (Insurance)
 3. 5% of 423400 (Motor Pool)
 4. 2% of Cost Account 424130 (Maint/Repair)
 - ii. Water Fund Cost Center 6205000
 1. Actual prior year work order amount for canal maintenance north reach (above Olivewood Booster)
 2. Actual prior year work order amount for canal maintenance south reach (below Olivewood Booster)
 - C. The sum of the cost components divided by the budgeted annual non-potable water sales will be the basis for the non-potable O&M cost.
 - i. Annual budgeted non-potable sales will be calculated by canal reach for costs under 2.B.ii.

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**RIVERSIDE – WESTERN
COOPERATIVE AGREEMENT FOR
WATER PRODUCTION AND CONVEYANCE**

EXHIBIT D

RESERVED

RECEIVED

MAR 09 2009

City of Riverside
City Clerk's Office

DATE: 2/25/2009

CONTRACTOR: Western Municipal Water District

DESCRIPTION: Cooperative Agreement for Water Production and Conveyance

DEPARTMENT: Public Utilities

BUDGET ACCOUNT (GL Key and Object):

DEPT. HEAD APPROVAL: HM

A large, stylized handwritten signature in blue ink, appearing to be 'D. A.', written over a horizontal line.

RETURN TO HANNAH DUSTIN, EXT. 4276, CITY CLERK'S OFFICE

Approved by City Council 2/17/09

COUNTER PARTY EXECUTED AGREEMENT
DOCUMENT TRANSMITTAL FORM

TO: CITY CLERK'S OFFICE
FROM: CITY ATTORNEY'S OFFICE
DATE: January 28, 2009

RE

FEB 23 2009

City of Riverside
City Clerk's Office



CONTRACTOR/LESSOR: WESTERN MUNICIPAL WATER DISTRICT
PROJECT DESCRIPTION/BID NO.: Cooperative Agreement for Water Production and Conveyance

X Approved by [City Council] [Agency] on
Anticipated [City Council] [Agency] future agenda of 02/10/09
No [City Council] [Agency] action required

17 94-231

Insurance required:

X No
Yes, as attached
Yes, withhold execution until received

Bonds required:

X No
Yes, as attached
Yes, withhold execution until received

Type of Insurance required (unless waived by the Risk Manager):

Commercial General Liability
Auto
Professional Liability
Workers' Compensation
Additional Insured Endorsement
Other:

Business Tax Certificate Required: N/A

Yes, current through _____
Yes, withhold execution until provided
No, exempted by RMC § 5.04.090

Dept. Head Approval:

[X] Attached [] Sig. Pg
[] Req'std 2/25/09

Agreement date(s):

X [City Council] [Agency] Approval Date:
Date City/Agency Executes 3/30/2009
Other:
Agreement expiration date: NONE open

Comments: AFTER EXECUTION, PLEASE RETURN TO KEVIN MILLIGAN IN PUBLIC UTILITIES. WESTERN EXECUTING AGREEMENT CONCURRENTLY.

Department: Public Utilities

Contact person: Kevin Milligan

Approved as to form by: Susan D. Wilson

Date Approved: 01/28/09

CA #: 08-2704

cc: Purchasing Division
Business Tax - Finance
Originating Department: Public Utilities

02/23/09

ATTACHED ARE DUPLICATE
ORIGINALS OF AGREEMENT
EXECUTED BY COUNTER PARTY
WESTERN MUNICIPAL WATER DIST.
SW/aak