



MWD

Metropolitan Water District of Southern California



INNOVATIVE CONSERVATION PROGRAM AGREEMENT

Agreement No. XXXXX

THIS AGREEMENT (Agreement) is made and entered into upon execution between The Metropolitan Water District of Southern California (Metropolitan) and _____ (Grant Recipient). Metropolitan and Grant Recipient may be collectively referred to as "Parties" and individually as "Party."

Recitals

- A. Metropolitan, through its Innovative Conservation Program (Program), provides a financial incentive to persons or entities for research that will document water savings and reliability of innovative water savings devices, technologies and strategies that save water to help achieve regional water supply reliability within Metropolitan's service area. This Program was established per authorization detailed in Board Letter No. 8-8 in December 2005.
- B. This Agreement provides the terms for Grant Recipient's participation in the Program.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, the Parties do agree as follows:

Section 1: Project Description

- 1.1 Grant Recipient shall carry out the innovative conservation project (Project) as described Exhibit A [Proposal Scope of Work], which is hereby incorporated into this Agreement.
- 1.2 Grant Recipient shall provide the Project deliverables shown in Exhibit B according to the time table set forth in Exhibit B [Deliverables Schedule negotiated from Proposal].

Section 2: Agreement Term

- 2.1 This Agreement shall be effective on [NO LATER THAN September 30, 2011] and the term shall be through [NO LATER THAN June 1, 2013]. Extensions of time to complete all or portions of the Project, including any required deliverables, may be permitted at the sole discretion of Metropolitan and shall be documented in writing in the form of an amendment to this Agreement signed by all parties.
- 2.2 This Agreement may be terminated by either Party for any reason upon 30 days written notice to the other Party. Upon termination by Grant Recipient for any reason, Grant Recipient shall refund Metropolitan any financial incentive that has been paid to Grant Recipient under this Agreement within 30 days after the date notice of termination is given to Metropolitan. If Metropolitan terminates this Agreement without cause, Grant Recipient may keep any financial incentive that has been paid to Grant Recipient. If Metropolitan terminates for breach of this contract by Grant Recipient, including failure to provide Metropolitan with any acceptable work as described in Exhibit A or deliverables on the dates described in Exhibit B are due, Grant Recipient shall refund to Metropolitan any financial incentive paid to Grant Recipient under this Agreement within 30 days after the date the notice of termination was mailed by Metropolitan to the Grant Recipient.
- 2.3 Metropolitan, at its sole discretion, may conclude a breach of contract has occurred if the Grant Recipient does not submit progress reports or the final report within timeframe established in Exhibit B.
- 2.4 This Agreement will automatically terminate if the Project has not demonstrated that work started by January 1, 2012.

Section 3: Agreement Administrators

- 3.1 _____ is appointed Agreement Administrator for Metropolitan for the purpose of administering this Agreement. Section 3.2 identifies the Agreement Administrator appointed by Grant Recipient for the purpose of administering this Agreement.
- 3.2 The designated Agreement Administrators may be changed by providing written notice to the other Party. Any communication required to administer this Agreement shall be in writing and will be deemed received upon personal delivery or 48 hours after deposit in any United States mail depository, first class postage prepaid, and addressed to the Party for whom intended, as follows:

If to Metropolitan:

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

If to Grant Recipient:

Either Party may change such address by giving notice to the other Party as provided herein.

Section 4: Responsibilities and Ownership

- 4.1 Grant Recipient may independently contract with its own agents under separate agreements for Project administration and management, provided they present no conflict of interest in Project performance or with the terms of this Agreement.
- 4.2 Grant Recipient and/or its agent shall provide all necessary services and materials for the Project including, but not limited to, the following: program administration, promotion, marketing materials, data collection, analysis, and reporting.
- 4.3 Grant Recipient shall comply with all Federal, State and local laws, ordinances and regulations and is solely responsible for any such obligations, including, without limitation, compliance with the California Environmental Quality Act.

