

PFAS TREATMENT FACILITIES AND PROGRAM AGREEMENT

This PFAS TREATMENT FACILITIES AGREEMENT (the "**Agreement**") is effective on the date identified in Section [REDACTED] ("**Effective Date**") of the Agreement, and is between the ORANGE COUNTY WATER DISTRICT, a special governmental district organized and existing pursuant to the Orange County Water District Act, Chapter 924, Statutes of 1933, as amended ("**OCWD**") on the one hand, and the Cities of Anaheim, Fullerton, Garden Grove, Orange, Santa Ana and Tustin; and the East Orange County Water District, Irvine Ranch Water District, Serrano Water District, Yorba Linda Water District, and Golden State Water Company (each a "**Producer**," and collectively "**Producers**") on the other. OCWD and the Producers are each a "**Party**" and collectively "**Parties**" to this Agreement.

A. OCWD manages the Orange County Groundwater Basin ("**Basin**") in northern and central Orange County in order to support a variety of beneficial uses, including potable and non-potable water supply. Much of the potable water supply currently used within northern and central Orange County is pumped groundwater for use by persons and Producers¹ within OCWD's service area. Section 2, subdivision 6 (j.) of the Orange County Water District Act ("**OCWD Act**") authorizes OCWD to "transport, reclaim, purify, treat, inject, extract, or otherwise manage and control water for the beneficial use of persons or property within the district and to improve and protect the quality of the groundwater supplies within the district." Inasmuch as Orange County is located in a semi-arid area, it is essential that all reasonable efforts be put forth by OCWD, in cooperation with the Producers, to protect the quality and quantity of groundwater supplies within OCWD's boundaries.

B. A group of man-made substances known as per- and polyfluoroalkyl substances ("**PFAS**") has been used in numerous consumer and industrial products since the 1940s. Recent testing in the Basin has revealed that as of the Effective Date, at least eleven producers and at least 71 groundwater wells that are sources of drinking water in the Basin are impacted by PFAS.

C. Producers are governmental agencies (or a regulated public utility) that operate public water systems for the purpose of delivering potable water. They obtain a portion of their water supply by pumping groundwater from Water Producing Facilities within the Basin.

D. In July 2018, the State of California Division of Drinking Water ("**DDW**") established a Response Level ("**RL**") of 70 parts per trillion ("**ppt**") for perfluorooctanoic acid ("**PFOA**") and 70 ppt perfluorooctane sulfonate ("**PFOS**"), two types of PFAS. In February 2020, DDW established revised RLs of 10 parts ppt for PFOA and 40 ppt for PFOS. Assembly Bill 756, codified at Health and Safety Code Section 116378, and effective January 1, 2020, requires that community water systems, including Producers, either notify their customers of PFAS detections

¹ "Producers," for purposes of this Agreement, means public agencies (or a regulated public utility) that extract groundwater from the Basin via "**Water Producing Facilities**" (as that term is defined in Section 24 of the OCWD Act), and who are adversely impacted by PFAS in one or more Water Producing Facility/Facilities they own or operate.

exceeding RLs or remove from service drinking water sources with PFAS exceeding RLs.² The revised RLs are perceived as a de facto regulation by some Producers.

E. In November 2019, the State of California Office of Environmental Health Hazard Assessment began the process of developing drinking water Public Health Goals ("**PHGs**") for PFOA and PFOS, the first step in the regulatory process leading to DDW setting enforceable Maximum Contaminant Levels ("**MCLs**"). As of the Effective Date, DDW projected establishing MCLs for PFOA and PFOS by the Fall of 2023, with PHGs projected to be established by the Summer of 2021.

F. PFAS compounds create a unique groundwater contamination issue that impacts many Producers. Without any action, PFAS impacted groundwater may migrate affecting other Water Producing Facilities and larger portions of the Basin.

G. The Parties desire that the Basin continue to provide a groundwater supply of suitable quality to allow for the continuation of all existing and potential beneficial uses, and that is in compliance with all state and federal standards and relevant advisory levels. Quick and effective actions by OCWD, in concert with the Producers, are needed to remove, treat and control PFAS down to established regulatory limits while also removing them to prevent their contamination of other portions of the Basin.

H. The Parties recognize the necessity and commit to a high level of coordination to expeditiously design, construct and operate PFAS treatment systems ("**Treatment Systems**") to remove PFAS from the Basin where PFAS is detected in Water Producing Facilities.

I. Until Treatment Systems are constructed, the impacted Producers will be purchasing greater amounts of more expensive imported water, and water in the Basin containing PFAS will not be treated so as to prevent its spread to other portions of the Basin.

J. As a result of DDW issuing revised RLs for PFOA and PFOS, and anticipated issuance of RLs and state or federal MCLs for other PFAS, Producers, have lost, or are anticipated to lose upon finalization of the RLs and/or MCLs for one or more PFAS, pumping capacity in one or more Water Producing Facilities due to the presence of PFAS. Given the magnitude of the PFAS problem within the Basin, and OCWD's desire to improve and protect the quality of the groundwater supplies within the District so that groundwater from the Basin may be beneficially used, OCWD has developed, and is implementing through this Agreement and other actions, a new program that will allow OCWD to purify and treat groundwater containing PFAS by substantially funding, contracting and cooperating with the Producers to develop, construct, operate, and maintain Treatment Systems such that water quality within the OCWD will be purified and improved

² DDW's February 2020 guidance directs community water systems to test for PFAS using EPA Method 537.1 and notes that DDW defines PFAS "as those analytes included in EPA Method 537.1."

(“**Program**”), and such that Producers can continue to beneficially use groundwater from the Basin after treatment for drinking water purposes. Producers desire to participate in the Program.

