

APPENDIX 7A

# Central Basin Municipal Water District Agreement

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**Central Basin Municipal Water District**

17140 S. Avalon Blvd • Suite 210 • Carson, CA 90746-1296

telephone 310-217-2222 • fax 310-217-2414

November 17, 2005

The Honorable Leonis C. Malburg, Mayor  
City of Vernon  
4325 Santa Fe Avenue  
Vernon, CA 90058

Dear Mayor Malburg:

**“Will Serve Letter”**

This letter serves as confirmation that the Central Basin Municipal Water District (District) Board of Directors has approved and authorized the District to construct an expansion of its recycled water distribution system to serve the City’s proposed power plant at the intersection of Boyle Avenue and Fruitland Avenue in the City of Vernon, California with the required amount of recycled water and pressure requirement pursuant to Agreement No. C1678.

Sincerely,

Rich Nagel  
Co-General Manager

Art Aguilar  
Co-General Manager

**NOTE:** November 29, 2005 – This letter has been revised to include reference to the City of Vernon’s Agreement No. 05-130 – An Agreement between Central Basin Municipal Water District and the City of Vernon regarding the buying and selling of recycled water, which was approved by the Vernon City Council on November 2, 2005, through Resolution No. 8890.



**AGREEMENT BETWEEN CENTRAL BASIN MUNICIPAL WATER DISTRICT**  
**AND THE CITY OF VERNON**  
**REGARDING THE BUYING AND SELLING**  
**OF RECYCLED WATER**

THIS AGREEMENT is made, entered into and executed in duplicate originals, any copy of which may be considered and used as the original hereof for all purposes, as of this 22nd day of November, 2005, in the City of Vernon, County of Los Angeles, California

BY AND BETWEEN

THE CITY OF VERNON, a municipal corporation (hereinafter referred to as "CITY"),  
4305 Santa Fe Avenue  
Vernon, CA 90058

AND

CENTRAL BASIN MUNICIPAL WATER DISTRICT (hereinafter referred to as "DISTRICT"),  
17140 S. Avalon Blvd., Ste. 210  
Carson, CA 90746-1296

1. RECITALS

CITY and DISTRICT enter into this Agreement (hereinafter referred to as the "Agreement") in recognition of, and concurrence in, the following:

A. CITY owns and operates its own electric and water distribution systems providing electricity and water to all its customers, with the exception of certain water customers located within the CITY which are served by the California Water Service Company or Maywood Mutual Water Company.

B. CITY is proposing to build the Vernon Power Generating Station Project (the "Project") in phases. The first phase of the Project will be an eight hundred ninety (890) megawatt electrical

generation facility to be located at the southeast corner of the intersection of Boyle Avenue and Fruitland Avenue in CITY. The Project will require a firm water supply of approximately 13,500 acre-feet per year for use in its cooling towers by the Project's planned in-service date of August 27, 2007.

C. CITY has elected to utilize approximately 13,500 acre-feet per year of recycled water for the Project in lieu of potable water to conserve potable water.

D. DISTRICT owns and operates a recycled water distribution system and will have recycled water available to meet the Project's anticipated recycled water needs.

E. To provide recycled water to the Project, certain facilities must be constructed. The facilities include:

i) VERNON PIPELINE PROJECT. These facilities consist of approximately one and one half (1 1/2) miles of 42-inch pipeline from the intersection of Industrial Way and Grande Vista in the City of Vernon to the proposed "Project". CITY will pay for all of the VERNON PIPELINE PROJECT. A drawing indicating the route of the VERNON PIPELINE PROJECT to the Project site is attached hereto as Exhibit "A" and made a part hereof as though fully set forth at length.

ii) THE SOUTHEAST WATER RELIABILITY PROJECT. These facilities consist of approximately ten (10) miles of 42-inch pipeline from the intersection of Industrial Way and Grande Vista in the City of Vernon to the Rio Hondo Pump Station in Whittier; expansion of the existing DISTRICT Rio Hondo Pump Station or addition of a new pump station;

back-up power generation for the pump station; two (2) two-way meters installed at the two locations where DISTRICT's recycled water pipeline enters the CITY boundary for this project and at the CITY boundary for the previously constructed Malburg Generation Station Project; a flushing facility for the 42-inch recycled water pipeline and a Supervisory Control and Data Acquisition (SCADA) system to monitor and control flow at both locations of entry into the city boundary. A drawing indicating the potential route of the Southeast Water Reliability Project is attached hereto as Exhibit "B";

F. Under this Agreement, the parties will cooperate to conserve potable water supplies by providing recycled water to the Project.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS SET FORTH HEREIN:

## 2. DEFINITIONS

A. PROJECT COSTS shall mean the costs incurred to administer, plan, permit, finance, design, perform construction management, perform public outreach, and construct all facilities contemplated by this agreement;

B. RECYCLED WATER shall mean treated wastewater that meets California Code of Regulations Title 22 standards.

C. MALBURG PIPELINE PROJECT shall mean the pipeline owned by CITY and Hollydale Pump Station constructed by the CITY and owned by

the DISTRICT to provide recycled water service to the Malburg Power Plant.

