

EXHIBIT "A"

RETROFIT FINANCING AGREEMENT NO. W1991

between

WEST BASIN MUNICIPAL WATER DISTRICT

and

CITY OF HAWTHORNE

As of November 12, 2008, West Basin Municipal Water District, herein "DISTRICT", and the City of Hawthorne, herein "CUSTOMER", agree as follows:

SECTION 1 – PURPOSE

DISTRICT has constructed a system to distribute recycled water on a wholesale basis. A portion of the recycled water is purchased from DISTRICT by Golden State Water Company (GSWC) at wholesale rates and resold within GSWC's service area in accordance with GSWC rates, rules, and regulations for the sale and distribution of recycled water. CUSTOMER wishes to obtain recycled water for irrigation purposes at Jim Thorpe Park (JTP), located at Prairie and 139th Street, Hawthorne CA. ("CUSTOMER location"), in lieu of the continued purchase of potable water from GSWC. Recycled water cannot be used without improvements (hereinafter "retrofit improvements") to the site irrigation system, which must be installed so that all recycled water use requirements are met. Customer will retain a contractor (herein CONTRACTOR) to install and provide material necessary for retrofit improvements and upgrades needed to convey recycled water within the CUSTOMER's irrigation system. As described herein, DISTRICT will provide CUSTOMER a low interest loan to pay for the cost of the retrofit improvements.

SECTION 2 - DESCRIPTION OF WORK

CUSTOMER shall:

- (a) Perform the retrofit modifications required to convert the JTP irrigation systems to use recycled water.
- (b) Comply with all statutes concerning public works contracts.
- (c) Obtain Los Angeles Department of Public Health (LADPH) approval for the use of recycled water at the CUSTOMER location.
- (d) Complete retrofit modifications and conversion to recycled water use within one year of the commencement of this agreement.
- (e) Provide DISTRICT documentation of retrofit construction cost upon request.

DISTRICT Shall:

- (a) Develop and submit the required retrofit drawings to LADPH.
- (b) Assist the CUSTOMER during the LADPH inspection and approval process.

SECTION 3 – CONSIDERATION

- (a) DISTRICT shall loan CUSTOMER \$100,000 for retrofit improvements at JTP as described in Section 2. DISTRICT shall provide the loan amount prior to the commencement of construction work.
- (b) If the final cost of the retrofit construction is less than \$100,000, CUSTOMER will pay DISTRICT the difference between final cost and \$100,000.00 (to reduce the overall loan amount) within 30 days of connection of the site to the recycled water system.
- (c) Any incentives received by CUSTOMER from the Metropolitan Water District for connection of the SITE to the recycled water system will be paid to DISTRICT to reduce the overall loan amount.
- (d) Annual interest on the loan is 5%, calculated monthly (0.4167% monthly) to start 30 days after receiving the loan.
- (e) CUSTOMER shall make payments of \$4,741.00 to DISTRICT every six months. The sum of two payments is less than the estimated savings generated per year due to implementing the recycled water project. The savings were estimated by using historical water consumption, current water rates, and current monthly meter costs as detailed in the chart provided by DISTRICT (Exhibit A). CUSTOMER will receive first invoice one month after receipt of the loan and every six months thereafter. CUSTOMER shall pay DISTRICT invoices within 45 days of receipt. Payment schedule is detailed in Exhibit B.
- (f) CUSTOMER is responsible for implementing the construction retrofit and any costs remaining to implement the retrofit.
- (g) If the site is not connected to the recycled water system within one year of the date first above written, CUSTOMER shall payback the \$100,000 loan

amount, plus 5% annual interest compounded monthly (.004167 monthly) retroactive to the date of issuance of the loan from the DISTRICT within 30 days of the one (1) year anniversary date of this agreement.

- (h) CUSTOMER can pay loan balance with no penalty.

SECTION 4 – INDEMNIFICATION

CUSTOMER shall hold harmless, defend at its own expense, and indemnify DISTRICT, its officers, employees, and agents against any and all liability, claims, losses, damages, or expenses, including reasonable attorneys' fees, arising from all acts or omissions to act of CUSTOMER or its officers, agents, or employees, including CONTRACTOR, in rendering services under this agreement; excluding, however, such liability, claims, losses, damages, or expenses arising solely from DISTRICT's negligence or willful acts.

SECTION 5 - INSURANCE REQUIREMENTS

(a) The CUSTOMER shall require the CONTRACTOR hired to undertake the retrofit work to procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property arising from or in connection with the performance of the work hereunder by the contractor, its officers, agents, employees, or volunteers.

(b) Said CONTRACTOR shall provide the following coverages:

(1) Commercial General Liability insurance written on an occurrence basis (Insurance Service Office policy form CG 0001 or insurer's equivalent) in the amount of \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. The insurance policy shall be amended to provide that the general aggregate limit shall apply separately to the work under this contract or the general aggregate shall be twice the required per occurrence limit.

(2) Business Automobile Liability insurance insuring all owned, non-owned and hired automobiles - coverage code 1 "any auto" (Insurance Service Office policy form CA 0001 or insurer's equivalent) in the amount of \$1,000,000 combined single limit per accident for bodily injury and property damage.

(3) Workers' Compensation and Employer's Liability Insurance - The

CUSTOMER and all sub-suppliers or sub-contractors shall insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the work site, in accordance with the "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof. The contractor shall provide employer's liability insurance with limits of no less than \$1,000,000 each accident, \$1,000,000 disease policy limit, and \$1,000,000 disease each employee.

(c) The insurance policies required above shall contain or be endorsed to contain the following specific provisions.

(1) Commercial General Liability

(i) The DISTRICT and its Board Members, officers, employees, agents and volunteers, as well as the CUSTOMER and its City Council, employees, agents and volunteers, are added as insureds. Additional insured endorsements shall be provided on Commercial General Liability form ISO 20 10 11 85 (or form ISO 20 10 10 01 accompanied by form ISO 20 37 10 01).

(ii) The CONTRACTOR's insurance shall be primary insurance as respects the DISTRICT, its Board Members, officers, employees, agents and volunteers and any insurance or self insurance maintained by the DISTRICT or CUSTOMER shall be excess of the CONTRACTOR's insurance and shall not contribute to it.

(iii) Any failure to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage under the policy provided to the DISTRICT, its Board Members, officers, employees, agents and volunteers or the CUSTOMER and its City Council, employees, agents and volunteers.

(iv) The policies shall contain a waiver of transfer rights of recovery ("waiver of subrogation") against the DISTRICT, its Board Members, officers, employees, agents and volunteers and the CUSTOMER and its City Council, employees, agents and volunteers for any claims arising out of the work of the contractor.

(v) The policies may provide coverage which contains deductible or self insured retentions. Such deductible and/or self insured retentions shall not be applicable with respect to the coverage provided to the DISTRICT and CUSTOMER under such policies. The CONTRACTOR shall be solely responsible for the deductible and/or self insured retention and the DISTRICT or CUSTOMER may, at their option, require the contractor to secure the payment of such deductible or self insured retentions by a surety

bond or an irrevocable and unconditional letter of credit. The insurance policies that contain deductibles or self insured retentions in excess of \$25,000 per occurrence shall not be acceptable without the prior approval of the DISTRICT and CUSTOMER.

(vi) Prior to start of work under the contract, the CONTRACTOR shall file with the DISTRICT and CUSTOMER evidence of insurance as required above from an insurer or insurers certifying to the required coverage. The coverage shall be evidenced on an ACORD Certificate of Insurance form (latest version) and be signed by an authorized representative of the insurer(s). A copy of form ISO 20 10 11 85 (or form ISO 20 10 10 01 accompanied by form ISO 20 37 10 01) required above shall be attached to the Certificate of Insurance at the time that it is filed with the DISTRICT. Should the required coverage be furnished under more than one policy of insurance, the CONTRACTOR may submit as many certificates of insurance as needed to provide the required amounts. The DISTRICT and CUSTOMER each reserve the right to require certified complete copies of any insurance coverage required by this contract but the receipt of such policy or policies shall not confer responsibility upon the DISTRICT or CUSTOMER as to sufficiency of coverage.

(2) All Coverages:

(i) Each policy required in this Section shall contain a policy cancellation clause that provides that the policy shall not be canceled or otherwise terminated by the insurer or the contractor or reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the DISTRICT, Attention: Project Manager.

(d) All insurance required by this contract shall be placed with insurers licensed by the State of California to transact insurance business of the types required herein. Each insurer shall have a current Best Insurance Guide rating of not less than A:VII unless prior approval is secured from the DISTRICT as to the use of such insurer.

(e) The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. The CONTRACTOR shall maintain evidence of compliance with the insurance requirements by the sub-contractors at the job site and make them available for review by the DISTRICT and CUSTOMER.

SECTION 6 – NOTICES

Notices required or permitted shall be given by personal delivery or by first class mail, postage prepaid, or facsimile transmission.

To: CUSTOMER
City of Hawthorne
Attn: Arnold Shadbehr
4455 West 126th Street
Hawthorne, CA 90250
Phone: (310) 349-2980
Fax: (310) 978-9862

To: DISTRICT
West Basin Municipal Water District
Attn: General Manager
17140 South Avalon Boulevard, Suite 210
Carson, CA 90746-1296
Phone: (310) 217-2411
Fax: (310) 217-2414

SECTION 7 - ATTORNEY'S FEES

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

SECTION 8 – ASSIGNMENT

CUSTOMER shall not assign, sell, or otherwise transfer any obligation or interest in this Agreement without the specific written consent of the DISTRICT.

SECTION 9 - APPLICABLE LAW

This Agreement shall be construed in accordance with and governed by the laws of the State of California.

SECTION 10 – INTEGRATION

This Agreement represents the entire understanding of the parties. No prior oral or written understanding shall be of any force or effect with respect to those matters covered by this Agreement.

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

APPROVED:

WEST BASIN MUNICIPAL WATER DISTRICT

By: _____
Richard Nagel, General Manager

APPROVED AS TO FORM:

By: _____
Lemieux & O'Neill, District Counsel

APPROVED:

CUSTOMER

By: _____
Jag Pathirana, City Manager

APPROVED AS TO FORM:

By: _____
Glen Shishido, City Attorney

ATTEST:

By: _____

Angie Reyes-English, City Clerk

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