K. OCWD has the authority to "construct, purchase, lease, or otherwise acquire, and to operate and maintain necessary waterworks and other works, machinery, [and] facilities ... useful or necessary to ... protect the quality of the common water supplies of [OCWD] and purposes incidental thereto."³ OCWD may also perform groundwater cleanup, abatement, or remedial work in cooperation with any other governmental agency, and may initiate cost recovery actions against persons responsible for causing contamination of the Basin, and for its costs in cleaning up or containing contamination or pollution of the Basin.⁴ OCWD is also authorized under Section 2(6)(1.) of the OCWD Act to protect and improve water quality within the Basin by entering into contracts with Producers to produce more groundwater from the Basin, while taking less water from alternative non-tributary sources, where OCWD determines that such increased production of groundwater will result in removal of contaminants or pollutants from the Basin that otherwise would not be removed. Specifically, OCWD has authority, “for the common benefit of the district and for the purpose of managing the groundwater basin and managing, replenishing, regulating, and protecting the groundwater supplies within the district” to enter into an agreement with Producers to increase the production of groundwater in lieu of water from an alternative non-tributary source for the purpose of removing contaminants or pollutants from the Basin. OCWD may also “pay from district funds that portion of the cost of the groundwater production as will encourage the production for beneficial use of polluted or contaminated groundwater, as long as that pollution or contamination is impairing the quality of the water supplies within the district and the quality of the water supplies within the district will be improved by that production.”

L. OCWD has determined that certain portions of the Basin in the vicinity of Producers’ Water Producing Facilities are polluted by PFAS, and that entering into this Agreement with Producers will encourage beneficial use of groundwater polluted by PFAS that would otherwise not be used while improving the quality of water supplies within the District.

M. OCWD and the Producers mutually desire to enter into this Agreement pursuant to the OCWD Act to document the Program responsibilities of the Parties in the construction and operation of PFAS Treatment Systems, systems that the Parties will use to treat PFAS pollution and contamination, thereby improving the quality of groundwater supplies within OCWD.

The Parties therefore agree as follows:

1. The Recitals above are deemed true and correct and are hereby incorporated in this Agreement as though fully set forth herein. The Parties agree that the actions that will be taken

³ OCWD Act, Section 2, Subd. 5.

⁴ OCWD Act, Section 8.

pursuant to this Agreement are reasonable and necessary to accomplish the goals and objectives of the OCWD Act.

2. PURPOSE

2.1 Facilitation of Basin-wide Treatment. OCWD and the Producers intend to facilitate treatment of Basin groundwater impacted by PFAS. OCWD will coordinate and fund planning and treatment pilot studies and design efforts, and fund the construction costs of PFAS Treatment Systems in the Basin subject to the provisions of this Agreement. OCWD will also fund a portion of the operation and maintenance costs of those facilities.

2.2 PFAS Compounds & Reopener. The Parties recognize the necessity of and commit to a high level of coordination to expeditiously design, construct and operate PFAS Treatment Systems to remove PFAS from the Basin where PFAS is detected in a Producer's (existing or anticipated) Water Producing Facilities at or above 80% of an applicable RL or MCL. The Parties acknowledge that additional compounds within the PFAS family may become regulated during the term of this Agreement. To the extent the Treatment Systems developed under this Agreement requires modification to treat PFAS that becomes regulated after the Effective Date, the Parties will, where necessary and mutually agreed upon, amend this Agreement to provide for treatment of additional compounds in the PFAS family.

3. PLANNING

3.1 Planning Study. OCWD has retained a consultant to prepare a "**Planning Study**" to evaluate the Producers' water systems, any of their Water Producing Facilities impacted by PFAS ("**Impacted Wells**"), and potential locations for construction of PFAS Treatment Systems for Impacted Wells. OCWD shall cause the consultant to actively consult with Producers in connection with preparation of the Planning Study. OCWD shall cause the consultant to provide a final Planning Study report to OCWD and Producers concurrently.

3.2 Pilot Study. OCWD shall perform a PFAS treatment "**Pilot Study**" to evaluate different treatment technologies to remove PFAS from groundwater.

3.3 Treatment Systems. OCWD shall use the results of the Planning Study and the Pilot Study to reasonably determine the type and final design of the Treatment Systems to treat PFAS contamination in the groundwater produced by Impacted Wells to levels below the RL or MCL. Development of the final design of Treatment Systems will consider 30-year lifecycle costs, including but not limited to Treatment System footprint and physical setting, relative land values, the proximity to existing water infrastructure and energy sources, operational costs and limitations, and any PFAS treatment studies conducted by Producers. The Treatment Systems will be designed for a 30-year useful life. If OCWD and a Producer mutually agree, a Treatment System that can remove PFAS contamination down to non-detect concentrations, depending upon site specific circumstances, may be designed and constructed.

3.4 Enhancements/Additions to Treatment System. If Producer desires to construct additions or enhancements to the PFAS Treatment System beyond what OCWD determines is the appropriate Treatment System, then OCWD will reasonably estimate the cost of those additions or enhancements (including planning costs, design costs, capital costs and operation and maintenance ["O&M"] costs) with assistance and input from Producer(s). For OCWD-Built facilities (defined below), OCWD shall include the additions or enhancements in the design and construction of the treatment facilities upon OCWD determination of feasibility of efficiently operating the Treatment Systems with the requested additions or enhancements. Producer shall reimburse OCWD for all costs associated with the OCWD-Built addition or enhancement constructed by OCWD. For Producer Built Treatment Systems that contain additions or enhancements beyond what OCWD determines to be an appropriate Treatment System, Producers shall have no right of reimbursement from OCWD for Producers' costs attributable to such additions or enhancements.

3.5 Producer Assistance. Producers shall support and assist OCWD in connection with the Planning Study, Pilot Study, and development of what constitutes an appropriate Treatment System design. "**Support and assist**," as used in this Agreement means timely providing reasonable staff time and available data/technical information where requested by OCWD to ensure OCWD has sufficient information to timely complete its obligations under this Agreement.

3.6 Untested Water Producing Facilities. OCWD reserves the discretion to delay the design and to not construct Treatment Facilities at Water Producing Facilities that have not been individually tested for PFAS, or which have not demonstrated consistent exceedance of an applicable PFAS RL or MCL.

