

AGENDA
SAN ELIJO JOINT POWERS AUTHORITY
MONDAY NOVEMBER 14, 2011 AT 9:00 AM
SAN ELIJO WATER RECLAMATION FACILITY – CONFERENCE ROOM
2695 MANCHESTER AVENUE
CARDIFF BY THE SEA,
CALIFORNIA

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. ORAL COMMUNICATIONS (NON-ACTION ITEM)
5. PRESENTATION OF AWARDS

None
6. * **CONSENT CALENDAR**
7. * APPROVAL OF MINUTES FOR THE OCTOBER 10, 2011 MEETING
8. * APPROVAL FOR PAYMENT OF WARRANTS AND MONTHLY INVESTMENT REPORTS
9. * SAN ELIJO WATER RECLAMATION FACILITY TREATED EFFLUENT FLOWS – MONTHLY REPORT
10. * SAN ELIJO JOINT POWERS AUTHORITY RECYCLED WATER PROGRAM – MONTHLY REPORT
11. * ITEMS REMOVED FROM CONSENT CALENDAR

Items on the Consent Calendar are routine matters and there will be no discussion unless an item is removed from the Consent Calendar. Items removed by a "Request to Speak" form from the public will be handled immediately following adoption of the Consent Calendar. Items removed by a Board Member will be handled as directed by the Board.

REGULAR AGENDA

12. SAN ELIJO JOINT POWERS AUTHORITY ANNUAL AUDIT

It is recommended that the Board of Directors:

1. Accept and file the 2010-11 Fiscal Year Audit for the San Elijo Joint Powers Authority; and
2. Discuss and take action as appropriate.

Staff Reference: Director of Finance/Administration

13. AUTHORIZATION OF ISSUANCE OF REFUNDING BONDS AND ACCEPTANCE OF PROFESSIONAL SERVICE CONTRACTS FOR TRUSTEE AND VERIFICATION RELATING TO THE BONDS

It is recommended that the Board of Directors:

1. Approve the recommendations of the General Manager regarding the acceptance of the attached resolution entitled:

Resolution Authorizing the Issuance of Revenue Bonds Relating to the Refunding of 2003 Refunding Revenue Bonds (San Elijo Water Pollution Control Facility), and the California Energy Resources Conservation and Development Commission Loan, Authorizing and Directing Execution of a Related Indenture of Trust, and Third Amended and Restated Loan Agreements, Authorizing Sale of bonds, Approving Official Statement, and Authorizing Official Action

2. Approve the recommendations of the General Manager regarding the acceptance of professional service contracts with Union Bank of California, as trustee for the revenue bonds, and Berens Tate Consulting, as verification agent for the revenue bonds;
3. Authorize the General Manager to execute contracts with these organizations; and
4. Discuss and take action as appropriate.

Staff Reference: General Manager

14. PROPOSED CONSTRUCTION PHASE OF THE ADVANCED WATER (DEMINERALIZATION) TREATMENT SYSTEM AT THE SAN ELIJO WATER RECLAMATION FACILITY

It is recommended that the Board of Directors:

1. Adopt resolution 2012-03 "A Resolution of the Board of Directors of the San Elijo Joint Powers Authority Authorizing the Execution of Leases and Related Agreements for the Advanced Water Treatment Project and Approving Certain Matters in Connection Therewith;
2. Authorize the General Manager to execute the agreement with Kennedy/Jenks Consultants to provide engineering services during construction of the recycled water demineralization facility for an amount not to exceed \$259,360; and
3. Discuss and take other actions as appropriate.

Staff Reference: General Manager

15. GENERAL MANAGER'S REPORT

Informational report by the General Manager on items not requiring Board action.

16. GENERAL COUNSEL'S REPORT

Informational report by the General Counsel on items not requiring Board action.

17. BOARD MEMBER COMMENTS

This item is placed on the agenda to allow individual Board Members to briefly convey information to the Board or public, or to request staff to place a matter on a future agenda and/or report back on any matter. There is no discussion or action taken on comments by Board Members.

18. CLOSED SESSION

None

A closed session may be held at any time during this meeting of the San Elijo Joint Powers Authority for the purposes of discussing potential or pending litigation or other appropriate matters pursuant to the "Ralph M. Brown Act".

19. ADJOURNMENT

The next regularly scheduled San Elijo Joint Powers Authority Board Meeting will be November 14, 2011 at 9:00 a.m.

NOTICE:

The San Elijo Joint Powers Authority's open and public meetings meet the protections and prohibitions contained in Section 202 of the Americans With Disabilities Act of 1990 (42 U.S.C Section 12132), and the federal rules and regulations adopted in implementation thereof. Any person with a disability who requires a modification or accommodation, including auxiliary aids or services, in order to participate in a public meeting of the SEJPA Board of Directors may request such modification or accommodation from Michael T. Thornton, General Manager, (760) 753-6203 ext. 72.

The agenda package and materials related to an agenda item submitted after the packet's distribution to the Board is available for public review in the lobby of the SEJPA Administrative Office during normal business hours. Agendas and minutes are available at www.sejpa.org. The SEJPA Board meetings are held on the second Monday of the month, except August.

AFFIDAVIT OF POSTING

I, Michael T. Thornton, Secretary of the San Elijo Joint Powers Authority, hereby certify that I posted, or have caused to be posted, a copy of the foregoing agenda in the following locations:

San Elijo Water Reclamation Facility, 2695 Manchester Avenue, Cardiff, California
City of Encinitas, 505 South Vulcan Avenue, Encinitas, California
City of Solana Beach, 635 South Highway 101, Solana Beach, California

The notice was posted at least 72 hours prior to the meeting, in accordance with Government Code Section 54954.2(a).

Date: November 9, 2011



Michael T. Thornton, P.E.
Secretary / General Manager

4. ORAL COMMUNICATIONS

Vice Chair Barth stated that Board Member Maggie Houlihan passed away in September from cancer. She reported that Maggie had last month's SEJPA Board Agenda posted on her door with the hope to participate in the meeting by phone. Maggie stayed active and worked till the end and that the SEJPA Board Member position was one of her favorites.

Chair Campbell stated that Maggie would be missed and she was very passionate in her discussions. Chair Campbell requested that today's meeting be adjourned in memory of Maggie Houlihan.

5. PRESENTATION OF AWARDS

None

6. CONSENT CALENDAR

Moved by Board Member Roberts and seconded by Vice Chair Barth to approve the Consent Calendar with unanimous vote of approval.

Consent Calendar:

Agenda Item No. 7	Approval of Minutes for the July 11, 2011 meeting
Agenda Item No. 8	Approval for Payment of Warrants and Monthly Investment Report
Agenda Item No. 9	San Elijo Water Reclamation Facility Treated Effluent Flows – Monthly Report
Agenda Item No. 10	San Elijo Joint Powers Authority Recycled Water Program – Monthly Report
Agenda Item No. 11	Ocean Outfall Pile Support Repair Authorization

12. ITEMS REMOVED FROM CONSENT CALENDAR

None

13. QUARTERLY RECYCLED WATER UPDATE – PRESENTATION ON THE NORTH SAN DIEGO COUNTY REGIONAL RECYCLED WATER PROJECT

General Manager Thornton stated that the North San Diego County Regional Recycled Water Project consists of 11 government organizations including local water districts, wastewater districts, and cities. The goal of this multi-jurisdictional group is to develop cost-effective solutions for meeting the region's water supply needs through recycled water projects. The firm of RMC Water and Environment was retained as the consultant for this project.

A PowerPoint presentation was given by Scott Goldman, Principal, from RMC on the draft findings of the report. Currently, San Diego County produces approximately 11,000 acre feet (AF) of recycled water and there are opportunities to more than double this production by the year 2020. Opportunities evaluated in this project included expanding and interconnecting existing recycled water systems as well as incorporating purified recycled water into the drinking water supply through indirect methods. For the SEJPA, the report findings indicated new market opportunities with the Olivenhain Municipal Water District and Santa Fe Irrigation District. Mr. Goldman reported that there may be state and federal funding to help study and construct recycled water facilities to increase the local water supply in San Diego County.

No action was required. This item was presented for information only.

14. APPROVE CONSTRUCTION LOAN FOR THE ADVANCED WATER TREATMENT SYSTEM AT THE SAN ELIJO WATER RECLAMATION FACILITY

General Manager Thornton briefly reviewed the background of the Advanced Water Treatment Project, which will allow the SEJPA to improve the recycled water quality and maximize its recycling efforts. The construction of the project is currently estimated to cost \$4.7 million. Under the proposed financing plan, \$2.0 million will be funded by the reserve funds within the recycled water program budget. The remaining \$2.7 million is planned to be funded by grant funds (approximately \$700,000) and a construction loan (approximately \$2.0 million). The General Manager stated that this financing plan was presented to the Solana Beach City Council in August and to the Encinitas City council in September, and the plan received unanimous support by both councils.

The General Manager reported the loan is a third-party construction loan placed by Brandis Tallman, LLC. The loan terms include an annual payment of approximately \$150,000 for 20 years at a fixed interest rate of 4.15%

Moved by Vice Chair Barth and seconded by Board Member Roberts to:

1. Authorize General Manager to execute the Advanced Water Treatment Construction Loan with Municipal Finance Corporation for an amount not-to-exceed \$2,000,000; and
2. Adopt Resolution 2012-01 Authorizing the Execution and Delivery of the Loan Agreement.

Motion carried with unanimous vote of approval.

15. BOND ISSUE REFUNDING

Director of Finance/Administration Gregory Lewis stated that in 1990 the wastewater facility upgrade and expansion was funded through the issuance of \$24.5 million in revenue bonds. In 1993, and again in 2003, the original bonds were refunded by the SEJPA for the purpose of reducing future payment costs by obtaining lower interest rates of 4.875% and 3.75% respectively. At this time, the SEJPA has the opportunity to refund the bonds at a rate of approximately 1.76%. With approximately 8 years remaining on these bonds, the analysis estimates gross savings of \$206,000 annually, a net present value savings of \$1.3 million. Gregory Lewis reported that pursuing the new issuance as an insured public offering should raise the rating from AA to AA+ (due

to the insurance). This would allow the bonds to be issued without a reserve fund, which would allow the current reserves to be used to reduce the bond issue and shorten the term of the bonds by one year. Additionally, Mr. Lewis presented information on using this refunding to refinance the California Energy Commission loan, which has a fixed interest rate of 3.95%. The maturity date of this portion of the refunding would remain the same as the original loan, March 2021.

Moved by Board Member Roberts and seconded by Vice Chair Barth to:

1. Authorize the General Manager to pursue refunding wastewater debt.

Motion carried with unanimous vote of approval.

16. GENERAL MANAGER'S REPORT

None

17. GENERAL COUNSEL'S REPORT

General Counsel Greg Moser stated that at next month's Board meeting he will report on the bills the Governor of California recently passed.

18. BOARD MEMBER COMMENTS

Vice Chair Barth reported that the City of Encinitas is in the process of filling the vacant city council seat in early November, and that person will also be assigned a position on the SEJPA's Board of Directors and should be present at the SEJPA's November meeting.

Board Member Roberts reported that the Santa Fe Irrigation District is having a ribbon cutting on October 26th at the San Dieguito Park, to commemorate the conversion of the park to recycled water. Board Member Roberts and General Manager Michael Thornton reported that they will attend the ceremony.

19. CLOSED SESSION

None

20. ADJOURNMENT

The Board of Directors adjourned the meeting in memory of Maggie Houlihan at 9:37 a.m. The next Board of Directors meeting will be held on November 14, 2011 at 9:00 a.m.

Respectfully submitted,



Michael T. Thornton, P.E.
General Manager

PAYMENT OF WARRANTS

12-11

28-Oct-11

VENDOR	DESCRIPTION OF EXPENSE	AMOUNT
<u>12-11 Warrants</u>		
AG Tech, LLC	Biosolids hauling - September	\$8,969.63
Aire Filter Products-Calif.	Filters for blowers - plant	\$544.36
American Payroll Association	Membership - C. Cook	\$254.00
Aquatic Bioassay	Lab testing - lab	\$960.00
Arizona Instrument	Repair, rental sensor assembly, Jerome meter - plant	\$1,289.89
Arrowhead	Kitchen and lab supplies	\$193.98
AT&T	Alarm service	\$379.61
AT&T	Phone service	\$383.02
AT&T - Eden Garden	Phone service	\$73.00
Atel Communications Inc.	Phone system repairs	\$255.00
Atlas Pumping Service	Grease and scum pumping - October	\$554.88
Atlas Pumping Service	Grease and scum pumping - September	\$832.32
Atlas Pumping Service	Grit and screening	\$742.35
Barracuda Networks, Inc.	Network - backup	\$50.00
Bee Safe Bee Removal	Remove honey bee colony - Oakcrest	\$450.00
Blake, Monica	Expense report - mileage	\$30.42
Boot World, Inc.	Safety shoes - S. Arredondo	\$135.72
Brenntag Pacific, Inc.	Sodium hydroxide - odor control - plant	\$1,172.07
Broding's Battery Warehouse	Batteries for Whacker pump - plant	\$79.96
Buckles, Marisa	Expense report - mileage	\$71.04
Buckles, Marisa	Expense report - mileage and meeting	\$52.44
Buckles, Marisa	Expense report - benefit meeting - staff	\$145.71
CWEA - Membership	Membership - J. Hernandez	\$132.00
CWEA - TCP	Certificate - A. Simonson	\$73.00
California Water Technologies	Ferric chloride - plant	\$5,962.37
Calscience Environmental Lab	Lab testing - lab	\$135.00
Chea, Ravy	Expense report - gift card for wellness program	\$25.00
Coast Waste Management, Inc.	Waste bin rental - plant	\$60.00
Complete Office	Office supplies	\$779.95
Corodata	Record storage - August	\$68.79
Corodata	Record storage - September	\$66.57
DMV	Safety record fee	\$1.00
DMV	Safety record fee	\$2.00
EDCO Waste & Recycling	Trash service - September	\$187.77
Fleet Services	Fuel - September	\$2,146.43
Golden Bell Products	Lift station degreaser - Coast Blvd. P. S. - August	\$96.98
Golden Bell Products	Lift station degreaser - Coast Blvd. P. S. - September	\$96.98
Golden State Overnight	Mailing compliance reports	\$15.92
Golden State Overnight	Mailing compliance reports	\$31.84
Grainger, Inc.	Safety valve, pressure gauge, timed drain valve - plant	\$229.55
Grainger, Inc.	General 3 hp motor - Fletcher Cove	\$456.95
Grainger, Inc.	Plug-in transformer 24vac/50vac 115 vac - plant	\$15.18
Grainger, Inc.	13 amp, 120/230 v float switch - plant	\$57.76
Henke, Michael	Expense report - parking	\$20.00
Horizon Health EAP	Employee assistance program	\$351.12

PAYMENT OF WARRANTS

12-11

28-Oct-11

VENDOR	DESCRIPTION OF EXPENSE	AMOUNT
Hydroscape Products, Inc.	Hunter diaphragm and latch - plant	\$219.20
Jani-King	Janitorial service - October	\$882.64
Jones Chemicals, Inc.	Sodium hypochlorite - water reclamation	\$3,184.22
Jones Chemicals, Inc.	Sodium hypochlorite - water reclamation	\$3,193.49
Konica	Monthly copier maintenance	\$88.87
Lab Safety Supply, Inc.	1g,5g,50g, stainless steel ultraclass weights - lab	\$283.33
Lawnmowers+ Plus Landscape	Plant maintenance	\$494.29
Layfield Environmental System	Baffle maintenance - plant	\$1,500.00
Leaf & Cole, LLP	Audit - progress billing	\$2,300.00
Leaf & Cole, LLP	Audit - progress billing	\$10,000.00
Lewis, Greg	Expense report - eye wash valve, binding reports	\$195.14
Lewis, Greg	Expense report - batteries	\$77.98
Marine Taxonomic Services	Outfall inspection and maintenance - outfall	\$17,500.00
Marine Taxonomic Services	Ocean offshore monitoring - outfall	\$740.00
McCrometer, Inc.	Flow meter tube - plant	\$714.13
McMaster-Carr Supply Co.	Replacement parts - plant	\$450.78
McMaster-Carr Supply Co.	Parts for blower - plant	\$458.98
McMaster-Carr Supply Co.	Parts for belt press - plant	\$274.24
MegaPath Inc.	T-1 service - October	\$278.13
Mr. Tony Lipka	Safety training - J. Hernandez, C. Larsen, K. James	\$375.00
New Pig Corporation	Leak diverter for roof - Moonlight P. S.	\$74.55
OMWD	Water service - Manchester - 08/08/11 - 09/08/11	\$49.24
One Source Distributors, Inc.	Electrical supplies and label printer - plant	\$378.86
One Source Distributors, Inc.	Electrical supplies - plant	\$124.56
One Source Distributors, Inc.	Digital inputs, analog inputs, relay output - Cardiff	\$567.14
PERS - Health	Health - September	\$17,980.84
PERS - Retirement	Retirement premium - 10/07/11	\$16,058.66
PERS - Retirement	Retirement premium - 10/23/11	\$16,077.65
Petty Cash	Replenish petty cash	\$153.08
Pacific Green Landscape	Landscape service - September	\$1,150.00
Pacific Green Landscape	Landscape service - October	\$1,150.00
Preferred Benefits Insurance	Vision insurance - October	\$274.54
Probuild	Repairs, shop and field supplies - September	\$313.85
Procopio,Cory,Hargreaves	General - August	\$6,108.00
Procopio,Cory,Hargreaves	General - September	\$3,462.60
Procopio,Cory,Hargreaves	2012 refunding - September	\$2,820.50
Red-D-Arc	Repair welder on truck	\$685.70
Rohan & Sons, Inc.	September - 90 days maintenance service	\$312.00
Rohan & Sons, Inc.	Water leak repair on air handler unit - plant	\$190.00
Rohan & Sons, Inc.	Install secondary pan under new air handler - plant	\$701.55
San Diego Gas and Electric	Gas and electric - 09/08 - 10/07 - Cardiff	\$1,467.08
San Diego Gas and Electric	Gas and electric - 08/09 - 09/08 - Valley	\$2,333.45
San Dieguito Water District	2710 Manchester - 07/25/11 - 09/26/11	\$203.72
San Dieguito Water District	Water service RWM 1 - 08/30/11 - 09/29/11	\$142.57
San Dieguito Water District	Water service RWM 3 - 08/30/11 - 09/29/11	\$852.73
San Dieguito Water District	Water service RWM 4 - 08/30/11 - 09/29/11	\$177.54
San Dieguito Water District	Water service RWM 5 - 08/30/11 - 09/29/11	\$688.64

PAYMENT OF WARRANTS

12-11

28-Oct-11

VENDOR	DESCRIPTION OF EXPENSE	AMOUNT
San Dieguito Water District	Water service RWM 6 - 08/30/11 - 09/29/11	\$3,935.47
San Dieguito Water District	Water service - 07/25/11 - 09/26/11 - plant	\$213.20
San Dieguito Water District	Water service - 07/25/11 - 09/26/11 - plant	\$165.06
San Dieguito Water District	S. Coast Highway 101 - 07/25/11 - 09/26/11	\$41.65
San Elijo Payroll Account	Payroll - 10/07/2011	\$73,595.07
San Elijo Payroll Account	Payroll - 10/21/2011	\$77,931.68
Santa Fe Irrigation District	Water service - Valley - 08.31.11 - 09.29.11	\$86.81
Santa Fe Irrigation District	Water service - Lomas Santa Fe Dr. - 07/20/11 - 09/21/11	\$1,310.77
SimplexGrinnell	Fire extinguisher service - plant	\$65.00
Smart & Final	Office and kitchen supplies	\$82.66
Specialty Seals & Accessories	Refurbish seal - Solana Beach P. S.	\$896.21
Sprint	Cellular phone service - August and September	\$575.43
Terra Renewal, LLC	Biosolids hauling - September	\$3,050.88
The SoCoGroup, Inc.	Diesel fuel for back-up generators-power outage	\$2,360.04
Thornton, Michael	Public event parking - water reclamation	\$20.00
Underground Service Alert	Dig alert - September	\$75.00
Unifirst Corporation	Uniform service - September	\$269.19
Unifirst Corporation	Uniform service - October	\$343.91
UPS	Mailing - lab	\$11.28
UPS	Mailing - water reclamation	\$12.66
VWR International, Inc.	Thermometer point calibration - lab	\$121.54
VWR International, Inc.	Buffer, detergent, gloves, filter, drier, and broth	\$936.73
VWR International, Inc.	Tubes cult 16x1150 cs1000, 6x50 cs2000 - lab	\$427.50
VWR International, Inc.	Buffer bod power 19ml - lab	\$64.04
Total 12-11 Warrants		\$312,932.81


SAN ELIJO JOINT POWERS AUTHORITY

PAYMENT OF WARRANTS SUMMARY

28-Oct-11

PAYMENT OF WARRANTS		\$312,932.81
Reference Number	12-11	

I hereby certify that the demands listed and covered by warrants are correct and just to the best of my knowledge, and that the money is available in the proper funds to pay these demands. The cash flows of the SEJPA, including the Member Agency commitment in their operating budgets to support the operations of the SEJPA, are expected to be adequate to meet the SEJPA's obligations over the next six months. I also certify that the SEJPA's investment portfolio complies with the SEJPA's investment policy.



Gregory Lewis
Director of Finance/Administration
Treasurer

STATEMENT OF FUNDS AVAILABLE FOR PAYMENT OF WARRANTS
AND INVESTMENT INFORMATION
AS OF

28-Oct-11

FUNDS ON DEPOSIT WITH	AMOUNT
LOCAL AGENCY INVESTMENT FUND <i>(AUGUST 2011 YIELD 0.41%)</i>	
SELF INSURANCE RESERVE	\$ 300,000.00
RESTRICTED SRF RESERVE	\$ 630,000.00
UNRESTRICTED DEPOSITS	\$ 6,287,983.79
 CALIFORNIA BANK AND TRUST <i>(AUGUST 2011 YIELD 0.10%)</i>	
REGULAR CHECKING	\$ 139,705.24
PAYROLL CHECKING	\$ 5,000.00
 TOTAL RESOURCES	 \$ 7,362,689.03

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SAN ELIJO JOINT POWERS AUTHORITY
MEMORANDUM

November 14, 2011

TO: Board of Directors
San Elijo Joint Powers Authority

FROM: General Manager

SUBJECT: SAN ELIJO WATER RECLAMATION FACILITY TREATED EFFLUENT FLOWS –
MONTHLY REPORT

RECOMMENDATION

No action required. This memorandum is submitted for information only.

DISCUSSION

Monthly Treatment Plant Performance and Evaluation

Wastewater treatment for the San Elijo Joint Powers Authority (SEJPA) met all NPDES ocean effluent limitation requirements for the month of September 2011. The primary indicators of treatment performance include the removal of Carbonaceous Biochemical Oxygen Demand (CBOD) and Total Suspended Solids (TSS). The SEJPA is required to remove a minimum of 85 percent of the CBOD and TSS from the wastewater. Treatment levels for CBOD and TSS were 96.5 percent and 94.1 percent, respectively, for September (as shown in Figure 1 and Figure 2).

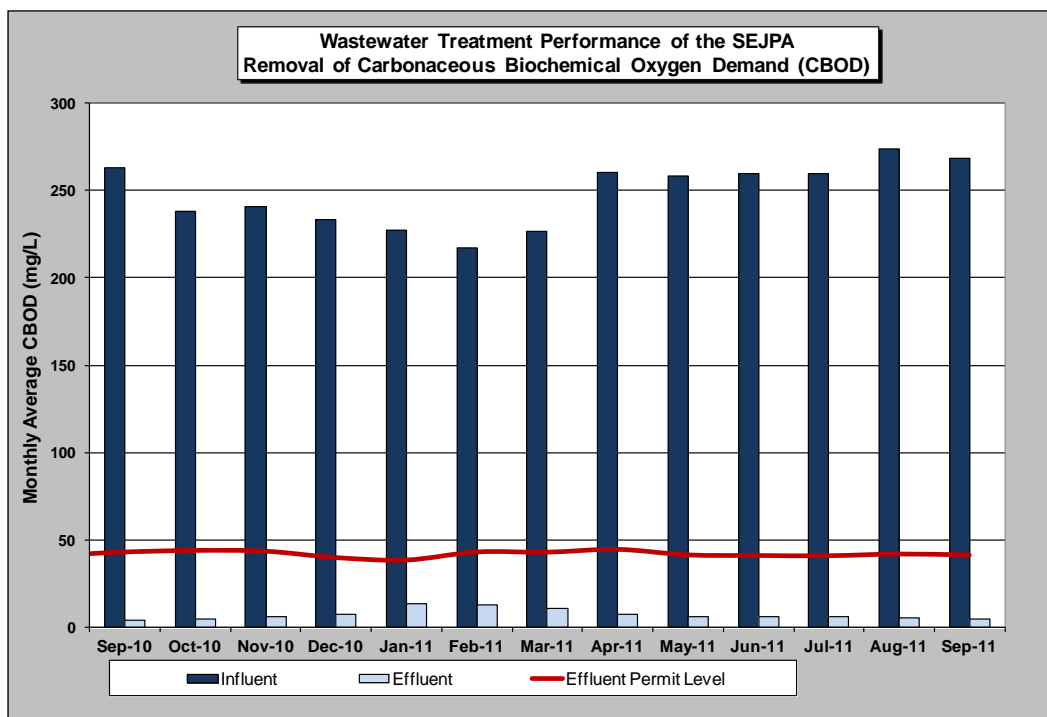


FIGURE 1

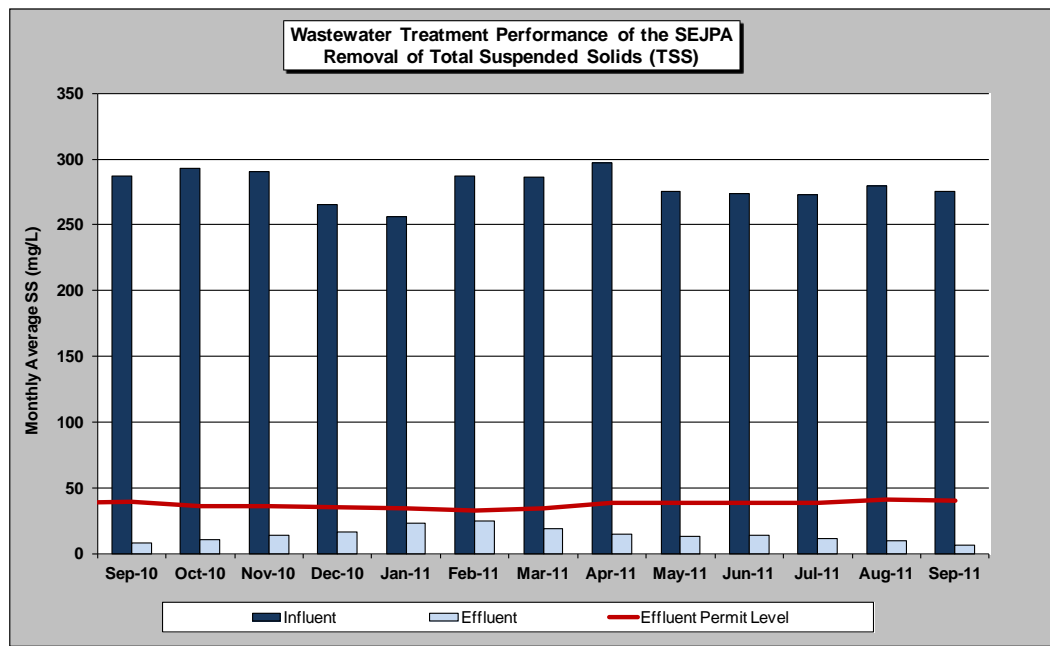


FIGURE 2

Member Agency Flows

Presented below are the influent and effluent flows for the month of September. Average daily influent flows were recorded for each Member Agency. Total effluent flow was recorded for the San Elijo Water Reclamation Facility.

	September	
	Influent (mgd)	Effluent (mgd)*
Cardiff Sanitary Division	1.262	0.564
City of Solana Beach	1.333	0.596
Rancho Santa Fe SID	0.146	0.066
Total San Elijo WRF Flow	2.741	1.226

Notes: As of July 1995, Rancho Santa Fe Community Services District (CSD) combined SID #2 and SID #3 into one Sewer Improvement District (SID).

* Effluent is calculated by subtracting the recycled water production from the influent wastewater.

Table 1 (below) presents the historical average, maximum, and unit influent and effluent flow rates per month for each of the Member Agencies. It also presents the number of connected Equivalent Dwelling Units (EDUs) for each of the Member Agencies during this same time period.

Figure 3 (below) presents the historical average daily flows per month for each Member Agency. This is to provide a historical overview of the average treated flow by each agency. As shown in the figure, the average treated flow typically ranges between 2.9 and 3.1 million gallons per day (mgd). Also shown in Figure 3 is the total wastewater treatment capacity of the plant, 5.25 mgd, of which each Member Agency has the right to 2.5 mgd, and Rancho Santa Fe Community Service District has the right to 0.25 mgd.

