

CITY OF CORONA

WATER SALE AGREEMENT

(HOME GARDENS COUNTY WATER DISTRICT)

1. PARTIES AND DATE.

This Water Sale Agreement ("Agreement") is entered into as of this 1st day of April, 2015 by and between the City of Corona, a California municipal corporation ("City") and Home Gardens County Water District, a county water district organized and existing pursuant to the County Water District Law (California Water Code §§ 30000 et seq.) ("District"). City and District sometimes individually referred to herein as "Party" and collectively as "Parties" throughout this Agreement.

2. RECITALS.

2.1 City Water Service. The City provides treated potable water service to customers within its service area in the City of Corona, County of Riverside. The City's water supply is a blend of City production wells and water that is imported from the Metropolitan Water District of Southern California.

2.2 District Water Service. The District provides water service to customers within its service area in the unincorporated community of Home Gardens. The District's water supply is provided from District production wells and contracts with other water suppliers, including the City of Riverside.

2.3 Available City Water. The City currently has treated potable water that is surplus to that needed to serve the City's current and future anticipated demands, and thus has treated potable water available for sale to the District subject to the terms and conditions of this Agreement.

2.4 Interconnection Point. The City has constructed an interconnection between the City's water system and the District's water system at the northern terminus of Temescal Street, consisting of a pressure reducing station and flow meter, as well as various fittings and appurtenances needed to deliver treated potable water to the District ("Interconnection Point").

2.5 Agreement Intent. The District desires to purchase and the City desires to sell treated potable water subject to the terms and conditions of this Agreement.

2.6 Corona Utility Authority. District understands that the City has entered into a Water Enterprise Management Agreement and a Wastewater Enterprise Management Agreement, both dated as of February 6, 2002, with the Corona Utility Authority ("CUA") for the maintenance, management and operation of those utility systems (collectively, the "CUA Management Agreements"). To the extent that this Agreement is deemed to be a "material

contract" under either of the CUA Management Agreements, City enters into this Agreement on behalf of the CUA and subject to the terms of the applicable CUA Management Agreement(s).

3. TERMS.

3.1 Term. The term of this Agreement shall be retroactive from December 31, 2014 to December 31, 2019, unless earlier terminated as provided herein ("Initial Term"). The Parties may, by mutual, written consent, extend the term of this Agreement. The District acknowledges that City shall have no obligation to agree to any extension of this Agreement, and may decline to do so or impose conditions for doing so, in City's sole discretion. Should either Party wish to terminate this Agreement for any reason authorized in Section 3.6.2 or 3.6.3 or not extend the term of this Agreement following the end of the Initial Term, such Party must notify the other Party in writing at least one hundred eighty (180) days before the effectiveness of the termination so as to allow the District sufficient time to procure water from an alternative source.

3.2 Water Sale and Purchase.

3.2.1 Quantity. Subject to the terms and conditions of this Agreement, including, but not limited to, the City availability, capacity and scheduling conditions provided for in Section 3.3.2 below, the District may purchase, and the City agrees to sell and deliver to the District, treated potable water at the Interconnection Point.

3.2.2 Purchase Price; CPI Increases. For treated potable water delivered to the District by the City, the District shall pay the City the rate of Five Hundred Dollars (\$500.00) per acre-foot ("Purchase Price"). Beginning July 1, 2019 and every five (5) years thereafter, the Purchase Price shall be increased based upon the compounded percentage change in the Consumer Price Index for the most recent five (5) year period calculated based upon each May to May twelve (12) month period. The Consumer Price Index used shall be the one published by the U.S. Bureau of Labor Statistics for All Urban Consumers, All Items, Los Angeles-Riverside-Orange County area (base year 1982-1984=100). By way of example, commencing on July 1, 2019, the Purchase Price shall increase by the compounded percentage change in the Consumer Price Index for the period of May 2014 through May 2019.