4. **DESIGN & CONSTRUCTION OF PFAS TREATMENT FACILITIES**

4.1 Funding. OCWD shall fund the reasonable cost to design and construct the Treatment System, except for necessary real property and entitlements for siting the Treatment System as described in Section 4.4. OCWD's funding obligations apply both to OCWD-Built or Producer-Built Treatment Systems, as defined below. OCWD's funding obligations include planning, design, and construction of the Treatment Systems whether OCWD-Built or Producer-Built.

4.2 OCWD Construction or Reimbursement. The Producer shall elect either:

- A. to have the Treatment System designed and built by OCWD ("**OCWD-Built**"),

or

- B. to be reimbursed for having the Treatment System designed and built by the Producer ("**Producer-Built**").

4.3 CEQA. In connection with the proposed Treatment System for Impacted Wells, the Parties shall work together to determine the best plan for and the lead agency for the purpose of complying with the California Environmental Quality Act ("**CEQA**"). Where a Producer serves as lead agency for a CEQA project, OCWD shall serve as a Responsible Agency and approve the portions of the CEQA project that OCWD will carry out. OCWD shall fund CEQA expenses incurred in connection with the Treatment System whether it is a Lead Agency or a Responsible Agency. Upon a Producer's request, OCWD shall prepare necessary CEQA documents for the Treatment System. OCWD shall fund any reasonable CEQA mitigation cost excluding land acquisition expenses.

4.4 Property Acquisition, Entitlements.

A. Land & Rights of Way. Each Producer shall secure at its expense any land and/or right of way necessary to construct the Treatment System(s).

B. Entitlements. Each Producer shall obtain at its expense all land use entitlements necessary to construct the Treatment System(s).

C. Property Conditions for OCWD-Built Treatment System. If a Producer chooses an OCWD-Built Treatment System, then OCWD will have no obligation to design or construct the Treatment System until a Producer has demonstrated it has obtained lands and land use entitlements sufficient to permit construction of the Treatment System. OCWD may begin final design work for facilities where land use entitlements are in the process of being obtained. If a Producer is unable to obtain the necessary entitlements within twelve months after the completion of the preliminary design for an Impacted Well, then Producer shall reimburse OCWD for reasonable design costs associated with that location unless the twelve month deadline is extended by mutual agreement of the Parties.

4.5 OCWD-Built Facilities. The provisions of this Section 4.5 apply to PFAS treatment facilities that a Producer elects to have OCWD design and build.

A. Design. OCWD will consult with and seek input from the Producer on the design and construction of the Treatment System, including the need for any extended manufacturer's warranties on Treatment System components. Producer shall support and assist OCWD in hiring design consultants and designing the Treatment System, but OCWD will have the reasonable authority and discretion in determining the Treatment System final design. The level of treatment selected by OCWD must allow the Producer to treat regulated PFAS to comply with RLs or MCLs, unless special circumstances dictate an alternative approach. Additions or enhancements to the Treatment System are subject to section 3.4.

B. Property Rights. A Producer shall provide OCWD with temporary property rights over any site necessary for construction, staging, and laydown for the Treatment System project. These temporary property rights will be in the form of a license or temporary construction easement, or other property right sufficient to provide for OCWD's control of the site during construction.

C. Advertising and Award of Construction Contracts. OCWD shall advertise, where required by the OCWD Act, and award construction contracts for construction of the Treatment System. A Producer shall support and assist OCWD in these efforts, and shall expeditiously provide any documents necessary for construction at no charge to OCWD.

D. Administration & Inspection. OCWD will administer the necessary contracts to construct the Treatment System, including reviewing and responding to contractor requests for information or requests for clarification, reviewing and approving shop drawings, and filing a Notice of Completion. OCWD shall provide all construction and inspection for the Treatment System.

E. Transfer of Treatment System. Upon filing the Notice of Completion for the Treatment System, OCWD will transfer the constructed and operating Treatment System to the Producer with an appropriate legal instrument and a quitclaim of any property rights obtained under Section 4.4. OCWD shall provide the Producer with copies of all applicable O&M manuals and record drawings for the Treatment System in OCWD's possession. Upon the Producer's receipt of the legal instrument and quitclaim of property rights, Producer shall be solely responsible for ensuring the proper operation, maintenance and repair of the Treatment System. The Parties may arrange for extended warranties on any component of the Treatment System, which additional cost may be paid for by the Producer, and which extended warranty will be transferred to the Producer together with the transfer documents.

F. Warranty, Post-Construction Remedies. OCWD will make construction warranty repairs and modifications not attributable to the negligence or willful misconduct of Producer for one year after the date of filing of the Treatment System Notice of Completion. The Parties will also, to the extent they deem prudent, jointly pursue any statutory construction defect remedies against third-party designers and contractors.

G. DDW Permit Assistance. OCWD will support and assist the Producer with technical information in modifying the Producer's DDW operating permit to account for and authorize the new Treatment System as part of the Producer's public water system.

4.6 Construction by Producer. The provisions of this Section 4.6 apply to PFAS treatment facilities that a Producer elects to design and build.

A. OCWD Approval of Design. The Producer shall prepare and submit to OCWD for approval a conceptual design for the Treatment System. OCWD shall review and

approve the design in writing within 30 days, which approval will not be unreasonably withheld. Once conceptual design for a Producer's proposed Treatment System is approved by OCWD, the Producer will coordinate with OCWD in the planning and final design of the Treatment System. The Producer shall then prepare and submit the final design to OCWD for approval. OCWD shall participate in the Producer's project meetings as necessary to obtain OCWD's final approval of the Treatment System in an expeditious manner so as not to delay the Producer's design and construction of the Treatment System. OCWD shall review and approve the final design, if deemed reasonable and effective, in writing, within 30 days. Such approval will not be unreasonably delayed or withheld, though OCWD shall have the right to place reasonable conditions on the final design approval.

B. Construction. Upon OCWD's approval of the final design, the Producer shall advertise, award, and ensure timely completion of all necessary contracts to construct the Treatment System. The Producer shall notify OCWD upon the award of the construction contract and upon recording the Notice of Completion.

