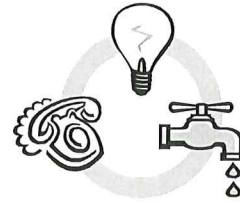


INDUSTRY PUBLIC UTILITIES COMMISSION CITY OF INDUSTRY



REGULAR MEETING AGENDA
DECEMBER 13, 2018 8:30 A.M.

President Mark D. Radecki
Commissioner Abraham N. Cruz
Commissioner Catherine Marcucci
Commissioner Cory C. Moss
Commissioner Newell W. Ruggles



Location: City Council Chamber, 15651 East Stafford Street, City of Industry, California

Addressing the Commission:

- ▶ **Agenda Items:** Members of the public may address the Commission on any matter listed on the Agenda. Anyone wishing to speak to the Commission is asked to complete a Speaker's Card which can be found at the back of the room and at the podium. The completed form should be submitted to the City Clerk prior to the Agenda item being called and prior to the individual being heard by the Commission.
- ▶ **Public Comments (Non-Agenda Items):** Anyone wishing to address the Commission on an item not on the Agenda may do so during the "Public Comments" period. In order to conduct a timely meeting, there will be a three-minute time limit per person for the Public Comments portion of the Agenda. State law prohibits the Commission from taking action on a specific item unless it appears on the posted Agenda. Anyone wishing to speak to the Commission is asked to complete a Speaker's Card which can be found at the back of the room and at the podium. The completed card should be submitted to the City Clerk prior to the Agenda item being called and prior to the individual being heard by the Commission.

Americans with Disabilities Act:

- ▶ In compliance with the ADA, if you need special assistance to participate in any City meeting (including assisted listening devices), please contact the City Clerk's Office (626) 333-2211. Notification of at least 48 hours prior to the meeting will assist staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting.

Agendas and other writings:

- ▶ In compliance with SB 343, staff reports and other public records permissible for disclosure related to open session agenda items are available at City Hall, 15625 East Stafford Street, Suite 100, City of Industry, California, at the office of the City Clerk during regular business hours, Monday through Thursday 8:00 a.m. to 5:00 p.m., Friday 8:00 a.m. to 4:00 p.m. Any person with a question concerning any agenda item may call the City Clerk's Office at (626) 333-2211.

-
1. Call to Order
 2. Flag Salute
 3. Roll Call
 4. Public Comments

5. **BOARD MATTERS**

5.1 Consideration of the Register of Demands

RECOMMENDED ACTION: Approve the Register of Demands and authorize the appropriate City Officials to pay the bills.

5.2 Consideration of the minutes of November 8, 2018 regular meeting

RECOMMENDED ACTION: Approve as submitted.

5.3 Consideration of a Lease of Water Rights for 500-acre feet of Groundwater Production Rights from the La Puente Valley County Water District for a total cost of \$379,470.00

RECOMMENDED ACTION: Approve the Lease Agreement.

5.4 Consideration of Professional Services Agreement between the Industry Public Utilities Commission and ASTRUM Utility Services, LLC for Consulting Services in an amount not to exceed \$550,000.00 from January 2, 2019 through January 2, 2022

RECOMMENDED ACTION: Approve the Agreement.

5.5 Report from the General Manager for the La Puente Valley County Water District

RECOMMENDED ACTION: Receive and file the report.

6. Adjournment. Next regular meeting: Thursday, January 10, 2019 at 8:30 a.m.

INDUSTRY PUBLIC UTILITIES COMMISSION

ITEM NO. 5.1

INDUSTRY PUBLIC UTILITIES COMMISSION

AUTHORIZATION FOR PAYMENT OF BILLS

Board Meeting December 13, 2018

<u>FUND</u>	<u>DESCRIPTION</u>	DISBURSEMENTS
560	INDUSTRY PUBLIC UTILITIES	18,561.56

<u>BANK</u>	<u>DESCRIPTION</u>	DISBURSEMENTS
BofA	BANK OF AMERICA CHECKING	18,561.56

APPROVED PER CITY MANAGER

**Industry Public Utilities Commission
Board Meeting
December 13, 2018**

Check	Date			Payee Name	Check Amount
IPUC.CHK - IPUC Water BofA Checking					
40398	11/13/2018			SO CALIFORNIA EDISON COMPANY	\$13,006.04
	Invoice	Date	Description	Amount	
	2019-00000662	10/31/2018	09/28-10/29/18 SVC - 1991 WORKMAN MILL U	\$13,006.04	
40399	12/13/2018			INDUSTRY PUBLIC UTILITIES COMMIS	\$1,000.00
	Invoice	Date	Description	Amount	
	NOV-18	11/28/2018	REIMBURSE PAYROLL - NOVEMBER 2018	\$1,000.00	
40400	12/13/2018			ROWLAND WATER DISTRICT	\$4,555.52
	Invoice	Date	Description	Amount	
	I-10312018-A	11/13/2018	CONTRACT SVC - OCTOBER 2018	\$2,528.94	
	I-10312018-B	11/13/2018	CONTRACT SVC - OCTOBER 2018	\$2,026.58	