SAN ELIJO WATER RECLAMATION FACILITY MONTHLY REPORT - FLOWS AND EDUS

MONTH	AVERAGE DAILY INFLUENT FLOW RATE (MGD)				AVERAGE DAILY EFFLUENT FLOW RATE (MGD)				CONNECTED EDUs				AVERAGE UNIT INFLUENT FLOW RATE (GAL/EDU/DAY)			
	CSD	RSF CSD	SB	TOTAL PLANT	CSD	RSF CSD	SB	TOTAL PLANT	CSD EDUS	RSF CSD EDUS	SB EDUS	TOTAL EDUS	CSD	RSF	SB	TOTAL PLANT
Jul-08	1.713	0.131	1.324	3.168	0.722	0.055	0.558	1.335	8,163	456	7,728	16,347	210	288	171	194
Aug-08	1.562	0.125	1.483	3.170	0.608	0.048	0.577	1.233	8,165	457	7,728	16,350	191	274	192	194
Sep-08	1.547	0.121	1.378	3.046	0.813	0.064	0.724	1.601	8,167	459	7,728	16,354	189	264	178	186
Oct-08	1.478	0.111	1.319	2.908	0.671	0.051	0.599	1.321	8,170	460	7,728	16,358	181	242	171	178
Nov-08	1.511	0.118	1.329	2.958	1.080	0.084	0.950	2.114	8,171	462	7,728	16,361	185	256	172	181
Dec-08	1.580	0.156	1.362	3.098	1.446	0.143	1.246	2.835	8,172	462	7,728	16,362	193	338	176	189
Jan-09	1.522	0.141	1.354	3.017	1.256	0.116	1.117	2.489	8,177	462	7,728	16,367	186	306	175	184
Feb-09	1.599	0.145	1.330	3.074	1.408	0.128	1.171	2.707	8,179	462	7,728	16,369	196	314	172	188
Mar-09	1.510	0.124	1.307	2.941	1.030	0.085	0.892	2.007	8,180	463	7,728	16,371	185	268	169	180
Apr-09	1.463	0.116	1.262	2.841	0.731	0.058	0.630	1.419	8,183	463	7,728	16,374	179	251	163	174
May-09	1.465	0.117	1.247	2.829	0.712	0.057	0.606	1.375	8,185	464	7,728	16,377	179	252	161	173
Jun-09	1.479	0.115	1.319	2.913	0.712	0.056	0.635	1.403	8,185	465	7,728	16,378	181	248	171	178
Jul-09	1.437	0.109	1.376	2.922	0.599	0.045	0.573	1.217	8,186	467	7,728	16,381	176	234	178	178
Aug-09	1.431	0.113	1.419	2.963	0.603	0.047	0.598	1.248	8,186	467	7,728	16,381	175	242	184	181
Sep-09	1.404	0.108	1.346	2.858	0.690	0.053	0.661	1.404	8,187	468	7,728	16,383	171	231	174	174
Oct-09	1.375	0.108	1.332	2.815	0.744	0.058	0.721	1.523	8,187	468	7,728	16,383	168	231	172	172
Nov-09	1.366	0.111	1.323	2.800	0.843	0.069	0.816	1.728	8,189	469	7,728	16,386	167	237	171	171
Dec-09	1.401	0.127	1.322	2.850	1.149	0.104	1.084	2.337	8,193	469	7,728	16,390	171	271	171	174
Jan-10	1.532	0.155	1.372	3.059	1.271	0.128	1.138	2.537	8,196	472	7,728	16,396	187	329	178	187
Feb-10	1.487	0.148	1.382	3.017	1.371	0.136	1.274	2.781	8,197	474	7,728	16,399	181	313	179	184
Mar-10	1.455	0.145	1.398	2.998	1.108	0.110	1.064	2.282	8,198	474	7,728	16,400	177	306	181	183
Apr-10	1.451	0.137	1.391	2.979	1.058	0.100	1.014	2.172	8,198	474	7,728	16,400	177	289	180	182
May-10	1.379	0.128	1.385	2.892	0.672	0.063	0.675	1.410	8,201	474	7,728	16,403	168	270	179	176
Jun-10	1.437	0.122	1.453	3.012	0.650	0.055	0.657	1.362	8,202	474	7,728	16,404	175	258	188	184
Jul-10	1.375	0.119	1.466	2.960	0.694	0.061	0.740	1.495	8,204	475	7,728	16,407	168	251	190	180
Aug-10	1.366	0.125	1.451	2.942	0.585	0.053	0.621	1.259	8,205	475	7,728	16,408	166	263	188	179
Sep-10	1.346	0.114	1.342	2.802	0.627	0.053	0.626	1.306	8,207	475	7,728	16,410	164	240	174	171
Oct-10	1.413	0.123	1.311	2.847	1.177	0.102	1.092	2.371	8,207	477	7,728	16,412	172	258	170	173
Nov-10	1.399	0.117	1.297	2.813	1.090	0.091	1.011	2.192	8,209	478	7,728	16,415	170	245	168	171
Dec-10	1.605	0.215	1.375	3.195	1.417	0.189	1.214	2.820	8,212	478	7,728	16,418	195	450	178	195
Jan-11	1.452	0.158	1.338	2.948	1.272	0.139	1.172	2.583	8,227	478	7,728	16,433	176	331	173	179
Feb-11	1.413	0.156	1.339	2.908	1.176	0.130	1.114	2.420	8,228	480	7,728	16,436	172	325	173	177
Mar-11	1.387	0.208	1.343	2.938	1.186	0.178	1.148	2.512	8,229	480	7,728	16,437	169	434	174	179
Apr-11	1.320	0.181	1.323	2.824	0.867	0.118	0.869	1.854	8,248	482	7,728	16,458	160	376	171	172
May-11	1.327	0.162	1.320	2.809	0.564	0.069	0.561	1.194	8,248	483	7,728	16,459	161	336	171	171
Jun-11	1.343	0.156	1.390	2.889	0.545	0.063	0.564	1.172	8,249	483	7,728	16,460	163	323	180	176
Jul-11	1.293	0.151	1.430	2.874	0.425	0.050	0.470	0.945	8,250	484	7,728	16,462	157	312	185	175
Aug-11	1.292	0.150	1.405	2.847	0.479	0.056	0.521	1.056	8,252	485	7,728	16,465	157	310	182	173
Sep-11	1.262	0.146	1.333	2.741	0.564	0.066	0.596	1.226	8,254	486	7,728	16,468	153	301	172	166

TABLE 1

CSD: Cardiff Sanitary Division
 RSF CSD: Ranch Santa Fe Community Service District
 SB: Solana Beach
 EDU: Equivalent Dwelling Unit

ASSUMPTIONS: SB average flow includes San Elijo Hills flow of 0.131 mgd
 SB Connected EDUs includes 300 EDUs for the City of San Diego

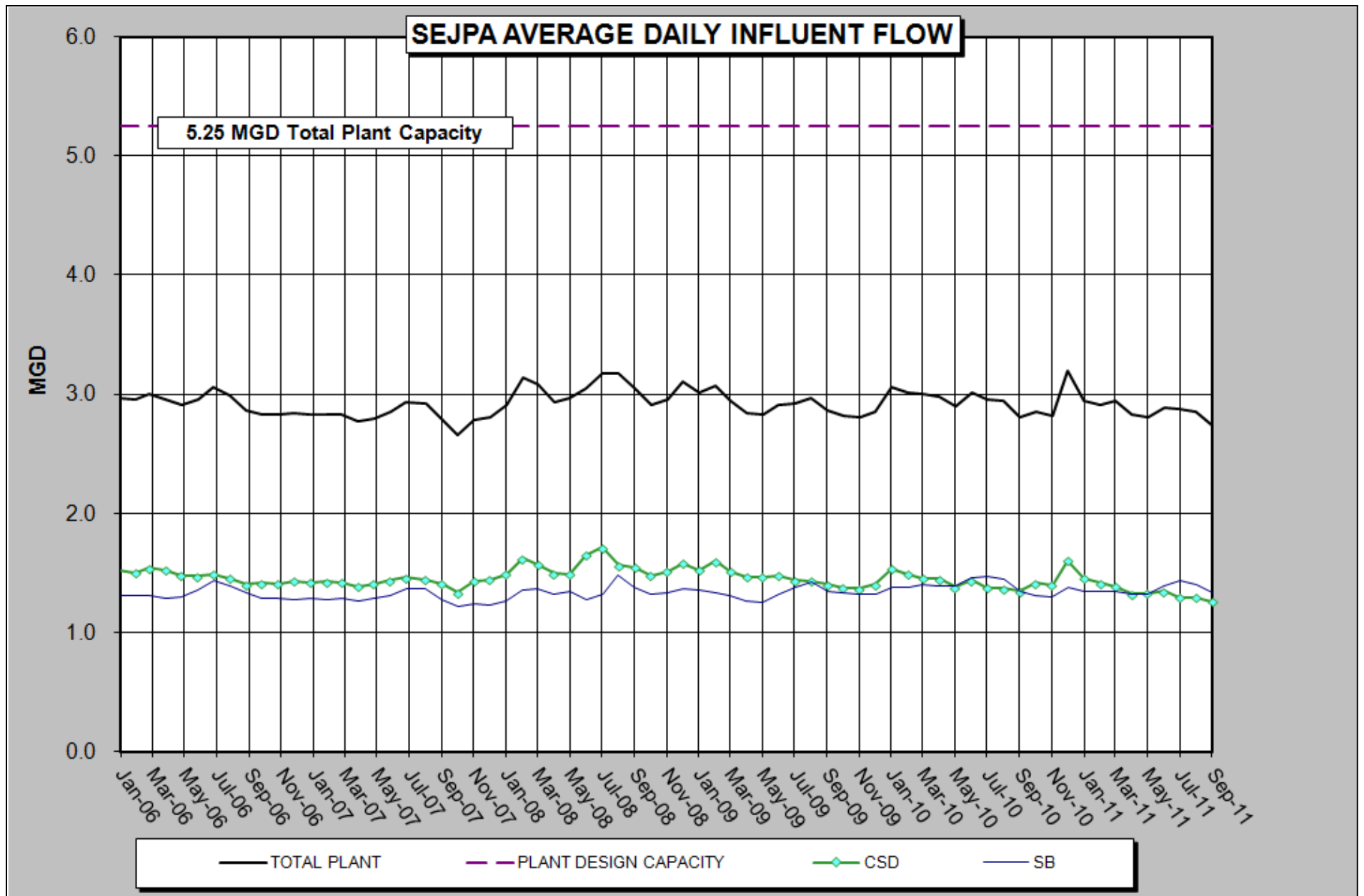


Figure 3

City of Escondido Flows

The average and peak flow rate from the City of Escondido's Hale Avenue Resource Recovery Facility, which discharges through the San Elijo Ocean Outfall, is reported below. The following average flow rate and peak flow rate is reported by the City of Escondido for the month of September.

	September (mgd)
Escondido (Average flow rate)	9.5
Escondido (Peak flow rate)	18.6

Connected Equivalent Dwelling Units

The number of EDUs connected for each of the Member Agencies for the month of September is as follows:

	September (EDU)
Cardiff Sanitary Division	8,254
Rancho Santa Fe SID	486
City of Solana Beach	7,428
San Diego (to Solana Beach)	300
Total EDUs to System	16,468

Respectfully submitted,



Michael T. Thornton, P.E.
General Manager

*

AGENDA ITEM NO. 10

SAN ELIJO JOINT POWERS AUTHORITY
MEMORANDUM

November 14, 2011

TO: Board of Directors
San Elijo Joint Powers Authority

FROM: General Manager

SUBJECT: SAN ELIJO WATER RECLAMATION PROGRAM – MONTHLY REPORT

RECOMMENDATION

No action required. This memorandum is submitted for information only.

DISCUSSION

Recycled Water Production

For the month of September 2011, recycled water demand was 137.37 acre-feet (AF), which was met using 137.31 AF of recycled water and 0.06 AF of supplementation with potable water. This equates to a blend mix for September of 99.9 percent recycled water and 0.1 percent potable water supplementation.

Figure 1 (attached) provides monthly supply demands for recycled water over the last five years. Figure 2 (attached) provides a graphical view of annual recycled water demand spanning the last eleven fiscal years. Recycled water demand can fluctuate from year to year, which is typically a function of weather. For example, Fiscal Year 2003-04, an unusually dry year, resulted in increased recycled water demand; and Fiscal Year 2004-05, an unusually wet year, resulted in lower recycled water demand.

Respectfully submitted,



Michael T. Thornton, P.E.
General Manager

MONTHLY RECYCLED WATER DEMAND

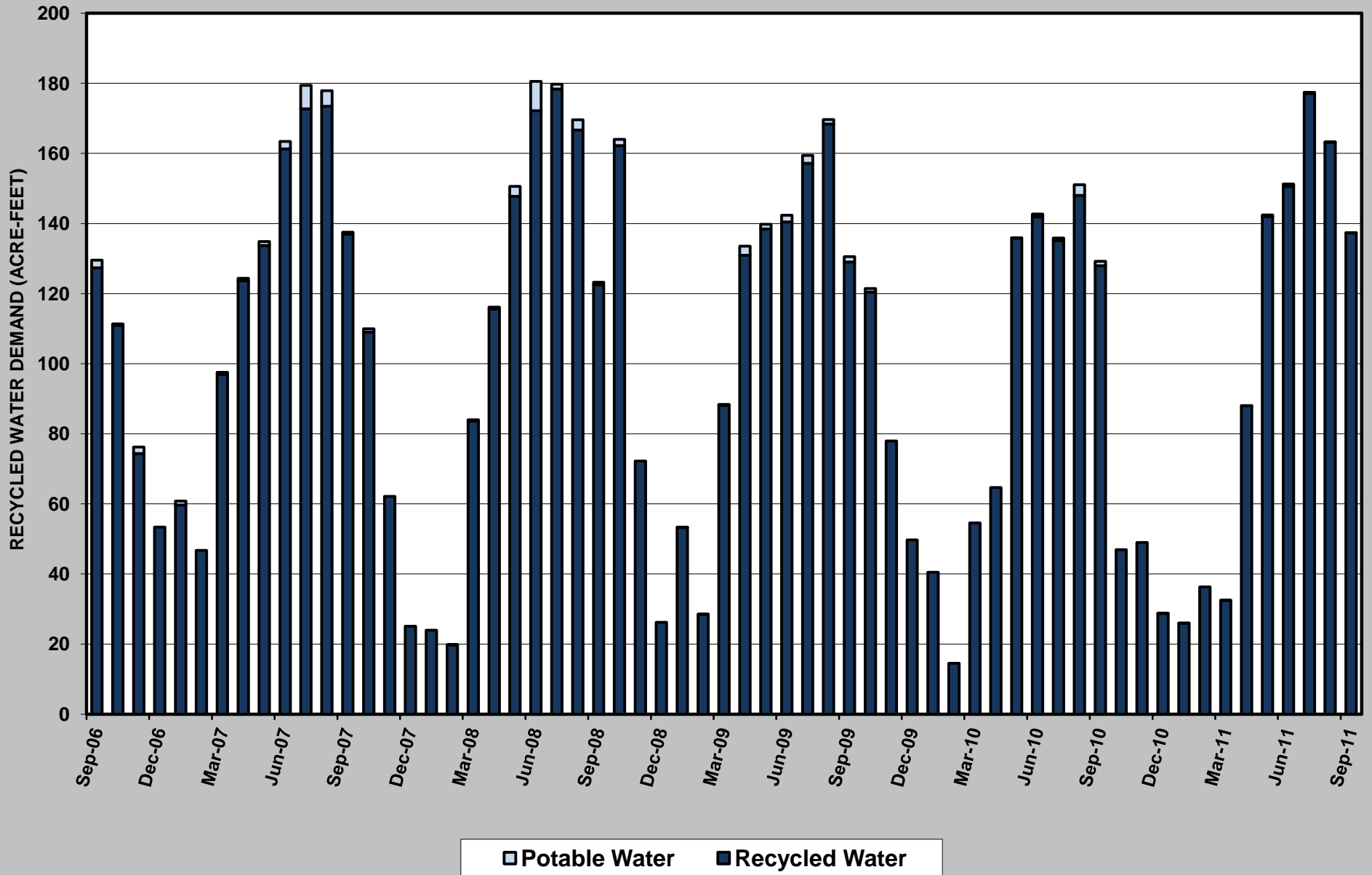


Figure 1

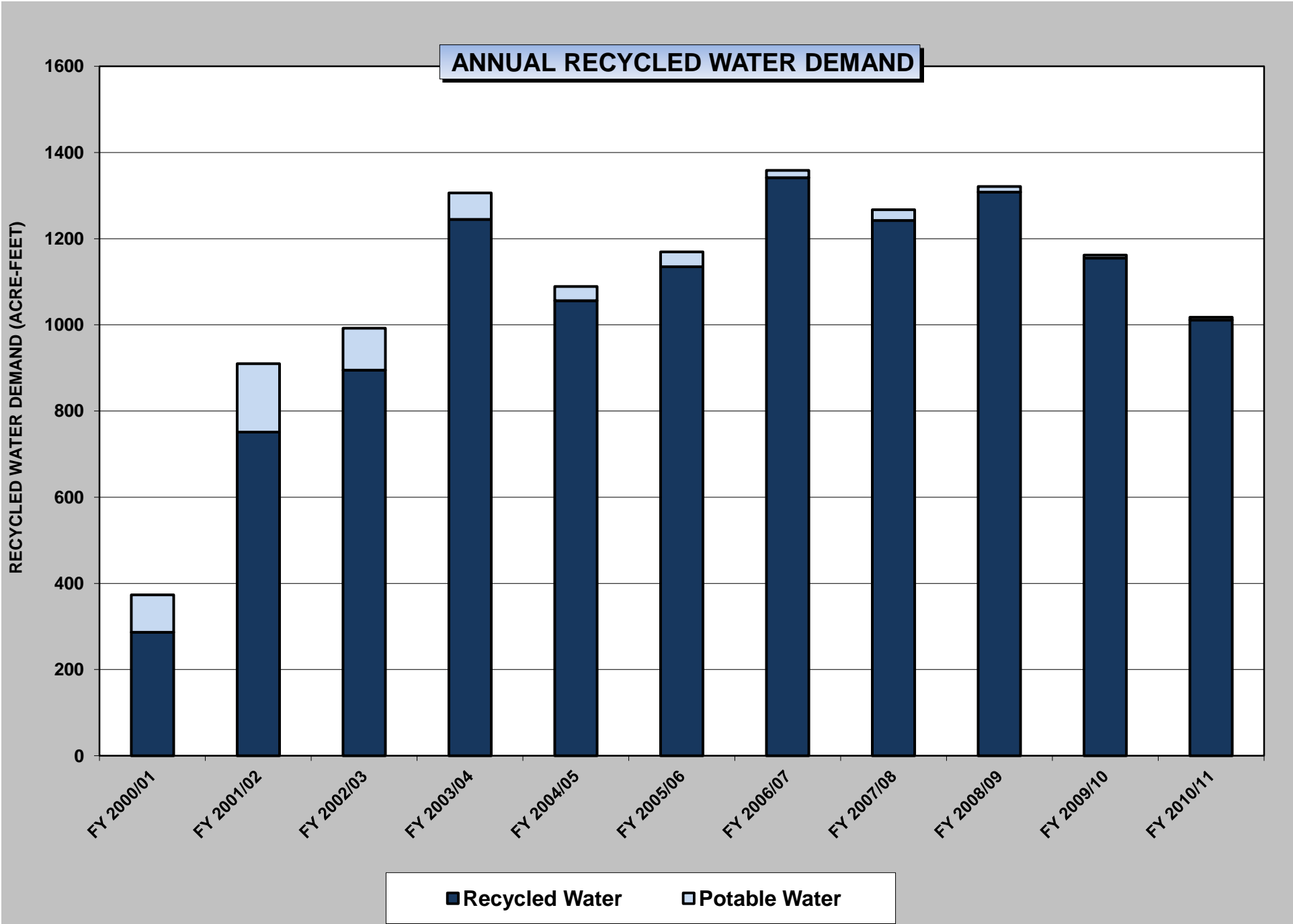


Figure 2

SAN ELIJO JOINT POWERS AUTHORITY
MEMORANDUM

November 14, 2011

TO: Board of Directors
San Elijo Joint Powers Authority

FROM: Director of Finance/Administration

SUBJECT: SAN ELIJO JOINT POWERS AUTHORITY ANNUAL AUDIT

RECOMMENDATION

It is recommended that the Board of Directors:

1. Accept and file the 2010-11 Fiscal Year Audit for the San Elijo Joint Powers Authority;
and
2. Discuss and take action as appropriate.

DISCUSSION

The audit of the San Elijo Joint Powers Authority (SEJPA) for Fiscal Year 2010-11 has been completed and is presented to the SEJPA Board of Directors. The SEJPA auditor, Leaf & Cole, LLP, stated that the SEJPA's financial statements are in conformity with accounting principles generally accepted in the United States of America, as well as the accounting systems prescribed by the State Controller's Office and State Regulations governing Special Districts.

The first section of the audit is the management discussion and analysis. It presents financial highlights of SEJPA operations and budget variances for the year as well as a description of capital improvements and long-term debt obligations. In addition, a brief discussion is included regarding Fiscal Year 2011-12 budget, rates, and capital commitments.

The second section of the audit includes the financial statements and footnotes prepared by Leaf & Cole, LLP.


The third section includes supplemental schedules to compare the current financial statements to the prior year. This information is not required but is included to allow the reader to make comparisons to the prior year's operations.

Mr. Michael Zizzi, CPA, engagement partner for the audit, will give a verbal presentation to the Board of Directors summarizing the audit and answer any questions.

It is therefore recommended that the Board of Directors:

1. Accept and file the 2010-11 Fiscal Year Audit for the San Elijo Joint Powers Authority;
and
2. Discuss and take action as appropriate.

Respectfully submitted,



Gregory Lewis
Director of Finance/Administration

Attachment: 2010-11 San Elijo Joint Powers Authority Financial Statement Draft

SAN ELIJO JOINT POWERS AUTHORITY

FINANCIAL STATEMENTS

JUNE 30, 2011 AND 2010

DRAFT



Leaf & Cole, LLP
Certified Public Accountants

**SAN ELIJO JOINT POWERS AUTHORITY
FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

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Leaf & Cole, LLP
Certified Public Accountants
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Members
American Institute of Certified Public Accountants
California Society of Certified Public Accountants

Independent Auditor's Report

To the Board of Directors
San Elijo Joint Powers Authority
2695 Manchester Avenue
Cardiff by the Sea, California 92007

We have audited the accompanying balance sheet of the San Elijo Joint Powers Authority as of June 30, 2011 and the related statement of revenues, expenses, and changes in net assets and cash flows for the year then ended. These financial statements are the responsibility of San Elijo Joint Powers Authority's management. Our responsibility is to express an opinion on these financial statements based on our audit. The financial statements of the San Elijo Joint Powers Authority as of June 30, 2010 were audited by other auditors whose reported dated October 11, 2010 expressed an unqualified opinion on those financial statements.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the State Controller's Minimum Audit Requirements for California Special Districts. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and the significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of San Elijo Joint Powers Authority as of June 30, 2011, and the changes in its financial position and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America, as well as the accounting systems prescribed by the State Controller's office and state regulations governing Special Districts.

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 3 through 6 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historic context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. The supplementary comparative schedules of net assets, the comparative schedules of revenue, expenses, and changes in net assets and the operating budget comparison schedules are presented for purposes of additional analysis and are not a required part of the financial statements. The supplementary comparative schedules of net assets and comparative schedules of revenue, expenses, and changes in net assets are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole. The operating budget comparison schedules have not been subjected to the auditing procedures applied in the audit of the basic financial statements and, accordingly, we do not express an opinion or provide any assurance on them.

Leaf & Cole LLP

San Diego, California
October 12, 2011

DRAFT

MANAGEMENT'S DISCUSSION AND ANALYSIS

Our discussion and analysis of the San Elijo Joint Powers Authority's (SEJPA) financial performance provides an overview of the SEJPA's financial activities for the year ended June 30, 2011. Please read it in conjunction with the SEJPA's financial statements which begin on page 7.

Financial Statements

This discussion and analysis provides an introduction and a brief description of the SEJPA's financial statements, including the relationship of the statements to each other and the significant differences in the information they provide. The SEJPA's financial statements include four components:

- Balance Sheets
- Statements of Revenues, Expenses and Changes in Net Assets
- Statements of Cash Flows
- Notes to the Financial Statements

The balance sheets include all of the SEJPA's assets and liabilities, with the difference between the two reported as net assets. Net assets are displayed in three categories:

- Invested in Capital Assets, Net of Related Debt
- Restricted Net Assets
- Unrestricted Net Assets

The balance sheets provide the basis for evaluating the capital structure of the SEJPA and assessing its liquidity and financial flexibility.

The statement of revenues, expenses and changes in net assets present information which show how the SEJPA's net assets changed during the year. All of the current year's revenues and expenses are recorded when the underlying transaction occurs, regardless of the timing of the related cash flows. The statements of revenues, expenses and changes in net assets measure the success of the SEJPA's operations over the past year and determines whether the SEJPA has recovered its costs through operating revenues.

The statement of cash flows provides information regarding the SEJPA's cash receipts and cash disbursements during the year. This statement may report cash activity in four categories:

- Operating
- Investing
- Capital financing
- Noncapital financing

This statement differs from the statement of revenues, expenses and changes in net assets by only accounting for transactions that result in cash receipts or cash disbursements.

The notes to the financial statements provide a description of the accounting policies used to prepare the financial statements and present material disclosures required by generally accepted accounting principles that are not otherwise present in the financial statements.

MANAGEMENT'S DISCUSSION AND ANALYSIS

Financial Highlights

During the year ended June 30, 2011, the SEJPA's net assets increased by \$318,639 to \$35,896,478. The SEJPA's operating revenues decreased \$105,367 to \$5,532,177, while operating expenses decreased \$161,733 to \$5,705,292. For the year ended June 30, 2011, operating expenses exceeded operating revenues by \$173,115, nonoperating expenses of \$794,486 exceeded nonoperating revenues of \$636,624 by \$157,862, due primarily from interest expense including interest on the State Loan Payable exceeding interest revenues. Member agency assessment's decreased from \$693,725 in the prior year to \$649,616 in the current year.

Financial Analysis of the SEJPA

Net Assets - The SEJPA's net assets increased between fiscal years ending 2011 and 2010 from \$35,577,839 to \$35,896,478. Net assets invested in capital assets, net of related debt decreased \$300,370. While the SEJPA incurred capital costs related to the Recycled Water Storage Project and the Plant Electrical Improvements, these costs were more than offset by depreciation expense. The following is a summary of the SEJPA's balance sheet:

	<u>2011</u>	<u>2010</u>	<u>Change</u>
Assets:			
Current assets	\$ 8,722,017	\$ 8,121,779	\$ 600,238
Other noncurrent assets	12,698,577	13,781,737	(1,083,160)
Capital assets	<u>36,842,076</u>	<u>37,884,497</u>	<u>(1,042,421)</u>
Total Assets	<u>58,262,670</u>	<u>59,788,013</u>	<u>(1,525,343)</u>
Liabilities:			
Current liabilities	2,503,936	2,597,785	(93,849)
Noncurrent liabilities	<u>19,862,256</u>	<u>21,612,389</u>	<u>(1,750,133)</u>
Total Liabilities	<u>22,366,192</u>	<u>24,210,174</u>	<u>(1,843,982)</u>
Net Assets:			
Invested in capital assets, net of related debt	28,332,037	28,632,407	(300,370)
Restricted	630,000	630,000	-
Unrestricted	<u>6,934,441</u>	<u>6,315,432</u>	<u>619,009</u>
Total Net Assets	<u>\$ 35,896,478</u>	<u>\$ 35,577,839</u>	<u>\$ 318,639</u>

Change in Net Assets - SEJPA's operating loss decreased as a result of operating expenses decreasing more rapidly than operating revenues. Operating expenses decreased in several categories, the most significant being repair parts expense - sanitation, Gas & Electric - Reclamation and supplies chemicals. Approximately 52% of the SEJPA's operating revenues come from its member agencies and are billed according to actual expenditures incurred.

MANAGEMENT'S DISCUSSION AND ANALYSIS

Financial Analysis of the SEJPA (Continued)

The SEJPA's investment income decreased \$48,749 due to lower returns offered by LAIF and the lower balance on loans receivable. The following is a summary of the SEJPA's "Statement of Revenues, Expenses, and Changes in Net Assets":

	<u>2011</u>	<u>2010</u>	<u>Change</u>
Revenues:			
Operating Revenues:			
Operating contributions from members	\$ 2,918,956	\$ 3,042,674	\$ (123,718)
Charges to nonmember agencies	2,613,221	2,594,870	18,351
Total Operating Revenues	<u>5,532,177</u>	<u>5,637,544</u>	<u>(105,367)</u>
Investment income	612,466	661,215	(48,749)
Member agency assessments	649,616	693,725	(44,109)
Capital grants	-	117,477	(117,477)
Other nonoperating revenue	24,158	20,411	3,747
Total Revenues	<u>6,818,417</u>	<u>7,130,372</u>	<u>(311,955)</u>
Expenses:			
Operating expenses	5,705,292	5,867,025	(161,733)
Interest expense	794,486	855,421	(60,935)
Total Expenses	<u>6,499,778</u>	<u>6,722,446</u>	<u>(222,668)</u>
Increase (Decrease) in Net Assets	<u>\$ 318,639</u>	<u>\$ 407,926</u>	<u>\$ (89,287)</u>

Capital Assets

Capital assets include plant equipment, lab equipment, office equipment, vehicles and construction-in-progress. At June 30, 2011, the SEJPA had invested \$60,106,755 in capital assets net of \$23,264,679 of accumulated depreciation. This amount represents a net decrease (including additions and deductions) of \$1,042,421 from the prior year. Significant additions include the Recycled Water Storage Project and the Plant Electrical Improvements. Depreciation expense for the year ended June 30, 2011 totaled \$1,504,678.

	<u>2011</u>	<u>2010</u>	<u>Change</u>
Plant equipment	\$ 58,619,270	\$ 58,633,528	\$ (14,258)
Lab equipment	115,577	106,282	9,295
Office equipment	105,564	105,564	-
Vehicles	273,763	273,763	-
Construction-in-progress	992,581	553,204	439,377
Subtotal	<u>60,106,755</u>	<u>59,672,341</u>	<u>434,414</u>
Less: Accumulated Depreciation	<u>(23,264,679)</u>	<u>(21,787,844)</u>	<u>(1,476,835)</u>
Net Capital Assets	<u>\$ 36,842,076</u>	<u>\$ 37,884,497</u>	<u>\$ (1,042,421)</u>

MANAGEMENT'S DISCUSSION AND ANALYSIS

Noncurrent Liabilities

At June 30, 2011, the SEJPA had \$19,862,256 in noncurrent liabilities, a decrease of \$1,750,133 from the prior year. No new debt was issued during the years ended June 30, 2011 and 2010. The SEJPA is exploring the possibility of refinancing the Refunding Revenue Bonds, as well as the California Energy Commission note payable, and could borrow up to \$2 million for the Advanced Water Treatment Project. More detailed information about the SEJPA's long-term debt is presented in the notes to the financial statements.

Economic Factors

Consistent with the prior year, SEJPA's fiscal year 2011/12 sanitary fund operations and maintenance budget is \$3.9 million. The water reclamation budget is \$1.8 million, unchanged from a year ago. Sales of reclaimed water are budgeted to be approximately 1,000 acre feet in the upcoming year, a 25% decrease from a year ago. However, water rates have increased and, combined, will result in only a 9.7% decrease in revenues, or approximately \$0.2 million.

Contingency funding for each program area has been reviewed and budgeted on the basis of the potential for unforeseen events within each activity area. For all programs, the amount in contingency funding is \$0.2 million and remains unchanged from last year's budget levels.

The capital project program will have a budget of \$0.9 million during the upcoming year. This is for improvements to the wastewater program.

