

**ACTION  
ITEM**


**2A**





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Date: October 14, 2015 (Special Board Meeting)

To: The Honorable Board of Directors

From: P. Joseph Grindstaff   
General Manager

Submitted by: Chris Berch   
Executive Manager of Engineering/Assistant General Manager

Shaun Stone   
Manager of Engineering

Subject: Construction Contract Award for the Montclair Flow Splitter Box and Metering Station Upgrades

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### **RECOMMENDATION**

It is recommended that the Board of Directors:

1. Approve the construction contract award for J.F.Shea Construction for the Montclair Splitter Box and Metering Station Upgrades, Project No. EN13018 in the amount of \$557,565; and
2. Authorize the General Manager to finalize and execute the contract.

### **BACKGROUND**

The Montclair Flow Splitter Box and Metering Station are located within an unincorporated area of San Bernardino County near the Cities of Montclair, Pomona and Chino. The Splitter Box and Metering Station receive sewage flows from Ontario, Montclair and Chino. The sewage flows are either diverted into RP-1 or into the CCWRF and then to RP-5 depending on the seasonal recycled water demands. Sewage flows can also be diverted to the Non-Reclaimable Wastewater (NRW) Line in the event of a system emergency.

The Montclair Flow Splitter Box and Metering Station have been in operation since December 1988. The Splitter Box is equipped with three (3) manually operated cast iron gates. Operation and Maintenance staff confirmed that the gates are inoperable and appear to be beyond repair. In addition, manually operating the gates in an increasingly heavy traffic street is a safety concern due to extensive traffic control requirements.

Stantec Consulting Services were retained to provide design engineering and construction support services for the project. The project will install three (3) remotely operated electric actuated stainless steel slide gates. The project will also upgrade some of the equipment inside the Metering Station's including the street-level access hatches and will provide redundancy to some of the equipment.

On August 13, 2015, Agency staff solicited bids for the construction of the subject project from the Agency's Pre-Qualified Contractors list. On September 21, 2015, the following bids were received:

<b>Bidder's Name</b>	<b>Bid Amount for Project No. EN13018</b>
J.F. Shea Construction	\$557,565
W.A. Rasic Construction Co. Inc.	\$797,000
Mike Bubalo Construction Co. Inc.	\$980,000
<b>Engineer's Estimate</b>	<b>\$540,000</b>

J.F. Shea Construction was the lowest responsive bidder.

The following is the projected project cost:

<b>Project Phase</b>	<b>Total Cost for EN13018</b>
Design (Consultant, IEUA Labor)	\$286,976
Construction	\$557,565
Construction Services (IEUA Labor and Augmentation)	\$200,000
Construction Contingency	\$115,000
<b>Total Project Cost</b>	<b>\$1,159,541</b>

The following is the project schedule:

<b>PROJECT PHASE</b>	<b>DATE</b>
Construction Contract Award	October 2015
Construction Completion	July 2016

The project is consistent of the Agency's Wastewater Management Business Goal to maintain capacity within systems and facilities to meet essential service demands and to protect public health and environment.

Construction Contract Award for the  
Montclair Flow Splitter Box and Metering Station Upgrades  
October 14, 2015  
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**PRIOR BOARD ACTION**

On December 18, 2013, the Board approved the award of the contract for the CCWRF Headworks & Odor Control Replacement and Montclair Splitter Box and Metering Station upgrades Design Engineering Services to Stantec Consulting Services, Inc.

**IMPACT ON BUDGET**

The construction contract for the Montclair Splitter Box and Metering Station Upgrades FY 2015/16, Project No. EN13018, in the amount of \$557,565 is within the total project budget of \$3,030,095 in the Regional Wastewater Capital (RC) Fund.

PJG:CB:SS:aa

# Montclair Splitter Box and Metering Station Upgrades Construction Contract Award Project No. EN13018 October 2015

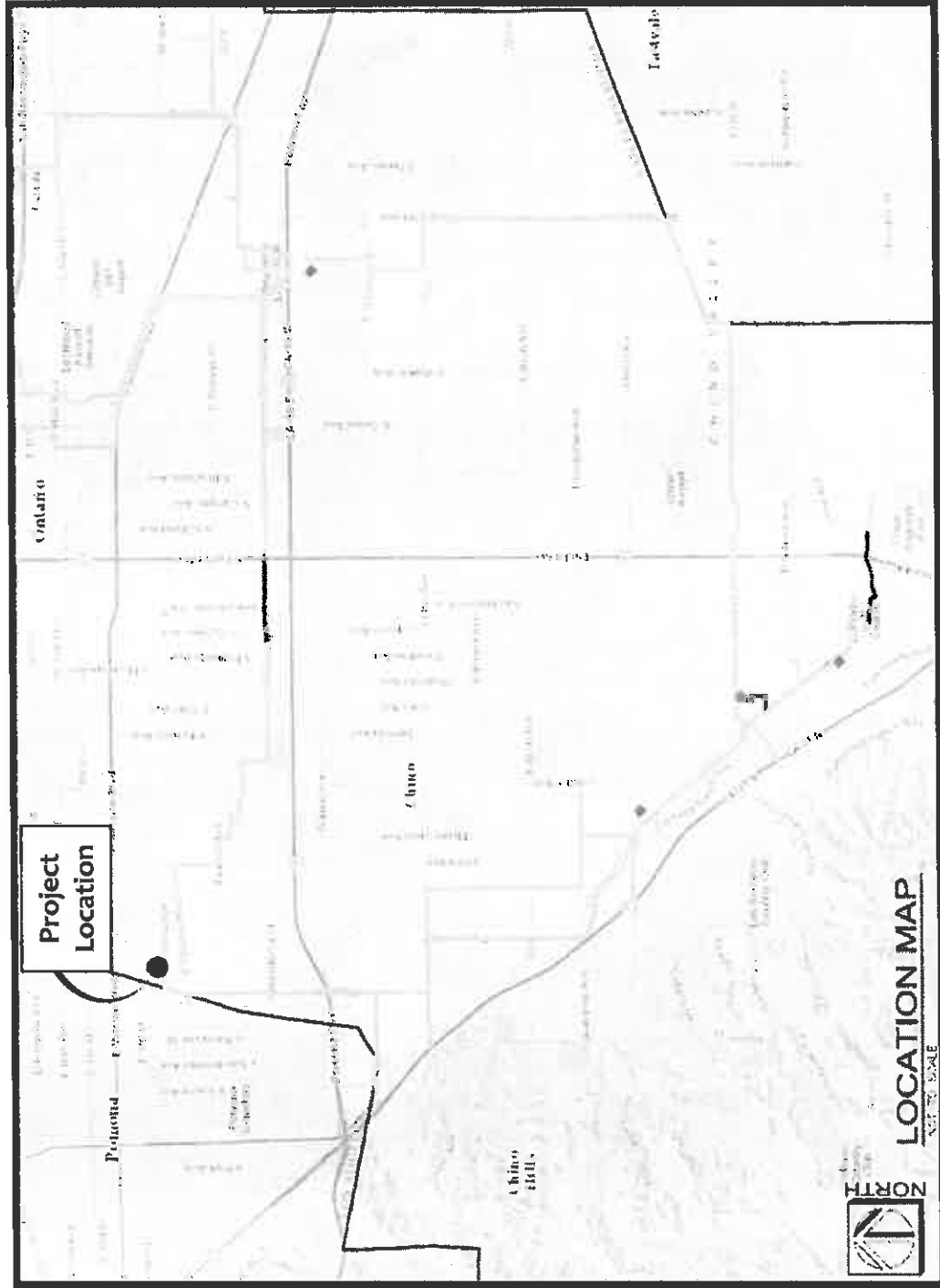


*Inland Empire Utilities Agency*  
A MUNICIPAL WATER DISTRICT

Shaun Stone, P.E.  
Manager of Engineering

Adham Almasri, P.E.  
Project Manager

# Project Location



**Inland Empire Utilities Agency**  
A MUNICIPAL WATER DISTRICT

# Project Background

- Splitter Box and Metering Station in operation since 1988
- Sluice gates are inoperable and beyond repairs
- Concern with manual operation in heavy traffic area



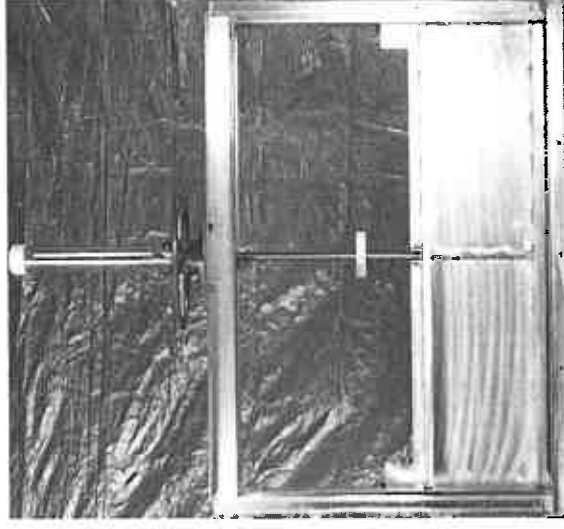
Removal of Access Covers is Time Consuming



Cast Iron Sluice Gates are Obsolete and in-Operable

# Project Scope

- Install 3 new electric actuated stainless steel isolation gates
- Install new stainless steel traffic rated access hatches
- Install new up-to-date flow probes with remote dependable readout and redundancy



New Stainless Steel Gates with Electric Operator



# Bid Results

- The construction bids were received as follows:

<b>Contractor's Name</b>	<b>Bid Amount</b>
J.F. Shea Construction	\$557,565
W.A. Rasic Construction Co. Inc.	\$797,000
Mike Bubalo Construction Co. Inc.	\$980,000
<b>Engineer's Estimate</b>	<b>\$540,000</b>

# Project Cost and Schedule

Description	Estimated Cost
Design (Consultant, IEUA Labor)	\$286,976
Construction Contract	\$557,565
Construction Services (IEUA Labor and Augmentation)	\$200,000
Construction Contingency	\$115,000
<b>Total Project Cost</b>	<b>\$1,159,541</b>
<b>IEUA Approved Budget</b>	<b>\$3,030,965</b>

Project Milestone	Date
Construction Contract Award	October 2015
Construction Completion	July 2016



# Agency Goal/Recommendation

Staff recommends that the Board of Directors approve the construction contract award to J.F. Shea Construction for the Montclair Splitter Box and Metering Station Upgrades, Project No. EN13018 in the amount of \$557,565 and also authorize the General Manager to execute the contract.

*The project is consistent of the Agency's Wastewater Management Business Goal to maintain capacity within systems and facilities to meet essential service demands and to protect public health and environment.*



## SECTION D - CONTRACT AND RELEVANT DOCUMENTS

### 1.0 CONTRACT

THIS CONTRACT, made and entered into this **21<sup>st</sup> day of October, 2015**, by and between **J.F. Shea Construction, Inc.** hereinafter referred to as "Contractor," and The Inland Empire Utilities Agency, a Municipal Water District, located in San Bernardino County, California, hereinafter referred to as "Agency".

#### **WITNESSETH:**

That for and in consideration of the promises and agreements hereinafter made and exchanged, the Agency and the Contractor agree as follows:

1. Contractor agrees to perform and complete in a workmanlike manner, all work required under the bidding schedule of said Agency's specifications entitled SPECIFICATIONS FOR Montclair Flow Splitter Box / Metering Station Upgrade, Project No. EN 13018.00, in accordance with the specifications and drawings, and to furnish at their own expense, all labor, materials, equipment, tools, and services necessary, except such materials, equipment, and services as may be stipulated in said specifications to be furnished by said Agency, and to do everything required by this Contract and the said specifications and drawings.
2. For furnishing all said labor, materials, equipment, tools, and services, furnishing and removing all plant, temporary structures, tools and equipment, and doing everything required by this Contract and said specifications and drawings; also for all loss and damage arising out of the nature of the work aforesaid, or from the action of the elements, or from any unforeseen difficulties which may arise during the prosecution of the work until its acceptance by said Agency, and for all risks of every description connected with the work; also for all expenses resulting from the suspension or discontinuance of work, except as in the said specifications are expressly stipulated to be borne by said Agency; and for completing the work in accordance with the requirements of said specifications and drawings, said Agency will pay and said Contractor shall receive, in full compensation therefore, the price(s) set forth in this Contract.
3. That the Agency will pay the Contractor progress payments and the final payment, in accordance with the provisions of the contract documents, with warrants drawn on the appropriate fund or funds as required, at the prices bid in the Bidding and Contract Requirements, Section C - Bid Forms and accepted by the Agency, and set forth in this below.

**Total Bid Price \$557,565.00, Five Hundred Fifty -Seven Thousand Five Hundred Sixty- Five Dollars and Zero Cents.**

If this is not a lump sum bid and the contract price is dependent upon the quantities constructed, the Agency will pay and said Contractor shall receive, in full compensation for the work the prices named in the Bidding and Contract Requirements, Section C -

**CONTRACT AND  
RELEVANT DOCUMENTS**

Bid Forms.

4. The Agency hereby employs the Contractor to perform the work according to the terms of this Contract for the above-mentioned price(s), and agrees to pay the same at the time, in the manner, and upon the conditions stipulated in the said specifications; and the said parties for themselves, their heirs, executors, administrators, successors, and assigns, do hereby agree to the full performance of the covenants herein contained.
5. The Notice Inviting Bids, Instructions to Bidders, Bid Forms, Information Required of Bidder, Performance Bond, Payment Bond, Contractors License Declaration, Specifications, Drawings, all General Conditions and all Special Conditions, and all addenda issued by the Agency with respect to the foregoing prior to the opening of bids, are hereby incorporated in and made part of this Contract, as if fully set forth.
6. The Contractor agrees to commence work under this Contract on or before the date to be specified in a written "Notice To Proceed" and to complete said work to the satisfaction of the Agency **Two Hundred and Seventy (270) calendar days** after award of the Contract. All work shall be completed before final payment is made.
7. Time is of the essence on this Contract.
8. Contractor agrees that in case the work is not completed before or upon the expiration of the contract time, damage will be sustained by the Agency, and that it is and will be impracticable to determine the actual damage which the Agency will sustain in the event and by reason of such delay, and it is therefore agreed that the Contractor shall pay to the Agency the amount of four thousand (\$4,000) dollars for each day of delay, which shall be the period between the expiration of the contract time and the date of final acceptance by the Agency, as liquidated damages and not as a penalty. Similarly, the Contractor shall pay to the Agency the amount of seven hundred and fifty dollars for each day after 120 days from the contract award if all shop drawings are not approved by the Agency. It is further agreed that the amount stipulated for liquidated damages per day of delay is a reasonable estimate of the damages that would be sustained by the Agency, and the Contractor agrees to pay such liquidated damages as herein provided.

In case the liquidated damages are not paid, the Contractor agrees that the Agency may deduct the amount thereof from any money due or that may become due to the Contractor by progress payments or otherwise under the Contract, or if said amount is not sufficient, recover the total amount.

Milestone	Liquidated Damages for Delay
Approval of All Shop Drawings after 120 days of contract award	\$750 / day
Contract Completion	\$4,000/ day

In addition to the liquidated damages, which may be imposed if the Contractor fails to complete the work within the time agreed upon, the Agency may also deduct from any sums due or to become due the Contractor, liquidated damages in accordance with the Bidding and Contract Requirements, Section B - Instruction to Bidders, Part 5.0 "Liquidated Damages", for any violation of the General Conditions, Section D - Contractor's Responsibilities, Part 8, "Law and Regulations"; Bidding and Contract Requirements Contract Section D -Contract and Relevant Documents, Part 1.0, Paragraphs 9 through 11; General Conditions , Section D - Contractor's Responsibilities, Part 4.0, "Labor, Materials and Equipment"; General Conditions Section D - Contractor's Responsibilities, Part 12.0, "Safety and Protection" or General Conditions Section H - Legal Responsibilities, Part 8.0, "Disturbance of the Peace.

9. That the Contractor will pay, and will require subcontractors to pay, employees on the work a salary or wage at least equal to the prevailing salary or wage established for such work as set forth in the wage determinations and wage standards applicable to this work, contained in or referenced in the contract documents.
10. That, in accordance with Section 1775 of the California Labor Code, Contractor shall forfeit to the Agency, as a penalty, not more than Fifty (\$50.00) Dollars for each day, or portion thereof, for each worker paid, either by the Contractor or any subcontractor, less than the prevailing rates as determined by the Director of the California Department of Industrial Relations for the work.
11. That, except as provided in Section 1815 of the California Labor Code, in the performance of the work not more than eight (8) hours shall constitute a day's work, and not more than forty (40) hours shall constitute a week's work; that the Contractor shall not require more than eight (8) hours of labor in a day nor more than forty hours of labor in a week from any person employed by the Contractor or any subcontractor; that the Contractor shall conform to Division 2, Part 7, Chapter 1, Article 3 (Section 1810, et seq.) of the California Labor Code; and that the Contractor shall forfeit to the Agency, as a penalty, the sum of Twenty-Five (\$25.00) Dollars for each worker employed in the execution of the work by Contractor or any subcontractor for each day during which any worker is required or permitted to labor more than eight (8) hours in violation of said Article 3.
12. That the Contractor shall carry Workers' Compensation Insurance and require all subcontractors to carry Workers' Compensation Insurance as required by the California Labor Code.
13. That the Contractor shall have furnished, prior to execution of the Contract, two bonds

CONTRACT AND  
RELEVANT DOCUMENTS

approved by the Agency, one in the amount of one hundred (100) percent of the contract price, to guarantee the faithful performance of the work, and one in the amount of one hundred (100) percent of the contract price to guarantee payment of all claims for labor and materials furnished.

14. The Contractor hereby agrees to protect, defend, indemnify and hold the Agency and its employees, agents, officers, directors, servants and volunteers free and harmless from any and all liability, claims, judgments, costs and demands, including demands arising from injuries or death of persons (including employees of the Agency and the Contractor) and damage to property, arising directly or indirectly out of the obligation herein undertaken or out of the operations conducted by the Contractor, its employees agents, representatives or subcontractors under or in connection with this Contract.

The Contractor further agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands or suit at the sole expense of the Contractor.

IN WITNESS WHEREOF, The Contractor and the General Manager of Inland Empire Utilities Agency\*, thereunto duly authorized, have caused the names of said parties to be affixed hereto, each in duplicate, the day and year first above written.

Inland Empire Utilities Agency,\*  
San Bernardino County, California.

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

Contractor J.F. Shea Construction, Inc.

By 

Title Steven W. Cox,  
Executive Vice President

\*Municipal Water District

CONTRACT AND  
RELEVANT DOCUMENTS

**ACTION  
ITEM**


**2B**





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Date: October 14, 2015 (Special Board Meeting)

To: The Honorable Board of Directors

From: P. Joseph Grindstaff  
General Manager 

Submitted by: Chris Berch   
Executive Manager of Engineering/Assistant General Manager

Sylvie Lee   
Manager of Planning & Environmental Resources

Subject: Energy Storage Services Agreement with Advanced Microgrid Solutions, Inc.

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### **RECOMMENDATION**

It is recommended that the Board of Directors:

1. Approve the Energy Storage Services Agreement between Inland Empire Utilities Agency and Advanced Microgrid Solutions, Inc. (AMS); and
2. Authorize the General Manager to finalize and execute the Agreement subject to non-substantive changes.

### **BACKGROUND**

IEUA has worked with AMS to develop cost effective energy storage solutions at several treatment plants to improve load management, support the Agency's renewable installations, and provide cost savings for facilities by taking advantage of Time-of-Use (TOU) changes in electricity pricing. AMS has developed a project structure whereby 3.65 MW of energy storage will be installed at no cost to IEUA. Under the Agreement, IEUA will have access to all of the stored energy and will pay AMS fixed equipment fees and performance-based service charges. AMS will assume, at its own expense, all responsibility for design, development, permitting, financing, operation, maintenance and decommissioning of the Project at each facility. IEUA will agree to provide AMS access to utility data and facilitate design, permitting, construction, interconnection and installation of the Project.

The energy storage installations will be equipped with software designed to adapt to each facility's load requirements and maximize cost savings based on the electricity tariff specific to

the site. AMS has conducted modeling for the IEUA facilities listed in the table below and estimated that the energy storage installations will result in annual savings up to \$550,000 across all facilities. After taking into account the equipment and service fees, AMS estimates that IEUA will realize \$55,000 to \$230,000 in annual electricity savings.

**Energy Storage Installation Sites and Sizes**

<b>Facility</b>	<b>Energy Storage Rating (MW)</b>
RP-1	1.0
RP-4	1.25
RP-5	0.5
CCWRF	0.5
1630 East Pump Station	0.15
1630 West Pump Station	0.25
<b>Total</b>	<b>3.65</b>

Because the savings models rely on electricity usage and tariff forecasts that may change over time, the Agreement does not include a savings guarantee. However, AMS has provided an assurance that IEUA will receive a minimum system benefit of \$15 per kW of storage installed, net of any equipment fees. This assurance guarantees a minimum savings of approximately \$55,000 annually. In the event that system performance warrants the cost savings assurance, AMS will make a lump sum cash payment to IEUA equivalent to the minimum system benefit of \$55,000.

The Agreement is for a 10-year term. AMS anticipates that additional third party agreements, such as utilization of the batteries for demand response programs, may present opportunities to enhance the revenue potential of the energy storage systems within the 10-year term. This agreement stipulates that all third party agreements must be approved by both parties prior to execution. IEUA's General Counsel and financial consultant, Public Financial Management, Inc., reviewed the Agreement and provided comments that were incorporated into the final contract language.

The project meets the IEUA's adopted Business goals for *Wastewater Management* by optimizing renewable resources, containing future energy costs, and progressing toward peak power independence with the proposed Energy Management strategy.

### **PRIOR BOARD ACTION**

On February 18, 2015, the Board of Directors approved a Memorandum of Understanding (MOU) between IEUA and AMS for a Master Lease and Energy Services Agreement.

On August 19, 2015, the Board of Directors approved a revised MOU between IEUA and AMS for a Master Lease and Energy Services Agreement that was substantially different than the February 2015 MOU.

**IMPACT ON BUDGET**

If approved, the fixed service fees of \$65/kW will be funded by the Utilities budget (10200-100000-140100-545110) in the Administrative Services Fund, and will be offset by the energy savings. If needed, the Savings Assurance Guarantee of \$80/kW will be credited to the Utilities budget.

**Attachment:**

1. Energy Storage Services Agreement

# Energy Storage Services Agreement with Advanced Microgrid Solutions (AMS)



*Inland Empire Utilities Agency*  
A MUNICIPAL WATER DISTRICT

Jesse Pompa  
Senior Associate Engineer

# Energy Storage at IEUA

- **Load Management Flexibility**
- **Save on demand charges during peak periods**
- **Optimize renewable resources**
- **Progress toward peak power independence**



# Energy Storage at IEUA

- Advanced Microgrid Solutions (AMS) to install 3.65 MW of battery storage at no expense to IEUA

Facility	Energy Storage Size (MW)
RP-1	1.0
RP-4	1.25
RP-5	0.5
CCWRF	0.5
1630 E Pump Station	0.15
1630 W Pump Station	0.25
<b>TOTAL</b>	<b>3.65</b>

# Agreement Terms

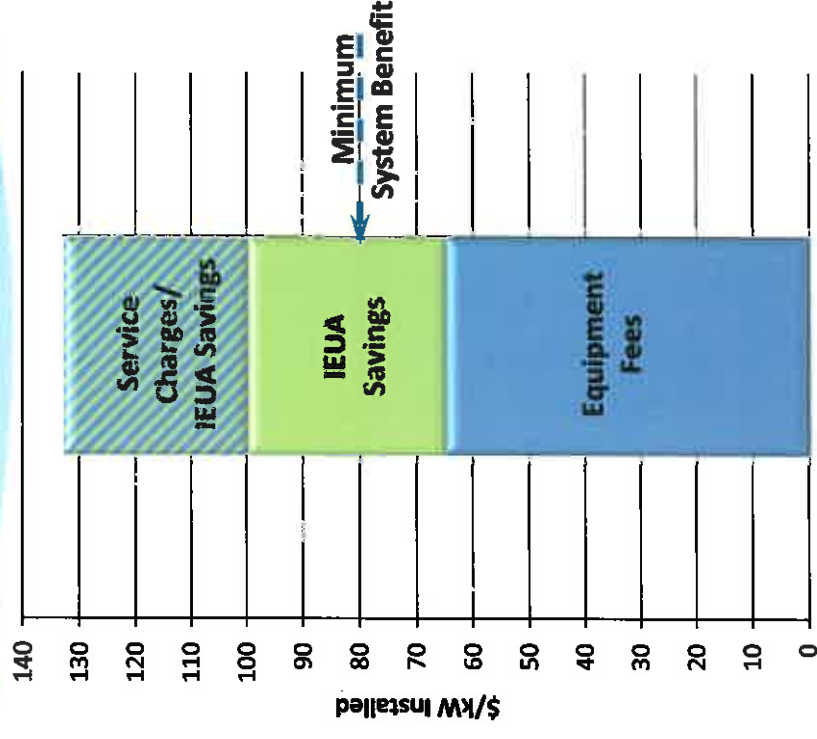
- 10-year term
- AMS to install, operate, and maintain equipment
- IEUA to pay fixed equipment and performance-based service charges
- Future third party agreements' contingent upon both parties' approval



*0.5 MW Tesla Battery Storage Installation*

# Fees and Cost Savings

- Fixed Service Fees at \$65/kW
- Service Charges Triggered after Savings above \$100/kW
  - Savings split 50-50
- Minimum System Benefit - \$80/kW
- Savings Assurance Guarantee
- Ensures savings floor of ~\$55,000



*Estimated Annual Savings to IEUA between \$55,000 and \$230,000*



## Next Steps

- Agreement Execution (October 2015)
- RP-5 Installation Complete (January 2016)
- Remaining Installations Complete (June 2016)

*Consistent with the Agency's business goal of Wastewater and Energy Management by optimizing facility energy use and renewable resources to contain future energy costs.*

Questions?

CONFIDENTIAL AND PROPRIETARY

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GENERAL TERMS AND CONDITIONS OF  
ENERGY MANAGEMENT SERVICES AGREEMENT

These General Terms and Conditions ("General Conditions") are dated as of 14th day of October, 2015 and are witnessed and acknowledged by Advanced Microgrid Solutions, Inc., a Delaware corporation ("Provider") and Inland Empire Utilities Agency ("Host Customer"), as evidenced by their signature on the last page of this document. These General Conditions are intended to be incorporated by reference into one or more Special Terms and Conditions of the Energy Management Services Agreement (each, a "Special Conditions") that may be entered into between Provider and Host Customer or between their respective Affiliates. Each Special Conditions that incorporates these General Conditions shall together constitute a separate Energy Management Services Agreement between Provider and Host Customer or between their respective Affiliates, as applicable. Except to the extent Provider or Host Customer, or their respective Affiliates, become a party to one or more Special Conditions that incorporate these General Conditions, these General Conditions shall have no binding effect upon Provider or Host Customer or such Affiliates, and then each Special Conditions and incorporated General Conditions shall only be binding on the party executing the Special Conditions for the Energy Storage System (as defined below) and Premises (as defined below) referenced in such Special Conditions.

1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

"Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

"Agreement" or "Energy Management Services Agreement" means the Special Conditions and General Conditions that, pursuant to the preamble to these General Conditions, together constitute a separate agreement between the parties to the Special Conditions with respect to the Energy Storage System and Premises referenced in the Special Conditions.

"Applicable Law" means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental

Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

"Approved Service Providers" means those service provider, listed on Schedule 10 of the Special Conditions, who are authorized to perform any operation or maintenance work on the Energy Storage System.

"Assignment" has the meaning set forth in Section 13.1.

"Bankruptcy Event" means with respect to a Party, that either:

(i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator with respect to itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to

bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in San Francisco, California are required or authorized by Applicable Law to be closed for business.

“Completion Date” has the meaning set forth in Section 3.3(b).

“Confidential Information” has the meaning set forth in Section 15.1.

“Control Area Operator” means the entity responsible for managing the bulk power grid where the Premises are located, and may be the Local Electric Utility or a regional transmission operator.

“Covenants, Conditions and Restrictions” or “CCR” means those requirements or limitations related to the Premises as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions, as may be modified from time to time.

“Disruption Period” has the meaning set forth in Section 4.3(b).

“Early Termination Date” means any date on which the Agreement terminates other than by reason of expiration of the then applicable Term.

“Early Termination Fee” means the fee payable by Host Customer to Provider under certain circumstances described herein in the amount set forth on Schedule 3, Column 1 of the Special Conditions.

“Effective Date” has the meaning set forth in the preamble to the Special Conditions.

“Energy Management Services” means such services provided from the Energy Storage System as set forth in the Special Conditions.

“Energy Storage System” means a battery or other technology system and related components to be installed by Provider at the Premises referenced in a Special Conditions that will be used by Provider to meet Provider’s obligations to Host Customer to provide the Energy Management Services as set forth in the Special Conditions.

“Energy Storage System Operations” means Provider’s operation, maintenance and repair of the Energy Storage Systems performed in accordance with the requirements herein.

“Environmental Attributes” shall mean any and all products from or characteristics of the Energy Storage Systems or the Energy Management Services, whether existing as of the Effective Date or subsequently created, other than electrical energy or capacity, including without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, Green-e®-certified products, Self-Generation Incentive Program or Auto-Demand Response program benefits pursuant to the Local Electric Utility tariff applicable to Host Customer, or any other benefit or incentive under programs for energy storage or discharge from batteries.

“Environmental Documents” has the meaning set forth in Section 7.2(h).