Checks	Status	Count	Transaction Amount
	Total	3	\$18,561.56

INDUSTRY PUBLIC UTILITIES COMMISSION

ITEM NO. 5.2

INDUSTRY PUBLIC UTILITIES COMMISSION
REGULAR MEETING MINUTES
CITY OF INDUSTRY, CALIFORNIA
NOVEMBER 8, 2018
PAGE 1

CALL TO ORDER

The Regular Meeting of the Industry Public Utilities Commission of the City of Industry, California, was called to order by President Mark D. Radecki at 8:30 a.m., in the City of Industry Council Chamber, 15651 East Stafford Street, California.

ROLL CALL

PRESENT: Mark D. Radecki, President
Abraham N. Cruz, Commissioner
Catherine Marcucci, Commissioner
Cory C. Moss, Commissioner
Newell W. Ruggles, Commissioner

STAFF PRESENT: Troy Helling, City Manager; Bing Hyun, Assistant City Manager; James M. Casso, General Counsel; Joshua Nelson, Contract City Engineer; and Julie Gutierrez-Robles, Assistant Secretary.

PUBLIC COMMENTS

There were no public comments.

CONSIDERATION OF THE REGISTER OF DEMANDS

MOTION BY COMMISSIONER MOSS, AND SECOND BY COMMISSIONER MARCUCCI TO APPROVE THE REGISTER OF DEMANDS AND AUTHORIZE THE APPROPRIATE CITY OFFICIALS TO PAY THE BILLS. MOTION CARRIED 5-0, BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:	CRUZ, MARCUCCI, MOSS, RUGGLES, RADECKI,
NOES:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	NONE
ABSTAIN:	COMMISSIONERS:	NONE

INDUSTRY PUBLIC UTILITIES COMMISSION
REGULAR MEETING MINUTES
CITY OF INDUSTRY, CALIFORNIA
NOVEMBER 8, 2018
PAGE 2

CONSIDERATION OF THE MINUTES OF OCTOBER 11, 2018 REGULAR MEETING

MOTION BY COMMISSIONER CRUZ, AND SECOND BY COMMISSIONER RUGGLES TO APPROVE THE MINUTES AS SUBMITTED. MOTION CARRIED 5-0, BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:	CRUZ, MARCUCCI, MOSS, RUGGLES, RADECKI,
NOES:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	NONE
ABSTAIN:	COMMISSIONERS:	NONE

PRESENTATION BY THE GENERAL MANAGER OF THE LA PUENTE VALLEY COUNTY WATER DISTRICT REGARDING THE INDUSTRY PUBLIC UTILITIES WATER OPERATIONS REPORT

General Manager Greg Galindo presented a report to the Commission.

MOTION BY COMMISSIONER MOSS, AND SECOND BY COMMISSIONER MARCUCCI TO RECEIVE AND FILE THE REPORT. MOTION CARRIED 5-0, BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:	CRUZ, MARCUCCI, MOSS, RUGGLES, RADECKI,
NOES:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	NONE
ABSTAIN:	COMMISSIONERS:	NONE

ADJOURNMENT

There being no further business, the Industry Public Utilities Commission adjourned at 8:43 a.m.

MARK D. RADECKI
PRESIDENT

JULIE GUTIERREZ-ROBLES
ASSISTANT SECRETARY

INDUSTRY PUBLIC UTILITIES COMMISSION

ITEM NO. 5.3

Staff Report



To: Joshua Nelson, Contract City Engineer, City of Industry

From: Greg B. Galindo, General Manager

Date: December 13, 2018

Subject: Consideration of an Agreement for the Lease of 500-acre feet of Groundwater Production Rights from the La Puente Valley County Water District for a total cost of \$379,470.00

Purpose - *Secure additional Main San Gabriel Basin (Basin) Groundwater Production Rights for the City of Industry Waterworks System (CIWS) to minimize the impacts of rising cost of replenishment water to the Industry Public Utilities (IPU) Water System Customers.*

Recommendation - *Approve the lease of 500 acre-feet of Groundwater Production Rights from the La Puente Valley County Water District's (District) at a rate of \$758.94 per acre-foot.*

Fiscal Impact - *The IPU Water Operations 2018-19 Fiscal Year (FY) Budget appropriates \$377,614 for the lease of groundwater production rights. The estimated cost of leasing 500 acre-feet from the District will be \$379,470 which is \$1,856 above the 2018-19 FY Budget projection. The lease will result in a \$34,152 savings in the cost of replenishment water.*

Summary

The IPU Water System, also referred to as the CIWS, has 1,103 acre-feet (AF) of adjudicated prescriptive pumping rights in the Basin. These rights equal to a 0.5581% Pumper's Share of available pumping rights annually. These pumping rights allow the CIWS to produce water from the basin on an annual basis in accordance with the rules and regulations of the Basin's Watermaster. The Watermaster Board of Directors annually establishes an Operating Safe Yield for the Basin, which is the amount of water that can be pumped annually from the Basin that is anticipated to be replenished by local precipitation within its watershed. For the current 2018-19 production year, the Operating Safe Yield was set at 150,000 AF. This results in the City having 837.15 AF of pumping rights for the current year.