5. OPERATIONS, MAINTENANCE AND REPLACEMENT

5.1 30-Year Term. Each Producer shall operate, maintain, and repair a Treatment System, and any related Impacted Well, for the earlier of:

- A. 30 years following the filing of the Notice of Completion; or
- B. Until water produced from the Impacted Wells meets RLs or MCLs for PFAS.

5.2 Operating Standards. OCWD recognizes in the normal course of operating a water system, the Treatment System and Impacted Wells may need to be turned off for routine maintenance, seasonal demands, emergencies, accommodating in-lieu imported water deliveries, and major repairs. Each Producer agrees to operate the Treatment System in a manner consistent with industry standards and take actions in the same manner as a reasonably prudent water system operator, with the understanding that the Treatment System funded by OCWD is intended to be regularly used for daily treatment of groundwater as long as PFAS exceeds an RL or MCL in the Basin in the vicinity of the well. The Parties understand and agree that Treatment Systems constructed or funded by OCWD are not intended to be used as "stand by" treatment system.

5.3 Compliance, Permits, Testing, Reporting. Each Producer shall obtain and comply with any and all regulatory permits, permissions or approvals necessary to operate and maintain the Treatment System. Producer shall operate and maintain the Treatment System in accordance with state and federal regulatory requirements, prevailing industry standards, good housekeeping practices, and equipment manufacturer recommendations and requirements. Producer shall perform required water quality testing and reporting to verify the successful operation of the Treatment System to comply with regulatory requirements. If a Producer fails to

timely perform testing and/or reporting in the future, then OCWD may in its reasonable discretion assume responsibility from a Producer for required water quality testing and/or reporting and that Producer shall timely pay OCWD all reasonable and necessary costs for that testing and reporting or such costs shall be deducted from OCWD's reimbursement payments to the Producer per Section 5.4.

5.4 Post-Completion Inspection; Cost Recoupment.

A. OCWD will periodically inspect the Treatment System after the filing of the Notice of Completion, to review the adequacy of Producer O&M activities. Producer shall provide access to the Treatment System after receiving reasonable notice from OCWD.

B. To the extent OCWD finds that Producer is not adequately operating and maintaining the Treatment System in accordance with industry standards and the manufacturer's directions, OCWD will, in the following order:

- (1) meet with the Producer in attempt to resolve the inadequate operation or maintenance;
- (2) formally notify the Producer of its obligation to properly maintain and operate the treatment system and give the Producer up to 120 days to remedy any OCWD finding of inadequate maintenance and/or improper operational protocols;
- (3) after 120 days, suspend O&M payments described in Section 6.2 until such time as the Producer demonstrates to OCWD that it is properly operating and maintaining the treatment system;
- (4) no sooner than 270 days from the initial formal notice, terminate this Agreement and seek to recoup, where applicable, the cost of constructing the Treatment System and/or other applicable damages.⁵

⁵ Any action by OCWD to recoup its, or the Producer's, OCWD funded costs for construction of the PFAS treatment system would be prorated based upon the length of time the treatment facilities has been in operation, and by any percentage of third-party cost recovery OCWD has obtained. For example, a breach by Producer in year twenty-five (25) of the thirty (30) year term of this Agreement would result in OCWD recouping significantly less than if the breach occurred in year five since twenty five years of useful life of the facility would have occurred, and would be further offset by any third-party cost recovery obtained by OCWD during that time.

6. FINANCIAL

6.1 Capital Costs—Payment and Reimbursement.

A. OCWD-Built Facilities—Upfront Payment. For OCWD-Built Treatment System, OCWD will pay as up-front costs all planning, design, construction, and start-up costs as described above, except for the costs for property rights, land use entitlements, additions or enhancements, or as otherwise described in this Agreement.

B. Producer-Built Facilities—Reimbursement. OCWD shall reimburse the Producer for all of the Producer's reasonable expenses for the planning, design, construction, and start-up of Treatment System on a monthly basis. OCWD shall pay reimbursements to the Producer within 30 days of receiving adequate documentation from the Producer.

C. Prior Expenditures. Within 60 days after the Effective Date, OCWD will reimburse the Producer for any previous reasonable and authorized expenses incurred by the Producer prior to the Effective Date in evaluating or developing the design for or constructing the Treatment System for the Producer's Impacted Wells.

- (1) Authorized expenses include, but may not be limited to: (1) design type costs, consultants and contractor; (2) pre-purchase of equipment and media for Treatment System; (3) equipment installed to temporarily treat for PFAS compounds which can be repurposed by the Producer into the Producer's final Treatment System; (4) permitting cost; and (5) CEQA type expenses. These same expenses incurred by Producer going forward are also eligible for reimbursement. Design, engineering, or evaluative type expenses incurred by a Producer that may be eligible for reimbursement, as reasonably determined by OCWD in its sole discretion (with input from the Producer) could include: (1) outside consultant costs and studies incurred by the Producer and related to the development and design of the Treatment System; (2) equipment installed to temporarily treat for PFAS compounds which can be repurposed by OCWD into a final treatment system; (3) permitting cost; and (4) CEQA type expenses.
- (2) Unauthorized expenses for reimbursement shall include: (1) the Producer's staff time; (2) direct or indirect overhead type expenses for staff; and (3) costs not primarily attributable to Treatment System design, construction and O&M.

6.2 O&M Reimbursement.

A. Reimbursement Rate. OCWD shall reimburse each Producer for 50% of allowable O&M costs, up to \$75/acre-foot of water treated by the Treatment System.

B. O&M Unit Cost. Each Producer shall annually calculate the O&M unit cost of the Treatment System on a July 1st to June 30th fiscal year basis and submit this information by October 1st of the following fiscal year to OCWD for review and reimbursement. The unit cost shall be calculated by dividing all appropriate and allowable O&M expenses by the Treatment System total water treated. The annual submittal by the Producer shall include all documentation and backup information necessary to support the unit cost calculation. Each Producer shall provide any reasonable information requested by OCWD in verifying the Producer's unit cost or other expenses for which the Producer seeks reimbursement per this Agreement. After execution of the agreement, at the request of the Producer after the Treatment System(s) are fully operational, OCWD will make a six month progress payment by January 30th of each fiscal year based upon no more than 50% of the estimated eligible total O&M cost OCWD would normally reimburse at the end of the fiscal year as determined by OCWD with input from the Producer.