Costs of sanitary services are allocated on the basis of percentage of use, as indicated by measured flows, or level of effort, as appropriate. On the basis of connected equivalent dwelling units (EDU's) in December 2010, the services provided to the Member Agencies by the SEJPA for wastewater treatment is budgeted to cost approximately \$161 per EDU per year. For one water agency, water reclamation fees are based on 85% of the rate in effect in 2010 and increase by 5% each year. The Encinitas Ranch Golf Course pays a set annual fee regardless of the amount of water used. For the remaining water agencies, water reclamation fees are based on 85% of the local potable water rate. These fees are supplemented by incentives from the Metropolitan Water District and the San Diego County Water Authority.

Contacting the SEJPA's Financial Management

This financial report is designed to provide our citizens, taxpayers, customers, investors and creditors with a general overview of the SEJPA's finances and to demonstrate the SEJPA's accountability for the financial resources it manages. If you have questions about this report or need additional financial information, contact the San Elijo Joint Powers Authority, 2695 Manchester Avenue, Cardiff by the Sea, California, 92007, or call (760) 753-6203.

**SAN ELIJO JOINT POWERS AUTHORITY
BALANCE SHEETS
JUNE 30, 2011 AND 2010**

	ASSETS	
	<u>2011</u>	<u>2010</u>
<u>Current Assets:</u> (Notes 1, 2, 3 and 7)		
Cash and cash equivalents	\$ 7,171,781	\$ 6,677,683
Due from other government agencies	309,622	233,581
Accrued interest receivable	190,614	205,515
Current portion of loans receivable	<u>1,050,000</u>	<u>1,005,000</u>
Total Current Assets	<u>8,722,017</u>	<u>8,121,779</u>
 <u>Noncurrent Assets:</u> (Notes 1, 2, 4, 5, 6, 7 and 10)		
Restricted Assets:		
Cash and cash equivalents	650,818	647,180
Investments	<u>1,591,670</u>	<u>1,596,993</u>
Total Restricted Assets	<u>2,242,488</u>	<u>2,244,173</u>
Capital Assets, net	<u>36,842,076</u>	<u>37,884,497</u>
Other Assets:		
Retrofit loans receivable	146,089	177,564
Loans receivable, net of current portion	<u>10,310,000</u>	<u>11,360,000</u>
Total Other Assets	<u>10,456,089</u>	<u>11,537,564</u>
Total Noncurrent Assets	<u>49,540,653</u>	<u>51,666,234</u>
 TOTAL ASSETS	 <u>\$ 58,262,670</u>	 <u>\$ 59,788,013</u>

The accompanying notes are an integral part of the financial statements.

**SAN ELIJO JOINT POWERS AUTHORITY
BALANCE SHEETS (CONTINUED)
JUNE 30, 2011 AND 2010**

LIABILITIES AND NET ASSETS

	<u>2011</u>	<u>2010</u>
<u>Current Liabilities:</u> (Notes 1, 3, 8, 9, 10 and 11)		
Accounts payable	\$ 266,890	\$ 323,724
Accrued liabilities	31,201	128,082
Accrued interest payable	334,390	369,315
Due to other government agencies	81,769	51,521
Current portion of refunding revenue bonds	1,050,000	1,005,000
Current portion of state loan payable	652,047	636,143
Current portion of California Energy Commission note payable	87,639	84,000
Total Current Liabilities	<u>2,503,936</u>	<u>2,597,785</u>
<u>Noncurrent Liabilities:</u> (Notes 1, 5, 8, 9, 10, 11 and 12)		
Payable From Restricted Assets:		
Due to member agencies payable from restricted assets	<u>1,612,488</u>	<u>1,614,173</u>
Long-Term Debt:		
Refunding revenue bonds, net of current portion	10,310,000	11,360,000
State loan payable, net of current portion	6,653,084	7,305,131
California Energy Commission note payable	965,079	1,053,101
Total Long-Term Debt	<u>17,928,163</u>	<u>19,718,232</u>
Other Noncurrent Liabilities:		
Net OPEB Obligation	34,591	15,730
Accrued vacation and sick leave	287,014	264,254
Total Other Noncurrent Liabilities	<u>321,605</u>	<u>279,984</u>
Total Noncurrent Liabilities	<u>19,862,256</u>	<u>21,612,389</u>
Total Liabilities	<u>22,366,192</u>	<u>24,210,174</u>
<u>Commitments and Contingencies</u> (Notes 13 and 14)		
<u>Net Assets:</u>		
Net assets invested in capital assets, net of related debt	28,332,037	28,632,407
Restricted net assets	630,000	630,000
Unrestricted net assets	6,934,441	6,315,432
Total Net Assets	<u>35,896,478</u>	<u>35,577,839</u>
TOTAL LIABILITIES AND NET ASSETS	<u>\$ 58,262,670</u>	<u>\$ 59,788,013</u>

The accompanying notes are an integral part of the financial statements.

SAN ELIJO JOINT POWERS AUTHORITY
STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN NET ASSETS
FOR THE YEARS ENDED JUNE 30, 2011 AND 2010

	<u>2011</u>	<u>2010</u>
<u>Operating Revenues:</u>		
Charges of services or other government agencies	\$ 2,613,221	\$ 2,594,870
Contributions from City of Encinitas	1,574,600	1,666,882
Contributions from City of Solana Beach	1,344,356	1,375,792
Total Operating Revenue	<u>5,532,177</u>	<u>5,637,544</u>
<u>Operating Expenses:</u>		
Salaries and wages	2,551,669	2,515,977
Depreciation	1,504,678	1,516,231
Utilities	578,780	612,877
Contracted services	254,469	285,856
Miscellaneous	96,806	99,880
Supplies	237,748	269,828
Repair parts expense	165,251	225,063
Insurance	76,826	83,916
Permit/purveyor fees	53,071	76,528
Disposal services	185,994	180,869
Total Operating Expenses	<u>5,705,292</u>	<u>5,867,025</u>
Operating (Loss)	<u>(173,115)</u>	<u>(229,481)</u>
<u>Nonoperating Revenues (Expenses):</u>		
Investment income	612,466	661,215
Rental income	22,291	21,642
Gain on disposal of capital assets	-	(2,324)
Other	1,867	1,093
State grants	-	117,477
Interest expense	(794,486)	(855,421)
Total Nonoperating Revenues (Expenses)	<u>(157,862)</u>	<u>(56,318)</u>
(Loss) Before Contributions	<u>(330,977)</u>	<u>(285,799)</u>
<u>Capital Contributions:</u>		
Member agency assessments	649,616	693,725
Total Capital Contributions	<u>649,616</u>	<u>693,725</u>
Change in net assets	318,639	407,926
Net Assets at Beginning of Year	<u>35,577,839</u>	<u>35,169,913</u>
NET ASSETS AT END OF YEAR	<u><u>\$ 35,896,478</u></u>	<u><u>\$ 35,577,839</u></u>

The accompanying notes are an integral part of the financial statements.

**SAN ELIJO JOINT POWERS AUTHORITY
STATEMENTS OF CASH FLOWS
FOR THE YEARS ENDED JUNE 30, 2011 AND 2010**

	<u>2011</u>	<u>2010</u>
<u>Cash Flows From Operating Activities:</u>		
Receipts from customers	\$ 5,486,384	\$ 5,573,151
Payments to suppliers	(1,705,779)	(1,940,463)
Payments to employees	(2,606,929)	(2,473,264)
Cash Flows Provided by Operating Activities	<u>1,173,676</u>	<u>1,159,424</u>
<u>Cash Flows From Noncapital Financing Activities:</u>		
Proceeds from state grant	-	117,477
Rental and other nonoperating income	24,158	21,642
Net Cash Provided by Noncapital Financing Activities	<u>24,158</u>	<u>139,119</u>
<u>Cash Flows From Capital and Related Financing Activities:</u>		
Acquisition and construction of capital assets	(462,257)	(533,604)
Proceeds from sale of capital assets	-	4,144
Principal paid on long-term debt	(1,725,526)	(1,642,027)
Interest paid on long-term debt	(829,411)	(911,523)
Member agency assessments	649,616	693,725
Net Cash Used in Capital and Related Financing Activities	<u>(2,367,578)</u>	<u>(2,389,285)</u>
<u>Cash Flows From Investing Activities:</u>		
Purchase of investments	(7,984,373)	(7,982,173)
Proceeds from maturity of investments	7,989,696	7,996,858
Investment income received	627,367	680,767
Proceeds from loans receivable	1,005,000	965,000
Proceeds of retrofit loans receivable, net	31,475	5,012
Increase in due to member agencies payable from restricted assets	(1,685)	(13,547)
Net Cash Provided by Investing Activities	<u>1,667,480</u>	<u>1,651,917</u>
Net Increase in Cash and Cash Equivalents	497,736	561,175
Cash and Cash Equivalents at Beginning of Year	<u>7,324,863</u>	<u>6,763,688</u>
CASH AND CASH EQUIVALENTS AT END OF THE YEAR	<u><u>\$ 7,822,599</u></u>	<u><u>\$ 7,324,863</u></u>

(Continued)

The accompanying notes are an integral part of the financial statements.

**SAN ELIJO JOINT POWERS AUTHORITY
STATEMENTS OF CASH FLOWS (CONTINUED)
FOR THE YEARS ENDED JUNE 30, 2011 AND 2010**

	<u>2011</u>	<u>2010</u>
<u>Cash and Cash Equivalents -</u>		
<u>Financial Statement Classification:</u>		
Cash and cash equivalents	\$ 7,171,781	\$ 6,677,683
Restricted cash and cash equivalents	650,818	647,180
	<u>\$ 7,822,599</u>	<u>\$ 7,324,863</u>
<u>Reconciliation of Operating Income (Loss) to</u>		
<u>Net Cash Provided by Operating Activities:</u>		
Operating income (loss)	\$ (173,115)	\$ (229,481)
Adjustments to reconcile operating income (loss) to		
net cash provided by operating activities:		
Depreciation	1,504,678	1,516,231
Change in assets and liabilities:		
Due from other government agencies	(76,041)	(64,393)
Accounts payable	(56,834)	(49,766)
Accrued liabilities	(96,881)	46,831
Due to other government agencies	30,248	(102,711)
Net OPEB obligation	18,861	-
Accrued vacation and sick leave	22,760	42,713
Net Cash Provided by Operating Activities	<u>\$ 1,173,676</u>	<u>\$ 1,159,424</u>

The accompanying notes are an integral part of the financial statements.

**SAN ELIJO JOINT POWERS AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

Note 1 - Organization and Significant Accounting Policies:

Organization

The San Elijo Joint Powers Authority (SEJPA) was established on June 17, 1987 with the power to own, operate, maintain and upgrade the San Elijo Water Reclamation Facility (WRF) through an agreement between the Cardiff Sanitation District (Cardiff) and the Solana Beach Sanitation District (Solana Beach)(the member agencies). The SEJPA which is governed by a board consisting of four members, two from each member agency; serves as a wastewater treatment facility for the member agencies as well as portions of Rancho Santa Fe Community Services District, Improvement Areas 2 and 3, and portions of the City of San Diego. On July 1, 1990, the City of Solana Beach succeeded to the powers and responsibilities of the Solana Beach Sanitation District; and on October 18, 2001, the City of Encinitas succeeded to the powers and responsibilities of the Cardiff Sanitation District.

Under the agreement establishing the SEJPA, Cardiff retained its right to 56% of the available treatment capacity of the plant, and Solana Beach retained its right to the remaining 44%. In May 1989 through an agreement between the SEJPA and the member agencies to upgrade and expand the WRF; Solana Beach paid Cardiff \$750,680 to increase its ownership percentage and capacity rights to 50%.

To finance the upgrade of the WRF from primary to secondary treatment, the SEJPA issued the San Elijo Joint Powers Authority 1990 Revenue Bonds. These bonds were refinanced in 1993 and again in 2003 through issuance of the San Elijo Joint Powers Authority 2003 Refunding Revenue Bonds in the amount of \$18,640,000. The portion of these bonds attributable to each member agency differs from the 50% ownership share due to the refunding of prior indebtedness as well as different equity contributions at the time of the issuance of the prior bonds.

In 1998 the SEJPA began construction of tertiary treatment, reclamation storage facilities, and a reclaimed water distribution system. This project was supported by \$12,633,522 from the State Revolving Fund loan program and \$4,214,788 in Bureau of Reclamation grant funding.

The SEJPA and the City of Escondido are joint owners and users, 21% and 79% respectively, of the San Elijo Ocean Outfall which is generally comprised of a regulator station and piping extending from an on-shore location out into the ocean.

The criteria used in determining the scope of the reporting entity is based on the provisions of GASB Statement 14, as amended by GASB Statement 39. The SEJPA is the primary government unit. Component units are those entities which are financially accountable to the primary government, either because the SEJPA appoints a voting majority of the component units board, or because the component unit will provide a financial benefit or imposed a financial burden on the SEJPA. The SEJPA has no component units.

Significant Accounting Policies

A summary of the SEJPA's significant accounting policies consistently applied in the preparation of the accompanying financial statements follows:

Method of Accounting

The SEJPA utilizes accounting principles appropriate for an enterprise fund to record its activities. Accordingly the balance sheets and the statements of revenues, expenses, and changes in net assets have been prepared using the economic resources measurement focus and the accrual basis of accounting.

**SAN ELIJO JOINT POWERS AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

Note 1 - Organization and Accounting Policies: (Continued)

Significant Accounting Policies (Continued)

Method of Accounting (Continued)

The SEJPA has not elected to apply the option allowed in paragraph 7 of the GASB Statement No. 20 “Accounting and Financial Reporting for Proprietary Activities” and, as a consequence, will continue to apply GASB statements and interpretations.

Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Accordingly, actual results could differ from those estimates.

Revenue Recognition

The SEJPA recognizes revenue from charges to its members and other government agencies when they are earned. Operating activities generally result from providing services and producing and delivering goods. As such, the SEJPA considers amounts received from reclaimed water sales and wastewater treatment to be operating revenues.

Investments

Investments are stated at their fair value which represents the quoted or stated market value. Investments that are not traded on a market, such as investments in external pools, are valued based upon the stated fair value as represented by the external pool.

Allowance for Doubtful Accounts

Management believes that all accounts receivable were fully collectible; therefore no allowance for doubtful accounts was recorded as of June 30, 2011 and 2010.

Capital Assets

Capital assets purchased or acquired with a cost exceeding \$2,000 and an estimated useful life of more than one year are reported at historical cost. Contributed assets are recorded at fair market value as of the date received. Additions, improvements and other capital outlays that significantly extend the useful life of an asset are capitalized. Other costs incurred for repairs and maintenance are expensed as incurred. Depreciation is calculated on the straight-line method over the following estimated useful lives:

Plant equipment	5 - 50 years
Lab equipment	5 - 40 years
Office equipment	5 - 20 years
Vehicles	5 years

Depreciation aggregated \$1,504,678 and \$1,516,231 for the years ended June 30, 2011 and 2010, respectively.

**SAN ELIJO JOINT POWERS AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

Note 1 - Organization and Accounting Policies: (Continued)

Significant Accounting Policies (Continued)

Interest

The SEJPA incurred interest charges on long-term debt. No interest was capitalized as a cost of construction for the years ended June 30, 2011 and 2010.

Classification of Liabilities

Certain liabilities which are currently payable have been classified as noncurrent because they will be funded from restricted assets.

Compensated Absences

Accumulated and unpaid vacation and sick-leave totaling \$287,014 and \$264,254 is accrued when incurred and included in noncurrent liabilities at June 30, 2011 and 2010, respectively.

Risk Management

The SEJPA is a member of the California Sanitation Risk Management Authority (CSRMA). CSRMA is a risk-pooling self-insurance authority created under provisions of California Government Code Sections 6500 et. seq. The purpose of CSRMA is to arrange and administer programs of insurance for the pooling of self-insured losses and to purchase excess insurance coverage. Each insured agency pays for its proportionate share of its individually contracted insurance coverage and consulting services. At June 30, 2011, the SEJPA participated in the programs of CSRMA as follows:

Municipal Liability Including Personal Injury, Property Damage, Public Officials Errors and Omissions, Automobile Liability and Employment Practices Liability - The liability shared risk program provides up to \$47 million per occurrence and in aggregate. SANDPIPA is self-insured up to \$2 million and excess insurance coverage has been purchased with a \$100,000 member self-insurance retention.

Property Damage - \$1,000,000,000 shared loss limit per occurrence with a \$25,000 deductible. Coverage includes: all risk property coverage, mobile equipment, auto physical damage and boiler and machinery. The SEJPA has elected a \$10,000 to \$350,000 deductible for boiler and machinery coverage depending on the size of the machinery.

Faithful Performance/Employee Dishonesty Bond - Insured up to \$10 million with a \$25,000 deductible. Coverage includes: employee dishonesty, faithful performance forgery or alteration, computer fraud, money and securities theft, disappearance and destruction.

The SEJPA participates in the worker's compensation program of the California Sanitation Risk Management Authority (CSRMA), a public entity risk pool, which provides coverage up to \$750,000 with no deductible.

The SEJPA pays annual premiums for this coverage. They are subject to retrospective adjustments based on claims experienced. The nature and amounts of the adjustments cannot be estimated and are charged to expense as invoiced. The SEJPA's insurance expense totaled \$76,826 and \$83,916 for the years ended June 30, 2011 and 2010, respectively. There were no instances in the past three years where a settlement exceeded the SEJPA's coverage.

**SAN ELIJO JOINT POWERS AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

Note 1 - Organization and Accounting Policies: (Continued)

Significant Accounting Policies (Continued)

Economic Dependency

The SEJPA received approximately 52% and 54% of its operating revenues from its member agencies for the years ended June 30, 2011 and 2010, respectively.

Cash and Cash Equivalents

For purposes of the statement of cash flows the SEJPA considers all investment instruments purchased with a maturity of three months or less to be cash.

Subsequent Events

In preparing these financial statements, the SEJPA has evaluated events and transactions for potential recognition or disclosure through October 12, 2011, the date the financial statements were available to be issued.

Reclassification

The SEJPA has reclassified certain prior year information to conform with the current year presentation.

Note 2 - Cash and Investments:

Investments Authorized by the California Government Code and the SEJPA's Investment Policy

The table below identifies the investment types that are authorized for the SEJPA by the California Government Code. The table also identifies certain provisions of the California Government Code that address interest rate risk, and concentration of credit risk. This table does not address investments of debt proceeds held by bond trustees that are governed by the provisions of debt agreements of the SEJPA, rather than the general provision of the California Government Code or the SEJPA's investment policy:

<u>Authorized Investment Type</u>	<u>Maximum Maturity</u>	<u>Maximum Percentage of Portfolio</u>	<u>Quality Requirements</u>
Local Agency Bonds	5 years	None	None
U.S. Treasury Obligations	5 years	None	None
State Obligations	5 years	None	None
CA Local Agency Obligations	5 years	None	None
U.S. Agency Securities	5 years	None	None
Bankers Acceptances	180 days	40%	None
Commercial Paper	270 days	25%	AI
Negotiable Certificates of Deposit	5 years	30%	None
Repurchase Agreements	1 year	None	None
Reverse Repurchase Agreements	92 days	20%	None
Medium-Term Notes	5 years	30%	A Rating

**SAN ELIJO JOINT POWERS AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

Note 2 - Cash and Investments: (Continued)

Investments Authorized by the California Government Code and the SEJPA's Investment Policy (Continued)

<u>Authorized Investment Type</u>	<u>Maximum Maturity</u>	<u>Maximum Percentage of Portfolio</u>	<u>Quality Requirements</u>
Mutual Funds	N/A	20%	Multiple
Money Market Mutual Funds	N/A	20%	Multiple
Collateralized Bank Deposits	5 years	None	None
Mortgage Pass-Through Securities	5 years	20%	AA
Time Deposits	5 years	None	None
California Local Agency Investment Fund (LAIF)	N/A	None	None

The SEJPA's Investment Policy is more restrictive than the California Government Code. The SEJPA may invest in the California Local Agency Investment Fund and the San Diego County Pooled Money Investment account. Open ended money market mutual funds and U.S. Agency Securities are being held by the bond trustee.

Cash and investments held by the SEJPA were comprised of the following at June 30:

	<u>Maturity in Years</u>		<u>2010 Total</u>
	<u>1 Year or Less</u>	<u>2011 Total</u>	
Cash on hand	\$ 200	\$ 200	\$ 200
California Local Agency Investment Fund (LAIF)	7,669,570	7,669,570	7,183,573
Deposits with financial institutions	132,011	132,011	123,916
Open ended money market mutual funds	20,818	20,818	17,174
Investments:			
U.S. Agency Securities	1,591,670	1,591,670	1,596,993
Total Cash and Investments	<u>\$ 9,414,269</u>	<u>\$ 9,414,269</u>	<u>8,921,856</u>
Financial Statement Classification:			
Current:			
Cash and cash equivalents		\$ 7,171,781	\$ 6,677,683
Restricted:			
Cash and cash equivalents		650,818	647,180
Investments		1,591,670	1,596,993
Total Cash and Investments		<u>\$ 9,414,269</u>	<u>\$ 8,921,856</u>

Disclosures Relating to Interest Rate Risk

Interest rate risk is the risk that changes in market interest rates will adversely affect the fair value of an investment. Generally, the longer the maturity of an investment, the greater the sensitivity of its fair value to changes in market interest rates. One of the ways that the SEJPA manages its exposure to interest rate risk is by purchasing shorter term investments so that a portion of the portfolio is maturing over time as necessary to provide the cash flows and liquidity needed for operations.

Information about the sensitivity of the fair values of the SEJPA's investments (including investments held by the bond trustee) to market interest rate fluctuations is provided in the previous table that shows the distribution of the SEJPA's investments by maturity as of June 30, 2011.

**SAN ELIJO JOINT POWERS AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

Note 2 - Cash and Investments: (Continued)

Disclosures Relating to Credit Risk

Generally, credit risk is the risk that an issuer of an investment will not fulfill its obligation to the holder of the investment. This is measured by the assignment of a rating by a nationally recognized statistical rating organization. Presented below is the actual rating as of the year end for each investment type:

	Rating as of Year End Standard & Poor's
Open Ended Money Market Mutual Funds	Not Rated
LAIF	Not Required
U.S. Agency Securities	AAA

Concentration of Credit Risk

Concentration of credit is the risk of loss attributed to the magnitude to the SEJPA's investment in a single issue.

The investment policy of the SEJPA contains no limitations on the amount that can be invested in any one issuer beyond that stipulated by the California Government Code. Investments in any one issuer (other than U.S. Treasury securities, mutual funds, and external investment pools) that represent 5% or more of total SEJPA investments are as follows:

<u>Issuer</u>	<u>Investment Type</u>	<u>2011</u>	<u>2010</u>
Federal National Mortgage Association	U.S. Agency Security	\$ <u>1,591,670</u>	\$ <u>1,596,993</u>

Custodial Credit Risk

Custodial credit risk for deposits is the risk that, in the event of the failure of a depository financial institution, the SEJPA will not be able to recover its deposits or will not be able to recover collateral securities that are in the possession of an outside party. The custodial credit risk for investments is the risk that, in the event of the failure of the counter-party (e.g., broker-dealer) the SEJPA will not be able to recover the value of its investment or collateral securities that are in the possession of another party. The California Government Code and the SEJPA's investment policy do not contain legal or policy requirements that would limit the exposure to custodial credit risk for deposits or investments, other than the following provision for deposits: The California Government Code requires that a financial institution secure deposits made by state or local governmental units by pledging securities in an undivided collateral pool held by a depository regulated under state law (unless so waived by the governmental unit). The market value of the pledged securities in the collateral pool must equal at least 110% of the total amount deposited by the public agencies. California law also allows financial institutions to secure SEJPA deposits by pledging first trust deed mortgage notes having a value of 150% of the secured public deposits.

As of June 30, 2011, none of the SEJPA's deposits with financial institutions in excess of federal depository insurance limits were held in uncollateralized accounts. As of June 30, 2011, no SEJPA investments were held by the same broker-dealer (counterparty) that was used by the SEJPA to buy the securities.

**SAN ELIJO JOINT POWERS AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

Note 2 - Cash and Investments: (Continued)

Investment in State Investment Pool

The SEJPA is a voluntary participant in the Local Agency Investment Fund (LAIF) that is regulated by California Government Code under the oversight of the Treasurer of the State of California. The fair value of the SEJPA's investment in this pool is reported in the accompanying financial statements at amounts based upon the SEJPA's pro-rata share of the fair value provided by LAIF for the entire LAIF portfolio (in relation to the amortized cost of that portfolio). The balance available for withdrawal is based on the accounting records maintained by LAIF, which are recorded on an amortized cost basis.

The statements of cash flows have been prepared by considering all investment instruments purchased with a maturity of three months or less to be cash equivalents. Following is a detail:

	<u>2011</u>	<u>2010</u>
California Local Agency Investment Fund (LAIF)	\$ 7,669,570	\$ 7,183,573
Deposits with Financial Institutions	132,011	123,916
Open Ended Money Market Mutual Funds	20,818	17,174
Cash on Hand	200	200
Total	<u>\$ 7,822,599</u>	<u>\$ 7,324,863</u>

Note 3 - Due From Other Government Agencies:

The SEJPA provides reclaimed water and wastewater treatment to a variety of governmental agencies within the San Diego County. The following is a detail of amounts owed to/from the SEJPA by these agencies as of June 30:

	<u>2011</u>	<u>2010</u>
Rancho Santa Fe CSD No. 2 and No. 3	\$ 98,545	\$ 6,448
Santa Fe Irrigation District	77,235	89,850
San Diego County Water Authority	67,770	63,855
Encinitas Ranch	32,500	-
City of Del Mar	23,449	22,736
City of Solana Beach	9,016	27,128
Other	(877)	(2,916)
San Dieguito Water District	(22,644)	21,642
City of Escondido	(57,141)	(46,683)
Total	<u>\$ 227,853</u>	<u>\$ 182,060</u>

Financial Statement Classification:

Due from other government agencies	\$ 309,622	\$ 233,581
Due to other government agencies	(81,769)	(51,521)
Total	<u>\$ 227,853</u>	<u>\$ 182,060</u>

**SAN ELIJO JOINT POWERS AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

Note 4 - Restricted Assets:

Restricted assets were provided by and are to be used for the following at June 30:

<u>Funding Source</u>	<u>Use</u>	<u>2011</u>	<u>2010</u>
Debt proceeds and interest earned	Debt service - Encinitas	\$ 1	\$ 2
Debt proceeds and interest earned	Debt service - Solana Beach	1	4
Debt proceeds and interest earned	Debt reserves	1,612,486	1,614,167
Receipts from customers	State loan reserve requirement	630,000	630,000
		<u>\$ 2,242,488</u>	<u>\$ 2,244,173</u>

When both restricted and unrestricted resources are available for use, it is the SEJPA's policy to use restricted resources first, and then unrestricted resources as necessary.