The CIWS's five-year average annual water production is approximately 1,350 AF, which is greater than its annual production rights in the Basin. This results in the CIWS having to lease groundwater production rights or purchase replenishment water to replace the water produced over its production rights. When needed, replenishment water is purchased from the Upper San Gabriel Valley Municipal Water District (Upper District). Upper District's rate for replenishment water is \$834.00 per AF. To avoid purchasing water at this cost, District staff actively pursues leases of water production rights in the Basin to offset the amount of replenishment water the CIWS will be required to purchase. Leases are preferred by District staff when the cost per AF to lease rights provides a savings to the CIWS's customers as compared to the purchase of replenishment water. District staff has been successful in the past in leasing water production rights at 91% and 92% of the Upper District rate for replenishment water.

For this fiscal year, District staff has secured a lease of 1,000 AF of 2018-19 groundwater production rights at 91% of Upper District’s replenishment rate. Provided below is a calculation of the production rights lease rate for the current year; ($\$834 \times 91\% = \758.94). The cost to lease 500 AF will be \$379,470. A Production Rights Lease Agreement, which is the same format as last year, is enclosed for your review and approval.

The Upper District Full Service Untreated Tier 1 Rate is subject to change and is expected to increase in January of 2020 by 4%. Any lease amount that results in the CIWS having more productions rights than its actual production will be carried over to the next production year. The District is committed to pursue effective cost savings measures that help maintain the affordability of the CIWS’s rates. This water management strategy results in a 9% savings in the cost of water that is over the CIWS’s annual production rights. Enclosed is a projection of the impact that leasing water production rights has on the cost of water annually.

In addition to the cost of leasing water production rights or replenishment water purchases, the CIWS must pay assessments for each AF of water produced annually. These assessments are set by the Watermaster Board of Directors on an annual basis. A list of these assessments, their purpose and their current rate is shown below:

Assessment	Purpose	Current Rate \$/AF
Administrative	Fund Watermaster; pays for various programs that Watermaster is responsible for, such as water quality monitoring, well permitting, enforcing rules and regulations and Judgement provisions.	\$15.00
Make-Up Obligation	Pays for all necessary costs of administration and satisfaction of the Make-up Water Obligation to the area at or below Whittier Narrows, pursuant to the Judgment in the Long Beach Case.	\$0.00
In-Lieu	Pays for the In-Lieu water program. Funds the difference in cost for a Producer that is directed by Watermaster to utilize supplemental water (i.e., import water) in-lieu of producing a like amount of groundwater.	\$10.00
Resource Development	To fund the purchase, financing and/or development of new or additional supplemental water sources.	\$105.00

Recommendation

District staff recommends the City approve the lease of 500 AF of groundwater production rights from the La Puente Valley County Water District for \$758.94 per AF. If approved, District staff will process the necessary documents with the Main San Gabriel Basin Watermaster and expend Industry Public Utilities Water Operations Funds to complete the lease transaction. The District will provide the City confirmation from Watermaster upon their acceptance of the lease documentation.

Fiscal Impact from Recommendation

The IPU Water Operations 2018-19 Fiscal Year (FY) Budget appropriates \$377,614 for the lease of groundwater production rights. The estimated cost of leasing 500 acre-feet from the District will be \$379,470 which is \$1,856 above the 2018-19 FY Budget projection. The lease will result in a \$34,152 savings in the cost of replenishment water.

Respectfully Submitted,

Greg B. Galindo

General Manager

La Puente Valley County Water District

Enclosures (2)

- Agreement to Lease 500 Acre-Feet of Main San Gabriel Basin Water Production Rights from La Puente Valley County Water District
- Summary of the Benefit from Annual Water Production Rights Leases

LEASE OF WATER RIGHTS

PRODUCTION RIGHT

THIS LEASE OF WATER RIGHTS (the "Lease") is entered into on this ____ day of December, 2018, by and between La Puente Valley County Water District, a County Water District ("Lessor"), and the Industry Public Utilities Commission, a public agency ("Lessee"), with respect to the following:

RECITALS

WHEREAS, both Lessor and Lessee were parties in that certain action that adjudicated groundwater rights in the Main San Gabriel Groundwater Basin (Upper San Gabriel Valley Municipal Water District v. City of Alhambra, et al., Los Angeles County Superior Court Case No. 924128) and has resulted in the Amended Judgment dated August 24, 1989 (the "Amended Judgment"); and

WHEREAS, pursuant to the Amended Judgment, both Lessor and Lessee hold certain adjudicated rights to pump groundwater from the Main San Gabriel Groundwater Basin ("Main Basin") on an annual basis which are further described in the Amended Judgment and referred to for purposes of this Agreement as "Annual Production Rights"; and

WHEREAS, pursuant to the Amended Judgment, including but not limited to Section 55 thereof, parties to the Amended Judgment are authorized to assign, transfer, license or lease all or any portion of their Annual Production Rights to other entities, including but not limited to other parties to the Amended Judgment, provided that appropriate notice procedures established by the Main San Gabriel Basin Watermaster ("Watermaster") are followed; and

WHEREAS, as of the date hereof, Lessor has 500 acre-feet of Annual Production Rights for the 2018-19 water year available for lease; and

WHEREAS, Lessor and Lessee desire to enter into this Lease for the 500 acre-feet of Annual Production Rights for the 2018-19 water year.