- 4.4 Metropolitan and Grant Recipient agree that each party shall be responsible for its own actions, and the actions of its officers, employees and agents, in performing services under this Agreement. Metropolitan and Grant Recipient each agree to indemnify and hold the other Party and its officers and agents harmless and agree to defend the other Party against any claim or asserted liability arising out of its actions, either willful or negligent, or the actions of its officers, employees and agents, in performing services pursuant to this Agreement. Such indemnity includes any losses relating to any claim made, whether or not a court action is filed, and attorney fees and administrative and overhead costs related to or arising out of such claim or asserted liability.
- 4.5 Grant Recipient is solely responsible for the performance of its staff or representatives in complying with the terms of this Agreement and for the proper allocation of funds provided by Metropolitan for the purpose of researching water conservation savings under this Agreement.
- 4.6 Grant Recipient shall be responsible for the design, implementation, personnel, equipment and supplies, and all capital and operating costs related to and incurred by Project. All materials and equipment necessary to implement Project are the exclusive property of Grant Recipient. Metropolitan shall have no ownership, right, title, security interest, or other interest in any Project facilities, materials, or equipment, nor any rights, duties, or responsibilities for operation or maintenance thereof.
- 4.7 Grant Recipient agrees to provide data and information as required to implement Project and evaluate Project implementation, costs, and water savings. Grant Recipient will make available for inspection to Metropolitan, upon reasonable advance notice, all records, books, computer files, and other documents relating to Project. Such documents shall be available for inspection for a period of three years following Agreement termination.
- 4.8 Grant Recipient shall include the following language in its agreement with any consultant or contractor retained by Grant Recipient to work on the Project: "(Consultant) agrees at its sole cost and expense to protect, indemnify, defend, and hold harmless Metropolitan and its Board of Directors, officers, representatives, agents and employees from and against any and all claims and liability of any kind (including, but not limited to, any claims or liability for injury or death to any person, damage to property, natural resources or to the environment, or water quality problems) that arise out of or relate to Grant Recipient's approval, construction, operation, repair or ownership of the Project. Such indemnity shall include all damages and losses related to any claim made, whether or not a court action is filed, and shall include attorney's fees, administrative and overhead costs, engineering and consulting fees and all other costs related to or arising out of such claim or asserted liability."

Section 5: Intellectual Property

- 5.1 Grant Recipient owns all intellectual property pursuant to this individual agreement. However, Metropolitan and its member public agencies have the right to use at no cost all intellectual property conceived and developed in the course of the research performed under this Agreement by Grant Recipient or any contractor and consultant working for Grant Recipient. As used herein, the term "intellectual property" includes, all inventions, and patents. This right of use of the intellectual property is limited to producing potable water by Metropolitan and/or its member public agencies within their respective service areas.
- 5.2 Grant Recipient shall notify Metropolitan in writing of all intellectual property conceived or developed in the course of the research performed under this Agreement.
- 5.3 Grant Recipient shall cooperate in the execution of all documents necessary to perfect and protect Metropolitan's and its member public agencies' right to intellectual property under this Agreement as requested by Metropolitan.
- 5.4 When requested by Metropolitan or its member public agencies, or upon termination of this Agreement, Grant Recipient shall furnish a copy of all documents and other tangible media containing intellectual property developed by Grant Recipient during the course of this Agreement, including all prototypes and computer programs.

Section 6: Metropolitan's Financial Incentive Payment

- 6.1 Metropolitan's financial contribution for the Project is not to exceed \$ _____. Grant Recipient shall be responsible for all costs in excess of \$ _____.
- 6.2 Metropolitan shall reimburse Grant Recipient only after a progress report and associated invoice has been received and approved by Metropolitan as in compliance with the requirements of this Agreement and scheduled in Exhibit B. Twenty five (25) percent of grant award shall be withheld until a final report is accepted by Metropolitan.
- 6.3 In the event of agreement termination for breach of contract by Grant Recipient, including failure of the Grant Recipient to use any of the funds advanced by Metropolitan, failure of the Grant Recipient to complete work on the Project, failure of the Grant Recipient to provide the progress reports and invoices as scheduled, or failure of the Grant Recipient to provide final report by May 15, 2013, Grant Recipient shall return all funding paid to Grant Recipient under this Agreement to Metropolitan within 30 days of written notice provided by Metropolitan.
- 6.4 All invoices related to the Project must be submitted by Grant Recipient to Metropolitan by May 15, 2013, to be considered for payment under the provisions of this agreement. Invoices received after May 15, 2013 will not be paid.
- 6.5 Invoices to Metropolitan will be paid 30 days after receipt of the invoices, provided the work achieved complies with the conditions set forth in section 6.2 of this Agreement and Exhibit A.