C. Reimbursable/Allowable Costs. Allowable O&M costs are the costs to the Producer necessarily incurred for the regular operation and maintenance of the Treatment System, as reasonably determined by OCWD after good faith consultation with Producer. Allowable O&M cost shall consider the specific site issues of each Treatment System. Examples of allowable O&M costs may include, but are not limited to:

- (1) periodically replacing carbon, resin, or other adsorption media;
- (2) necessary power and chemical cost to operate the Treatment System;
- (3) routine maintenance of the Treatment System;
- (4) periodic repair and replacement type cost items;
- (5) cost of additional staff time to operate the Treatment System;
- (6) required water quality sampling and testing for compliance monitoring;
- (7) determining and implementing compliance with new or revised PFAS regulations;

- (8) additional pumping cost caused by the Treatment System;
- (9) disposal of waste materials generated by the Treatment System, including landfill costs and incineration, and costs of hazardous waste disposal (if applicable);
- (10) sewerage costs associated with maintenance/backwash of the Treatment System; and
- (11) such other reasonable maintenance costs as are necessary to ensure the Treatment System continues to operate properly consistent with its design.

D. Non-reimbursable costs include:

- (1) existing Producer staff time costs not attributable to the PFAS Treatment Facilities;
- (2) direct or indirect overhead type expenses for staff; and
- (3) cost resulting from a Producer's inadequate operation and maintenance of the Treatment System.

E. Reimbursement Rate Adjustment. The \$75/acre foot rate will be automatically adjusted annually each July 1 (beginning July 1, 2021) by the percentage differential based on the last two annual indices set forth in the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers - Los Angeles-Long Beach-Anaheim. The maximum O&M reimbursement rate may be increased by OCWD if there are unforeseen, unique or specific circumstances of the Treatment System that, through no fault of a Producer, result in a higher cost of treatment at a Producer's treatment system, including increased costs attributable to new statutes, regulations or regulatory interpretations.

F. Submittals; Reimbursement Timing. OCWD shall reimburse each Producer its allowable O&M costs incurred by a Producer within 60 days of receiving the Producer's annual O&M unit cost calculation and supporting information as described in Section 6.2.B. via direct payment.

G. Treatment Media. OCWD may solicit and enter into a future contract with the appropriate activated carbon, resin, and/or other adsorption media manufacturers to obtain a lower price for this material than could be obtained by the individual Producer. Unless a Producer opts out in writing of this Section within 30 days of the Effective Date, Producer will support and participate in OCWD efforts to obtain a lower cost for activated carbon and/or resin.

6.3 Grants.

A. OCWD-Sought. OCWD may seek federal, state, or other grant funding to offset costs of the PFAS program contemplated by this Agreement. Each Producer shall support and assist OCWD, as may be reasonably requested by OCWD, to obtain any grants that may be used by OCWD to fund construction and/or future O&M of Treatment Systems. Grant funds received by OCWD will be used to fund OCWD's costs of planning, design and construction of Treatment systems, unless otherwise required by the terms of that grant.

B. Producer Support to OCWD-Sought Grants. Each Producer shall support and assist OCWD in preparing any annual reports or documents necessary for OCWD to comply with grants received for the PFAS program. Subject to the requirements of this Section 5.3, no provisions in this Agreement will prevent a Producer from applying for grants or loans, from any source, for PFAS treatment projects in its service territory.

C. Producer-Sought Funding. A Producer may also seek third-party funding for Treatment System-related expenses. Any outside development and design type grants or funding initiated and received by a Producer will be utilized to offset OCWD's PFAS design or construction costs for the Producer. If a Producer receives any grants or other third-party funding for operational expenses of the Treatment System, that Producer shall share those proceeds with OCWD in proportion to the percentage of O&M funded by OCWD if allowed by the grant or other third-party funding instrument.

6.4 Records Retention, Audit. The Parties shall keep and maintain all records, accounts and reports relating to this Agreement for a period of at least ten years after the date of a final judgment or final settlement resolving any and all litigation related to PFAS cost recovery initiated per Section 7.4 of this Agreement. The Parties will have access to these records at any time during normal business hours upon 10 calendar days' notice. At its cost, any Party may audit the books, records and accounts of the Party relating to its performance of this Agreement, and the audited Party shall provide reasonable cooperation to the auditing Party in this regard.

7. **RISK ALLOCATION**

7.1 Insurance

A. Construction Activities. In the hiring of consultants and contractors to design and build the Treatment System, the hiring or contracting Party will have the other Party included as an additional indemnitee and additional insured on the same basis and with the same limits in all contracts. The hiring Party will use the higher of the two Parties' standard limits for the purpose of coverage requirements. For example, in connection with an OCWD-Built Treatment System, OCWD shall have Producer named as an additional indemnitee and an additional insured in all consulting and construction contracts related to the Producer's Treatment System(s). In connection with a Producer-Built Treatment System, Producer shall have OCWD named as an

additional indemnitee and an additional insured in all consulting and construction contracts. The hiring or contracting Party shall provide the other Party with proof of insurance, including additional insured endorsements.

B. Parties' Coverage. Each Producer shall take out and maintain in effect at all times during the term of this Agreement comprehensive general liability insurance in an amount not less than \$2 million per occurrence, for bodily injury, death and property damage associated with the operation and maintenance of the Treatment Facilities and Impacted Wells, naming OCWD as an additional insured under such policy. An endorsement evidencing this insurance coverage shall be furnished to OCWD prior to OCWD or Producer commencing construction on a Treatment System. If the Producer is, or becomes, partially or fully self-insured for its public liabilities, a letter executed by the Producer's General Manager or City Manager stating the Producer's self-insured status and acknowledging its responsibility to indemnify OCWD as required in this Agreement, may be furnished in lieu of the insurance endorsement otherwise required herein. The Producer shall provide written notice to OCWD of any change in the Producer's insured or self-insured status within 30 days of the date of such change.