Note 5 - Capital Assets:

Capital assets consist of the following at June 30:

	<u>2011</u>			
	<u>Balance at June 30, 2010</u>	<u>Additions</u>	<u>Deletions</u>	<u>Balance at June 30, 2011</u>
Capital Assets Not Being Depreciated:				
Construction in progress	\$ 553,204	\$ 463,840	\$ (24,463)	\$ 992,581
Capital Assets Being Depreciated:				
Plant equipment	58,633,528	9,712	(23,970)	58,619,270
Lab equipment	106,282	13,168	(3,873)	115,577
Office equipment	105,564	-	-	105,564
Vehicles	273,763	-	-	273,763
	<u>59,119,137</u>	<u>22,880</u>	<u>(27,843)</u>	<u>59,114,174</u>
Less: Accumulated depreciation	(21,787,844)	(1,504,678)	27,843	(23,264,679)
Net Capital Assets Being Depreciated	<u>37,331,293</u>	<u>(1,481,798)</u>	<u>-</u>	<u>35,849,495</u>
Net Capital Assets	<u>\$ 37,884,497</u>	<u>\$ (1,017,958)</u>	<u>\$ (24,463)</u>	<u>\$ 36,842,076</u>
	<u>2010</u>			
	<u>Balance at June 30, 2009</u>	<u>Additions</u>	<u>Deletions</u>	<u>Balance at June 30, 2010</u>
Capital Assets Not Being Depreciated:				
Construction in progress	\$ 465,931	\$ 437,490	\$ (350,217)	\$ 553,204
Capital Assets Being Depreciated:				
Plant equipment	58,234,878	418,544	(19,894)	58,633,528
Lab equipment	138,678	7,398	(39,794)	106,282
Office equipment	103,981	20,390	(18,807)	105,564
Vehicles	273,763	-	-	273,763
	<u>58,751,300</u>	<u>446,332</u>	<u>(78,495)</u>	<u>59,119,137</u>
Less: Accumulated depreciation	(20,345,964)	(1,516,231)	74,351	(21,787,844)
Net Capital Assets Being Depreciated	<u>38,405,336</u>	<u>(1,069,899)</u>	<u>(4,144)</u>	<u>37,331,293</u>
Net Capital Assets	<u>\$ 38,871,267</u>	<u>\$ (632,409)</u>	<u>\$ (354,361)</u>	<u>\$ 37,884,497</u>

**SAN ELIJO JOINT POWERS AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

Note 6 - Retrofit Loans Receivable:

The SEJPA has entered into agreements with certain reclaimed water users whereby the SEJPA reimbursed the reclaimed water users for reasonable costs incurred for the retrofitting of the water user's facilities in order for them to accept and use reclaimed water for nonpotable purposes. The water users agreed to repay the SEJPA the aggregate amount of the retrofit work together with interest ranging from 3.5% to 4.5%. Reclaimed water is purchased at the potable water rate with the difference between the two rates being considered repayment of the reimbursed costs with the payment first applied to interest. Retrofit loans receivable consist of the following at June 30:

	<u>2011</u>	<u>2010</u>
22 nd District Agricultural Association	\$ 118,959	\$ 125,800
Cardiff Cove Homeowners Association	18,857	22,007
Ocean Knoll Elementary School	-	20,568
Oak Crest Park	8,273	9,189
Total	\$ 146,089	\$ 177,564

Note 7 - Loans Receivable:

On April 1, 2003 the City of Encinitas and the City of Solana Beach entered into the second amendment and restated loan agreements with the SEJPA. The loan agreements amended and restated the loan agreements dated March 1, 1990 and restated March 15, 1993. The loans bear interest from 2% - 5%. Principal and interest are payable semi-annually four days prior to each September 1 and March 1 each year, along with interest earnings on the reserve funds in order to provide the SEJPA with sufficient funds to service the debt on the Refunding Revenue Bonds. (See Note 9) Loans receivable consist of the following at June 30:

	<u>2011</u>	<u>2010</u>
City of Solana Beach	\$ 6,125,000	\$ 6,595,000
City of Encinitas	5,235,000	5,770,000
Subtotal	11,360,000	12,365,000
Less current portion	(1,050,000)	(1,050,000)
Total	\$ 10,310,000	\$ 11,360,000

Note 8 - Noncurrent Liabilities:

Noncurrent liabilities consist of the following at June 30:

	2011					
	Balance June 30, 2010	Additions	Deletions	Balance June 30, 2011	Due within one year	Due after one year
Payable from Restricted Assets:						
Due to member agencies payable from restricted assets	\$ 1,614,173	\$ -	\$ (1,685)	\$ 1,612,488	\$ -	\$ 1,612,488
Long-Term Debt:						
Refunding Revenue Bonds (Note 9)	12,365,000	-	(1,005,000)	11,360,000	1,050,000	10,310,000
State Loan Payable (Note 10)	7,941,274	-	(636,143)	7,305,131	652,047	6,653,084
California Energy Commission Note Payable (Note 11)	1,137,101	-	(84,383)	1,052,718	87,639	965,079
Total Long-Term Debt	21,443,375	-	(1,725,526)	19,717,849	1,789,686	17,928,163

(Continued)

**SAN ELIJO JOINT POWERS AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

Note 8 - Noncurrent Liabilities: (Continued)

	2011					
	Balance June 30, 2010	Additions	Deletions	Balance June 30, 2011	Due within one year	Due after one year
Other Noncurrent Liabilities:						
Net OPEB Obligation (Note 12)	15,730	22,275	(3,414)	34,591	-	34,591
Accrued Vacation and Sick Leave (Note 1)	264,254	22,760	-	287,014	-	287,014
Total Other Noncurrent Liabilities	<u>279,984</u>	<u>45,035</u>	<u>(3,414)</u>	<u>321,605</u>	<u>-</u>	<u>321,605</u>
Total Noncurrent Liabilities	<u>\$ 23,337,532</u>	<u>\$ 45,035</u>	<u>\$ (1,730,625)</u>	<u>\$ 21,651,942</u>	<u>\$ 1,789,686</u>	<u>\$ 19,862,256</u>

	2010					
	Balance June 30, 2009	Additions	Deletions	Balance June 30, 2010	Due within one year	Due after one year
Payable from Restricted Assets:						
Due to member agencies payable from restricted assets	\$ 1,627,720	\$ -	\$ (13,547)	\$ 1,614,173	\$ -	\$ 1,614,173
Long-Term Debt:						
Refunding Revenue Bonds (Note 9)	13,330,000	-	(965,000)	12,365,000	1,005,000	11,360,000
State Loan Payable (Note 10)	8,561,902	-	(620,628)	7,941,274	636,143	7,305,131
California Energy Commission Note Payable (Note 11)	1,193,500	-	(56,399)	1,137,101	84,000	1,053,101
Total Long-Term Debt	<u>23,085,402</u>	<u>-</u>	<u>(1,642,027)</u>	<u>21,443,375</u>	<u>1,725,143</u>	<u>19,718,232</u>
Other Noncurrent Liabilities:						
Net OPEB Obligation (Note 12)	-	18,330	(2,600)	15,730	-	15,730
Accrued Vacation and Sick Leave (Note 1)	221,541	42,713	-	264,254	-	264,254
Total Other Noncurrent Liabilities	<u>221,541</u>	<u>61,043</u>	<u>(2,600)</u>	<u>279,984</u>	<u>-</u>	<u>279,984</u>
Total Noncurrent Liabilities	<u>\$ 24,934,663</u>	<u>\$ 61,043</u>	<u>\$ (1,658,174)</u>	<u>\$ 23,337,532</u>	<u>\$ 1,725,143</u>	<u>\$ 21,612,389</u>

Note 9 - 2003 Refunding Revenue Bonds:

In April 2003, the SEJPA issued the 2003 Revenue Refunding Bonds in the amount of \$18,640,000 for the purpose of refunding its \$22,565,000 1993 Refunding Revenue Bonds, the proceeds of which had been loaned to its two member agencies to finance the upgrade and expansion of the water pollution control facility. (See Note 7)

The 2003 Refunding Revenue Bonds are payable in annual principal installments ranging from \$845,000 to \$1,515,000 through March 1, 2020. Interest payments are due semiannually on September 1, and March 1. Interest rates on the bonds range from 2% to 5%. The 2003 Refunding Revenue Bonds outstanding total \$11,360,000 and \$12,365,000 at June 30, 2011 and 2010, respectively. The member agencies have covenanted to make payments of loan installments in each year from net revenues derived from the operation of each Agency's respective wastewater collection system.

Debt service requirements on the 2003 Refunding Revenue Bonds are as follows:

	Principal	Interest
2012	\$ 1,050,000	\$ 546,600
2013	1,090,000	504,600
2014	1,135,000	461,000
2015	1,190,000	404,250
2016	1,245,000	344,750
2017-2020	5,650,000	647,500
	<u>\$ 11,360,000</u>	<u>\$ 2,908,700</u>

**SAN ELIJO JOINT POWERS AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

Note 10 - State Loan Payable:

In March 1988, the SEJPA entered into an agreement with the State Water Resources Control Board for funding of the San Elijo Water Reclamation System. The loan was funded through the State Revolving Fund loan program administered by the State of California in the amount of \$12,633,522. The State Revolving Fund loan program provides funding for water reclamation projects at a reduced interest rate of 2.5%. The state loan payable outstanding total \$7,305,131 and \$7,941,274 at June 30, 2011 and 2010, respectively. The San Elijo Water Reclamation Project represented the construction of tertiary treatment, operational storage facilities, effluent pump stations and a reclaimed water distribution system. Annual loan repayments are made by the SEJPA in the amount of \$834,675 and continue through August 2020. The SEJPA has agreed to maintain a dedicated source of revenue sufficient to provide reasonable assurance of repayment of the loan.

The terms of the state loan payable require the SEJPA to place \$63,000 into a reserve fund each year for ten (10) years, beginning with the issuance of the loan. The reserve fund balance was \$630,000 and \$630,000 as of June 30, 2011 and 2010, respectively.

Debt service requirements on the State Loan Payable are as follows:

	<u>Principal</u>	<u>Interest</u>
2012	652,047	182,628
2013	668,348	166,327
2014	685,057	149,618
2015	702,183	132,492
2016	719,738	114,937
2017-2021	3,877,758	295,617
	<u>\$ 7,305,131</u>	<u>\$ 1,041,619</u>

Note 11 - California Energy Commission Note Payable:

In December 2007, the SEPJA entered into an unsecured promissory note with the California Energy Resources Conservation and Development Commission (California Energy Commission) in the maximum amount of \$1,193,500. Interest accrues at 3.95% on the unpaid principal balance and is payable in 24 semi-annual payments of principal and interest beginning on or before December 22nd of the fiscal year following the year in which the Project is completed. The California Energy Commission note payable outstanding total \$1,052,718 and \$1,137,101 at June 30, 2011 and 2010, respectively.

Debt service requirements on the California Energy Commission note payable are as follows:

	<u>Principal</u>	<u>Interest</u>
2012	87,639	40,837
2013	91,244	37,232
2014	94,884	33,592
2015	98,669	29,807
2016	102,537	25,939
2017-2021	577,746	34,593
	<u>\$ 1,052,719</u>	<u>\$ 202,000</u>

**SAN ELIJO JOINT POWERS AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

Note 12 - Postretirement Benefits:

Plan Description

The SEJPA provides medical insurance benefits to eligible retirees and their spouses in accordance with various labor agreements. The SEJPA pays up to the entire cost of health benefits for eligible retirees and their spouses until age 55 subject to the SEJPA's vesting schedule. After age 65, the SEJPA pays up to \$108 per month for any health coverage, also subject to the vesting schedule.

Funding Policy and Annual OPEB Costs

The contribution requirements of the SEJPA are established and may be amended annually by the Board of Directors. The SEJPA's annual other post-employment benefit (OPEB) cost (expense) for the Plan is calculated based on the annual required contribution of the SEJPA (ARC), an amount actuarially determined in accordance with the parameters of GASB Statement No. 45. The ARC represents a level of funding that, if paid on an ongoing basis, is projected to cover normal costs each year and to amortize any unfunded actuarial liabilities (or funding excess) over a period not to exceed twenty years. The SEJPA's Board of Directors has established a policy of funding the ARC on a pay as you go basis. The current ARC rate is 15.33% of annual covered payroll. The following table shows the components of the SEJPA's annual OPEB cost, the amount actually contributed to the Plan including benefits paid to retirees, and changes in the SEJPA's net OPEB obligation for the years ended June 30:

	<u>2011</u>	<u>2010</u>
Annual required contribution	\$ 19,894	\$ 18,330
Interest on net OPEB obligation	2,399	-
Adjustment to annual required contribution	(18)	-
Annual OPEB cost	22,275	18,330
Contributions (including benefits paid)	(3,414)	(2,600)
Increase in net OPEB obligation	18,861	15,730
Net OPEB obligation - Beginning of Year	15,730	-
Net OPEB obligation - End of Year	\$ 34,591	\$ 15,730

The SEJPA's annual OPEB cost, the percentage of annual OPEB cost contributed to the Plan, and the net OPEB obligation for 2011 and the two preceding years were as follows:

Fiscal Year	Annual OPEB Cost	Percentage of ARC Contributed	Net Pension Obligation
June 30, 2009	\$ N/A	N/A	\$ N/A
June 30, 2010	18,330	14.18%	15,730
June 30, 2011	22,275	15.33%	34,591

Funding Status and Funding Progress

As of June 30, 2011, the most recent actuarial valuation date, the Plan was not yet funded. The SEJPA's actuarial accrued liability for benefits at June 30, 2011 was \$149,480 and the covered payroll (annual payroll of active employees covered by the Plan) was \$1,623,768, with a ratio of the UAAL to the covered payroll of 9.21%. The normal cost payments made during the year of \$3,414 funded 15.33% of the annual required contribution (ARC) leaving an unfunded actuarial liability (UAAL) of \$149,480 and a funded ration of -0-%.

**SAN ELIJO JOINT POWERS AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

Note 12 - Postretirement Benefits: (Continued)

Funding Status and Funding Progress (Continued)

Actuarial Valuation Date	Actuarial Value of Assets (A)	Actuarial Liability Entry Age (B)	Unfunded AAL (UAAL) (B-A)	Funded Status (A/B)	Covered Payroll (C)	UAAL as a Percentage of Covered Payroll [(B-A)/C]
June 30, 2009	\$ N/A	\$ N/A	\$ N/A	N/A	\$ N/A	N/A
June 30, 2010	-	98,075	98,075	N/A	1,506,130	6.52%
June 30, 2011	-	149,480	149,480	0.0%	1,623,768	9.21%

Actuarial valuations of an ongoing Plan involve estimates of the value of reported amounts and assumptions about the probability of occurrence of events far into the future. Examples include assumptions about future employment, mortality, and the healthcare cost trend. Amounts determined regarding the funded status of the Plan and the annual required contributions of the employer are subject to continual revision as actual results are compared with past expectations and new estimates are made about the future. The schedule of funding progress presents multiyear trend information that shows whether the actuarial value of Plan assets is increasing or decreasing over time relative to the actuarial accrued liabilities for benefits.

Actuarial Methods and Assumptions

Projections of benefits for financial reporting purposes are based on the formal Plan document and include the types of benefits provided at the time of each valuation and the historical pattern of sharing benefits and costs between employer and plan members to that point. The actuarial methods and assumptions used include techniques that are designed to reduce the effects of short-term volatility in actuarial accrued liabilities and the actuarial assets, consistent with the long-term perspective of the calculations.

The actuarial cost method used for determining the benefits obligations is the Entry Age Normal Actuarial Cost Method. The actuarial assumptions included a 7.75% discount rate, which assumes the SEJPA continues to maintain the retiree health benefits program as an unfunded plan. The amount represents the present value of all contributions for retiree health benefits projected to be paid by the SEJPA for current and future retirees; and an annual healthcare cost trend rate of 4%. The UAAL is being amortized as a level percentage of projected payroll over 17 years.

Note 13 - Defined Benefit Pension Plan:

Plan Description

The SEJPA contributes to the California Public Employees Retirement System (CalPERS), a cost sharing multiple-employer defined benefit pension plan. The SEJPA participates in the miscellaneous 2.5% at 55 pool. CalPERS provides retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries. CalPERS acts as a common investment and administrative agent for participating public employers within the State of California. CalPERS requires agencies with less than 100 active members in the plan to participate in a risk pool. A menu of benefits provisions as well as other requirements is established by State Statutes within the Public Employees Retirement Law. The plan selects optional benefit provisions from the benefit menu by contract with CalPERS and adopts those benefits through SEJPA resolution. CalPERS issues a separate comprehensive annual financial report. Copies of the CalPERS' annual financial report may be obtained from the CalPERS executive office - 400 P Street - Sacramento, California 95814.

**SAN ELIJO JOINT POWERS AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

Note 13 - Defined Benefit Pension Plan: (Continued)

Funding Policy

Active plan members are required to contribute 8% of their annual covered salary, of which the SEJPA pays 5.5% on behalf of its employees. The SEJPA is required to contribute the actuarially determined remaining amounts necessary to fund the benefits for its members. The actuarial methods and assumptions are those adopted by the CalPERS board of administration. The required employer contribution rate for the fiscal year ended June 30, 2011 and 2010 was 12.567% and 12.187%, respectively. The contribution requirements of the plan members and the SEJPA are established and may be amended by CalPERS. The SEJPA's contributions for the years ended June 30, 2011, 2010 and 2009 were \$281,041, \$276,849 and \$270,616, respectively, which were equal to the required contributions each year.

Note 14 - Commitments and Contingencies:

Contracts

The SEJPA has entered into various contracts for the purchase of material and construction of capital assets. The amounts contracted are based on the contractor's estimated cost of construction. At June 30, 2011, the total unpaid amount on these contracts is approximately \$1,058,000.

Litigation

Legal claims and lawsuits arise from time to time in the normal course of business which, in the opinion of management, will have no material effect on the SEJPA's financial position.

Operating Leases

Under an agreement dated April 11, 1991 the SEJPA leases a maintenance facility to the City of Encinitas for \$1 per year for an initial term of 30 years. The lease may be renewed or extended at the expiration of the initial term at a rate mutually agreed upon. In addition to the annual payment of \$1, the City agreed to reimburse the SEJPA within 30 days for all engineering and inspection costs incurred as a result of the engineering and construction of the maintenance facility. The City also agreed to reimburse the SEJPA for all construction costs incurred by the SEJPA as a result of the construction of the maintenance facility in 30 equal annual installments at an interest rate equal to the interest rate on the bonds issued for construction of the upgrade and expansion of the Water Pollution Control Facility. The lease payments collected are then remitted directly to the member agencies.

In January 2007 the SEJPA entered into a Communications Site License Agreement as lessor with Omnipoint Communications, Inc. The initial term of the agreement, which calls for an annual payment of \$20,400 and increasing 3% annually, is for 5 years commencing the earlier of the date the licensees intend to commence construction or October 1, 2007. The SEJPA recognized rental income in the amount of \$22,291 and \$21,642 for the years ended June 30, 2011 and 2010, respectively. Future lease payments to be received are as follows:

<u>Years Ended</u> <u>June 30</u>	
2012	\$ <u>22,960</u>

**SAN ELIJO JOINT POWERS AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

Note 15 - New Governmental Accounting Standards:

GASB No. 51

In June 2007, the Governmental Accounting Standards Board issued Statement No. 51, "Accounting and Financial Reporting for Intangible Assets." This pronouncement is effective for periods beginning after June 15, 2009. Retroactive reporting of these intangible assets is encouraged but not required. This Statement requires that all intangible assets not specifically excluded by its scope provisions be classified as capital assets. This pronouncement did not have a material effect on the SEJPA's statements in the year of adoption, the year ended June 30, 2010.

GASB No. 53

In June 2008, the Governmental Accounting Standards Board issued Statement No. 53, "Accounting and Financial Reporting for Derivative Investments." This pronouncement is effective for periods beginning after June 15, 2009, with earlier application encouraged. The Statement requires governments to measure most derivative instruments at fair value in their financial statements that are prepared on the economic resources measurement focus and the accrual basis of accounting. The guidance in this Statement also addresses hedge accounting requirements. The SEJPA has no derivative instruments at June 30, 2011 or 2010.

GASB No. 54

In March 2009, the Government Accounting Standards Board issued Statement No. 54, "Fund Balance Reporting and Governmental Fund Type Definitions." This pronouncement is effective for periods beginning after June 15, 2010, with early implementation encouraged. This pronouncement establishes fund balance classifications that comprise a hierarchy based primarily on the extent to which a government is bound to observe constraints imposed upon the use of the resources reported in governmental funds. The initial distinction that is made in reporting information in reporting fund balance information is identifying amounts that are considered non-spendable, such as fund balance associated with inventories. This statement also provides for additional classification as restricted, committed, assigned, and unassigned based on the relative strength of the constraints that control how specific accounts can be spent. Fund balance reclassifications made to conform to the provisions of this statement should be applied retroactively by restating fund balance for all periods presented. The SEJPA has no governmental funds at June 30, 2011 or 2010.

GASB No. 57

In December 2009, the Governmental Accounting Standards Board issued Statement No.57, "OPEB Measurements by Agent Employers and Agent Multiple-Employer Plans." This Statement amends Statement No. 45, "Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions" to permit an agent employer that has an individual-employer OPEB Plan with fewer than 100 total plan members to use the alternate measurement method, at its option, regardless of the number of total plan members in the agent-multiple employer OPEB plan in which it participates. Consistent with this change to the employer-reporting requirements, this Statement also amended a requirement in Statement No. 43, "Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans", that a defined benefit OPEB plan obtain an actuarial valuation. The amendment permits the requirement to be satisfied for an agent-multiple employer OPEB plan by reporting an aggregation of results of actuarial valuations of the individual-employer OPEB plans or measurements resulting from use of the alternative measurement method for individual-employer OPEB plans that are eligible.

**SAN ELIJO JOINT POWERS AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

Note 15 - New Governmental Accounting Standards: (Continued)

GASB No. 57 (Continued)

In addition, the Statement clarifies that when actuarially determined OPEB measurements are reported by an agent multiple-employer OPEB plan and its participating employers, those measurements should be determined as of a common date and at a minimum frequency to satisfy the agent multiple-employer OPEB plan's financial reporting requirements.

GASB No. 58

In December 2009, the Governmental Accounting Standards Board issued Statement No. 58, "Accounting and Financial Reporting for Chapter 9 Bankruptcies." This pronouncement is effective for period beginning after June 15, 2009. Early application is encouraged. Retroactive application is required for all periods presented during which the government was in bankruptcy. The objective of this Statement is to provide accounting and financial reporting guidance for governments that have petitioned for protection from creditors by filing for bankruptcy under Chapter 9 of the United States Bankruptcy Code. It requires governments to re-measure liabilities that are adjusted in bankruptcy when the court approves a new payment plan. The SEJPA has not filed for bankruptcy protection, nor does it anticipate doing so as of June 30, 2011 or 2010.

GASB No. 59

In June 2010, Governmental Accounting Standards Board issued Statement No. 59, "Financial Instruments Omnibus". This pronouncement is effective for periods beginning after June 15, 2011. Earlier application is encouraged. The objective of this Statement is to update and improve existing standards regarding financial reporting and disclosure requirements of certain financial instruments and external investment pools for which significant issues have been identified in practice. The SEJPA has not determined the effect on the financial statements in the year of adoption.

GASB No. 60

In November 2010, the Governmental Accounting Standards Board issued Statement No. 60, "Accounting and Financial Reporting for Service Concession Arrangements". This pronouncement is effective for periods beginning after December 15, 2011 and its provisions are generally required to be applied retroactively. The objective of this statement is to address issues related to service concession arrangements (SCA's) which are a type of public-private or public-public partnership. An SCA is an arrangement between the transferor (a government) and an operator in which (1) the transferor conveys to the operator the right and related obligation to provide services through the use of infrastructure or other public assets in exchange for significant consideration and (2) the operator collects and is compensated by fees from third parties. The SEJPA does not have any SCA's as of June 30, 2011 and 2010.

GASB No. 61

In November 2010, the Governmental Accounting Standards Board issued Statement No. 61, "The Financial Reporting Entity: Omnibus – an amendment of GASB Statements No. 14 and No. 34". This pronouncement is effective for periods beginning after June 15, 2012. Earlier application is encouraged. The objective of this statement is to address reporting entity issues that have arisen since the issuance of Statements No. 14 and No. 34. The SEJPA does not have any component units as of June 30, 2011 and 2010.

**SAN ELIJO JOINT POWERS AUTHORITY
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 2011 AND 2010**

Note 15 - New Governmental Accounting Standards: (Continued)

GASB No. 62

In December 2010, the Governmental Accounting Standards Board issued Statement No. 62, "Codification of Accounting and Financial Reporting Guidance contained in Pre-November 30, 1989 FASB and AICPA Pronouncements". This pronouncement is effective for periods beginning after December 15, 2011. Earlier application is encouraged. The objective of this statement is to incorporate into the GASB's authoritative literature certain accounting and financial reporting guidance that is included in the pronouncements of the FASB and the AICPA that was issued on or before November 30, 1989 which does not conflict with or contradict GASB pronouncements. This pronouncement is not anticipated to have a material effect on the financial statements of the SEJPA in the year of implementation.

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**SAN ELIJO JOINT POWERS AUTHORITY
COMPARATIVE SCHEDULE OF NET ASSETS - WASTEWATER
JUNE 30, 2011 AND 2010**

	<u>2011</u>	<u>2010</u>	<u>Difference</u>
<u>Current Assets:</u>			
Cash and cash equivalents	\$ 3,514,535	\$ 3,418,987	\$ 95,548
Due from other government agencies	108,668	57,141	51,527
Accrued interest receivable	186,744	200,161	(13,417)
Current portion of loan receivable	<u>1,050,000</u>	<u>1,005,000</u>	<u>45,000</u>
Total Current Assets	<u>4,859,947</u>	<u>4,681,289</u>	<u>178,658</u>
<u>Noncurrent Assets:</u>			
Restricted Assets:			
Cash and cash equivalents	20,818	17,174	3,644
Investments	<u>1,591,670</u>	<u>1,596,993</u>	<u>(5,323)</u>
Total Restricted Assets	<u>1,612,488</u>	<u>1,614,167</u>	<u>(1,679)</u>
Capital Assets	<u>24,723,952</u>	<u>25,326,988</u>	<u>(603,036)</u>
Other Assets:			
Loans Receivable, net of current portion	<u>10,310,000</u>	<u>11,360,000</u>	<u>(1,050,000)</u>
Total Noncurrent Assets	<u>36,646,440</u>	<u>38,301,155</u>	<u>(1,654,715)</u>
TOTAL ASSETS	<u>\$ 41,506,387</u>	<u>\$ 42,982,444</u>	<u>\$ (1,476,057)</u>

SAN ELIJO JOINT POWERS AUTHORITY
COMPARATIVE SCHEDULE OF NET ASSETS - WASTEWATER (CONTINUED)
JUNE 30, 2011 AND 2010

	<u>2011</u>	<u>2010</u>	<u>Difference</u>
<u>Current Liabilities:</u>			
Accounts payable	\$ 197,938	\$ 261,903	\$ (63,965)
Accrued liabilities	27,399	89,720	(62,321)
Accrued interest payable	182,200	195,600	(13,400)
Due to other government agencies	59,125	51,521	7,604
Due to member agencies	22,644	-	22,644
Retentions payable	-	-	-
Current portion of refunding revenue bonds	1,050,000	1,005,000	45,000
Current portion of California Energy Commission note payable	87,639	84,000	54,000
Total Current Liabilities	<u>1,626,945</u>	<u>1,687,744</u>	<u>(60,799)</u>
<u>Noncurrent Liabilities:</u>			
Payable From Restricted Assets:			
Due to member agencies payable from restricted assets	<u>1,612,488</u>	<u>1,614,173</u>	<u>(1,685)</u>
Long-Term Debt:			
Refunding revenue bonds, net of current portion	10,310,000	11,360,000	(1,050,000)
California Energy Commission note payable	965,079	1,053,101	1,139,500
Total Long-Term Debt	<u>11,275,079</u>	<u>12,413,101</u>	<u>(1,138,022)</u>
Other Noncurrent Liabilities:			
OPEB obligation	31,803	12,942	-
Accrued vacation and sick leave	248,082	228,509	19,573
			-
Total Noncurrent Liabilities	<u>13,167,452</u>	<u>14,268,725</u>	<u>184,667</u>
Total Liabilities	<u>14,794,397</u>	<u>15,956,469</u>	<u>(1,162,072)</u>
<u>Net Assets:</u>			
Net assets invested in capital assets, net of related debt	23,671,234	24,189,887	(518,653)
Unrestricted net assets	3,040,756	2,836,088	204,668
Total Net Assets	<u>26,711,990</u>	<u>27,025,975</u>	<u>(313,985)</u>
TOTAL LIABILITIES AND NET ASSETS	\$ <u>41,506,387</u>	\$ <u>42,982,444</u>	\$ <u>(1,476,057)</u>

**SAN ELIJO JOINT POWERS AUTHORITY
COMPARATIVE SCHEDULE OF REVENUES, EXPENSES AND
CHANGES IN NET ASSETS - WASTEWATER
FOR THE YEARS ENDED JUNE 30, 2011 AND 2010**

	<u>2011</u>	<u>2010</u>	<u>Difference</u>
<u>Operating Revenue:</u>			
Contributions from City of Encinitas	\$ 1,574,600	\$ 1,666,882	\$ (92,282)
Contributions from City of Solana Beach	1,344,356	1,375,792	(31,436)
Charges of services or other government agencies	<u>652,350</u>	<u>651,275</u>	<u>1,075</u>
Total Operating Revenue	<u>3,571,306</u>	<u>3,693,949</u>	<u>(122,643)</u>
<u>Operating Expenses:</u>			
Salaries and Wages	2,146,915	2,070,111	76,804
Depreciation	1,052,882	1,087,035	(34,153)
Utilities	459,343	462,430	(3,087)
Contracted services	210,584	225,181	(14,597)
Miscellaneous	63,126	61,796	1,330
Supplies	181,339	195,917	(14,578)
Repair parts expense	144,308	201,303	(56,995)
Insurance	53,889	56,031	(2,142)
Permit/purveyor fees	35,500	32,720	2,780
Disposal services	<u>185,994</u>	<u>180,869</u>	<u>5,125</u>
Total Operating Expenses	<u>4,533,880</u>	<u>4,573,393</u>	<u>(39,513)</u>
Operating (Loss)	<u>(962,574)</u>	<u>(879,444)</u>	<u>(83,130)</u>
<u>Nonoperating Revenue (Expense):</u>			
Investment income	592,295	635,386	(43,091)
Rental income	22,291	21,642	649
Other	1,867	1,093	774
Gain (loss) on disposal of capital assets	-	(2,113)	2,113
State grants	-	117,477	107,202
Interest expense	<u>(617,480)</u>	<u>(654,950)</u>	<u>37,470</u>
Total Nonoperating Revenues (Expenses)	<u>(1,027)</u>	<u>118,535</u>	<u>(119,562)</u>
Income (Loss) Before Contributions	<u>(963,601)</u>	<u>(760,909)</u>	<u>(202,692)</u>
<u>Capital Contributions:</u>			
Member agency assessments	<u>649,616</u>	<u>693,725</u>	<u>(44,109)</u>
Total Capital Contributions	<u>649,616</u>	<u>693,725</u>	<u>(44,109)</u>
Change in net assets	(313,985)	(67,184)	(246,801)
Net Assets at Beginning of Year	<u>27,025,975</u>	<u>27,093,159</u>	<u>(67,184)</u>
NET ASSETS AT END OF YEAR	<u>\$ 26,711,990</u>	<u>\$ 27,025,975</u>	<u>\$ (313,985)</u>

**SAN ELIJO JOINT POWERS AUTHORITY
COMPARATIVE SCHEDULE OF NET ASSETS - RECLAMATION
JUNE 30, 2011 AND 2010**

	<u>2011</u>	<u>2010</u>	<u>Difference</u>
<u>Current Assets:</u>			
Cash and cash equivalents	\$ 3,657,246	\$ 3,258,702	\$ 398,544
Due from other government agencies	200,954	176,440	24,514
Accrued interest receivable	3,870	5,354	(1,484)
Total Current Assets	<u>3,862,070</u>	<u>3,440,496</u>	<u>421,574</u>
<u>Noncurrent Assets:</u>			
Restricted Assets:			
Cash and cash equivalents	<u>630,000</u>	<u>630,000</u>	<u>-</u>
Total Restricted Assets	<u>630,000</u>	<u>630,000</u>	<u>-</u>
Capital Assets	<u>12,118,124</u>	<u>12,557,509</u>	<u>(439,385)</u>
Other Noncurrent Assets:			
Retrofit loans receivable	<u>146,089</u>	<u>177,564</u>	<u>(31,475)</u>
Total Noncurrent Assets	<u>12,894,213</u>	<u>13,365,073</u>	<u>(470,860)</u>
TOTAL ASSETS	<u>\$ 16,756,283</u>	<u>\$ 16,805,569</u>	<u>\$ (49,286)</u>

SAN ELIJO JOINT POWERS AUTHORITY
COMPARATIVE SCHEDULE OF NET ASSETS - RECLAMATION (CONTINUED)
JUNE 30, 2011 AND 2010

	<u>2011</u>	<u>2010</u>	<u>Difference</u>
<u>Current Liabilities:</u>			
Accounts payable	\$ 68,952	\$ 61,821	\$ 7,131
Accrued liabilities	3,802	38,362	(34,560)
Accrued interest payable	152,190	173,715	(21,525)
Current portion of state loan payable	652,047	636,143	15,904
Total Current Liabilities	<u>876,991</u>	<u>910,041</u>	<u>(33,050)</u>
<u>Noncurrent Liabilities:</u>			
 <u>Long-Term Debt:</u>			
State loan payable, less current portion	<u>6,653,084</u>	<u>7,305,131</u>	<u>(652,047)</u>
Total Long-Term Debt	<u>6,653,084</u>	<u>7,305,131</u>	<u>(652,047)</u>
 <u>Other Noncurrent Liabilities:</u>			
OPEB Obligation	2,788	2,788	-
Accrued vacation and sick leave	38,932	35,745	3,187
Total Other Noncurrent Liabilities	<u>41,720</u>	<u>38,533</u>	<u>3,187</u>
Total Noncurrent Liabilities	<u>6,694,804</u>	<u>7,343,664</u>	<u>(648,860)</u>
Total Liabilities	<u>7,571,795</u>	<u>8,253,705</u>	<u>(681,910)</u>
<u>Net Assets:</u>			
Net assets invested in capital assets, net of related debt	4,660,803	4,442,520	218,283
Restricted net assets	630,000	630,000	-
Unrestricted net assets	3,893,685	3,479,344	414,341
Total Net Assets	<u>9,184,488</u>	<u>8,551,864</u>	<u>632,624</u>
TOTAL LIABILITIES AND NET ASSETS	\$ <u>16,756,283</u>	\$ <u>16,805,569</u>	\$ <u>(49,286)</u>