Section 7: Installation Verification

- 7.1 Grant Recipient shall be responsible for selecting a method to quantify water and energy savings, verify equipment installation, and/or rebated by Grant Recipient or its agents during the Project and for paying all costs associated with this verification. Grant Recipient shall obtain concurrence from Metropolitan of methodology used and document verification activities.
- 7.2 Grant Recipient will certify verification by signing invoices submitted to Metropolitan.

Section 8: Rate Structure [Included only when recipient is a Metropolitan member agency]

- 8.1 Agency agrees and understands that Metropolitan's rate structure as of January 1, 2004 ("Existing Rate Structure") provides the revenue necessary to support the development of new water supplies by local agencies through incentive payments in the Local Resources Program (LRP), Conservation Credits Program (CCP), and the Seawater Desalination Program (SDP). In particular, the Water Stewardship Rate is the component of Existing Rate Structure that provides revenue for the LRP, CCP and SDP. Further, Agency acknowledges that Existing Rate Structure and all components within that rate structure were developed with extensive public input and member agency participation, and that the elements of Existing Rate Structure have been properly adopted in accordance with Metropolitan's rules and regulations.
- 8.2 (a) Agency agrees that Metropolitan's rates set under the Existing Rate Structure may be reset throughout the term of this Agreement to account for the cost of service, and that Agency will address any and all future issues, concerns and disputes relating to Existing Rate Structure, through administrative opportunities available to them pursuant to Metropolitan's public board process. As such, Agency agrees if they file or participate in litigation or support legislation to challenge or modify Existing Rate Structure, including changes in overall rates and charges that are consistent with the current cost-of-service methodology, Metropolitan may initiate termination of this agreement consistent with Paragraph 4 below. Metropolitan agrees that any change in Existing Rate Structure, including changes in cost-of-service philosophy or methodology would be enacted only after collaboration and discussion with its member public agencies, and Metropolitan's public board review and approval process.
- (b) Notwithstanding the foregoing, Agency retains the right to file and/or participate in litigation and/or to support legislation without triggering the termination of this agreement if there are material changes to Existing Rate Structure or changes in cost-of-service methodology used to set rates by future Metropolitan board action. Agency also retains the right to file and/or support litigation should Metropolitan, in setting rates under Existing Rate Structure, fail to comply with public notice, open meeting, or other legal requirements associated with the process of setting water rates and related taxes, fees, and charges. Agency agrees that they will not file or participate in litigation, nor will they support legislation affecting Metropolitan's rate structure after any such change in rate structure or violation of the law regarding rate setting processes until, and unless, they have exhausted all administrative opportunities available to them pursuant to Metropolitan's public board process.
- 8.3 Agency agrees that all users of the Metropolitan conveyance and distribution system should support the LRP, CCP, and SDP, that such projects provide benefits to Metropolitan and the users of the system by making existing distribution and conveyance capacity available for additional delivery, and that under Existing Rate Structure, the Water Stewardship Rate is an element of charges properly adopted by the Metropolitan Board and properly applied to water wheeled through the Metropolitan conveyance and distribution system.
- 8.4 Should Agency file or support litigation, or sponsor or support legislation, that would challenge or be adverse to Existing Rate Structure, as described in Paragraph (a) of Section 2, Metropolitan's Chief Executive Officer may file a 90-day notice of intent to terminate this Agreement with Metropolitan's Executive Secretary, with copies to all members of Metropolitan's Board of Directors, and contemporaneously provide Agency with a copy of the notice. Within 30 days of receipt of such notice, Agency shall have the right to request, in writing, mediation of the dispute by a neutral third party with expertise in finance and rate setting. The mediator shall be selected by agreement of the parties, or failing agreement within 60 days of such request for mediation, a mediator shall be selected by the Metropolitan Board of Directors from a list of at least four candidates, one each from Agency, and two of which will be supplied by Metropolitan's Chief Executive Officer. The cost of the mediation shall be borne equally by the parties. The request for mediation shall also serve to stay the 90-day notice of intent to terminate, but for no more than 90 days beyond the filing of the notice of request for mediation, unless otherwise agreed in writing by the parties. If mediation does not result in an agreement acceptable to each party to this Agreement within the time provided herein, the notice of intent to terminate shall be reinstated. The Metropolitan Board of Directors shall act to approve or disapprove termination of this Agreement, and all of Metropolitan's obligations hereunder shall terminate if approved, on or before the ninetieth day following filing of the notice to terminate or, if mediation has been requested as described above, the ninetieth day following the request for mediation (or other date agreed in writing by the parties.)
- 8.5 Metropolitan and Agency agree that should litigation or legislation brought forth or sponsored by third parties result in changes to Existing Rate Structure, this Agreement will continue in effect unless mutually agreed in writing by the parties.
- 8.6 Should Metropolitan and its member agencies agree on an alternative rate and revenue structure that obviates the need for this section on Rate Structure Integrity, this section shall be amended or deleted to conform to such action.
- 8.7 Notwithstanding the foregoing, Metropolitan shall have no power or authority under this Section to terminate this Agreement, and Metropolitan's Chief Executive Office shall not file a 90-day notice of intent to terminate this Agreement, if an Agency (but not the Recipient) files or participates in any litigation or supporting legislation to challenge or modify Existing Rate Structure, but the Recipient transmits a writing to Metropolitan's Chief Executive Officer within thirty (30) days of request therefore from Metropolitan, stating that Recipient has not participated directly or indirectly in the filing or prosecution of any litigation or the drafting or advocacy of any legislation to challenge or modify Existing Rate Structure, and indicates support for Existing Rate Structure.