3.2.3 Invoicing and Payment. The District shall pay the City for water delivered to the District pursuant to this Agreement within thirty (30) days after delivery of an invoice from the City. City shall invoice District monthly for the quantity of water delivered the prior month, multiplied by the Purchase Price. Invoices need not be provided pursuant to the notice provisions of Section 3.10 below, and instead may be provided by standard mail, email or other electronic or other written communication methods.

3.3 Delivery of Water.

3.3.1 Delivery Point. The physical point of delivery of the treated potable water pursuant to this Agreement shall be the Interconnection Point, or such other alternative locations as may be agreed upon by the City and the District. The City shall maintain and operate the Interconnection Point.

3.3.2 Delivery Schedule. Subject to City's availability and capacity, as determined by the City in its discretion, the City shall deliver to the District treated potable water at such times and in such quantities as is requested from time to time by the District. The City shall use its reasonable efforts to commence delivery of water as requested by the District. If, at the time specified by the District for delivery of water, there is or there is expected to be insufficient availability or capacity for City to make such delivery, the City shall promptly so advise the District, stating the reason for such lack of availability or capacity, and the City shall continue to make all reasonable efforts to schedule and make delivery of the requested water as soon as possible.

3.3.3 Measurement of Water Delivered. The City shall provide the District with an accounting of water delivered to District to support invoices provided pursuant to Section 3.2.3 above. The City shall determine the method, equipment and facilities necessary to provide the measurement of water delivered to the District ("Measurement Equipment"). The District may, at all reasonable times, and at its option and its own expense, inspect, examine and test the Measurement Equipment. Should District discover any discrepancies or other issues with the accounting of water delivered to District or accuracy of the Measurement Equipment, the Parties shall cooperate to identify the cause of such discrepancy or issue to resolve same in good faith, including through appropriate adjustments in the invoices provided by City.

3.4 Additional City Obligations.

3.4.1 City Water Facilities. Ownership, operation and maintenance of all water transmission and distribution pipelines, equipment and facilities in the City's water system, up to and including the Measurement Equipment and Interconnection Point ("City Water Facilities"), shall be the responsibility of the City in accordance with all then current applicable federal, state and local laws, rules, regulations and permit requirements.

3.4.2 Source of Water. The water sold and delivered to the District hereunder may be provided by City from any source available to the City.

3.4.3 Water Quality. The City shall be responsible for ensuring: (1) that the quality of the treated potable water delivered to the District pursuant to this Agreement is of the same quality of water that the City delivers to its residential customers; and (2) that it complies with then current applicable federal, state and local laws, rules, regulations and permit requirements applicable to the City, including any discharge requirements and any compliance waivers granted to the City ("City Quality Standards"). Monthly, the City shall provide the District with a copy of the City Quality Standards and the District shall be solely responsible for ensuring that the City Quality Standards meet the District Quality Standards, as defined in Section 3.5.2 below. The City shall be responsible for any liability resulting from a change in water quality caused by something within the City Water Facilities, and shall defend, indemnify and hold the District harmless pursuant to the indemnification provisions of Section 3.8 below. The City shall promptly notify the District in the event that the City becomes aware of a material adverse change in the quality of the water delivered by the City pursuant to this Agreement or delivered by the District to its customers, and the Parties shall cooperate to identify the cause of

such change. If the cause of the change is within the City Water Facilities, the City shall be responsible for addressing the water quality and bringing it into compliance with the City Quality Standards. If the cause of the change is within the District Water Facilities, the District shall be responsible for addressing the water quality and bringing it into compliance with the District Quality Standards.

3.4.4 Sampling of District's Water System. City personnel or other authorized agents of the City showing proper evidence of identification shall have the right to enter upon District's premises for the purpose of: (a) inspecting the District's water system to ascertain compliance with this Agreement and other federal, state and local laws, rules, regulations and permit requirements; and (b) sampling and analyzing the water within the District's water system to ascertain compliance with this Agreement and other federal, state and local laws, rules, regulations and permit requirements.