“Environmental Law” means any and all federal, state, local, provincial and foreign, civil and criminal laws, statutes, ordinances, orders, common law, codes, rules, regulations, judgments, decrees, injunctions relating to the protection of health and the environment, worker health and safety, and/or governing the handling, use, generation, treatment, storage, transportation, disposal, manufacture, distribution, formulation,

packaging, labeling, or release to the environment of or exposure to Hazardous Materials, including any such requirements implemented through Governmental Approvals.

“Estimated Remaining Payments” means as of any date, the estimated remaining Management Services Payments to be made through the end of the then-applicable Term, as reasonably determined by Provider.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the Term.

“Financing Party” means, as applicable (i) any Person (or its agent) from whom Provider (or an Affiliate of Provider) leases an Energy Storage System, (ii) any Person (or its agent) who has made or will make a loan to or otherwise provides financing to Provider (or an Affiliate of Provider) with respect to an Energy Storage System, or (iii) any Person acquiring a direct or indirect interest in Provider or in Provider’s interest in the Agreement or an Energy Storage System.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“General Conditions” has the meaning set forth in the preamble hereto, and includes all Exhibits hereto.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority, including any such approval, consent, order or binding agreements with or involving a governmental authority under Environmental Laws.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government. Governmental Authority includes the Local Electric Utility and the Control Area Operator.

“Hazardous Materials” means any hazardous or toxic material, substance or waste, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing

materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, mold, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are regulated under or for which liability can be imposed under any Environmental Law.

“Host Customer” has the meaning set forth in the preamble to the Special Conditions.

“Host Customer Default” has the meaning set forth in Section 11.2(a).

“Host Customer Indemnified Parties” has the meaning set forth in Section 16.1.

“Indemnified Persons” means Host Customer Indemnified Parties or Provider Indemnified Parties, as the context requires.

“Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits, ancillary services or capacity products and subsidies including, but not limited to, the subsidies in Schedule 6 of the Special Conditions and all other storage or energy subsidies and incentives.

“Installation Work” means the construction and installation of the Energy Storage Systems and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Premises.

“Invoice Date” has the meaning set forth in Section 6.2.

“Liens” has the meaning set forth in Section 7.1(d).

“Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Host Customer at the Premises.

“Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

“Management Services Payment” has the meaning set forth in Section 6.1.

“Market Products” has the meaning set forth in Section 5.4.

“Party” or “Parties” has the meaning set forth in the preamble to the Special Conditions.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Pre-existing Environmental Conditions” means any: (i) violation of, breach of or non-compliance with any Environmental Laws with respect to the Premises that first existed, arose or occurred on or prior to Provider’s commencement of Installation Work at the Premises and (ii) the presence or release of, or exposure to, any Hazardous Materials at, to, on, in, under or from the Premises that first existed, arose or occurred on or prior to Provider’s commencement of Installation Work at the Premises.

“Premises” means the premises described in Schedule 6 of the Special Conditions. The Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 6 of the Special Conditions.

“Provider” has the meaning set forth in the Special Conditions.

“Provider Default” has the meaning set forth in Section 11.1(a).

“Provider Indemnified Parties” has the meaning set forth in Section 16.2.

“Representative” has the meaning set forth in Section 15.1.

“Services Term” has the meaning set forth in Section 3 of the Special Conditions.

“Security Interest” has the meaning set forth in Section 8.2.

“Site-Specific Requirements” means the site-specific information and requirements as may be set forth in Schedule 6 of the Special Conditions.

“Special Conditions” is defined in the preamble to these General Conditions. References to “the Special Conditions” herein shall be deemed to be to a specific Special Conditions that incorporates these General Terms to form a separate Energy Management Services Agreement applicable to the Energy Storage System and Premises referenced in such Special Conditions.

“Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus two percent (2%) or (b) the maximum rate allowed by Applicable Law.

“Term” has the meaning set forth in Section 2.1.

“Termination Date” means the date on which the Agreement ceases to be effective, including on an Early Termination Date or the Expiration Date.

“Transfer Time” has the meaning set forth in Section 4.3(a).

1.2 Interpretation. The captions or headings in these General Conditions are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” refer to Articles and Sections of these General Conditions.

## 2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue until sixty (60) days following the Services Term (the “Term”).

2.2 Removal of Energy Storage System at Expiration. Upon the expiration or earlier termination of the Agreement, Provider shall, at Provider’s expense (except as otherwise provided herein), remove all of its tangible property comprising the Energy Storage Systems

from the Premises on a mutually convenient date but in no case later than sixty (60) days after the Termination Date. The Premises shall be returned to their original conditions other than Energy Storage System mounting pads or other support structures, incidental hardware (all of which may remain at the Premises) and ordinary wear and tear. If an Energy Storage System is to be located on a roof or inside Host Customer's building, then in no case shall Provider's removal of an Energy Storage System affect the integrity of Host Customer's roof or building, which shall be as leak proof as it was prior to removal of the Energy Storage System (other than ordinary wear and tear). For purposes of Provider's removal of an Energy Storage System, Host Customer's covenants pursuant to Section 7.2 shall remain in effect until the date of actual removal of the Energy Storage System. Provider shall leave the Premises in neat and clean order. If Provider fails to remove or commence substantial efforts to remove an Energy Storage System by the required date, Host Customer shall have the right, at its option, to remove the Energy Storage System to a public warehouse and restore the related Premises to its original condition, other than Energy Storage System mounting pads or other support structures, incidental hardware (all of which may remain at the Premises) and ordinary wear and tear, and Provider shall reimburse Host Customer for its reasonable cost of such removal; *provided*, if Host Customer elects to remove and store an Energy Storage System, it shall exercise reasonable care to do so in a manner consistent with good electrical practices.

**2.3 Conditions of the Agreement**  
**Prior to Installation.** In the event that any of the following events or circumstances occur prior to the Completion Date for any Energy Storage System to be installed hereunder, Provider may (at its sole discretion) remove a given Host Customer site from the Premises or terminate the Agreement, in which case neither Party shall have any liability to the other in respect of such Premises or related Energy Storage System, in the event of a removal, or hereunder, in the event of a termination, except for any such liabilities that may have accrued prior to such removal:

(i) Provider determines that the Premises, or portion thereof, as is, is insufficient to accommodate an Energy Storage System or unsuitable for construction or operation of an Energy Storage System.

(ii) There exist site conditions (including Pre-Existing Environmental Conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work at a given site, or damage or adversely affect the electricity production from an Energy Storage System as designed.

(iii) There is a material adverse change in the regulatory environment, Incentives or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the economics of the Agreement for Provider and its investors.

(iv) Provider is unable to obtain financing for an Energy Storage System on terms and conditions satisfactory to it.

(v) Provider has not received: (1) a fully executed license in the form of Exhibit A of these General Conditions from the owner of the Premises, or necessary portion thereof (if the Host Customer is a tenant), (2) a release or acknowledgement from any mortgagee of the Premises, if required by Provider's Financing Party, to establish the priority of its security interest in an Energy Storage System, and (3) such other documentation as may be reasonably requested by Provider to evidence Host Customer's ability to meet its obligations under Section 7.2(d)(ii) to ensure that Provider will have access to the Premises throughout the Term.

(vi) There has been a material adverse change in the rights of Host Customer to occupy the Premises, or relevant portion thereof, or Provider to construct, operate or maintain the an Energy Storage System on the Premises.

(vii) Provider has not received evidence reasonably satisfactory to it that the Host Customer's current interconnection services are adequate to support the Energy Storage Systems, or that such interconnection services can be upgraded at a cost satisfactory to Provider unless Host Customer has agreed to pay for any such upgrades required.

(viii) Host Customer or Provider has determined that there are easements, CCRs or other land-use restrictions, liens or encumbrances

that would materially impair or prevent the installation, operation, maintenance or removal of an Energy Storage System.

(ix) There has been a material adverse change in Host Customer's credit-worthiness.

### 3. HOST CUSTOMER CONSTRUCTION, INSTALLATION AND TESTING OF STORAGE SYSTEM.

3.1 Installation Work. Provider will cause the Energy Storage Systems to be designed, engineered, installed and constructed substantially in accordance with Schedule 6 of the Special Conditions and Applicable Law. The Energy Storage Systems shall be integrated with the Premises' electrical systems, and subject to applicable codes and utility tariffs, shall be capable of charging from grid supplied energy and shall be capable of discharging to the Premises. At its request, Host Customer shall have the right to review all construction plans and designs, including engineering evaluations of the impact of the Energy Storage System. Provider shall perform the Installation Work in a manner that minimizes inconvenience to and interference with the use of the Premises to the extent commercially practical.

3.2 Approvals; Permits. Host Customer shall assist Provider in obtaining all necessary consents, approvals and permits required to perform Provider's obligations under this Agreement, and in those related to the Local Electric Utility, any Governmental Approval, and Incentive program, and any consents, waivers, approvals or releases required pursuant to any applicable contract or CCR. Provider shall pay all fees of obtaining such consents, approvals and permits and Host Customer shall not pay any such fees or any other related payment.

### 3.3 Energy Storage System Acceptance Testing.

(a) Provider shall conduct testing of the Energy Storage Systems in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by energy storage system integrators in the United States.

(b) If the results of such testing indicate that an Energy Storage System is capable

of providing the Energy Management Services, and the Energy Storage System has obtained all necessary approvals for operation, then Provider shall send a written notice to Host Customer to that effect, and the date of such notice shall be the "Completion Date" for such Energy Storage System.

### 4. STORAGE SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. The Energy Storage Systems will be owned by Provider or Provider's Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense; provided, that any repair or maintenance costs incurred by Provider as a result of Host Customer's negligence or breach of its obligations hereunder shall be reimbursed by Host Customer. The Energy Storage Systems shall, in the normal course, shall charge from the grid or from solar or other onsite generation, as applicable, and discharge to the Premises such that the Energy Storage Systems are capable of delivering the Energy Management Services. Such operation of the Energy Storage Systems may be done remotely.

4.2 Metering. (a) Provider may provide the Energy Management Services using the existing electricity metering devices at the Premises and shall install and maintain one or more additional utility-grade kilowatt-hour (kWh) meters for the measurement of electrical energy as well as power discharged by the Energy Storage Systems and for the measurement of electrical energy delivered by the Local Electric Utility used to charge the Energy Storage Systems. Upon Host Customer's reasonable written request, Provider shall furnish a copy of all technical specifications and accuracy calibrations for each such additional Meter(s).

(b) Host Customer shall take all actions necessary to ensure Provider has real-time telemetered access to the electricity meters at the Premises, including those owned or operated by the Local Electric Utility, for measuring electric energy provided by the Local Electric Utility to the Premises.

### 4.3 Energy Storage System Disruptions.

(a) Substitution of Premises. If, for reasons other than Provider's breach of its



obligations hereunder, Provider ceases to have access rights to the Premises as necessary to operate each Energy Storage System or provide the Energy Management Services prior to the Expiration Date, then Host Customer shall provide Provider with a mutually agreeable substitute premises. Host Customer shall provide at least one hundred and eighty (180) days' written notice prior to the date on which it desires to effect such substitution. In connection with such substitution, Host Customer and Provider shall amend the Agreement to specify the substitute premises. Host Customer shall also provide any new owner, lessor, or mortgagee consents or releases required by Provider's Financing Party in connection with the substitute Premises. If Host Customer is unable to obtain such consents and releases for a substitute premises, or if Provider does not accept the substitute premises, the substitution shall not be allowed. Host Customer shall pay all costs associated with relocation of an Energy Storage System including all costs and expenses incurred by or on behalf of Provider in connection with removal of the Energy Storage System from the existing site and repair or maintenance of the site, if applicable, and installation and testing of the Energy Storage System at such substitute premises and all applicable interconnection fees and expenses at the substitute premises, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refileing the security interest of Provider's Financing Party in the Energy Storage System. Provider shall make commercially reasonable efforts to remove all of its tangible property comprising the relocated Energy Storage System from the vacated site prior to the termination of Host Customer's rights to use such Premises. Upon removal of the tangible property comprising the Energy Storage System from the site, the site shall be returned to its original condition other than Energy Storage System mounting pads or other support structures, incidental hardware (all of which may remain at the site) and ordinary wear and tear. If an Energy Storage System is to be located on a roof or within Host Customer's building, then in no case shall Provider's removal of the Energy Storage System affect the integrity of the roof, which shall be as leak proof as it was prior to removal of Energy Storage System, ordinary wear and tear excepted. In connection with any substitution of Premises, Host Customer shall continue to make all Management Services Payments, and Host Customer shall reimburse Provider for any lost or reduced revenue as provided in Section 4.3(c).

The Parties may, at any time, upon mutual agreement substitute sites for an Energy Storage System and allocate amongst themselves the costs and expense of so doing.

(b) Premises Repair and Other Energy Storage System Disruptions. In the event that (x) the owner or lessee of the Premises, or any portion thereof, repairs the Premises for any reason not directly related to damage caused by the Energy Storage System, and such repair requires the partial or complete temporary disassembly or movement of an Energy Storage System, or (y) any act or omission of Host Customer or Host Customer's employees, Affiliates, agents or subcontractors (collectively, a "Host Customer Act") results in a disruption or outage in Energy Storage System production, then, in either case, Host Customer shall (i) pay Provider for all work required by Provider to disassemble or move the Energy Storage System and to re-install and test the Energy Storage System, (ii) continue to make all Management Services Payments, and (iii) reimburse Provider for any lost or reduced revenue as provided in Section 4.3(c).

(c) Lost Revenue During Disruptions. During any time that an Energy Storage System has reduced or no operations due to a relocation or other disruption described in Section 4.3(a) or 4.3(b) (any such time, the "Disruption Period"), Host Customer shall reimburse Provider for any lost or reduced revenue or other benefits from Incentives or Environmental Attributes that are not delivered or received during the Disruption Period due to such reduced or non-operation to the extent such reimbursement is expressly agreed to in writing by both Parties prior to commencement of such dispatch or installation of additional capacity for provision of Market Products under Section 5.4.

4.4 Software. Host Customer acknowledges that Provider's Affiliate, Advanced Microgrid Solutions, Inc. ("AMS") shall own all software used in connection with or related to the Energy Storage Systems ("Software"). The Energy Storage Systems exclude Software. Provider shall obtain all license rights necessary from AMS to utilize the Software and operate the Equipment. Host Customer will keep the Software free of all Liens. Other than its rights under the Agreement, Host Customer shall have no interest in the Data or Software. During the Term, Provider grants to Host Customer, at no

cost to Host Customer, a limited, non-exclusive, royalty-free license solely as necessary to make use of the System Data (as defined in Section 15.5) and Energy Storage Systems at the Premises and to receive the Energy Management Services. Host Customer may not use, execute, access, reverse engineer, modify or make derivative works of the Software in any way.

## 5. DELIVERY OF ENERGY MANAGEMENT SERVICES.

5.1 Performance Guarantee. Provider shall guarantee the performance of the Energy Storage Systems as set forth in Schedule 4 of the Special Conditions.

5.2 Environmental Attributes and Incentives. Host Customer's purchase of Energy Management Services does not include Environmental Attributes or Incentives, each of which shall be owned by Provider or Provider's Financing Party for the duration of the Energy Storage System's operating life. Host Customer disclaims any right to Environmental Attributes or Incentives based upon the installation or operation of the Energy Storage System at the Premises. Host Customer will cooperate with Provider to enable Provider to secure the benefits of any Environmental Attributes and Incentives, and shall, at the request of Provider, execute any document or agreement and take such actions as are reasonably necessary to fulfill the intent of this Section 5.2. In the event that Host Customer receives any Environmental Attributes or Incentives, Host Customer shall provide such Environmental Attributes and Incentives to Provider without deduction or setoff. To avoid any conflicts with fair trade rules regarding claims of other energy use and to help ensure that Environmental Attributes will be certified by Green-e® or a similar organization, Host Customer shall submit to Provider for approval any press releases regarding Host Customer's use of energy from the Energy Storage Systems and shall not submit for publication any such releases without the prior written approval of Provider. Without limiting Provider's other rights hereunder, in the event that Host Customer breaches its obligations under this Section 5.2 and, as a result thereof, the value of the Environmental Attributes or Incentives generated by the Energy Storage Systems is reduced, Host Customer shall pay to Provider the value of such reduction.

5.3 Title to Energy Storage System. Throughout the duration of the Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the Energy Storage Systems at all times, and the Energy Storage Systems shall remain the personal property of Provider or Provider's Financing Party and shall not attach to or be deemed a part of, or fixture to, the Premises. The Energy Storage Systems shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Host Customer covenants that it will use reasonable commercial efforts to place all parties having an interest in or lien upon the real property comprising the Premises, or any portion thereof, on notice of the ownership of the Energy Storage Systems and the legal status or classification of the Energy Storage Systems as personal property. Host Customer authorizes Provider to file any and all financing statements or precautionary fixture filings to provide such notice to lien holders of the Premises or of Host Customer. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as attaching to an Energy Storage System as a fixture of the Premises, Host Customer shall provide, at Provider's request, a disclaimer or release from such lien holder. If Host Customer is the fee owner of the Premises, Host Customer consents to the filing by Provider, on behalf of Host Customer, of a disclaimer of the Energy Storage Systems as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises. If Host Customer is not the fee owner, Host Customer will, at Provider's request, use commercially reasonable efforts to obtain such consent from such owner.

5.4 Market Products. Provider shall have the right to discharge or otherwise use the Energy Storage Systems to sell or otherwise benefit from any product or service that any Energy Storage System is capable of providing from time to time, including but not limited to demand response, wholesale energy sales, ancillary utility services and qualification for generation capacity credits ("Market Products"). All revenue or other benefits from using the Energy Storage Systems to deliver Market Products shall be the sole property of Provider unless otherwise agreed to in writing by both Parties. Notwithstanding the foregoing, Provider's use of the Energy Storage Systems for Market Products requiring dispatch of the existing capacity installed under this Agreement, or any

additional capacity added to the Energy Storage System for purposes other than to perform the Energy Management Services in Schedule 1 shall be agreed to in writing by both Parties prior to commencement of such dispatch or installation of such additional capacity. Provider's right to use an Energy Storage System in such manner shall not excuse Provider from its obligation to provide the Energy Management Services and be bound by the limitations set forth in the Energy Management Services Agreement and performance guarantee as set forth in Section 5.1.

## 6. PRICE AND PAYMENT.

6.1 Purchase Requirement. Host Customer shall pay to Provider a monthly payment (the "Management Services Payment") for the Energy Management Services during each calendar month of the Term as set forth in Schedule 2 of the Special Conditions. Host Customer remains and shall be solely responsible for all Local Electric Utility charges relating to the Premises, including all fees and charges relating to electricity provided to the Premises and the Energy Storage Systems.

6.2 Invoice. Provider shall invoice Host Customer on or about the first day of each month (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the first Completion Date to occur, for the Management Services Payment in respect of the immediately preceding month. The last invoice shall include a pro-rated Management Services Payment only through the Termination Date of this Agreement.

6.3 Time of Payment. Host Customer shall pay all undisputed amounts due hereunder within thirty (30) days after the date of the applicable Invoice Date.

6.4 Method of Payment. Host Customer shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Provider from time to time. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. All payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

6.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Host Customer shall not be deemed in default under the Agreement as a result of its failure to pay disputed amounts and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Host Customer is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date originally due under such invoice until the date paid.

## 7. GENERAL COVENANTS.

7.1 Provider's Covenants. Provider covenants and agrees to the following:

(a) Notice of Damage or Emergency. Provider shall (i) promptly notify Host Customer if it becomes aware of any damage to or loss of the use of an Energy Storage System or any event or circumstance that could reasonably be expected to adversely affect an Energy Storage System, (ii) immediately notify Host Customer if it becomes aware of any event or circumstance relating to an Energy Storage System or the Premises that poses a significant risk to human health, the environment, the Energy Storage System or the Premises.

(b) Governmental Approvals; Incentives. Except as otherwise provided for herein, while providing the Installation Work, Energy Management Services, and Energy Storage System Operations, Provider shall obtain and maintain and secure, at its cost and expense, all Governmental Approvals required to be obtained and maintained and secured by Provider and to enable Provider to perform such obligations, and all Environmental Attributes and Incentives.

(c) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Energy Management Services, and Energy Storage System Operations that shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property. Provider will not bring onto or store at the Premises any Hazardous Materials, except for such substances that are necessary for the Installation Work, the maintenance of the Energy

Storage Systems and/or incorporated into the Energy Storage Systems and, in any case, that are in full compliance with all Environmental Laws. Provider shall materially comply with Environmental Laws during Installation Work, operation and decommissioning of the Energy Storage Systems by Provider.

(d) Liens. Other than a Financing Party's security interest in or ownership of an Energy Storage System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein, in each case to the extent such Lien arises from or is related to Provider's performance or non-performance of its obligations hereunder. If Provider breaches its obligations under this Section 7.1(d), it shall (i) immediately notify Host Customer in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Host Customer, and (iii) defend and indemnify Host Customer against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

7.2 Host Customer's Covenants. Host Customer covenants and agrees as follows:

(a) Notice of Damage or Emergency. Host Customer shall (i) promptly notify Provider if it becomes aware of any damage to or loss of the use of an Energy Storage System or any event or circumstance that could reasonably be expected to adversely affect an Energy Storage System, (ii) immediately notify Provider it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, an Energy Storage System or the Premises.

(b) Liens. Host Customer shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the Energy Storage Systems or any interest therein. If Host Customer breaches its obligations under this Section, it shall immediately notify Provider in writing, shall promptly cause such Lien to be discharged and released of record without cost to Provider, and shall indemnify Provider against all costs and expenses (including reasonable attorneys' fees and court costs at trial

and on appeal) incurred in discharging and releasing such Lien.

(c) Consents and Approvals. Host Customer shall comply with Applicable Law in connection with providing Provider with access to the Premises and in performing any of its obligations under this Agreement. Host Customer shall ensure that any authorizations required in order to enter into this Agreement and make the Premises available to Provider for the purposes of this Agreement, are obtained or provided in a timely manner. To the extent that only Host Customer is authorized to request, obtain or issue any necessary approvals, Governmental Approvals, Environmental Attributes, Incentives, rebates or other financial incentives, Host Customer shall cooperate with Provider to obtain or issue such approvals, Governmental Approvals, rebates or other financial incentives in the name of Provider. Host Customer shall provide to Provider copies of all Governmental Approvals and CCRs applicable to the Premises, other than those obtained by Provider or to which Provider is a party.

(d) Access to Premises, Grant of License. Host Customer hereby grants to Provider a commercial license coterminous with the Term, containing all the rights necessary for Provider to use and occupy portions of the Premises for the installation, operation, maintenance and removal of the Energy Storage Systems pursuant to the terms of this Agreement, including ingress and egress rights to the Premises and access to electrical panels and conduits to interconnect or disconnect the Energy Storage Systems with the Premises' electrical wiring for Provider and its Affiliates, employees, contractors and subcontractors, and the Local Electric Utility and Governmental Authorities. Without limiting the foregoing:

(i) Regardless of whether Host Customer is owner of the Premises or leases the Premises from a landlord, Host Customer hereby covenants that (A) Provider shall have access to the Premises and Energy Storage Systems during the Term of this Agreement and for so long as needed after termination to remove the Energy Storage Systems pursuant to the applicable provisions herein, and (B) neither Host Customer nor Host Customer's landlord will interfere or handle any Provider equipment or the Energy Storage Systems without prior written authorization from Provider; provided, however,

that Host Customer and Host Customer's landlord shall at all times have access to and the right to observe the Installation Work or Energy Storage System removal.

(ii) If Host Customer is a lessee of the Premises, Host Customer further covenants that it shall deliver to Provider a license from Host Customer's landlord in substantially the form attached hereto as Exhibit A of these General Conditions.

(e) Temporary storage space during installation or removal. Host Customer shall provide sufficient space at the Premises for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the Installation Work, Energy Storage System Operations or Energy Storage System removal, and access for rigging and material handling.

(f) Site-Specific Requirements. On or before the Effective Date, Host Customer shall identify and set forth on Schedule 6 of the Special Conditions and unless previously delivered, Host Customer shall, to the extent the same are known and available, deliver to Provider copies of all reports, agreements, plans, inspections, tests, studies or other materials concerning the presence of Hazardous Materials at, from or on the Premises including, but not limited to, soil reports, design drawings, environmental reports, sampling results or other documents relating to Hazardous Materials that have been identified or may be present on, in or under the Premises (collectively, the "Environmental Documents"). Thereafter, Host Customer agrees to provide copies of any new Environmental Documents within ten (10) days of receipt of same. Host Customer hereby agrees to furnish such other documents in Host Customer's possession or control with respect to Governmental Approvals compliance with Environmental Law or Hazardous Materials with respect to the Premises as may be reasonably requested by Provider from time to time.

(g) Environmental Conditions. Notwithstanding anything to the contrary in the Agreement, Host Customer shall operate and maintain the Premises to comply with the requirements of all applicable Environmental Laws that limit or govern the conditions or uses of the Premises, without impairing or interfering

with Provider's construction, operation and ownership of the Energy Storage Systems or occupancy of the Premises. In no event shall Provider have any liability or obligation with respect to any Pre-existing Environmental Condition on, in or under the Premises, or operations or maintenance of the Premises required to comply with Environmental Laws with respect to Pre-Existing Environmental Conditions. Host Customer shall indemnify, hold harmless and defend Provider from and against all claims, pay costs and expenses, and conduct all actions required under Environmental Laws with respect to Pre-existing Environmental Conditions at, on or under the Premises.

(h) Provision of Information. Within five (5) Business Days of receiving them, Host Customer shall provide to Provider copies of all invoices and/or electricity bills for electricity services from the Local Electric Utility for the Premises.

## 8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties of Both Parties. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date that:

(a) It is duly organized and validly existing and in good standing in the jurisdiction of its organization;

(b) It has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;

(c) It has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;

(d) The Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

(e) There is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or

other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein;

(f) Its execution and performance of the Agreement and the transactions contemplated hereby do not and will not constitute a breach of any term or provision of, or a default under, (i) any contract, agreement or Governmental Approval to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws; and

(g) Its execution and performance of the Agreement and the transactions contemplated hereby do not and will not require any consent from a third party, including any Governmental Approvals from any Governmental Authority, that are not identified in Schedule 6 to the Special Conditions.

**8.2 Representations of Host Customer.** Host Customer represents and warrants to Provider as of the Effective Date that:

(a) Host Customer acknowledges that it has been advised that part of the collateral securing the financial arrangements for the Energy Storage System may be the granting of a first priority perfected security interest (the "Security Interest") in the Energy Storage System to a Financing Party;

(b) To Host Customer's knowledge, the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, lease or security agreement affecting the Premises;

(c) Host Customer is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to an Energy Storage System as an interest adverse to Provider's Financing Party's Security Interest therein;

(d) To Host Customer's knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement;

(e) To Host Customer's knowledge, Host Customer has identified and disclosed to Provider in Schedule 6 of the Special Conditions (i) all Environmental Documents, (ii) all CCRs, Governmental Approvals or other restrictions imposed under Applicable Laws with respect to the use of the Premises that could affect the construction and operation of the Energy Storage Systems, and (iii) all environmental reports, studies, data or other information relating to the use of the Premises by Provider within the Host Customer's possession or control;

(f) The Premises is in compliance with Environmental Laws, and that Host Customer holds and is in compliance with all Governmental Approvals required for the ownership and any current operations or activities conducted at the Premises;

(g) Host Customer has identified in Schedule 6 and delivered to Provider all material reports and information concerning the presence or release of Hazardous Materials on, in or under the Premises; and

(h) If Host Customer leases the Premises, or any relevant portion thereof, Host Customer's lease is in full force and effect, and constitutes a valid and binding obligation of Host Customer, enforceable against Host Customer in accordance with its terms. There are no material disputes or legal proceedings between Host Customer and Host Customer's landlord under such lease. Neither the Host Customer nor, to the knowledge of Host Customer, the Host Customer's landlord is in default under, nor, has any event occurred and is continuing which, with notice or the lapse of time or both, would result in a default under the lease, whether caused by Host Customer or, to the knowledge of Host Customer, the Host Customer's landlord.

Any Financing Party shall be an intended third-party beneficiary of this Section 8.2.

**8.3 EXCLUSION OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 5.1 AND THIS SECTION 8, and section 4 of the Special Terms and Conditions, THE INSTALLATION WORK, STORAGE SYSTEM OPERATIONS, AND ENERGY MANAGEMENT SERVICES PROVIDED BY PROVIDER TO HOST CUSTOMER PURSUANT TO THIS AGREEMENT SHALL BE "AS-IS WHERE-IS." NO OTHER

WARRANTY TO HOST CUSTOMER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE STORAGE SYSTEMS, THE ENERGY MANAGEMENT SERVICES OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY PROVIDER.

## 9. TAXES AND GOVERNMENTAL FEES.

9.1 Host Customer Obligations. Host Customer shall reimburse and pay for any documented taxes, fees or charges imposed or authorized by any Governmental Authority and paid by Provider due to Provider's sale of the Energy Management Services to Host Customer (other than income taxes imposed upon Provider). Provider shall notify Host Customer in writing with a detailed statement of such amounts, which shall be invoiced by Provider and payable by Host Customer. Host Customer shall timely report, make filings for, and pay any and all sales, use, income, gross receipts or other taxes, and any and all franchise fees or similar fees assessed against it due to its purchase of the Energy Management Services. This Section 9.1 excludes taxes specified in Section 9.2.