Section 9: Miscellaneous

- 9.1 Effective six (6) months after written notice to the Parties, this Agreement shall terminate with regard to all Parties upon the occurrence of the two events described in Subsection 9.1(a.) and Subsection 9.1(b.):
- a. Metropolitan determines that it will no longer:
 - i. Provide incentives or other financial support to its member agencies for seawater desalination, water recycling, or groundwater recovery projects through the Local Resources Program, Seawater Desalination Program, or similar programs; or
 - ii. Utilize the Water Stewardship Rate or a similar charge to fund the Local Resources Program, Seawater Desalination Program, or other similar programs; or
 - iii. Include the Water Stewardship Rate as a charge for all water conveyed on the system; and

b. A member of the Western delegation to the Board of Directors of the Metropolitan Water District of Southern California votes in favor of the determination described in Subsection 8.4(a).

9.2 The termination provisions of Section 9.1 shall remain in effect only so long as all Metropolitan Local Resources Program, Seawater Desalination Program, or similar program agreements approved by Metropolitan’s Board of Directors after November 10, 2009 contain termination provisions materially in accord with Section 9.1 of this Agreement.

9.3 This Agreement may be amended by written mutual agreement executed by both Parties. Any alteration or variation of the terms of this Agreement will not be valid unless made in writing and signed by both Parties. This Agreement constitutes the entire agreement between the Parties.

9.4 This Agreement will insure to the benefit of and be binding upon Metropolitan and Grant Recipient and their respective successors. This Agreement is not assignable by either Party in whole or in part.

9.5 The partial or total invalidity of one or more parts of this Agreement will not affect the intent or validity of this Agreement.

9.6 This Agreement will be deemed a contract under the laws of the State of California, and for all purposes will be interpreted in accordance with such laws. Metropolitan and Grant Recipient hereby agree and consent to the exclusive jurisdiction of the courts of the State of California, and that the venue of any action brought hereunder will be in Los Angeles County, California

Attachments incorporated in this Agreement include:

- Exhibit A – Project Description [Scope of Work negotiated from Proposal]
- Exhibit B – Deliverables [Deliverable Schedule negotiated from Proposal]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

APPROVED AS TO FORM:

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

General Counsel

General Manager

By: _____
Deputy General Counsel

By: _____
Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

PROJECT PROPONENT

By: _____
Legal Counsel (if necessary)

By: _____

Date: _____

Date: _____

In Duplicate