D. VERNON PIPELINE PROJECT shall mean the 42-inch pipeline and flushing facility within the CITY boundary from the intersection of Industrial Way and Grande Vista to the proposed "Project";

E. SOUTHEAST WATER RELIABILITY PROJECT shall mean the approximately ten (10) miles of 42-inch pipeline from the intersection of Industrial Way and Grande Vista in the City of Vernon to the Rio Hondo Pump Station in Whittier by way of Pico Rivera, Montebello, City of Commerce and East Los Angeles exclusive of the Vernon Pipeline Project; expansion of the existing DISTRICT Rio Hondo Pump Station or addition of a new pump station; back-up power generation for the pump station; two (2) two-way meters installed at the two locations where DISTRICT'S recycled water pipeline enters the CITY boundary for this project and at the CITY boundary for the previously constructed Malburg Generation Station Project; a flushing facility for the 42-inch recycled water pipeline and a SCADA system to monitor and control flow at both locations of entry into the city boundary.

### 3. CITY'S DUTIES AND OBLIGATIONS.

CITY shall be responsible for performing the following:

A. CITY will purchase recycled water from DISTRICT and pay for said recycled water at DISTRICT'S prevailing wholesale recycled water commodity rate, as established by DISTRICT;

B. If the DISTRICT establishes a wholesale recycled water commodity rate that is less than the City's rate for the Project, CITY will pay for said received water at the lesser rate as the base for

monthly invoice calculation exclusive of any lesser rate established for the Malburg project.

C. CITY will pay District a monthly Capital Recovery Fee to recover 64.9% of the Southeast Water Reliability Project cost, plus 100% of the VERNON PIPELINE PROJECT beginning on the latest of August 27, 2006, or the DISTRICT's completion of the VERNON PIPELINE PROJECT and the SOUTHEAST WATER RELIABILITY PROJECT. The fee will be paid in 300 monthly installments at an interest rate equal to the Bond Buyer Municipal Bond Index (40 Bonds) at the date of DISTRICT's financing of project. The fee is a "take-or-pay" obligation which is payable by the CITY regardless of completion of the project, availability of recycled water or purchases of recycled water by the CITY or for any other reason.

D. CITY anticipates the amount of recycled water to be purchased will be up to approximately 13,500 acre-feet per year for the Vernon Power Plant.

E. CITY anticipates peak flow demands to be a fourteen thousand (14,000) gpm for the Project from the Southeast Water Reliability Project.

F. The actual flow and amount purchased by the CITY will depend on the operation of the Project.

G. Through either usage or discharge to a sewer, CITY will daily purchase and use a minimum of 6.7 acre-feet (2,431 AFY) for the "Project" beginning August 27, 2007. The minimum daily purchase/use amount for the Project will be reduced a like amount by the daily sum of water taken by all users along the Southeast Water Reliability Project pipeline preceding the connection to the CITY.

H. CITY will comply with all provisions of: California Regional Water Quality Control Board ("RWQCB") Order No. 87-50 and Order No. 87-51 (hereinafter "Orders") and their successors issued to the County Sanitation District of Los Angeles County; Title 17 and 22 of the California Code of Regulations; and regulations of the State of California Department of Health Services regarding recycled water;

I. CITY will perform annual visual inspections and periodic cross-connection tests at the "Project" site and provide documentation to DISTRICT when requested;

J. CITY will require "Project" "on-site supervisors" to sign a document similar to DISTRICT'S "Conditions for the Introduction and Use of Recycled Water" thereby acknowledging the conditions under which recycled water may be used at the site;

K. CITY will provide a copy of the latest "RWQCB" Orders to the "Project" "on-site supervisor" as required in the Orders;

L. CITY will allow DISTRICT to design and construct the VERNON PIPELINE PROJECT.

M. CITY will, subject to approval of the Vernon City Council, provide letters of support for DISTRICT'S pursuit of additional grant funding for projects in DISTRICT'S service area.

