

Agenda Number 5.d.

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MEETING DATE: November 6, 2014

AGENDA ITEM: Approval of the Modified Member Service Area Agreement between CAWCD and Metropolitan Domestic Water Improvement District Southwest-Diablo Village

RECOMMENDATION:

Staff recommends that the Board approve the Modified Member Service Area Agreement between CAWCD and Metropolitan Domestic Water Improvement District Southwest-Diablo Village.

FINANCIAL IMPLICATIONS: None

LINKAGE TO STRATEGIC PLAN, POLICY, STATUTE OR GUIDING PRINCIPLE:

- CAWCD Board of Directors 2010 Strategic Plan
 - Replenishment: Water Supply; Long-term Role of the CAGRD
- A.R.S. §48-3780 – Qualifications as a Member Service Area

PREVIOUS BOARD ACTION/ACTIVITY:

On January 9, 2014, the Board approved the Member Service Area Agreement between Central Arizona Water Conservation District and Metropolitan Domestic Water Improvement District Regarding Metropolitan Domestic Water Improvement District Southwest-Diablo Village (Metro Southwest-Diablo Village).

ISSUE SUMMARY/DESCRIPTION:

Metro Southwest-Diablo Village has applied to increase the maximum annual volume that can be reported as Excess Groundwater and to extend its water service area to include Pomegranate Farms subdivision. Simultaneously, they modified their application with Arizona Department of Water Resources (ADWR) to include

Pomegranate Farms subdivision in their designation of assured water supply (Designation) for the Metro Southwest-Diablo Village service area.

Earlier this year, the service area received a Designation from ADWR. The water provider is no longer required to file Annual Reports on behalf of the subdivisions. The member land subdivisions are inactivated, the parcels will not receive the CAGR Special Assessments on their property tax bills, and they will not be required to pay Annual Membership Dues (AMDs). Instead, Metro Southwest-Diablo Village will receive an Annual Replenishment Tax bill and will pay AMDs as a Member Service Area.

Attached is the proposed Member Service Area Agreement between CAWCD and Metropolitan Domestic Water Improvement District Southwest - Diablo Village. As we have done for all Member Service Areas that have enrolled in the CAGR since approximately 2001, we are including a provision in the Agreement that establishes a maximum volume that can be reported as Excess Groundwater in any year. Paragraph 1.7.2 of the Agreement establishes the maximum annual volume of 4,144 acre-feet for the Metro Southwest-Diablo Village service area.

SUGGESTED MOTION:

I move that the Board of Directors approve the Modified Member Service Area Agreement between CAWCD and Metropolitan Domestic Water Improvement District Southwest-Diablo Village.

Attachment.

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Attachment.**

**MEMBER SERVICE AREA AGREEMENT
BETWEEN CENTRAL ARIZONA WATER CONSERVATION DISTRICT
AND
METROPOLITAN DOMESTIC WATER IMPROVEMENT DISTRICT REGARDING
METROPOLITAN DOMESTIC WATER IMPROVEMENT DISTRICT
SOUTHWEST-DIABLO VILLAGE**

This Member Service Area Agreement is made this ____ day of _____, 2014, between the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and Metropolitan Domestic Water Improvement District of Pima County, Arizona.

RECITALS

- A. The Municipal Provider provides water utility service within the Service Area.
- B. On January 9, 2014, the Municipal Provider and CAWCD executed the Member Service Area Agreement between Central Arizona Water Conservation District and Metropolitan Domestic Water Improvement District, a political subdivision of the State of Arizona.
- C. The Municipal Provider obtained a designation of assured water supply for its service area in February 2014, DWR designation #26-700761.0000.
- D. The Original Agreement limits the volume of Excess Groundwater that the Municipal Provider can deliver in a calendar year to 2,725.81 acre-feet. The Municipal Provider desires to increase this limit, and CAWCD is willing to amend the Original Agreement to do so.
- E. Because the Municipal Provider desires to amend the Original Agreement to increase the volume of Excess Groundwater that it may deliver, the Municipal Provider and CAWCD desire to amend the Original Agreement. The Parties intend that these amended Agreements will supersede and replace the Original Agreement.
- F. Article 7.3 of the Original Agreement provides that it may be amended by the express written agreement of CAWCD and the Municipal Provider.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, and intending to be legally bound, the parties hereby agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 "AGREEMENT" means this Member Service Area Agreement Between CAWCD and Metropolitan Domestic Water Improvement District Southwest-Diablo Village, as amended from time to time.

