



AGREEMENT NO. 75347

FY 2007-2015

THE CITY OF SAN MARINO

WATER CONSERVATION FUNDING AGREEMENT

BETWEEN

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

AND

THE CITY OF SAN MARINO

AGREEMENT NO. 75347

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AND

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TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
Recitals.....	1
Section 1: Project Description	2
Section 2: Agreement Term.....	2
Section 3: Agreement Administrators.....	2
Section 4: Written Notice.....	3
Section 5: Responsibility and Ownership.....	3
Section 6: Funding.....	4
Section 7: Installation Verification.....	4
Section 8: Invoicing Requirements.....	5
Section 9: Incentive Payment.....	5
Section 10: Rate Structure	5
Section 11: Other Terms	7
Exhibits	
Exhibit A: Metropolitan’s Incentives	Exhibit E HECW Agreement No. 4600004214
Exhibit B: Item Database Information	Exhibit F: HECW Allocation
Exhibit C: Conservation Credit Invoice	Exhibit G: Supplemental Purchase Specification
Exhibit D: WBIC Agreement No. 4600003098	Exhibit H: California Friendly Model Home Program

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BETWEEN

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
AND

THE CITY OF SAN MARINO

THIS AGREEMENT (Agreement) is made and entered into as of July 1, 2006, by and between The Metropolitan Water District of Southern California (Metropolitan) and the City of San Marino (San Marino). Metropolitan and San Marino may be collectively referred to as "Parties" and individually as "Party."

Recitals

- A. Metropolitan, through its Conservation Credits Program (Program), assists member agencies in conserving water supplies. The Program was established per authorization detailed in Board Letter No. 7-7 in May 1990 and subsequent authorizations there after. Pursuant to those Board authorizations, Metropolitan established funding for a number of water conservation items shown in Exhibit A, which is attached hereto and incorporated herein by this reference;
- B. San Marino, a Metropolitan Member Agency, elects to participate in Metropolitan's Program to replace non-conserving items within its service area;
- C. Metropolitan expects, in the future, by addendum to this Agreement, to establish funding for additional water conservation items and to change some or all of the existing funding rates;
- D. Metropolitan has fiscal responsibility to manage its budget, and hence may have a need to limit availability of funds;
- E. Metropolitan actively pursues grants and other outside funding to increase the incentive funding amount per item and if obtained, allocates and passes these funds to its Member Agencies; and
- F. Metropolitan currently has several grants, with the Department of Water Resources (DWR), that are incorporated into this Agreement. The following Exhibits, which are attached hereto and incorporated herein by this reference, incorporate those grant agreements and allocations: Exhibit A-Metropolitan Incentives, Exhibit B-Database Information for Incentive Programs, Exhibit C-Conservation Credit Invoice, Exhibit D-

DWR Weather-Based Irrigation Controller (WBIC) grant agreement, Exhibit E –DWR High-Efficiency Clothes Washer (HECW) grant agreement, and Exhibit F-Prop. 50 HECW allocation.

- G. As of July 1, 2006, Metropolitan will only fund ultra-low flush toilets (ULFT's) that meet requirements in Exhibit G-Supplemental Purchase Specification (SPS). The SPS was developed by the Los Angeles Department of Water and Power to be used to establish a higher standard for ULFT's. Beginning January 1, 2009 Metropolitan will cease funding for ULFTs and will only fund High-Efficiency Toilets (HETs).

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, the Parties do agree as follows:

Section 1: Project Description

This Agreement combines all conservation programs into one agreement and provides incentives to Metropolitan's Member Agencies. Addendums to this agreement will be issued for changes involving Board approved items, grant funding, and changes to incentive programs including funding and incentive levels.

Section 2: Agreement Term

- 2.1 This Agreement will be effective on July 1, 2006 or upon execution of this Agreement by all Parties, whichever is later. San Marino will complete all item installations, distributions, vouchers, or rebates by June 30, 2015, and provide all final invoicing and verification to Metropolitan by August 15, 2015, or within 45 days after termination, whichever occurs first (Term). Continuance of this Agreement will be subject to annual budget approval by Metropolitan's Board.
- 2.2 This Agreement may be amended at any time by written mutual agreement executed by both of the Parties, or by Addendums issued by Metropolitan, as set forth in Section 1.
- 2.3 This Agreement may be terminated by either Party for any reason 30 days after written notice to the other Party as provided in Section 4. Such termination could occur if the funding mechanism for conservation programs is changed as a result of action by Metropolitan's Board.
- 2.4 Upon termination, San Marino shall provide Metropolitan with complete documentation for remaining items covered under this Agreement and invoiced as provided in Sections 8 and 9.

