

**CYCLIC STORAGE AGREEMENT AMONG  
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA  
AND THE CITY OF BURBANK**

This Cyclic Storage Agreement (“Agreement”) is made as of \_\_\_\_\_, 2017, by and among the METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA (“Metropolitan”), a public agency of the State of California and the City of Burbank (“Burbank”) a municipal corporation and charter city of the State of California (collectively, the “Parties”).

**RECITALS**

A. Metropolitan is a wholesale provider to its 26 member agencies, created under The Metropolitan Water District Act (“MWD Act”). Wat. Code appen., §§ 109-25, 109-130.

B. Burbank is a member public agency of Metropolitan and a retail water provider with a service area overlying the San Fernando Basin (“Basin”), a groundwater basin located in Los Angeles County. The City was incorporated as a general law city on July 8, 1911, and adopted its city charter on January 13, 1927.

C. Metropolitan imports water from the California State Water Project (“SWP”) and the Colorado River and delivers those supplies to its member agencies, including Burbank.

D. The Parties currently provide for the delivery of water by Metropolitan to Burbank in advance of demand for the water by Burbank under a one-year Cyclic Storage Agreement dated August 1, 2017 (the “Initial Agreement”).

E. Burbank stores such water for later extraction pursuant to that certain Judgment dated January 26, 1979 in City of Los Angeles v. City of San Fernando, et. al. (Case No. 650079) (the “Judgment”).

F. The Parties wish to replace the Initial Agreement with this Agreement to provide a longer storage term to better meet Metropolitan and Burbank’s long term planning needs.

### **COVENANTS**

In consideration of the above recitals, the covenants, and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, IT IS AGREED:

1. **Storage of Metropolitan Water**

Burbank hereby agrees to enter into a cyclic storage arrangement with Metropolitan through this Cyclic Storage Agreement. In order to manage its water resources, Metropolitan may store water with Burbank through the delivery of water in advance of Burbank’s purchase of that water. Metropolitan may request that Burbank accept delivery of water for storage through direct spreading or injection, or through in-lieu means (“Metropolitan’s Cyclic Storage”).

Burbank may accept delivery of Metropolitan water through written confirmation to Metropolitan that the water may be delivered to Burbank pursuant to Section 5.2.1.2 of the Judgment for future extraction and purchase by Burbank in accordance with the terms of this Agreement. Burbank shall be solely responsible for storing any water delivered by Metropolitan and accounting for that water in a Cyclic Storage Account, and its obligation to purchase the water from Metropolitan remains regardless of whether Burbank secures proper storage for that water.

2. **Delivery into Cyclic Storage Account**

The amount of water to be stored by Burbank for Metropolitan under this Agreement shall not exceed 35,000 acre-feet at any point in time. Prior to each delivery of water by Metropolitan into the Cyclic Storage Account, the Parties shall mutually agree to: (1) the amount, location, and timing of actual water delivered pursuant to this Cyclic Storage Agreement; and (2) a schedule by which Burbank shall purchase the stored water. Any amendment to the delivery schedule shall require mutual agreement. Until such time as Burbank purchases the stored water in accordance with Section 6, the water shall be accounted for in the Cyclic Storage Account, pursuant to Section 3.

3. Cyclic Storage Account

Burbank agrees to perform accounting of deliveries and purchases pursuant to this Agreement (the “Cyclic Storage Account”, or “Account”) and to report all spreading and extraction activities in compliance with the Judgment. Burbank will account for all spreading and transfer deliveries in and out of the Cyclic Storage Account and will maintain a record of the balance of water in the Cyclic Storage Account. The Parties to this Agreement will confirm accounting of transactions and balance at the end of each fiscal year.

4. Delivery from the Cyclic Storage Account

Metropolitan shall deliver water to Burbank from the Cyclic Storage Account in accordance with the schedule agreed to by the parties pursuant to Section 2. Metropolitan will bill Burbank for the water at the time of such deliveries in accordance with Section 6. In the event Burbank does not meet its purchase obligation in accordance with Sections 2 or 6, Metropolitan retains the prerogative to meet regular untreated water demands by Burbank either from water stored in its Cyclic Storage Account or from water in its distribution system.

Metropolitan need not provide advance notice to Burbank when it exercises its prerogative under this Section.

5.     Loss of Water

There shall be no losses assigned to Metropolitan's Cyclic Storage Account. Water delivered into the Cyclic Storage Account through Metropolitan's Service Connection B-06 shall be fully credited to Metropolitan's Cyclic Storage.