9.2 Provider Obligations. Subject to Section 9.1 above, Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the Energy Storage Systems. Provider shall not be obligated for any taxes payable by or assessed against Host Customer based on or related to Host Customer's overall income or revenues.

## 10. FORCE MAJEURE.

10.1 Definition. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the

affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of Provider or as a result of such party's failure to comply with a collective bargaining agreement); (v) action or inaction by a Governmental Authority (unless Host Customer is a Governmental Authority and Host Customer is the Party whose performance is affected by such action nor inaction). A Force Majeure Event shall not be based on the economic hardship of either Party, or upon the expiration of any lease of the Premises by the Host Customer from the owner of the Premises.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event, provided that the Party claiming relief under this Article 10 shall as soon as practicable after becoming aware of the circumstances constituting Force Majeure (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that Host Customer shall not be excused from making any payments and paying any unpaid amounts due in respect of Energy Management Services delivered to Host Customer prior to the Force Majeure Event performance interruption.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected a Party's

substantial performance hereunder and that has continued for a continuous period of one hundred eighty (180) days, then the non-affected Party shall be entitled to terminate the Agreement upon ninety (90) days' prior written notice to the affected Party. If substantial performance resumes within such ninety (90) day period, the Agreement shall not terminate and shall remain in full force and effect, and the remainder of this Section 10.3 shall not be applicable. If at the end of such ninety (90) day period such substantial performance has not resumed, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination).

## 11. DEFAULT.

### 11.1 Provider Defaults and Host Customer Remedies.

(a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a "Provider Default"):

(i) A Bankruptcy Event shall have occurred with respect to Provider;

(ii) Provider fails to pay Host Customer any undisputed amount owed under the Agreement within thirty (30) days from receipt of notice from Host Customer of such past due amount; and

(iii) Provider breaches any material representation, covenant or other term of the Agreement and (A) such breach is not cured within thirty (30) days after Host Customer's written notice of such breach, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed.

(b) Host Customer's Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Article 12, Host Customer may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement.

### 11.2 Host Customer Defaults and Provider's Remedies.

(a) Host Customer Default. The following events shall be defaults with respect to Host Customer (each, a "Host Customer Default"):

(i) A Bankruptcy Event shall have occurred with respect to Host Customer;

(ii) Host Customer fails to pay Provider any undisputed amount due Provider under the Agreement within thirty (30) days from receipt of notice from Provider of such past due amount; and

(iii) Host Customer breaches any material representation, covenant or other term of the Agreement if (A) such breach is not cured within thirty (30) days after Provider's notice of such breach, or (B) Host Customer fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed.

(b) Provider's Remedies. If a Host Customer Default described in Sections 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Article 12, Provider may terminate this Agreement and upon such termination, (A) Provider shall be entitled to receive from Host Customer the Early Termination Fee, and (B) Provider may exercise any other remedy it may have at law or equity or under the Agreement.

11.3 Removal of Energy Storage System. Upon any termination of the Agreement pursuant to this Article 11, Provider will remove the Energy Storage Systems pursuant to Section 2.3 hereof.

## 12. LIMITATIONS OF LIABILITY.

12.1 Except in connection with an express remedy provided hereunder or as otherwise expressly provided herein, neither Party shall be liable to the other Party or its Indemnified Persons for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with the Agreement.

12.2 A Party's maximum liability to the other Party under the Agreement, shall be limited to the aggregate Estimated Remaining



Payments as of the date of the events giving rise to such liability, provided, however, the limits of liability under this Section 12.2 shall not apply with respect to (i) indemnity obligations hereunder in respect of personal injury, intellectual property infringement or environmental claims and (ii) any obligation of Host Customer to pay Management Services Payments or the Early Termination Fee.

### 13. ASSIGNMENT.

13.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an "Assignment") the Agreement or any interest therein, without the prior written consent of Host Customer, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Host Customer, Provider may (i) assign this Agreement to an Affiliate of Provider or to a third party that acquires the Energy Storage Systems and, in each case, agrees in writing to assume all of Provider's rights and obligations under the Agreement, or (ii) assign this Agreement as collateral security in connection with any financing of any Energy Storage System. In the event that Provider identifies a Financing Party in Schedule 5 of the Special Conditions, or in a subsequent notice to Host Customer, then Host Customer shall comply with the provisions set forth in Exhibit B of these General Terms and Conditions and agrees to provide such estoppels and acknowledgments as Provider may reasonably request from time to time. Any Financing Party shall be an intended third-party beneficiary of this Section 13.1. Any Assignment by Provider without any required prior written consent of Host Customer shall not release Provider of its obligations hereunder.

13.2. Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party in Schedule 5 of the Special Conditions, or in a subsequent notice to Host Customer, then Host Customer hereby acknowledges:

(a) The collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under the Agreement, as consented to under Section 13.1 of the Agreement.

(b) The Financing Party as such collateral assignee shall be entitled to exercise

any and all rights of lenders generally with respect to Provider's interests in this Agreement.

(c) It has been advised that Provider has granted a first priority perfected security interest in Energy Storage System to the Financing Party and that the Financing Party has relied upon the characterization of the Energy Storage System as personal property, as agreed in this Agreement in accepting such security interest as collateral for its financing of the Energy Storage System.

Any Financing Party shall be an intended third-party beneficiary of this Section 13.2.

13.3 Assignment by Host Customer. Host Customer shall not assign the Agreement or any interest therein, without Provider's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Provider, Provider may, upon at least 90 days prior written notice to Provider, assign this Agreement to an Affiliate of Host Customer or to a third party that acquires the Premises and, in each case, agrees in writing to assume all of Host Customer's rights and obligations under the Agreement. Any Assignment by Host Customer without the prior written consent of Provider shall not release Host Customer of its obligations hereunder.

### 14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 5 of the Special Conditions, or at such other address as may be designated in writing to the other Party from time to time.

14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the

Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.

14.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by Host Customer. Invoices shall be sent by regular first class mail postage prepaid.

## 15. CONFIDENTIALITY AND DATA.

15.1 Confidentiality Obligation. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the Energy Storage System or of Host Customer's business ("Confidential Information") to the other or, if in the course of performing under the Agreement or negotiating the Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants, and Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Representatives"), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of the Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Article, except as set forth in

Section 15.3. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

15.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

(a) Becomes publicly available other than through the receiving Party;

(b) Is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;

(c) Is independently developed by the receiving Party; or

(d) Becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

In addition, without limiting any of the foregoing, Provider may, without Host Customer's consent, provide to the Local Electric Utility, Control Area Operator, Governmental Authority, equipment suppliers, service providers and financing providers all design, operational, testing, maintenance and repair data in connection with the Energy Storage System, any and all System Data, and any and all information related to Host Customer or the Premises in connection with the Energy Storage System and Energy Management Services. At Host Customer's written request, Provider shall provide a summary list to Host Customer of such information provided to parties set forth in this Section 15.2(d).

15.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity

materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the Agreement; provided, that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Host Customer agrees that Provider may, at its sole discretion, take photographs of the installation process of the Energy Storage System and/or the completed Energy Storage System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Host Customer permission and the installation site shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city and state.

15.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article 15 by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article 15. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article 15, but shall be in addition to all other remedies available at law or in equity.

15.5 Ownership and Use of Data. Provider shall at all times own all data generated by the meter(s) installed with the Energy Storage System and otherwise regarding the operation and discharge of the Energy Storage System and Software for Energy Management Services, Market Products or Environmental Attributes (collectively, the "System Data"). Notwithstanding anything in this Article 15 to the contrary, Provider shall be entitled to use the System Data for any purpose, including marketing and publicity, so long as the System

Data does not identify Host Customer or the Premises.

## 16. INDEMNITY.

16.1 Provider's Indemnity. Subject to Article 12, Provider agrees that it shall indemnify and hold harmless Host Customer, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Host Customer Indemnified Parties") from and against any and all Losses incurred by Host Customer Indemnified Parties to the extent arising from or out of the following: (a) any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Provider's negligence or willful misconduct, (b) any infringement of patents or the improper use of other proprietary rights by Provider or its employees or representatives that may occur in connection with the performance of the Installation Work, Energy Storage System Operations or Energy Management Services and the ownership and use of the Energy Storage Systems, or (c) violation by Provider of its confidentiality obligations under Section 15. Provider shall not, however, be required to reimburse or indemnify any Host Customer Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Host Customer Indemnified Party.

16.2 Host Customer's Indemnity. Subject to Article 12, Host Customer agrees that it shall indemnify and hold harmless Provider, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Provider Indemnified Parties") from and against any and all Losses incurred by Provider Indemnified Parties to the extent arising from or out of any claim for or arising out of (a) any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Host Customer's negligence or willful misconduct, (b) any breach of Host Customer's obligations to avoid creating any Liens in connection with the Energy Storage Systems or Software, (c) any failure by Host Customer to have full and encumbered rights to grant the access to Provider as set forth in Section 7.2(d), and (d) violation by Provider of its confidentiality obligations under Section 15. Host Customer

shall not, however, be required to reimburse or indemnify any Provider Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Provider Indemnified Party.

## 17. INSURANCE.

17.1 Generally. Host Customer and Provider shall each maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies or acceptable self-insured retentions: (a) Workers' Compensation Insurance as may be from time to time required under applicable federal and state law, (b) Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence, and (c) automobile insurance with commercially reasonable coverages and limits. Additionally, Provider shall carry employer's liability insurance with a minimum limit of \$1,000,000 per occurrence and excess or umbrella liability insurance for commercial general liability having a per occurrence and aggregate limit of not less than \$5,000,000 Host Customer. If Host Customer files a claim on its insurance policy for property damage to the Premises caused by the Energy Storage Systems and not due in any way to Host Customer's action or inaction, Provider shall pay Host Customer's deductible for such claim in an amount not to exceed twenty-five thousand dollars (\$25,000).

17.2 Certificates of Insurance. Each Party, upon request, shall furnish current certificates evidencing that the insurance required under Section 17.1 is being maintained.

17.3 Additional Insureds. Each Party's insurance policy shall be written on an occurrence basis and shall include the other Party as an additional insured as its interest may appear.

17.4 Insurer Qualifications. All insurance maintained hereunder shall be maintained with companies either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt-to-policyholder-surplus ratio of 1:1.

## 18. MISCELLANEOUS.

18.1 Integration; Exhibits. The Agreement, together with the Exhibits and Schedules attached thereto or incorporated by reference, constitute the entire agreement and understanding between Provider and Host Customer with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof which are of no further force or effect. The Exhibits and Schedules attached to the Agreement, including these General Conditions as incorporated by reference, are integral parts of the Agreement and are an express part of the Agreement.

18.2 Conflict. In the event of a conflict between the provisions of these General Conditions and the Special Conditions, the provisions of the Special Conditions shall prevail.

18.3 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Host Customer.

18.4 Industry Standards. Except as otherwise set forth herein, for the purpose of the Agreement the normal standards of performance within the power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

18.5 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Provider or Host Customer shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

18.6 Sovereign Immunity. To the extent permitted by Applicable Law, Host Customer hereby waives any defense of sovereign immunity that Host Customer might otherwise have in connection with any action taken by Provider to enforce its rights against Host Customer under this Agreement.

18.7 Limited Effect of Waiver. The failure of Provider or Host Customer to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such

provision, in any other instance or of any other provision in any instance.

18.8 Survival. The obligations under Sections 2.2 (Removal of Energy Storage System), Section 7.1(d) (Provider Covenant), Sections 7.2(d), (e), (f) and (g) (Host Customer Covenants), Section 8.3 (Exclusion of Warranties), Article 9 (Taxes and Governmental Fees), Article 12 (Limitation of Liability), Article 14 (Notices), Article 15 (Confidentiality), Article 18 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

18.9 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of California without reference to any choice of law principles. The Parties agree that the courts of the State of California and the Federal Courts sitting therein shall have jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by Applicable Law. The Parties waive to the fullest extent permitted by Applicable Law any objection it may have to the laying of venue of any action or proceeding under this Agreement any courts described in this Section 18..

18.10 Severability. If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

18.11 Relation of the Parties. The relationship between Provider and Host Customer shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Host Customer, in performing any of their obligations hereunder, shall be independent contractors or independent

parties and shall discharge their contractual obligations at their own risk.

18.12 Successors and Assigns. This Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Host Customer and their respective successors and permitted assigns.

18.13 No Dedication. Neither Party shall be considered to have dedicated its property to the public or any portion thereof as a result of the Agreement or its performance thereunder. Neither Party shall claim that the other has dedicated its property to the public or any portion.

18.14 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument

18.15 Electronic Delivery. This Agreement may be duly executed and delivered by a Party by execution electronic, "pdf" delivery of the signature page of a counterpart to the other Party.

18.16 Liquidated Damages Not Penalty. Host Customer acknowledges that the Early Termination Fee constitutes liquidated damages, and not penalties, in lieu of Provider's actual damages resulting from the early termination of the Agreement. Host Customer further acknowledges that Provider's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Host Customer's rights and obligations under the Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Host Customer in lieu of Provider's actual damages.

*[Remainder of page intentionally left blank.]*

These General Terms and Conditions are witnessed and acknowledged by Provider and Host Customer below. Neither Provider nor Host Customer shall have any obligations or liability resulting from its witnessing and acknowledging these General Terms and Conditions.

**"PROVIDER": ADVANCED MICROGRID SOLUTIONS, INC.**

By: 

Name: Susan Kennedy

Title: Chief Executive Officer

Date: September 25, 2015

**"HOST CUSTOMER": INLAND EMPIRE UTILITIES AGENCY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Exhibit A  
of General Conditions

[HOST CUSTOMER'S LETTERHEAD]

[Landlord's Address]

Attn: Authorized Representative

Re: Proposed Energy Storage System Installation at [Address of Premises]

Lease dated [ ] between [HOST CUSTOMER] and [LANDLORD] (the "Lease")

Dear Authorized Representative:

As has been discussed with you, [HOST CUSTOMER] and an affiliate of \_\_\_\_\_ ("Provider") have entered into an Energy Management Services Agreement, pursuant to which Provider will install, finance, operate, and maintain Energy Storage Systems at the above-referenced premises which [HOST CUSTOMER] leases from you pursuant to the Lease. By signing below and returning this letter to us, you confirm that:

1. The Energy Storage Systems and the energy (including environmental benefits and credits, market products and related attributes and various financial incentives) produced by the Energy Storage Systems are personal property, and shall not be considered the property (personal or otherwise) of [LANDLORD] upon installation of the Energy Storage Systems at the premises.
2. Provider or its designee (including finance providers, the local electric utility and governmental authorities) shall have the right without cost to access the premises in order to install, operate, inspect, maintain, and remove the Energy Storage Systems. [LANDLORD] will not charge Host Customer or Provider any rent for such right to access the premises.
3. [LANDLORD] has been advised that the finance providers for the Energy Storage Systems have a first priority perfected security interest in the Energy Storage Systems. Provider and the finance providers for the Energy Storage Systems (including any Energy Storage System lessor or other lender) are intended beneficiaries of [LANDLORD]'s agreements in this letter.
4. [LANDLORD] will not take any action inconsistent with the foregoing.

We thank you for your consideration of this opportunity and we look forward to working with you in our environmental campaign to increase the utilization of clean, renewable energy resources.

Very truly yours,

[HOST CUSTOMER]

By: \_\_\_\_\_  
Name:  
Title: Authorized Representative

Acknowledged and agreed by:

[LANDLORD]

By: \_\_\_\_\_

Name:

Title: Authorized Representative

**Exhibit B**  
**of General Conditions**

**Certain Agreements for the Benefit of the Financing Parties**

Host Customer acknowledges that Provider will be receiving financing accommodations from one or more Financing Parties and that Provider may sell or assign an Energy Storage System or this Agreement and/or may secure Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the Energy Storage System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such Financing Party, Host Customer agrees as follows:

(a) **Consent to Collateral Assignment.** Host Customer consents to either the assignment, sale or conveyance to a Financing Party or the collateral assignment by Provider to a Financing Party, of Provider's right, title and interest in and to this Agreement.

(b) **Notices of Default.** Host Customer will deliver to the Financing Party, concurrently with delivery thereof to Provider, a copy of each notice of default given by Host Customer under the Agreement, inclusive of a reasonable description of Provider default. No such notice will be effective absent delivery to the Financing Party. Host Customer will not mutually agree with Provider to cancel, modify or terminate the Agreement without the written consent of the Financing Party.

(c) **Rights Upon Event of Default.** Notwithstanding any contrary term of this Agreement:

i. The Financing Party, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement and only in the event of Provider's or Host Customer's default. The Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the Energy Storage Systems.

ii. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Provider under this Agreement or (unless the Financing Party has succeeded to Provider's interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Host Customer hereby gives it the option to do so.

iii. Upon the exercise of remedies under its security interest in an Energy Storage System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Host Customer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement.

iv. Upon any default not reasonably susceptible to cure by a Finance Party, including, without limitation, rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of the Financing Party made within ninety (90) days of such default, Host Customer shall enter into a new agreement with the Financing Party or its designee having the same terms and conditions as this Agreement.

(d) **Right to Cure.**

i. Host Customer will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Provider) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement. The Parties agree that the cure rights described herein are in addition to and apply and commence following the



expiration of any notice and cure period applicable to Provider. The Parties respective obligations will otherwise remain in effect during any cure period; provided that if such Provider default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional ninety (90) days.

ii. If the Financing Party (including any Host Customer or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Sub-section (c)(i). above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

**CONFIDENTIAL AND PROPRIETARY**

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**SPECIAL TERMS AND CONDITIONS**

**OF THE**

**ENERGY MANAGEMENT SERVICES AGREEMENT**

This Special Terms and Conditions of the Energy Management Services Agreement (the "Special Conditions") is made and entered into as of October 14, 2015 (the "Effective Date"), between Advanced Microgrid Solutions, Inc. a Delaware corporation ("Provider"), and Inland Empire Utilities Agency, ("Host Customer"; and, together with Provider, each, a "Party" and together, the "Parties").

**RECITALS**

- A. Host Customer desires that Provider install and operate Energy Storage Systems on select Host Customer Premises in the San Bernardino County area (as hereafter defined) to optimize and manage distributed energy technologies in a manner that enables the facilities to shift electric consumption from grid to stored or other energy resources as needed to facilitate optimal and cost effective energy management; to enhance the reliability and security of the facilities by using stored energy as stand-by generation in the event of electrical outages; and to provide resources and support to the Utility or grid operator where possible through Utility Services Agreements PPAs or wholesale ancillary services market transactions (Energy Management Services), and Provider is willing to do the same.
- B. Provider and Host Customer acknowledged those certain General Terms and Conditions of the Energy Management Services Agreement dated as of October 14, 2015 ("General Conditions"), which are incorporated by reference herein as set forth below (such General Conditions, together with these Special Conditions, together, the "Agreement").
- C. Host Customer acknowledges that Provider may utilize the capabilities of the Energy Storage Systems to provide Market Products, including pursuant to one or more agreements with the Local Electric Utility or other retail energy service provider (each, a "Utility Services Agreement"). Provider's use of the Energy Storage System in such manner shall not excuse Provider from its obligation to provide the Energy Management Services and be bound by the performance obligations as set forth in Schedule 1 and Schedule 4 of this Agreement. Furthermore, Provider's use of the Energy Storage System requiring dispatch of the existing capacity installed under this Agreement, or any additional capacity added to the Energy Storage System for purposes other than to perform the Energy Management Services in Schedule 1 shall be agreed to in writing by both Parties prior to commencement of such dispatch or installation of such additional capacity.

## AGREEMENT

In consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of General Conditions. The General Conditions are incorporated herein as if set forth in their entirety. Any capitalized terms not otherwise defined herein shall have the meaning given to them in the General Conditions. Any conflict between the General Terms and these Special Terms shall be resolved in favor of the provisions of these Special Terms.
2. Energy Management Services. The Energy Management Services to be performed by Provider are contained in Schedule 1.
3. Services Term. The Services Term of this Agreement shall commence on the Effective Date and shall continue for ten (10) years from the first day of the Billing Period immediately following the Completion Date for the last Energy Storage System to be installed by Provider under this Agreement, or December 31, 2027, whichever is earlier, unless terminated earlier pursuant to the provisions of the Agreement. Each twelve (12) month period following the Completion Date for such last Energy Storage System, constitutes a "Term Year".
4. Termination for Cause. Notwithstanding Section 11 of the General Conditions: (a) in the event that (i) Host Customer no longer has authority to grant the access rights provided under Section 7.2(d) of the General Conditions in respect of the entirety of the Premises, or (ii) Host Customer ceases operations at the entirety of Premises such that there is no longer any electricity service at any of the Premises, either Party may terminate this Agreement by delivering written notice to the other; or (b) a Provider Default (as defined in Section 11.1 of the General Conditions) occurs, Host Customer may terminate this Agreement by delivering written notice to Provider, and (c) in the event that a Host Customer Default (as defined in Section 11.2 of the General Conditions) occurs, Provider may terminate this Agreement by delivering written notice to Host Customer. If Host Customer terminates this Agreement under this Section 4, Provider shall remove the Energy Storage Systems, and bear such costs, as provided in Section 2.2 of the General Conditions. If Provider terminates this Agreement under this Section 4, Host Customer shall pay to Provider an amount equal to the sum of the Early Termination Fee, any amounts then due and owing under this Agreement and any costs incurred by Provider to remove the Energy Storage Systems and restore the Premises to their original condition (except as provided in Section 2.2 of the General Terms).
5. Termination for Convenience. Either Party may, upon written notice to the other, terminate this Agreement in its sole discretion. If such termination is by Host Customer, such written notice must be provided no less than twelve months before the effective date of such termination and Host Customer shall, prior to the effective date of such termination, either pay to Provider an amount equal to the sum of the Early Termination Fee, any amounts then due and owing under this Agreement and any costs incurred by

Provider to remove the Energy Storage Systems and restore the Premises to their original condition (except as provided in Section 2.2 of the General Terms), and bear such costs, as provided in Sections 4.3(a) and 4.3(c) of the General Conditions. If such termination is by Provider, Provider shall notify Host Customer in writing at least twelve (12) months, provided that such notice period shall be ninety (90) days in the event that Energy Management Services are not being provided by Provider for all Project Sites, before such termination and shall, at Provider's own cost, remove the Energy Storage Systems and restore the Project Sites to their original condition less ordinary wear and tear, as provided in Section 2.2 of the General Conditions.

6. Limitation of Damages: Without limiting, and in addition to, Section 12.2 of the General Conditions, neither Party's liability under this Agreement shall exceed an amount equal to twenty five percent (25%) of the cost of the Energy Storage Systems; The foregoing limitation shall not apply in connection with: (i) the Early Termination Fee; (ii) claims for indemnification as permitted under the Agreement; (iii) breach of confidentiality obligations; (iv) violation of a Party's ownership or proprietary rights; or (v) claims for which such limitation is not permitted by law.
  
7. Proposed Project Sites – The Parties understand and agree that (i) Provider may delete from the list of Project Sites proposed in Schedule 6 due to factors identified as a result of Provider's diligence and/or information disclosed by Host Customer, and (ii) Provider and Host shall agree in writing to adjust or modify total amount in kW of energy storage systems installed, MGDR, Energy Management Services Fee, Performance Payment and any relevant or associated term or condition in the Special Conditions and/or General Conditions relating to any such change to Schedule 6 or disclosure set forth in Section 7(i).
  
8. Schedules: The following Schedules hereto are hereby incorporated into this Agreement:

Schedule 1	Energy Management Services
Schedule 2	Management Services Payment
Schedule 3	Early Termination Fee
Schedule 4	Performance Guarantee
Schedule 5	Notice Information
Schedule 6	Site-Specific Information and Requirements: Description of the Premises, Project Sites, Energy Storage Systems and Scope of Work
Schedule 7	Base Year Load, Utility Rates
Schedule 8	Guarantee Rate
Schedule 9	Other Terms and Conditions
Schedule 10	Approved Service Providers

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Host Customer have executed this Agreement effective as of the Effective Date.

**Advanced Microgrid Solutions, Inc.**

**Inland Empire Utilities Agency**

By: Sus P Kennedy  
Name: Susan Kennedy  
Title: Chief Executive Officer  
Date: September 25, 2015

By: \_\_\_\_\_  
Name:  
Title:  
Date

## SCHEDULES

### I. Schedule 1 – Energy Management Services

#### Provider shall provide the following Energy Management Services

1. ***Peak Demand Reduction:*** Provider will install and operate individual Energy Storage Systems of approximately 3650 kW/7300 kWh at specified portions of the Premises (each a “Project Site”) for purposes of reducing Host Customer’s peak energy demand and providing optimal use of on-site energy resources. The actual capacity of each Energy Storage System will depend upon the actual Energy Storage System configurations and Project Sites agreed upon by Provider and Host Customer during the Energy Storage System design period.

***Demand Response:*** Provider will work to determine if Energy Storage Systems may be used to generate incremental revenues from Host Customer participation in Utility demand response or other utility programs (as defined below, “Demand Response Programs”). Notwithstanding Section 5.4 of the General Conditions, any revenue associated with enhanced participation in such demand response programs and any revenue associated with existing nominations that are met without shedding site load, in each case to the extent made possible through operation of the Energy Storage Systems, will be included in the calculation of Cost Savings, as defined below. Demand Response Programs means Southern California Electric (“SCE”) tariffed demand response programs and such programs that are approved, amended, or added by SCE from time-to-time. As of the Effective Date, SCE Demand Response Programs consist of, but are not limited to, the following:

- Agricultural and Pumping Interruptible Program
- Automated Demand Response
- Permanent Load Shifting
- Time-of-Use Base Interruptible Program
- Capacity Bidding Program
- Demand Bidding Program
- Aggregator Managed Portfolio (AMP) Program
- Summer Advantage Incentive (also known as Critical Peak Pricing)
- Optional Binding Mandatory Curtailment
- Summer Discount Plan
- Real-Time Pricing
- Scheduled Load Reduction Program
- Pumping and Agricultural Real-Time Pricing
- Peak Time Rebate

Revenues associated with any Utility Services Agreement not executed and in effect as of the Effective Date shall accrue to the exclusive benefit of Provider, unless otherwise agreed to in writing by both Parties, and shall not be included in the calculation of Cost Savings.

2. ***Analytics and Portfolio Planning:*** Provider will use historic, current and forecast data analytics regarding energy generation, consumption and cost at each Project Site where an Energy Storage System is in operation to prepare an optimized, integrated resource management plan for Host Customer including the use of Energy Storage Systems. Provider will develop a baseline of energy usage and electricity expenses for each such Project Site.
3. ***Stand-By Source:*** Provider will, if requested by Host Customer in writing prior to completion of design by Provider, configure and operate installed Energy Storage Systems to provide temporary back-up energy to support specified essential loads during grid outages, consistent with the requirements of the Local Electric Utility.
4. ***Aggregation:*** Provider will be responsible for aggregation and scheduling of load reduction produced by the Project for dispatch in conjunction with utility Demand Response Programs or other revenue-generating opportunities. Provider will collaborate with Host Customer with the goal of designing optimal peak demand reduction opportunities within operational parameters of each Project Site and the Premises, provided that Host Customer understand and agrees that such optimal peak demand reduction opportunities may not be achieved.
5. ***Custom Energy Management Web Portal:*** During the Services Term but not before operation by Provider of the Project Site after Project Site RP-5, Provider will make available real time access to available data to Host Customer via a password-protected user interface, an energy management web portal that will display Host Customer's monthly energy usage, monthly kWh battery throughput, state of charge and discharge of the batteries, peak demand reduction enabled by the Energy Storage Systems and estimated Cost Savings on a monthly, annual and per kilowatt of installed Energy Storage System basis.
6. ***24/7 System Monitoring:*** Provider will, at its own expense, install an Internet connection or phone line for remote monitoring of the Energy Storage Systems to monitor operation and performance of the Equipment 24 hours a day and 7 days a week.
7. ***Microgrid Control Systems:*** Provider will review and recommend automated software control systems to be owned and/or leased by Host Customer for purposes of facilitating grid "islanding" and grid support in partnership with the Local Electric Utility.
8. ***Solar PV:*** Provider will review and recommend options for installation of solar PV systems at certain Project Sites to be integrated with Energy Storage System located thereon. Solar PV installations, if any, at any Project Site will be negotiated by the parties and is subject to the parties executing a power purchase or other agreement.

**Additional Services:** Any additional services or resources provided to Host Customer by Provider, Provider's affiliates or technology partners using equipment other than Energy Storage Systems (such as installation of Solar PV or other distributed energy resources), will be negotiated and agreed to in a separate agreement.)("Additional Services").

## **II. Schedule 2 – Energy Management Services Payment**

The Energy Management Services Payment is Nineteen Thousand Seven Hundred Seventy Dollars (\$19,770) per month during the Services Term plus any Performance Bonus Payment, paid annually, for providing Actual Annual Demand Reduction of at least 25435 kW AC or total Cost Savings in excess of Three Hundred Sixty-five Thousand Dollars (\$365,000) in any Term Year as set forth below.

### **Calculation of Performance Bonus Payment:**

If the Energy Storage Systems provide, on an aggregate basis across the Agreement and the Associated Agreements, Actual Annual Demand Reduction (as defined in Schedule 4) of at least 25435 kW AC or total Cost Savings in excess of Three Hundred Sixty-five Thousand Dollars (\$365,000) in any Term Year, Host Customer shall pay to Provider, within ninety (90) days after the end of such Term Year, an amount equal to the greater of (a) 50% of the amount by which the Actual Annual Demand Reduction exceeds 25435 kW AC multiplied by the Guarantee Rate or (b) 50% of Host Customer's total Cost Savings in excess of Three Hundred Sixty-five Thousand Dollars (\$365,000).