AGREEMENT

IN CONSIDERATION of the foregoing recital and the mutual promises set forth herein, Lessor and Lessee agree as follows:

1. Leasing of Production Rights. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, Five Hundred (500) acre-feet of Annual Production Rights (the "Leased Production Rights") for the term and upon the terms and conditions set forth in this Lease.

2. Term. The term of this Lease shall be for a period commencing July 1, 2018 and ending June 30, 2019.
3. Lease Rate, Payment and Adjustment.

The lease rate under this Lease shall be ninety-one percent (91%) of the prevailing Pre-purchased Supplemental Water Rate (the "Pre-purchased SWR") set by the Upper San Gabriel Valley Municipal Water District's Board of Directors ("USGVMWD") on June 5, 2018. That Pre-purchased SWR is \$834 per acre foot for the current production year.

Thus, the gross rental amount payable for the lease of the Leased Production Rights under this Lease for the term as listed in paragraph 2 above shall be \$379,470, which is calculated on the basis of 91% of the Pre-purchased SWR of \$834 per acre foot. If the Pre-purchased SWR set by USGVMWD is revised or otherwise changed and made effective prior to June 30, 2019, a reconciling payment adjustment will be made by the Lessee or the Lessor, as the case may be, to the other party within 30 days from the date the revised Pre-purchased SWR is approved by USGVMWD.

Upon execution of this Lease, Lessor will send an invoice for, and Lessee will make the full payment of \$379,470 within 15 days of Watermaster's acknowledgement of the Lease.

All payments due Lessor pursuant to this Lease shall be made and sent as follows:

La Puente Valley County Water District
112 N. First Street
La Puente, CA 91744

4. Agreement Regarding Main San Gabriel Basin Watermaster.
 - (a) Lessor agrees to execute and deliver to Lessee all documents which, from time to time, may be required by the Watermaster to reflect the lease to Lessee of the Leased Production Rights which are the subject of this Lease. All such documents shall be in such form and substance as shall be reasonably satisfactory to Lessor, Lessee and the Watermaster. If for any reason, the Watermaster elects not to acknowledge this Lease, Lessor agrees to refund prior payments to Lessee within 15 days from the date of a refund request by Lessee and substantiation of said refusal by Watermaster.
 - (b) Lessee shall, at its expense, prepare and submit all reports required by the Watermaster in connection with the exercise by Lessee of the Leased Production Rights.

- (c) Lessee shall pay all assessments required by Watermaster and the San Gabriel Valley Water Association in connection with the exercise by Lessee of the Leased Production Rights.
- (d) This Lease entitles Lessee to the use only of the Leased Production Rights (i.e., lease of water rights) associated with Lessor's Production Rights. Lessor retains and does not convey to Lessee any other rights associated with said Production Rights.
- (e) The parties shall execute and file with the Watermaster all documents required under the Amended Judgment.
- (f) The parties agree to comply and be bound by all terms and conditions of the Amendment judgment and any and all other orders or determinations of the court and Watermaster.

5. Indemnification.

- (a) Lessor shall indemnify, hold harmless and defend Lessee and each of its officers, officials, employees, agents and authorized volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the Lessee, Lessor, or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly, are a consequence of, or are in any way attributable to, in whole or in part, the performance of the Agreement from the negligent or intentional acts or omissions of Lessor or any of its officers, officials, employees, agents or authorized volunteers in the performance of this Lease; provided nothing herein shall constitute a waiver by Lessor of governmental immunities including California Government Code Section 810 et seq.
- (b) Lessee shall indemnify, hold harmless and defend Lessor and each of its officers, officials, employees, agents and authorized volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by Lessor, Lessee or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly, are a consequence of, or are in any way attributable to, in whole or in part, the performance of the Lease from negligence or intentional acts or omissions of Lessee or any of its officers, officials, employees, agents or authorized volunteers in the performance of this Lease; provided nothing herein shall constitute a waiver by Lessee of governmental immunities including California Government Code Section 810 et seq.