Section 3: Agreement Administrators

- 3.1 Ms. Maria Biel is appointed Agreement Administrator for Metropolitan for the purpose of administering this Agreement and making any decisions in connection therewith on behalf of Metropolitan. Ms. Beverly Hori is appointed Agreement Administrator for San Marino for the purpose of administering this Agreement and making any decisions in connection therewith on behalf of San Marino. The designated Agreement

Administrators may be changed by providing written notice to the other Party as outlined in Section 4.

Section 4: Written Notice

- 4.1 Any communication required to administer this Agreement shall be in writing and will be deemed received upon personal delivery or 48 hours after deposit in any United States mail depository, first class postage prepaid, and addressed to the Party for whom intended, as follows:

If to Metropolitan: The Metropolitan Water District of Southern California
Post Office Box 54153
Los Angeles, CA 90054-0153

Attention: Ms. Maria Biel

If to San Marino: The City of San Marino
2020 Huntington Drive
San Marino, CA 91108

Attention: Ms. Beverly Hori

Either Party may change such address by giving notice to the other Party as provided herein.

Section 5: Responsibility and Ownership

- 5.1 San Marino, at its sole discretion, may independently contract with its own agents under separate agreements for Project administration and management, provided they present no conflict of interest in Project performance or with the terms of this Agreement.
- 5.2 San Marino and/or its agent shall provide all necessary services and materials for the Project including, but not limited to, the following: program administration, promotion, marketing materials, data collection, analysis, and reporting.
- 5.3 All materials and supplies necessary to implement the Project shall be the exclusive property of San Marino. Metropolitan shall have no ownership, right, title, security interest, or other interest in any Project facilities, materials, or supplies, nor any rights, duties, responsibilities for operation or maintenance thereof.
- 5.4 San Marino is responsible for assuring that the Project complies with all federal, state, and local requirements.
- 5.5 San Marino is solely responsible for the performance of its staff or representatives in complying with the terms of this Agreement and for the proper allocation of funds provided by Metropolitan for the purpose of achieving water conservation savings under this Agreement.

- 5.6 San Marino agrees to cooperate with Metropolitan's data management activities related to assessing device saturation and program success.
- 5.7 As part of the Project, San Marino shall use and maintain an electronic database similar to the format shown in Exhibit B for any conservation items installed, distributed, vouchered, or rebated by San Marino or its agents, to avoid duplicate distributions and to determine the saturation rate of items by the appropriate geographic delineation.

Section 6: Funding

- 6.1 Incentives are limited by Board policy to \$195 per acre-foot of water saved, up to the full cost of the device. If at any time during this Agreement Metropolitan determines that the cost of any particular device falls below the incentive level, Metropolitan shall adjust the incentive accordingly per Board policy.
- 6.2 Metropolitan is funding the pilot demonstration project California Friendly Model Home Rebate Program to promote interest in new water-efficient features for the home. Exhibit H, which is attached is Metropolitan's pre-approval form for this program.
- 6.3 Metropolitan funding shall be in the form of a conservation credit on Metropolitan's water service invoice to San Marino. In recognition of receiving these incentives, San Marino pledges to increase efforts to achieve landscape and commercial conservation, and support these programs through local cost share. Metropolitan's financial obligation for funding will be for the time period specified and/or until funds are exhausted on that item. To the extent Metropolitan's Board determines not to fund one or more items listed on Exhibit A, Metropolitan will issue an addendum to Exhibit A to adjust funding rate(s).
- 6.4 If Metropolitan secures additional funding from outside sources for one or more items, an addendum will be issued from Metropolitan. Metropolitan will notify San Marino of outside funding status and should outside funding run out, Metropolitan's funding commitment will revert to the current Board approved amount. Metropolitan may issue allocations or deploy other administrative actions to ensure that grant limits are not over spent. The funding amounts listed on Exhibit A are modified from time to time by addendums. San Marino shall be responsible for all costs in excess of those listed on Exhibit A of the addendums.