**SAN ELIJO JOINT POWERS AUTHORITY
COMPARATIVE SCHEDULE OF REVENUES, EXPENSES AND
CHANGES IN NET ASSETS - RECLAMATION
FOR THE YEARS ENDED JUNE 30, 2011 AND 2010**

	<u>2011</u>	<u>2010</u>	<u>Difference</u>
<u>Operating Revenue:</u>			
Charges of services or other government agencies	\$ 1,960,871	\$ 1,943,595	\$ 17,276
Total Operating Revenues	<u>1,960,871</u>	<u>1,943,595</u>	<u>17,276</u>
<u>Operating Expenses:</u>			
Salaries and wages	404,754	445,866	(41,112)
Depreciation	451,796	429,196	22,600
Utilities	119,437	150,447	(31,010)
Supplies	56,409	73,911	(17,502)
Repair parts expense	20,943	23,760	(2,817)
Miscellaneous	33,680	38,084	(4,404)
Contracted services	43,885	60,675	(16,790)
Insurance	22,937	27,885	(4,948)
Permit/purveyor fees	17,571	43,808	(26,237)
Total Operating Expenses	<u>1,171,412</u>	<u>1,293,632</u>	<u>(122,220)</u>
Operating Income	<u>789,459</u>	<u>649,963</u>	<u>139,496</u>
<u>Nonoperating Revenue (Expense):</u>			
Investment income	20,171	25,829	(5,658)
Gain (loss) on disposal of capital assets	-	(211)	211
Other	-	-	-
Feasibility study	-	-	-
Interest expense	(177,006)	(200,471)	23,465
Total Nonoperating Revenues (Expenses)	<u>(156,835)</u>	<u>(174,853)</u>	<u>18,018</u>
Change in net assets	<u>632,624</u>	<u>475,110</u>	<u>157,514</u>
Net Assets at Beginning of Year	<u>8,551,864</u>	<u>8,076,754</u>	<u>475,110</u>
NET ASSETS AT END OF YEAR	<u>\$9,184,488</u>	<u>\$8,551,864</u>	<u>\$ 632,624</u>

**SAN ELIJO JOINT POWERS AUTHORITY
OPERATING BUDGET COMPARISON SCHEDULE - WASTEWATER
FOR THE YEAR ENDED JUNE 30, 2011**

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
<u>Operating Expenses:</u>			
Salaries and wages	\$ 2,108,420	\$ 2,146,915	\$ (38,495)
Utilities	452,441	459,343	(6,902)
Contracted services	343,316	210,584	132,732
Miscellaneous	272,164	63,126	209,038
Supplies	214,525	181,339	33,186
Repair parts expense	144,000	144,308	(308)
Insurance	65,100	53,889	11,211
Disposal/permit fees	2,000	185,994	(183,994)
Permit/purveyor fees	42,500	35,500	7,000
Contingency	144,290	-	144,290
Operating Expenses	<u>3,788,756</u>	<u>3,480,998</u>	<u>307,758</u>
Depreciation	<u>-</u>	<u>1,052,882</u>	<u>(1,052,882)</u>
Total Operating Expenses	<u>\$ 3,788,756</u>	<u>\$ 4,533,880</u>	<u>\$ (745,124)</u>

DRAFT

**SAN ELIJO JOINT POWERS AUTHORITY
OPERATING BUDGET COMPARISON SCHEDULE - RECLAMATION
FOR THE YEAR ENDED JUNE 30, 2011**

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
<u>Operating Expenses:</u>			
Salaries and wages	\$ 428,870	\$ 404,754	\$ 24,116
Utilities	189,616	119,437	70,179
Contracted services	58,534	43,885	14,649
Miscellaneous	62,518	33,680	28,838
Supplies	81,927	56,409	25,518
Repair parts expense	40,000	20,943	19,057
Insurance	27,900	22,937	4,963
Permit/purveyor fees	28,500	17,571	10,929
Contingency	39,120	-	39,120
Operating Expenses	<u>956,985</u>	<u>719,616</u>	<u>237,369</u>
 Depreciation	 <u>-</u>	 <u>451,796</u>	 <u>(451,796)</u>
 Total Operating Expenses	 <u>\$ 956,985</u>	 <u>\$ 1,171,412</u>	 <u>\$ (214,427)</u>

DRAFT

SAN ELIJO JOINT POWERS AUTHORITY
MEMORANDUM

November 14, 2011

TO: Board of Directors
San Elijo Joint Powers Authority

FROM: General Manager

SUBJECT: AUTHORIZATION OF ISSUANCE OF REFUNDING BONDS AND
ACCEPTANCE OF PROFESSIONAL SERVICE CONTRACTS FOR TRUSTEE
AND VERIFICATION RELATING TO THE BONDS

RECOMMENDATION

It is recommended that the Board of Directors:

1. Approve the recommendations of the General Manager regarding the acceptance of the attached resolution entitled:

Resolution Authorizing the Issuance of Revenue Bonds Relating to the Refunding of 2003 Refunding Revenue Bonds (San Elijo Water Pollution Control Facility), and the California Energy Resources Conservation and Development Commission Loan, Authorizing and Directing Execution of a Related Indenture of Trust, and Third Amended and Restated Loan Agreements, Authorizing Sale of Bonds, Approving Official Statement, and Authorizing Official Action

2. Approve the recommendations of the General Manager regarding the acceptance of professional service contracts with Union Bank of California, as trustee for the revenue bonds, and Berens Tate Consulting, as verification agent for the revenue bonds;
3. Authorize the General Manager to execute contracts with these organizations; and
4. Discuss and take action as appropriate.

BACKGROUND

In 1990, the Member Agencies and the SEJPA funded the upgrade and expansion of the wastewater facilities at the San Elijo Water Pollution Control Facility. The project was funded by the issuance of \$24.5 million in revenue bonds. In 1993, and again in 2003, the original bonds were refunded by the SEJPA for the purpose of reducing future payment costs by obtaining lower interest rates. At this time, the existing bonds have an outstanding balance of \$11,360,000 with approximately 8 years remaining at an average annual interest rate of 4.875 percent. The bonds have one last call date in March, 2012.

In 2007, the SEJPA entered into a loan agreement with the California Energy Commission (CEC) to finance the Performance Optimization of the Activated Sludge System. The agreement was for \$1,193,500 financed for 12 years at an interest rate of 3.95 percent. The outstanding balance in December will be \$1,009,328. This loan can be prepaid at any time with no fees or service charges.

Due to market conditions in the public bond sector, staff believes that significant cost savings may be obtained through the refunding of the bonds and the CEC loan.

DISCUSSION

On November 9, 2011, the Member Agencies of the SEJPA received information relating to the potential for refunding the SEJPA's outstanding 2003 Refunding Revenue Bonds along with the CEC loan, and approved a resolution authorizing the acceptance of contracts with bond counsel and disclosure counsel related to the refunding. Brandis Tallman, LLC the underwriter for the Refunding Bonds has estimated that based on current market conditions the refunding would result in a net present value savings to the SEJPA of approximately \$1.0 million or 8.0% of the amount of 2003 Bonds and CEC loan to be refunded, resulting in an estimated annual savings of approximately \$160,000 per year. Attached to this report are summaries of the analysis noting the overall statistical results, the projected savings of the refinancing on an annual basis, and the anticipated debt service on the new Refunding Bonds.

Bond Counsel, Jones Hall of San Francisco, has prepared documentation to implement the transaction, including an Indenture of Trust, Third Amended Loan Agreements with the Cities of Encinitas and Solana Beach, resolutions for adoption by this Board and the City Councils of Encinitas and Solana Beach, and other documents necessary for the actions needed to close the issuance of the Bonds. The Indenture of Trust provides the specific terms of the Refunding Bonds. The Third Amended Loan Agreements provide the terms of the loans to Encinitas and Solana Beach. The resolutions are the documents under which this Board and the City Councils of Encinitas and Solana Beach approve the documents and authorize the execution of agreements necessary to issue the Refunding Bonds.

Disclosure Counsel, Best, Best & Krieger, has prepared a Preliminary Official Statement, a Continuing Disclosure Certificate and a Purchase Contract relating to the information provided to the purchasers of the Refunding Bonds and information provided for the public markets and providing the terms under which Brandis Tallman, LLC will purchase the Refunding Bonds.

The Resolution authorizes the General Manager, the Director of Finance/Administration, the SEJPA's General Counsel, and other officers of the SEJPA to take actions, including the execution of the documents described above, with such changes as are needed to qualify the Refunding Bonds for an investment grade rating from a national rating service or qualify the Refunding Bonds for bond insurance. The Resolution expressly requires that the net present value of savings from the issuance of the Refunding Bonds be at least 3% of the principal amount of the 2003 Bonds and the CEC loan being refunded.

Attached to this report regarding the authorization to issue the Refunding Bonds are the following documents:

- Resolution (named above)
- Indenture of Trust
- Third Amended Loan Agreements (with both Encinitas and Solana Beach)
- Preliminary Official Statement
- Continuing Disclosure Certificate (Appendix F to the Preliminary Official Statement)
- Purchase Contract
- Escrow Agreement

In order to complete the transaction, it is necessary for the SEJPA to retain the services of a major trust institution to serve as trustee for the Refunding Bonds. After a competitive process conducted by Brandis Tallman LLC, Union Bank of California was deemed to present the lowest cost to the SEJPA with a level of service necessary to meet the needs of the transaction and of the SEJPA. In addition, an accounting firm experienced in the preparation of reports verifying the sufficiency of funds available to redeem the 2003 Bonds must prepare a verification report under the terms of the indenture for the 2003 Bonds. The firm Berens Tate Consulting has been selected as verification agent for this transaction.

FINANCIAL IMPACT

Net present value savings of the issuance of the Refunding Bonds is estimated by the Underwriter to be approximately \$1.0 million or 8.0% of the amount of the 2003 Bonds and CEC loan to be refunded. The exact amount of the savings will be determined as of the actual sale of the Bonds, currently scheduled for January 26, 2012. Unless the net present value of savings is at least equal to 3% of the principal amount of the 2003 Bonds and CEC loan being refunded, the SEJPA is not authorized to proceed with the transaction.

Funds to provide payment of the professional fees under these contracts are provided in the refunding bond issue. In the event that the refunding bond issue does not proceed, the professional fees are not payable by the SEJPA.

SUMMARY

Subject to the limitation that the savings be at least equal to 3% of the principal amount of the 2003 Bonds and CEC loan being refunded, the General Manager has recommended that the Board authorize issuance of the Refunding Bonds by approval of the Resolution.

The Manager has recommended award of contracts to the selected professionals for the potential refunding of the SEJPA's 2003 Bonds and the CEC loan. Funds are available in the budget of the refunding for the payment of those costs.

It is therefore recommended that the Board of Directors:

1. Approve the recommendations of the General Manager regarding the acceptance of the attached resolution entitled:

Resolution Authorizing the Issuance of Revenue Bonds Relating to the Refunding of 1993 Refunding Revenue Bonds (San Elijo Water Pollution Control Facility), and the California Energy Resources Conservation and Development Commission Loan, Authorizing and Directing Execution of a Related Indenture of Trust, and Third Amended and Restated Loan Agreements, Authorizing Sale of Bonds, Approving Official Statement, and Authorizing Official Action

2. Approve the recommendations of the General Manager regarding the acceptance of professional service contracts with Union Bank of California, as trustee for the revenue bonds, and Berens Tate Consulting, as verification agent for the revenue bonds;
3. Authorize the General Manager to execute contracts with these organizations; and
4. Discuss and take action as appropriate.

Respectfully submitted,



Michael T. Thornton, P.E.
General Manager

Attachments: SEJPA Summary
SEJPA Refunding Model
Resolution
Trust Indenture
Third Amended Loan Agreements (with both Encinitas and Solana Beach)
Preliminary Official Statement
Purchase Contract
Escrow Agreement

SAN ELIJO JOINT POWERS AUTHORITY, CALIFORNIA
Refunding Revenue Bonds, Series 2011 (2003 Refunding Revenue Bonds)
and Refunding of the 2005A ECAA Revenue Bond
Summary as of 10/25/11
Preliminary, Subject to Change with Market Conditions

	<u>Loan</u>	<u>2003 Bonds</u>	<u>Combined</u>
REFUNDING BONDS			
Cost of Defeasance @ 3/1/2012 for Bonds and 1/1/12 for Loan	1,011,549	11,736,400	12,747,949
Cost of Issuance and Underwriter's Discount (1)	25,672	250,200	275,872
Reserve Fund	0	Surety	Surety
Existing Reserve Fund	0	1,598,300	1,598,300
Debt Service Due (Next Respective Payment Date)	2,221	1,323,300	1,325,521
Par Amount	1,035,000	9,065,000	10,100,000
Arbitrage Yield			2.57%
All-In True Interest Cost			3.05%
Final Maturity of Refunding (shortened by 1 year for the 2003 Bonds and 3 Months for the Loan)	3/1/2021	3/1/2019	
AVG. FISCAL YEAR DEBT SERVICE SAVINGS (2)			
2012/13 thru Final Maturity of Loan or Bonds	4,420	156,069	160,488
TOTAL DEBT SERVICE (2)			
Refunding	1,174,105	9,954,376	11,128,481
Existing	1,218,301	11,014,076	12,232,377
Savings	44,196	1,059,700	1,103,896
Net Present Value Savings	36,746	958,550	995,296
Net Present Value Savings %	3.64%	8.44%	8.05%

(1) Incl. bond counsel, disclosure counsel, rating, printing, trustee, underwriter's discount, bond insurance premium and surety, as applicable.

(2) Includes a credit for interest earnings on the reserve fund each year and the reserve fund corpus in the final year of 2019/20 on the 2003 Bonds.

San Elijo Joint Powers Authority, California
Refunding Revenue Bonds, Series 2011
(2005A ECAA Revenue Bond and 2003 Refunding Revenue Bonds)
Sources and Uses of Funds (Public Offering, Insured, Surety)

Allocation Percentage **7.93%** **92.07%** **100.00%**

Sources of Funds	Loan	Refunding	Totals
Par Amount of Bonds	1,035,000.00	9,065,000.00	10,100,000.00
Plus: Accrued Interest	-	-	-
Less: (OID) Plus: OIP	-	-	-
Less: Underwriter's Discount (1)	(6,727.50)	(58,922.50)	(65,650.00)
Net Proceeds at Closing	1,028,272.50	9,006,077.50	10,034,350.00
Prior Issue Reserve Fund	-	1,598,300.00	1,598,300.00
Interest From 12/22/11 to 1/12/12	2,220.98	-	2,220.98
Debt Service Due 3/1/2012	-	1,323,300.00	1,323,300.00
Total Prior Issue Funds	2,220.98	2,921,600.00	2,923,820.98
Total Sources of Funds	1,030,493.48	11,927,677.50	12,958,170.98

Uses of Funds			
Cost to Payoff Prior Issue	1,011,549.47	11,736,400.00	12,747,949.47
Beginning Escrow Cash Balance	-	-	-
Reserve Fund (2)	-	-	-
Reserve Fund Surety (3)	3,205.74	37,194.26	40,400.00
Bond Insurance Premium (4)	4,696.42	39,817.51	44,513.93
Costs of Issuance (5)	9,943.15	115,364.43	125,307.58
Accrued Interest	-	-	-
Total Uses of Funds	1,029,394.78	11,928,776.20	12,958,170.98
Rounding Adjustment (Contingency)	1,098.70	(1,098.70)	-

Reserve Fund Calculation

Maximum Annual Debt Service	1,549,262.50
10.00% of the Par Amount of Bonds	1,010,000.00
1.25 Times Average Annual Debt Service	1,522,595.54

Assumptions

- (1) 0.65% (\$6.50/bond) of the Par Amount of Bonds
- (2) 10.00% of the Par Amount of Bonds Funded via Surety
- (3) 4.00% of the Reserve Fund Requirement (10.00% of the Par Amount of Bonds)
- (4) 0.40% (40bp) of Total Principal and Interest
- (5) See Attached Schedule

Run Date **October 25, 2011**
Run Time **10:10 AM**

San Elijo Joint Powers Authority, California
Refunding Revenue Bonds, Series 2011
(2005A ECAA Revenue Bond and 2003 Refunding Revenue Bonds)

Costs of Issuance

Bond Counsel	46,000.00
Disclosure Counsel	29,000.00
Fiscal Agent / Trustee / Escrow Agent	6,000.00
Rating Fee	25,000.00
Printing / Miscellaneous	12,000.00
Verification Report	3,000.00
Rounding Adjustment (Contingency)	4,307.58
Total	125,307.58

San Elijo Joint Powers Authority, California
Refunding Revenue Bonds, Series 2011
(2005A ECAA Revenue Bond and 2003 Refunding Revenue Bonds)

Summary Statistics

Arbitrage Yield	2.56635 %
TIC	2.51863 %
"All-In" TIC	3.04642 %
Average Coupon	2.36870 %
Net Interest Cost (NIC)	2.51990 %
Average Life	4.299 Years

San Elijo Joint Powers Authority, California
Refunding Revenue Bonds, Series 2011
(2005A ECAA Revenue Bond and 2003 Refunding Revenue Bonds)

Price / Yield / Production Calculation (Combined Series)

	Principal	(OID) / OIP
Totals	10,045,000	-

Delivery Date	Mat Date	Coupon	Yield	Price	Principal	(OID) / OIP
1/12/2012						
	3/1/2012	0.450	0.450	100.000	-	-
	3/1/2013	0.850	0.850	100.000	1,315,000	-
	3/1/2014	1.300	1.300	100.000	1,355,000	-
	3/1/2015	1.750	1.750	100.000	1,370,000	-
	3/1/2016	2.100	2.100	100.000	1,390,000	-
	3/1/2017	2.350	2.350	100.000	1,425,000	-
	3/1/2018	2.625	2.625	100.000	1,460,000	-
	3/1/2019	2.900	2.900	100.000	1,495,000	-
	3/1/2020	3.150	3.150	100.000	115,000	-
	3/1/2021	3.300	3.300	100.000	120,000	-

San Elijo Joint Powers Authority, California Refunding Revenue Bonds, Series 2011 (2005A ECAA Revenue Bond and 2003 Refunding Revenue Bonds) Gross Debt Service Schedule (Combined Series)

Date	Principal	Rate	Interest	Periodic Debt Service	Annual Debt Service
1/12/2012					
3/1/2012	55,000	0.450	27,896.65	82,896.65	
6/22/2012					82,896.65
9/1/2012			102,353.75	102,353.75	
12/22/2012					
3/1/2013	1,315,000	0.850	102,353.75	1,417,353.75	
6/22/2013					1,519,707.50
9/1/2013			96,765.00	96,765.00	
12/22/2013					
3/1/2014	1,355,000	1.300	96,765.00	1,451,765.00	
6/22/2014					1,548,530.00
9/1/2014			87,957.50	87,957.50	
12/22/2014					
3/1/2015	1,370,000	1.750	87,957.50	1,457,957.50	
6/22/2015					1,545,915.00
9/1/2015			75,970.00	75,970.00	
12/22/2015					
3/1/2016	1,390,000	2.100	75,970.00	1,465,970.00	
6/22/2016					1,541,940.00
9/1/2016			61,375.00	61,375.00	
12/22/2016					
3/1/2017	1,425,000	2.350	61,375.00	1,486,375.00	
6/22/2017					1,547,750.00
9/1/2017			44,631.25	44,631.25	
12/22/2017					
3/1/2018	1,460,000	2.625	44,631.25	1,504,631.25	
6/22/2018					1,549,262.50
9/1/2018			25,468.75	25,468.75	
12/22/2018					
3/1/2019	1,495,000	2.900	25,468.75	1,520,468.75	
6/22/2019					1,545,937.50
9/1/2019			3,791.25	3,791.25	
12/22/2019					
3/1/2020	115,000	3.150	3,791.25	118,791.25	
6/22/2020					122,582.50
9/1/2020			1,980.00	1,980.00	
12/22/2020					
3/1/2021	120,000	3.300	1,980.00	121,980.00	
6/22/2021					123,960.00
Totals	10,100,000		1,028,481.65	11,128,481.65	11,128,481.65

San Elijo Joint Powers Authority, California
 Refunding Revenue Bonds, Series 2011
 (2005A ECAA Revenue Bond and 2003 Refunding Revenue Bonds)

Net Debt Service Schedule and Savings Calculation (Cash Flow NPV Basis -Combined)

New Issue Reserve Fund		-		Prior Issue Reserve Fund		1,598,300.00							
Investment Yield		-		Investment Yield		1.00							
Date	Periodic Debt Service	Less: RF Earnings	Net Periodic Debt Service	Net Annual Debt Service	Prior Issue Periodic Debt Service	Less: RF Earnings and Corpus	Net Prior Issue Periodic Debt Service	Prior Issue Annual Debt Service	Annual (Savings) / Cost	2.56635 Present Value			
1/12/2012													
3/1/2012	82,896.65	-	82,896.65		1,323,300.00	(7,991.50)	1,315,308.50			(1,228,141.72)			
6/22/2012				82,896.65	64,237.99		64,237.99	1,379,546.49	(1,296,649.84)	(63,514.06)			
9/1/2012	102,353.75	-	102,353.75		252,300.00	(7,991.50)	244,308.50			(139,670.68)			
12/22/2012					64,237.99		64,237.99			(62,709.39)			
3/1/2013	1,417,353.75	-	1,417,353.75		1,342,300.00	(7,991.50)	1,334,308.50			80,673.85			
6/22/2013				1,519,707.50	64,237.99		64,237.99	1,707,092.98	(187,385.48)	(61,914.91)			
9/1/2013	96,765.00	-	96,765.00		230,500.00	(7,991.50)	222,508.50			(120,605.25)			
12/22/2013					64,237.99		64,237.99			(61,130.50)			
3/1/2014	1,451,765.00	-	1,451,765.00		1,365,500.00	(7,991.50)	1,357,508.50			89,259.55			
6/22/2014				1,548,530.00	64,237.99		64,237.99	1,708,492.98	(159,962.98)	(60,356.03)			
9/1/2014	87,957.50	-	87,957.50		202,125.00	(7,991.50)	194,133.50			(99,273.29)			
12/22/2014					64,237.99		64,237.99			(59,591.36)			
3/1/2015	1,457,957.50	-	1,457,957.50		1,392,125.00	(7,991.50)	1,384,133.50			68,150.07			
6/22/2015				1,545,915.00	64,237.99		64,237.99	1,706,742.98	(160,827.98)	(58,836.39)			
9/1/2015	75,970.00	-	75,970.00		172,375.00	(7,991.50)	164,383.50			(80,584.22)			
12/22/2015					64,237.99		64,237.99			(58,090.98)			
3/1/2016	1,465,970.00	-	1,465,970.00		1,417,375.00	(7,991.50)	1,409,383.50			50,922.18			
6/22/2016				1,541,940.00	64,237.99		64,237.99	1,702,242.98	(160,302.98)	(57,355.01)			
9/1/2016	61,375.00	-	61,375.00		141,250.00	(7,991.50)	133,258.50			(63,868.40)			
12/22/2016					64,237.99		64,237.99			(56,628.37)			
3/1/2017	1,486,375.00	-	1,486,375.00		1,451,250.00	(7,991.50)	1,443,258.50			37,823.61			
6/22/2017				1,547,750.00	64,237.99		64,237.99	1,704,992.98	(157,242.98)	(55,910.94)			
9/1/2017	44,631.25	-	44,631.25		108,500.00	(7,991.50)	100,508.50			(48,396.86)			
12/22/2017					64,237.99		64,237.99			(55,202.59)			
3/1/2018	1,504,631.25	-	1,504,631.25		1,488,500.00	(7,991.50)	1,480,508.50			20,628.69			
6/22/2018				1,549,262.50	64,237.99		64,237.99	1,709,492.98	(160,230.48)	(54,503.22)			
9/1/2018	25,468.75	-	25,468.75		74,000.00	(7,991.50)	66,008.50			(34,228.56)			
12/22/2018					64,237.99		64,237.99			(53,812.71)			
3/1/2019	1,520,468.75	-	1,520,468.75		1,519,000.00	(31,142.99)	1,487,857.01			27,185.93			
6/22/2019				1,545,937.50	64,237.99		64,237.99	1,682,341.49	(136,403.99)	(53,130.94)			
9/1/2019	3,791.25	-	3,791.25		37,875.00	(37,875.00)	(0.00)			3,120.44			
12/22/2019					64,237.99		64,237.99			(52,457.82)			
3/1/2020	118,791.25	-	118,791.25		1,552,875.00	(1,552,875.00)	(0.00)			96,533.95			
6/22/2020				122,582.50	64,237.99		64,237.99	128,475.98	(5,893.48)	(51,793.22)			
9/1/2020	1,980.00	-	1,980.00		-	-	-			1,588.63			
12/22/2020					64,237.99		64,237.99			(51,137.04)			
3/1/2021	121,980.00	-	121,980.00		-	-	-			96,629.48			
6/22/2021				123,960.00	64,237.99		64,237.99	128,475.98	(4,515.98)	(50,489.17)			
Totals	11,128,481.65	-	11,128,481.65	11,128,481.65	15,291,671.81	(1,733,773.99)	13,557,897.82	13,557,897.82	(2,429,416.17)	(2,320,817.25)			
								Plus: Prior Issue Other Funds	1,325,520.98	1,325,520.98			
								Net Total	(1,103,895.19)	(995,296.27)			
								Savings % New		9.85%			
								Savings % Prior		8.05%			

San Elijo Joint Powers Authority, California
Refunding Revenue Bonds, Series 2011
(2005A ECAA Revenue Bond and 2003 Refunding Revenue Bonds)

Price / Yield / Production Calculation (Loan)

	Principal	(OID) / OIP
Totals	980,000	-

Delivery Date	Mat Date	Coupon	Yield	Price	Principal	(OID) / OIP
1/12/2012						
	3/1/2012	0.450	0.450	100.000	-	-
	3/1/2013	0.850	0.850	100.000	100,000	-
	3/1/2014	1.300	1.300	100.000	100,000	-
	3/1/2015	1.750	1.750	100.000	105,000	-
	3/1/2016	2.100	2.100	100.000	105,000	-
	3/1/2017	2.350	2.350	100.000	110,000	-
	3/1/2018	2.625	2.625	100.000	110,000	-
	3/1/2019	2.900	2.900	100.000	115,000	-
	3/1/2020	3.150	3.150	100.000	115,000	-
	3/1/2021	3.300	3.300	100.000	120,000	-

San Elijo Joint Powers Authority, California
 Refunding Revenue Bonds, Series 2011
 (2005A ECAA Revenue Bond and 2003 Refunding Revenue Bonds)
 Gross Debt Service Schedule and Savings Calculation (NPV Basis - Loan)

Date	Principal	Rate	Interest	Periodic Debt Service	Annual Debt Service	Prior Issue Periodic Debt Service	Prior Issue Annual Debt Service	Annual (Savings) / Cost	2.56635 Present Value
1/12/2012									
3/1/2012	55,000	0.450	3,107.42	58,107.42					57,906.08
6/22/2012					58,107.42	64,237.99	64,237.99	(6,130.57)	(63,514.06)
9/1/2012			11,291.25	11,291.25					11,109.57
12/22/2012						64,237.99			(62,709.39)
3/1/2013	100,000	0.850	11,291.25	111,291.25					108,113.27
6/22/2013					122,582.50	64,237.99	128,475.98	(5,893.48)	(61,914.91)
9/1/2013			10,866.25	10,866.25					10,422.22
12/22/2013						64,237.99			(61,130.50)
3/1/2014	100,000	1.300	10,866.25	110,866.25					104,988.74
6/22/2014					121,732.50	64,237.99	128,475.98	(6,743.48)	(60,356.03)
9/1/2014			10,216.25	10,216.25					9,552.07
12/22/2014						64,237.99			(59,591.36)
3/1/2015	105,000	1.750	10,216.25	115,216.25					106,361.02
6/22/2015					125,432.50	64,237.99	128,475.98	(3,043.48)	(58,836.39)
9/1/2015			9,297.50	9,297.50					8,474.18
12/22/2015						64,237.99			(58,090.98)
3/1/2016	105,000	2.100	9,297.50	114,297.50					102,856.29
6/22/2016					123,595.00	64,237.99	128,475.98	(4,880.98)	(57,355.01)
9/1/2016			8,195.00	8,195.00					7,281.25
12/22/2016						64,237.99			(56,628.37)
3/1/2017	110,000	2.350	8,195.00	118,195.00					103,685.64
6/22/2017					126,390.00	64,237.99	128,475.98	(2,085.98)	(55,910.94)
9/1/2017			6,902.50	6,902.50					5,978.45
12/22/2017						64,237.99			(55,202.59)
3/1/2018	110,000	2.625	6,902.50	116,902.50					99,969.76
6/22/2018					123,805.00	64,237.99	128,475.98	(4,670.98)	(54,503.22)
9/1/2018			5,458.75	5,458.75					4,608.94
12/22/2018						64,237.99			(53,812.71)
3/1/2019	115,000	2.900	5,458.75	120,458.75					100,417.31
6/22/2019					125,917.50	64,237.99	128,475.98	(2,558.48)	(53,130.94)
9/1/2019			3,791.25	3,791.25					3,120.44
12/22/2019						64,237.99			(52,457.82)
3/1/2020	115,000	3.150	3,791.25	118,791.25					96,533.95
6/22/2020					122,582.50	64,237.99	128,475.98	(5,893.48)	(51,793.22)
9/1/2020			1,980.00	1,980.00					1,588.63
12/22/2020						64,237.99			(51,137.04)
3/1/2021	120,000	3.300	1,980.00	121,980.00					96,629.48
6/22/2021					123,960.00	64,237.99	128,475.98	(4,515.98)	(50,489.17)
Totals	1,035,000		139,104.92	1,174,104.92	1,174,104.92	1,220,521.81	1,220,521.81	(46,416.89)	(38,967.35)
						Plus: Prior Issue Reserve Fund		-	-
						Plus: Prior Issue Other Funds		2,220.98	2,220.98
						Less: New Issue Reserve Fund		-	-
						Net Total		(44,195.91)	(36,746.37)
						Savings % New			3.55%
						Savings % Prior			3.64%