6. Other Provisions.

- (a) All communications, notices and demands (collectively “Notices”) of any kind shall be made in writing and personally served or sent by registered or certified mail, postage prepaid to the following:

Lessor: Greg B. Galindo
La Puente Valley County Water District
112 N. First Street
La Puente, CA 91744

Lessee: Troy Helling
Industry Public Utilities Commission
15625 East Stafford Street #100
City of Industry, California 91744

Any Notice personally served shall be effective upon service. Any Notice sent by mail, and properly addressed, shall be effective upon date of receipt, or refusal as indicated on the return receipt. Either party may change its address for Notices by notice to the other given in a manner provided in this subparagraph.

- (b) This Lease shall inure to the benefit of and be binding upon the heirs, successors and assigns of both parties hereto.
- (c) Each party shall, upon request of the other party, take such further actions and execute and deliver such further instruments as shall be reasonably required to carry out the purpose and intent of this Lease.
- (d) This Lease is executed in the State of California and shall be governed by and construed in accordance with California law. Venue for any action arising out of or related to the Lease shall be placed in any court of the State of California with appropriate jurisdiction and located in the County of Los Angeles, with service of process to be in accordance with the then provisions of the California Code of Civil Procedure.
- (e) This Lease may be executed in two or more counterparts, each of which shall be an original but all of which, together, shall constitute a single instrument. It shall not be necessary for both parties to execute the same counterpart(s) of this Lease for this Lease to become effective.
- (f) This Lease constitutes the entire agreement of Lessor and Lessee with respect to the subject matter hereof. This Lease supersedes all prior discussions and understandings with respect to the subject matter hereof. There are no representations, warranties, promises or

covenants as to the subject matter hereof except as expressly set forth in this Lease.

- (g) This Lease may be amended only by a written instrument executed by both parties.
- (h) The paragraph headings contained in this Lease are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.
- (i) Lessor represents and acknowledges that it is executing this Lease as the owner of the Production Rights that are the subject of this Lease, and that said rights are not encumbered in any way that would interfere with Lessee's rights as set forth herein.
- (j) Neither party shall assign, let or sublet the whole or any part of its interest in this Agreement without the prior written consent of the other party.
- (k) This Lease does not create, and shall not be construed to create, any rights enforceable by any person, partnership, corporation, joint venture, limited liability company, public entity, or other form of organization or association of any kind that is not a party to this Lease.
- (l) In the event of any action between the parties hereto seeking enforcement or interpretation of any of the provisions of this Lease, the prevailing party in such action shall be entitled to an award, in addition to any damages, for its reasonable costs and expenses, including without limitation, actual costs and attorneys' fees, consultants' fees and experts' fees, as ordered by the trier of fact.
- (m) Any waiver of the provisions of this Lease by the party entitled to the benefits thereof as to any instance must be in writing and shall in no event be deemed a waiver of the same provision with respect to any other instance or a waiver of any other provision of this Lease.

IN WITNESS WHEREOF, Lessor and Lessee have executed and delivered this Lease as of the Effective Date.

LESSOR

La Puente Valley County Water District

Greg B. Galindo
General Manager

LESSEE

Industry Public Utilities Commission

Troy Helling
Public Utilities Director

ATTEST:

Julie Gutierrez Robles, Deputy Secretary

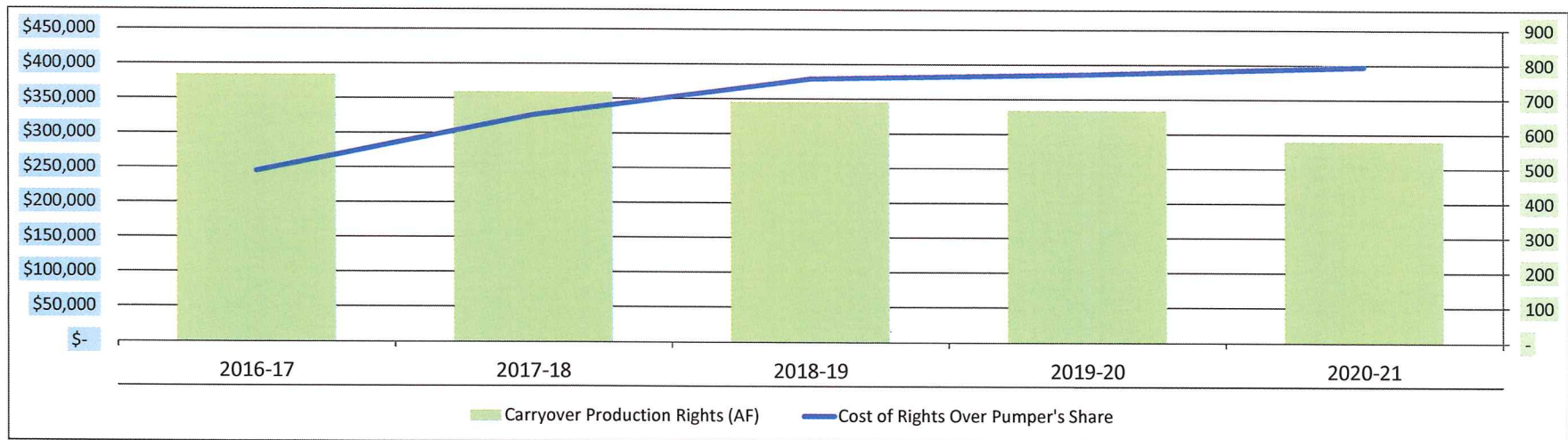
APPROVED AS TO FORM:

James M. Casso, General Counsel

CIWS Water Production and Production Rights Lease Summary 2018-19

Production Year	2016-17	2017-18	2018-19	2019-20	2020-21
1 Watermaster Operating Safe Yield (AF)	150,000	150,000	150,000	150,000	150,000
2 CIWS Annual AF Production Right (Safe Yield x Pumper's Share .5581%)	837.15	837.15	837.15	837.15	837.15
3 Carryover Production Rights (AF)	767.59	718.79	691.05	668.20	580.35
4 Annual Production (AF)	1,235.95	1,314.89	1,360.00	1,425.00	1,425.00
5 Production Over CIWS Rights (AF)	(368.79)	(241.05)	(168.20)	(80.35)	7.50
6 Production Rights Lease (AF)	350.00	450.00	500.00	500.00	500.00
7 Annual Production Rights Remaining (AF)	718.79	691.05	668.20	580.35	492.50
8 Lease Rate (\$/AF)	\$ 699.79	\$ 726.18	\$ 758.94	\$ 773.12	\$ 796.31
9 Cyclic Storage Rate (\$/AF)	\$ 769.00	\$ 798.00	\$ 834.00	\$ 859.02	\$ 884.79
10 Lease Cost	\$ 244,927	\$ 326,781	\$ 379,470	\$ 386,559	\$ 398,156
1 Cyclic Storage Cost	\$ -	\$ -	\$ -	\$ -	\$ -
12 Cost of Rights Over Pumper's Share	\$ 244,927	\$ 326,781	\$ 379,470	\$ 386,559	\$ 398,156
13 Average Rate of Right Over Pumper's Share (\$/AF)	\$ 699.79	\$ 726.18	\$ 758.94	\$ 773.12	\$ 796.31

Notes: Row 1 - Safe Yield is set by Watermaster in May of each for the subsequent year based on hydrological conditions. Columns for years 2018-19 through 2020-21 figures based on District staff projections. Row 12 - Depicts only the total cost of water rights leases and/or replenishment water purchases. This figure does not include any other applicable production assessments, power or treatment costs.



INDUSTRY PUBLIC UTILITIES COMMISSION

ITEM NO. 5.4



INDUSTRY PUBLIC UTILITIES COMMISSION

MEMORANDUM

TO: Honorable Mayor Radecki and Commission Board Members

FROM: Troy Helling, Public Utilities Director *TH*

STAFF: Joshua Nelson, Contract IPUC Engineer, CNC Engineering *JN*
Dev Birla, Operations Manager, CNC Engineering *DDB*

DATE: December 13, 2018

SUBJECT: Consideration of Professional Services Agreement between the Industry Public Utilities Commission and ASTRUM Utility Services, LLC for Consulting Services in an amount not to exceed \$550,000.00 from January 2, 2019 through January 2, 2022

Background:

ASTRUM Utility Services, LLC (ASTRUM) provides consulting services to the IPUC through a subconsultant contract with CNC Engineering (CNC), dated April 18, 2018. The contract was amended on June 11, 2018 by Amendment No. 1 due to a change in the scope of services and monthly compensation. The monthly compensation is \$14,000 per month and details of the scope of services is provided in Exhibit A.

Discussion:

ASTRUM provides resource planning, regulatory strategies and compliance filings, tariff schedules and customer billings and administrative services to the IPUC. Staff proposes a new Professional Services Agreement between the IPUC and ASTRUM to continue providing consulting services to the IPUC. The proposed Agreement will replace the subconsultant contract between ASTRUM and CNC. The Agreement will commence on January 2, 2019 and remain in effect until January 2, 2022. The revised scope of work and Rate Schedule is provided in Exhibit A and B, respectively, of the Professional Services Agreement (PSA).

Fiscal Impact:

Funding for the project is included in the 2018-2019 Fiscal Year budget in the amount of \$170,000 to the Utility Administration/ASTRUM Utilities (Account No. 161-300-5120.01). The recommended action for this Agreement will have a no fiscal impact on the 2018-19 Budget.

Recommendation:

It is recommended that the IPUC approve the Professional Services Agreement with ASTRUM for an amount not-to-exceed \$550,000 through January 2, 2022.

Exhibit:

- A. Professional Services Agreement for Consulting Services with ASTRUM dated December 13, 2018

TH/JN/DB:jv

EXHIBIT A

Professional Services Agreement for Consulting Services with ASTRUM dated
December 13, 2018

[Attached]

**INDUSTRY PUBLIC UTILITIES COMMISSION
PROFESSIONAL SERVICES AGREEMENT**

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”), is made and effective as of January 2, 2019 (“Effective Date”), between the Industry Public Utilities Commission (“IPUC”) and ASTRUM Utility Services, LLC (“Consultant”). The IPUC and Consultant are hereinafter collectively referred to as the “Parties”.