Section 7: Installation Verification

- 7.1 San Marino shall be responsible for selecting a method to verify installation of items installed, distributed, vouchered, and/or rebated by San Marino or its agents during the Project and for paying all costs associated with this verification. San Marino shall inform Metropolitan of methodology used and document verification activities in the database.
- 7.2 Metropolitan will accept San Marino's certification on the number of items installed and verified to calculate Metropolitan's credit to San Marino, subject to the provisions of Section 11 of this Agreement.

- 7.3 For informational purposes only, Metropolitan reserves the right to conduct installation verification of items within San Marino's service area.

Section 8: Invoicing Requirements

- 8.1 San Marino shall provide Metropolitan monthly invoices for all items installed, distributed, vouchered, and/or rebated by San Marino or its agent. Exhibit C is a sample invoice. The sample invoice can be modified for use with any item listed in Exhibit A. Invoices are due on the 15th of each month. The invoice shall be signed by San Marino's General Manager or designee certifying the number of items installed and verified as specified in Section 7. If San Marino's General Manager delegates authority to a designee, San Marino shall notify Metropolitan of the designee in writing prior to the next billing period as outlined in Section 4.
- 8.2 Upon receipt and approval of San Marino's invoice, Metropolitan will issue a credit on Metropolitan's next water service invoice to San Marino.

Section 9: Incentive Payment

- 9.1 To receive Metropolitan's incentives, San Marino must submit to Metropolitan database information on all items installed, distributed, vouchered, and/or rebated by San Marino with that month's invoice.
- 9.2 Metropolitan and San Marino or its agent agree to provide data and information as required by the other Party to implement Project and evaluate Project implementation, costs, and water savings. Metropolitan and San Marino will make available for inspection to the other Party, upon reasonable advance notice, all records, books, computer files, and other documents relating to Project. Such documents shall be available for inspection for a period of three years following Agreement termination. If Metropolitan or any other public entity with jurisdiction conducts an audit and determines that any invoice is in error, funds will either be credited or debited by Metropolitan on the next water service invoice in accordance with the findings.

Section 10: Rate Structure

- 10.1 San Marino agrees and understands that Metropolitan's rate structure as of January 1, 2006 ("Existing Rate Structure") provides the revenue necessary to support the development of new water supplies by local agencies through incentive payments in the Local Resources Program (LRP), Conservation Credits Program (CCP), and the Seawater Desalination Program (SDP). In particular, the Water Stewardship Rate is the component of Existing Rate Structure that provides revenue for the LRP, CCP and SDP. Further, San Marino acknowledges that Existing Rate Structure and all components within that rate structure were developed with extensive public input and member agency participation, and that the elements of Existing Rate Structure have been properly adopted in accordance with Metropolitan's rules and regulations.
- 10.2 (a) San Marino agrees that Metropolitan's rates set under the Existing Rate Structure may be reset throughout the term of this Agreement to account for the cost of

service, and that San Marino will address any and all future issues, concerns and disputes relating to Existing Rate Structure, through administrative opportunities available to them pursuant to Metropolitan's public board process. As such, San Marino agrees if they file or participate in litigation or support legislation to challenge or modify Existing Rate Structure, including changes in overall rates and charges that are consistent with the current cost-of-service methodology, Metropolitan may initiate termination of this agreement consistent with Paragraph 10.4 below. Metropolitan agrees that any change in Existing Rate Structure, including changes in cost-of-service philosophy or methodology would be enacted only after collaboration and discussion with its member public agencies, and Metropolitan's public board review and approval process.

- (b) Notwithstanding the foregoing, San Marino retains the right to file and/or participate in litigation and/or to support legislation without triggering the termination of this agreement if there are material changes to Existing Rate Structure or changes in cost-of-service methodology used to set rates by future Metropolitan board action. San Marino also retains the right to file and/or support litigation should Metropolitan, in setting rates under Existing Rate Structure, fail to comply with public notice, open meeting, or other legal requirements associated with the process of setting water rates and related taxes, fees, and charges. San Marino agrees that they will not file or participate in litigation, nor will they support legislation affecting Metropolitan's rate structure after any such change in rate structure or violation of the law regarding rate setting processes until, and unless, they have exhausted all administrative opportunities available to them pursuant to Metropolitan's public board process.