N. CITY will submit its application for permit to construct and operate an eight hundred ninety (890) megawatt power generation station to California Energy Commission (CEC) in November, 2005.

O. CITY will cooperate and support DISTRICT in pursuit of additional customers for recycled water use within the CITY.

#### 4. DISTRICT'S DUTIES AND OBLIGATIONS.

DISTRICT agrees to perform the following:

A. Subject to Section 5. below, DISTRICT will complete the Southeast Water Reliability Project on or before August 27, 2007.

B. DISTRICT will sell recycled water to CITY at DISTRICT's prevailing wholesale recycled water commodity rate or at such lower rate as specified in Section 3.B.;

C. Subject to applicable federal, state, and local laws, the DISTRICT will operate and maintain its recycled water distribution system (not including facilities within the CITY Water Department's service area) to provide approximately 13,500 AFY for the Vernon Power Plant with a chlorine residual of 0.4 parts per million;

D. DISTRICT will provide recycled water, except during circumstances beyond its control, to CITY at the point of connection between the Vernon Pipeline Project and the Southeast Water Reliability Project to meet a peak demand of fourteen thousand (14,000) gpm from the Southeast Water Reliability Project at a minimum of forty (40) pounds per square inch for the "Project". The actual flow will depend upon the operation of the "Project";

E. DISTRICT will design and construct the Vernon Pipeline Project for the City of Vernon;

F. DISTRICT will provide monthly invoices in accordance with process set forth in Section 8.

G. DISTRICT will assist CITY with regulatory approvals from the State of California Department of Health Services for the Vernon Pipeline Project;

H. DISTRICT will provide CITY with copies of DISTRICT'S Recycled Water Customer Guide that explains the roles and responsibilities of the recycled water customer with regard to the use of recycled water;

I. DISTRICT will support CITY'S application to the California Energy Commission (hereinafter "CEC") for the proposed Project by providing a "Will Serve" Letter as part of the application, along with additional exhibits, analyses, and documents, when requested by CITY or CEC. Drafts of exhibits, analyses and documents, if any, will be provided by DISTRICT to CITY for review prior to submittal to CEC;

J. DISTRICT will install two (2) two-way recycled water meters at the CITY boundary (one on the north border of CITY and the other on the south border) with SCADA signal from meters and metered sewer connection to CITY and DISTRICT at CITY'S cost;

K. DISTRICT will provide yearly calibration of the two-way meters described in Section 4.K. DISTRICT will replace as needed but no less than every ten years;

L. DISTRICT will, on a monthly basis, read the recycled water meters serving the CITY;

##### 5. CRITICAL PATH.

To meet the CITY'S planned in-service date of August 2007 the following critical path milestones must be met:

A. CITY will submit its application for permit to construct and operate an eight hundred ninety (890) megawatt power generation station to California Energy Commission (CEC) in November, 2005;

B. CEC deems permit application complete by February 10, 2006;

C. CEC approves permit application and construction commences by October 1, 2006;

D. City completes financing of the Project (last opportunity to terminate agreement with respect to payment of the Capital Recovery Fee) by October 1, 2006;

E. Transmission back-feed complete on August 27, 2007; and

F. Plant is operational August 27, 2007.

Any delay for a critical path milestone will create a day for day alteration in completion date for the DISTRICT's Southeast Water Reliability Project. Should the DISTRICT fail to meet its obligation to provide recycled water, for any reason, on the agreed date in accordance with the Critical Path and the CITY is ready to begin operation of the "Project" using recycled water, DISTRICT will reimburse CITY \$4,500 per day to offset the cost difference between potable water costs and recycled water costs. DISTRICT guarantees that imported water will be available in amounts specified in this Agreement.

#### 6. TERMINATION OF AGREEMENT

Either party may terminate this agreement with thirty (30) days written notification. If City initiates termination, CITY agrees upon termination to reimburse DISTRICT for all costs incurred by the DISTRICT to administer, finance, plan, permit, design, perform construction management, perform public outreach, and construct the Southeast Water Reliability Project and Vernon Pipeline Project to date. Should the District secure customers outside the City of Vernon that subscribe a portion of the pipeline capacity allocated for CITY, the City's Capital Recovery Fee would be reduced a like percentage. If DISTRICT terminates the agreement, CITY is relieved of the obligation to continue payments of Capital Recovery Fee.