1.2 "AMA" means the Active Management Area as defined Arizona Revised Statutes § 45-402(2).

1.3 "ANNUAL MEMBERSHIP DUES" means the charge established annually by CAWCD pursuant to Arizona Revised Statutes § 48-3779.

1.4 "CAWCD" means the Central Arizona Water Conservation District, a political subdivision of the State of Arizona, and any successor political subdivision.

1.5 "DEPARTMENT" means the Arizona Department of Water Resources, an agency of the State of Arizona, and any successor agency.

1.6 "DIRECTOR" means the director of the Department.

1.7 "EXCESS GROUNDWATER" means the amount of Groundwater equal to the amount of Groundwater delivered by the Municipal Provider within the Service Area in a calendar year in excess of the amount of Groundwater that may be delivered by the Municipal Provider for use within the Service Area in that calendar year consistent with the applicable Assured and Adequate Water Supply Rules adopted by the Department for the Tucson Active Management Area pursuant to Arizona Revised Statutes § 45-576(H), subject to the following conditions:

1.7.1 In no event shall the amount of Excess Groundwater delivered by the Municipal Provider in a calendar year be less than the amount of Excess Groundwater calculated in accordance with Paragraph 2.4; and

1.7.2 Notwithstanding the minimum reporting requirements of Paragraph 2.4, the amount of Excess Groundwater delivered by the Municipal Provider in a calendar year shall not exceed 4,144 acre-feet.

1.8 "GROUNDWATER" is as defined in Arizona Revised Statutes § 45-101(5).

1.9 "GROUNDWATER REPLENISHMENT STATUTE" means Arizona Revised Statutes, Title 48, Chapter 22.

1.10 "MEMBER SERVICE AREA" is as defined in Arizona Revised Statutes § 48-3701(11).

1.11 "MUNICIPAL PROVIDER" means Metropolitan Domestic Water Improvement District Southwest-Diablo Village, and its successors and assigns.

1.12 "REPORT(S)" means the report(s) required to be prepared by the Municipal Provider in accordance with Arizona Revised Statutes § 48-3775(B) and this Agreement.

1.13 "REPLENISHMENT RESERVE CHARGE" means the charge established annually by CAWCD pursuant to Arizona Revised Statutes § 48-3772(E) and included in the Replenishment Tax.

1.14 "REPLENISHMENT RESERVE FEE" means the fee that must be levied by CAWCD pursuant to Arizona Revised Statutes § 48-3780.01. The fee is equal to twice the Replenishment Reserve Charge multiplied by the Excess Groundwater Increment as defined in Arizona Revised Statutes § 48-3701.

1.15 "REPLENISHMENT TAX" means the annual tax levied by CAWCD against the Municipal Provider in a calendar year based on the Service Area Replenishment Obligation.

1.16 "RESOLUTION" means the Resolution of Metropolitan Domestic Water Improvement District regarding Membership in the Central Arizona Groundwater Replenishment District (Metropolitan Domestic Water Improvement District Southwest-Diablo Village).

1.17 "SERVICE AREA" means the service area depicted in Exhibit A, attached and incorporated into this Agreement, and any additions to and extensions of the Service Area.

1.18 "SERVICE AREA REPLENISHMENT OBLIGATION" means, with respect to the Service Area, the Excess Groundwater of the Service Area in a particular calendar year reduced by the replenishment credits, if any, applied by the Municipal Provider with respect to the Service Area under Arizona Revised Statutes § 48-3772(H).

ARTICLE 2 REPORTING REQUIREMENTS

2.1 Annual Reports. In accordance with Arizona Revised Statutes § 48-3775(B), on or before March 31 of each year after the publication of the Resolution, the Municipal Provider shall file a Report with CAWCD and with the Director that contains the following information for the preceding calendar year, which is the reporting year:

2.1.1 The amount of Groundwater delivered by the Municipal Provider to all customers within the Service Area, and the basis for the calculation of the amount of Groundwater delivered.

2.1.2 The amount of Excess Groundwater delivered by the Municipal Provider to all customers within the Service Area, and the basis for the calculation of the amount of Excess Groundwater delivered.