3.5 District Obligations and Responsibilities.

3.5.1 District Water Facilities. Ownership, operation and maintenance of all water transmission and distribution pipelines, equipment and facilities in the District's water system, up to and including anything beyond the Measurement Equipment and Interconnection Point ("District Water Facilities"), shall be the responsibility of the District in accordance with all then current applicable federal, state and local laws, rules, regulations and permit requirements.

3.5.2 Water Quality. Once the treated potable water leaves the City's system at the Interconnection Point, the District shall be responsible for ensuring: (1) that the quality of the treated potable water delivered by the City to the District pursuant to this Agreement, when delivered by the District to its customers, is of the same quality of water that the District delivers to its residential customers; and (2) that it complies with then current applicable federal, state and local laws, rules, regulations and permit requirements applicable to the District, including any discharge requirements and any compliance waivers granted to the District ("District Quality Standards"). Upon request, the District shall provide the City with a copy of the District Quality Standards. To the extent that the District Quality Standards exceed the City Quality Standards, the District shall be responsible for any necessary additional treatment of the water delivered to the District pursuant to this Agreement in order to deliver it to the District's customers. The District shall be responsible for any liability resulting from a change in water quality caused by something within the District Water Facilities, and shall defend, indemnify and hold the City harmless pursuant to the indemnification provisions of Section 3.8 below. The District shall promptly notify the City in the event that the District becomes aware of a material adverse change in the quality of the water delivered by the City pursuant to this Agreement or delivered by the District to its customers, and the Parties shall cooperate to identify the cause of such change. If the cause of the change is within the City Water Facilities, the City shall be responsible for addressing the water quality and bringing it into compliance with the City Quality Standards. If the cause of the change is within the District Water Facilities, the District shall be responsible for addressing the water quality and bringing it into compliance with the District Quality Standards.

3.5.3 Contamination. District shall take all commercially available steps to prevent and monitor for unauthorized discharges and contamination events within the District Water Facilities, and shall notify City immediately in the event it learns of any unauthorized discharges or contamination events within or relating to the District Water Facilities.

3.5.4 Ownership of Water. Ownership and title to water delivered to District pursuant to this Agreement shall pass to the District upon conveyance of the water past the Interconnection Point. District shall be solely responsible for the use of any water delivered by City pursuant to this Agreement after the water passes the Interconnection Point.

3.5.5 Use of Water. The District shall use all water delivered by City pursuant to this Agreement to meet the needs of its retail customers within the District's service area. The wholesale or retail sale or transfer, either with or without compensation, of any water delivered by City pursuant to this Agreement to any parties or persons other than retail customers within the District's service area is prohibited.

3.5.6 Cooperation. District shall cooperate with all reasonable requests of City with respect to taking any action necessary to preserve the integrity of the City Water Facilities and the quality of the water delivered to District pursuant to this Agreement.

3.6 Termination.

3.6.1 Default. This Agreement may be terminated in the event of a breach of this Agreement that is not timely cured within thirty (30) calendar days after notice of the breach is given to the Party deemed to have committed the breach; provided, however, if such breach is of a nature that cannot reasonably be cured within thirty (30) calendar days, termination shall be effective if the breaching Party either fails to commence such cure within thirty (30) calendar days of such notice, or commences such cure within such thirty (30) calendar days but fails thereafter to diligently prosecute such cure to completion. Any such written notice of breach shall include a detailed statement as to the claimed failure to perform. In the event the breaching Party fails to cure the breach within the cure period, as such period may be extended by mutual agreement, the non-breaching Party may elect to consider the other Party in default and terminate this Agreement immediately. Notwithstanding the foregoing, the non-breaching Party may also pursue any and all other remedies in law or equity.

3.6.2 Unavailability of Water. This Agreement may be terminated by City with one hundred eighty (180) days' notice to District if City, in its sole discretion, determines that it is unable to deliver the amount of treated potable water requested by District or that it cannot guarantee the availability of sufficient treated potable water for the remaining term of this Agreement. District acknowledges that in the event of termination of this Agreement, City cannot and does not guarantee the availability of any treated potable water to serve the District's service area.

3.6.3 Failure to Convey Well Sites. The Parties intend to negotiate agreements to provide for: (1) the construction of two (2) wells on real property currently owned by the District, which wells will be owned solely by the City; (2) the conveyance from the District to

the City of fee title to the real property on which the wells will be located; and (3) a division of the water produced from such wells between the Parties. This Agreement may be terminated by either Party with one hundred eighty days (180) days' notice to the other Party if the wells are not constructed, the real property is not conveyed to City, or an agreement cannot be reached between the Parties regarding the division of water produced from such wells.

3.6.4 Effect of Termination. If this Agreement is terminated as provided under this Agreement, District shall pay City for all water which is delivered by City prior to the date of termination.

3.7 Good Faith. The Parties acknowledge and agree that this Agreement is subject to the covenant of good faith and fair dealing, provided that nothing in this Agreement shall require City to agree to an extension of this Agreement, modification of the Purchase Price, or any other amendment to this Agreement, nor preclude City from granting, rejecting or conditioning any such request in its sole discretion.

3.8 Mutual Indemnification.

3.8.1 District Indemnification. Neither City nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by District and/or its officials, officers, employees, consultants, subcontractors and agents under or in connection with this Agreement. It is understood and agreed that District, to the maximum extent permitted by law, will defend, indemnify and hold free and harmless the City and its officials, officers, employees, consultants, subcontractors and agents from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of any alleged acts, errors or omissions of District or its officials, officers, employees, consultants, subcontractors and agents in connection with the performance of this Agreement, including, without limitation, the payment of reasonable expert witness fees, attorney fees and other related costs and expenses.

3.8.2 City Indemnification. Neither District nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by City and/or its officials, officers, employees, consultants, subcontractors and agents under or in connection with this Agreement. It is understood and agreed that City, to the maximum extent permitted by law, will defend, indemnify and hold free and harmless the District and its officials, officers, employees, consultants, subcontractors and agents from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of any alleged acts, errors or omissions of City or its officials, officers, employees, consultants, subcontractors and agents in connection with the performance of this Agreement, including, without limitation, the payment of reasonable expert witness fees, attorney fees and other related costs and expenses.

3.9 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the

prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

3.10 Notices Except as otherwise specified herein, all notices or other communication provided for in this Agreement shall be in writing sent by registered or certified mail, return receipt requested, addressed to the person to receive such notice or communication at the following addresses. Notice shall be deemed effective upon receipt or refusal to accept delivery:

If to City: Jonathan Daly, General Manager
Department of Water & Power
City of Corona
755 Public Safety Way
Corona, CA 92880

If to District: David Vigil, General Manager
Home Gardens County Water District
3832 N. Grant Street
Corona, CA 92879

Notice of change of address, telephone numbers or e-mail address shall be given by written notice in the manner set forth in this subsection. Unless otherwise designated from time to time in writing to the other Party, the above-mentioned individuals shall be considered contacts and representatives of their respective Parties in connection with performance of this Agreement.

3.11 Agreement Not Assignable; Corona Utility Authority. This Agreement may not be assigned by either Party and does not run with the land. Notwithstanding the foregoing, to the extent that this Agreement is deemed to be a "material contract" under either of the CUA Management Agreements, District has no right to terminate this Agreement, either with or without cause, based upon the existence or non-existence of either or both of the CUA Management Agreements. Therefore, if an applicable CUA Management Agreement expires or terminates for any reason, District shall remain fully obligated to perform under this Agreement on behalf of the CUA or another third party contracted by the CUA for the maintenance, management and operation of the applicable utility system.

3.12 Required Actions. City and District agree to execute all instruments and documents and to take all actions as may be required in order to consummate the transactions contemplated by this Agreement.

3.13 Entire Agreement. This Agreement contains the entire agreement between the Parties concerning the subject matter of this Agreement, and supersedes any prior agreements, understanding or negotiations (whether oral or written). No addition or modification of any term or provision shall be effective unless set forth in writing duly approved by each Party and signed by the authorized representative of each Party.

3.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

3.15 Severability. If any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, illegal or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts of this Agreement shall remain in full force and effect, as fully as though such invalid, illegal or unenforceable portion had never been part of this Agreement.

3.16 Headings. Headings at the beginning of each section and subsection are solely for convenience of reference and are not a substantive part of this Agreement.

3.17 Construction. Whenever the context of this Agreement requires the same, the singular shall include the plural and the masculine, feminine and neuter shall include the others. Without limitation, any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any member of the relevant class. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if all Parties had prepared it together. Any reference in this Agreement to an agreement or other instrument shall mean such agreement or instrument as it may from time to time be supplemented, modified, amended or extended in accordance with the terms of such agreement or instrument.

3.18 Waiver. No waiver by either Party of any default by the other Party under this Agreement shall be implied from any omission or delay by the non-defaulting Party to take action on account of the default if the default persists or is repeated. Any waiver of any covenant, term or condition contained in this Agreement must be in writing. Any such express written waiver shall not be construed as a waiver of any subsequent breach of the same covenant term or condition, nor shall it affect any default other than the default expressly made the subject of the waiver. The consent or approval by a Party to or of any act by the other Party shall not be deemed to waive or render unnecessary consent or approval to or of any subsequent act.

3.19 No Third Party Beneficiaries. This Agreement shall not be deemed to confer any rights upon any individual or entity which is not a Party hereto, and the Parties hereto expressly disclaim any such third-party benefit.

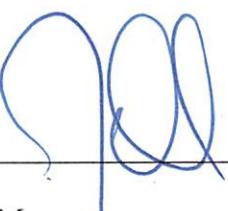
3.20 Governing Law and Venue. This Agreement is executed and delivered in the State of California and shall be construed and enforced in accordance with, and governed by, the laws of the State of California. Any action to interpret or enforce this Agreement shall be brought and maintained exclusively in the courts of and for Riverside County.

[SIGNATURES ON NEXT TWO (2) PAGES]

CITY'S SIGNATURE PAGE FOR
CITY OF CORONA
WATER SALE AGREEMENT
(HOME GARDENS COUNTY WATER DISTRICT)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

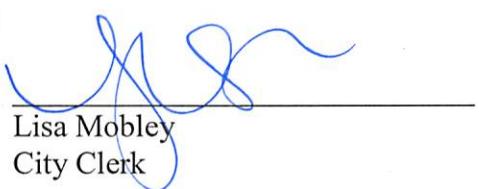
CITY OF CORONA

By: 

Jonathan Daly
DWP General Manager

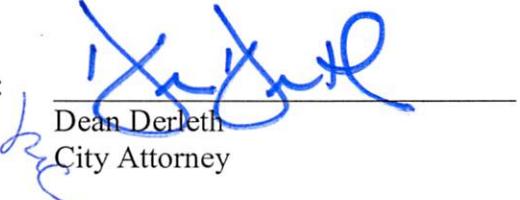
Consent: 

Bradly L. Robbins
Executive Director
Corona Utility Authority

Attest: 

Lisa Mobley
City Clerk

Approved as to Form:

By: 

Dean Derleth
City Attorney

DISTRICT'S SIGNATURE PAGE FOR
CITY OF CORONA
WATER SALE AGREEMENT
(HOME GARDENS COUNTY WATER DISTRICT)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

HOME GARDENS COUNTY WATER DISTRICT

By:



David F. Vigil
General Manager

Attest:



Secretary of the Board of Directors

Approved as to Form:

By:



Fred Galante
District Counsel