San Elijo Joint Powers Authority, California
Refunding Revenue Bonds, Series 2011
(2005A ECAA Revenue Bond and 2003 Refunding Revenue Bonds)

Prior Issue Debt Service Schedule and Redemption Provisions (Loan)

Date	Principal	Rate	Interest	Periodic Debt Service	Annual Debt Service	1/12/2012 Called Bonds	0.00% Call Premium	Periodic Debt Service	Defeasance Debt Service
12/22/2011									
1/12/2012								2,220.98	1,011,549.47
6/22/2012	44,249.14	3.950	19,988.85	64,237.99	64,237.99	44,249.14	-		
12/22/2012	45,125.45	3.950	19,112.54	64,237.99		45,125.45	-		
6/22/2013	46,118.68	3.950	18,119.31	64,237.99	128,475.98	46,118.68	-		
12/22/2013	46,932.46	3.950	17,305.53	64,237.99		46,932.46	-		
6/22/2014	47,951.40	3.950	16,286.59	64,237.99	128,475.98	47,951.40	-		
12/22/2014	48,811.55	3.950	15,426.44	64,237.99		48,811.55	-		
6/22/2015	49,857.24	3.950	14,380.75	64,237.99	128,475.98	49,857.24	-		
12/22/2015	50,765.60	3.950	13,472.39	64,237.99		50,765.60	-		
6/22/2016	51,770.97	3.950	12,467.02	64,237.99	128,475.98	51,770.97	-		
12/22/2016	52,796.24	3.950	11,441.75	64,237.99		52,796.24	-		
6/22/2017	53,898.64	3.950	10,339.35	64,237.99	128,475.98	53,898.64	-		
12/22/2017	54,909.24	3.950	9,328.75	64,237.99		54,909.24	-		
6/22/2018	56,041.71	3.950	8,196.28	64,237.99	128,475.98	56,041.71	-		
12/22/2018	57,106.53	3.950	7,131.46	64,237.99		57,106.53	-		
6/22/2019	58,270.26	3.950	5,967.73	64,237.99	128,475.98	58,270.26	-		
12/22/2019	59,391.46	3.950	4,846.53	64,237.99		59,391.46	-		
6/22/2020	60,567.66	3.950	3,670.33	64,237.99	128,475.98	60,567.66	-		
12/22/2020	61,767.14	3.950	2,470.85	64,237.99		61,767.14	-		
6/22/2021	62,997.12	3.950	1,240.87	64,237.99	128,475.98	62,997.12	-		
Totals	1,009,328.49		211,193.32	1,220,521.81	1,220,521.81	1,009,328.49	-	2,220.98	1,011,549.47

San Elijo Joint Powers Authority, California
Refunding Revenue Bonds, Series 2011
(2005A ECAA Revenue Bond and 2003 Refunding Revenue Bonds)

Price / Yield / Production Calculation (2003)

	Principal	(OID) / OIP
Totals	9,065,000	-

Delivery Date	Mat Date	Coupon	Yield	Price	Principal	(OID) / OIP
1/12/2012						
	3/1/2012	0.450	0.450	100.000	-	-
	3/1/2013	0.850	0.850	100.000	1,215,000	-
	3/1/2014	1.300	1.300	100.000	1,255,000	-
	3/1/2015	1.750	1.750	100.000	1,265,000	-
	3/1/2016	2.100	2.100	100.000	1,285,000	-
	3/1/2017	2.350	2.350	100.000	1,315,000	-
	3/1/2018	2.625	2.625	100.000	1,350,000	-
	3/1/2019	2.900	2.900	100.000	1,380,000	-
	3/1/2020	3.150	3.150	100.000	-	-
	3/1/2021	3.300	3.300	100.000	-	-

San Elijo Joint Powers Authority, California Refunding Revenue Bonds, Series 2011 (2005A ECAA Revenue Bond and 2003 Refunding Revenue Bonds) Gross Debt Service Schedule (2003)
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Date	Principal	Rate	Interest	Periodic Debt Service	Annual Debt Service
1/12/2012					
3/1/2012	-	-	24,789.24	24,789.24	24,789.24
9/1/2012			91,062.50	91,062.50	
3/1/2013	1,215,000	0.850	91,062.50	1,306,062.50	1,397,125.00
9/1/2013			85,898.75	85,898.75	
3/1/2014	1,255,000	1.300	85,898.75	1,340,898.75	1,426,797.50
9/1/2014			77,741.25	77,741.25	
3/1/2015	1,265,000	1.750	77,741.25	1,342,741.25	1,420,482.50
9/1/2015			66,672.50	66,672.50	
3/1/2016	1,285,000	2.100	66,672.50	1,351,672.50	1,418,345.00
9/1/2016			53,180.00	53,180.00	
3/1/2017	1,315,000	2.350	53,180.00	1,368,180.00	1,421,360.00
9/1/2017			37,728.75	37,728.75	
3/1/2018	1,350,000	2.625	37,728.75	1,387,728.75	1,425,457.50
9/1/2018			20,010.00	20,010.00	
3/1/2019	1,380,000	2.900	20,010.00	1,400,010.00	1,420,020.00
9/1/2019			-	-	
3/1/2020	-	-	-	-	-
9/1/2020			-	-	
3/1/2021	-	-	-	-	-
Totals	9,065,000		889,376.74	9,954,376.74	9,954,376.74

San Elijo Joint Powers Authority, California
 Refunding Revenue Bonds, Series 2011
 (2005A ECAA Revenue Bond and 2003 Refunding Revenue Bonds)

Net Debt Service Schedule and Savings Calculation (Cash Flow NPV Basis - 2003)

New Issue Reserve Fund				Prior Issue Reserve Fund		1,598,300.00					
Investment Yield				Investment Yield		1.00					
Date	Periodic Debt Service	Less: RF Earnings	Net Periodic Debt Service	Net Annual Debt Service	Prior Issue Periodic Debt Service	Less: RF Earnings and Corpus	Net Prior Issue Periodic Debt Service	Net Prior Issue Annual Debt Service	Annual (Savings) / Cost	2.56635 Present Value	
1/12/2012											
3/1/2012	24,789.24	-	24,789.24	24,789.24	1,323,300.00	(7,991.50)	1,315,308.50	1,315,308.50	(1,290,519.26)	(1,286,047.80)	
9/1/2012	91,062.50	-	91,062.50		252,300.00	(7,991.50)	244,308.50			(150,780.25)	
3/1/2013	1,306,062.50	-	1,306,062.50	1,397,125.00	1,342,300.00	(7,991.50)	1,334,308.50	1,578,617.00	(181,492.00)	(27,439.42)	
9/1/2013	85,898.75	-	85,898.75		230,500.00	(7,991.50)	222,508.50			(131,027.48)	
3/1/2014	1,340,898.75	-	1,340,898.75	1,426,797.50	1,365,500.00	(7,991.50)	1,357,508.50	1,580,017.00	(153,219.50)	(15,729.19)	
9/1/2014	77,741.25	-	77,741.25		202,125.00	(7,991.50)	194,133.50			(108,825.36)	
3/1/2015	1,342,741.25	-	1,342,741.25	1,420,482.50	1,392,125.00	(7,991.50)	1,384,133.50	1,578,267.00	(157,784.50)	(38,210.95)	
9/1/2015	66,672.50	-	66,672.50		172,375.00	(7,991.50)	164,383.50			(89,058.40)	
3/1/2016	1,351,672.50	-	1,351,672.50	1,418,345.00	1,417,375.00	(7,991.50)	1,409,383.50	1,573,767.00	(155,422.00)	(51,934.11)	
9/1/2016	53,180.00	-	53,180.00		141,250.00	(7,991.50)	133,258.50			(71,149.64)	
3/1/2017	1,368,180.00	-	1,368,180.00	1,421,360.00	1,451,250.00	(7,991.50)	1,443,258.50	1,576,517.00	(155,157.00)	(65,862.03)	
9/1/2017	37,728.75	-	37,728.75		108,500.00	(7,991.50)	100,508.50			(54,375.31)	
3/1/2018	1,387,728.75	-	1,387,728.75	1,425,457.50	1,488,500.00	(7,991.50)	1,480,508.50	1,581,017.00	(155,559.50)	(79,341.07)	
9/1/2018	20,010.00	-	20,010.00		74,000.00	(7,991.50)	66,008.50			(38,837.50)	
3/1/2019	1,400,010.00	-	1,400,010.00	1,420,020.00	1,519,000.00	(31,142.99)	1,487,857.01	1,553,865.51	(133,845.51)	(73,231.38)	
9/1/2019	-	-	-		37,875.00	(37,875.00)	-			-	
3/1/2020	-	-	-		1,552,875.00	(1,552,875.00)	-			-	
Totals	9,954,376.74	-	9,954,376.74	9,954,376.74	14,071,150.00	(1,733,773.99)	12,337,376.01	12,337,376.01	(2,382,999.28)	(2,281,849.90)	
							Plus: Prior Issue Other Funds		1,323,300.00	1,323,300.00	
								Net Total	(1,059,699.28)	(958,549.90)	
								Savings % New		10.57%	
								Savings % Prior		8.44%	

San Elijo Joint Powers Authority, California
Refunding Revenue Bonds, Series 2011
(2005A ECAA Revenue Bond and 2003 Refunding Revenue Bonds)

Prior Issue Debt Service Schedule and Redemption Provisions (2003)

Date	Principal	Rate	Interest	Periodic Debt Service	Annual Debt Service	3/1/2012 Called Bonds	1.00% Call Premium	Periodic Debt Service	Defeasance Debt Service
9/1/2011									
3/1/2012	1,050,000	4.000	273,300.00	1,323,300.00	1,323,300.00			1,323,300.00	11,736,400.00
9/1/2012			252,300.00	252,300.00					
3/1/2013	1,090,000	4.000	252,300.00	1,342,300.00	1,594,600.00	1,090,000	10,900.00		
9/1/2013			230,500.00	230,500.00					
3/1/2014	1,135,000	5.000	230,500.00	1,365,500.00	1,596,000.00	1,135,000	11,350.00		
9/1/2014			202,125.00	202,125.00					
3/1/2015	1,190,000	5.000	202,125.00	1,392,125.00	1,594,250.00	1,190,000	11,900.00		
9/1/2015			172,375.00	172,375.00					
3/1/2016	1,245,000	5.000	172,375.00	1,417,375.00	1,589,750.00	1,245,000	12,450.00		
9/1/2016			141,250.00	141,250.00					
3/1/2017	1,310,000	5.000	141,250.00	1,451,250.00	1,592,500.00	1,310,000	13,100.00		
9/1/2017			108,500.00	108,500.00					
3/1/2018	1,380,000	5.000	108,500.00	1,488,500.00	1,597,000.00	1,380,000	13,800.00		
9/1/2018			74,000.00	74,000.00					
3/1/2019	1,445,000	5.000	74,000.00	1,519,000.00	1,593,000.00	1,445,000	14,450.00		
9/1/2019			37,875.00	37,875.00					
3/1/2020	1,515,000	5.000	37,875.00	1,552,875.00	1,590,750.00	1,515,000	15,150.00		
Totals	11,360,000		2,711,150.00	14,071,150.00	14,071,150.00	10,310,000	103,100.00	1,323,300.00	11,736,400.00

RESOLUTION NO. 2012-02

RESOLUTION AUTHORIZING THE ISSUANCE OF REVENUE BONDS RELATING TO THE REFUNDING OF 2003 REFUNDING REVENUE BONDS (SAN ELIJO WATER POLLUTION CONTROL FACILITY) AND THE CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION LOAN, AUTHORIZING AND DIRECTING EXECUTION OF A RELATED INDENTURE OF TRUST, AND THIRD AMENDED AND RESTATED LOAN AGREEMENTS, AUTHORIZING SALE OF BONDS, APPROVING OFFICIAL STATEMENT, AND AUTHORIZING OFFICIAL ACTION

WHEREAS, the Cardiff Sanitation District ("Cardiff") and the Solana Beach Sanitation District ("Solana Beach Sanitation District") (together, the "Districts") have heretofore entered into a Joint Exercise of Powers Agreement dated as of June 17, 1987 (the "Agreement"), establishing the San Elijo Joint Powers Authority (the "Authority") for the purpose of establishing a single agency authorized to manage, operate, maintain and expand the Authority's plant for the treatment and disposal of sewage or wastewater (the "Enterprise") and to determine the joint and separate obligations of the Districts concerning the transmission, treatment, disposal and reclamation of sewage and wastewater within the respective service territories of the Districts; and

WHEREAS, Solana Beach Sanitation District existed as a county sanitation district duly established and authorized to transact business and exercise powers under and pursuant to the provisions of Chapter 3, Part 3 of Division 5 of the Health and Safety Code of the State of California (the "County Sanitation District Act"), and had the power under Section 4764 of the County Sanitation District Act to borrow money and incur indebtedness; and

WHEREAS, Solana Beach Sanitation District was merged into the City of Solana Beach ("Solana Beach") on July 1, 1990, and under Section 57531 of the California Government Code, Solana Beach is the successor in interest to all of the rights and obligations of Solana Beach Sanitation District under Solana Beach Sanitation District's Loan Agreement; and

WHEREAS, Cardiff existed as a county sanitation district duly established and authorized to transact business and exercise powers under and pursuant to the provisions of the County Sanitation District Act, and had the power under Section 4764 of the County Sanitation District Act to borrow money and incur indebtedness; and

WHEREAS, Cardiff was merged into the City of Encinitas ("Encinitas") on October 18, 2001, and under Section 57531 of the California Government Code, Encinitas is the successor in interest to all of the rights and obligations of Cardiff under the Cardiff Sanitation District's Loan Agreement; and

WHEREAS, the Authority issued its San Elijo Joint Powers Authority 1990 Revenue Bonds (San Elijo Water Pollution Control Facility Upgrade and Expansion Project) in an aggregate principal amount of \$24,265,000 (the "1990 Bonds") for the purpose of providing funds to assist in the financing of the San Elijo Water Pollution Control Facility Upgrade and Expansion Project (the "Project"); and

WHEREAS, the Authority issued its \$22,565,000 aggregate principal amount of San Elijo Joint Powers Authority 1993 Refunding Revenue Bonds (San Elijo Water Pollution Control Facility) (the "1993 Bonds") for the purpose of refunding in part the 1990 Bonds; and

WHEREAS, the 1993 Bonds were secured by two separate loan agreements (the "Amended and Restated Loan Agreements") dated as of March 15, 1993, between the Authority and Cardiff and between the Authority and Solana Beach, respectively; and

WHEREAS, the Authority issued its \$18,640,000 aggregate principal amount of San Elijo Joint Powers Authority 2003 Refunding Revenue Bonds (San Elijo Water Pollution Control Facility) (the "2003 Bonds") for the purpose of refunding the 1993 Bonds; and

WHEREAS, the 2003 Bonds are secured by two separate loan agreements (the "Second Amended and Restated Loan Agreements") dated as of April 1, 2003, by and among the Authority, Union Bank, N.A. (formerly, Union Bank of California, N.A.) (the "Trustee") and Encinitas and by and among the Authority, the Trustee and Solana Beach, respectively; and

WHEREAS, in 2007, the Authority entered into the Energy Conservation Assistance Account Loan Agreement between the California Energy Resources Conservation and Development Commission (the "Commission") and the Authority, pursuant to which the Commission made an unsecured loan to the Authority in the original principal amount of \$1,193,500, of which \$1,009,328 principal amount will be outstanding on January 1, 2012 (the "CEC Loan," and together with the 2003 Bonds, the "Prior Debt"); and

WHEREAS, the Authority has determined that interest savings will be realized if the Prior Debt is refunded; and

WHEREAS, the refunding Bonds are to be issued pursuant to the Article 10 (commencing with section 53570) of Chapter 3 of Division 2 of Title 5 of the Government Code of the State of California (the "Act"), and pursuant to an Indenture of Trust dated as of January 1, 2012, by and between the Authority and the Trustee; and

WHEREAS, Best Best & Krieger LLP ("Disclosure Counsel") has caused to be prepared an Official Statement describing the Bonds and the Enterprise, Solana Beach and Encinitas and their respective sewer systems, the preliminary form of which is on file with the Secretary; and

WHEREAS, the Board has duly considered such transactions and wishes at this time to approve said transactions in the public interests of the Authority;

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED by the Board of Directors of the San Elijo Joint Powers Authority as follows:

SECTION 1. Issuance of Bonds. The Board hereby authorizes the issuance of the Bonds under and pursuant to the Act and the Indenture for the purposes hereinbefore described so long as the net present value interest savings achieved by the refunding of the Prior Debt are at least three percent (3%) (expressed as a percentage of the principal of the Prior Debt being refunded). The Board hereby approves the Indenture, in substantially the form on file with the Secretary, together with any additions thereto or changes therein necessary to qualify the Bonds for an investment grade rating from one or more national rating agencies, or to qualify the Bonds for municipal bond insurance, or deemed necessary or advisable by the General Manager or the Director of Finance/Administration. The General Manager is hereby authorized

and directed to execute, and the Clerk of the Board is hereby authorized and directed to attest, the final form of the Indenture, for and in the name and on behalf of the Authority. The Board hereby authorizes the delivery and performance of the Indenture.

SECTION 2. Approval of Amendment and Restatement of Loans. The Board hereby authorizes and approves the amendment and restatement of the loans made by the Authority to Solana Beach and to Encinitas pursuant to the Second Amended and Restated Loan Agreements (the "Loans"). The Loans shall be amended and restated pursuant to and in accordance with the terms of the Third Amended and Restated Loan Agreement, dated as of January 1, 2012, by and among the Authority, Encinitas and the Trustee, and the Third Amended and Restated Loan Agreement, dated as of January 1, 2012, by and among the Authority, Solana Beach and the Trustee, each relating to the Loans, as so amended and restated (the "Restated Loan Agreements"). The Board hereby approves the Restated Loan Agreements in substantially the form on file with the Clerk of the Board, together with any additions thereto or changes therein necessary to qualify the Bonds for an investment grade rating from one or more national rating agencies, or to qualify the Bonds for municipal bond insurance, or deemed necessary or advisable by the General Manager or the Director of Finance/Administration. The General Manager is hereby authorized and directed to execute, and the Clerk of the Board is hereby authorized and directed to attest, the final form of the Restated Loan Agreements for and in the name and on behalf of the Authority. The Board hereby authorizes the delivery and performance of the Restated Loan Agreements.

SECTION 3. Sale of Bonds. The Board hereby approves the sale of the Bonds by negotiated sale to the Brandis Tallman LLC (the "Underwriter") pursuant to the Purchase Contract, among the Underwriter, the Authority, Encinitas and Solana Beach (the "Purchase Contract") in substantially the form on file with the Clerk of the Board, together with any changes therein or additions thereto approved by the General Manager or the Director of Finance/Administration. The General Manager and the Director of Finance/Administration are hereby separately authorized and directed to execute the Purchase Contract, so long as the purchase price received by the Authority for the Bonds shall be not less than ninety-nine percent (99%) of the par amount thereof, exclusive of original issue discount and premium.

SECTION 4. Official Statement. The Board hereby approves the preliminary Official Statement describing the Bonds, in substantially the form submitted by Disclosure Counsel and on file with the Clerk of the Board. Distribution of the Preliminary Official Statement by the Underwriter is hereby authorized and approved. The Board hereby authorizes the distribution of the final Official Statement by the Underwriter. The General Manager and the Director of Finance/Administration are hereby separately authorized and directed to approve any changes in or additions to a final form of said Official Statement. The Final Official Statement shall be executed in the name and on behalf of the Authority by the Chairperson or General Manager or the Director of Finance/Administration, all of whom are hereby separately authorized and directed to execute the final Official Statement on behalf of the Authority.

The General Manager and the Director of Finance/Administration are hereby separately authorized to execute an appropriate certificate stating his determination that the Preliminary Official Statement has been deemed nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934, as amended.

SECTION 5. Continuing Disclosure. The Board hereby approves the Continuing Disclosure Certificate, in the form on file with the Clerk of the Board. The General Manager and Director of

Finance/Administration are hereby separately authorized and directed to execute the Continuing Disclosure Certificate.

SECTION 6. Approval of Professional Service Contracts. The firm of Jones Hall, A Professional Law Corporation, is hereby designated to serve as Bond Counsel to the Authority, and the firm of Best Best & Krieger LLP is hereby designated to serve as Disclosure Counsel to the Authority, in connection with the refunding transaction described in this Resolution. Compensation to said firms shall be paid from a portion of the proceeds of the Bonds.

The Agreement for Legal Services between Jones Hall, A Professional Law Corporation, and the Authority, a copy of which is on file with the Director of Finance/Administration, is hereby approved, and the General Manager is hereby authorized and directed for and in the name and on behalf of the Authority to execute said agreement. The Agreement for Legal Services between Best Best & Krieger LLP and the Authority, a copy of which is on file with the Director of Finance/Administration, is hereby approved, and the General Manager is hereby authorized and directed for and in the name and on behalf of the Authority to execute said agreement.

SECTION 7. Official Action. The General Manager, the Director of Finance/Administration, the Secretary, the Authority's General Counsel and any and all other officers of the Authority are hereby authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions, including execution and delivery of any and all assignments, certificates, requisitions, agreements (including specifically an escrow deposit and trust agreement, if necessary, between the Authority and the Trustee for the Prior Debt), notices, consents, instruments of conveyance, warrants and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and sale of the Bonds and the amendment and restatement of the Loans as described herein.

SECTION 8. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

PASSED AND ADOPTED by the Board of Directors of the San Elijo Joint Powers Authority at a meeting thereof held on the 14th day of November 2011.

Thomas M. Campbell, Chairperson

ATTEST:

Michael T. Thornton, Secretary

**JONES HALL,
A PROFESSIONAL LAW CORPORATION**

**AGREEMENT FOR LEGAL SERVICES
(San Elijo Water Reclamation Facility Refunding Bonds)**

THIS AGREEMENT FOR LEGAL SERVICES is made and entered into this _____ day of _____, 2011, by and between the SAN ELIJO JOINT POWERS AUTHORITY (the "Authority"), and JONES HALL, A PROFESSIONAL LAW CORPORATION, San Francisco, California ("Attorneys").

WHEREAS, the Authority financed the construction of certain improvements to its wastewater system and issued revenue bonds in 1990 (the "1990 Bonds") to finance such improvements; and

WHEREAS, the 1990 Bonds were refunded on April 14, 1993, when the Authority issued its \$22,565,000 San Elijo Joint Powers Authority 1993 Refunding Revenue Bonds (San Elijo Water Pollution Control Facility) (the "1993 Bonds"); and

WHEREAS, the 1993 Bonds were refunded on April 29, 2003, when the Authority issued its \$18,640,000 San Elijo Joint Powers Authority 2003 Refunding Revenue Bonds (San Elijo Water Pollution Control Facility) (the "Prior Bonds"); and

WHEREAS, the Authority has determined to issue bonds to refund the Prior Bonds through the issuance of refunding revenue bonds (the "Refunding Bonds"); and

WHEREAS, the Authority has determined that Attorneys are specially trained and experienced to provide services for the financing and the execution and delivery of the Refunding Bonds; and

WHEREAS, the public interest, economy and general welfare will be served by this Agreement for Legal Services;

NOW, THEREFORE, IT IS HEREBY AGREED, as follows:

1. Duties of Attorneys. Attorneys shall provide legal services in connection with the authorization, issuance and consummation of the financing proceedings relating to execution and delivery of the Refunding Bonds. Such services shall include the following:

a. Confer and consult with the officers and administrative staff of the Authority as to matters relating to the financing proceedings;

b. Attend all meetings of the Board of Directors and any administrative meetings at which any financing proceedings relating to the Refunding Bonds are to be discussed, deemed necessary by Attorneys for the proper planning of the financing proceedings or when specifically requested to attend;

c. Prepare any required amendments to existing financing documents, indentures, escrow agreements, and all resolutions, notices and legal documents necessary for the proper conduct of the financing proceedings relating to the execution and delivery of the Refunding Bonds;

d. Review all financial documents for legal sufficiency;

e. Review, without undertaking an independent investigation, the official statement prepared in connection with the financing proceedings to assure correctness of disclosure relating to the legal documents;

f. Prepare and provide a signature and no-litigation certificate, an arbitration certificate and any and all other closing documents required to accompany delivery of the Refunding Bonds;

g. Prepare and provide a complete transcript of the conduct of the proceedings necessary to accompany delivery of the Refunding Bonds;

h. Subject to the completion of proceedings to the satisfaction of Attorneys, provide the legal opinion of Attorneys that the interest due with respect to the Refunding Bonds is excludable from gross income for purposes of federal income taxation and that such interest is exempt from California personal income taxation;

i. Subject to the completion of proceedings to the satisfaction of Attorneys, provide the legal opinion of Attorneys approving in all regards the legality of all proceedings relating to the execution and delivery of the Refunding Bonds; and

j. Confer and consult with Authority officials and agents with regard to problems which may arise during the servicing and payment of principal and interest due with respect to the Refunding Bonds.

2. Compensation. For the services set forth under Section 1, Attorneys shall be paid the percentage compensation set forth below:

a. One percent (1%) of the principal amount of the Refunding Bonds to a principal amount of \$1,000,000; plus,

b. One-half percent (1/2%) of the principal amount of the Refunding Bonds in excess of \$1,000,000, but less than or equal to \$5,000,000; plus,

c. One-quarter percent (1/4%) of the principal amount of the Refunding Bonds in excess of \$5,000,000, but less than \$10,000,000; plus

d. One-fifteenth percent (1/15%) of the principal amount of the Refunding Bonds in excess of \$10,000,000.

In addition, Attorneys shall be reimbursed for any costs advanced by Attorneys on behalf of the Authority, including delivery and messenger services, closing costs, duplication costs, transcript binding costs and expenses for travel outside the State of California, if any, but specifically excluding travel expenses within the State of California.

Payment of said fees and expenses shall be entirely contingent, shall be due and payable upon the delivery of the Refunding Bonds and shall be payable solely from the proceeds of the Refunding Bonds or other available moneys of the Authority.

3. Exceptions. Any services rendered in any litigation involving the Authority or the financing proceedings relating to the Refunding Bonds are excepted from the services to be rendered for the above compensation. For such services which Attorneys are directed to render for and on behalf of the Authority, compensation shall be on the basis of reasonable fees to be agreed upon by the Authority and Attorneys.

4. Termination of Agreement. This Agreement for Legal Services shall be indefinite as to term but may be terminated at any time by the Authority, with or without cause, upon written notice to Attorneys. In the event of such termination, all finished and unfinished documents shall, at the option of the Authority, become its property and shall be delivered to the Authority by Attorneys.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

SAN ELIJO JOINT POWERS AUTHORITY

Michael Thornton, General Manager

JONES HALL,
A Professional Law Corporation

William H. Madison



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October 26, 2011

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San Elijo Joint Powers Authority
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Mr. David Ott
City of Solana Beach
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Ms. Jennifer Smith
City of Encinitas
505 South Vulcan Avenue
Encinitas, CA 92024-3633

Re: Disclosure Counsel Services to San Elijo Joint Powers Authority for
proposed issuance of its 2012 Refunding Revenue Bonds Refunding
2003 Revenue Bonds

All:

We are pleased to submit this letter to you in connection with our services as disclosure counsel to the San Elijo Joint Powers Authority (the "Authority") relating to the proposed issuance of the Authority's above-captioned bonds (the "Bonds"). The firm of Best Best & Krieger LLP will serve as disclosure counsel on this matter and proposes to perform the following services on the basis set forth in this letter.

We will confer and consult with the Authority's staff, staff of member agencies of the Authority, bond counsel, bond insurers and the Authority's financing consultant and underwriter on all matters relating to the preparation of an official statement describing the terms of issuance of the Bonds. Our services will include the preparation of a preliminary and final official statement, a purchase contract and a continuing disclosure agreement, in order for the Authority to comply with Rule 15c2-12. We will also conduct the necessary due diligence in order to verify the narrative in the Official Statement regarding the Authority and its members.

Subject to completion of the financing to our satisfaction, Best Best & Krieger LLP will issue its legal opinion with respect to the matters discussed in the official statement.

Based on our current understanding of the issuance of the Bonds and the involvement of Best Best & Krieger LLP attorneys in drafting documents relating to the issuance of the Bonds and



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Mr. Gregory Lewis
Ms. Jennifer Smith
Mr. David Ott
October 26, 2011
Page 2

delivering our legal opinion, our fee, including reimbursement for costs, would be \$29,000, payable upon the successful completion of the financing. Our fee assumes a bond issuance size of approximately \$13,000,000 which would close by February 1, 2012. If the transaction is not completed within the estimated schedule or our involvement differs significantly from our expectations, we would expect to be paid a fee that we mutually agree would reflect reasonable compensation for legal services rendered considering the risk undertaken and the level of expertise required to undertake such legal service. By your signature and return of this letter, you agree to pay our fees and expenses as set forth in this paragraph.

If this arrangement is satisfactory to you, please authorize our employment according to the terms of this letter by having this letter executed by you or your agent.

We look forward to working with you and the staff of the San Elijo Joint Powers Authority in order to bring this matter to a successful conclusion.

Sincerely yours,

Kim A. Byrens
for BEST BEST & KRIEGER LLP

TERMS OF PAYMENT OF FEES AND
EXPENSES OF DISCLOSURE COUNSEL
APPROVED THIS ____ DAY OF
_____, 2011.