RECITALS

WHEREAS, IPUC desires to engage Consultant to perform the services described herein, and Consultant desires to perform such services in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, IPUC and Consultant agree as follows:

1. TERM

This Agreement shall commence on the Effective Date, and shall remain and continue in effect until tasks described herein are completed, but in no event later than January 2, 2022, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

(a) Consultant shall perform the tasks (“Services”) described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. (“Scope of Services”). Tasks other than those specifically described in the Scope of Services shall not be performed without prior written approval of the IPUC. The Services shall be performed by Consultant, unless prior written approval is first obtained from the IPUC. In the event of conflict or inconsistency between the terms of this Agreement and Exhibit A, the terms of this Agreement shall prevail.

(b) IPUC shall have the right to request, in writing, changes to the Services. Any such changes mutually agreed upon by the Parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement.

(c) Consultant shall perform all Services in a manner reasonably satisfactory to the IPUC and in a first-class manner in conformance with the standards of quality normally observed by an entity providing professional engineering consulting services, serving a municipal agency.

(d) Consultant shall comply with all applicable federal, state, and local laws, regulations and ordinances in the performance of this Agreement, including but not limited to, the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*). During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom

Consultant was not working on the Effective Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute or law; and (ii) IPUC has not consented in writing to Consultant's performance of such work. No officer or employee of IPUC shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the IPUC. If Consultant was an employee, agent, appointee, or official of the IPUC in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, and Consultant will be required to reimburse the IPUC for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

(e) Consultant represents that it has, or will secure at its own expense, all licensed personnel required to perform the Services. All Services shall be performed by Consultant or under its supervision, and all personnel engaged in the Services shall be qualified and licensed to perform such services.

3. MANAGEMENT

City's Utilities Director or his designee, shall represent the IPUC in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but shall have no authority to modify the Services or the compensation due to Consultant.

4. PAYMENT

(a) The IPUC agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B ("Rate Schedule"), attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed Five Hundred Fifty Thousand Dollars (\$550,000.00) for the total Term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the IPUC. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by IPUC and Consultant at the time IPUC's written authorization is given to Consultant for the performance of said services.

(c) Consultant shall submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as

practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the IPUC disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within 45 days of receipt of an invoice therefore.

5. SUSPENSION OR TERMINATION OF AGREEMENT

(a) The IPUC may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the IPUC suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the IPUC shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the IPUC. Upon termination of the Agreement pursuant to this Section, the Consultant shall submit an invoice to the IPUC pursuant to Section 5 of this Agreement.

6. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by IPUC that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of IPUC or its designees at reasonable times to review such books and records; shall give IPUC the right to examine and audit said books and records; shall permit IPUC to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the IPUC and may be used, reused, or otherwise disposed of by the IPUC without the permission of the Consultant. With respect to computer files, Consultant shall make available to the IPUC, at the Consultant's office, and upon reasonable written request by the IPUC, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. Consultant hereby grants to IPUC all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by Consultant in the course

of providing the services under this Agreement. All reports, documents, or other written material developed by Consultant in the performance of the Services pursuant to this Agreement, shall be and remain the property of the IPUC.

7. INDEMNIFICATION

(a) Indemnity for professional liability

When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless the IPUC and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or Subconsultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnity for other than professional liability

Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless IPUC, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

(c) DUTY TO DEFEND. In the event the IPUC, its officers, employees, agents and/or volunteers are made a party to any action, claim, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this Agreement, and upon demand by IPUC, Consultant shall have an immediate duty to defend the IPUC at Consultant's cost or at IPUC's option, to reimburse the IPUC for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters.

Payment by IPUC is not a condition precedent to enforcement of this indemnity. In the event of any dispute between Consultant and IPUC, as to whether liability arises from the sole negligence of the IPUC or its officers, employees, or agents, Consultant will be obligated to pay for IPUC's defense until such time as a final judgment has been entered adjudicating the IPUC as solely negligent. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

8. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached hereto and incorporated herein by reference.

9. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to the IPUC a wholly independent consultant and/or independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultants exclusive direction and control. Neither IPUC nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the IPUC. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against the IPUC, or bind the IPUC in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, IPUC shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for IPUC. IPUC shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

10. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The IPUC, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

11. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the IPUC in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the IPUC has or will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the IPUC to any and all remedies at law or in equity.

12. NO BENEFIT TO ARISE TO LOCAL OFFICERS AND EMPLOYEES

No member, officer, or employee of IPUC, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Services during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Services performed under this Agreement.

13. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without IPUC's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the IPUC, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the IPUC, unless otherwise required by law or court order. (b)

Consultant shall promptly notify IPUC should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the IPUC, unless Consultant is prohibited by law from informing the IPUC of such Discovery, court order or subpoena. IPUC retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless IPUC is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to Consultant in such proceeding, Consultant agrees to cooperate fully with the IPUC and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by IPUC to control, direct, or rewrite said response.

14. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To IPUC:

Industry Public Utilities Commission
15625 E. Stafford, Suite 100
City of Industry, CA 91744

Attention: Utilities Director

With a Copy To: James M. Casso, City Attorney
Casso & Sparks, LLP
13200 Crossroads Parkway North, Suite 345
City of Industry, CA 91746

To Consultant: Leonard Viejo, President
2107 Torrey Pines Road
La Jolla, CA 92037-3310

15. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the IPUC.

Before retaining or contracting with any subconsultant for any services under this Agreement, Consultant shall provide IPUC with the identity of the proposed subconsultant, a copy of the proposed written contract between Consultant and such subconsultant which shall include an indemnity provision similar to the one provided herein and identifying IPUC as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subconsultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from the IPUC for such insurance.

Notwithstanding Consultant's use of any subconsultant, Consultant shall be responsible to the IPUC for the performance of its subconsultant as it would be if Consultant had performed the Services itself. Nothing in this Agreement shall be deemed or construed to create a contractual relationship between the IPUC and any subconsultant employed by Consultant. Consultant shall be solely responsible for payments to any subconsultants. Consultant shall indemnify, defend and hold harmless the Indemnified Parties for any claims arising from, or related to, the services performed by a subconsultant under this Agreement.

16. GOVERNING LAW/ATTORNEYS' FEES

The IPUC and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court in Los Angeles County, California. If any action at law or suit in equity is brought to enforce or interpret the provisions of this Agreement, or arising out of or relating to the Services provided by Consultant under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all related costs, including costs of expert witnesses and consultants, as well as costs on appeal, in addition to any other relief to which it may be entitled.

17. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous

agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

18. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

19. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

20. CAPTIONS

The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and shall have no significance in the interpretation of this Agreement.

21. WAIVER

The waiver by IPUC or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by IPUC or Consultant unless in writing.

22. REMEDIES

Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies.

23. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

“IPUC”
City of Industry

“CONSULTANT”
ASTRUM Utility Services, LLC

By: _____
Troy Helling, Public Utilities Director

By _____
Leonard Viejo, President

Attest:

By: _____
Julie Gutierrez- Robles, Deputy City Clerk

Approved as to form:

By: _____
James M. Casso, City Attorney

Attachments: Exhibit A Scope of Services
 Exhibit B Rate Schedule
 Exhibit C Insurance Requirements

EXHIBIT A

SCOPE OF SERVICES

Consultant shall provide the following services:

1. Resource Planning

- A. Develop portfolio and risk management strategies consistent with the IPUC's financial position.
- B. Forecast and schedule hourly, monthly and annual energy requirements.
- C. Monitor short and long-term energy prices, and recommend procurement strategies.
- D. Maintain relationships with existing energy suppliers, and work to establish additional enabling agreements to position the IPUC to receive additional competitive bids for the purchase of wholesale energy and resource adequacy.
- E. Solicit competitive bids from energy suppliers, coordinate energy purchases, and finalize contracts with selected energy suppliers.
- F. Validate complex monthly power supply billings.

2. Regulatory Strategies and Compliance Filings

- A. Advise staff on potential impacts of energy-related legislation, and forecasting the financial impacts of such legislation.
- B. Advise staff of actions taken or currently being considered by other public agencies.
- C. Advise staff of Southern California Edison rate changes.
- D. Preparation and submittal of required regulatory filings.
- E. Develop strategies that comply with the "Resource Adequacy Requirements" and "Renewable Portfolio Standards".
- F. Develop compliance strategies to reduce the cost of compliance.

3. Tariff Schedules and Customer Billings

- A. Assist in reviewing, drafting and negotiating selected energy service agreements with customers.
- B. Forecast the energy requirements and financial impact of selected energy service agreements.
- C. Compare existing and proposed tariff schedules to surrounding electric utilities.
- D. Perform cost of service study and assist staff with drafting of rate schedules, rules and regulations.

4. Administrative Services

- A. Assist in the preparation of IPUC's monthly financial and operating results and Line Loss reports.
- B. Develop rigorous financial/economic analyses as required.
- C. Assist in the preparation of an Annual Business Plan.
- D. Assist Staff's understanding of electric utility issues.
- E. Conference calls and emails with City and IPUC Staff and Consultants

EXHIBIT B

RATE SCHEDULE

- \$14,000 monthly from January 2, 2019 to June 30, 2019
- \$14,500 monthly from July 1, 2019 to June 30, 2020
- \$15,100 monthly from July 1, 2020 to June 30, 2021
- \$15,800 monthly from July 1, 2021 to December 31, 2021

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting Consultant's indemnification of City, and prior to commencement of the Services, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to Agency.

General liability insurance. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000.00 combined single limit for each accident.

Professional liability (errors & omissions) insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

Proof of insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Consultant, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a

primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the Agency nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass Through Clause. Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by the City. The City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by the City.

Timely notice of claims. Consultant shall give the City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.