

### **THIRD AMENDMENT**

FY 2025-2035

COMMERCIAL/INDUSTRIAL/INSTITUTIONAL

WATER CONSERVATION FUNDING AGREEMENT NO. 66656

BETWEEN

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

AND

CITY OF SAN MARINO

This amendment to Agreement No. 66656, hereinafter referred to as Third Amendment, is between The Metropolitan Water District of Southern California, a public agency of the State of California, organized and existing under The Metropolitan Water District Act of the State of California, hereinafter referred to as Metropolitan, and the City of San Marino, a member agency of Metropolitan, hereinafter referred to as Member Agency. Metropolitan and Member Agency may be collectively referred to as "Parties" and individually as "Party."

#### Recitals

A. There is now in effect between the Parties a Water Conservation Funding Agreement dated March 9, 2006, as amended by the First Amendment, and as amended by the Second Amendment, hereinafter referred to as Agreement.

B. The Parties desire to amend the Agreement with this Third Amendment to extend the term of the Agreement from June 30, 2025, to June 30, 2035, subject to annual budget approval by Metropolitan's Board of Directors.

C. The Parties also desire to update the agreement administrators and notice requirements and clarify the inclusion of all incentive programs.

NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement, including all previous amendments to the Agreement and this Third Amendment, the Parties agree as follows:

#### Terms of Agreement

1. The following Sections in the Agreement are hereby amended and shall now read as follows:

- a. "1.1 This Agreement will be effective on March 9, 2006, and shall terminate on June 30, 2035 (Term). Continuance of this Agreement will be subject to annual

budget approval by Metropolitan's Board, in its sole discretion. This Agreement will immediately terminate if Metropolitan's Board does not fund the Program."

- b. "2.1 Mr. Marcelo Alvarez is appointed Agreement Administrator for Metropolitan for the purpose of administering this Agreement and making any decisions in connection therewith on behalf of Metropolitan. Concerns regarding the Program should be addressed to Mr. Alvarez."
- c. "2.2 Amber Shah is appointed Agreement Administrator for Member Agency for the purpose of administering this Agreement and making any decisions in connection therewith on behalf of Member Agency."
- d. "6.1 Member Agency elects to participate in Metropolitan's Program to provide financial incentives for water-efficient devices and other incentive programs within its service area. This Agreement and/or successive Agreement Addendums identify the specific incentive amounts that are in effect in the individual Member Agency's service territory."
- e. "Section 8: Notice

8.1 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: Mr. Marcelo Alvarez

If to Member Agency: City of San Marino  
2200 Huntington Drive  
San Marino, CA 91108  
Attention: Amber Shah

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

f. “Section 10: Evaluation, Audit, and Record Retention

10.1 Metropolitan and Member Agency agree to provide access to their and their authorized representatives’ books, documents, papers, computer files and records that are directly pertinent to this Agreement for the purpose of making Program evaluation, audit, examination, excerpts, and transcriptions. Metropolitan and Member Agency will retain all required records for applications or work performed by the Member Agency for a period beginning on the date the incentive is first awarded for a given application and respective project and ending seven years later.”

2. The following Sections are hereby added to the Agreement:

- a. “1.4 This Agreement encompasses multiple conservation programs which provide incentives to consumers and may subsidize Member Agency’s non-regional programs. Addenda to this Agreement will be issued for changes involving Board approved items, grant funding, and changes to incentive programs including funding and incentive levels.”
- b. “5.6 Incentives are generally 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. Metropolitan Board approval is required for any specified incentives at a rate higher than \$195 per acre-foot of water saved.”
- c. “5.7 Member Agency shall provide Metropolitan invoices for all items installed, distributed, vouchered and/or rebated by Member Agency or its agent as required and outlined in the applicable addendum.”
- d. “5.8 “If Metropolitan secures additional funding from outside sources for one or more items, an addendum will be issued from Metropolitan. Metropolitan will notify Member Agency 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 overspent. The funding amounts listed on Exhibit A are subject to being modified from time to time via addenda. Member Agency shall be responsible for all costs in excess of those listed on Exhibit A of the Addenda.”

3. The following Sections in the Agreement are hereby deleted in their entirety: 4.1, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, and 7.7.

4. This Third Amendment modifies the Agreement only as expressly set forth above. This Third Amendment does not modify, alter, or amend the Agreement in any other way whatsoever. All other Agreement terms and conditions not expressly set forth above remain unchanged.

5. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Third Amendment.

6. The persons executing this Third Amendment on behalf of the Parties here warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Third Amendment on behalf of said Party, (iii) by so executing this Third Amendment such Party is formally bound to the provisions of this Third Amendment, and (iv) the entering into this Third Amendment does not violate any provision of any other Agreement to which said Party is bound.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Third Amendment on the date and year last written below (Effective Date).

CITY OF SAN MARINO

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

Deven N. Upadhyay  
General Manager

By \_\_\_\_\_

By \_\_\_\_\_

Philippe Eskandar \_\_\_\_\_

Deven N. Upadhyay \_\_\_\_\_

City Manager \_\_\_\_\_

General Manager \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Marcia L. Scully  
General Counsel

By

\_\_\_\_\_

By \_\_\_\_\_

Joseph Montes \_\_\_\_\_

Alondra Espinosa \_\_\_\_\_

City Attorney \_\_\_\_\_

Deputy General Counsel \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_