7.2 Indemnity.

A. By Producer:

(1) Each Producer shall defend, indemnify and hold OCWD, harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to person or property, losses, penalties, obligations, expenses or liabilities (collectively, "**Claims**") that may be asserted or claimed by any third party arising out of the negligent or reckless performance or implementation of this Agreement by Producer except for Claims arising out of or relating to the design or construction of a Treatment System where OCWD designed or constructed the Treatment System.

(2) Producer shall indemnify, defend and hold OCWD harmless from any liability, or regulatory enforcement attributable, in whole or in part, to Producer's failure to properly operate and maintain the Treatment System and Impacted Wells.

B. By OCWD:

(1) OCWD shall defend, indemnify and hold each Producer harmless from and against any and all Claims that may be asserted or claimed by any third party arising out of the negligent or reckless performance or implementation of this Agreement by OCWD, except for Claims arising out of or relating to the design or construction of a Treatment System where the Producer designed or constructed the Treatment System.

7.3 Release & Hold Harmless.

A. Producers' Release of OCWD.

(1) Producers, and each of them, hereby release OCWD, its officers, directors, employees, agents and representatives, from any and all liability, known or unknown, arising out of, or otherwise attributable to the discovery and/or presence of PFAS in the Santa Ana River, the Basin, Producer's Water Producing Facilities, and Producer's potable or non-potable water system, before, during or after treatment. Such release shall include, but is not limited to, claims or litigation initiated by third parties against Producer or OCWD, and any other legal, administrative, or regulatory actions associated with OCWD's performance of its obligations under this Agreement (unless attributable to OCWD's sole active negligence or willful misconduct during such performance).

B. OCWD's Release of Producers.

(1) OCWD hereby releases each Producer, their officers, directors, employees, agents and representatives, from any and all liability, known or unknown, arising out of, or otherwise attributable to the discovery and/or presence of PFAS in the Santa Ana River, the Basin, Producers' Water Producing Facilities, and each Producers' potable or non-potable water system, before, during or after treatment. Such release shall include, but is not limited to, claims or litigation initiated by third parties against a Producer or OCWD, and any other legal, administrative, or regulatory actions associated with a Producer's performance of obligations under this Agreement (unless attributable to Producer's sole active negligence or willful misconduct during such performance).

(2) This release by OCWD does not pertain in circumstances where liability results, or is alleged to result, from the failure of a

Producer to properly operate and maintain the Treatment System constructed per this Agreement.

C. Producer's Release of other Producers.

(1) Each Producer hereby releases and shall hold the other Producers harmless from liability associated with the presence of PFAS in the Basin.

(2) However, this release by each Producer does not pertain to circumstances where liability results, or is alleged to result, from the failure of the other Producer(s) to properly operate and maintain the Treatment System(s) constructed per this Agreement.

D. No Admission of Liability. Nothing contained herein shall be deemed an admission of liability. by any Party to this Agreement.

7.4 Legal Cost Recovery Efforts.

A. OCWD anticipates commencing litigation against responsible parties, including chemical manufacturers of PFAS, in order to recover costs from persons responsible for placing PFAS into the stream of commerce and/or the environment where it could make its way into the Basin (“Damages”). The Producers shall support, coordinate, assist and comply with all reasonable OCWD requests regarding OCWD’s cost recovery litigation related to pursuit of Damages associated with PFAS.

B. OCWD will request each Producer that has sustained Damages to determine if intends to jointly retain counsel (“Shared Litigation Counsel”) with OCWD in litigation to recover Damages. Producers who join as co-plaintiffs are “Participating Producers” in OCWD’s cost recovery efforts.

C. OCWD and Participating Producers will establish a Steering Committee and Executive Committee to direct Shared Litigation Counsel and make litigation decisions.

D. OCWD and Participating Producers will enter into an appropriate joint prosecution/common interest agreement to hire Shared Litigation Counsel and establish confidentiality and privilege concerning communications and work product of the Steering Committee and Executive Committee.

E. OCWD and Participating Producer agree that any Damages obtained in the PFAS litigation will be pooled and distributed to OCWD and Participating Producers proportionally to their respective claimed damages, such that each Participating Producer and

OCWD will recover the same percentage of their overall claimed damages in the manner shown on Exhibit A.

F. Participating Producers can decide at any time to discontinue participation in the litigation initiated by OCWD, but agree, if applicable, to pay to Shared Litigation Counsel, in accordance with any retainer agreement negotiated with Shared Litigation Counsel, for the withdrawing Producers share of Shared Litigation Counsel's reasonable attorneys' fees and cost incurred prior to the date of withdrawal (if any). Further, per the terms of any retainer agreement with Shared Litigation Counsel, the Participating Producers agree to maintain as confidential, and where applicable, to return, any communications and work product obtained via the litigation.

G. OCWD believes that it is in the best interest of OCWD and Producers impacted by PFAS to jointly initiate litigation as co-plaintiffs with Shared Litigation Counsel. However, if a Producer decides to pursue or initiate separate PFAS litigation ("Separate Litigation"), Producer shall notify OCWD of such intent thirty (30) days prior to formally filing the Separate Litigation. Producer in the Separate Litigation must comply with the following:

1. The Producer shall give OCWD the opportunity to review and comment on Separate Litigation documents (e.g., pleadings) prior to any Separate Litigation filing.
2. No PFAS related cost incurred by OCWD, or likely to be incurred by OCWD, and related to the Producers treatment system(s) (construction and/or O&M), will be asserted in a Producer's Separate Litigation.
3. In order to prevent duplicative claims for the same damages in separate lawsuits, assertion of which without OCWD's consent shall constitute a violation of this Agreement, OCWD must approve any PFAS related cost a Producer is seeking to recover prior to its assertion in Separate Litigation. However, OCWD shall not unreasonably withhold such approval, and shall consult in good faith with counsel for a Producer that wishes to initiate Separate Litigation in order to seek ways to accommodate the interests of both Parties, prior to disapproving any cost.
4. A Producer shall closely coordinate its separate legal action with OCWD, and, where requested in good faith by OCWD, support the positions taken by OCWD related to PFAS in court and in political, community and business forums.
5. A Producer shall not assert claims against OCWD in any litigation related to PFAS, or otherwise knowingly take positions that could result in OCWD or other Producers incurring liability related to PFAS as a result of the position asserted by the Producer in the Separate Litigation.