**Calculation of Cost Savings:** On a monthly basis, Provider will calculate Host Customer's aggregate utility bill across all Project Sites at which Energy Storage Systems are in operation, with and without the Energy Storage Systems, using the corresponding electricity rates and utility tariffs for each service account. The difference between these two calculated bills represents the value from peak demand reductions and load shifting attributable to the Energy Storage Systems (together with demand response payments described in Schedule 1 above, "***Cost Savings***"). Provider makes no guarantees that any specific Cost Savings will be realized by Host Customer.



**III. Schedule 3 – Early Termination Fee**

The Early Termination Fee will be as follows:

<b>Early Termination Occurs in Service Year:</b>	<b>Column 1 Early Termination Fee (\$/kW DC of the Energy Storage System)</b>
1*	1,871
2	951.40
3	907.80
4	864.20
5	820.60
6	555.40
7	465.40
8	375.40
9	285.40
10	195.40

Upon expiration of the Service Term, the amount in Column 1 shall be deemed to be zero (0).

\*Includes Early Termination prior to the Completion Date.

**IV. Schedule 4 – Performance Guarantee**

1. If after Provider installs and operates individual Energy Storage Systems of approximately 3650 kW/7300 kWh at specified portions of the Premises and the Energy Storage Systems do not provide Actual Annual Demand Reduction of at least 20348 kW AC in any Term Year, on an aggregate basis across all Project Sites (such amount, the “Minimum Guaranteed Demand Reduction” or “MGDR”), Provider shall credit Host Customer an amount equal to Host Customer’s Lost Savings on an invoice or invoices within ninety (90) days after the end of such Term Year, up to the Lost Savings Cap; *provided*, if the Energy Storage Systems do not provide the Minimum Guaranteed Demand Reduction in the last Term Year, then Provider shall pay to Host Customer a Lost Savings payment within ninety (90) days following the end of the Term; *provided further*, if the Agreement is terminated early, except due to a Provider Default, the Minimum Guaranteed Demand Reduction will not apply to the Term Year in which the Agreement is terminated.

2. The Minimum Guaranteed Demand Reduction and Guarantee Rate shall be reduced to the extent Provider’s ability or cost to provide the Energy Management Services at one or more Project Sites are affected by any of the following:

- (a) Any act or omission by Host Customer affects an Energy Storage System to the extent due in part or entirely to Host Customer’s negligence, or due to any other act or omission of Host Customer that impairs an Energy Storage System’s ability to safely store and discharge energy or Provider’s ability to monitor or control the Energy Storage System.
- (b) Theft, destruction or damage affects the Energy Storage System in any way that impairs its ability to safely store and discharge energy or Provider’s ability to monitor or control the Energy Storage System, except to the extent caused by the manufacturer of the Energy Storage System, Provider or its Approved Service Providers.
- (c) A Disruption Period occurs.
- (d) A Host Customer Default, including Provider suspending the Energy Management Services as a result of a Host Customer Default.
- (e) Host Customer fails to provide access to a Project Site or an Energy Storage System as required by Section 7.2(d) of the General Conditions.
- (f) A Force Majeure Event.
- (g) Host Customer elects to have the Local Electric Utility apply a different tariff or rate category to the Project Site.
- (h) Any material deviation in the characteristics of the electricity demands at the Project Sites from actual Local Electric Utility provided demand data for the period between July 2013 and June 2014, not resulting from the Energy Management Services or Provider’s acts or omissions.

- (i) Relocation of any Energy Storage System or a reduction in the number of Energy Storage Systems installed pursuant to this Agreement.

Host Customer shall notify Provider two (2) business days in advance of the commencement of any maintenance that may have an impact on the energy demand storage at a specific site ("Planned Maintenance"). The Planned Maintenance shall not reduce Providers obligation to provide Energy Management Services and shall not be considered a Disruption Period under Section 4.3(b) of the General Terms and Conditions. Should an emergency occur at one of the sites that necessitates an energy shut down ("Emergency Maintenance"), Provider shall be notified as soon as reasonably possible, but in no event greater than forty-eight hours, with an estimate of when the site shall be returned to normal operating conditions.

On each invoice submitted by Provider to Host Customer, Provider shall include a statement of the amount by which the Minimum Guaranteed Demand Reduction and/or Guarantee Rate will be reduced pursuant to this Section 2, including a detailed explanation of, and rationale for, its calculation methodology, annotated work papers and source data. If Host Customer does not dispute the amount of such reduction within thirty (30) days after its receipt of such invoice, Host Customer will be deemed to have accepted such reduction.

Host Customer shall notify Provider no later than five (5) business days after the date that Host Customer received notice of, became aware of, knew or should have known of: (i) any plans to change the operations at the Premises that would materially impact the Equipment; (ii) any change in the Premises' applicable utility tariffs or electricity prices; and (iii) any other changes at the Premises that could reasonably be expected to adversely affect the ability to use the Equipment to generate electricity Cost Savings.

3. If there is a change in the Local Electric Utility Tariff applicable to any Project Site that has a material impact on Provider's ability to provide the Energy Management Services, then upon written notice from Provider to Host Customer, the Parties shall negotiate in good faith to make the minimum changes to this Agreement necessary to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Effective Date; *provided*, any change in the rates or other costs applicable to a Project Site under the Local Electric Utility Tariff will not constitute a change that will cause this Section 3 to be applicable. Notwithstanding the foregoing, Provider shall continue to provide the Energy Management Services, and Host Customer shall continue to make the Management Services Payments, while the Parties negotiate the changes to the Agreement contemplated in this Section 3.

#### 4. Additional Defined Terms

“Actual Annual Demand Reduction” or “AADR” means the sum of all Actual Demand Reductions during each Term Year, calculated as follows:

$$AADR_{Term\ Year} = ADR_{Billing\ Period\ 1} + ADR_{Billing\ Period\ 2...} + ADR_{Billing\ Period\ 12}$$

“Actual Demand Reduction” or “ADR” means the sum of the Peak Demand Reductions within a Billing Period, calculated as follows:

$$ADR_{Billing\ Period} = PDR_{Demand\ Period\ 1} + PDR_{Demand\ Period\ 2...} + PDR_{Demand\ Period\ Final}$$

“Billing Period(s)” means each of the consecutive time periods applicable to Host Customer during which the Utility assesses and bills demand charges for the Premises.

“Demand Period” means each period within a Billing Period for which a demand charge is or could be assessed by the Local Electric Utility. The Premises may have one or as many as twenty Demand Periods per Billing Period, including, if applicable, Demand Periods referred to as “Peak”, “Part-Peak”, “Mid-Peak”, “Off-Peak”, “Non Coincident”, “On-Peak” or “Critical Peak”.

“Guarantee Rate” or “GR” means the weighted average of Host Customer’s utility demand charges across all demand periods for participating accounts at Subject Properties in the Project area as of the Effective Date of this Agreement. The GR is set forth in Schedule 8 of this Special Conditions.

“Lost Savings” means the dollar amount Provider will credit or pay to Host Customer in accordance with the terms of this Agreement, if applicable, calculated as follows:

$$Lost\ Savings = (MGDR - AADR) \times GR$$

“Lost Savings Cap” means Eighty Dollars (\$80) per kW of energy storage installed. The Lost Savings Cap is applicable on a Term Year basis.

Peak Demand Reduction: means, for each Demand Period in each month during the Term, the difference between (i) the peak demand for each utility service account at each Project Site as to which an Energy Storage System is in operation, calculated by Provider using Data from the Energy Storage System meter, utility meter and/or site (shadow) meter at such Project Site and assuming that the Energy Storage System was not in

operation (ii) the actual peak demand for each utility service account at each Project Site as to which a Energy Storage System is in operation, calculated by Provider using Data from the Energy Storage System meter, utility meter and/or site (shadow) meter at such Project Site (with the Energy Storage System in operation).

**V. Schedule 5 – Notice Information**

**Host Customer:**

General Counsel  
Inland Empire Utilities Agency  
6075 Kimball Avenue  
Chino, CA 91708

**Provider:**

General Counsel  
Advanced Microgrid Solutions, Inc.  
25 Stillman St., Suite 200  
San Francisco, CA 94107

**VI. Schedule 6 – Site Specific Information and Requirements**

**a. Project Sites and Service Accounts (Proposed)**

<b>Equipment Site Name</b>	<b>Address</b>	<b>Southern California Electric Company Host Customer Account(s)</b>
<b>RP-1</b>	2450 E Philadelphia St Ontario, CA	2-20-230-9647 2-19-984-8979 2-06-561-5429
<b>RP-4/IERCF</b>	12811 6 <sup>th</sup> St Rancho Cucamonga, CA	2-19-908-7271 2-08-629-5938
<b>RP-5</b>	6075 Kimball Ave Unit C Chino, CA	2-25-040-0645
<b>CCWRF – Carbon Canyon</b>	14950 Telephone Ave Chino, CA	2-19-986-3986 2-22-473-1182
<b>East Ave Pump Station</b>	7420 ½ East Avenue Rancho Cucamonga, CA	2-32-717-0494
<b>West Pump Station</b>	1530 E 6 <sup>th</sup> St A Ontario, CA	2-34-658-5961
<b>E Philadelphia</b>	1818 E Philadelphia St Ontario, CA	TBD
<b>San Bernardino</b>	13707 San Bernardino Ave Fontana, CA	TBD
<b>NW Jurupa</b>	13450 NW Jurupa Fontana, CA	TBD
<b>Palmetto</b>	34 Palmetto-Philadelphia Ontario, CA	TBD

**b. Known Restrictions.**

In accordance with the General Conditions, the following information references any known restrictions on the use of the Premises for the construction, ownership, use and operation of the Energy Storage System, including any land use restrictions, known underground structures or equipment, or limitations arising under permits or applicable law, as well as any additional Environmental Documents, reports or studies in the possession or control of the Host Customer, which shall each have been delivered to Provider as of the Effective Date:

<b>Type of Information</b>	<b>Information Delivered to Provider as of the Effective Date</b>
Phase I environmental site assessment	[Insert applicable details, or mark "Not Applicable"]
Reports on site sampling (soil or groundwater)	[Insert applicable details, or mark "Not Applicable"]
Land use restrictions imposed by governmental authorities	[Insert applicable details, or mark "Not Applicable"]
Lease restrictions on proposed Energy Storage System installation	[Insert applicable details, or mark "Not Applicable"]
Cleanup plan, corrective action plan or permits applicable to Premises	[Insert applicable details, or mark "Not Applicable"]
Open spill reports or unresolved release reports	[Insert applicable details, or mark "Not Applicable"]
Known underground storage tanks, foundations, utilities	[Insert applicable details, or mark "Not Applicable"]
Utility easements or public rights of way	[Insert applicable details, or mark "Not Applicable"]
Completed closure or "cap" on buried waste or other materials	[Insert applicable details, or mark "Not Applicable"]
Collection Systems in place for extracting and collecting methane, groundwater or leachate	[Insert applicable details, or mark "Not Applicable"]
Subject to the control of a trustee, group of entities or entities other than landlord and/or Host Customer	[Insert applicable details, or mark "Not Applicable"]



**c. Description of the Premises, Energy Storage System and Scope of Work**

<b><u>A. Premises</u></b>	[Physical Address: _____] [APN Number: _____]
<b>Site diagram attached:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Premises are leased by Host Customer</b> <b>Lease termination date:</b>	[Insert applicable details, or mark "Not Applicable"]
<b>Premises are owned by Host Customer</b> <b>Name of Mortgagee (lender):</b>	[Insert applicable details, or mark "Not Applicable"]
<b><u>B. Description of Energy Storage System</u></b>	
<b>Type:</b>	grid-interconnected or any other general descriptors
<b>Energy Storage System Size:</b>	[ ] kWh DC (representing an initial estimate, which may vary depending on the final design of the Energy Storage System or as provided in the General Conditions)
<b>Energy Storage System Technology:</b>	[Insert battery information]
<b>Inverter Size</b>	[ ] kW AC
<b>Inverter:</b>	
<b>Control System</b>	A site controller, including a forecasting engine and energy management system that performs customer load analyses and dispatches the Energy Storage System to perform the Energy Management Services.
<b><u>C. Scope of Work</u></b>	
<b>Overview:</b>	Design and supply grid-interconnected, [ground mounted, roof-top, interior] Energy Storage System

<b>Requirements:</b>	[Insert any necessary modification of rooftops to accept Energy Storage System and/or modification of Premises for Ground Mounted facilities to install foundations, electrical lines, etc.]
<b><u>D. Anticipated Subsidy or Rebate</u></b>	Self-Generation Incentive Program; Automated Demand Response

**VII. Schedule 7 – Base Year Load, Utility Tariff and Rates**

In accordance with Schedule IV 2 (Performance Guarantee) of the Special Terms and Conditions, the following information references the base year load, Utility Tariff and Rates for the Premises.

Premises:	SCE Service Account Number:
Utility Tariff / Rate as of Effective Date:	To be provided by Provider.
<u>Month</u>	<u>kW AC</u>
January	To be provided by Provider.
February	To be provided by Provider.
March	To be provided by Provider.
April	To be provided by Provider.
May	To be provided by Provider.
June	To be provided by Provider.
July	To be provided by Provider.
August	To be provided by Provider.
September	To be provided by Provider.
October	To be provided by Provider.
November	To be provided by Provider.
December	To be provided by Provider.

**VIII. Schedule 8 – Guarantee Rate**

The Guarantee Rate as of the Effective Date of this Agreement is Fourteen dollars Thirty-five Cents (\$14.35) per kW AC.

**IX. Schedule 9 – Other Terms and Conditions**

1. Provider and Host Customer will cooperate reasonably and in good faith on the design, permitting, construction, interconnection and installation of the Energy Storage Systems, including so as to enable Provider, or its Affiliate, to meet their obligations under this Agreement and any Utility Services Agreement. Host Customer's consent shall be obtained prior to the finalization of the size, location, interconnection arrangements and facilities, aesthetics, landscaping, civil engineering specifications and operations and maintenance plans of or for the Energy Storage System. If the Parties are unable to agree upon the specific attributes of a given Energy Storage System, such Energy Storage System may be removed from the Agreement upon written notice from one Party to the other.
2. Without limiting Host Customer's obligations hereunder, Provider shall be responsible for performing, and complying with any obligations, under any Utility Services Agreement.
3. Host Customer shall designate Provider to act on Host Customer's behalf as its agent, aggregator or representative, in respect of Host Customer's Local Electric Utility service accounts subject to this Agreement or any Associated Agreement.
4. Provider shall disclose the name of each Finance Party within a reasonable period of time after the contract closing date of such financing transaction.
5. During the Term, Provider shall pay the amount of the increase to the premium of Host Customer's general liability insurance policy for coverage related to the Energy Storage Systems, provided that such payment shall not exceed two thousand five hundred dollars (\$2,500) each calendar year.

**X. Schedule 10 – Approved Service Providers**

To be provided by Provider.

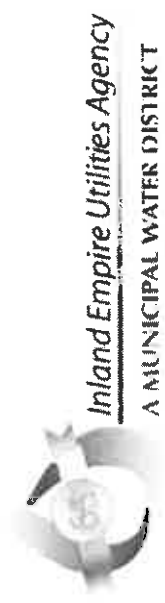
[End of Special Terms and Conditions]

**INFORMATION  
ITEM**

**3A**

# Engineering and Construction Management Project Updates

October 2015

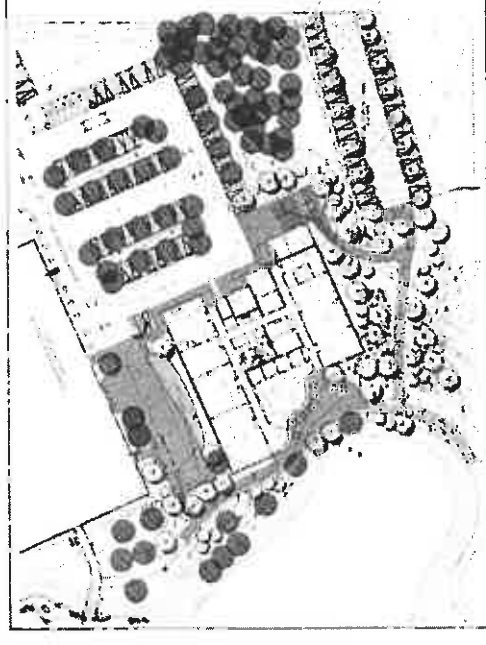


Shaun Stone, P.E.  
Manager of Engineering

John Scherck,  
Acting Deputy Manager of Construction Management

# EN15008 - Water Quality Laboratory

- Engineering Consultant: The Austin Company
- Current Contract: \$1.3 M
- Total Project Budget: \$21 M
- Scope of Work: Consultant Engineering Services for New Water Quality Laboratory and Central Chiller Plant Expansion
- Current Activities:
  - Update 85% Lab Design
  - 30% Central Plant Design
  - Panel expert/third party design review
- Focus Point:
  - Site layout review – access, laydown, security
  - Overall construction cost estimate update
  - Pre-qualification of Contractors
  - Compatibility with existing HQ complex-color, furniture

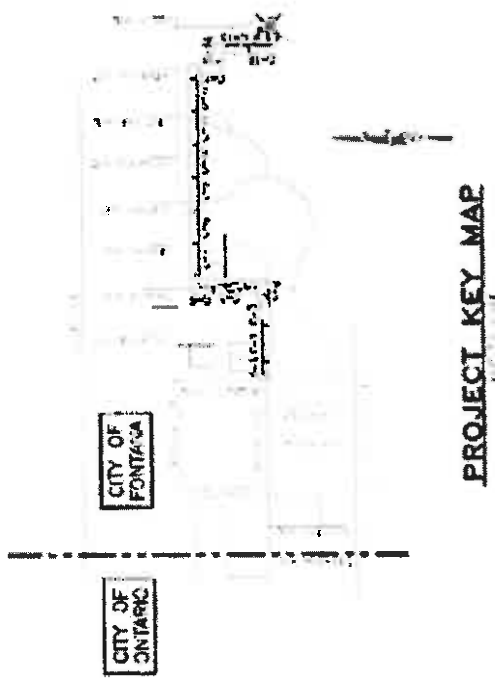


Project Site Plan



# EN13045 – Wineville Recycled Water Pipeline Extension Segment B

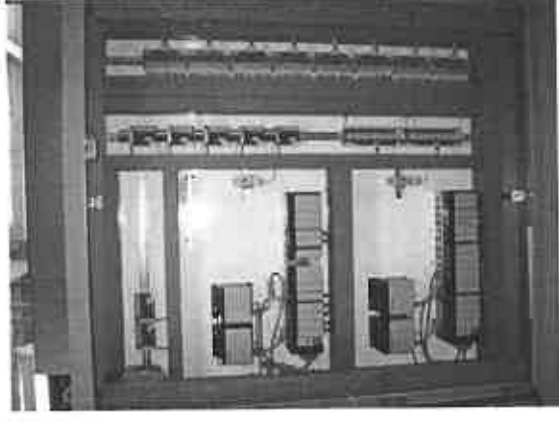
- Contractor: Mike Bubalo Construction
- Current Contract Value: \$9.1 M (with VE)
- Total Project Budget: \$11.9 M
- Scope of Work: Construct 2.6 miles of RW Pipeline (VE Alignment Total)
- Current Activities:
  - Installation and programming of control panel
- Contract Completion: November 2015
- Percent Complete: 95%
- Focus Points:
  - Pipeline is in manual operation
  - Full automated operation available upon completion of control panel programming



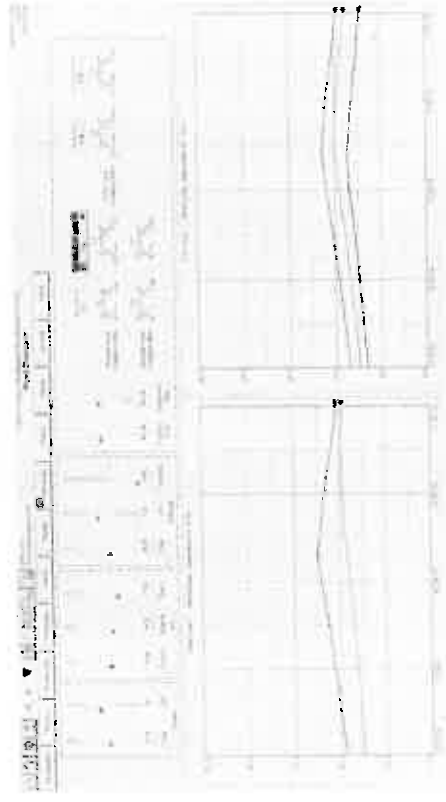
Wineville Segment B Pipeline Installation Progress

# EN13016 – SCADA Enterprise System CCWRF

- Contractor: Technical Systems, Inc.
- Current Contract: \$2.5 M
- Total Project Budget: \$10.3 M
- Scope of Work: Migration of existing control system to modern SCADA system at CCWRF
- Current Activities:
  - Installation of Headworks Remote Input/Output panel
  - Submittal approvals for fabrication of remaining panels
  - High-Performance Operator screens
- Contract Completion: February 2016
- Percent Complete: 49%
- Focus Point:
  - Control and server room modifications
  - Factory acceptance testing of remaining panels
  - Reporting software training



Headworks Control Panel



Operator Overview Screen Development

# EN15032 – Agency-Wide HVAC Improvements, Package No. 3

- Engineering Consultant: Allison Mechanical, Inc.
- Current Contract: \$431 K
- Total Project Budget: \$1.2 M
- Scope of Work: Replacement/upgrade of air conditioning units for RP-1 Warehouse, RP-2 Dewatering Control building, RP-5 Power Center No. 3
- Current Activities:
  - Review shop drawing submittals
  - SCADA Workshop
- Contract Completion: May 2016
- Percent Complete: 2%
- Focus Point:
  - Long lead submittals



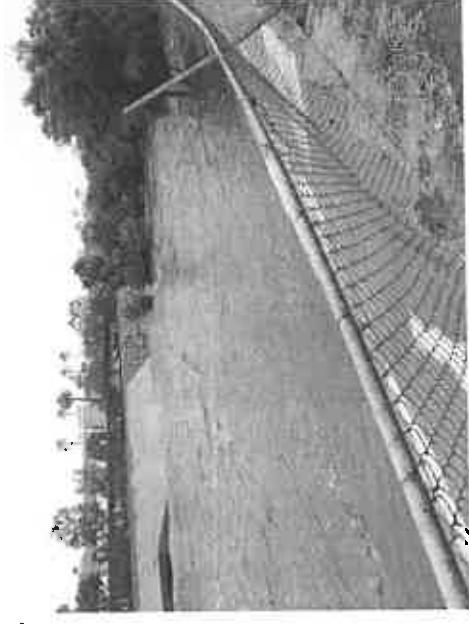
RP-5 Power Center No. 3

# EN12020 – Chino Creek Invert Repair

- Contractor: Mike Bubalo Construction
- Current Contract: \$156 K
- Total Project Budget: \$477 K
- Scope of Work: Construction of new reinforced concrete slab, clearing nuisance vegetation
- Current Activities:
  - Temporary repairs of uplifted slab areas
  - Permanent repair discussion with Contractor and USACE
- Focus Point:
  - Determination of responsibility
  - Cost evaluation for permanent repairs
  - Schedule for permanent repairs



Flow Diversion Set-up 9-8-15

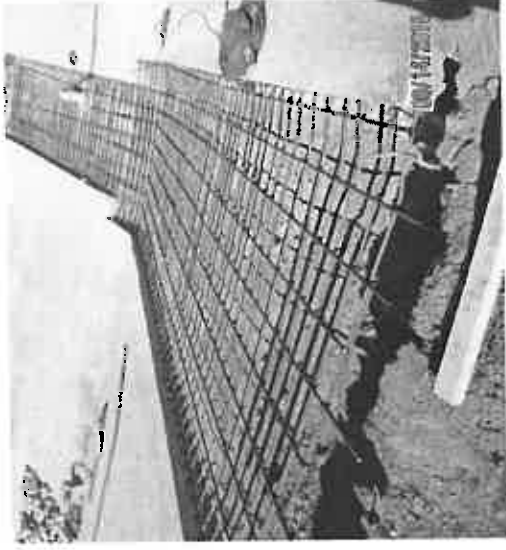


9-15-15 Rain Event

# EN12020 – Chino Creek Invert Repair- Additional Photos



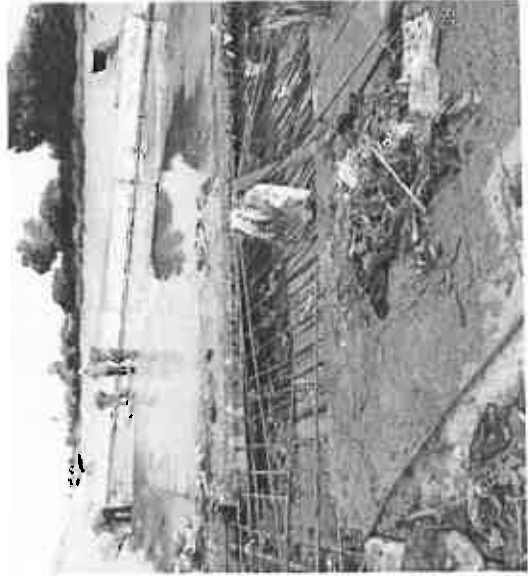
Excavation of Channel 9-9-15



Ready for Concrete 9-14-15



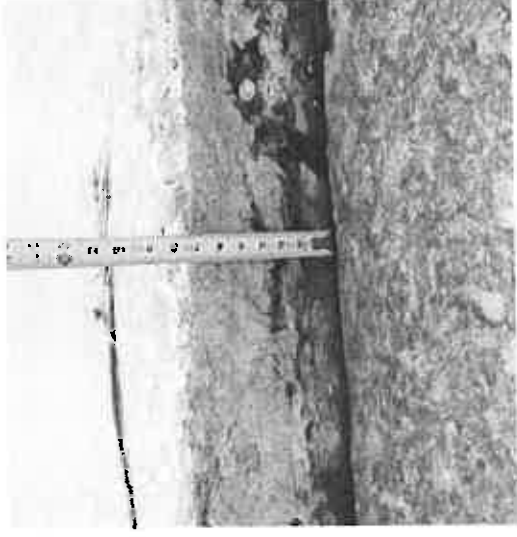
Rain Event 9-15-15



Damage Photos 9-16-15



Slab Uplift Downstream of Trench



9 inch uplift of slab

INFORMATION  
ITEM

**3B**

# FY14/15 Building Activity Summary Ten-Year Growth Survey



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**Inland Empire Utilities Agency**  
A MUNICIPAL WATER DISTRICT

October 2015

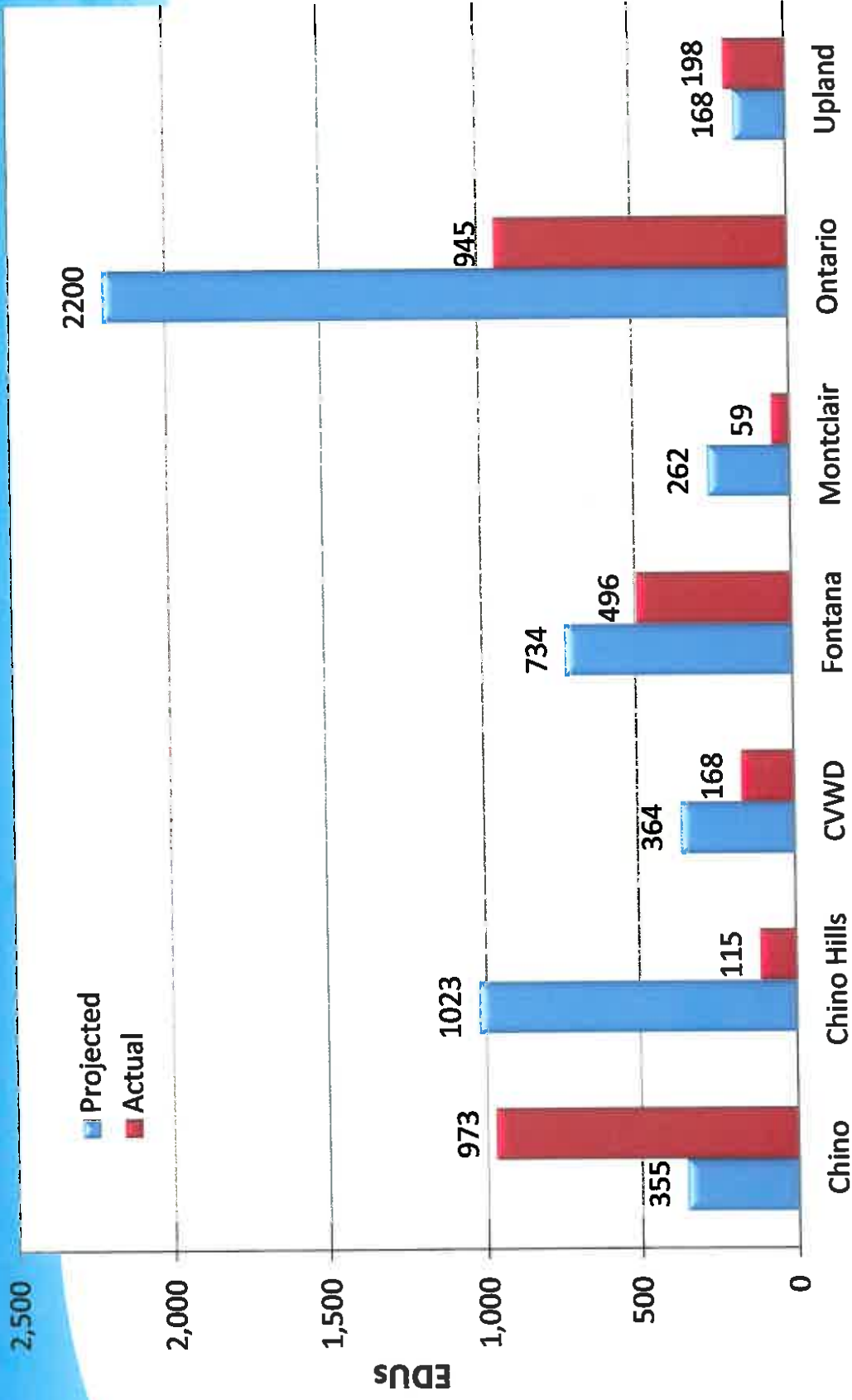
## Summary: FY14/15 Building Activity

- IEUA Member Agency Forecast = 5,106 EDUs
- IEUA Budgeted Forecast = 3,000 EDUs
- Fiscal Year Building Activity = 2,953 EDUs
- Fiscal Year Building Activity at 58% of IEUA's