Authorized Signatory

INDENTURE OF TRUST

by and between the

SAN ELIJO JOINT POWERS AUTHORITY

and

**UNION BANK, N.A.
as Trustee**

Dated as of January 1, 2012

**Relating to
\$ _____
San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)**

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EXHIBIT A FORM OF BOND

INDENTURE OF TRUST

THIS INDENTURE OF TRUST (this "Indenture"), made and entered into as of January 1, 2012, is by and between the SAN ELIJO JOINT POWERS AUTHORITY, a joint powers authority organized and existing under the laws of the State of California (the "Authority") and UNION BANK, N.A., a banking association organized and existing under the laws of the United States of America (formerly, Union Bank of California, N.A.) with a principal corporate trust office in Los Angeles, California, and being qualified to accept and administer the trusts hereby created (the "Trustee");

WITNESSETH:

WHEREAS, the Authority is a joint powers authority duly organized and existing under and pursuant to that certain Joint Exercise of Powers Agreement dated June 17, 1987, by and between the Solana Beach Sanitation District ("Solana Beach Sanitation District") and the Cardiff Sanitation District ("Cardiff"), and under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the "Act"), and is authorized pursuant to Article 10 (commencing with Section 53570) of Chapter 3 of Division 2 of Title 5 of the Government Code of the State of California (the "Bond Law") to borrow money for the purpose of financing the acquisition of bonds, notes and other obligations of, or for the purpose of making loans to, the Members to provide financing for public capital improvements of the Members; and

WHEREAS, for the purpose of providing financing for the wastewater treatment facilities, the Authority issued its San Elijo Joint Powers Authority 1990 Revenue Bonds (San Elijo Water Pollution Control Facility) in the aggregate principal amount of \$24,465,000 (the "1990 Bonds"), all pursuant to and secured by an Indenture of Trust, dated as of March 1, 1990, between State Street Bank and Trust Company of California, N.A. (the "Prior Trustee") and the Authority (the "1990 Indenture"); and

WHEREAS, Solana Beach Sanitation District was merged into the City of Solana Beach ("Solana Beach") on July 1, 1990, and under Section 57531 of the California Government Code, Solana Beach is the successor in interest to all of the rights and obligations of the Solana Beach Sanitation District; and

WHEREAS, for the purpose of refunding a portion of the 1990 Bonds, the Authority issued its San Elijo Joint Powers Authority 1993 Revenue Bonds (San Elijo Water Pollution Control Facility) in the aggregate principal amount of \$22,565,000 (the "1993 Bonds"), all pursuant to and secured by an Indenture of Trust, dated as of March 15, 1993, between the Authority and the Prior Trustee (the "1993 Indenture"); and

WHEREAS, for the purpose of refunding the 1993 Bonds, the Authority issued its San Elijo Joint Powers Authority 2003 Revenue Bonds (San Elijo Water Pollution Control Facility) in the aggregate principal amount of \$18,640,000 (the "2003 Bonds"), all pursuant to and secured

by an Indenture of Trust, dated as of April 1, 2003, between the Authority and the Trustee (the "2003 Indenture"); and

WHEREAS, Cardiff was merged into the City of Encinitas ("Encinitas") on October 18, 2001, and under Section 57531 of the California Government Code, Encinitas is the successor in interest to all of the rights and obligations of Cardiff; and

WHEREAS, in 2007, the Authority entered into the Energy Conservation Assistance Account Loan Agreement between the California Energy Resources and Development Commission (the "Commission") and the Authority, pursuant to which the Commission made an unsecured loan to the Authority in the original principal amount of \$1,193,500, and of which \$1,009,328 principal amount will be outstanding on January 1, 2012 (the "CEC Loan," and together with the 2003 Bonds, the "Prior Debt"); and

WHEREAS, the Authority, Encinitas and Solana Beach have determined that interest savings will be realized if the Prior Debt is refunded through the issuance of refunding bonds hereunder (the "Bonds"); and

WHEREAS, in order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and to secure the payment of the principal thereof and interest thereon, the Authority has authorized the execution and delivery of this Indenture; and

WHEREAS, all acts and proceedings required by law necessary to make the Bonds, when executed by the Authority, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the Authority, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of the Indenture have been in all respects duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the principal of and the interest and premium (if any) on all Bonds at any time issued and Outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the Owners thereof, and for other valuable considerations, the receipt whereof is hereby acknowledged, the Authority does hereby covenant and agree with the Trustee, for the benefit of the respective Owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS; AUTHORIZATION AND PURPOSE OF BONDS; EQUAL SECURITY

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section shall for all purposes of this Indenture and of any Supplemental Indenture and of the Bonds and of any certificate, opinion, request or other documents herein mentioned have the meanings herein specified.

“Act” means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State, as in existence on the Closing Date or as thereafter amended from time to time.

“Agreement” means that certain Joint Exercise of Powers Agreement, dated June 17, 1987, entered into under the Act by and between Cardiff and Solana Beach Sanitation District, together with any amendments thereof and supplements thereto.

“Authority” means the San Elijo Joint Powers Authority, a joint powers authority duly organized and existing under the Agreement and the laws of the State.

“Authority Representative” means the Manager of the Authority.

“Board” means the Board of the Authority.

“Bond Law” means Article 10 (commencing with Section 53570) of Chapter 3 of Division 2 of Title 5 of the Government Code of the State, as in existence on the Closing Date or as thereafter amended from time to time.

“Bond Year” means each twelve-month period extending from March 2 in one calendar year to March 1 of the succeeding calendar year, both dates inclusive, except that the 1st Bond Year shall extend from the Closing Date to March 1, 2013.

“Bonds” means the San Elijo Joint Powers Authority 2012 Refunding Revenue Bonds (San Elijo Water Reclamation Facility).

“Business Day” means a day of the year on which banks in New York, New York, and Los Angeles, California, are not required or authorized to remain closed and on which The New York Stock Exchange is not closed.

“Cardiff” means the Cardiff Sanitation District, a county sanitation district duly organized and existing under the laws of the State.

“Certificate of the Authority” means a certificate in writing signed by the Chairperson, Vice-Chairperson, Authority Representative or Secretary of the Authority, or by any other officer of the Authority duly authorized by the Board for that purpose.

"Cities" means Solana Beach and Encinitas.

"Closing Date" means January __, 2012, being the date of delivery of the Bonds to Brandis Tallman LLC, as the original purchaser thereof.

"Costs of Issuance" means all expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds, including but not limited to all compensation, fees and expenses (including but not limited to fees and expenses for legal counsel) of the Authority and the Trustee, compensation to any financial consultants or underwriters, legal fees and expenses, filing and recording costs, rating agency fees, costs of preparation and reproduction of documents and costs of printing.

"Costs of Issuance Fund" means the fund by that name established and held by the Trustee pursuant to Section 3.03.

"Debt Service" means, during any period of computation, the amount obtained for such period by totaling the following amounts:

(a) The principal amount of all Outstanding Serial Bonds coming due and payable by their terms in such period;

(b) The interest which would be due during such period on the aggregate principal amount of Bonds which would be Outstanding in such period if the Bonds are retired as scheduled, but deducting and excluding from such aggregate amount the amount of Bonds no longer Outstanding.

"Depository" means (a) initially DTC, and (b) any other Securities Depository acting as Depository pursuant to Section 2.05.

"Depository System Participant" means any participant in the Depository's book-entry system.

"EMMA" means Municipal Securities Rulemaking Board's Electronic Municipal Market Access.

"Encinitas" means the City of Encinitas, a general law city duly organized and existing under the laws of the State, as successor to the Cardiff Sanitation District.

"Enterprise" means any and all facilities of the Authority used for the treatment and disposal of wastewater, including sewage treatment plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, treatment, purification or disposal of sewage, and any necessary lands, rights of way and other real or personal property useful in connection therewith; provided, that the term "Enterprise" shall not include the Water Reclamation Facility.

“Escrow Bank” means the Trustee, acting as Escrow Bank under the Escrow Deposit and Trust Agreement.

“Escrow Deposit and Trust Agreement” means the Escrow Deposit and Trust Agreement, dated as of January 1, 2012, by and between the Authority and the Escrow Bank.

“Escrow Fund” means the fund of that name established and maintained under the Escrow Deposit and Trust Agreement.

“Event of Default” means any of the events described in Section 8.01.

“Fair Market Value” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the City and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of the investment. To the extent required by the Regulations, the term “investment” will include a hedge.

“Federal Securities” means any direct, noncallable general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), or other noncallable obligations of any government sponsored agency the timely payment of principal of and interest on which are directly or indirectly fully and unconditionally guaranteed by the United States of America.

“Fiscal Year” means any twelve-month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the Authority as its official fiscal year period.

“Indenture” means this Indenture of Trust, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture pursuant to the provisions hereof.

“Interest Account” means the account by that name established and held by the Trustee pursuant to Section 4.02(a).

“Interest Payment Date” means March 1 and September 1 in each year, beginning September 1, 2012, and continuing thereafter so long as any Bonds remain Outstanding.

“Loan Agreements” means, collectively, (a) the Third Amended and Restated Loan Agreement, dated as of January 1, 2012, by and among the Authority, the Trustee and Encinitas, relating to the Restated Loan to Encinitas in the amount of \$_____; and (b) the Third Amended and Restated Loan Agreement, dated as of January 1, 2012, by and among the Authority, the Trustee and Solana Beach, relating to the Restated Loan to Solana Beach in the amount of \$_____.

“Loans” means the restated loans made by the Authority to the Members under and pursuant to the Loan Agreements.

“Members” mean Encinitas, as successor in interest to Cardiff, and Solana Beach, as successor in interest to Solana Beach Sanitation District.

“Moody's” means Moody's Investors Service, Inc., and its successors and assigns.

“Net Proceeds,” when used with reference to any insurance or condemnation award or sale of property, means the respective gross proceeds from the sale of property or insurance or condemnation award remaining after payment of all expenses (including attorneys' fees and any extraordinary expenses of the Trustee) incurred in the collection of such gross proceeds.

“Nominee” means (a) initially, Cede & Co. as nominee of DTC, and (b) any other nominee of the Depository designated pursuant to Section 2.05(a).

“Outstanding”, when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 9.07) all Bonds theretofore executed, issued and delivered by the Authority under this Indenture except -

(a) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation;

(b) Bonds paid or deemed to have been paid within the meaning of Section 9.03; and

(c) Bonds in lieu of or in substitution for which other Bonds shall have been executed, issued and delivered pursuant to this Indenture or any Supplemental Indenture.

“Owner” or **“Bond Owner”**, when used with respect to any Bond, means the person in whose name the ownership of such Bond shall be registered on the Registration Books.

“Permitted Investments” means the following, but only to the extent that the same are acquired at Fair Market Value, which at the time of investment are legal investments under the laws of the State for the moneys proposed to be invested therein:

(a) Federal Securities;

(b) any of the following direct or indirect obligations of the following agencies of the United States of America and other entities: (i) direct obligations of the Export-Import Bank; (ii) certificates of beneficial ownership issued by the Farmers Home Administration; (iii) participation certificates issued by the General Services Administration; (iv) mortgage-backed bonds or pass-through obligations issued and guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or the Federal Housing Administration; (v) project notes issued by the United States Department of Housing and Urban Development; and (vi) public housing notes and bonds guaranteed by the United States of America;

(c) interest-bearing demand or time deposits (including certificates of deposit) in federal or State chartered savings and loan associations or in federal or State banks (including the Trustee), provided that: (i) in the case of a savings and loan association, such demand or time deposits shall be fully insured by the Federal Deposit Insurance Corporation, or the unsecured obligations of such savings and loan association shall be rated A or better by Moody's or S&P; and (ii) in the case of a bank, such demand or time deposits shall be fully insured by the Federal Deposit Insurance Corporation, or the unsecured obligations of such bank (or the unsecured obligations of the parent bank holding company of which such bank is the lead bank) shall be rated A or better by Moody's or S&P;

(d) commercial paper rated in the highest rating category by Moody's or S&P;

(e) obligations the interest on which is excludable from gross income pursuant to Section 103 of the Tax Code and which are either (a) rated A or better by Moody's or S&P, or (b) fully secured as to the payment of principal and interest by Federal Securities;

(f) obligations issued by any corporation organized and operating within the United States of America having assets in excess of \$500,000,000, which obligations are rated A or better by Moody's or S&P;

(g) money market funds the policy of which is to invest solely in Federal Securities or in obligations which are fully guaranteed or collateralized by Federal Securities, including funds for which the Trustee or an affiliate provides investment advice or other services;

(h) any investment agreement which is either (i) fully collateralized with cash or Federal Securities; or (ii) entered into with a financial institution the long-term unsecured obligations of which are rated A or better by S&P; and

(i) the Local Agency Investment Fund - Bond Proceeds Pool established and maintained by the Treasurer of the State of California.

"Principal Account" means the account by that name established and held by the Trustee pursuant to Section 4.02(b).

“Record Date” means, with respect to any Interest Payment Date, the fifteenth (15th) calendar day of the month immediately preceding such Interest Payment Date, whether or not such day is a Business Day.

“Registration Books” means the records maintained by the Trustee pursuant to Section 2.09 for the registration and transfer of ownership of the Bonds.

“Request of the Authority” means a request in writing signed by the Authority Representative, the Treasurer of the Authority, or by any other officer of the Authority duly authorized by the Board for that purpose.

“Reserve Account” means the account by that name established and held by the Trustee pursuant to 4.02(c).

“Reserve Requirement” means an amount equal to the lesser of: (i) maximum annual Debt Service on the Bonds in any Bond Year; (ii) ten percent (10%) of the principal amount of the Bonds; or (iii) 125% of average annual Debt Service on the Bonds in each Bond Year. On the Closing Date, the Reserve Requirement for the Bonds is \$_____. Of said amount, Encinitas’s pro rata share of the Reserve Requirement is \$_____, and Solana Beach’s pro rata share of the Reserve Requirement is \$_____. From the Closing Date until payment in full or retirement or discharge of the Bonds in full, each City’s pro rata share of the Reserve Requirement shall be equal to such City’s pro rata responsibility to pay debt service on the Bonds on the date such pro rata share is determined.

“Revenue Fund” means the fund by that name established pursuant to Section 4.02.

“Revenues” means: (a) all amounts payable by the Members pursuant to the Loan Agreements (taking into account any limitations contained therein with respect to such payment), other than (i) administrative fees and expenses and indemnity against claims payable to the Authority and the Trustee and (ii) amounts payable to the United States of America pursuant to Section 4.06 of each of the Loan Agreements; (b) any proceeds of Bonds originally deposited with the Trustee and all moneys deposited and held from time to time by the Trustee in the funds and accounts established hereunder; (c) income and gains with respect to the investment of amounts on deposit in the funds and accounts established hereunder; and (d) earnings on the amounts on hand in the Reserve Account.

“S&P” means Standard & Poor's Corporation, and its successors and assigns.

“Securities Depositories” means The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax-(516) 227-4039 or 4190; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the Authority may designate in a Certificate of the Authority delivered to the Trustee.

“Solana Beach” means the City of Solana Beach, a general law city duly organized and existing under the laws of the State, as successor to the Solana Beach Sanitation District.

“State” means the State of California.

“Supplemental Indenture” means any indenture, agreement or other instrument hereafter duly executed by the Authority and the Trustee in accordance with the provisions of this Indenture.

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the Bonds, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

“Tax Regulations” means temporary and permanent regulations promulgated under or with respect to Section 103 and Sections 141 through 150, inclusive, of the Tax Code.

“Trust Office” means the principal corporate trust office of the Trustee at 120 So. San Pedro Street, Suite 400, Los Angeles, CA 90012, or such other offices as may be specified to the Authority by the Trustee in writing.

“Trustee” means Union Bank, N.A. (formerly, Union Bank of California, N.A.), and its successors and assigns, and any other corporation or association which may at any time be substituted in its place as provided in Article VI.

“Water Reclamation Facility” means the tertiary treatment system and reclaimed water distribution system of the Authority, including two 750,000 gallon reservoirs, 17 miles of distribution pipeline and two pumping stations, as more particularly described in the Authority’s State Revolving Fund Loan Program No. C-06-4155-110.

“Written Request” shall mean a request in writing signed by an Authorized Representative of the entity making such request.

Section 1.02. Rules of Construction. All references in this Indenture to “Articles”, “Sections”, and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; and the words “herein”, “hereof”, “hereunder”, and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

Section 1.03. Authorization and Purpose of Bonds. The Authority has reviewed all proceedings heretofore taken relative to the authorization of the Bonds and has found, as a result of such review, and hereby finds and determines that all things, conditions, and acts required by law to exist, happen and be performed precedent to and in the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Authority is now authorized under the Agreement and the Bond Law and each and every requirement of law, to issue the Bonds in the manner and form provided in this Indenture. Accordingly, the Authority hereby authorizes the issuance of the Bonds

pursuant to the Bond Law and this Indenture for the purpose of providing funds to make the Loans to the Cities under the Loan Agreements.

Section 1.04. Equal Security. In consideration of the acceptance of the Bonds by the Owners thereof, this Indenture shall be deemed to be and shall constitute a contract between the Authority and the Owners from time to time of the Bonds; and the covenants and agreements herein set forth to be performed on behalf of the Authority shall be for the equal and proportionate benefit, security and protection of all Owners of the Bonds without preference, priority or distinction as to security or otherwise of any of the Bonds over any of the others by reason of the number or date thereof or the time of sale, execution or delivery thereof, or otherwise for any cause whatsoever, except as expressly provided therein or herein.

ARTICLE II

ISSUANCE OF BONDS

Section 2.01. Terms of Bonds. The Bonds authorized to be issued by the Authority under and subject to the Bond Law and the terms of this Indenture shall be designated the “San Elijo Joint Powers Authority 2012 Refunding Revenue Bonds (San Elijo Water Reclamation Facility)” and shall be issued in the original aggregate principal amount of _____ Dollars (\$_____).

The Bonds shall be issued in fully registered form without coupons in denominations of \$5,000 or any integral multiple thereof, so long as no Bond shall have more than one maturity date. The Bonds shall mature on March 1 in each of the years and in the amounts, and shall bear interest (calculated on the basis of a 360-day year of twelve 30-day months) at the rates, as follows:

Maturity Date (March 1)	Principal Amount	Interest Rate Per Annum	Maturity Date (March 1)	Principal Amount	Interest Rate Per Annum
2012	\$	%	2021	\$	%
2013			2022		
2014			2023		
2015			2024		
2016			2025		
2017			2026		
2018			2027		
2019			2028		
2020					

Interest on the Bonds shall be payable on each Interest Payment Date to the person whose name appears on the Registration Books as the Owner thereof as of the Record Date immediately preceding each such Interest Payment Date, such interest to be paid by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owner at the address of such Owner as it appears on the Registration Books as of the preceding Record Date; provided, however, that at the written request of the Owner of at least \$1,000,000 in aggregate principal amount of Outstanding Bonds filed with the Trustee prior to any Record Date, interest on such Bonds shall be paid to such Owner on each succeeding Interest Payment Date by wire transfer of immediately available funds to an account in the United States designated in such written request. Principal of and premium (if any) on any Bond shall be paid upon presentation and surrender thereof, at maturity or the prior redemption thereof, at the Trust Office of the Trustee. The principal of and interest and premium (if any) on the Bonds shall be payable in lawful money of the United States of America.

Each Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before the

following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (b) it is authenticated on or before August 15, 2012, in which event it shall bear interest from the Closing Date; provided, however, that if, as of the date of authentication of any Bond, interest thereon is in default, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Section 2.02. Redemption of Bonds. (a) Redemption From Optional Loan Prepayments. Except as provided below, Bonds maturing on or prior to March 1, 20__ are not subject to redemption prior to maturity. The Bonds maturing on or after March 1, 20__ are subject to redemption prior to maturity, at the option of the Authority, as a whole or in part, as directed by the Authority, and by lot among maturities, on any date on or after March 1, 20__, at a redemption price equal to the principal amount thereof, plus accrued interest to the date of redemption, plus a premium (expressed as a percentage of the total principal amount redeemed), at the redemption prices set forth below:

<u>Redemption Date</u>	<u>Redemption Price</u>
March 1, 20__ through February 28, 20__	%
March 1, 20__ and thereafter	

(b) Mandatory Redemption Upon Acceleration of Loan. The Bonds shall also be subject to mandatory redemption in whole, or in part pro rata among maturities such that approximately equal annual debt service on the Bonds results in each succeeding Bond Year, and by lot within a maturity, on any date, solely from amounts credited towards the payment of principal of any Loan coming due and payable solely by reason of acceleration of such Loan pursuant to Section 5.01 of the related Loan Agreement, at a redemption price equal to the principal amount of the Bonds to be redeemed, without premium, together with accrued interest thereon to the redemption date. Pursuant to Section 5.02 of the related Loan Agreement, the Bonds shall be subject to mandatory redemption under this subsection (b) solely from amounts credited towards the payment of principal of any Loan which has become due and payable by reason of acceleration, and shall not be subject to redemption from any amounts credited towards the payment of past due interest and matured principal.

(c) Notice of Redemption. The Trustee, on behalf and at the expense of the Authority, shall mail (by first class mail) notice of any redemption to the respective Owners of any Bonds designated for redemption at their respective addresses appearing on the Registration Books, and to the Securities Depositories and to EMMA, at least thirty (30) but not more than sixty (60) days prior to the date fixed for redemption; provided, however, that neither failure to receive any such notice so mailed nor any defect therein shall affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. Such notice shall state the date of the notice, the redemption date, the redemption place and the redemption price and shall designate the CUSIP numbers, the Bond numbers and the maturity or maturities (in the event of redemption of all of the Bonds of such maturity or maturities in whole) of the Bonds to be redeemed, and shall require that such Bonds be then surrendered at the Trust Office for redemption at the redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date. Neither the Authority nor the

Trustee shall have any responsibility for any defect in the CUSIP number that appears on any Bond or in any redemption notice with respect thereto, and any such redemption notice may contain a statement to the effect that CUSIP numbers have been assigned by an independent service for convenience of reference and that neither the Authority nor the Trustee shall be liable for any inaccuracy in such numbers. To the extent funds for redemption of Bonds are not on deposit with the Trustee at the time the notice of redemption is sent to the Owners of the Bonds, the notice or redemption shall nevertheless be sent by the Trustee at the Written Request of the Authority, but such notice may state that redemption is conditioned upon receipt by the Trustee of funds sufficient to effect said redemption.

(d) Selection of Bonds for Redemption. Whenever provision is made in this Indenture for the redemption of less than all of the Bonds, the Trustee shall select the Bonds to be redeemed from all Bonds not previously called for redemption, among maturities as specified in (a) or (b) above and by lot within such maturities in any manner which the Trustee in its sole discretion shall deem appropriate and fair. For purposes of such selection, all Bonds shall be deemed to be comprised of separate \$5,000 portions and such portions shall be treated as separate Bonds which may be separately redeemed.

(e) Partial Redemption of Bonds. In the event only a portion of any Bond is called for redemption, then upon surrender of such Bond the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of the same series and maturity date, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond to be redeemed.

(f) Effect of Redemption. From and after the date fixed for redemption, if funds available for the payment of the principal of and interest (and premium, if any) on the Bonds so called for redemption shall have been duly provided, such Bonds so called shall cease to be entitled to any benefit under this Indenture other than the right to receive payment of the redemption price, and no interest shall accrue thereon from and after the redemption date specified in such notice. All Bonds redeemed pursuant to this Section 2.02 shall be cancelled and shall be surrendered to the Authority in accordance with Section 9.10. All moneys held by or on behalf of the Trustee for the payment of principal of or interest or premium on Bonds, whether at redemption or maturity, shall be held in trust for the account of the Owners thereof and the Trustee shall not be required to pay Owners any interest on, or be liable to Owners for any interest earned on, moneys so held.

Section 2.03. Form of Bonds. The Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, shall be substantially in the respective forms set forth in Exhibit A attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

Section 2.04. Execution of Bonds. The Bonds shall be signed in the name and on behalf of the Authority with the manual or facsimile signatures of its General Manager and attested with the manual or facsimile signature of Clerk of the Board or any assistant duly appointed by the Board and shall be delivered to the Trustee for authentication by it. In case any officer of the Authority who shall have signed any of the Bonds shall cease to be such officer before the

Bonds so signed shall have been authenticated or delivered by the Trustee or issued by the Authority, such Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Authority as though the individual who signed the same had continued to be such officer of the Authority. Also, any Bond may be signed on behalf of the Authority by any individual who on the actual date of the execution of such Bond shall be the proper officer although on the nominal date of such Bond such individual shall not have been such officer.

Only such of the Bonds as shall bear thereon a certificate of authentication in substantially the form set forth in Exhibit A, manually executed by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee shall be conclusive evidence that the Bonds so authenticated have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

Section 2.05. Book Entry System. (a) Original Delivery. The Bonds shall be initially delivered in the form of a separate single fully registered Bond (which may be typewritten) for each maturity of the Bonds. Upon initial delivery, the ownership of each such Bond shall be registered in the registration books kept by the Trustee in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Bonds shall be registered in the name of the Nominee on the Registration Books.

With respect to Bonds the ownership of which shall be registered in the name of the Nominee, the Issuer and the Trustee shall have no responsibility or obligation to any Depository System Participant or to any person on behalf of which such the Authority holds an interest in the Bonds. Without limiting the generality of the immediately preceding sentence, the Authority and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any notice with respect to the Bonds, including any notice of redemption, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed in the event the Authority elects to redeem the Bonds in part, (iv) the payment to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest represented by the Bonds or (v) any consent given or other action taken by the Depository as Owner of the Bonds. The Authority and the Trustee may treat and consider the person in whose name each Bond is registered as the absolute owner of such Bond for the purpose of payment of principal, premium and interest represented by such Bond, for the purpose of giving notices of prepayment and other matters with respect to such Bond, for the purpose of registering transfers of ownership of such Bond, and for all other purposes whatsoever. The Trustee shall pay the principal of and interest and premium, if any, on the Bonds only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal of and interest and premium, if any, on the Bonds to the extent of the sum or sums so paid. No person other than a Bond Owner shall receive a Bond evidencing the obligation of the Authority to make payments of principal, interest and premium, if any, pursuant to this Indenture. Upon delivery by the Depository to the Nominee of written notice to the effect that the Depository has determined to

substitute a new Nominee in its place, and subject to the provisions herein with respect to Record Dates, such new nominee shall become the Nominee hereunder for -all purposes; and upon receipt of such a notice the Authority shall promptly deliver a copy of the same to the Trustee.

(b) Representation Letter. In order to qualify the Bonds for the Depository's book-entry system, the Authority and the Trustee shall execute, countersign and deliver to such Depository a letter representing such matters as shall be necessary to so qualify the Bonds. The execution and delivery of such letter shall not in any way limit the provisions of subsection (a) above or in any other way impose upon the Authority any obligation whatsoever with respect to persons having interests in the Bonds other than the Bond Owners. Upon the written acceptance by the Trustee, the Trustee shall agree to take all action necessary for all representations of the Authority in such letter with respect to the Trustee to at all times be complied with. In addition to the execution and delivery of such letter, the Authority may take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. In the event that either (i) the Depository determines not to continue to act as Depository for the Bonds, or (ii) the Authority determines to terminate the Depository as such, then the Authority shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the Authority and the Trustee in the issuance of replacement Bonds by providing the Trustee with a list showing the interests of the Depository System Participants in the Bonds, and by surrendering the Bonds, registered in the name of the Nominee, to the Trustee on or before the date such replacement Bonds are to be issued. The Depository, by accepting delivery of the Bonds, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the Authority fails to identify another Securities Depository to replace the Depository, then the Bonds shall no longer be required to be registered in the Registration Books in the name of the Nominee, but shall be registered in whatever name or names the Owners transferring or exchanging Bonds shall designate, in accordance with the provisions of this Article II.

In the event the Authority determines that it is in the best interests of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the Authority may notify the Depository System Participants of the availability of such certificated Bonds through the Depository. In such event, the Trustee will issue, transfer and exchange Bonds as required by the Depository and others in appropriate amounts; and whenever the Depository requests, the Trustee and the Authority shall cooperate with the Depository in taking appropriate action (y) to make available one or more separate certificates evidencing the Bonds to any Depository System Participant having Bonds credited to its account with the Depository, or (z) to arrange for another Securities Depository to maintain custody of a single certificate evidencing such Bonds, all at the Authority's expense.

(d) Payments to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of and interest and premium, if any, on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the letter described in subsection (b) or as otherwise instructed by the Depository.

Section 2.06. Transfer of Bonds. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by his duly authorized attorney, upon presentation and surrender of such Bond for cancellation, accompanied by delivery of a written instrument of transfer in a form approved by the Trustee, duly executed. Whenever any Bond shall be surrendered for transfer, the Authority shall execute and the Trustee shall thereupon authenticate and deliver to the transferee a new Bond or Bonds of like tenor, maturity and aggregate principal amount. The Trustee shall not be required to transfer, pursuant to this Section, either (a) all Bonds during the period established by the Trustee for the selection of Bonds for redemption, or (b) any Bonds selected for redemption pursuant to Section 2.02(d).

Section 2.07. Exchange of Bonds. Bonds may be exchanged at the Trust Office of the Trustee for Bonds of the same tenor and maturity and of other authorized denominations. The Trustee shall not be required to exchange, pursuant to this Section, either (a) all Bonds during the period established by the Trustee for the selection of Bonds for redemption, or (b) any Bonds selected for redemption pursuant to Section 2.02(d).

Section 2.08. Temporary Bonds. The Bonds may be issued initially in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the Authority and may contain such reference to any of the provisions of this Indenture as may be appropriate. Every temporary Bond shall be executed by the Authority and be registered and authenticated by the Trustee upon the same conditions and in substantially the same manner as the definitive Bonds. If the Authority issues temporary Bonds, it will execute and furnish definitive Bonds without delay, and thereupon the temporary Bonds shall be surrendered, for cancellation, in exchange therefor at the Trust Office of the Trustee, and the Trustee shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Indenture as definitive Bonds authenticated and delivered hereunder.

Section 2.09. Registration Books. The Trustee will keep or cause to be kept at its Trust Office sufficient records for the registration and transfer of the Bonds, which shall at all times during regular business hours be open to inspection by the Authority with reasonable prior notice; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said records, Bonds as hereinbefore provided.

Section 2.10. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Authority, at the expense of the Owner of said Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like series, tenor and authorized denomination in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be cancelled by it and delivered to, or upon the order of, the Authority. If any Bond issued hereunder shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Authority and the Trustee and, if such evidence be satisfactory

to them and indemnity satisfactory to them shall be given, the Authority, at the expense of the Bond Owner, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like series and tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen (or if any such Bond shall have matured or shall have been called for redemption, instead of issuing a substitute Bond the Trustee may pay the same without surrender thereof upon receipt of indemnity satisfactory to the Trustee). The Authority may require payment of a reasonable fee for each new Bond issued under this Section and of the expenses which may be incurred by the Authority and the Trustee. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original contractual obligation on the part of the Authority whether or not the Bond alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds secured by this Indenture.

ARTICLE III

ISSUANCE OF BONDS; DEPOSIT AND APPLICATION OF PROCEEDS

Section 3.01. Issuance of Bonds. Upon the execution and delivery of this Indenture, the Authority shall execute and deliver Bonds in the aggregate principal amount of _____ Dollars (\$_____), and shall deliver the Bonds to the Trustee for authentication and delivery to the original purchaser thereof upon the Request of the Authority.

Section 3.02. Application of Proceeds of Sale of Bonds; Transfers. (i) Upon the receipt of payment for the Bonds on the Closing Date, the Trustee shall apply the proceeds of sale thereof, as follows:

- (a) The Trustee shall deposit \$_____ to the Reserve Account.
- (b) The Trustee shall deposit \$_____ in the Costs of Issuance Fund.
- (c) The Trustee shall transfer to the Escrow Bank the amount of \$_____, for deposit in the Escrow Fund.