8. **EXPIRATION & TERMINATION.** This Agreement expires 30 years from the filing of the Notice of Completion. A Producer may terminate this Agreement upon providing 90 days written notice to OCWD. However, if a Producer terminates this Agreement prior to the 30 year date of expiration, the Producer shall reimburse OCWD for all of OCWD's unrecovered costs in constructing the Treatment System using the methodology described in footnote 5, plus any other reasonable expenses incurred by OCWD as a result of the early termination.

9. **NOTICE.** Any notice, instrument, payment or document required to be given or delivered under this Agreement shall be given or delivered by personal delivery or by depositing the same in a United States Mail depository, first class postage prepaid, and addressed as set forth in Exhibit B. Notice under this Agreement may also be provided to such other address as any Party may direct in writing to the other. Service of any instrument or document given by mail will be deemed complete upon receipt if delivered personally, or forty eight (48) hours after deposit of such instrument or document in a United States mail depository, first class postage prepaid, and addressed as set forth above.

10. MISCELLANEOUS

10.1 Further Assurances. The Parties shall execute and deliver any documents and cooperate in performing any acts necessary to further the intent of this Agreement.

10.2 Time is of the Essence. Time is of the essence in performing all obligations under this Agreement.

10.3 Counterparts. This Agreement may be executed in multiple counterparts, each of which is an original. All signatures taken together will be considered as one and the same agreement.

10.4 Force Majeure. Upon written notice by a Party, the respective duties and obligations of the Parties will be suspended for the time period that performance by the Party is prevented or substantially impeded by: workforce strikes; riots; fire; flood; federal, state or county regulatory action; pandemics, war; or terrorism.

10.5 Dispute Resolution. If a dispute arises between the Parties in connection with this Agreement, the Parties shall engage in a mediation before a third-party neutral.

10.6 Successors and Assigns. All of the terms, conditions and provisions of this Agreement inure to the benefit of and will be binding upon OCWD, the Producer, and their respective successors and assigns.

10.7 No Implied Waivers. If any term, condition or provision of this Agreement is breached by either Party and thereafter waived by the other Party, that waiver will be limited to

the specific breach so waived, and will not be deemed either to be a continual waiver or to waive any other breach under this Agreement.

10.8 No Obligation to Third Parties. The approval, execution and performance of this Agreement does not confer any rights upon any person or entity other than OCWD and the Producers. There are no third-party beneficiaries to this Agreement. Each Producer's obligations under this Agreement are to OCWD only, unless otherwise specifically stated herein (e.g., requirement to release or provide notice to other Producers).

10.9 Nature of Relationship. This Agreement does not create, and will not be construed or deemed to create, any agency, partnership, joint venture, landlord-tenant or other relationship between OCWD and any Producer except as specified in this Agreement.

10.10 Integration, Construction and Amendment. This Agreement represents the entire understanding of OCWD and each Producer as to the design and construction of PFAS treatment facilities for the Impacted Wells. No prior oral or written understanding will be of any force or effect with respect to those matters covered by this Agreement. This Agreement will be construed as if drafted by both OCWD and each Producer.

10.11 Modification, Variance and Most Favored Nation Provisions. Unless specifically authorized herein, this Agreement may not be modified, altered or amended unless in writing signed by authorized representatives of both OCWD and all Participating Producers, except that OCWD and any individual Producer may enter into a Producer-specific "Variance" that will be applicable only with respect to OCWD and that specific Producer. Except for where site-specific circumstances require unique considerations, OCWD shall interpret and administer this Agreement in a similar manner with each Producer. At least 30 days prior to approving any proposed Variance, OCWD will provide written notice of the proposed Variance to the other Producers and provide each with an opportunity to opt in to the same terms of that Variance. Upon approval of any Variance, OCWD shall provide a fully-executed version of the Variance to each Producer that has opted in under the Variance..

10.12 Severability. Each provision of this Agreement is severable from the whole. If any provision of this Agreement is found contrary to law, the remainder of this Agreement will continue in full force.

10.13 Authority.

A. Producer hereby agrees that funding provided by OCWD per this Agreement is in furtherance of OCWD's purpose of treating/purifying water in the Basin to facilitate beneficial use of locally produced groundwater water in order to increase production of groundwater containing PFAS from the Basin—to levels typical prior to setting of RLs for PFAS, and that Producer's production of water from the Basin is in lieu of Producer taking water from an

alternative non-tributary source, thereby furthering OCWD's efforts to remove or eliminate PFAS contaminants from the Basin.

B. By entering into this Agreement, each Party represents that it, and the other Parties to this Agreement, have proper legal authority to enter into this Agreement and to fund the work described herein. Each person executing this Agreement on behalf of a Party warrants that they are: (1) duly authorized to execute and deliver this Agreement on behalf of that Party, (2) by executing this Agreement, that Party is formally bound to the provisions of this Agreement, and (3) entering into this Agreement does not violate any provision of any other Agreement to which that Party is bound. No individual signing this Agreement shall have individual liability under this Agreement. As a condition of entering this Agreement, all Parties expressly waive any future challenge to the legal authority of the other Parties to enter into this Agreement, or to the authority of any other Party to fund the programs described in this Agreement.

10.14 Construction and Amendment. The terms of this Agreement will be construed in accordance with the plain meaning of the language used and will not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The headings of sections and paragraphs of this Agreement are for convenience or reference only and will not be construed to limit or extend the meaning of the terms, covenants and conditions of this Agreement. This Agreement may only be amended by the mutual consent of the Parties by an instrument in writing.