7. EXPANSION OF PROJECT

The incremental cost of any requested increase to the size or length of the proposed pipelines or pump station shall be borne entirely by the party requiring the increase. If the DISTRICT expands the pipeline to accommodate additional users, the CITY's Capital Recovery Fee payment would be recalculated to reflect the adjusted proportion of capacity allocated to the CITY.

8. INVOICING PROCESS

CITY and DISTRICT agree to use the following process:

A. After the "Project" is operational or August 27, 2007, whichever comes first:

- i) DISTRICT will determine the amount of recycled water consumed by reading the two (2) two-way meters located at the CITY boundaries;
- ii) DISTRICT will calculate the invoice for recycled water based on the amount of recycled water consumed and the DISTRICT'S prevailing wholesale recycled water commodity rates;

B. On August 27, 2007 the DISTRICT will invoice the CITY for its portion of the Southeast Water Reliability Project and Vernon Pipeline Project. CITY will make three hundred (300) equal monthly payments over 25 (twenty-five) years in the amount calculated in Section 3.C.

9. FUTURE RATE INCREASE.

The DISTRICT Board of Directors will establish its wholesale recycled water commodity rate from time to time. Any increase of rates by the

DISTRICT after the date of this Agreement shall be reasonable and shall not be greater than those charged to other purchasers of wholesale recycled water from DISTRICT, notwithstanding the separate rate agreement regarding the Malburg Power Generation Station. The rate for recycled water shall not be greater than the DISTRICT's effective rate for imported potable water.

10. HYDRAULIC CALCULATIONS.

The Vernon Pipeline Project and the Southeast Water Reliability Project shall each be 42-inch diameter.

11. ANNUAL RECONCILIATION.

CITY and DISTRICT shall meet annually to review recycled water deliveries and other matters of mutual interest.

12. TERM

The term of this agreement shall be thirty (30) years. Two ten-year automatic renewals will occur unless either party provides notice of intent to terminate two years in advance of the applicable term period.

13. ATTORNEYS' FEES

If any action is instituted to enforce this Agreement, the prevailing party shall be reimbursed all reasonable attorneys' fees, costs of collection, as well as any other costs and expenses incurred in connection with the enforcement effort.

14. NOTICES

A. Notices given pursuant to the provisions of this Agreement, or necessary to carry out its provisions, shall be in writing and delivered either: (1) personally to the person to whom the notice is to be given; or (2) faxed and mailed to such person. Addresses of DISTRICT and CITY for this purpose shall be:

Central Basin: CENTRAL BASIN MUNICIPAL WATER DISTRICT  
ATTN: GENERAL MANAGER  
17140 SOUTH AVALON BOULEVARD, SUITE 210  
CARSON, CA 90746-1296

- with a copy to:

LEMIEUX & O'NEILL  
2393 TOWNSGATE ROAD, SUITE 201  
WESTLAKE VILLAGE, CA 91361

City of Vernon: THE CITY OF VERNON  
ATTN: BRUCE V. MALKENHORST, JR.  
ACTING CITY CLERK  
4305 SANTA FE AVENUE  
VERNON, CA 90058-0805

15. SEVERABILITY.

If any portion of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law. Furthermore, to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of this Agreement containing any provision held to be invalid, void or otherwise unenforceable that is not itself invalid, void or enforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, void, or unenforceable.

16. GOVERNING LAW.

The validity, interpretation and performance of this Agreement shall be controlled and construed under the laws of the State of California as enacted and in force at the time this Agreement is fully executed.

17. ENTIRE AGREEMENT.

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject hereof and contains all of the covenants and agreements between the parties with respect to said matter. Each party to this Agreement acknowledges that any representations, inducements, promises, statements or agreements, orally or otherwise, that have been made by any party, or anyone acting on behalf of any party, which are not contained in this Agreement shall not be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged.

18. INDEMNIFICATION.

A. DISTRICT shall indemnify, defend, protect and hold CITY and its officers, agents and employees free and harmless from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, orders, judgments and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense arising out of the negligent acts by DISTRICT, its contractors or agents, in the performance of this Agreement, except to the extent arising from or caused by the negligence or willful misconduct of CITY, its officers, agents or employees.

B. CITY shall indemnify, defend, protect and hold DISTRICT and METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA and its officers, agents and employees free and harmless from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, orders, judgments and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense arising out of the negligent acts by CITY, its contractors or agents, in the performance of this Agreement, except to the extent

arising from or caused by the negligence or willful misconduct of DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, and its officers, agents or employees.

