

The Choice programs will include:

- South Orange Coastal Ocean Desalination Project
- Poseidon Huntington Beach Ocean Desalination
- MWDOC's School Program
- MWDOC's Water Use Efficiency Programs

Each year, MWDOC will develop a budget for these Choice programs in collaboration with the Member Agencies and only the Member Agencies that elect to participate will be charged directly for these services.

Under the agreement, MWDOC will also realign its rate structure to reflect the regional nature of its services. The current rate structure includes both a fixed retail connection charge and a per acre-foot charge. Approximately 65% of MWDOC's revenues are captured from the per-retail connection charge, and 35% are captured through the per acre-foot charge. Beginning in fiscal year 2011/12, MWDOC will transition over a five-year period to recovering all of its revenue from the fixed retail connection charge.

FINANCIAL IMPACT

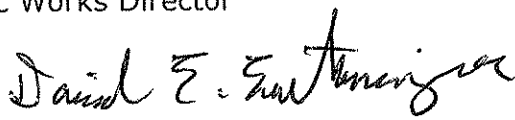
The fiscal impact for Core services will not change, as Core services will be allocated equally among all Member Agencies. The cost for Choice services will vary depending on what Choice services the City elects to receive. City's current cost, \$271,311 is estimated to increase to \$279,954 with the same services. All services will be funded through the Water Fund and will have no impact on the General Fund.

RECOMMENDATION

It is recommended that City Council:

- Approve the attached agreement between Municipal Water District of Orange County and the City of Garden Grove;
- Authorize the Mayor to sign and execute the agreement.


KEITH G. JONES
Public Works Director


By: David E. Entsminger
Water Services Manager

Recommended for Approval


Matthew Fertal
City Manager

Attachment No. 1: Agreement between MWDOC and Its Member Agencies
Attachment No. 2: Choice Budget and Financial Analysis

Amended 12-14-10

**AGREEMENT BETWEEN MWDOC AND ITS MEMBER AGENCIES ON
BUDGET, ACTIVITIES, CHARGES, AND OTHER ISSUES**

This Agreement is made by and between the Municipal Water District of Orange County ("MWDOC") and those of its 28 Member Agencies that have signed below (referred to collectively as "Member Agency Parties" and individually as "Member Agency Party"). Signatories to this Agreement are also referred to herein collectively as "Parties" and individually as "Party." This Agreement is effective as of the Effective Date established pursuant to Section 12.1 below.

RECITALS

WHEREAS, MWDOC is a wholesale water provider to 28 Member Agencies in Orange County, California; and

WHEREAS, MWDOC is a member agency of the Metropolitan Water District of Southern California ("MET") and appoints four (4) directors to MET's Board of Directors, and

Whereas, MWDOC was formed in 1951 by Orange County voters to provide imported water from MET into Orange County; and

Whereas, MWDOC has been performing this function and many other functions since its formation in support of Member Agencies within its service area; and

Whereas, MWDOC was formed and operates pursuant to the Municipal Water District Law of 1911 (Water Code Section 71000 et seq.) and is governed by a seven-member publicly elected Board of Directors; and,

Whereas, an essential area of MWDOC's authority includes the setting of rates for water commodities and services, and while rates may be different for different classes or conditions of service, they shall be uniform for like classes and conditions of service (Water Code § 71614); and,

Whereas, an essential area of MWDOC's authority includes representing the Member Agencies at MET to ensure that the approximately \$140 million paid to MET each year by MWDOC is used effectively and efficiently; and,

Whereas, in addition to its role at MET, MWDOC's regional services to its Member Agencies currently include water use efficiency programs, water supply planning activities to improve reliability and emergency preparedness, the Water Emergency Response Organization of Orange County ("WERO"), the school education program, and numerous other programs; and

Whereas, in support of these services to its Member Agencies, MWDOC seeks grant funding for its programs, engages lobbyists on the Federal, State and local levels, and operates a public affairs department that serves its Member Agencies and their customers; and

Whereas, MWDOC's budget and rates have been the subject of discussion between MWDOC and some of its Member Agencies over the past several years, and these Member Agencies have raised concerns over whether the rate structure is equitable and whether a Member Agency should be able to opt out of certain services if it provides those services; and

Whereas, in conjunction with the preparation by the Orange County Local Agency Formation Commission ("OCLAFCO") of its 2007 Municipal Services Review and Sphere of Influence for MWDOC, MWDOC and several of its Member Agencies from southern Orange County participated in a series of "stakeholder" discussions facilitated by OCLAFCO in an attempt to resolve these and other concerns; and

Whereas, following approval by Orange County LAFCO of the 2007 Municipal Services Review and Sphere of Influence for MWDOC, OCLAFCO retained a consultant to conduct a study of "governance options" for MWDOC ("Governance Study"), which Study was funded 50% by MWDOC and 50% by six of its Member Agencies from southern Orange County; and

Whereas, the same six Member Agencies, namely El Toro Water District, Trabuco Canyon Water District, Santa Margarita Water District, Irvine Ranch Water District, Moulton Niguel Water District and South Coast Water District, have issued a "White Paper" regarding the formation of a "South Orange County Water Authority" that discusses issues associated with formation of such an agency if certain changes in MWDOC's operations are not made; and

Whereas, the Governance Study recommended the addition of three Member Agencies into the Study effort -- the City of San Clemente, the City of San Juan Capistrano and Laguna Beach County Water District, thereby bringing the total number of "South County Agencies" to nine; and

Whereas, the other Member Agencies of MWDOC are the City of Brea, City of Buena Park, City of Fountain Valley, City of Garden Grove, City of Huntington Beach, City of La Habra, City of La Palma, City of Newport Beach, City of Orange, City of Seal Beach, City of Tustin, City of Westminster, East Orange County Water District, Emerald Bay Services District, Golden State Water Company ("GSWC"), Mesa Consolidated Water District, Orange County Water District, Serrano Water District, and Yorba Linda Water District.