10.15 No Admissions. Nothing in this Agreement may be deemed an admission. Moreover, no language that may have previously been circulated in prior drafts of this Agreement, but subsequently removed at the request of a Producer, shall be used by either Party as evidence, or in any other manner, in litigation currently pending in Los Angeles Superior Court between OCWD and the Cities of Anaheim, Yorba Linda, Golden State Water Company, Mesa Water District, and East Orange County Water District on the one hand, and Irvine Ranch Water District (IRWD) on the other, Case No. BS168278 [Lead Case] Case No. BS175192 [Consolidated Case] (the "Litigation"), as such Litigation may be amended from time to time.

10.16 Additional Parties. Notwithstanding any other provision of this Agreement, OCWD is authorized to allow other Producers adversely impacted by PFAS but not named in this Agreement to become Parties to and execute this Agreement without obtaining the concurrence of the other Parties to this Agreement or otherwise modifying this Agreement (except to add an additional signature block).

10.17 Effective Date and Binding Effect. The date OCWD executes this Agreement shall be the Effective Date of this Agreement. Each Party executing the Agreement thereafter shall be bound by, and benefit from, the terms of this Agreement on the date that Party executes the Agreement, notwithstanding that other Parties have not yet executed the Agreement.

No Party shall be bound by this Agreement until such Party has executed this Agreement, nor shall any Party that has executed this Agreement owe any contractual duty to any Party that has not yet executed this Agreement until such other Party executes this Agreement. The timelines referenced in Sections 6.1(C) and 6.2 (G) of this Agreement shall begin to run on the date a Producer executes this Agreement if such date is after the Effective Date.

10.18 Electronic Signatures. Any Party may execute this Agreement using an "electronic signature," as that term is defined in California Civil Code Section 1633.2, or a "digital signature," as defined by California Government Code Section 16.5. An electronic or digital signature will have full legal effect and enforceability. Nothing in this Agreement requires any Party to use or accept the submission of any subsequent or related document containing an electronic or digital signature where written notice is otherwise required by this Agreement.

APPROVED AS TO FORM:

ORANGE COUNTY WATER DISTRICT

RUTAN & TUCKER, LLP

By: _____
Vicente Sarmiento, President

By: _____
Jeremy Jungreis
General Counsel, OCWD

By: _____
Michael R. Markus, General Manager

APPROVED AS TO FORM:

CITY OF ANAHEIM

By: _____
City Attorney

By: _____

APPROVED AS TO FORM:

CITY OF FULLERTON

By: _____
City Attorney

By: _____

APPROVED AS TO FORM:

CITY OF GARDEN GROVE

By: _____
City Attorney

By: _____

APPROVED AS TO FORM:

CITY OF ORANGE

By: _____
City Attorney

By: _____

APPROVED AS TO FORM:

CITY OF TUSTIN

WOODRUFF, SPRADLIN & SMART,
APC

By: _____
Dr. Allan Bernstein, Mayor

By: _____
David E. Kendig,
City Attorney, City of Tustin

ATTEST

CITY OF SANTA ANA

Daisy Gomez
Clerk of the Council

Kristine Ridge
City Manager

APPROVED AS TO FORM
SONIA R. CARVALHO, City Attorney

RECOMMENDED FOR APPROVAL

By: _____
John M. Funk
Assistant City Attorney

Nabil Saba
Acting Executive Director
Public Works Agency

APPROVED AS TO FORM:
ATKINSON, ANDELSON, LOYA, RUUD
& ROMO

**EAST ORANGE COUNTY WATER
DISTRICT**

By: _____
Jeffrey A. Hoskinson

By: _____
Lisa Ohlund, General Manager

APPROVED AS TO FORM:
HANSON BRIDGETT, LLP

IRVINE RANCH WATER DISTRICT

By: _____
Claire H. Collins

By: _____
Paul A. Cook, General Manager

APPROVED AS TO FORM:

SERRANO WATER DISTRICT

By: _____
S. Wayne Rosenbaum

By: _____
Jerry A. Vilander

APPROVED AS TO FORM:

YORBA LINDA WATER DISTRICT

By: _____
Andrew B. Gagen

By: _____

Exhibit A
Allocation of Recovery

Example of proportionally dividing damages assuming litigation, after paying Shared Litigation Counsel, results in a total damage pool of 75% of all damages (\$630M) claimed by all Participating Producers (total claims of \$839M). The column to the far right reflects each co-plaintiff's hypothetical recovery.

(Total Amount Claimed in Litigation by each co-plaintiff x .75)

Agency	PFAS Cost Incurred ⁽¹⁾ (Millions)	Percent of Total	Amount of Settlement Received	Assume receive 75% of cost settlement - \$630
OCWD	\$443	53%	\$332	
Anaheim	\$78	9%	\$58	
EOCWD	\$12	1%	\$9	
Fullerton	\$54	6%	\$40	
Garden Grove	\$42	5%	\$31	
IRWD	\$6	1%	\$5	
Orange	\$48	6%	\$36	
Santa Ana	\$54	6%	\$40	
Serrano	\$18	2%	\$14	
Tustin	\$18	2%	\$14	
YLWD	<u>\$66</u>	<u>8%</u>	<u>\$50</u>	
Total	\$839	100%	\$630 M	

(1) Total PFAS cost incurred by each agency including capital, O&M, MWD water purchases and other

(Dollar amounts shown are for illustrative purposes only and are not related to actual PFAS cost that may be incurred or damages recovered)

Exhibit B
Notice Addresses

Orange County Water District

PO Box 8300
18700 Ward Street
Fountain Valley, CA 92708
Attn: General Manager

City of Anaheim

Anaheim, CA _____
Attn: _____

City of Fullerton

Fullerton, CA _____
Attn: _____

City of Orange

Orange, CA _____
Attn: _____

City of Tustin

Tustin, CA _____
Attn: _____

City of Santa Ana

Santa Ana, CA _____
Attn: _____

East Orange County Water District

185 N. McPherson Road

Orange, CA 92869-3720

Attn:

Irvine Ranch Water District

15600 Sand Canyon Avenue

Irvine, CA 92618

Attn: General Manager

Serrano Water District

18021 Lincoln Street

Villa Park, CA 92861-6446

Attn:

Yorba Linda Water District

PO Box 309

Yorba Linda, CA 92885-0309

Attn: