

**AGREEMENT REGARDING THE TRANSFER OF RECYCLED WATER
RECHARGED BY THE INLAND EMPIRE UTILITIES AGENCY FOR
THE CITY OF FONTANA AND TRANSFERED TO
THE FONTANA WATER COMPANY**

This AGREEMENT REGARDING THE TRANSFER OF RECYCLED WATER RECHARGED BY THE INLAND EMPIRE UTILITIES AGENCY FOR THE CITY OF FONTANA (“Agreement”) is entered into as of the _____ day of _____, 2026 by and between the **CITY OF FONTANA** (“City”) and **FONTANA WATER COMPANY** (“Company”) for the transfer of City’s right of first purchase of recycled water recharged to the Chino Basin by the Inland Empire Utilities Agency (“IEUA”).

WHEREAS, the supply of water to the Chino Basin (“Basin”) region is limited, and it is in the best interest of water and wastewater agencies in the Basin to maximize the reuse and recharge of recycled water where appropriate to lower the cost of Basin replenishment, which lowered cost is shared by water producers and customers as the cost of water is a direct pass through for the Company; and

WHEREAS, City does not operate a water delivery system for domestic water;

WHEREAS, Company operates a domestic water delivery system and has the means to put the City’s recycled recharged water to beneficial use;

WHEREAS, City is a Contracting Agency as defined in the “Regional Sewage Service Contract” dated November 1, 2023, as may be amended from time to time, (“Regional Contract”) that transmits wastewater to IEUA’s Regional Sewerage System for treatment;

WHEREAS, Regional Contract Section 15.B.1 provides “Each Contracting Agency shall have the right of first purchase from IEUA of Recycled Water in a total quantity not exceeding the base entitlement of the Contracting Agency.”;

WHEREAS, City, as a Contracting Agency, has the right of first purchase from IEUA recycled water in a total quantity not exceeding the City’s base entitlement;

WHEREAS, City of Ontario (“Ontario”) and City are parties to a Right of First Purchase of Recharged Reclaimed Water Agreement dated January 15, 2008 as amended March 18, 2014, and June 13, 2017, and as may be amended from time to time, (the “Ontario Agreement”) where Ontario has the right of first purchase of up to 3,000 acre-feet (“AF”) per year of City’s base entitlement of recycled water that is recharged in the Basin;

WHEREAS, City may on an annual basis transfer any rights which Ontario elects not to claim pursuant to Section 4(b) of the Ontario Agreement;

WHEREAS, this Agreement does not pertain to direct use of recycled water and does not intend to amend, alter, or modify the Agreement for Regionalized Recycled Water Service dated April 26, 2011, by and between City and Company;

WHEREAS, IEUA plans to implement a water reuse program known as the Chino Basin Program (CBP) to advance treated recycled water and inject it into the Chino Basin for future production; and

WHEREAS, the City is willing to transfer a portion of the City's recycled water base entitlement to Company; and

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, and for the mutual covenants contained herein, the parties agree as follows:

I. TRANSFER OF RIGHT FIRST PURCHASE OF TREATED EFFLUENT

For the period beginning with fiscal year 2025/26 and continuing for the remainder of the term of this Agreement, and subject to the terms and conditions contained herein and in the Regional Contract, the City hereby assigns and transfers to the Company: (a) all of the City's right of first purchase of the City's base entitlement (as that term is defined under Section 15.B.1 of the Regional Contract) in excess of 3,000 AF per fiscal year recharged into the Basin by IEUA on behalf of the City; and (b) that portion of City's right of first purchase which Ontario elects to not claim pursuant to Section 4 of the Ontario Agreement, if any, ((a) and (b) collectively the "Transferred Right").

II. ACCEPTANCE OF TRANSFER

Company hereby accepts the foregoing transfer, agrees to take and pay for the Transferred recycled water and assumes and agrees to perform and be bound by all of the covenants, agreements, provisions, conditions, and obligations of City arising from or under the Regional Contract but only as they relate to and to the extent of Company's exercise of the rights transferred to it under this Agreement.

III. PURCHASE PRICE; PAYMENT

As consideration for the City's agreement to grant Company the Transferred Right, under Section 1 of this Agreement, Company will incur and will pay all approved IEUA costs associated with Company's Transferred Right under Section 2 of this Agreement. This payment includes, but is not limited to the following:

a. On an annual basis Company will pay all charges attributable to transferred water acquired by Company at current fiscal year IEUA recharge rate per acre foot established by IEUA in accordance with the Regional Contract. For fiscal year 2025/26 the IEUA recharge rate is \$714.85/AF

b. Company will timely pay amounts due under Section III.a directly to IEUA. Company will promptly provide the City with copies of invoices received from IEUA and proof of payment of the invoices within thirty (30) days of such payment.

i. Company agrees to defend, indemnify, and hold harmless the City, the City's directors, officers, and employees from any claims, damage, liability, or costs (including reasonable attorney's fees and legal costs) arising out of or in any way related to Company's failure to timely pay IEUA amounts due under this Section III.

c. In addition to the payment to be made by Company directly to IEUA as set forth above, on an annual basis Company will also pay City a fixed 5% of the current fiscal year IEUA

recharge rate per acre foot established by IEUA for the Transferred Rights from City to Company under Section I of this Agreement. For fiscal year 2025/26 the rate is (\$714.85/AF x 5%) or \$35.74 per-acre-foot.

Payment shall be made by Company to City each year for the amount of recharged recycled water transferred to Company purchased during the previous fiscal year. Prior to issuance of an invoice, Company shall provide to City, to the attention of the City Engineering/Public Works Department, an IEUA report showing the total amount of recycled water recharged transferred to Company during the previous fiscal year. This report shall be provided by Company to City no later than thirty (30) days after receipt of IEUA invoice. Upon receipt and verification of such information, City shall issue an invoice to Company no later than thirty (30) days after receiving IEUA report for the amount due. Company shall initiate the payment to City within thirty (30) days of the date of City's invoice, by mailing a check for the full amount due. Any payment not received by City within thirty (30) days from the due date will incur a late payment penalty of 10% of the total amount due from Company to City. If payment is not received by City within ninety (90) days after City gives Company written notice as provided in Section XIII that payment is delinquent, then City will have the option to terminate this agreement pursuant to Section VII of this Agreement.

d. The Parties agree that annual price adjustments may be necessary due to changes in the IEUA rate, changes in the market, or for other reasons. If a price adjustment is requested by either party, the Parties will meet and confer regarding the price adjustment. If the Parties are unable to agree on a new price within sixty (60) days from the date of the request for a price adjustment, this Agreement may be terminated in accordance with Section VII of this Agreement.

IV. TERM

This Agreement will be for a term of five (5) consecutive fiscal years which terminate at the end of fiscal year 2031/32 or upon the completion and implementation of the CBP, whichever occurs first ("Termination Date") unless otherwise terminated by either party in accordance with Section VII below.

V. NO OBLIGATION TO DELIVER SPECIFIED AMOUNT OF WASTEWATER TO IEUA

The parties agree that the City is under no obligation to deliver any minimum amount of wastewater to any IEUA Regional Plant for treatment and recharge purposes.

VI. DELIVERY

Company will be solely responsible for development and maintenance of facilities necessary for Company to exercise the Transferred Right and take delivery of the water from the Basin pursuant to this Agreement.

VII. TERMINATION

This Agreement may be terminated by either party, at its sole discretion, with or without cause, or for no cause, by giving thirty (30) days' notice to the other party. If this Agreement is terminated all the rights and obligations of the Parties set forth herein will be of no further force and effect. If the Agreement is terminated due to convenience and Company has not exercised the Transferred Right but issued a payment for the same, the Company may request reimbursement of the prepaid payment.

VIII. INDEMNIFICATION

City and Company each agree, to the fullest extent permitted by law, to indemnify and hold the other party, and its directors, officers, employees, or authorized volunteers harmless from any claims, damage, liability, or cost (including attorneys' fees and costs of defense) in connection with or in any way related to the parties' performance of rights and obligation under this Agreement, including such negligent acts, errors, or omissions by sub-contractors or others for whom the indemnifying party is legally liable; provided, however, that this indemnity will not apply to the gross negligence or willful misconduct of a party. This provision will survive the termination of this Agreement.

IX. AUTHORITY

Each signatory of this Agreement represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting.

X. GOVERNING LAW; VENUE

This Agreement will be interpreted and enforced in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement will be filed and litigated exclusively in the Superior Court of San Bernardino County, California or in the Federal District Court for the Central District of California.

XI. ENTIRE AGREEMENT; AMENDMENT

This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior written and oral agreements with respect to the matters covered by this Agreement. This Agreement may not be amended except by an instrument in writing signed by each of the parties hereto.

XII. ATTORNEYS' FEES

In the event of any litigation pertaining to this Agreement, the losing party shall pay the prevailing party's costs and expenses, including without limitation, reasonable attorneys' fees.

XIII. RECORDATION

City will cause this Agreement to be recorded in the Official Records of San Bernardino County and will promptly provide conformed copies of the recorded Agreement to the Company and IEUA as required under the Regional Contract.

XIV. NOTICES

Whenever any notice is required or permitted to be given under the terms of this Agreement, the same will be given in writing, and sent by: (a) certified mail, return receipt requested, postage prepaid; (b) a national overnight delivery service, delivery prepaid; (c) hand delivery with written receipt acknowledged; or (d) e-mail, followed by a copy sent in accordance with this Section XIII sent the same day as the e-mail, in each case to the address (together with a contemporaneous copy to each copied addressee), as applicable, set forth below. Any notice required or given hereunder will be deemed received the same Business Day if sent by hand delivery or e-mail, the next Business Day if sent by overnight courier, or three (3) days after posting if sent by certified mail, return receipt requested; provided that, any notice received after 6:00 p.m. Pacific Time on any Business Day or received on any day that is not a Business Day will be deemed to have been received on the following Business Day. Further, all notices given pursuant to this Agreement will be deemed effective if executed and sent by counsel for City or Company, as applicable. Any party can change their addresses and contact information by written notice to the other parties hereunder.

To City: City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
Attn: _____
Email: _____

To Company: Fontana Water Company
15966 Arrow Route
Fontana, CA 92335
Attn: Water Resources
Email: _____

With Copy to: San Gabriel Valley Water Company
P.O. Box 6010
El Monte, CA 92734-2010
Attn: General Counsel
Email: _____

XV. NO ASSIGNMENT

Neither party may assign any right under this Agreement to a third party without the prior written consent of the other party.

XVI. CAPTIONS; INTERPRETATION

The section headings used herein are solely for convenience and will not be used to interpret this Agreement. The parties acknowledge that this Agreement is the product of negotiation and compromise on the part of the parties, and the parties agree, that since they have participated in the negotiation and drafting of this Agreement, this Agreement will not be construed as if prepared by one of the parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it.

XVII. SEVERABILITY

If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances will be held by a court of competent jurisdiction, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition, or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, will not be affected, and will be valid and enforceable to the fullest extent permitted by law unless the rights and obligations of the parties have been materially altered or abridged thereby.

XVIII. COUNTERPARTS

This Agreement may be executed in counterparts, each of which will, irrespective of the date of its execution and delivery, be deemed an original, and the counterparts together will constitute one and the same instrument.

XIX. RECITALS INCORPORATED

The above Recitals are true and correct and are incorporated into this Agreement as though fully set forth herein.

XX. TIME OF THE ESSENCE

Time is of the essence in the execution and performance of this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

SIGNATURE PAGE
TO
AGREEMENT REGARDING THE TRANSFER OF RECHARGED RECYCLED WATER

**CITY OF FONTANA,
a California municipal corporation**

**FONTANA WATER COMPANY,
a California corporation**

By: _____
Matthew C. Ballantyne
City Manager

By: _____

Attest:

By: _____
Germaine Key, City Clerk

Approved as to form:

Best Best & Krieger LLP
City Attorney

By: _____
Phillip Burum, Deputy City Manager
Development Services Organization

By: _____
Gia Kim
Public Works Director/City Engineer

IN COMPLIANCE WITH INSURANCE ADMINISTRATION POLICIES/PROCEDURES

By: _____
Rakesha Thomas, Director of
Human Resources and Risk Management

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ before me,
_____, Notary Public, personally
appeared _____, who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ before me,
_____, Notary Public, personally
appeared _____, who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
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WITNESS my hand and official seal.

Signature _____

(Seal)