Whereas, Emerald Bay Services District boundaries are located in the southern Orange County area and has requested to be included as a South County Agency, as hereinafter defined for purposes of this agreement; and

Whereas, the Parties signing below have reached a comprehensive agreement, memorialized herein ("Agreement"), that accommodates the interests of all

Parties, maintains MWDOC as the wholesale regional planning agency and promotes a cooperative and collaborative partnership between MWDOC and its Member Agencies;

NOW, THEREFORE, THE PARTIES ACKNOWLEDGE AND AGREE AS FOLLOWS:

1. DEFINITIONS

- 1.1 "South County Agencies," as referenced in the recitals above, refers collectively to City of San Clemente, City of San Juan Capistrano, El Toro Water District, Irvine Ranch Water District, Laguna Beach County Water District, Moulton Niguel Water District, Santa Margarita Water District, South Coast Water District, Trabuco Canyon Water District and Emerald Bay Services District.
- 1.2 "Member Agencies" refers to any and all entities, public or private, that purchase water from MWDOC. "Member Agency Parties" refers to Member Agencies who have signed this Agreement.
- 1.3 "North County Agencies" as referenced in the Recitals above refer collectively to Member Agencies (other than the South County Agencies), including the City of Brea, City of Buena Park, City of Fountain Valley, City of Garden Grove, City of Huntington Beach, City of La Habra, City of La Palma, City of Newport Beach, City of Orange, City of Seal Beach, City of Tustin, City of Westminster, East Orange County Water District, District, Golden State Water Company, Mesa Consolidated Water District, Orange County Water District, Serrano Water District, and Yorba Linda Water District.

2. MWDOC BUDGET

2.1 Core and Choice Services. Commencing in Fiscal Year 2011-2012, MWDOC will organize its budget according to "Core" services and "Choice" services. (See Section 4 below regarding designation of specific services as Core and Choice.)

2.1.1 The Core services budget shall include services identified by MWDOC as services that are both essential to its mission and carried out on behalf of the entire MWDOC service area for all 28 Member Agencies. The Core services also include services that MWDOC determines cannot practicably or efficiently be budgeted and charged to individual Member Agencies on an agency-by-agency basis.

- 2.1.2 Choice services shall be budgeted, described, and priced in a manner that is intended to allow individual Member Agencies to decide whether to receive such services from MWDOC. MWDOC's costs for Choice services provided, including related Overhead costs, will be recovered only from the MWDOC Member Agencies electing to receive the service.
- 2.1.3 Once Core and Choice services are established for the purpose of the Fiscal Year 2011-2012 budget, those designations and their associated cost allocations shall thereafter be presumed reasonable and appropriate; and such designations and cost allocations will be used by MWDOC in its budgeting in subsequent years, subject to Paragraph 5.3 below. The designation of any new or different services to be offered by MWDOC as Core or Choice will be made at the time the services are considered for approval by the MWDOC Board and will be subject to input from the Member Agencies during the review process described below.
- 2.2 Review of Budget.** MWDOC will continue its practice of soliciting and considering review and input on its budget from all MWDOC Member Agencies commencing in December and developing a conceptual draft budget for Member Agency review the following January. On or before March 1st of each calendar year, MWDOC shall publish its draft budget and shall solicit comments from Member Agencies. Each Member Agency shall indicate to MWDOC in writing by March 15th of each year if any changes in the Choice Services they will be participating in are being considered or are to be deleted as a Choice Service (some services, such as the South Orange Coastal Ocean Desalination Project, have existing contractual commitments that differ from fiscal year commitments). In the absence of such timely notification of changes by the Member Agencies, the Member Agencies will be deemed to be participating without change in those Choice services in the following budget year to the same extent that the Member Agencies are participating in such Choice Services as of March 15. Member Agencies desiring to submit formal comments on the budget shall deliver such formal comments to MWDOC before April 15th. (See Section 6.1 below, "Elected Officials 'Meeting.") These comments will be considered in preparation of the final Budget and will be presented to the MWDOC Board in May. The Parties acknowledge that the MWDOC Board is solely responsible for final approval and establishment of the MWDOC Budget and all rates and charges.

3. MWDOC'S RESERVES

- 3.1 Purpose.** MWDOC's Reserves allow it to meet operating and emergency financial requirements for operation of the District, including cash flow for managing grants and such expenses as future building improvements, Other Post Employment Benefits (OPEB), unforeseen emergencies, potential litigation, and MWDOC elections.
- 3.2 Reserve Line Items.** MWDOC adopted a Reserve Policy on June 16, 2010, as outlined in the chart below. MWDOC will segregate its reserves into these categories and will report on the levels each year during the budget preparation process:

MWDOC Proposed Reserves as of June 30, 2010	
Reserve Category	Proposed Amount
General Reserves (Unrestricted Reserve)	\$1,850,000
Grant/WUE Cash flow (Designated Reserve)	\$1,000,000
Election Expense (Designated Reserve)	\$ 500,000
Building Repair/Replacement (Designated Reserve)	\$ 350,000
Total Designated or Unrestricted	\$3,700,000
OPEB Reserve (Irrevocable Trust -- Restricted)	\$500,000

4. MWDOC CHOICE SERVICES

MWDOC shall institute a budgeting process in accordance with Section 2 above based on a designation of certain MWDOC services as Core services and other MWDOC services as Choice services. For the purposes of this Agreement and the MWDOC 2011-2012 Budget, the designation of Core and Choice services and Overhead costs are identified in Table A, attached. (See 5.3 below.) Input to any proposed changes in the designations shall be solicited from the Member Agencies in the annual budget preparation process in accordance with Section 2.2 above.