6.     Obligation for Purchase and Payment

Burbank agrees to purchase water from Metropolitan's Cyclic Storage Account in accordance with Sections 2 and 4 of this Agreement, but no later than the termination of this Agreement. Burbank shall be billed by and pay Metropolitan in accordance with the billing and payment provisions in Metropolitan's Administrative Code, as amended over time. The purchase of water from Metropolitan's Cyclic Storage Account shall be equivalent to the sale and delivery of water for purposes of applying the provisions of Metropolitan's Administrative Code. Payments to Metropolitan for such sale of water from its Cyclic Storage Account shall be calculated using Metropolitan's rate for full service untreated water in effect at the time of the sale of water to Burbank. The sale of water from Metropolitan's Cyclic Storage Account to Burbank shall be included in the calculation of the Burbank's Ten-Year Rolling Sales Average for purposes of Metropolitan's Readiness-to-Serve Charge at the time stored water is sold to Burbank. The Capacity Charge shall not apply to cyclic water sales because Metropolitan shall deliver water for storage at its discretion.

7.     Rent or Offset Credit

It is hereby agreed that there shall be no charge, rent assessment, or expense incurred by Metropolitan by reason of the storage of water by Burbank for Metropolitan, nor is there any credit

or offset for the benefits thereof, nor shall there be any charge to Metropolitan for the use of physical facilities including service connections, flood control channels, spreading basins or hydrologic services utilized in connection with any storage allowed herein.

8. Indemnity Clause

Liability and indemnification shall be determined pursuant to section 4502 of the Metropolitan Administrative Code. Metropolitan provides no warranty or guarantee regarding the quality or content of its untreated water or the suitability of its use for replenishment of groundwater basins. Burbank acknowledges that it is accepting untreated water “as is.”

9. Term

The term of this Agreement shall commence on the date and year listed at the beginning of the Agreement and shall terminate 10 years thereafter. An extension of this term can be made upon mutual agreement of the Parties.

10. Initial Agreement Superseded

Upon execution, this Agreement shall supersede and replace the Initial Agreement.

11. Termination

In the event of a material breach hereunder, any party hereto may terminate this Agreement upon thirty (30) days' written notice to the other Parties hereto. Metropolitan may require amendment of this Agreement, or its termination, upon sixty (60) days' written notice if its Administrative Code is amended to change (i) the manner in which Metropolitan sets its water rates and charges for the sale and delivery of water (the rate structure), (ii) designations of classes of water service, or (iii) conditions of water service, in a manner which requires amendment of this Agreement. In the event this Agreement must be so amended, it shall be amended to provide water rates and charges applicable to water service for untreated water applicable to all of Metropolitan's

member public agencies, except for any charge specifically set to recover costs incurred to meet peak distribution demands. In the event such an amendment to this Amendment cannot be obtained from any Party, this Agreement may be terminated by Metropolitan upon sixty (60) days' written notice to the other Party hereto.

12. Purchase of Water After Termination

Upon notice of termination under Section 11, Burbank is obligated to purchase all water remaining in the Metropolitan Cyclic Storage Account within 90 days. During this period, all untreated water demands from Burbank to Metropolitan will be met with Metropolitan's Cyclic Storage. Until the Cyclic Storage Account is depleted, Burbank shall not obtain water from sources other than Metropolitan with the exception of local resource projects developed to offset imported water requirements.

13. Notices

Any notice required hereunder may be given by mail, postage prepaid, addressed as follows:

To: City of Burbank  
275 E. Olive Avenue  
Burbank, CA 91502  
Attention: BWP General Manager

To: Metropolitan Water District  
700 N. Alameda Street  
Los Angeles, CA 90012  
Attention: Chief Operating Officer

14. Interpretation

The Parties have developed this Agreement jointly and in consultation with their respective legal counsel. No ambiguity shall be resolved against any Party on the premise that it or its attorneys were responsible for drafting this Agreement or any of its terms.

15. Governing Law

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

16. Counterparts

This Agreement may be executed in counterparts, and signatures transmitted via facsimile or electronic mail shall be deemed to be originals.

17. No Third Party Rights

This Agreement does not create any rights enforceable by any person or entity that is not a Party to this Agreement.

18. Authority

The Parties represent that the persons executing this Agreement on their behalf are authorized to do so.

19. Assignment

No Party shall assign its rights under this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate as of the date and year listed at the beginning of the Agreement.

Approved as to form:  
Office of the City Attorney

City of Burbank

By: \_\_\_\_\_  
Joseph H. McDougall  
Sr. Assistant City Attorney

By: \_\_\_\_\_  
Jorge Somoano  
General Manager

Approved as to form:

Marcia L. Scully  
General Counsel

The Metropolitan Water District  
of Southern California

By: \_\_\_\_\_  
General Counsel

By: \_\_\_\_\_  
Jeffrey Kightlinger  
General Manager