2.1.3 Such other information as CAWCD may reasonably require.

2.2 Records. In accordance with Arizona Revised Statutes § 48-3775(F), the Municipal Provider shall maintain current and accurate records of the information required to be included in the Reports.

2.3 Form of Reports. In accordance with Arizona Revised Statutes § 48-3777, CAWCD shall determine the form of the Reports to be submitted by the Municipal Provider in order to carry out the purposes of the Groundwater Replenishment Statute.

2.4 Formula for Calculating the Minimum Volume of Excess Groundwater. Except as provided in Paragraph 1.7.2, the Municipal Provider shall report a minimum volume of the Groundwater delivered by the Municipal Provider within the Service Area as Excess Groundwater delivered by the Municipal Provider to all customers within the Service Area in each year during the term of this Agreement. The formula for calculating this minimum volume is as follows:

$$(GW - IR) \times 2/3 = \text{Minimum volume of Groundwater delivered to be reported as Excess Groundwater}$$

Where: GW = Groundwater delivered by the Municipal Provider within the Service Area during the preceding year, which is the reporting year

IR = The volume of incidental recharge awarded to the Municipal Provider for the reporting year as calculated by the Director in accordance with the Assured and Adequate Water Supply Rules adopted by the Department for the Tucson Active Management Area pursuant to Arizona Revised Statutes § 45-576(H)

ARTICLE 3 REPLENISHMENT TAX, REPLENISHMENT RESERVE FEE AND ANNUAL MEMBERSHIP DUES

3.1 Levy of Replenishment Tax and Replenishment Reserve Fee. CAWCD shall levy the Replenishment Tax and any Replenishment Reserve Fee due against the Municipal Provider in accordance with Arizona Revised Statutes § 48-3781.

3.2 Levy of Annual Membership Dues. CAWCD shall levy the Annual Membership Dues in accordance with Arizona Revised Statutes § 48-3779, and the Municipal Provider shall pay the Annual Membership Dues in accordance with Arizona Revised Statutes § 48-3779.

3.3 Annual Statement. On or before the third Monday of August of each year after the publication of the Resolution, CAWCD will transmit a statement to the Municipal Provider stating the amount of the annual Replenishment Tax, including the annual Replenishment Reserve Charge, the Replenishment Reserve Fee, and the Annual Membership Dues. The annual Replenishment Tax shall be equal to the assessment rate per acre-foot of Groundwater fixed by CAWCD for the Tucson Active Management Area, including any applicable Replenishment Reserve Charge, multiplied by the Service Area Replenishment Obligation. The Replenishment Reserve Fee shall be computed as provided in Arizona Revised Statutes §

48-3772(E). The Annual Membership shall be computed as provided in Arizona Revised Statutes § 48-3779.

3.4 Payment of Replenishment Tax, Replenishment Reserve Fee and Annual Membership Dues. On or before October 15 of each year after the publication of the Resolution, the Municipal Provider shall pay to CAWCD an amount equal to the annual Replenishment Tax, the Replenishment Reserve Fee, the Annual Membership Dues, and any fee for membership levied by CAWCD.

3.5 Interest, Cost and Penalties. If the Replenishment Tax, the Replenishment Reserve Fee and Annual Membership Dues are not paid when due, CAWCD will be entitled to interest, costs and penalties as provided by Arizona Revised Statutes § 48-3782.

ARTICLE 4 ENFORCEMENT POWERS

4.1 Penalty for Failure to Report. If the Municipal Provider fails to timely file a Report as required by CAWCD, CAWCD may assess a penalty in accordance with Arizona Revised Statutes § 48-3775(G).

4.2 Inspections, Investigations and Audits. The CAWCD has the rights provided under Arizona Revised Statutes § 48-3783 with respect to inspections, investigations and audits.

ARTICLE 5 DEFAULT AND REMEDIES

5.1 Default. The occurrence of any of the following events constitutes an event of default by the Municipal Provider:

5.1.1 The failure of the Municipal Provider to perform any term, covenant or condition of this Agreement, if that failure continues for thirty days following the Municipal Provider's receipt of written notice from CAWCD.

5.1.2 (i) The filing by or against the Municipal Provider of a petition to have the Municipal Provider adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against the Municipal Provider, the same is dismissed within 60 days); (ii) the making by the Municipal Provider of any general assignment for the benefit of creditors; (iii) the appointment of a trustee or receiver to take possession of substantially all of the Municipal Provider's assets, when possession is not restored to the Municipal Provider within 60 days; or (iv) the attachment, execution or other judicial seizure of substantially all of the Municipal Provider's assets, where such seizure is not discharged within 60 days.

5.2 Remedies. If an event of default occurs, CAWCD may immediately terminate this Agreement by written notice to the Municipal Provider and/or may pursue any other rights

available to it in law or equity. The Municipal Provider's obligation to pay any amounts due but unpaid as of the date of termination shall survive termination of this Agreement.

ARTICLE 6 GENERAL PROVISIONS

6.1 Binding Effect. The provisions of this Agreement inure to the benefit of and bind the respective successors and assigns of the parties hereto, provided that no assignment or transfer of this Agreement or any part or interest herein is valid until approved by CAWCD in its sole and absolute discretion.

6.1.1 The Municipal Provider agrees and covenants to CAWCD to execute and record any additional documentation which CAWCD may reasonably require to effectuate the intents and purposes of this Agreement and the Groundwater Replenishment Statute.

6.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties and no understandings or obligations not expressly set forth in this Agreement are binding upon the parties.

6.3 Amendments. This Agreement may be modified, amended or revoked only (i) by the express written agreement of the parties hereto with concurrence by the Department; or (ii) by amendment statutes, rules or regulations or successor statutes, rules or regulations, as contemplated by Paragraph 6.5. Notwithstanding the foregoing, this Agreement may be terminated pursuant to the provisions of A.R.S. § 48-3780(B).

6.4 Interpretation. This Agreement is governed by and must be construed and Interpreted in accordance with and in reference to the laws of the State of Arizona, including but not limited to the Groundwater Replenishment Statute.

6.5 Rules, Regulations and Successor Statutes. All references in this Agreement to Arizona Revised Statutes include all rules and regulations promulgated by the Department under such statutes and all amendments and successor statutes, rules and regulations to such statutes, rules and regulations.

6.6 Additions to and Extensions of the Service Area. The Municipal Provider shall notify CAWCD in writing of its intent to add to or extend its service area. Such notice shall be provided to CAWCD before final action is taken regarding an addition to or extension of the Service Area. Within 60 days of any action which adds to or extends the Service Area, the Municipal Provider shall submit an amended Service Area map to CAWCD.

6.7 Severability. Any determination by any court of competent jurisdiction that any provision of this Agreement is invalid or unenforceable does not affect the validity or enforceability of any other provision of this Agreement.

6.8 Captions. All captions, titles or headings in this Agreement are used for the purpose of reference and convenience only and do not limit, modify or otherwise affect any of the provisions of this Agreement.

6.9 Notices. Except as otherwise required by law, any notice given in connection with this Agreement must be in writing and must be given by personal delivery, overnight delivery, facsimile, or United States certified or registered mail. Any such notice must be addressed to the appropriate party at the following address (or at any other address as a party may hereafter designate by written notice given as required by this paragraph):

CAWCD:
For delivery use: Central Arizona Water Conservation District
23636 North 7th Street
Phoenix, Arizona 85024
Attn: Manager, Groundwater Replenishment District

For U.S. Mail use: Central Arizona Water Conservation District
P.O. 43020
Phoenix, Arizona 85080-3020
Attn: Manager, Groundwater Replenishment District

Municipal Provider: Metropolitan Domestic Water Improvement District
PO Box 36870
Tucson, Arizona 85740

Notice is deemed to have been given on the date on which notice is personally delivered, delivered to an overnight delivery service, transmitted by facsimile, or mailed. Notice is deemed to have been received on the date on which the notice is actually received or delivery is refused.

IN WITNESS WHEREOF, the Parties to this Agreement have executed this Agreement as of the date first set forth above.

CAWCD: CENTRAL ARIZONA WATER CONSERVATION DISTRICT

By: _____
Pamela Pickard

Its: President

ATTEST:

Lisa Atkins, Secretary

MUNICIPAL
PROVIDER:

METROPOLITAN DOMESTIC WATER IMPROVEMENT
DISTRICT OF PIMA COUNTY, ARIZONA

By: _____
Judy Scrivener

Its: Chair, Board of Directors

ATTEST:

Clerk

APPROVED AS TO FORM:

Legal Counsel

080.03

EXHIBIT A SERVICE AREA MAP