4.1 Designation of Choice Services.

The Choice categories identified at this time are described below. During the first half of fiscal year 2010-11, MWDOC Staff and the Member Agencies will work together to develop the concept, structure, budget and participation terms for the following services and any others identified for implementation beginning July 1, 2011. These will be developed in such a way as to be offered to the Member Agencies for participation and will be incorporated into the proposed budget for 2011-12.

4.1.1 Project Participation Committees

4.1.1.1 South Orange Coastal Ocean Desalination Project will continue to be organized in a Project Participation format with five agencies participating on an equal cost-sharing basis. The participating agencies will ultimately determine all institutional, financing and delivery issues for the project.

4.1.1.2 Poseidon Huntington Beach Ocean Desalination Project is currently organized in a Project Participation format with 23 agencies participating on an equal cost-sharing basis. The costs to date for outside consulting have been paid for by Poseidon, so no local costs have been paid by the agencies.

4.1.2 MWDOC - Member Agency Agreements

4.1.2.1 School Program will be organized with each Member Agency participating and paying its share of costs on a per student basis, and this Program also includes as participants the non-Member Agency cities of Anaheim, Fullerton, and Santa Ana.

4.1.2.2 Water Use Efficiency Program will be developed as a pay-as-you-go or a pay-for-participation basis instead of a "choice" basis. Functionally, however, there will be "choice" programs offered to all Member Agencies by agreement or through direct participation by retail consumers or others in the water service area. The Parties anticipate that the terms for the agreements between MWDOC and the Member Agencies will range between 3 and 5 years. The eight programs currently in operation include:

- Residential clothes washers
- Sprinkler nozzles
- SmarTimers
- CII Plumbing Fixtures
- Synthetic Turf
- Hotel Program
- Industrial Program
- Landscape Certification Program

4.2 Right to Submit Proposal. If a Member Agency Party does not participate in a MWDOC Choice Service pursuant to the provisions of this Agreement, including Section 2 above, and desires to participate in a substantially similar Service from another Member Agency Party, as set forth in a written proposal, such Member Agency Party shall deliver to MWDOC, no later than March 15th of each year, a copy of the written proposal to receive such Service. MWDOC shall have thirty (30) days from receipt of such proposal to submit a scope and cost to provide the Service, for the Member Agency Party's consideration.

4.3 Core Programs shall be those listed in Table A. Any funding brought in via MWDOC efforts from its State or Federal advocacy efforts, except for those specifically being funded through a Project Participation Agreement, shall be available to all MWDOC Member Agencies via Core or Choice Programs, e.g., such as the Water Use Efficiency Program.

4.4 Overhead Costs shall be those listed in Table A. The Overhead costs are allocated over all Core and Choice services. Subject to Paragraph 5.3, if activities are ever added to or removed from the

list of Core or Choice services, the commensurate proportion of Overhead costs will also be allocated accordingly. The determination of the Overhead cost percentage applicable to each Core and Choice service for any particular year shall be made during the budget preparation process and fixed for the entire budget year.

5. REVENUE COLLECTION

The Parties agree that MWDOC should transition its current rate structure, which includes both a per retail connection charge and a per acre-foot charge, to a structure that includes only a per retail connection charge. Currently, MWDOC's revenue from water rate charges is approximately 65% on the per retail connection charge and 35% on the per acre-foot charge. As described below, MWDOC shall increase the percentage on the per retail connection charge gradually, reaching 100% in fiscal year 2015-16.

- 5.1 Fixed Charges.** Commencing in fiscal year 2011 -2012, MWDOC will begin transitioning to a 100% fixed charge. In the first year of this process, 80% of MWDOC's water rate charges for its operating budget will be fixed, and 20% will be water charges. Each year for the next four years, MWDOC will increase the amount on fixed charges by 5%.
- 5.2 Method of Fixed Charges.** MWDOC will continue to use the methodology in effect as of the Effective Date to define retail service connections independent of size as the method of passing charges to the Member Agencies on a fixed charge basis.
- 5.3 Designation of Core, Choice, and Overhead Services.** The designations of services and activities set forth in (i) Section 2.1 and Table A for Core and Choice Service, in (ii) Paragraph 4.4 and Table A for Overhead Costs, and in (iii) Paragraph 5.2 for Method of Fixed Charges, shall carry a presumption of reasonableness and, therefore, shall remain unchanged for the term of this Agreement, unless changed by amendment in accordance with the provisions of Section 15.