19. ASSIGNMENT AND SUBCONTRACTING PROHIBITED.

No party to this Agreement may assign or subcontract any right or obligation pursuant to this Agreement except with the express written consent of the other party. Any other attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

20. AMENDMENTS.

This Agreement may be modified or amended only by a written document properly executed by both DISTRICT and CITY.

21. BENEFIT OF AGREEMENT.

This Agreement shall bind and benefit the parties hereto and their heirs, successors, and permitted assigns.

22. FORUM SELECTION.

Any action brought relating to this Agreement shall be brought and held exclusively in a State Court in the County of Los Angeles, California.

23. RECITALS.

All recitals are incorporated by reference.

24. WAIVER.

Any waiver at any time by either party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to subsequent default or other matter.

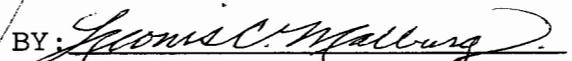
Neither Party shall be considered in to be in default in any of its obligations under this Agreement when a failure of performance

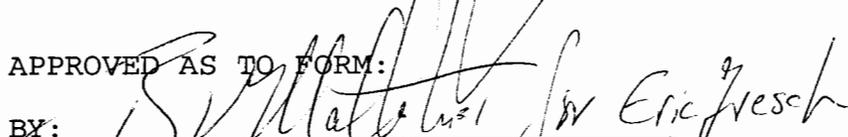
shall be due to an uncontrollable force. The term "uncontrollable force" shall mean any cause beyond the control of the party affected, including, but not restricted to, flood, earthquake, storm, fire, lightening, epidemic, war, riot, civil disturbance or disobedience, sabotage, or embargoes of the United States Government or any other government, which by exercise of due diligence such party could not reasonably have been expected to avoid and by exercise of due diligence has been unable to overcome. Either party rendered unable to fulfill any of its obligations under this Agreement by reason of an uncontrollable force, shall give written notice within five business days of such fact to the other party and shall exercise due diligence to remove such inability with all reasonable dispatch.

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement by their duly authorized officers effective as of the day and year first above written.

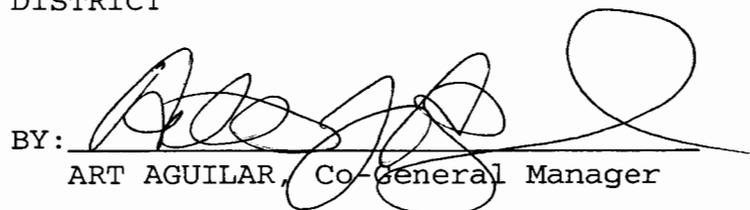
CITY OF VERNON

ATTEST:   
BY: Bruce V. Malkenhorst, Jr.  
BRUCE V. MALKENHORST, JR., Acting City Clerk

BY:   
LEONIS C. MALBURG, Mayor

APPROVED AS TO FORM:  
BY:   
ERIC T. FRESCH, City Attorney

CENTRAL BASIN MUNICIPAL WATER DISTRICT

BY:   
ART AGUILAR, Co-General Manager

BY:   
RICHARD NAGEL, Co-General Manager

DISTRICT'S LEGAL COUNSEL

BY:   
STEVEN O'NEILL, Lemieux & O'Neil



SOUTH EL MONTE

# Southeast Water Reliability Project



MONTEREY PARK

ROSEMEAD

COUNTY

LOS ANGELES

COUNTY

GRANDE VISTA

S LORENA ST

E OLYMPIC BLVD

23473.25 ft

HUBBARD

WESTSIDE

SAYBROOK

GARFIELD AV

W OLYMPIC BLVD

MONTEBELLO

11451 ft

W BEVERLY BLVD

21448.95 ft

W OLYMPIC BLVD

BEVERLY BLVD

2962.39 ft

BEVERLY BLVD

MONTEBELLO

W OLYMPIC BLVD

MONTEBELLO

CITY OF COMMERCE

5

70

BOYLE

1347 ft

ALCOA

50TH

46TH PACKERS

VERNON

MAYWOOD

BELL

BELL GARDENS

CUDAHY

CUDAHY

CUDAHY

CUDAHY



1 inch equals 3,000 feet

**Legend**

- Existing Recycled Water Pipeline
- Southeast Water Reliability Project (Alternative B)

Not for bidding purposes

Exhibit B

SANTA FE SPRINGS

DOWNEY

BELL

CUDAHY

CUDAHY