Member Agency Forecasts



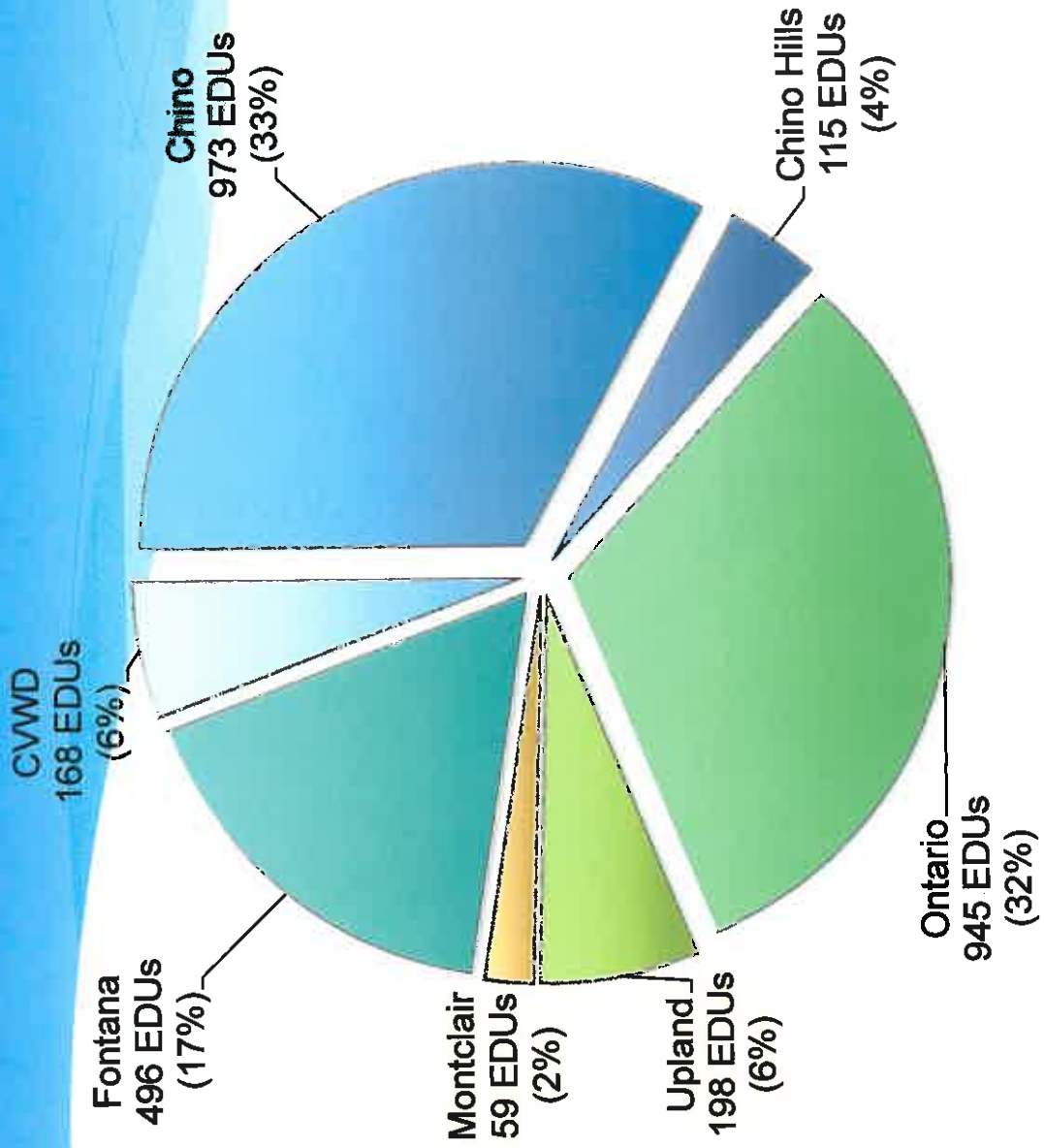
# FY14/15 Distribution of Growth



Partial EDU rounded to the nearest whole number

# FY14/15 Building Activity

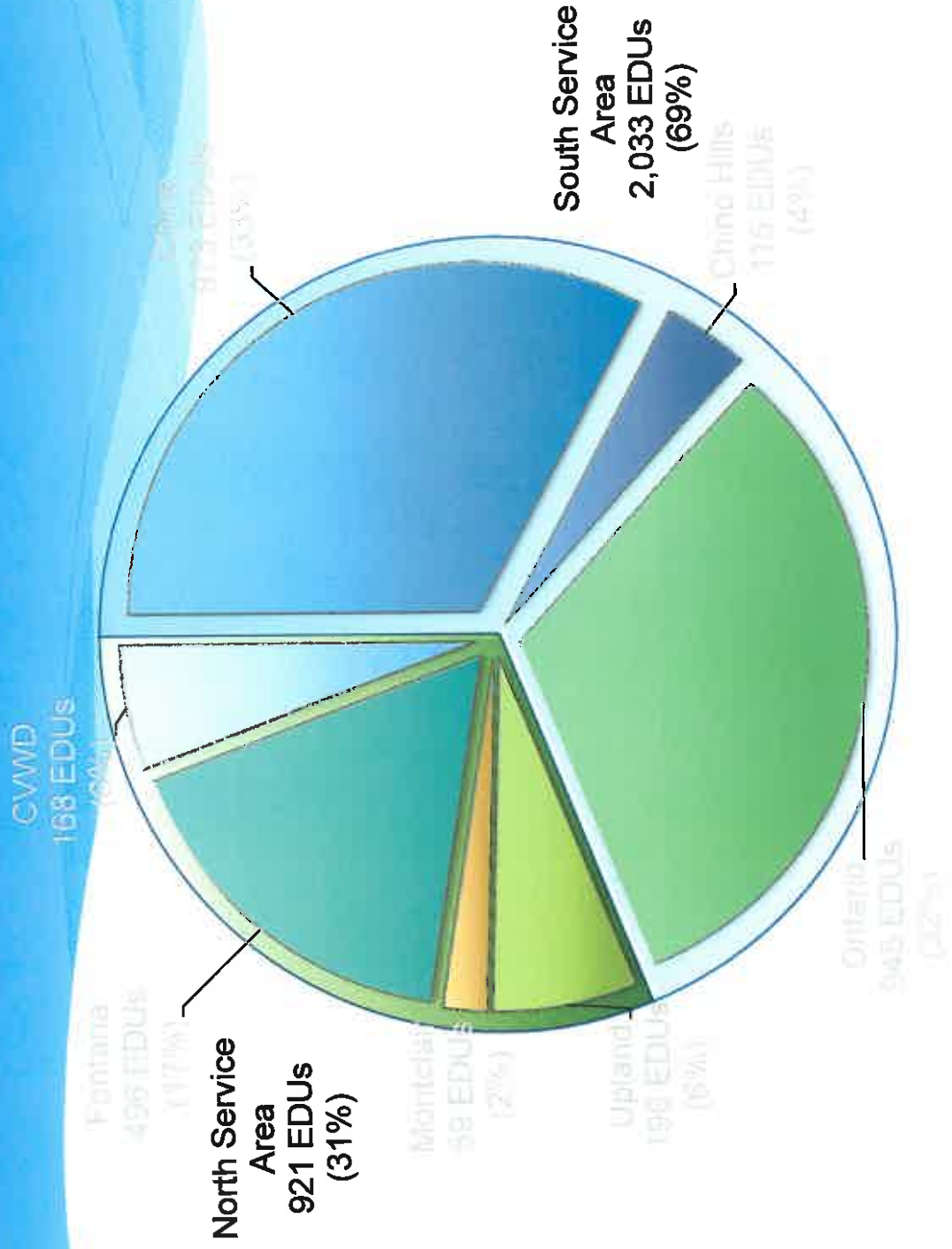
2,953 EDUs Resulted in \$15.08M in CCRA Funding



Partial EDU rounded to the nearest whole number

# FY14/15 Building Activity

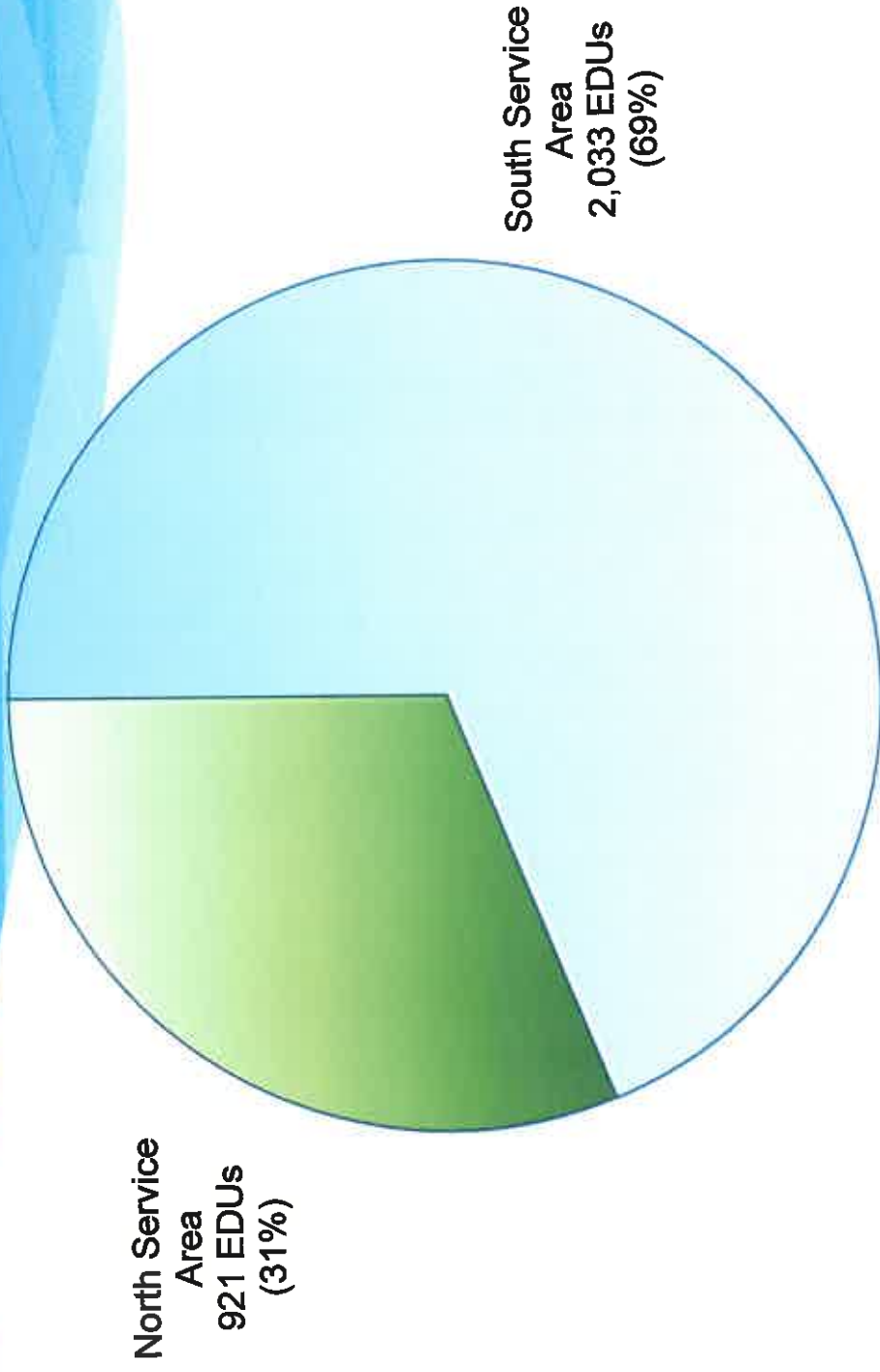
2,953 EDUs Resulted in \$15.08M in CCRA Funding



Partial EDU rounded to the nearest whole number

# FY14/15 Building Activity

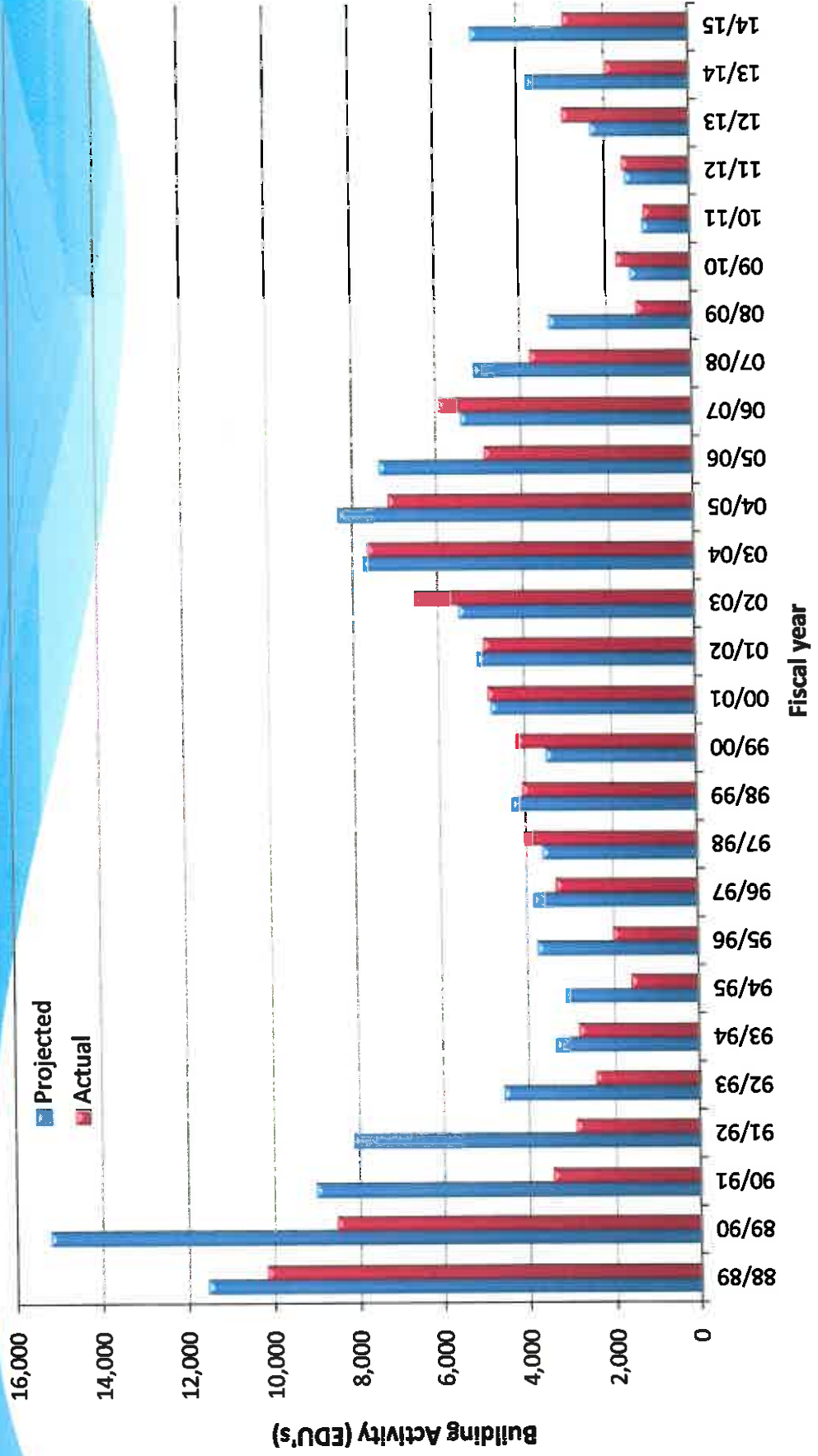
2,953 EDUs Resulted in \$15.08M in CCRA Funding



Partial EDU rounded to the nearest whole number

# Building Activity

Projected vs. Actual

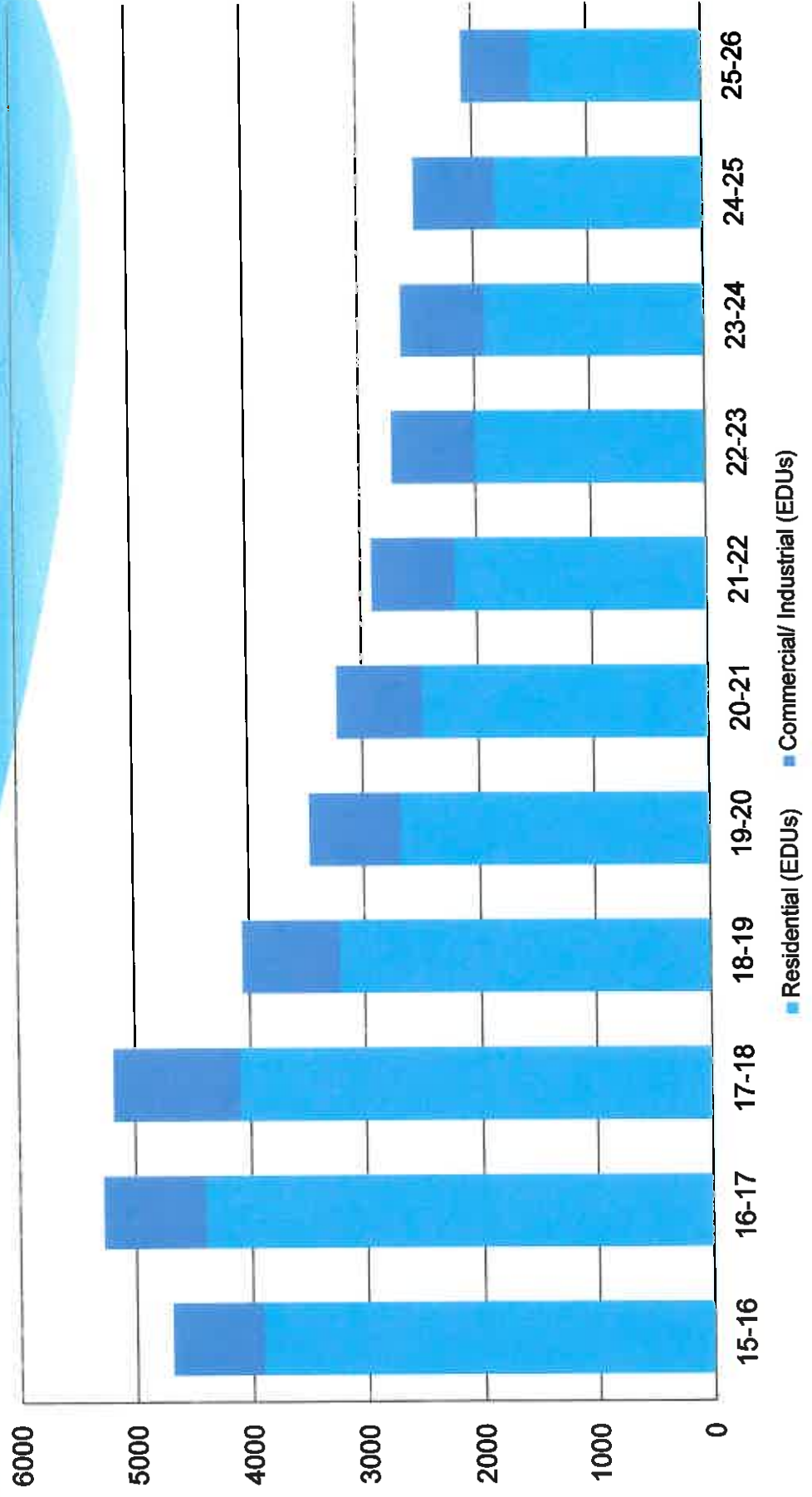


# FY15/16 EDU Projection

Contracting Agency	Residential (EDUs)	Commercial Industrial (EDUs)	Total (EDUs)
Chino	680	60	740
Chino Hills	736	75	811
CVWD*	250	114	364
Fontana	560	57	617
Montclair	165	24	189
Ontario	1350	450	1800
Upland	169	3	237
<b>Projected Totals</b>	<b>3554</b>	<b>984</b>	<b>4538</b>

\*based on FY13/14 projections. No updates received to date

# EDU Growth Forecast



**10-Year EDU  
Growth  
Forecast  
34,090 EDUS**

**Upland**  
1,103 EDUS

**CVWD\***  
3,335 EDUS

**Fontana**  
4,442 EDUS

**Montclair**  
459 EDUS

**Ontario**  
17,450 EDUS

**Chino**  
4,167 EDUS

**Chino Hills**  
3,134 EDUS





**10-Year EDU  
Growth  
Forecast  
34,090 EDUS**

**Upland**  
1,103 EDUS

**CVWD\***  
3,336 EDUS

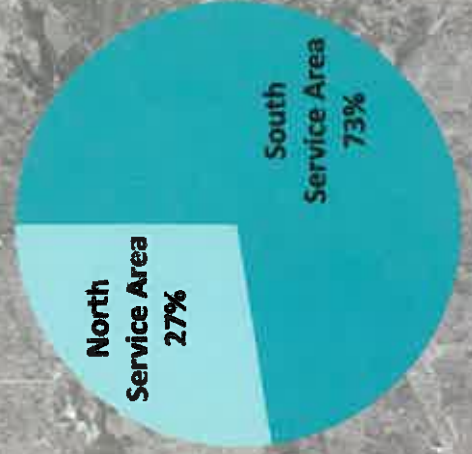
**Fontana**  
4,442 EDUS

**Montclair**  
459 EDUS

**Ontario**  
17,450 EDUS

**Chino**  
4,167 EDUS

**Chino Hills**  
3,134 EDUS



# Questions

INFORMATION  
ITEM

**3D**

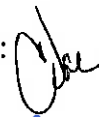



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Date: October 14, 2015 (Special Board Meeting)

To: The Honorable Board of Directors

From: P. Joseph Grindstaff  
General Manager

Submitted by:  Christina Valencia  
Chief Financial Officer/ Assistant General Manager

 Javier Chagoyen-Lazaro  
Manager of Finance and Accounting

Subject: Treasurer's Report of Financial Affairs

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### **RECOMMENDATION**

The Treasurer's Report of Financial Affairs for the month ended August 31, 2015, is an informational item for the Board of Director's review.

### **BACKGROUND**

The Treasurer's Report of Financial Affairs for the month ended August 31, 2015, is submitted in a format consistent with State requirements. The monthly report denotes investment transactions that have been executed in accordance with the criteria stated in the Agency's Investment Policy (Resolution No. 2015-6-3).

Total cash, investments, and restricted deposits of \$137,000,298, reflects an increase of \$5,350,555 compared to the total reported for July 2015. The increase was mainly due to the SRF and grant receipts for the Central Wineville Recycled Water project. As a result, the average days of cash on hand for the month ended August 31, 2015 increased from 145 days to 170 days. Average days of cash on hand is calculated using the monthly ending balance of unrestricted cash and cash equivalents divided by disbursements associated with operating expenses, debt service, and capital expenditures as recorded in the Agency's cash flow. New connection fees collected and held by member agencies is excluded from the calculation.

The Agency's investment portfolio average rate of return in August 2015 was 0.623%, a slight decrease of 0.025% compared to the average yield of 0.648% reported in July 2015. The decrease is attributed to the loan and grant proceeds temporarily invested in the sweep account

with a yield of 0.30%. Staff is actively looking at alternatives to improve the overall investment portfolio yield while maintaining enough liquidity to support the operating activities.

The Financial Affairs report is consistent with the Agency's Business Goal of Fiscal Responsibility in providing financial reporting that accounts for cash and investment activities to fund operating requirements and to optimize investment earnings.

#### **PRIOR BOARD ACTION**

The Board reviewed the Financial Affairs Report for the month of July 2015 on September 16, 2015.

#### **IMPACT ON BUDGET**

The interest earned on the Agency's investment portfolio increases the Agency's reserves.

Attachment: August 2015 Treasurer's Report of Financial Affairs

**INLAND EMPIRE UTILITIES AGENCY**  
**Cash and Investment Summary**

*Month Ended*  
**August 31, 2015**

**TREASURER'S REPORT OF FINANCIAL AFFAIRS**

**For the Month Ended August 31, 2015**



All investment transactions have been executed in accordance with the criteria stated in the Agency's Investment Policy (Resolution No. 2015-6-3) adopted by the Inland Empire Utilities Agency's Board of Directors during its regular meeting held on June 17, 2015.

The funds anticipated to be available during the next six-month period are expected to be sufficient to meet all foreseen expenditures during the period.

\* A Municipal Water District

**INLAND EMPIRE UTILITIES AGENCY**  
**Cash and Investment Summary**

Month Ended  
 August 31, 2015

	<u>August</u>	<u>July</u>
<b>Cash, Bank Deposits, and Bank Investment Accounts</b>	<b>\$1,614,770</b>	<b>\$1,593,369</b>
<b>Investments</b>		
CBB Repurchase (Sweep)	\$23,619,181	\$13,030,277
Local Agency Investment Fund (LAIF)	24,853,241	24,853,241
CalTrust	3,542,350	3,540,861
Certificates of Deposit	7,310,210	7,310,210
Municipal Bonds	1,004,294	1,006,441
Medium Term Notes	3,001,050	4,001,034
U.S. Treasury Notes	999,768	999,752
U.S. Government Sponsored Entities	17,000,685	17,000,732
<b>Total Investments</b>	<b>\$81,330,779</b>	<b>\$71,742,548</b>
<b>Total Cash and Investments Available to the Agency</b>	<b>\$82,945,549</b>	<b>\$73,335,917</b>
<b>Restricted Deposits</b>		
Debt Service Accounts	\$2,544,723	\$7,202,385
CCRA Deposits Held by Member Agencies	43,230,726	42,657,717
OPEB (CERBT) Account	6,854,133	7,028,610
Escrow Deposits	1,425,167	1,425,114
<b>Total Restricted Deposits</b>	<b>\$54,054,749</b>	<b>\$58,313,826</b>
<b>Total Cash, Investments, and Restricted Deposits</b>	<b>\$137,000,298</b>	<b>\$131,649,743</b>

**INLAND EMPIRE UTILITIES AGENCY**  
**Cash and Investment Summary**

*Month Ended  
August 31, 2015*

**Cash, Bank Deposits, and Bank Investment Accounts**

Citizens Business Bank Demand Account (Offset by CBB Sweep Balance)	\$346,991
Citizens Business Bank Workers' Compensation Account	66,440
Bank of America Payroll Account	63,024
Bank of America Payroll Taxes Account	45,498
Subtotal Demand Deposits	<u>\$521,953</u>
<b>Other Cash and Bank Accounts</b>	
Petty Cash	<u>\$2,250</u>
Subtotal Other Cash	<u>\$2,250</u>
<b>Bank of the West Money Market Account</b>	\$1,051,441
<b>US Bank Pre-Investment Money Market Account</b>	\$39,126
<b>Total Cash and Bank Accounts</b>	<u>\$1,614,770</u>

**Investments**

<b>CBB Repurchase (Sweep) Investments</b>	
Federal Home Loan	<u>\$23,619,181</u>
Subtotal CBB Repurchase (Sweep)	<u>\$23,619,181</u>
<b>Local Agency Investment Fund (LAIF)</b>	
LAIF Non-Restricted Fund	\$18,935,186
LAIF Insurance Sinking Fund	5,918,055
Subtotal Local Agency Investment Fund	<u>\$24,853,241</u>
<b>CalTrust</b>	
Short Term	<u>\$3,542,350</u>
Subtotal CalTrust	<u>\$3,542,350</u>
<b>Certificates of Deposit</b>	
Citizens Business Bank	\$4,172,210
Brokered Certificates of Deposit	3,138,000
Subtotal Certificates of Deposit	<u>\$7,310,210</u>



**INLAND EMPIRE UTILITIES AGENCY**  
**Cash and Investment Summary**

Month Ended  
August 31, 2015

<b><u>Investments Continued</u></b>	
<b><u>Municipal Bonds</u></b>	
State and Local Municipal Bonds	\$1,004,294
Subtotal State Municipal Bonds	<u>\$1,004,294</u>
<b><u>Medium Term Notes</u></b>	
JP Morgan Securities	1,000,245
John Deere Capital Corp	1,001,758
JP Morgan Chase & Co.	999,047
Subtotal Medium Term Notes	<u>\$3,001,050</u>
<b><u>U.S. Treasury Notes</u></b>	
Treasury Note	\$999,768
Subtotal U.S. Treasury Notes	<u>\$999,768</u>
<b><u>U.S. Government Sponsored Entities</u></b>	
Fannie Mae Bank	\$6,999,324
Freddie Mac Bank	4,001,361
Federal Farm Credit Bank	2,000,000
Federal Home Loan Bank	4,000,000
Subtotal U.S. Government Sponsored Entities	<u>\$17,000,685</u>
<b><u>Total Investments</u></b>	<u>\$81,330,779</u>
<b><u>Restricted Deposits</u></b>	
<b><u>Debt Service Reserves</u></b>	
08B Debt Service Accounts	\$2,544,710
10A Debt Service Accounts	13
Subtotal Debt Service Reserves	<u>\$2,544,723</u>

**INLAND EMPIRE UTILITIES AGENCY**  
**Cash and Investment Summary**

Month Ended  
August 31, 2015

**CCRA Deposits Held by Member Agencies**

City of Chino	\$11,824,579
Cucamonga Valley Water District	7,165,504
City of Fontana	6,873,270
City of Montclair	2,492,480
City of Ontario	8,391,771
City of Chino Hills	3,141,669
City of Upland	3,341,453
Subtotal CCRA Deposits Held by Member Agencies	<u>\$43,230,726</u>

**CalPERS**

OPEB (CERBT) Account	\$6,854,133
Subtotal CalPERS Accounts	<u>\$6,854,133</u>

**Escrow Deposits**

Chicago Title (Forestar/IEUA Holding Escrow)	\$1,255,082
Scott Valley Bank (GSE Construction)	170,085
Subtotal Escrow Deposits	<u>\$1,425,167</u>

**Total Restricted Deposits**

\$54,054,749

**Total Cash, Investments, and Restricted Deposits as of August 31, 2015**

\$137,000,298

Total Cash, Investments, and Restricted Deposits as of 8/31/15

\$137,000,298

Less: Total Cash, Investments, and Restricted Deposits as of 7/31/15

131,649,743

**Total Monthly Increase (Decrease)**

\$5,350,555

**INLAND EMPIRE UTILITIES AGENCY**  
**Cash and Investment Summary**

Month Ended  
 August 31, 2015

	Credit Rating @ Purchase		CHANGES IN Credit Rating		Par Amount	Cost-Basis Amount	Term (Days)	August Amortization	August Value	% Coupon	% Yield to Maturity	Maturity Date	Market Value
	S&P	Moody's	S&P	Moody's									
<b>Cash, Bank Deposits, and Bank Investment Accounts</b>													
<b>Citizens Business Bank</b>													
Demand Account*					\$346,991	\$346,991	N/A	N/A	\$346,991		0.30%	N/A	\$346,991
Subtotal CBB					\$346,991	\$346,991			\$346,991		0.30%		\$346,991
<b>Workers' Compensation Account</b>													
Subtotal CBB					\$66,440	\$66,440	N/A	N/A	\$66,440		N/A	N/A	\$66,440
<b>Bank of America</b>													
Payroll Checking					\$63,024	\$63,024	N/A	N/A	\$63,024		N/A	N/A	\$63,024
Payroll Tax Checking					45,498	45,498	N/A	N/A	45,498		N/A	N/A	45,498
Subtotal B of A					\$108,522	\$108,522			\$108,522		N/A	N/A	\$108,522
<b>Bank of the West</b>													
Money Market Plus - Business Account					\$1,051,441	\$1,051,441	N/A	N/A	\$1,051,441		0.18%	N/A	\$1,051,441
Subtotal Bank of the West Money Market					\$1,051,441	\$1,051,441			\$1,051,441		0.18%		\$1,051,441
<b>US Bank</b>													
Federated Automated MMA					\$39,126	\$39,126	N/A	N/A	\$39,126		0.01%	N/A	\$39,126
Subtotal USB Money Market					\$39,126	\$39,126			\$39,126		0.01%		\$39,126
<b>Petty Cash</b>					\$2,250	\$2,250	N/A	N/A	\$2,250		N/A	N/A	\$2,250
<b>Total Cash, Bank Deposits and Bank Investment Accounts</b>					<b>\$1,614,770</b>	<b>\$1,614,770</b>			<b>\$1,614,770</b>				<b>\$1,614,770</b>
<i>*Negative demand checking balance is offset by the Daily Repurchase (Sweep) Account balance</i>													
<b>Investments</b>													
<b>CBB Daily Repurchase (Sweep) Accounts</b>													
Federal Home Loan					\$23,619,181	\$23,619,181	N/A	N/A	\$23,619,181		0.30%	N/A	\$23,619,181
Subtotal CBB Repurchase Accounts					\$23,619,181	\$23,619,181			\$23,619,181		0.30%		\$23,619,181
<b>LAIF Accounts</b>													
Non-Restricted Funds					\$18,935,186	\$18,935,186	N/A	N/A	\$18,935,186		0.330%	N/A	\$18,935,186
LAIF Sinking Fund					5,918,055	5,918,055	N/A	N/A	5,918,055		0.330%	N/A	5,918,055
Subtotal LAIF Accounts					\$24,853,241	\$24,853,241			\$24,853,241		0.330%		\$24,853,241
<b>CALTRUST Accounts</b>													
Short-Term					\$3,542,350	\$3,542,350	N/A	N/A	\$3,542,350		0.50%	N/A	\$3,542,350
Subtotal CalTrust Accounts					\$3,542,350	\$3,542,350			\$3,542,350		0.50%		\$3,542,350
<b>Certificates of Deposit</b>													
CBB Certificate of Deposit					\$4,172,210	\$4,172,210	425	N/A	\$4,172,210		0.45%	09/19/15	\$4,172,210
Subtotal Certificates of Deposits					\$4,172,210	\$4,172,210			\$4,172,210		0.45%		\$4,172,210

**INLAND EMPIRE UTILITIES AGENCY**  
**Cash and Investment Summary**

Month Ended  
 August 31, 2015

	Credit Rating @ Purchase		CHANGES IN Credit Rating		Par Amount	Cost Basis Amount	Term (Days)	August Amortization	August Value	% Coupon	% Yield to Maturity	Maturity Date	Market Value
	S&P	Moody's	S&P	Moody's									
<b>Investments (continued)</b>													
<b>Brokered Certificates of Deposit</b>													
Ally Bank	N/A		N/A		\$245,000	\$245,000	541		\$245,000	0.80%	0.80%	01/17/17	\$244,701
Capital One National Association	N/A		N/A		240,000	240,000	542		240,000	0.80%	0.80%	01/17/17	239,707
Compass Bank	N/A		N/A		245,000	245,000	542		245,000	0.85%	0.85%	01/17/17	244,701
Comenity Capital Bank	N/A		N/A		240,000	240,000	720		240,000	1.15%	1.15%	07/13/17	239,470
Discover Bank	N/A		N/A		240,000	240,000	722		240,000	1.15%	1.15%	07/17/17	239,393
Medallion Bank	N/A		N/A		240,000	240,000	722		240,000	1.20%	1.20%	07/17/17	239,393
Capital One Bank	N/A		N/A		240,000	240,000	901		240,000	1.35%	1.35%	01/16/18	239,443
Goldman Sachs Bank USA	N/A		N/A		240,000	240,000	901		240,000	1.40%	1.40%	01/16/18	240,058
BMW Bank of North America	N/A		N/A		240,000	240,000	900		240,000	1.40%	1.40%	01/17/18	240,050
American Express Bank	N/A		N/A		240,000	240,000	1081		240,000	1.70%	1.70%	07/16/18	239,014
American Express Centurion	N/A		N/A		240,000	240,000	1081		240,000	1.70%	1.70%	07/16/18	239,014
HSBC Bank USA, NA Step	N/A		N/A		244,000	244,000	1808		244,000	1.25%	2.32%	07/29/20	242,604
JPM Chase NA Step	N/A		N/A		244,000	244,000	1810		244,000	1.25%	2.51%	07/31/20	242,665
					\$3,138,000	\$3,138,000		\$0	\$3,138,000		1.410%		\$3,130,213
Subtotal Brokered CDs													
<b>US Treasury Note</b>													
US Treasury Note	N/A	AAA	N/A	AAA	\$1,000,000	\$999,463		15	\$999,768	0.63%	0.64%	12/15/16	\$1,000,940
Subtotal Treasuries					\$1,000,000	\$999,463		\$15	\$999,768		0.64%		\$1,000,940
<b>U.S. Government Sponsored Entities</b>													
(As of August 2011, all US GSE's have been downgraded to AA+ Rating by S&P)													
Federal Home Loan Bank	AA+	AAA	AA+	AAA	\$2,000,000	\$2,000,000	355		\$2,000,000	0.38%	0.38%	06/20/16	\$1,997,960
Freddie Mac Bond	AA+	AAA	AA+	AAA	1,000,000	1,000,000	1,080		1,000,000	0.75%	0.75%	12/19/16	999,200
Freddie Mac Bond	AA+	AAA	AA+	AAA	2,001,500	2,001,500	722		2,001,361	0.85%	0.81%	06/16/17	1,999,300
Fannie Mae Bond	AA+	AAA	AA+	AAA	999,750	999,750	1,826	(64)	999,885	0.75%	1.18%	12/18/17	1,000,260
Federal Home Loan Bank	AA+	AAA	AA+	AAA	2,000,000	2,000,000	1,100	4	2,000,000	1.20%	1.20%	06/29/18	1,998,440
Fannie Mae Bond	N/A	AAA	N/A	AAA	2,000,000	2,000,000	1,459		2,000,000	1.63%	1.63%	12/28/18	2,008,460
Fannie Mae Bond	AA+	AAA	AA+	AAA	4,000,000	3,999,400	1,456	13	3,999,439	1.50%	1.50%	05/24/19	3,992,880
Federal Farm	AA+	AAA	AA+	AAA	2,000,000	2,000,000	1,460		2,000,000	1.52%	1.52%	06/24/19	2,011,920
Freddie Mac Bond	AA+	AAA	AA+	AAA	1,000,000	1,000,000	1,440		1,000,000	1.00%	3.00%	07/29/19	999,850
					\$17,000,000	\$17,000,650		(\$47)	\$17,000,685		1.294%		\$17,008,270
Subtotal U.S. Gov't Sponsored Entities													
<b>Municipal Bonds</b>													
California State General Obligation Bond	A-	A1	A+	AA3	\$1,000,000	\$1,089,000	1,285	(\$2,147)	\$1,004,294	3.95%	3.35%	11/01/15	\$1,005,890
Subtotal State and Local Municipal Bonds					\$1,000,000	\$1,089,000		(\$2,147)	\$1,004,294		1.35%		\$1,005,890

**INLAND EMPIRE UTILITIES AGENCY**  
**Cash and Investment Summary**

Month Ended  
 August 31, 2015

	Credit Rating @ Purchase		CHANGES IN Credit Rating		Par Amount	Cost Basis Amount	Term (Days)	August Amortization	August Value	% Coupon	% Yield to Maturity	Maturity Date	Market Value
	S&P	Moody's	S&P	Moody's									
<b>Medium Term Notes</b>													
JP Morgan Securities	A	A2		A3	1,000,000	1,001,500	1,094	(43)	1,000,245	1.130%	1.07%	02/26/16	1,001,400
John Deere Capital Corp	A	A2		(71)	1,000,000	1,004,000	1,754	(71)	1,001,758	1.20%	1.11%	10/10/17	997,890
JP Morgan Chase & Co	A	A3		30	1,000,000	999,000	1,022	30	999,047	1.63%	1.66%	05/15/18	990,790
Subtotal Medium Term Notes				(\$84)	\$3,000,000	\$3,004,500			\$3,001,050		1.28%		\$2,990,080
<b>Total Investments</b>					<b>\$81,324,982</b>	<b>\$81,418,595</b>			<b>\$81,330,779</b>				<b>\$81,322,375</b>
<b>Source of Investment Market Value: US Bank</b>													
<b>Restricted Deposits</b>													
<b>Debt Service and Arbitrage Accounts</b>													
08B Debt Service Accounts					\$2,544,710	\$2,544,710	N/A	N/A	\$2,544,710		0.00%	N/A	\$2,544,710
US Bank Debt Serv. Accounts					\$2,544,710	\$2,544,710			\$2,544,710		0.00%		\$2,544,710
Subtotal '08B Debt Service Accts													
10A Debt Service Accounts					\$13	\$13	N/A	N/A	\$13		0.00%	N/A	\$13
US Bank Debt Serv. Accounts					\$13	\$13			\$13		0.00%		\$13
Subtotal '10A Debt-Service Accts													
<b>Total Debt Service Accounts</b>					<b>\$2,544,723</b>	<b>\$2,544,723</b>			<b>\$2,544,723</b>				<b>\$2,544,723</b>
<b>CCRA Deposits Held by Member Agencies</b>													
City of Chino					\$11,824,579	\$11,824,579	N/A	N/A	\$11,824,579		N/A	N/A	\$11,824,579
Cucamonga Valley Water District					7,165,504	7,165,504	N/A	N/A	7,165,504		N/A	N/A	7,165,504
City of Fontana					6,873,270	6,873,270	N/A	N/A	6,873,270		N/A	N/A	6,873,270
City of Montclair					2,492,480	2,492,480	N/A	N/A	2,492,480		N/A	N/A	2,492,480
City of Ontario					8,391,771	8,391,771	N/A	N/A	8,391,771		N/A	N/A	8,391,771
City of Chino Hills					3,141,669	3,141,669	N/A	N/A	3,141,669		N/A	N/A	3,141,669
City of Upland					3,341,453	3,341,453	N/A	N/A	3,341,453		N/A	N/A	3,341,453
Subtotal CCRA Deposits Held by Member Agencies					\$43,230,726	\$43,230,726			\$43,230,726				\$43,230,726
(Totals as reported through May 31, 2015)													
<b>CalPERS Deposits</b>													
OPEB (CERBT) Account					\$7,000,000	\$7,000,000	N/A	N/A	\$6,854,133		N/A	N/A	\$6,854,133
Subtotal CalPERS Deposits					\$7,000,000	\$7,000,000			\$6,854,133				\$6,854,133
<b>Escrow Deposits</b>													
Forestar/IEUA Holding Escrow (RP-1 Outfall)					\$1,255,082	\$1,255,082	N/A	N/A	\$1,255,082		N/A	N/A	\$1,255,082
GSE Construction					170,085	170,085	N/A	N/A	170,085		N/A	N/A	170,085
Subtotal Escrow Deposits					\$1,425,167	\$1,425,167			\$1,425,167				\$1,425,167
<b>Total Restricted Deposits</b>					<b>\$54,200,616</b>	<b>\$54,200,616</b>			<b>\$54,054,749</b>				<b>\$54,054,749</b>
<b>Total Cash, Investments, and Restricted Deposits as of August 31, 2015</b>					<b>\$137,140,368</b>	<b>\$137,233,981</b>			<b>\$137,000,298</b>				<b>\$136,991,894</b>

**INLAND EMPIRE UTILITIES AGENCY**  
**Cash and Investment Summary**

Month Ended  
 August 31, 2015

August Purchases					
No.	Date	Transaction	Investment Security	Par Amount Purchased	Investment Yield
			No Purchases		
<b>Total Purchases</b>				<b>\$ -</b>	

August Investment Maturities, Calls & Sales					
No.	Date	Transaction	Investment Security	Par Amount Matured/Sold	Investment Yield to Maturity
1	08/11/15	Matured	GE Capital Corp.	\$ 1,000,000	2.500%
<b>Total Maturities, Calls &amp; Sales</b>				<b>\$ 1,000,000</b>	

**INLAND EMPIRE UTILITIES AGENCY**  
**Cash and Investment Summary**

Month Ended  
 August 31, 2015

<b>Directed Investment Category</b>	<b>Amount Invested</b>	<b>Yield</b>
CBB Repurchase (Sweep)	\$23,619,181	0.300%
Local Agency Investment Fund	24,853,241	0.330%
CalTrust	3,542,350	0.500%
Medium Term Notes	3,001,050	1.283%
Municipal Bonds	1,004,294	1.350%
US Treasury Notes	999,768	0.640%
U.S. Government Sponsored Entities	17,000,685	1.294%
	<b>\$74,020,569</b>	<b>0.607%</b>
<b>Bank Deposit and Investment Accounts</b>		
Citizens Business Bank - Demand Account	\$346,991	0.300%
Citizens Business Bank - Certificate of Deposit	4,172,210	0.450%
Various Banks - Brokered Certificates of Deposit	3,138,000	1.410%
Bank of the West Money Market Account	1,051,441	0.180%
	<b>\$8,708,642</b>	<b>0.757%</b>

**Total Portfolio**  
*Investment Portfolio Rate of Return*  
**\$82,729,211**  
**0.623%**

<b>Restricted/Transitory/Other Demand Accounts</b>	<b>Amount Invested</b>	<b>Yield</b>
US Bank - 2008B Debt Service Accounts	\$2,544,710	0.000%
US Bank - 2010A Debt Service Accounts	13	0.000%
CCRA Deposits Held by Member Agencies	43,230,726	N/A
Citizens Business Bank - Workers' Compensation Account	66,440	N/A
US Bank - Pre-Investment Money Market Account	39,126	0.010%
CalPERS OPEB (CERBT) Account	6,854,133	N/A
Other Accounts*	110,772	N/A
	<b>\$52,845,920</b>	<b>0.000%</b>

**Total Other Accounts**  
*Average Yield of Other Accounts*  
**\$135,575,131**  
**0.000%**

\* Note: Bank of America Payroll Deposits used as compensating balances for bank services.

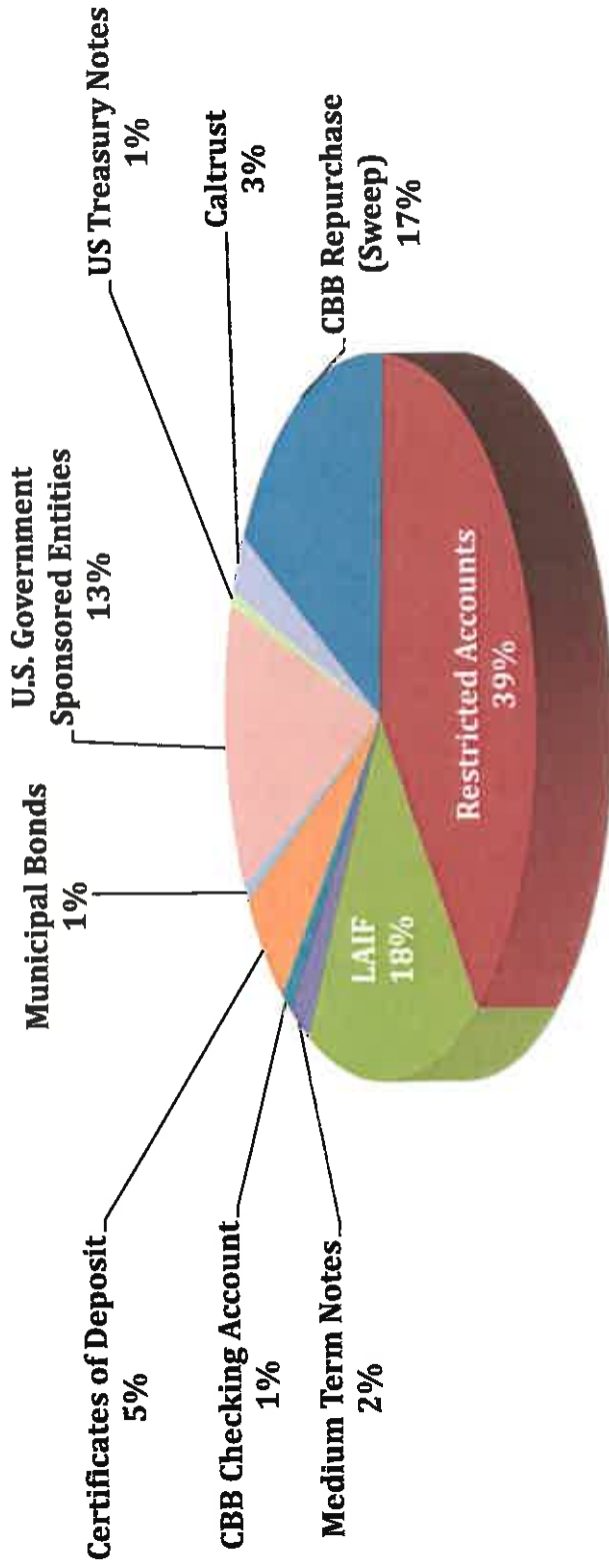
# ***Inland Empire Utilities Agency***

## **Treasurer's Report of Financial Affairs**

**For the Month Ended August 31, 2015**

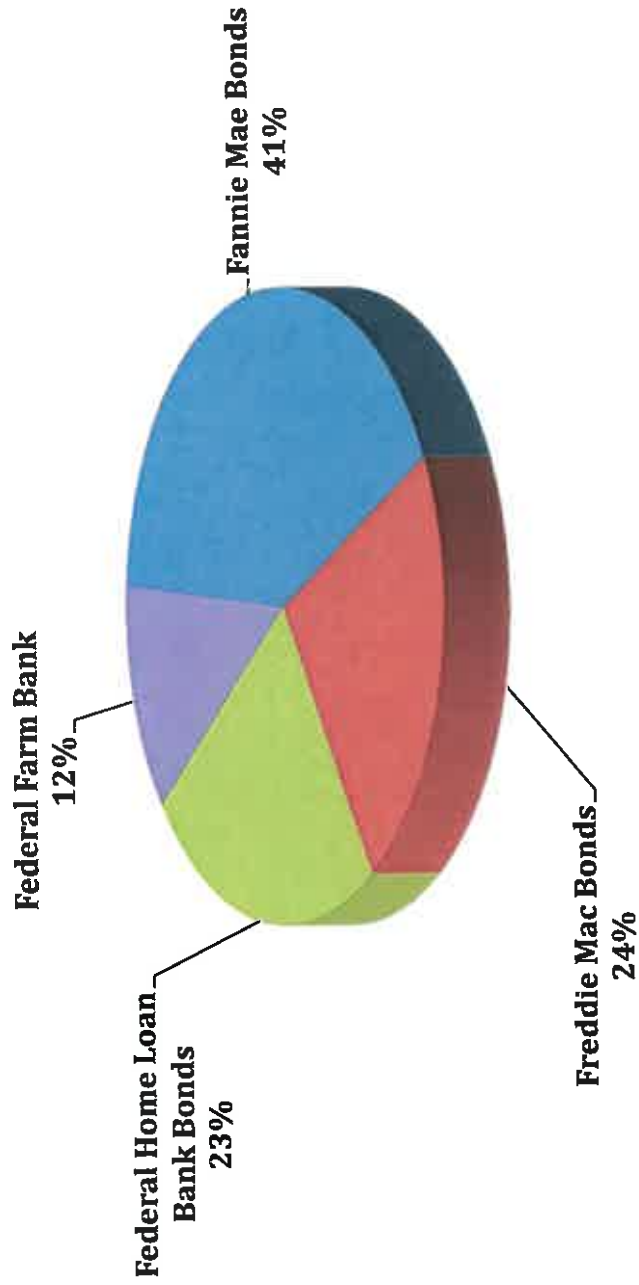
**Combined Agency Portfolio (net of escrow deposits)**

**\$135,575,131**

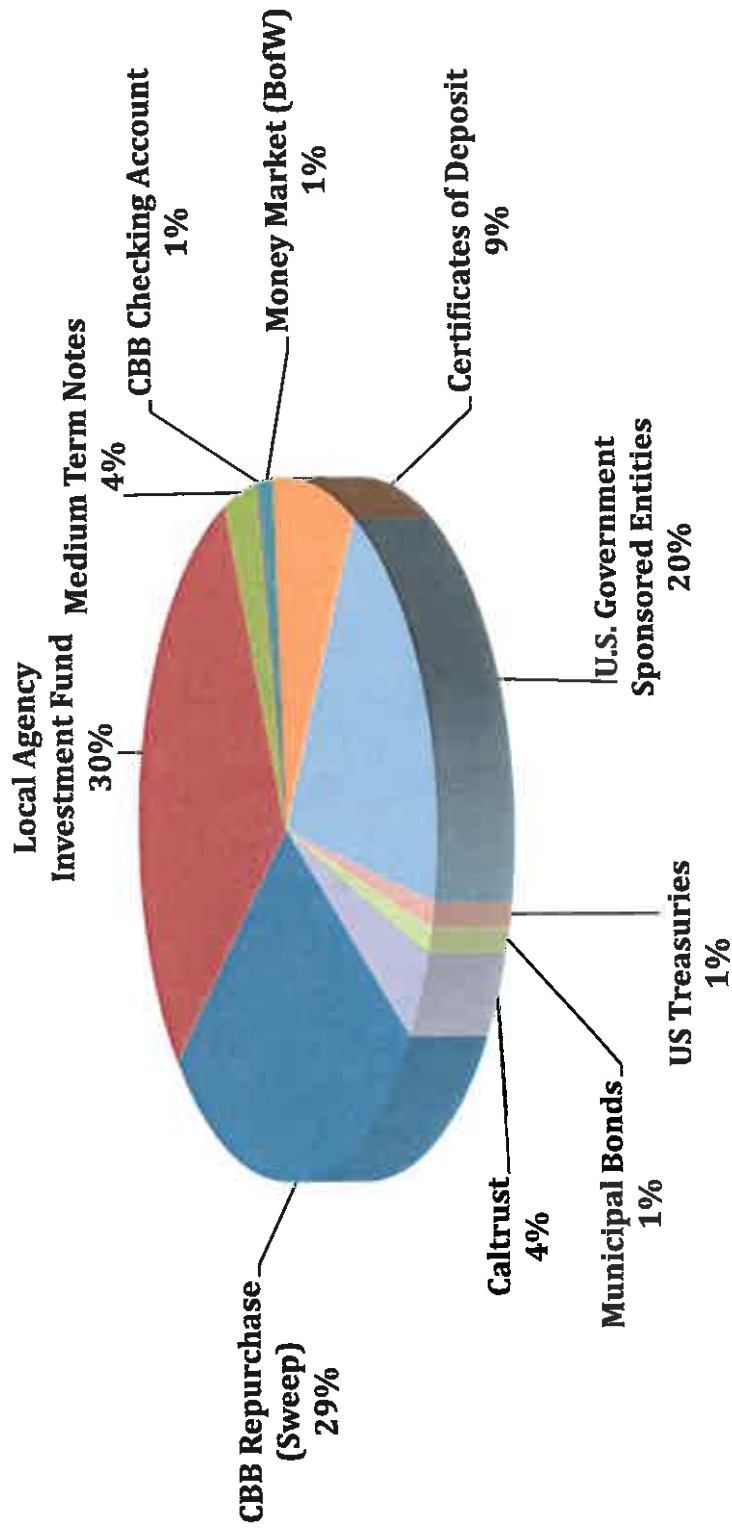




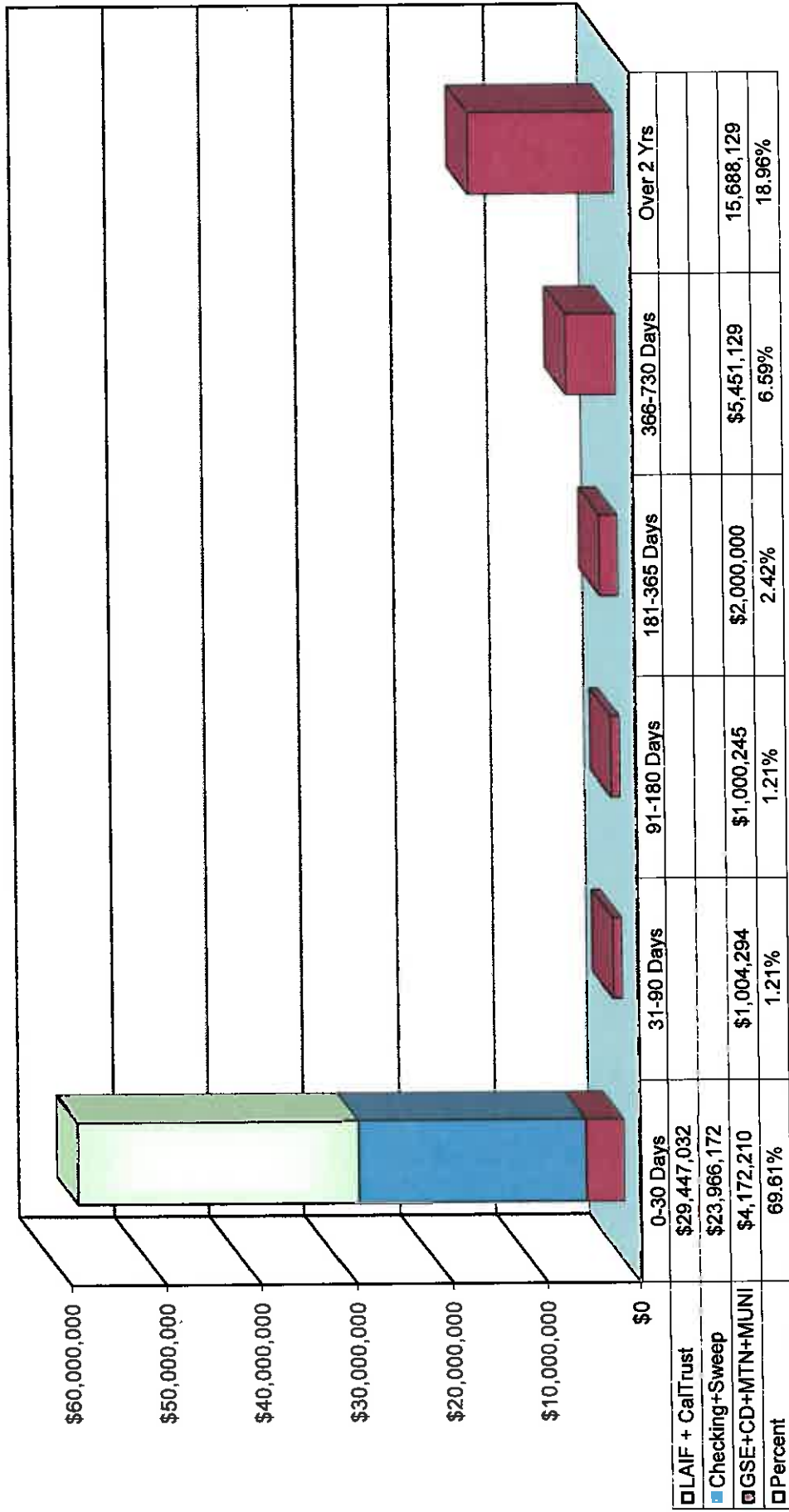
***Inland Empire Utilities Agency***  
**Treasurer's Report of Financial Affairs**  
**For the Month Ended August 31, 2015**  
**U.S. Government Sponsored Entities Portfolio**  
**\$17,000,685**