6. **INTERACTION OF ELECTED OFFICIALS**

6.1 **Elected Officials' Meeting.** MWDOC will hold a semi-annual meeting for elected representatives of the Member Agencies and a GSWC officer or the officer's designee in October and April ("Elected Officials' Meeting") in addition to any other meetings, workshops, or assemblies open to those officials. The meetings shall be chaired by the President of the MWDOC Board and it is the intent of the Parties that the primary attendees shall be members of their respective governing bodies. The forum will be used to discuss:

- MWDOC activities, policies, and budget (including reserves)
- MET activities and policies
- Statewide water resource issues
- Strategies to increase Orange County's water supply reliability and to minimize Orange County water costs
- Other topics of significant interest to the Orange County water community

Beginning in March 2011 and each year thereafter, upon completion of the first DRAFT of the MWDOC Budget for the upcoming year, MWDOC will formally request comments on the budget from all 28 Member Agencies, as described in Section 2.2 above. MWDOC will report on the budget comments received from the Member Agencies at the Elected Officials' Meeting described herein.

6.2 **Public Meetings.** The Elected Officials' Meetings shall be noticed public meetings of MWDOC's Board. Each Member Agency participating in these meetings shall be responsible for compliance with the Brown Act by its own legislative body. (Government Code § 54950 etseq.)

7. **SELECTION OF MET DIRECTORS**

7.1 **Recommended Appointments by MWDOC Member Agency Parties.**

Commencing with the first vacant MWDOC MET Director position following the Effective Date, the MWDOC Board will institute and follow the procedure set forth in this Section 7 for appointing MET Directors.

- 7.1.1 The MWDOC Administrative Code provides that the Board President shall nominate and the Board shall approve MET Directors.
 - 7.1.2 Under the conditions and procedures established in this Agreement, the MWDOC Board will delegate limited nominating power to the MWDOC Member Agencies for two of MWDOC's MET Director positions.
 - 7.1.3 When the first MET Director vacancy occurs following the Effective Date, the South County Agencies that are Member Agency Parties ("South County Parties") may nominate a candidate of their choosing ("MET Candidate") through a process to which they all agree, directly to the MWDOC President and Board. In the absence of agreement among the South County Parties, the nomination(s) shall be determined by a "one agency, one vote" process among the South County Parties. Nominations shall be stated in a letter to the MWDOC Board President signed by authorized elected representatives of the South County Parties. Once filled, that seat will be designated, pursuant to this Agreement, as the "South County Seat".
 - 7.1.4 When the second MET Director vacancy occurs following the Effective Date, the North County Agencies that are Member Agency Parties ("North County Parties") may nominate a MET Candidate of their choosing, through a process to which they all agree, directly to the MWDOC President and Board. In the absence of agreement among the North County Parties, the nomination(s) shall be determined by a "one agency, one vote" process among the North County Parties. Nominations shall be stated in a letter to the MWDOC Board President signed by authorized elected representatives of the North County Parties. Once filled, that seat will be designated, pursuant to this Agreement, as the "North County Seat".
- 7.2** The MWDOC Board shall consider each nominated MET Candidate seriously, in good faith and in the spirit of this Agreement and can only reject said MET Candidate for cause. The remaining MET Director seats shall continue to be filled pursuant to MWDOC's Administrative Code. MWDOC shall continue its practice of advising the Member Agencies when a vacancy occurs and soliciting potential candidates and input from all Member Agencies for filling these seats.
- 7.3** All MWDOC MET Directors shall serve for an indefinite term pursuant to the MWDOC Administrative Code; provided, however, a MWDOC MET Director holding the North County Seat or the South County Seat may be removed by MWDOC only after MWDOC has convened an ad hoc committee to review that MWDOC MET Director's performance and the ad hoc committee has solicited and considered the input of the respective nominating area as provided below. If a vacancy occurs in the North County Seat or the South County Seat, the North or South County Parties, as established herein, may make subsequent nominations to fill the vacancy in accordance with Sections 7.1.3 and 7.1.4, as applicable. The MWDOC Board President shall

consider appointment of an ad hoc committee to review the performance of MWDOC's MET Directors upon request of any MWDOC Board Member or Member Agency, or upon the MWDOC President's own determination. Such review, if any, may be conducted no more than once annually. If appointed, the ad hoc committee shall solicit input from the respective nominating areas on the performance of the North County and South County nominated MET Directors. Should the North County Parties or South County Parties deem it appropriate to remove their selected MET Director, they can make their request for removal to the MWDOC Board. The MWDOC Board will not unreasonably withhold action on such request(s).

8. COMPLIANCE WITH MWDOC ADMINISTRATIVE CODE

Any MET Candidate nominated and appointed as provided herein must be familiar with MWDOC's Administrative Code and express a willingness to comply with it. This includes, without limitation, meeting the criteria for a MWDOC MET Director established in Section 1500 of the MWDOC Administrative Code.

9. COMPLIANCE WITH LAW

The nomination and appointment of any MET Candidate, as provided herein, must comply with applicable statutory and case law.

10. MET DIRECTOR ORANGE COUNTY CAUCUS

MWDOC will schedule and conduct at its offices regular meetings of the MET Directors representing MET Member Agencies in Orange County. Meetings will be scheduled at least three (3) times per year to be determined by the Orange County MET Directors at the first meeting each year. The purpose of the meetings is to provide special access by all Member Agencies to the MET Directors representing Orange County.

11. REMEDIES AND ENFORCEMENT

11.1 Remedies in General. Except as set forth below, each Party shall have all remedies otherwise available to enforce the terms of the Agreement and to seek remedies for any breach hereof, including but not limited to the remedies set forth in Sections 11.2.3, 11.5 and 11.6 of this Agreement.