10.3 San Marino agrees that all users of the Metropolitan conveyance and distribution system should support the LRP, CCP, and SDP, that such projects provide benefits to Metropolitan and the users of the system by making existing distribution and conveyance capacity available for additional delivery, and that under Existing Rate Structure, the Water Stewardship Rate is an element of charges properly adopted by the Metropolitan Board and properly applied to water wheeled through the Metropolitan conveyance and distribution system.

10.4 Should San Marino file or support litigation, or sponsor or support legislation, that would challenge or be adverse to Existing Rate Structure, as described in paragraph (a) of Section 10.2, Metropolitan's General Manager may file a 90-day notice of intent to terminate this Agreement with Metropolitan's Executive Secretary, with copies to all members of Metropolitan's Board of Directors, and contemporaneously provide San Marino with a copy of the notice. Within 30 days of receipt of such notice, San Marino shall have the right to request, in writing, mediation of the dispute by a neutral third party with expertise in finance and rate setting. The mediator shall be selected by agreement of the parties, or failing agreement within 60 days of such request for mediation, a mediator shall be selected by the Metropolitan Board of Directors from a list of at least four candidates, one each from San Marino, and two of which will be supplied by Metropolitan's General Manager. The costs of the mediation shall be borne equally by the parties. The request for mediation shall also serve to stay the 90-day notice of intent

to terminate, but for no more than 90 days beyond the filing of the notice of request for mediation, unless otherwise agreed in writing by the parties. If mediation does not result in an agreement acceptable to each party to this Agreement within the time provided herein, the notice of intent to terminate shall be reinstated. The Metropolitan Board of Directors shall act to approve or disapprove termination of this Agreement, and all of Metropolitan's obligations hereunder shall terminate if approved, on or before the ninetieth day following filing of the notice to terminate or, if mediation has been requested as described above, the ninetieth day following the request for mediation (or other date agreed in writing by the parties.)

- 10.5 Metropolitan and San Marino agree that should litigation or legislation brought forth or sponsored by third parties result in changes to Existing Rate Structure, this Agreement will continue in effect unless mutually agreed in writing by the parties.
- 10.6 Should Metropolitan and its member agencies agree on an alternative rate and revenue structure that obviates the need for this section on Rate Structure Integrity, this section shall be amended or deleted to conform to such action.

Section 11: Other Terms

- 11.1 Metropolitan and San Marino agree that each party shall be responsible for its own actions, and the actions of its officers, employees and agents, in performing services under this Agreement. Metropolitan and San Marino each agree to indemnify and hold the other Party and its officers and agents harmless and agree to defend the other Party against any claim or asserted liability arising out of its actions, either willful or negligent, or the actions of its officers, employees and agents, in performing services pursuant to this Agreement. Such indemnity will include any losses relating to any claim made, whether or not a court action is filed, and will include attorney fees and administrative and overhead costs related to or arising out of such claim or asserted liability.
- 11.2 San Marino shall include the following language in its agreement with any consultant or contractor retained by San Marino to work on the Project: "(Consultant) agrees at its sole cost and expense to protect, indemnify, defend, and hold harmless Metropolitan and its Board of Directors, officers, representatives, agents and employees from and against any and all claims and liability of any kind (including, but not limited to, any claims or liability for injury or death to any person, damage to property, natural resources or to the environment, or water quality problems) that arise out of or relate to San Marino's approval, construction, operation, repair or ownership of the Project. Such indemnity shall include all damages and losses related to any claim made, whether or not a court action is filed, and shall include attorneys fees, administrative and overhead costs, engineering and consulting fees and all other costs related to or arising out of such claim or asserted liability."
- 11.3 San Marino is solely responsible for any such actions arising under the California Environmental Quality Act (Pub.Res.Code §21000 et seq.).