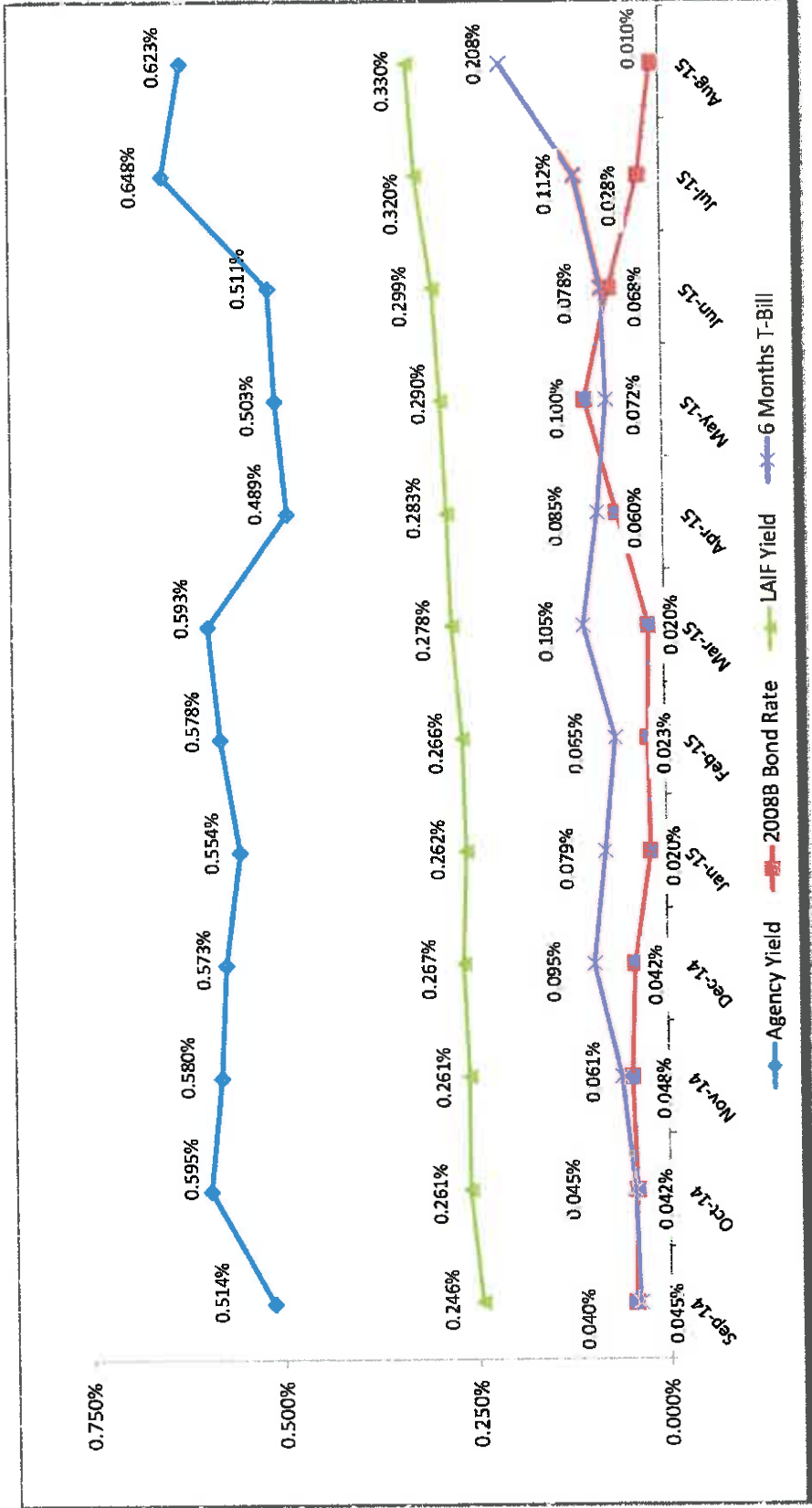
**Inland Empire Utilities Agency**  
**Treasurer's Report of Financial Affairs**  
 For the Month Ended August 31, 2015  
 Unrestricted Agency Investment Portfolio  
**\$82,729,211**



**Inland Empire Utilities Agency**  
**Treasurer's Report of Financial Affairs**  
 For the Month Ended August 31, 2015  
 Directed Investment Portfolio Maturity Distribution  
**\$82,729,211**



**Inland Empire Utilities Agency**  
**Treasurer's Report of Financial Affairs**  
 Demand Deposit Accounts  
 Agency Yield Comparison





*Inland Empire Utilities Agency*  
A MUNICIPAL WATER DISTRICT

# **Treasurer's Report of Financial Affairs for August 31, 2015**

**October 2015**

**Board Meeting**

# Report of Financial Affairs

## Liquidity

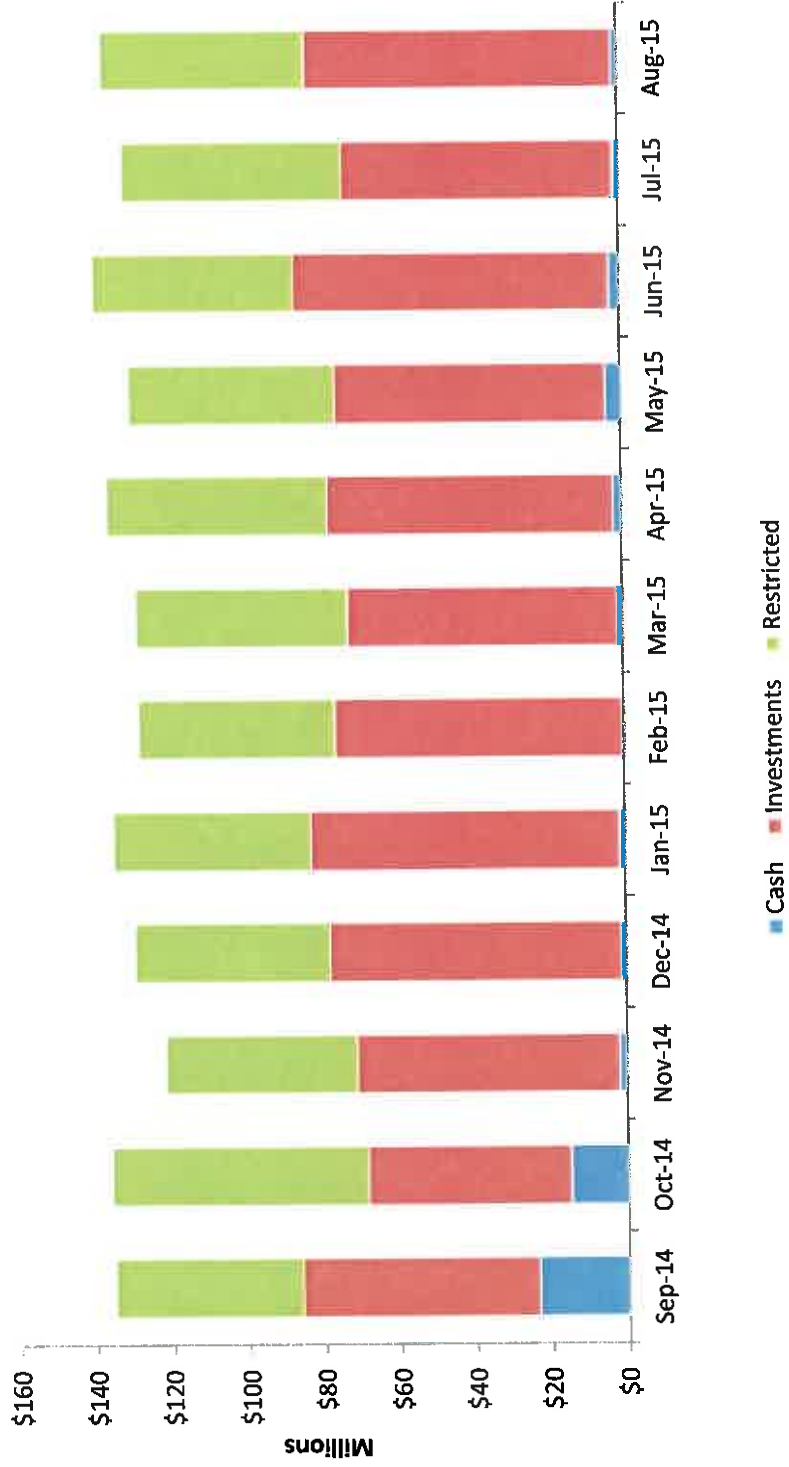
Description	August 2015	July 2015	Increase (Decrease)
Cash, Investments, Restricted Deposits	\$137.0M	\$131.6M	\$5.4M
Investment Portfolio Yield	0.623%	0.648%	(0.025%)
Average Days Cash on Hand	170 Days	145 Days	25 Days

## Portfolio

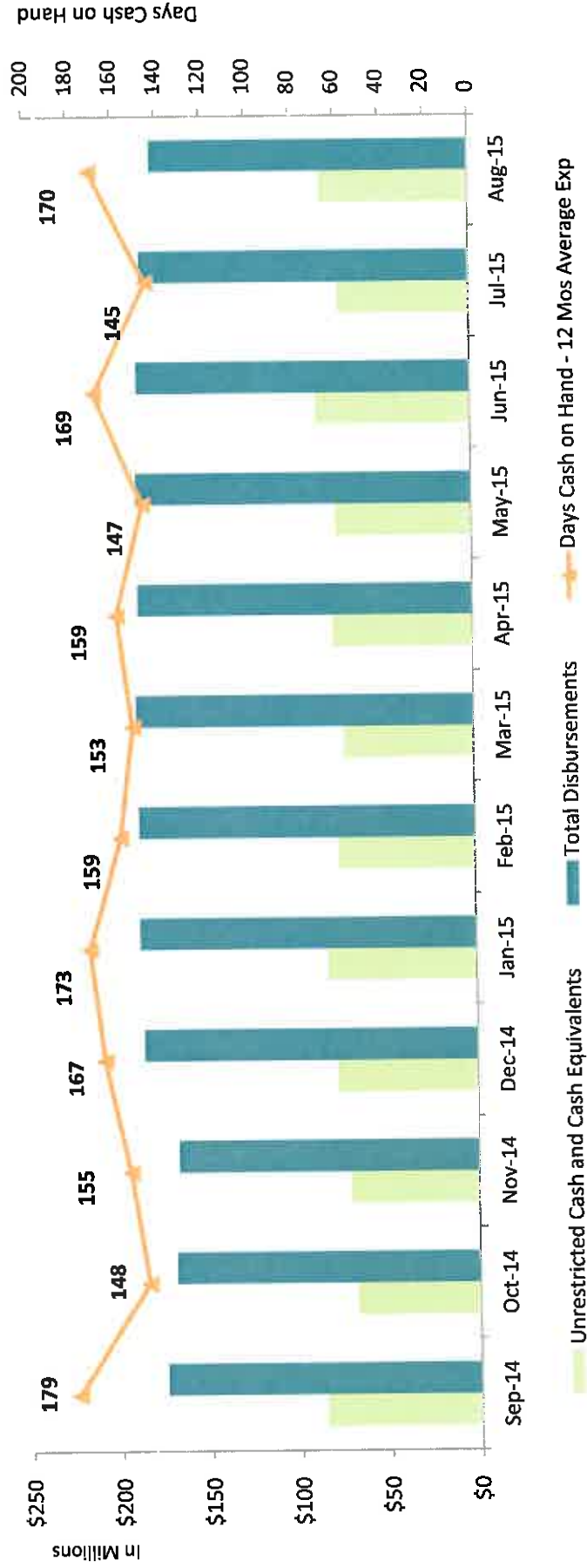
Term	Description	Allowable Threshold	Investment Value (\$ million)	Yield	Current Portfolio %
Short Term, Under 1 Year:	LAIF	\$50M	\$24.8	0.33%	30%
	CalTrust	\$20M	\$3.5	0.50%	4%
	Citizens Business –Sweep	40%	\$23.6	0.30%	29%
	CBB – Certificate of Deposit	30%	\$4.2	0.45%	5%
	Bank of the West – MMA	20%	\$1.1	0.18%	1%
	State and Local Municipal Bonds	10%	\$10	1.35%	1%
	Medium Term Notes	10%	\$1.0	1.07%	1%
	US Government Securities	n/a	\$2.0	0.38%	3%
	CBB Checking	40%	\$0.3	0.30%	1%
	1 to 3 Years:	Brokered CDs	30%	\$2.7	1.23%
Medium Term Notes		10%	\$2.0	1.39%	3%
US Treasury Note		n/a	\$1.0	0.64%	1%
Over 3 Years:	US Government Securities	n/a	\$6.0	0.99%	7%
	Brokered CDs	30%	\$0.5	2.41%	1%
	US Government Securities	n/a	\$9.0	1.70%	10%

# Cash, Investments and Restricted Deposits

Cash, Investments and Restricted Deposits

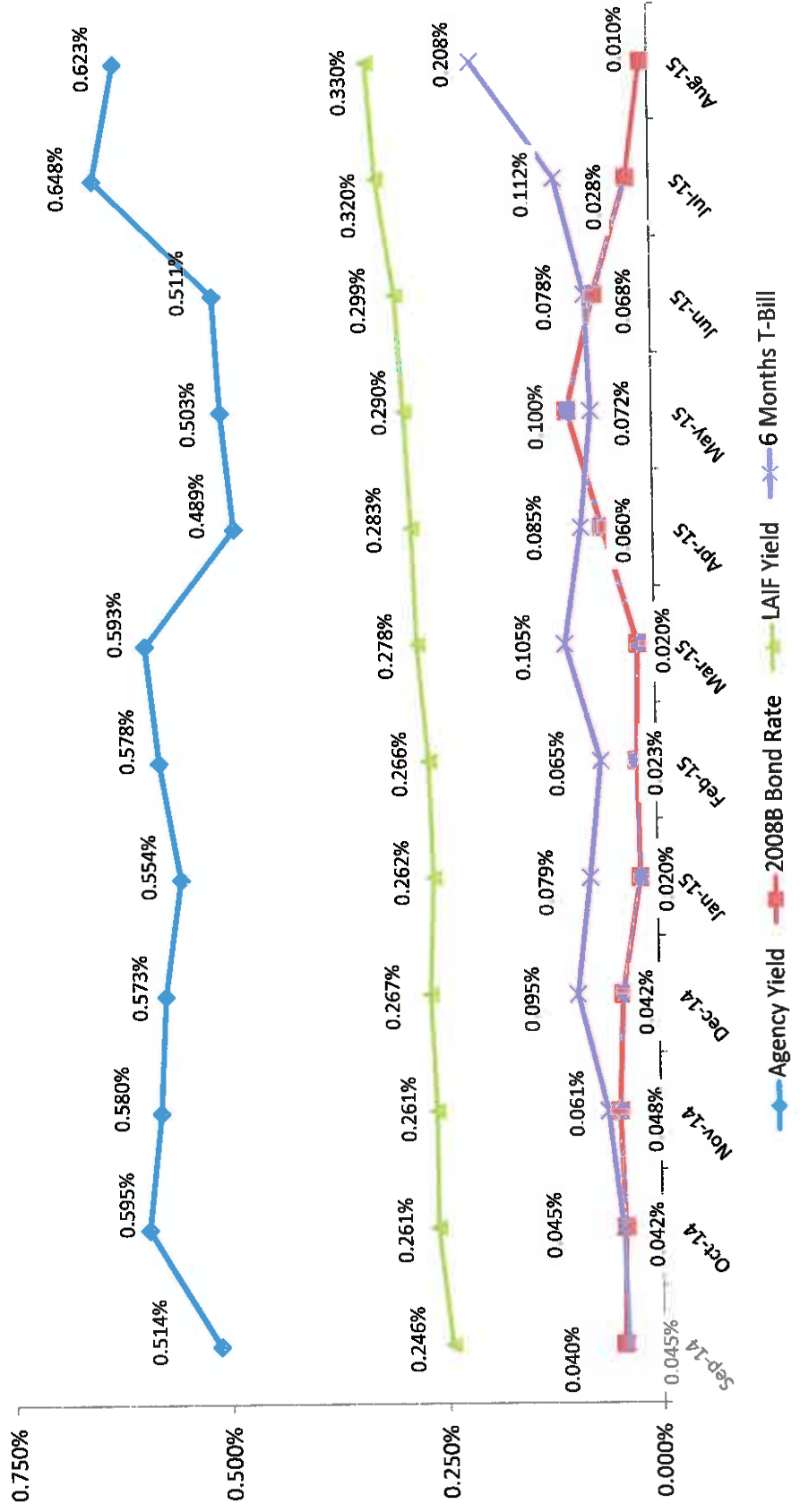


# Day Cash On Hand 12 Months Rolling Average





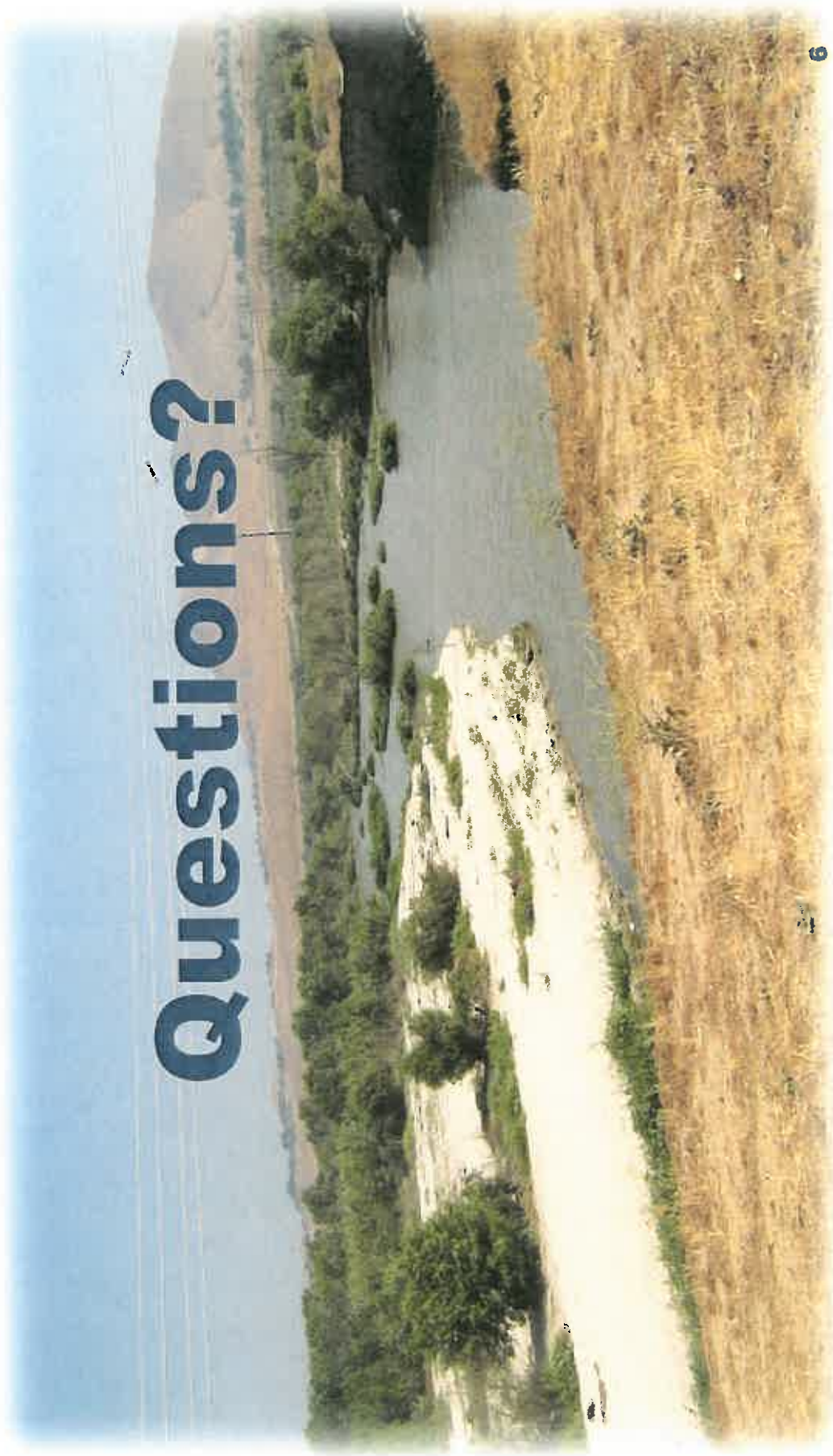
# Month End Portfolio Yield Comparison





*Inland Empire Utilities Agency*  
A MUNICIPAL WATER DISTRICT

# Questions?



**INFORMATION  
ITEM**

**3E**



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Date: October 21, 2015 (Special Board Meeting)  
To: The Honorable Board of Directors  
Through: Public, Legislative Affairs, and Water Resources Committee (10/14/15)  
From: P. Joseph Grindstaff  
General Manager  
Submitted by: Kathy Besser  
Manager of External Affairs  
Subject: Public Outreach and Communication

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### RECOMMENDATION

This is an informational item for the Board of Directors to receive and file.

### BACKGROUND

#### October

- October 17, Landscape and Water Conservation Fair, Chino Basin Water Conservation District, 4594 San Bernardino Street, Montclair, 9:00 a.m.-2:00 p.m.
- October 27, WEWAC Project WET Workshop, IEUA HQB Event Room, 8:00 a.m. - 3:00 p.m.
- October 29, Employee Association Halloween Luncheon, IEUA HQB Event Room, 11:30 a.m. - 1:00 p.m.

#### December

- December 16, Employee Holiday Luncheon, Los Serranos Country Club, 15656 Yorba Ave, Chino Hills, 11:00 a.m. – 3:00 p.m.

#### January

- January 14, Blood Drive, IEUA HQB Event Room, 10:00 a.m. – 2:00 p.m.

#### February

- Cypress Elementary GIES Dedication, 9751 Cypress Ave, Fontana, 5:00 p.m. – 6:30 p.m.

#### April

- Eagle Canyon Elementary GIES Dedication, 13435 Eagle Canyon Drive, Chino Hills

May

- Truman Middle School GIES Dedication, 16224 Mallory Drive, Fontana

Outreach/Education - Civic Publications Newspaper Campaign

- IEUA staff has renewed Civic Publications contract for fiscal year 2015/16. Staff ran a ¼ page, bilingual (English/Spanish) regional workshop ad on September 13, 2015 and a Water Fair spadea on October 11, 2015 in the Daily Bulletin.

Media and Outreach

- IEUA staff has renewed contracts with *Chino Champion*, *La Opinion* and *Fontana Herald News* for fiscal year 2015/16. Outreach campaigns will feature *Kick the Habit* advertisements and banner displays, as well as promoting upcoming events.
- IEUA staff held the third Drought Task Force meeting with member agencies on September 29, 2015 to discuss rolling-out the regional *Kick the Habit* public awareness campaign. Consultants Tripepi Smith & Associates presented campaign artwork to the member agency reps that has been developed thus far, including; bus advertisements, mirror clings, vehicle magnets, and a *Kick the Habit* landing page on IEUA's website. Drought Task Force meetings will continue to be held every other month, with the next meeting scheduled for mid-November.
- To launch *Kick the Habit*, a landing page has been created on IEUA's website to increase awareness about the drought and promote changes in water use that will help ensure the sustainability of our water supply. The landing page currently features conservation messages, rebates and a list of sponsoring agencies.
- *Kick the Habit* print advertisements ran in the *Chino Champion* on August 22, September 5 and October 3, 2015, as well as an online banner display has been created for *Fontana Herald News* directing community members to the landing page on IEUA's website.
- *Kick the Habit* bus advertisements began on October 5, 2015 and will run for six months. Mirror clings and vehicle magnets are in the printing process. Clings will be placed in restrooms at the Ontario Mills Mall for six months, and we are working with management at Victoria Gardens and the Chino Spectrum to do the cling displays at these locations as well.
- Staff has renewed a 12 month signage display contract with Big League Dreams located in Chino Hills. *Kick the Habit* artwork was created and sent to Big League Dreams to update the current Save Our Water display.

Education and Outreach Updates

- Water Discovery Program: 116 Girl Scout troop members, elementary, middle and high school students have taken part in the park field trip from July 1, 2015 through September 30, 2015. Fourteen additional Water Discovery Field Trips for school year 2015/16 have been scheduled. The Busing Mini-Grant program will be ending in December 2015. Only schools within IEUA's service area will qualify for busing grants after December 2015.

## Public Outreach and Communication

October 21, 2015

Page 3

- Staff has updated school contacts and sent out education program brochures to all schools within IEUA's service area to begin promotion of IEUA's education programs for school year 2015/16.
- Staff is currently working on scheduling principal meetings at the school districts within IEUA's service area to promote upcoming education programs and opportunities.
- IEUA staff is working in cooperation with Chino Basin Water Conservation District and member agency representatives to plan the Landscape and Water Conservation Fair held annually in October. The Water Conservation Fair will be held on Saturday, October 17<sup>th</sup>. IEUA has been awarded MWD's Community Partnering Program grant for an additional \$2,000 for outreach and materials.
- Staff worked with the Water Resources Analyst II and graphic design consultants to create a tagline and logo to use for landscape signage and magnets. Signs are currently in the process of being printed and will be distributed to member agencies accordingly.
- IEUA is working on updating various facility illustrations and brochures. The educational component for these brochures is being updated in order for visitors and stakeholders to have a simple yet detailed visual of each IEUA facility and process. Since July 1, 2015, staff has updated brochures for Regional Plant No. 5, education programs and the Chino Creek Wetlands and Educational Park.
- Staff is currently working on scheduling the next Water Association Leadership Breakfast. Colonel Kirk Gibbs, U.S. Army Corps of Engineers, who took command of the Los Angeles District Office on August 1<sup>st</sup>, has accepted to be the keynote speaker. Date is TBD.
- Staff, in cooperation with member agencies, has recruited three teams for MWD's 2016 Solar Cup Competition to be held May 13-16, 2016. Final team names and contact information were submitted to MWD on October 1, 2015 for the 2016 program year: Chino High School (Chino), Chino Hills High School (Chino Hills) and Henry J. Kaiser High School (Fontana).
- Staff has GIES pre-inspection visits set up for October for program year 2015/16 participants. Schools are currently in the process of clearing the garden sites to prep for planting. Once inspections are complete the next phase of the project will begin.

### **PRIOR BOARD ACTION**

None.

### **IMPACT ON BUDGET**

The above-mentioned activities are budgeted in the FY 2015/16 Administrative Service Fund, External Affairs Services budget.

INFORMATION  
ITEM

**3F**

# *Innovative Federal Strategies* LLC

Comprehensive Government Relations

## MEMORANDUM

**To:** Joe Grindstaff and Kathy Besser, IEUA

**From:** Letitia White, Jean Denton, and Drew Tatum

**Date:** September 30, 2015

**Re:** September Monthly Legislative Update

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### *Temporary Appropriations Bill Crosses the Finish Line*

There was talk again this year that the federal government would shut down at the end of the fiscal year because Congress would not be able to pass any appropriations bills to fund the government beyond September 30<sup>th</sup>. In what came as a shock to most on Capitol Hill on September 25<sup>th</sup>, House Speaker John Boehner (R-OH) announced that he would be resigning at the end of October, and would be introducing a clean continuing resolution to fund the government through December 11, 2015 over objections from conservatives in his own party. Boehner told his colleagues of his plans during a regularly scheduled conference meeting where Members get the schedule for the upcoming week. At this point, the Senate had already started the process of advancing a clean continuing resolution after failing to advance one that stripped Planned Parenthood funding.

Senate Majority Leader Mitch McConnell (R-KY) had attempted to advance the continuing resolution that stripped Planned Parenthood funding, but it failed when Republicans were unable to get the 60 votes needed to advance the bill. Several Republicans joined their Democratic colleagues to block the bill from advancing on a 47-52 vote. Earlier this week, the clean continuing resolution was able to reach the cloture threshold by a vote of 77-19, and ultimately passed the Senate by a vote of 78-20. Speaker Boehner indicated that he would need Democratic votes to pass the continuing resolution, as the more conservative members of his party have demanded that any appropriations legislation include a provision to defund Planned Parenthood. The House was able to pass the clean continuing resolution by a vote of 277-151. Last night, President Obama signed the continuing resolution into law before the midnight deadline, avoiding a government shutdown.