11.2 Breach of the Agreement.

- 11.2.1 Any material breach or material violation of the Agreement shall be deemed a default under this Agreement.
- 11.2.2 In the event of an alleged material breach or material violation of the Agreement, the Parties agree to work together in good faith to resolve any disagreement using the following dispute resolution process:
 - 11.2.2.1 The Party alleging a breach shall notify the other Parties of the basis for the allegation and the requested cure for the breach.
 - 11.2.2.2 The alleged breaching Party receiving notice of breach shall have 15 calendar days to respond. If the response acknowledges that a breach has occurred, the breaching Party shall have 30 days to cure such breach, provided that if such breach cannot be reasonably capable of being cured within said 30-day period, then the breaching Party shall not be in default of this Agreement provided that the breaching Party is diligently continuing to cure such default.
 - 11.2.2.3 If the Party alleging a breach and the alleged breaching Party disagree with respect to whether a breach has occurred, they shall meet and confer in good faith toward a mutually satisfactory solution. The meet and confer shall be open to all Parties.
 - 11.2.2.4 If the dispute cannot be resolved through the meet and confer process within 60 calendar days after the first meeting, the Party alleging a breach and the alleged breaching Party, along with any other Party that wishes to participate, shall engage in third party mediation, with the participating Parties to equally share mediation costs. Said mediation shall end no later than 90 calendar days after the completion of the original meet and confer process. No Party may file a lawsuit concerning the alleged breach until the mediation has ended.
 - 11.2.2.5 In the event a lawsuit is filed after completion of the mediation concerning the alleged breach, the Parties' rights and obligations under this Agreement shall continue until one of three actions occurs: (1) the agreement continues as drafted; (2) the agreement is terminated; or (3) an amendment to the agreement is entered into pursuant to Section 15.
- 11.2.3 Any Party to this Agreement may, in addition to any other remedy, seek an order from a court specifically enforcing the

obligations of the Parties to the Agreement to comply with this Section 11.2.

- 11.3 Material Breach in the Event of Certain Activities.** The Parties to this Agreement have mutual interests in avoiding the time, expense, and uncertainty of either (a) legislative measures that would affect MWDOC's organizational form or (b) filing an application with the OCLAFCO for secession of a Party or detachment of a Party's territory from MWDOC. Consequently, the Parties to this Agreement agree that "material breach," within the meaning of Section II.(a) shall include (but not be limited to) the following activities that any Party hereto may undertake during the term of this Agreement:
- 11.3.1 The submission of an application with OCLAFCO to reorganize or undertake an action that would result in a Party's secession or the detachment of all or a portion of a Party's territory, from MWDOC, or would result in any other material change in governance or structure affecting MWDOC.
 - 11.3.2 The filing of any written letters or testimony with, or providing verbal testimony to, any committee or other body of the State Legislature in support of legislative measures that would (A) materially affect MWDOC's organizational form or change the governance of MWDOC, and (B) would result in secession or detachment of territory from MWDOC by any Member Agency.
- 11.4** An action constituting a material breach under Sections 2.2, 4, 5, 6, 7, 10, or 11.3 shall be subject to the dispute resolution provisions of Section 11.2.2.
- 11.5 Enforcement.** Any Party may enforce compliance by a defaulting Party with the terms of this Agreement by, among other available remedies:
- 11.5.1 Filing a complaint for specific performance;
 - 11.5.2 Filing an action to recover actual damages to which the notifying Party may be entitled for violation by the defaulting Party of the terms of this Agreement;
 - 11.5.3 Filing an action to enjoin the violation, on an ex parte basis if necessary, by temporary or permanent injunction, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief;

11.5.4 Petitioning for a writ of ordinary or administrative mandate ordering the defaulting Party to cure; and/or

11.5.5 Petitioning for a writ of ordinary or administrative mandate ordering OCLAFCO not to process an application filed in contravention of this Agreement.

11.6 Injunctive and Temporary Relief Appropriate. The Parties acknowledge that breach of this Agreement may not be adequately remedied by monetary damages and could result in irreparable harm to the aggrieved Parties. Therefore, injunctive and temporary relief may be appropriate to ensure compliance with the terms of this Agreement.

12. TERM OF AGREEMENT

12.1 Effective Date. This Agreement shall be effective upon the date of execution by MWDOC, which shall execute the Agreement upon express approval of its Board ("Effective Date"). MWDOC shall inform all Parties by e-mail when that event occurs.

12.2 Subsequent Execution. Any Member Agency that executes this Agreement after the Effective Date shall, upon execution, become a full Party to the Agreement, with all the rights and obligations set forth herein.

12.3 Termination Date. This Agreement shall run for a term of five (5) years from the Effective Date, unless terminated as provided herein. This agreement may be extended by mutual agreement of all of the Parties hereto for subsequent term(s) five (5) years, or other period as mutually agreed to at the time of the extension.

13. OBLIGATIONS OF MEMBER AGENCIES

13.1 No OCLAFCO Application. During the term of this Agreement, none of the Member Agency Parties shall prepare, hire a consultant to prepare, or submit an application to OCLAFCO requesting reorganization or any action that would result in detachment of any territory from MWDOC or any other change affecting the governance, structure, or finances of MWDOC, unless agreed to in writing by MWDOC. In the event that the OCLAFCO undertakes proceedings, whether in response to an application or pursuant to its own discretionary powers, that reduces the territory within the boundaries or affects or changes the governance, structure or finances of MWDOC, these proceedings shall be considered a material breach of this Agreement by the Party or

Parties filing, supporting or in any way furthering the application except to the extent their actions are required by law.

- 13.2 No Legislative Activities.** During the term of this Agreement, none of the Member Agency Parties shall pursue, support, or further any legislative measures that would affect MWDOC's organizational form, board or staff members, finances, exercise of powers, or governance or result in detachment of any territory from MWDOC, unless agreed to in writing by MWDOC.
- 13.3 Participation in Agreement.** During the term of this Agreement, the Member Agency Parties, and each of them, shall contribute staff time and resources as required to participate and contribute in good faith to the activities and changes discussed in this Agreement.

14. OBLIGATIONS OF MWDOC

14.1 No OCLAFCO Application. During the term of this Agreement, MWDOC shall not prepare, hire a consultant to prepare, or submit an application to OCLAFCO as described in Paragraph 13.1 relating to the governance, structure, or finances of MWDOC or any equivalent OCLAFCO application relating to the governance, structure, or finances of any of its Member Agencies, unless agreed to in writing by the affected Member Agency.

- 14.2 No Legislative Activities.** During the term of this Agreement, MWDOC shall not pursue, support, or further any legislative measures that would affect any Member Agency's organizational form, board or staff members, finances, exercise of powers, or governance or result in detachment of any territory from the Member Agency, unless agreed to in writing by the Member Agency.
- 14.3 Participation in Agreement.** During the term of this Agreement, MWDOC shall contribute staff time and resources as required to participate and contribute in good faith to the activities and changes discussed in this Agreement.

15. AMENDMENT OF AGREEMENT

- 15.1** Any amendment, alteration, or variation of any provision of this Agreement ("Amendment") will not be valid unless made in writing and approved as provided in this Section.
- 15.2** The Parties acknowledge that the process of obtaining initial approvals and execution of this Agreement has required a substantial investment of public resources and time and that the same process should not be required for subsequent Amendments to the Agreement that are proposed without objection. For this reason, Amendments to the Agreement may be made as provided in this section.
- 15.2.1** An Amendment to the Agreement proposed by MWDOC shall be distributed by MWDOC to all Parties signing this

Agreement for a 60-day review period.

15.2.2 Any and all comments and objections to the Amendment shall be provided by the Parties to MWDOC and the remaining Member Agency Parties before the conclusion of the 60-day review period.

15.2.3 If no objections are received by the conclusion of the 60-day review period, the Amendment shall be valid and binding on the Parties. Upon this occurrence, MWDOC will provide a copy of the Amendment to all Parties.

15.2.4 If any objections are received within the review period, MWDOC may submit the proposed Amendment to the Parties for signatures, and if the proposed Amendment is executed by MWDOC and all of the Member Agency Parties, the Amendment shall be valid and binding on the Parties. Upon this occurrence, MWDOC will provide a copy of the Amendment to all Parties.

15.3 An Amendment to the Agreement proposed by a Party other than MWDOC shall be submitted in writing to MWDOC. Upon receipt of the proposed Amendment, MWDOC shall then follow the procedures set forth in section 15.2 above.

16. NO ADMISSION BY ANY PARTY

The Parties acknowledge that statements made by the Parties during negotiation of this Agreement, statements made in this Agreement, and all rights and obligations that arise from this Agreement were and are in furtherance of the goal of resolving issues between the Parties without the need for administrative or judicial proceedings, including possible OCLAFCO proceedings and litigation. Neither any statement made during negotiation of this Agreement nor any provision of the Agreement itself shall constitute an admission by a Party or be offered as evidence or included in any record of proceedings in any future administrative or judicial proceeding.

17. GENERAL PROVISIONS

17.1 All Parties are deemed to have participated in the drafting of this Agreement, and any rule of law (including, but not limited to, Civil Code Section 1654) or legal principle that would require interpretation of this Agreement against the drafter hereto shall not apply and is waived by the Parties. This Agreement may be signed in multiple counterparts for convenience of the Parties.

17.2 This Agreement will inure to the benefit of and be binding upon all Parties and their respective successors and assigns.

17.3 This Agreement will be deemed a contract made under the laws of

the State of California and for all purposes will be interpreted in accordance with such laws. The Parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California.

- 17.4** This Agreement constitutes the entire agreement among the Parties. This Agreement supersedes any and all other understandings or agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters; and each Party acknowledges that no representation, inducement, promise of agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.
- 17.5** If any action at law or equity, including any action for writ of mandate or injunctive relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party(ies) shall be entitled to its or their reasonable attorney's fees and costs as against the Party(ies) that did not prevail in that action or proceeding.
- 17.6** All activities undertaken pursuant to this Agreement must be in compliance with all applicable state and federal laws and regulations.
- 17.7** In the event one or more of the provisions contained in this Agreement is held invalid, illegal or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this Agreement and the remaining parts of this Agreement shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this Agreement.
- 17.8** All communications set forth in this Agreement shall be in writing and transmitted to and among the Parties in a manner that is consistent with the custom and practice of MWDOC and its Member Agencies then in effect. Any computations of time shall start from 5:00 PM on the day of receipt.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the respective dates shown below.

Mayor, City of San Clemente

Date

Mayor, City of San Juan Capistrano

Amended 12-14-10

Date

President, El Toro Water District

Date

President, Trabuco Canyon Water District

Date

Mayor, City of Brea

Date

Mayor, City of Buena Park

Date

Mayor, City of Fountain Valley

Date

Mayor, City of Garden Grove

Date

Mayor, City of Huntington Beach

Date

Mayor, City of La Habra

Date

Mayor, City of La Palma

Date

Mayor, City of Newport Beach

Date

Mayor, City of Orange

Date

Mayor, City of Seal Beach

Date

Mayor, City of Tustin

Date

Mayor, City of Westminster	Date
President, East Orange County Water District	Date
President, Emerald Bay Service District	Date
Officer, Golden State Water Company	Date
President, Mesa Consolidated Water District	Date
President, Orange County Water District	Date

President, Serrano Water District

Date

President, Yorba Linda Water District

Date

Table A - MWDOC Breakdown of Services/Activities/Costs		
Core Services	Choice Services	Overhead Costs
<p>Board Compensation & Benefit</p> <p>Retiree Costs</p> <p>Legal Costs</p> <p>Board Elections</p> <p>Accounting and General Admin</p> <p><u>MET Representation</u></p> <ul style="list-style-type: none"> • MET Director Support • MET policy analysis, programs and special projects • MET operations, water rates and accounting <p>Staff time for MWDOC's Water Use Efficiency Programs Manager</p> <p><u>Governmental Affairs</u></p> <ul style="list-style-type: none"> • In-house staff for legislative info • WACO, ISDOC and other support • Federal lobbyist for countywide funding • State lobbyist for countywide legislative, grant funding and policy access • Local lobbyist for Board of Supervisors <p><u>Public Affairs</u></p> <ul style="list-style-type: none"> • Coordination with MET, other regional and local retailers • Basic communications functions-media outreach and inquiries, water information and messaging, MWDOC website • MWDOC newsletter (e-currents) • Countywide surveys as appropriate • Countywide water awareness in coordination with retail agencies <p><u>Research – support for Center for Demographic Research</u></p> <p><u>Water Supply Planning</u></p> <ul style="list-style-type: none"> • Coordination among agencies • Water use tracking and projections • Water supply analysis • Regulatory compliance issues • Water trends analysis • Countywide studies <p>Water Emergency Response Organization of Orange County (WEROC) – MWDOC contribution</p>	<p><u>Water Use Efficiency</u></p> <ul style="list-style-type: none"> • Residential clothes washers • Sprinkler nozzles • SmartTimers • CII Plumbing Fixtures • Synthetic Turf • Hotel Program • Industrial Program • Landscape Certification Program <p>Includes marketing materials for WUE activities, staff time, overhead and grant funds (MET and other)</p> <p><u>Governmental Relations</u></p> <ul style="list-style-type: none"> • Any project or program legislative or grant support on choice activities – Townsend Public Affairs <p><u>Specific Programs</u></p> <ul style="list-style-type: none"> • School program • South Orange Coastal Ocean Desal Project <ul style="list-style-type: none"> ◦ Federal lobbying for SOCODP – Barker ◦ Federal lobbying for SOCODP – Townsend • Support for Poseidon Desal Project • Other Project specific studies • Non-countywide issue studies 	<p>Salary charged to overhead function (vacation, sick leave and holidays)</p> <p>Personnel development</p> <p>Legal costs charged to overhead function</p> <p>Employee benefits</p> <p>Personnel/staff development</p> <p>Information technology</p> <p>Conference employee</p> <p>Travel & Accommodations employee</p> <p>Automotive/Mileage/Toll</p> <p>Office maintenance</p> <p>Rents & Leases</p> <p>Office supplies</p> <p>Insurance expenses</p> <p>Utilities – telephone</p> <p>Miscellaneous expenses</p> <p>Professional fees for overhead activities</p> <p>Software support</p> <p>Computers/software</p>

Table 1
Summary of Revenues by Agency
Under Choice Activities Budget and Increased Meter Charge
Fiscal Year 2010-2011