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

APPROVED AS TO FORM:

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Sydney B. Bennion
Acting General Counsel

Jeffrey Kightlinger
General Manager

By: _____
Senior Deputy
General Counsel

By: _____
Stephen N. Arakawa, Manager
Water Resource Management

Date: _____
5/19/06

Date: _____
5/12/06

APPROVED AS TO FORM:

THE CITY OF SAN MARINO

By: _____

By: _____
Benjamin Lewis Jr.
Director of Network Operations

Date: _____

Date: _____
4/17/06

In Duplicate

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FIRST AMENDMENT

TO THE WATER CONSERVATION FUNDING AGREEMENT NO. 75347
BETWEEN
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
AND
CITY OF SAN MARINO

There is now in effect a Water Conservation Funding Agreement between The Metropolitan Water District of Southern California (Metropolitan) and the City of San Marino (San Marino) entered into as of July 1, 2006, hereinafter referred to as Agreement.

WHEREAS, under this Agreement Metropolitan assists member agencies in implementing a variety of water conservation measures, which includes providing funding to retrofit devices with more efficient models.

WHEREAS, Metropolitan's Board approved the Region-wide Residential Conservation Program in July 2007, which San Marino can participate pursuant to this First Amendment.

WHEREAS, Metropolitan entered into an agreement with the Electric & Gas Industries Association to administer Metropolitan's Region-wide Residential Conservation Program.

THEREFORE, the parties desire to amend the Agreement with this First Amendment as follows:

1. San Marino agrees to participate in Metropolitan's Region-wide Residential Conservation Program administered by the Electric & Gas Industries Association. Eligible device incentives under Metropolitan's Region-wide Residential Conservation Program are listed in Exhibit O-1.

2. Prior to participation by San Marino customers, San Marino shall submit to Metropolitan an executed copy of Exhibit O-2 acknowledging specific devices for participation under Metropolitan's Region-wide Residential Conservation Program. San Marino may revise Exhibit O-2 at any time during the course of the Agreement by resubmitting an executed copy of Exhibit O-2.
3. San Marino may supplement Metropolitan's incentives under the Region-wide Program by submitting to Metropolitan an executed copy of Exhibit O-3, indicating amount of funding to be added for each device and specified period as applicable. San Marino may revise Exhibit O-3 at any time during the course of the Agreement by resubmitting an executed copy of Exhibit O-3.
4. In addition to participating in the Region-wide Residential Conservation Program, San Marino may separately administer its own programs to receive Metropolitan's incentive in compliance with Agreement terms. If San Marino administers its own residential conservation program, the following shall be provided to Metropolitan within 30 days if requested:
 - a. A database that includes pertinent customer and retrofitted device information for grant-funded items.
 - b. Documentation of San Marino's rebate approval process and supporting materials such as program application, copies of receipts, etc.
5. The Residential Region-wide Conservation Program is effective July 10, 2007.

Attachments: **Region-wide Residential Conservation Program**
Exhibit O-1 Eligible Devices;
Exhibit O-2 Device Participation;
Exhibit O-3 Member Agency Supplemental Funding

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment to the Water Conservation Funding Agreement.

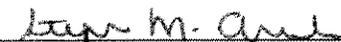
APPROVED AS TO FORM:

Karen L. Tachiki
General Counsel

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Jeffrey Kightlinger
General Manager

By: 
Setha E. Schlang
Senior Deputy General Counsel

By: 
Stephen N. Arakawa, Manager
Water Resource Management

Date: 9/30/08

Date: 10/1/08

APPROVED AS TO FORM:

CITY OF SAN MARINO

By: _____

By: 
Matthew Ballantyne
City Manager

Date: _____

Date: 9.22.08

In triplicate
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Exhibit O-1

REGION-WIDE RESIDENTIAL CONSERVATION PROGRAM**ELIGIBLE DEVICES**

DEVICE/ITEM <i>SUBJECT TO BE ADDED/DELETED</i>	METROPOLITAN INCENTIVE
High-Efficiency Toilet (HET) <i>(Maximum of 1.28 gallons per flush; replacing 3.0 gallons per flush or greater)</i>	\$165.00
HET Upgrade <i>(Maximum of 1.28 gallons per flush; replacing ULFT 1.6 gallons per flush or greater into a new home)</i>	\$ 30.00
High Efficiency Clothes Washers (HECW) <i>(Requires a water of 5.0 or less)</i>	\$85.00
High Efficiency Clothes Washers (HECW) - using grant funds <i>(Requires a water of 5.0 or less)</i>	\$110.00
Weather Based Irrigation Controller (WBIC) <i>(less than one irrigated acre up to 12 stations)</i> <i>(Must be tested for a list of qualifying devices refer to www.Irrigation.org, Swat Controller Reports, Performance Reports)</i>	\$ 80.00
More than 12 stations	\$ 6.50 (per station)
Weather Based Irrigation Controller (WBIC) <i>(one irrigated acre or larger)</i>	\$630.00 (per acre)
Rotating Nozzles <i>(one time rebate per address)</i>	\$ 4.00

Note: All other devices must be administered and funded by each Member Agency.

Exhibit O-2

REGION-WIDE RESIDENTIAL CONSERVATION PROGRAM
DEVICE PARTICIPATION

DEVICE/ITEM SUBJECT TO BE ADDED/DELETED	REGION-WIDE PROGRAM	LOCAL PROGRAM
High-Efficiency Toilet (HET) <i>(Maximum of 1.28 gallons per flush; replacing 3.0 gallons per flush or greater)</i>	<input type="checkbox"/>	<input type="checkbox"/>
HET Upgrade <i>(Maximum of 1.28 gallons per flush; replacing ULFT 1.6 gallons per flush or greater into a new home)</i>	<input type="checkbox"/>	<input type="checkbox"/>
High Efficiency Clothes Washers (HECW) - using grant funds <i>(Requires a water of 5.0 or less)</i>	<input type="checkbox"/>	<input type="checkbox"/>
Weather Based Irrigation Controller (WBIC) <i>(less than one irrigated acre up to 12 stations)</i> <i>(Must be tested for a list of qualifying devices refer to www.Irrigation.org, Swat Controller Reports, Performance Reports)</i>	<input type="checkbox"/>	<input type="checkbox"/>
Weather Based Irrigation Controller (WBIC) <i>(one irrigated acre or larger)</i>	<input type="checkbox"/>	<input type="checkbox"/>
Rotating Nozzles <i>(one time rebate per address)</i>	<input type="checkbox"/>	<input type="checkbox"/>

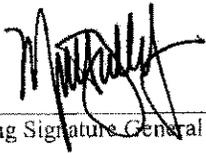
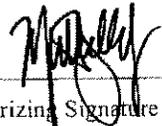
Device Participation	
 _____ Authorizing Signature General Manager/Designee	9.22.08 _____ Date

Exhibit O-3

REGION-WIDE RESIDENTIAL CONSERVATION PROGRAM

MEMBER AGENCY SUPPLEMENTAL FUNDING

DEVICE/ITEM SUBJECT TO BE ADDED/DELETED	METROPOLITAN INCENTIVE	MEMBER AGENCY SUPPLEMENT
High-Efficiency Toilet (HET) <i>(Maximum of 1.28 gallons per flush; replacing 3.0 gallons per flush or greater)</i>	\$165.00	\$
HET Upgrade <i>(Maximum of 1.28 gallons per flush; replacing ULFT 1.6 gallons per flush or greater into a new home)</i>	\$ 30.00	\$
High Efficiency Clothes Washers (HECW) - using grant funds <i>(Requires a water of 5.0 or less)</i>	\$110.00	\$
Weather Based Irrigation Controller (WBIC) <i>(less than one irrigated acre up to 12 stations)</i> <i>(Must be tested for a list of qualifying devices refer to www.Irrigation.org, Swat Controller Reports, Performance Reports)</i>	\$ 80.00	\$
More than 12 stations	\$6.50 <i>(per station)</i>	\$
Weather Based Irrigation Controller (WBIC) <i>(one irrigated acre or larger)</i>	\$630.00 <i>(per acre)</i>	\$
Rotating Nozzles <i>(one time rebate per address)</i>	\$ 4.00	\$

Member Agency Supplemental Funding		
Amount \$ <u>0</u>	Starting Date _____	Ending Date _____
 _____ Authorizing Signature General Manager/Designee	<u>9.22.08</u> Date	