Republican leaders have insisted that they will go another direction in attempting to defund Planned Parenthood. The House and Senate passed a budget resolution for the first time this year, giving them the option to use a procedure called reconciliation to pass legislation with a simple majority vote in the Senate. The House Ways and Means Committee has already met and advanced legislation to roll back portions of the president's healthcare law. Conservatives have wanted to send a bill to President Obama that would dismantle portions of the Affordable Care Act, but have not been able to reach the 60 vote threshold in the Senate necessary to proceed with any such legislation. Under the legislation being developed by the House Ways and Means



## *Innovative Federal Strategies LLC*

Committee, only portions of the law would be repealed in order to comply with Senate rules dictating that reconciliation language only deal with taxes and spending in order to meet budget guidelines. The Planned Parenthood restrictions are set to be added as the legislation makes its way through different House committees. If this legislation does advance, it would only require 51 votes in the Senate. Republicans currently have a 54 seat majority. However, any such legislation is sure to be vetoed by President Obama and Republicans do not have the votes necessary to override it.

The Senate Majority Leader released information this week that House and Senate leaders have begun discussions with the White House to solidify a two year budget agreement that would push the threat of a government shutdown past the 2016 presidential election. Recognizing the stalemate that has existed between Republicans in Congress and President Obama, the goal of the conversations is to be sure this is the last time both parties must come to the table with the current administration. At least two phone calls between the White House, Boehner, and McConnell have already occurred. McConnell will first attempt to bring back the FY16 funding bills to the floor, which are sure to be filibustered by Senate Democrats. He hopes that will be the “triggering event” to get all parties to the table to negotiate a two year budget deal.

### ***Boehner’s Resignation Sets off Leadership Race***

Speaker Boehner’s resignation has set off House leadership races that could shake up many of the top positions within the Republican conference. The conference has not set dates for elections, but they will begin with a vote to replace Boehner. To elect a Speaker of the House, Republicans will first have to advance a candidate by a majority vote of the conference. This nominee will then have to get a majority vote of Members present and voting from the full House of Representatives. Traditionally, Democrats put forth their own nominee for Speaker, and all members of its caucus vote for that nominee. This underscores the need for Republicans to put forth a nominee who will be able to secure at least 218 votes from the full House of Representatives in order to avoid an embarrassing intraparty fight on the floor. The other picks for party leadership only require a simple majority of Republicans within the conference. Though we generally know the winners of those positions in advance, the respective conference chairman announces those changes to the House from the floor. Below are a list of potential scenarios for House Republican leadership races:

- **Speaker of the House:** Current Majority Leader Kevin McCarthy (R-CA) is seen as the frontrunner to serve as the next speaker. Before announcing his bid, McCarthy began soliciting support for the top spot. He has been talking with the conservative wing of his party in an effort to assure them he will take a more aggressive stance against the White House and will push harder on Senate Republicans to do the same. McCarthy may have to push for a “coalition” style of leadership, opting to support a more conservative majority leader or whip in order to secure the votes he needs. At the moment, the only other Republican considering throwing his hat in the race is Rep. Daniel Webster (R-FL). Webster ran for Speaker and received several votes in January from members protesting Boehner’s continued occupancy of the gavel. However, Webster does not have the same name recognition or campaign operation as McCarthy. Additionally, McCarthy has the added benefit of having traveled the country to recruit candidates over the last few election cycles.

## *Innovative Federal Strategies LLC*

- **Majority Leader:** If Kevin McCarthy is able to unite his party around his bid for speaker, there will be an opening for his current position. As with the case of the Speaker's race, current Majority Whip Steve Scalise (R-LA) would like a promotion from his party. Scalise went from serving as Republican Study Committee Chairman to Majority Whip after the leadership shakeup last summer that resulted from Majority Leader Eric Cantor's primary election defeat. Scalise has had several high-profile embarrassments since taking over the party's vote counting operations. In addition to a public scandal, there have been questions about his ability to accurately determine where his party stands before bills are brought to the floor. There have been several instances where bills have been pulled from the floor after leadership was no longer confident they would have the votes necessary to pass legislation. Scalise will face a serious challenge from Rep. Tom Price (R-GA), the current Chairman of the House Budget Committee. In that position, he negotiated the first joint budget resolution to pass both the House and Senate for the first time in many years. Price has already received a high profile endorsement from Rep. Paul Ryan (R-WI). Price has also received the endorsement from Rep. Jeb Hensarling (R-TX) who was considering his own bid for the position. At the moment, it appears that the majority leader's race may be very competitive.
- **Majority Whip:** There won't be a race for majority whip if the current No. 3 House Republican, Steve Scalise of Louisiana, doesn't beat Budget Chairman Tom Price of Georgia for majority leader. If he is successful, there are already two members looking to join House leadership. Rep. Patrick McHenry (R-NC), the appointed chief deputy whip, and Rep. Pete Sessions (R-TX), the chairman of the Rules Committee, both sent letters to colleagues announcing their intentions. In most cases, the chief deputy whip has moved into a position of elected leadership, except in the recent case where Scalise was able to beat out former chief deputy whip Peter Roskam (R-IL). McHenry is attempting to play on his experience to persuade his colleagues to give him the opportunity to serve in leadership. For his part, Sessions is relying on his fundraising and campaign experience while service as chairman of the NRCC, the fundraising arm for Congressional Republicans. In that role, Sessions was able to help Republicans return to their position as the majority party.

Republicans hope to move quickly to elect new party leaders with votes scheduled to take place on Thursday, October 8th. At this point, elections should not have an impact on pending legislation, but they will impact negotiations on yearlong spending moving into the fall. Additionally, the new leadership team will have to grapple with other "big ticket" items facing Congress this fall: raising the debt ceiling, transportation funding, and dealing with the budget caps. This could prove to be a heavy lift for a new leadership team that hopes to unite a party.

### ***Outlook for October***

Congress had bought itself more time on dealing with yearlong funding, but another deadline looms at the end of the month. The current short term extension for transportation authorization and funding is set to expire on October 29<sup>th</sup>. There are already talks that Congress may need another temporary extension as little progress has been made determining overall funding levels for transportation programs or the necessary budgetary offsets or revenue streams. The Senate Energy and Natural Resources Committee has also announced it will hold a hearing on western

**INFORMATION  
ITEM**

**3G**

# *Agricultural Resources*

635 Maryland Avenue, N.E.  
Washington, D.C. 20002-5811  
(202) 546-5115  
[agresources@erols.com](mailto:agresources@erols.com)

September 30, 2015

## Legislative Report

**TO: Joe Grindstaff**  
**General Manager, Inland Empire Utility Agency**

**FR: David M. Weiman**  
**Agricultural Resources**  
**LEGISLATIVE REPRESENTATIVE, IEUA**

**SU: Legislative Report, September, 2015**

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The month of September – not what anyone expected. The entire legislative year and the last month of the fiscal year was turned upside down by an unanticipated the Speaker’s surprise resignation announcement and a House Republican political feud. It is a huge distraction – and is competing with the overall legislative agenda for time and attention.

### Snapshot.

- \* House and Senate returned from the August Recess on September 8
- \* Current fiscal year ended on September 30, new one begins on October 1.
- \* None of the 12 annual funding bills had been enacted yet.
- \* The Iran Nuclear Deal was pending mid-month and efforts to block it failed. It was approved.
- \* The underlying budget agreement had been modified to propose more Defense spending (at the expense of domestic spending). That created an internal House political backlash in every direction and among all factions and interests.
- \* Congress was scheduled to be in session only 10 days during September.
- \* Returning just after Labor Day, the Tea Party/Freedom Caucus were making budget cuts/amendment demands that would shut-down Government (and wanted to do it).
- \* Since July, same Tea Party/Freedom Caucus factions of House R Conference were openly talking of forcing Speaker Boehner out and forcing a no-confidence vote.

- \* During the third week of September, Pope Francis arrived at the invitation of the Speaker. Washington was completely distracted for three days (September 22-24).

### **Boehner's Surprise Announcement – He's Retiring – Now**

- Speaker, the day after Pope departed, met with his caucus first thing the following morning and stunned the Members by announcing that he was stepping down in 30+ days.
- In his announcement, he made it clear that he'd "had it" with those in his Caucus who just want to take down the entire system and that he was departing to prevent a shut down.
- Boehner will relinquish the Speakership AND retire from Congress on October 30 – a month from now.
- A political upheaval ensued and scramble is underway (that will culminate in a vote of the entire House sometime in late October – selection of a Speaker is a House matter, not just a R decision).
- Boehner's resignation set in motion a full House R leadership shuffle/reconfiguration (a) in the middle of a session (highly unusual); (b) on the eve of the fiscal year; and (c) with a Federal Government shut-down pending.

### **New House Republican Leadership Team Pending**

- The leadership "transition" is underway and will start with a Republican Caucus election first week of October (step one) and finalized later in the month (step two) with an election in the full House (Rs and Ds). In Caucus, only Rs vote. In the full House, Rs and Ds vote. The outcome is by no means assured or settled.
- Rep. Paul Ryan (VP candidate with Mitt Romney in 2012) was immediately considered as a possible Speaker. He declined and, for now, will remain as Chair, Ways and Means (the powerful and important tax-writing Committee who's preoccupied with drafting a comprehensive tax reform bill).
- California Rep. Kevin McCarthy (R-Bakersfield), the current Majority Leader, is seeking the Speakership, but is being challenged by two members, Rep. Daniel Webster from Florida (and a distant relative of the historically famous Daniel Webster) and the high-profile Rep. Jason Chaffetz (R-UT), presently Chair, Government Reform Committee.
- Immediate reaction within the Caucus – House Rs appear to be rallying around McCarthy.
- This would open the Majority Leader's position and as well as the Whip's position (third ranking in House leadership). Candidates for these positions have emerged (assuming McCarthy becomes Speaker).

### **Immediate Legislative Response – No Government Shut-Down**

- Instant reaction – clean CR (no controversial provisions) advanced, approved by House and Senate, submitted to the President on September 30 and CR immediately signed into law. All 12 funding bills were approved and the Federal Government continues business uninterrupted.
- The CR is a short-term funding “fix.” It was only extended to December 11. Congress will confront the same issues (now without Speaker Boehner) ten weeks from now.

### **Boehner’s 30-Day Exit Agenda**

- Boehner, in his press conference and afterwards, announced that, prior to his departure (end of October) that he wanted the new Speaker to be able to have a fresh start. To that end, he indicated that he wanted to pass:
  - \* Full year CR.
  - \* Debt Limit bill (Federal Government cannot operate without a legislative adjustment to the Debt Limit). The Treasury Department recently notified Congress that the Debt Limit would be reached in early November
  - \* Reauthorization of the Export-Import Bank (high priority for business and the Chamber of Commerce), but previously defunded at the insistence of the Tea Party/Freedom Caucus
  - \* Passage of the stuck (and overdue) Highway bill.
  - \* Other(s)?
- These bills – without highly restrictive amendments, are opposed by the Tea Party and Freedom Caucus within the House R Caucus. To move these bills, Boehner will lose 40-60 R votes (or more) and count on D votes to pass these bills. Pending on the horizon, a burst of bi-partisanship (welcomed by many).
- Freedom Caucus and Tea Party Members are up in arms – seething over the implications – and all of this is playing out in the various leadership battles.

### **Senate Response – Anxious to Work With Boeher, Isolate Fringe Elements of R Caucus (Senate)**

- Sen, Mitch McConnell (R-KY), Senate Majority Leader, is actively working with Speaker Boehner to pass the held-up annual funding bills (or, a full-year CR), Debt Limit bill, Highway bill and Export-Import bill.
- Senator Ted Cruz (R-TX) and a candidate for President returned to Washington on the eve of the fiscal year, and offered amendments to the short-term CR that would have led to a Government shut-down on September 30.
- In a remarkable development, Sen. Cruz offered the amendment, but was unable to get any senators to support him. His amendment died for lack of a second (this is virtually unheard of) and he was forced to relinquish the floor.

- Clean CR passed the Senate.

### **Administration Response**

- President Obama signed the short-term CR into law hours after it was passed. Shutdown averted.
- President also issued a statement declaring that he will not sign another short-term CR into law. This imposes more pressure on Congress to produce full-year funding for the departments and agencies.

### **Water/Weather/Drought**

#### **Water/Drought – Senate Hearings Scheduled on Boxer-Feinstein Drought Bill**

- Senate Energy Committee announced a hearing for October 8 to hear testimony on the House-passed Valadao bill and the Boxer-Feinstein bill.
- Witness list is very limited, however Jeff Kightlinger, MWD, will be a witness.
- A markup in the Senate could occur in November, but that remains unclear.

### **El Nino**

- Last month I reported on “El Nino is Coming, El Nino is Coming...” The report is unchanged.
- Last month’s report. *“El Nino stories from NASA, the Weather Service and academics who track such events are now appearing daily in print and e-media and are reporting this EL Nino to be one of the strongest formations ever is building in the Pacific in years. Questions remain. Is this a “drought-buster OR a flood-inducer? Will precipitation from storms have a chance to permeate the dry landscape, OR instead, become huge “gully-washers?” Where will the storm hit? Most reports and indications are that Southern California will receive the brunt of an El Nino. What about Northern California? Will it come as rain OR reach the higher elevations as snow? And, will any of this precip carry over to the Colorado River Basin? Within the IEUA service area, if flooding occurs, there will be concerns about the ability to capture and recharge as much water as possible and limit conflicts with the Chino Dairies. Right now, there are more questions than answers. IEUA should be coordinating with SAWPA, the Corps and local governments if flooding occurs or to manage it if/when it comes.”*
- Report after report from departments, agencies and academics – during September – is certain that an El Nino will bring considerable rain/precip to Southern California, but is as uncertain that (a) it will meaningfully reach Northern California and (b) if it does, whether or not it will fall as snow in the Sierra Nevadas or rain beneath the network of dams (thereby a high risk for flooding).. The short-term implication is clear: carry-over storage is unclear and uncertain.

- ACWA-sponsored drought bill briefing. ACWA hosted a briefing at its Hall of States offices attended by almost 30 DC reps. House and Senate (D&R) staff from the Energy Committee and Resources Committee, along with John Watts, DF's Legislative Director attended and participated. Discuss focused on (a) the BB-DF bill; and (b) what would likely happen procedurally as these bills are considered.
  - \* Part of the discussion became "budget-technical." Key question – how to, under the current rules, pay for the bill (required by the H/S Budget rules).
  - \* Offsets will be required. Various options were identified and reviewed.
  - \* The BB-DF bill estimated cost is \$1.3 Billion and the sponsors proposed to offset part of the cost by deauthorizing unused authorities previously enacted for BuRec projects and programs. This would include, according to DF's office, used Title XVI projects.
  - \* By that criteria, the IEUA-Cucamonga Title XVI project could get authorized.
  - \* This was immediately discussed with DF's office. They know that IEUA and Cucamonga want to proceed, but BuRec blocked it for questionable technical reasons. IEUA has been invited to provide a full explanation to the Senators and the Committee.
  - \* IEUA has informed DF's office about this in previous years and again last July. IEUA is preparing a new "white paper" on the problem – to protect and recapture the multi-million authorization.
  - \* IEUA and Cucamonga are working together on this.
  
- ***Drought Conditions – California.*** An all but identical report from last few months. At the end of September, all 58 California Counties remained in various levels of drought. According to the NOAA/USDA's well-visited Drought Monitor web site, 100% of California remains in drought and the September 28 weekly update reported that approximately 90% of the entire State was in severe, extreme or exceptional drought.
  
- ***Drought Conditions – Rest of the West.*** Coastal states (CA, OR, and WA plus NV) remain in severe drought. Same with Arizona, Utah, Idaho and western Montana as each state continues to experience serious drought conditions. Texas, after several months of reduced drought conditions, is once again seeing them reappear.

### **Looking Into September**

- House leadership to be resolved – hopefully. Speaker's gavel to be handed to the next Speaker.



- Boehner will attempt to move back-logged legislation (or it will be blocked).
- Threat of future government shut-downs will be addressed and perhaps ended for now.
- Drought legislation will be considered.
- IEUA trip to Washington is being planned for the third week of October.

INFORMATION  
ITEM

**3H**



**October 2, 2015**

**To:** Inland Empire Utilities Agency

**From:** Michael Boccadoro  
President

**RE:** September Legislative Report

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**Overview:**

The first year of the 2015-16 Legislative Session was officially gaveled closed in the early hours of September 12 with hundreds of bills being sent to the Governor in the final days of the session. One of the biggest pieces of legislation to pass was the scaled-back version SB 350 (de Leon, D-Los Angeles), with included provisions for a 50 percent by 2030 renewable energy target and expanded building energy efficiency targets. The Governor's proposal to reduce petroleum usage by 50 percent was removed in order to earn enough votes for the bill to pass. The Legislature also acted, or failed to act on several measures that IEUA had taken positions on. Unfortunately, AB 1201 (Salas, D-Bakersfield) on Delta predation did not make it out of the Senate Appropriations Committee. However, after a long, multi-year and down to the last minute battle, AB 888 (Bloom, D-Santa Monica) to eliminate plastic microbeads from personal care products finally made it to the Governor's desk with a strong assist from IEUA.

While the Legislature did not allocate most of the \$1.5 billion from Greenhouse Gas Reduction Fund, they did appropriate \$19 million to Department of Water Resources for local agencies, JPAs, and nonprofits for water efficiency and energy efficiency programs, and for continued implementation of the California Water Plan.

During the final week of the session new leadership was elected in both houses. Anthony Rendon (D-Lakewood) was chosen by the Democratic Caucus to become the next Speaker of the Assembly replacing Toni Atkins (D-San Diego) sometime shortly after the Legislature returns in January. Assemblymember Chad Mayes (R-Yucca Valley) was elected to replace Assemblymember Kristin Olsen (R-Modesto) as the Minority Leader. Finally, Senator Jean Fuller (D-Bakersfield) stepped in earlier than expected to replace Senator Bob Huff (R-Diamond Bar) as the Senate Minority Leader.

As California's drought continues, the state's major reservoirs all remain at significantly low levels. Late summer rains in Southern California helped ease conditions a little, but not enough to reverse the severe and extreme drought conditions facing most of the state.

Metropolitan Water District of Southern California (MWD) staff presented a framework to partner with Los Angeles County Sanitation District create one of the world's largest water recycling plants with a capacity to recycle 168,000 acre-feet of water a year. San Diego County Water Authority Officials voiced skepticism over the proposal.

A recently released poll conducted by the LA Times/USC Dornsife showed that while 92 percent of Californians see the drought as a major problem or a crisis, 64 percent said it has had little to no effect on their daily lives. Additionally, the poll showed that 95 percent of voters strongly favor approaches to boosting supplies, such as water recycling, capturing storm runoff and 85 percent favor increasing groundwater storage.

The California Energy Commission, the California Public Utilities Commission and the California Independent System Operator kicked off a new transmission-planning effort known as the Renewable Energy Transmission Initiative (RETI 2.0) to look at how changes in the electrical system including higher levels of renewable energy, demand response and distributed generation will impact electricity transmission.

## **Inland Empire Utilities Agency Status Report – September 2015**

### ***Legislative Session Ends***

The first year of the 2015-16 legislative session was gaveled closed in the very early morning of September 12 with lawmakers sending hundreds of bills to the Governor's desk in the final 36 hours of the session.

Notably, the scaled back version of SB 350 (de Leon, D- Los Angeles) gained enough support to pass after a key provision that would have required a 50 percent reduction in petroleum use was removed from the legislation. The bill, which is expected to be signed by Governor Brown before the October 11 deadline, still increases the state's renewable energy targets to 50 percent by 2030 and doubles energy efficiency in existing buildings by 2030.

During the final week of session, an amendment went into the bill that would have completely eliminated unbundled Renewable Energy Credits (RECs). Unbundled RECs, known as "Bucket Three" RECs, are provided for renewable energy produced and used onsite. Unbundled, or "paper" RECs are sold without the produced renewable energy entering the grid. West Coast Advisors worked with others to successfully remove this provision from SB 350. On a related front, sponsors of AB 1144 (Rendon) were unsuccessful in getting their language into SB 350. Ab 1144 sought to provide full renewable energy credit (REC) status to behind the meter, onsite energy projects.

SB 32 (Pavley, D-Agoura Hills) which would codify the state's greenhouse gas reduction targets to 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050, failed to gain enough support and the bill was put on hold until the legislature returns in January. The measure ran into a block of moderate Democrats on the Assembly floor preventing its passage.

After several unsuccessful attempts in years past, Assemblyman Richard Bloom (D- Santa Monica) was finally able to get his plastic microbeads bill onto the Governor's desk where it is currently awaiting action. The bill prohibits the sale of personal care products with plastic microbeads after January 1, 2020. The bill was met with strong opposition by the personal care

products industry, but Mr. Bloom took last minute amendments to address concerns and get the bill onto the Governor's desk. West Coast Advisors worked with IEUA staff to ensure that the Inland Empire' legislative in the Senate were aware of IEUA's position, helping to earn some key votes to ensure the bill's passage.

AB 1288 (Atkins, D-San Diego) was amended in the final 36 hours of the session and gives the Speaker of the Assembly and the Senate Rules Committee authority to each appoint one person to the California Air Resources Board. These individuals must represent environmental justice communities. Currently the Governor appoints all 12 members of the CARB board and it is unclear if he supports legislative appointments and will sign the legislation.

Senator Lois Wolk's (D-Davis) SB 7 to require water submeters in new multi-unit structures once again failed to reach the finish line and will be a two-year bill.

AB 1201 (Salas, D- Bakersfield), which sought to require the Department of Fish and Wildlife to develop and implement a predation program to protect endangered species has stalled for the year. The legislation was unexpectedly held by the Senate Appropriations Committee due to fiscal concerns.

SB 471 (Pavley, D-Agoura Hills) which would explicitly allow reductions of greenhouse gas emissions associated with the water sector, including water use, supply and treatment, to be eligible for funding from AB 32 cap and trade revenues also stalled in the Assembly Appropriations committee.

### ***Greenhouse Gas Reduction Fund Stalls***

During the June budget process, the Legislature and Governor decided to punt the allocation of the \$1.5 billion Greenhouse Gas Reduction Fund (GGRF) to the end of session. As a result, stakeholders waited patiently for the spending plan to be released in the final week of the session. The Legislature and the Governor once again punted the spending plan, which is now expected to be released after the Legislature returns in January, or during the next budget cycle. The decision to delay the spending plan does not affect the 60 percent continuously appropriated for high speed rail, other transportation and sustainable communities programs. Limited GGRF funding was also allocated for water-use efficiency projects. Specifically, the Department of Water Resources was allocated \$19 million for local agencies, JPAs, and nonprofits for water efficiency and energy efficiency programs, and for continued implementation of the California Water Plan.

### ***Legislative Leadership Changes***

Amidst all of the last minute flurry on legislation, there were also three big leadership changes in the Senate and Assembly that could have implications for water policy moving forward as the new leaders have broad hands-on experience with water issues.

Assemblyman Anthony Rendon (D-Lakewood) has been chosen by his Democratic colleagues to become then next Assembly Speaker when the Legislature resumes in 2016. He has been the chair of the Assembly Utilities and Commerce Committee for the past year and he previously

chaired the Assembly Water, Parks and Wildlife Committee (2013-2014) and was instrumental in development of Proposition 1, the 2014 Water Bond. Rendon will replace current Speaker Toni Atkins (D-San Diego) and is expected to provide more practical leadership on statewide water issues and policy.

On the Republican side, first-term Assemblyman Chad Mayes (R- Yucca Valley) was recently chosen to be the next Republican Leader in the lower house, replacing Kristin Olsen (R- Modesto). Olsen was sometimes concerned with in-Delta interests and failed to favorably view a broader statewide water perspective. Mayes’ district extends from the Coachella Valley in Riverside County to the high-desert regions of San Bernardino County. Mayes will not face term limits for 11 years.

Finally, Senator Jean Fuller (R-Bakersfield) replaced Republican Leader Bob Huff (R-Diamond Bar) in late August, several months earlier than expected. Like Rendon, Senator Fuller has been actively engaged in water policy and issues and served as the vice chair of the Senate Natural Resources and Water Committee for several years. She also represents a significant agricultural region and understands Central Valley Project and State Water Project issues and the importance of new conveyance facilities and additional water storage facilities. Senator Fuller will be termed out in 2018.

***Water Supply Update***

California’s reservoirs continue to decline. Late summer rain in Southern California helped southern basins, while the north remains very dry.

The following is a chart of water levels at several California reservoirs, as of September 28:

<b>Reservoir</b>	<b>Percent of Capacity</b>	<b>Percent of Historical Average</b>
Lake Shasta	35%	59%
Lake Oroville	30%	48%
Folsom Lake	18%	32%
San Luis Reservoir	20%	42%
Lake Perris	36%	47%
Castaic Lake	36%	45%

Releases from Shasta continue to be held lower than normal to keep cold water in the reservoir to benefit Chinook salmon later in the year. Shasta Reservoir is expected to reach 1,460,000 AF by the middle of October. At that level, it will be double the amount recorded at the same time in 1977 when storage was just 700,000 AF. Releases from Oroville have also been running slightly higher than normal to make up for the Shasta reductions. Oroville is expected to sit at just 900,000 AF by the middle of October, or roughly the same level reached in 1977. Folsom is still on pace to reach 120,000 AF by the end of October, or roughly 30,000 AF below the record 1976-77 low level.

***MWD Plans to Recycle Water***

At a recent committee meeting, Metropolitan Water District of Southern California (MWD) staff presented a framework to create one of the world’s largest water recycling plants. The proposed plan is to partner with Los Angeles County Sanitation District to build treatment and distribution infrastructure over the next ten years that would ultimately purify and reuse as much as 168,000

acre-feet of water a year. Initially, MWD staff is asking for \$15 million to build a demonstration facility in Carson. San Diego County Water Authority Officials voiced skepticism over the proposal.

### ***LA Times/USC Poll***

A recently released poll conducted by the LA Times/USC Dornsife showed that while 92 percent of Californians see the drought as a major problem or a crisis, 64 percent said it has had little to no effect on their daily lives. They oppose sacrificing environmental protections (50 percent) to expand water supplies and generally approve of how Gov. Jerry Brown has handled the crisis (50 percent).

95 percent of voters strongly favored approaches to boosting supplies, such as water recycling, capturing storm runoff and 85 percent favor increasing groundwater storage.

The poll found that voters spread blame for the state's water supply problems: in order; lack of rain and snow, followed by old delivery systems and insufficient storage, people using too much water, growth, climate change, environmental regulations and agricultural use.

### ***RETI 2.0***

As the Legislature passed new climate change targets, the California Energy Commission, the California Public Utilities Commission and the California Independent System Operator kicked off a new transmission-planning effort known as the Renewable Energy Transmission Initiative (RETI 2.0) to look at how changes in the electrical system including higher levels of renewable energy, demand response and distributed generation will impact electricity transmission.

The agencies will hold a series of workshops on environmental data and analytical approaches and engage a broad group of stakeholders in the effort.

### ***Bill Update***

Below are bills IEUA is tracking:

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**31**





CALIFORNIA STRATEGIES, LLC

Date: October 01, 2015  
To: Inland Empire Utilities Agency  
From: John Withers, Jim Brulte  
Re: September Activity Report

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Listed below is the California Strategies, LLC monthly activity report. Please feel free to call us if you have any questions or would like to receive any more information on any of the items mentioned below.

- Met with IEUA Executive Management Team to review priority issues and to discuss activities for September that they wanted accomplished.
- Participated in discussions with staffs of San Bernardino and IEUA to discuss coordination of County and District legislative and public policy issue agendas that Executive Staff wanted.
- Received the recently released LAFCO report and updated strategy and approach
- Discussed County flood control and IEUA issues.
- Continue to monitor statewide water issues including the BDCP, water bond, and drought relief act activities.
- Outreach to Board Directors as needed on issues of interest
- Monitor Santa Ana Regional Board agenda and issues of interest to IEUA.

**INFORMATION  
ITEM**

**3J**

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## *Federal Legislation of Significance*

<b>Bill Number</b>	<b>Sponsor</b>	<b>Summary</b>	<b>Status</b>
n/a	Sen. Dianne Feinstein	Feinstein introduced legislation in the final days of the month to combat drought in California. Specifically for IEUA, it contains a title on recycled water. It also removed the requirement for Congress to authorize Title XVI projects.	Introduced. Waiting a hearing before the Senate Energy and Natural Resources Committee in October when other drought bills are considered.
H.R.2898	Rep. David Valadao	Western Drought Legislation introduced by California House Republicans that would ease environmental regulations provide for easier permitting for water storage projects.	Passed the House. To be considered before the Senate Energy and Natural Resources Committee in October alongside Feinstein's bill.
S.1140	Senator John Barrasso	Requires the Secretary of the Army and the Administrator of the Environmental Protection Agency to propose a regulation revising the definition of the term "waters of the United States".	Introduced and reported favorably by the Environment and Public Works Committee for consideration by the Senate.
H.R.1732	Rep. Bill Shuster	Requires the Secretary of the Army and the Administrator of the Environmental Protection Agency to withdraw their existing proposed rule regarding the waters of the United States and propose a new rule with additional stakeholder feedback.	This bill has passed the House. The Senate is currently considering their own version (mentioned above).
H.R. 2028 / S. ____	House and Senate Appropriations Committees	Energy and Water Appropriations Bills for FY16. The Senate bill	Both the House and Senate Committees have cleared their annual appropriations

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		<p>contains an additional \$50 million for "Western Drought Relief" like last year's bill. That money was used primarily for recycled water projects.</p>	<p>bills, but only the House has passed its version. With the CR set to expire on December 11<sup>th</sup>, Congress will have to pass either full-year funding bills or another continuing resolution. We are watching for a two year deal to develop that could increase the budget caps, and therefore potentially made additional funding available for drought mitigation projects.</p>
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