Agency	Approved Rates		Choice Budget		100% Meter		Choice and 100% Meter	
	Per Conn:	Per AF:	Per Conn:	Per AF:	Per Conn:	Per AF:	Per Conn:	Per AF:
Brea	\$ 85,965	\$ 151,247	\$ 86,816	\$ 145,786	\$ 98,186	\$ 167,358	\$ 96,785	\$ 158,928
Buena Park	\$ 9,301	\$ 120,332	\$ 10,667	\$ 1,366	\$ 10,566	\$ 1,265	\$ 11,698	\$ 2,398
East Orange CWD RZ	\$ 5,406	\$ 122,560	\$ 4,555	\$ (850)	\$ 4,789	\$ (616)	\$ 4,053	\$ (1,353)
El Toro WD	\$ 115,280	\$ 271,311	\$ 115,280	\$ (7,270)	\$ 147,799	\$ 25,250	\$ 135,876	\$ 13,327
Emerald Bay Serv. Distr.	\$ 257,169	\$ 317,404	\$ 257,169	\$ (14,142)	\$ 299,243	\$ 27,932	\$ 279,954	\$ 8,643
Fountain Valley	\$ 289,131	\$ 381,433	\$ 289,131	\$ (28,273)	\$ 368,467	\$ 51,063	\$ 330,784	\$ 13,380
Garden Grove	\$ 355,678	\$ 737,229	\$ 355,678	\$ (25,755)	\$ 457,319	\$ 75,887	\$ 417,580	\$ 36,148
Golden State Water Co.	\$ 792,689	\$ 94,314	\$ 792,689	\$ 55,461	\$ 804,567	\$ 67,339	\$ 847,619	\$ 110,390
Huntington Beach	\$ 89,149	\$ 29,870	\$ 89,149	\$ (5,165)	\$ 109,932	\$ 15,618	\$ 101,889	\$ 7,575
Irvine Ranch WD	\$ 28,943	\$ 70,985	\$ 28,943	\$ (927)	\$ 37,448	\$ 7,578	\$ 35,124	\$ 5,254
La Habra	\$ 93,752	\$ 160,102	\$ 93,752	\$ 22,767	\$ 70,063	\$ (922)	\$ 93,000	\$ 22,015
La Palma	\$ 162,227	\$ 502,066	\$ 162,227	\$ 2,125	\$ 203,119	\$ 43,018	\$ 197,317	\$ 37,215
Laguna Beach CWD	\$ 528,030	\$ 185,793	\$ 528,030	\$ 25,964	\$ 453,448	\$ (48,618)	\$ 488,371	\$ (13,695)
Mesa Consolidated WD	\$ 193,173	\$ 271,800	\$ 193,173	\$ 7,380	\$ 230,421	\$ 44,627	\$ 229,577	\$ 43,783
Moulton Niguel WD	\$ 291,273	\$ 357,075	\$ 291,273	\$ (65,802)	\$ 286,772	\$ 14,972	\$ 259,447	\$ (12,353)
Newport Beach	\$ 192,364	\$ 162,817	\$ 192,364	\$ 29,547	\$ 151,662	\$ (11,155)	\$ 183,265	\$ 20,448
Orange	\$ 113,540	\$ 495,722	\$ 113,540	\$ 32,094	\$ 97,863	\$ 16,417	\$ 126,932	\$ 45,486
OCWD	\$ 487,551	\$ 39,105	\$ 487,551	\$ (8,171)	\$ 464,765	\$ (30,957)	\$ 462,299	\$ (33,424)
San Clemente	\$ 37,637	\$ 12,903	\$ 37,637	\$ (1,468)	\$ 46,231	\$ 7,126	\$ 43,450	\$ 4,345
San Juan Capistrano	\$ 13,018	\$ 109,759	\$ 13,018	\$ 115	\$ 19,611	\$ 6,708	\$ 18,490	\$ 5,587
Santa Margarita WD	\$ 136,627	\$ 51,141	\$ 136,627	\$ 26,868	\$ 104,793	\$ (4,966)	\$ 132,576	\$ 22,817
Seal Beach	\$ 47,701	\$ 132,434	\$ 47,701	\$ (3,440)	\$ 35,132	\$ (16,009)	\$ 34,642	\$ (16,499)
Serrano WD	\$ 133,883	\$ 145,196	\$ 133,883	\$ 1,450	\$ 170,967	\$ 38,534	\$ 165,316	\$ 32,883
South Coast WD	\$ 140,183	\$ 205,059	\$ 140,183	\$ (5,013)	\$ 174,638	\$ 29,441	\$ 164,199	\$ 19,003
Trabuco Canyon WD	\$ 191,324	\$ 5,309,762	\$ 191,324	\$ (13,734)	\$ 207,821	\$ 2,762	\$ 193,577	\$ (11,481)
Tustin	\$ 5,309,762	\$ 5,309,762	\$ 5,309,762	\$ -	\$ 5,309,762	\$ -	\$ 5,309,762	\$ -
Westminster								
Yorba Linda WD								
Three Revenues								

Per Conn: \$5.75
 Per AF: \$6.75
 Choice: \$0

Per Conn: \$4.69
 Per AF: \$5.51
 Choice: \$978,484

Per Conn: \$8.74
 Per AF: \$0
 Choice: \$0

Per Conn: \$7.13
 Per AF: \$0.0
 Choice: \$978,484

Assumptions Made in the Financial Analysis of the MWDOC Settlement Agreement

In accordance with discussions occurring as part of the Settlement Agreement, MWDOC has modeled the estimated impact to each MWDOC Member Agency under a "Choice Budget" including moving to 100 percent of MWDOC's remaining costs being collected through the per meter charge.

The attached analysis was performed during the budget discussions in April, 2010. All of the numbers are based on the hypothetical impact that these changes would have on MWDOC's FY 2010/11 budget and rates.

The choice programs in this analysis are based on the FY 2010/11 programs budgets and recent participation in these programs by each MWDOC agency. The totals, therefore, do not reflect each agency's selected level of participation in each choice program going forward. The actual choice budgets and will be developed in late 2010, and agencies will have until March 2011 to make their final selection on which programs to participate in for FY 2011-12.

Under these assumptions, a choice budget of \$978,000 was developed that included the following program areas:

- South Orange Coastal Ocean Desalination Project (\$139,000)
- Poseidon Huntington Beach Ocean Desalination Project (\$46,000)
- School Program (\$133,000)
- Water Use Efficiency Program (\$660,000)

The costs under these programs are allocated to each agency based on their recent participation in MWDOC programs. The costs of the South Orange Coastal Ocean Desalination Project and the Poseidon Project were allocated to all project participants on an equal cost-sharing basis. The School Program and the majority of the Water Use Efficiency Programs were allocated to each agency based on actual participation in the programs in FY 2008/09. Each of the Choice Program budgets also included an Overhead Factor of 66%, which was applied to the total salaries and wages allocated within each program.

MWDOC's adopted rates and charges for FY 2010/11 are \$5.75 per certified retail water meter, and \$6.75 per acre-foot of water delivered. MWDOC currently captures approximately 65% of its revenues through the per-meter charge, and 35% are captured through the per acre-foot charge. Under the Settlement Agreement, MWDOC will transition over a five year period to a new rate structure that includes only a per meter charge. For the purposes of this analysis, the impact on each agency was calculated with 100 percent of MWDOC's costs being captured by the per meter charge under the number of certified meters in FY 2010/11. The actual impact will be phased in over 5 years.