Section 3.03. Costs of Issuance Fund. There is hereby established a fund to be held by the Trustee known as the "Costs of Issuance Fund" into which shall be deposited a portion of the proceeds of the Loans in the aggregate amount of \$_____ pursuant to Section 3.04 of each of the Loan Agreements. The moneys in the Costs of Issuance Fund shall be used to pay Costs of Issuance from time to time upon receipt of a Request of the Authority. On the date which is sixty (60) days following the Closing Date, or upon the earlier receipt by the Trustee of a Request of the Authority stating that all Costs of Issuance have been paid, the Trustee shall transfer all remaining amounts in the Costs of Issuance Fund to the Revenue Fund.

Section 3.04. Validity of Bonds. The validity of the authorization and issuance of the Bonds shall not be affected in any way by any proceedings taken by the Cities with respect to the application of the proceeds of the Loans, and the recital contained in the Bonds that the same are issued pursuant to the Bond Law shall be conclusive evidence of their validity and of the regularity of their issuance.

ARTICLE IV

REVENUES; FLOW OF FUNDS

Section 4.01. Pledge of Revenues; Assignment of Rights. Subject to the provisions of Section 6.03, the Bonds shall be secured by a first lien on and pledge (which shall be effected in the manner and to the extent hereinafter provided) of all of the Revenues and a pledge of all of the moneys in the Reserve Account, the Interest Account and the Principal Account, including all amounts derived from the investment of such moneys. The Bonds shall be equally secured by a pledge, charge and lien upon the Revenues and such moneys without priority for number, date of Bonds, date of execution or date of delivery; and the payment of the interest on and principal of the Bonds, and any premiums upon the redemption of any thereof, shall be and are secured by an exclusive pledge, charge and lien upon the Revenues and such moneys. So long as any of the Bonds are Outstanding, the Revenues and such moneys shall not be used for any other purpose; except that out of the Revenues there may be apportioned such sums, for such purposes, as are expressly permitted by Section 4.02.

The Authority hereby transfers in trust and assigns to the Trustee, for the benefit of the Owners from time to time of the Bonds, all of the Revenues, and all of the right, title and interest of the Authority in the Loan Agreements. The Trustee shall be entitled to and shall receive all of the Revenues, and any Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and shall forthwith be paid by the Authority to the Trustee. The Trustee also shall be entitled to and shall take all steps, actions and proceedings reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the Authority and all of the obligations of the Members under the Loan Agreements.

Section 4.02. Revenue Fund; Receipt, Deposit and Application of Revenues. All Revenues described in clause (a) of the definition thereof in Section 1.01 shall be promptly deposited by the Trustee upon receipt thereof in a special fund designated as the "Revenue Fund" which the Trustee shall establish, maintain and hold in trust hereunder.

On or before each Interest Payment Date, the Trustee shall transfer from the Revenue Fund and deposit into the following respective accounts (each of which the Trustee shall establish and maintain within the Revenue Fund), the following amounts in the following order of priority, the requirements of each such account (including the making up of any deficiencies in any such account resulting from lack of Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any transfer is made to any account subsequent in priority:

(a) Interest Account. On or before each Interest Payment Date, the Trustee shall deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to equal the amount of interest becoming due and payable on such Interest Payment Date on all Outstanding Bonds. No deposit need be made into the Interest Account if the amount contained therein is at least equal to the interest becoming due and payable upon all Outstanding Bonds on the next succeeding Interest Payment Date. All moneys in the Interest

Account shall be used and withdrawn by the Trustee solely for the purpose of paying the interest on the Bonds as it shall become due and payable (including accrued interest on any Bonds redeemed prior to maturity). All amounts on deposit in the Interest Account on the first day of any Bond Year, to the extent not required to pay any interest then having come due and payable on the Outstanding Bonds, shall be withdrawn therefrom by the Trustee and at the Written Request of the Members, either (a) credited on a pro-rata basis (based upon the Cities' respective responsibility for debt service as of the date of the withdrawal) towards any amounts to be paid by the Cities pursuant to the Loan Agreements, or (b) transferred to the Cities on a pro rata basis (based upon the Cities' respective responsibility for debt service as of the date of the transfer) to be used for any lawful purposes of the Cities.

(b) Principal Account. On or before each Interest Payment Date on which the principal of the Bonds shall be payable, the Trustee shall deposit in the Principal Account an amount required to cause the aggregate amount on deposit in the Principal Account to equal the principal amount of the Bonds coming due and payable on such date pursuant to Section 2.01, or the redemption price of the Bonds (consisting of the principal amount thereof and any applicable redemption premiums) required to be redeemed on such date pursuant to any of the provisions of Section 2.02. All moneys in the Principal Account shall be used and withdrawn by the Trustee solely for the purpose of (i) paying the principal of the Bonds at the maturity thereof, or (ii) paying the principal of and premium (if any) on any Bonds upon the redemption thereof pursuant to Section 2.02(a) or (b). All amounts on deposit in the Principal Account on the first day of any Bond Year, to the extent not required to pay the principal of any Outstanding Bonds then having come due and payable, shall be withdrawn therefrom and, at the Written Request of the Cities, transferred to the Cities on a pro rata basis (based upon the Cities' respective responsibility for debt service as of the date of the withdrawal) to be used for any lawful purposes of the Cities.

(c) Reserve Account. From the proceeds of the sale of the Bonds, there shall be deposited in the Reserve Account an amount which will equal the Reserve Requirement. The amount on deposit in the Reserve Account shall be maintained at the Reserve Requirement at all times prior to the payment of the Loans in full.

In the event that either of the Cities shall fail to deposit with the Trustee the full amount required to be deposited pursuant to the Loan Agreements on or before the second (2nd) Business Day preceding any Interest Payment Date, on such Business Day the Trustee shall withdraw from the Reserve Account and transfer to the Interest Account and the Principal Account, in such order, an amount equal to the difference between (a) the amount required to be deposited pursuant to the Loan Agreements and (b) the amount actually deposited by the Cities. In the event that the amount on deposit in the Reserve Account shall at any time be less than the Reserve Requirement, the Trustee shall promptly notify the Cities of the amount required to be deposited therein to restore the balance to the Reserve Requirement, such notice to be given by telephone, telefax or other form of telecommunication promptly confirmed in writing, and the Cities shall thereupon transfer to the Trustee their pro rata share (based upon the Cities' respective responsibility for debt service as of the date of the required transfer) of the amount needed to restore the Reserve Account to the Reserve Requirement; except that in no event shall either of the Cities be required to make up a deficiency in the Reserve Account caused by the other City's nonpayment of a Loan Installment. Amounts on deposit in the

Reserve Account shall not be pledged or assigned as security for or applied in any way to, the payment of any obligations other than the obligation of the Authority hereunder.

In the event that the amount on deposit in the Reserve Account on the second (2nd) Business Day preceding any Interest Payment Date (other than the final Interest Payment Date) exceeds the Reserve Requirement, the Trustee shall thereupon withdraw from the Reserve Account all amounts in excess of the Reserve Requirement and, at the Written Request of the Cities, either (a) credit such amounts on a pro rata basis, towards the deposit then required to be made by the Cities pursuant to the Loan Agreements, or (b) pay such amounts to the Cities on a pro rata basis (based upon the Cities' respective responsibility for debt service as of the date of the withdrawal) to be used for any lawful purpose. At the Written Request of the Cities filed with the Trustee, all amounts in the Reserve Account shall either be (a) credited on a pro rata basis (based upon the Cities' respective responsibility for debt service as of the date of the withdrawal), on the second (2nd) Business Day preceding the final Interest Payment Date, to the deposit then required to be made by the Cities pursuant to the Loan Agreements, or (b) transferred on a pro rata basis, on the final Interest Payment Date, to the Cities to be used for any lawful purpose. Notwithstanding the foregoing provisions of this paragraph, however, no amounts shall be withdrawn from the Reserve Account and transferred to the Cities pursuant to this paragraph during any period in which an Event of Default shall have occurred and be continuing hereunder.

Section 4.03. Investments. All moneys in any of the funds or accounts established with the Trustee pursuant to this Indenture shall be invested by the Trustee solely in Permitted Investments pursuant to the direction of the Authority given to the Trustee in advance of the making of such investments (and promptly confirmed in writing, as to any such direction given orally). In the absence of any such direction from the Authority, the Trustee shall invest any such moneys in Federal Securities or in money market funds described in clause (g) of the definition of Permitted Investments; provided, that Permitted Investments purchased with funds on deposit in the Reserve Account shall have an average aggregate weighted term to maturity not greater than five (5) years, unless such funds are invested in (i) Federal Securities, in which case the average aggregate weighted term to maturity may not be greater than ten (10) years, or (ii) an investment agreement, in which case the term of the investment agreement may extend to the final maturity date of the Bonds. Permitted Investments purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. Deficiencies in the amount on deposit in any fund or account resulting from a decline in market value shall be restored no later than the succeeding valuation date.

All interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder shall be deposited in the fund or account from which such investment was made. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder upon the Request of the Authority. The Trustee or an affiliate may act as principal or agent in the acquisition of any investment and may impose its customary charges therefor. The Trustee shall incur no liability for losses arising from any investments made pursuant to this Section.

Section 4.04. Acquisition, Disposition and Valuation of Investments.

(a) Except as otherwise provided in subsection (b) of this Section, the Authority covenants that all investments of amounts deposited in any fund or account created by or pursuant to this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of section 148 of the Tax Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Indenture or the Tax Code) at Fair Market Value.

(b) Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code and (unless valuation is undertaken at least annually) investments in the Reserve Account shall be valued at their present value (within the meaning of section 148 of the Tax Code) .

ARTICLE V

COVENANTS OF THE AUTHORITY

Section 5.01. Punctual Payment. The Authority shall punctually pay or cause to be paid the principal, interest and premium (if any) to become due in respect of all the Bonds, in strict conformity with the terms of the Bonds and of this Indenture, according to the true intent and meaning thereof, but only out of Revenues and other assets pledged for such payment as provided in this Indenture.

Section 5.02. Extension of Payment of Bonds. The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement, and in case the maturity of any of the Bonds or the time of payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon which shall not have been so extended. Nothing in this Section shall be deemed to limit the right of the Authority to issue Bonds for the purpose of refunding any Outstanding Bonds, and such issuance shall not be deemed to constitute an extension of maturity of the Bonds.

Section 5.03. Against Encumbrances. The Authority shall not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Revenues and other assets pledged or assigned under this Indenture while any of the Bonds are Outstanding, except the pledge and assignment created by this Indenture. Subject to this limitation, the Authority expressly reserves the right to enter into one or more other indentures for any of its corporate purposes, including other programs under the Bond Law, and reserves the right to issue other obligations for such purposes.

Section 5.04. Power to Issue Bonds and Make Pledge and Assignment. The Authority is duly authorized pursuant to law to issue the Bonds and to enter into this Indenture and to pledge and assign the Revenues, the Loan Agreements and other assets purported to be pledged and assigned, respectively, under this Indenture in the manner and to the extent provided in this Indenture. The Bonds and the provisions of this Indenture are and will be the legal, valid and binding special obligations of the Authority in accordance with their terms, and the Authority and the Trustee (subject to the provisions of Section 6.02 hereof) shall at all times, to the extent permitted by law, defend, preserve and protect said pledge and assignment of Revenues and other assets and all the rights of the Bond Owners under this Indenture against all claims and demands of all persons whomsoever.

Section 5.05. Maintenance and Operation of Enterprise in Efficient and Economical Manner. The Authority covenants and agrees to maintain and operate the Enterprise in an efficient and economical manner, and to operate, maintain and preserve the Enterprise in good repair and working order.

Section 5.06. Against Sale, Eminent Domain.

The Authority will not sell, lease or otherwise dispose of the Enterprise or any part thereof essential to the proper operation of the Enterprise or to the maintenance of the Net Revenues, except as herein expressly permitted. The Authority will not enter into any lease or agreement which impairs the operation of the Enterprise or any part thereof necessary to secure adequate Net Revenues for the payment of the interest on and principal or redemption price, if any, on the Bonds, or which would otherwise impair the rights of the Owners with respect to the Net Revenues or the operation of the Enterprise. Any real or personal property which has become non-operative or which is not needed for the efficient and proper operation of the Enterprise, or any material or equipment which has worn out, may be sold if such sale will not reduce Net Revenues.

Any amounts received as awards as a result of the taking of all or any part of the Enterprise by the lawful exercise of eminent domain, if and to the extent that such right can be exercised against such property of the Authority, shall either (a) be used for the acquisition or construction of improvements and extension of the Enterprise, or (b) be deposited in the Revenue Fund.

Section 5.07. Insurance. The Authority covenants that it shall at all times maintain such insurance on the Enterprise as is customarily maintained with respect to works and properties of like character against accident to, loss of or damage to such works or properties. If any useful part of the Enterprise shall be damaged or destroyed, such part shall be restored to use. The Net Proceeds of insurance against accident to or destruction of the physical Enterprise shall be used for repairing or rebuilding the damaged or destroyed portions of the Enterprise.

Any such insurance shall be in the form of policies or contracts for insurance with insurers of good standing and shall be payable to the Authority, or may be in the form of self-insurance maintained by the Authority.

Section 5.08. Accounting Records and Financial Statements. The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with industry standards, in which complete and accurate entries shall be made of all transactions made by the Trustee relating to the proceeds of Bonds, the Revenues, the Loan Agreements and all funds and accounts established pursuant to this Indenture. Such books of record and account shall be available for inspection by the Authority and the Members, during regular business hours with reasonable prior notice.

Section 5.09. No Additional Obligations. The Authority covenants that no additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Revenues in whole or in part.

Section 5.10. Private Activity Bond Limitation. The Authority shall assure that the proceeds of the Bonds are not so used as to cause the Bonds to satisfy the private business tests of section 141(b) of the Tax Code or the private loan financing test of section 141(c) of the Tax Code.

Section 5.11. Federal Guarantee Prohibition. The Authority shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Tax Code.

Section 5.12. Rebate Requirement. The Authority shall take any and all actions necessary to assure compliance with section 148(f) of the Tax Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Bonds.

Section 5.13. No Arbitrage. The Authority shall not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Bonds would have caused the Bonds to be "arbitrage bonds" within the meaning of section 148 of the Tax Code.

Section 5.14. Maintenance of Tax-Exemption. The Authority shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the date of issuance of the Bonds.

Section 5.15. Loan Agreements. The Trustee, as assignee of the Authority's rights pursuant to Section 4.01, shall promptly collect all amounts due from the Members pursuant to the Loan Agreements and, subject to the provisions of Section 6.02 hereof, shall diligently enforce, and take all steps, actions and proceedings reasonably necessary for the enforcement of all of the rights of the Authority thereunder and for the enforcement of all of the obligations of the Members thereunder.

The Authority, the Trustee and the Members may at any time amend or modify either of the Loan Agreements pursuant to Section 6.04 thereof, but only (a) if the Trustee first obtains the written consent of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding to such amendment or modification, or (b) without the consent of any of the Bond Owners, if such amendment or modification is for any one or more of the following purposes-

(a) to add to the covenants and agreements of either of the Cities contained in such Loan Agreement, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power therein reserved to or conferred upon either of the Cities; or

(b) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in such Loan Agreement, or in any other respect whatsoever as either of the Cities may deem necessary or desirable, provided under any circumstances that such modifications or amendments shall not materially adversely affect the interests of the Owners of the Bonds; or

(c) to amend any provision thereof relating to the Tax Code, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the

exclusion from gross income of interest on any of the Bonds under the Tax Code, in the opinion of nationally-recognized bond counsel.

Prior to entering into any amendment or modification of either Loan Agreement pursuant to this Section 5.11, the Trustee may require the Authority to deliver to the Trustee an opinion of nationally-recognized bond counsel to the effect that such amendment or modification has been adopted in accordance with the requirements of this Indenture and will not adversely affect the exclusion from gross income of interest on the Bonds under the Tax Code.

Section 5.16. Continuing Disclosure. The Authority hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Indenture, failure of the Authority to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default; however, the Trustee may (and, at the request of any Participating Underwriter or the holders of at least 25% aggregate principal amount of Outstanding Bonds, shall) or any holder or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

Section 5.17. Further Assurances. The Authority will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture, and for the better assuring and confirming unto the Owners of the Bonds the rights and benefits provided in this Indenture.

ARTICLE VI

THE TRUSTEE

Section 6.01. Appointment of Trustee. Union Bank, N.A., in Los Angeles, a national banking association organized and existing under and by virtue of the laws of the United States of America, is hereby appointed Trustee by the Authority for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided in this Indenture. The Authority agrees that any successor Trustee appointed hereunder shall be: (a) authorized by law to perform all the duties imposed upon it by this Indenture, (b) shall have (or, in the case of a bank or trust company which is part of a bank holding company system, the related bank holding company shall have) a combined capital and surplus of at least Fifty Million Dollars (\$50,000,000), and (c) be subject to supervision or examination by federal or State authority, so long as any Bonds are Outstanding. If such bank or trust company publishes a report of condition at least annually pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of this Section 6.01 the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Trustee is hereby authorized to pay the principal of and interest and redemption premium (if any) on the Bonds when duly presented for payment at maturity, or on redemption or purchase prior to maturity, and to cancel all Bonds upon payment thereof. The Trustee shall keep accurate records of all funds administered by it and of all Bonds paid and discharged.

Section 6.02. Acceptance of Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) The Trustee, prior to the occurrence of an Event of Default and after curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants shall be read into this Indenture against the Trustee. In case an Event of Default hereunder has occurred (which has not been cured or waived), the Trustee may exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill and diligence in their exercise, as is consistent with the fiduciary responsibilities of a trustee.

(b) The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, accountants, agents, or receivers, shall not be liable for the acts or omissions of such attorneys, agents, accountants and receivers appointed with due care, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder. The Trustee may conclusively rely on an opinion of counsel as full and complete protection for any action taken or suffered by it hereunder.

(c) The Trustee shall not be responsible for any recital herein, or in the Bonds, or for any of the supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby and the Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, conditions or agreements on the part of the Authority hereunder or on the part of the Authority or the Members under the Loan Agreements.

(d) The Trustee may become the Owner of Bonds secured hereby with the same rights which it would have if not the Trustee; may acquire and dispose of other bonds or evidences of indebtedness of the Authority with the same rights it would have if it were not the Trustee; and may act as a depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of Bonds, whether or not such committee shall represent the Owners of the majority in aggregate principal amount of the Bonds then Outstanding.

(e) The Trustee shall be protected in acting, in good faith and without negligence, upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken or omitted to be taken by the Trustee in good faith and without negligence pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Owner of any Bond, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof. The Trustee shall not be bound to recognize any person as an Owner of any Bond or to take any action at his request unless the ownership of such Bond by such person shall be reflected on the Registration Books.

(f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a Certificate of the Authority as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default hereunder of which the Trustee has been given notice or is deemed to have notice, as provided in Section 6.02(h) hereof, shall also be at liberty to accept a Certificate of the Authority to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed by it to be necessary or advisable, but shall in no case be bound to secure the same.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable for other than its negligence or willful misconduct. The immunities and exceptions from liability of the Trustee shall extend to its officers, directors, employees and agents.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any Event of Default hereunder or under the Loan Agreements except failure by the Authority or the Cities to make any of the payments to the Trustee required to be made by the Authority pursuant hereto or thereto or failure by the Authority or the Members

to file with the Trustee any document required by this Indenture or the Loan Agreements to be so filed subsequent to the issuance of the Bonds, unless the Trustee shall be specifically notified in writing of such default by the Authority or by the Owners of at least twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the Trust Office, and in the absence of such notice so delivered the Trustee may conclusively assume there is no Event of Default hereunder except as aforesaid.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, accountants and representatives, shall have the right fully to inspect all books, papers and records of the Authority pertaining to the Bonds, and to make copies of any of such books, papers and records such as may be desired but which is not privileged by statute or by law.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises hereof.

(k) Notwithstanding anything elsewhere in this Indenture with respect to the execution of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, the Trustee shall have the right, but shall not be required, to demand any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, as may be deemed desirable for the purpose of establishing the right of the Authority to the execution of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Before taking the action referred to in Sections 6.05 or 8.02, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default in connection with any such action.

(m) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law.

(n) Whether or not therein expressly so provided, every provision of this Indenture and the Loan Agreements relating to the conduct or affecting the liability of the Trustee shall be subject to the provisions of this Section 6.02.

Section 6.03. Fees, Charges and Expenses of Trustee. The Trustee shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees (including expenses) and other expenses reasonably and necessarily made or incurred by the Trustee in connection with such services. Upon the occurrence of an Event of Default hereunder, but only upon an Event of Default, the Trustee shall have a first lien with right of payment prior to payment of any Bond upon the amounts held hereunder for the foregoing fees, charges and expenses incurred by it.

Section 6.04. Notice to Bond Owners of Default. If an Event of Default hereunder occurs with respect to any Bonds of which the Trustee has been given or is deemed to have notice, as provided in Section 6.02(h) hereof, then the Trustee shall promptly give written notice thereof by first-class mail to the Owner of each such Bond, within 30 days of the receipt of such notice, give written notice thereof by first-class mail to the Owner of each such Bond, unless such Event of Default shall have been cured before the giving of such notice; provided, however, that unless such Event of Default consists of the failure by the Authority to make any payment when due, the Trustee may elect not to give such notice if and so long as the Trustee in good faith determines that it is in the best interests of the Bond Owners not to give such notice.

Section 6.05. Intervention by Trustee. In any judicial proceeding to which the Authority is a party which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners of any of the Bonds, the Trustee may intervene on behalf of such Bond Owners, and subject to Section 6.02(l) hereof, shall do so if requested in writing by the Owners of at least twenty-five percent (25%) in aggregate principal amount of such Bonds then Outstanding.

Section 6.06. Removal of Trustee. The Owners of a majority in aggregate principal amount of the Outstanding Bonds may at any time, and the Authority may (and at the request of the Cities shall) so long as no Event of Default shall have occurred and then be continuing, remove the Trustee initially appointed, and any successor thereto, by an instrument or concurrent instruments in writing delivered to the Trustee, whereupon the Authority or such Owners, as the case may be, shall appoint a successor or successors thereto; provided that any such successor shall be a bank or trust company meeting the requirements set forth in Section 6.01.

Section 6.07. Resignation by Trustee. The Trustee and any successor Trustee may at any time give thirty (30) days' written notice of its intention to resign as Trustee hereunder, such notice to be given to the Authority and the Cities by registered or certified mail. Upon receiving such notice of resignation, the Authority shall promptly appoint a successor Trustee. Any resignation or removal of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. Upon such acceptance, the Authority shall cause notice thereof to be given by first class mail, postage prepaid, to the Bond Owners at their respective addresses set forth on the Registration Books.

Section 6.08. Appointment of Successor Trustee. In the event of the removal or resignation of the Trustee pursuant to Sections 6.06 or 6.07, respectively, with the prior written consent of the Cities, the Authority shall promptly appoint a successor Trustee. In the event the Authority shall for any reason whatsoever fail to appoint a successor Trustee within ninety (90) days following the delivery to the Trustee of the instrument described in Section 6.06 or within ninety (90) days following the receipt of notice by the Authority pursuant to Section 6.07, the Trustee may, at the expense of the Authority, apply to a court of competent jurisdiction for the appointment of a successor Trustee meeting the requirements of Section 6.01 hereof. Any such successor Trustee appointed by such court shall become the successor Trustee hereunder notwithstanding any action by the Authority purporting to appoint a successor Trustee following the expiration of such ninety-day period.

Section 6.09. Merger or Consolidation. Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided that such company shall meet the requirements set forth in Section 6.01, shall be the successor to the Trustee and vested with all of the title to the trust estate and all of the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

Section 6.10. Concerning any Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Authority an instrument in writing accepting such appointment hereunder and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors; but such predecessor shall, nevertheless, on the Request of the Authority, or of the Trustee's successor, execute and deliver an instrument transferring to such successor all the estates, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as the Trustee hereunder to its successor. Should any instrument in writing from the Authority be required by any successor Trustee for more fully and certainly vesting in such successor the estate, rights, powers and duties hereby vested or intended to be vested in the predecessor Trustee, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority.

Section 6.11. Appointment of Co-Trustee. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the law of the State) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in the case of litigation under this Indenture, and in particular in case of the enforcement of the rights of the Trustee on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an additional individual or institution as a separate co-trustee. The following provisions of this Section 6.11 are adopted to these ends.

In the event that the Trustee appoints an additional individual or institution as a separate or co-trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Should any instrument in writing from the Authority be required by the separate trustee or co-trustee so appointed by the Trustee for more fully and certainly vesting in and confirming

to it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Authority. In case any separate trustee or co-trustee, or a successor to either, shall become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate trustee or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new trustee or successor to such separate trustee or co-trustee.

Section 6.12. Indemnification; Limited Liability of Trustee. The Authority further covenants and agrees to indemnify and save the Trustee and its officers, directors, agents and employees, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise and performance of its powers and duties hereunder, including the costs and expenses of defending against any claim of liability, but excluding any and all losses, expenses and liabilities which are due to the negligence or willful misconduct of the Trustee, its officers, directors, agents or employees. No provision in this Indenture shall require the Trustee to risk or expend its own funds or otherwise incur any financial liability hereunder if it shall have reasonable grounds for believing repayment of such funds or adequate indemnity against such liability or risk is not assured to it. The Trustee shall not be liable for any action taken or omitted to be taken by it in accordance with the direction of the Owners of at least twenty-five percent (25%) in aggregate principal amount of Bonds Outstanding relating to the time, method and place of conducting any proceeding or remedy available to the Trustee under this Indenture. The obligations of the Authority under this paragraph shall survive the resignation or removal of the Trustee under this Indenture.

ARTICLE VII

MODIFICATION AND AMENDMENT OF THE INDENTURE

Section 7.01. Amendment Hereof. This Indenture and the rights and obligations of the Authority and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Indenture which shall become binding upon adoption, without consent of any Bond Owners, to the extent permitted by law but only for any one or more of the following purposes-

(a) to add to the covenants and agreements of the Authority in this Indenture contained, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or powers herein reserved to or conferred upon the Authority so long as such limitation or surrender of such rights or powers shall not materially adversely affect the Owners of the Bonds; or

(b) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Indenture, or in any other respect whatsoever as the Authority may deem necessary or desirable, provided under any circumstances that such modifications or amendments shall not materially adversely affect the interests of the Owners of the Bonds in the reasonable judgment of the Authority; or

(c) to amend any provision hereof relating to the Tax Code, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest on any of the Bonds under the Tax Code, in the opinion of nationally-recognized bond counsel.

Except as set forth in the preceding paragraph of this Section 7.01, this Indenture and the rights and obligations of the Authority and of the Owners of the Bonds may only be modified or amended at any time by a Supplemental Indenture which shall become binding when the written consent of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding are filed with the Trustee. No such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Authority to pay the principal, interest or redemption premiums (if any) at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the Owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee.

Section 7.02. Effect of Supplemental Agreement. From and after the time any Supplemental Indenture becomes effective pursuant to this Article VII, this Indenture shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations of the parties hereto or thereto and all Owners of Outstanding Bonds, as the case may be, shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any Supplemental

Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Prior to entering into any Supplemental Indenture pursuant to this Section 7.02, the Trustee may require the Authority to deliver to the Trustee an opinion of nationally-recognized bond counsel to the effect that such Supplemental Indenture has been adopted in accordance with the requirements of this Indenture and will not adversely affect the exclusion from gross income of interest on the Bonds under the Tax Code.

Section 7.03. Endorsement or Replacement of Bonds After Amendment. After the effective date of any action taken as hereinabove provided, the Authority may determine that the Bonds shall bear a notation, by endorsement in form approved by the Authority, as to such action, and in that case upon demand of the Owner of any Bond Outstanding at such effective date and presentation of his Bond for that purpose at the Trust Office, a suitable notation as to such action shall be made on such Bond. If the Authority shall so determine, new Bonds so modified as, in the opinion of the Authority, shall be necessary to conform to such Bond Owners' action shall be prepared and executed, and in that case upon demand of the Owner of any Bond Outstanding at such effective date such new Bonds shall be exchanged at the Trust Office, without cost to each Bond Owner, for Bonds then Outstanding, upon surrender of such Outstanding Bonds.

Section 7.04. Amendment by Mutual Consent. The provisions of this Article VII shall not prevent any Bond Owner from accepting any amendment as to the particular Bond held by him, provided that due notation thereof is made on such Bond.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES OF BOND OWNERS

Section 8.01. Events of Default. The following events shall be Events of Default hereunder:

(a) Default in the due and punctual payment of the principal of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise.

(b) Default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable.

(c) Failure by the Authority to observe and perform any of the covenants, agreements or conditions on its part in this Indenture or in the Bonds contained, other than as referred to in the preceding clauses (a) and (b), for a period of thirty (30) days after written notice, (unless such grace period is extended to sixty (60) days) (the "Grace Period") specifying such failure and requesting that it be remedied has been given to the Authority by the Trustee, or to the Authority and the Trustee by the Owners of not less than twenty-five percent (25%) in aggregate principal amount of the Outstanding Bonds; provided, however, that if in the reasonable opinion of the Authority the failure stated in such notice can be corrected, but not within the Grace Period, the Trustee and such Owners shall not unreasonably withhold their consent to an extension of such time and if corrective action is instituted by the Authority within the Grace Period and diligently pursued until such failure is corrected.

(d) The filing by the Authority of a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the Authority, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Authority or of the whole or any substantial part of its property.

(e) An event of default has occurred under either of the Loan Agreements.

Section 8.02. Remedies and Rights of Bond Owners. Upon the occurrence and during the continuance of an Event of Default, the Trustee may pursue any available remedy at law or in equity (including an action in mandamus) to enforce the payment of the principal of, premium, if any, and interest on the Outstanding Bonds, and to enforce any rights of the Trustee under or with respect to this Indenture.

If an Event of Default shall have occurred and be continuing and if requested so to do by the Owners of at least twenty-five percent (25%) in aggregate principal amount of Outstanding

Bonds and indemnified as provided in Section 6.02(l), the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article VIII, as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bond Owners.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bond Owners) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bond Owners hereunder or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein; such right or power may be exercised from time to time as often as may be deemed expedient.

Section 8.03. Application of Revenues and Other Funds After Default. All amounts received by the Trustee pursuant to any right given or action taken by the Trustee under the provisions of this Indenture shall be applied by the Trustee in the following order upon presentation of the several Bonds, and the stamping thereon of the amount of the payment if only partially paid, or upon the surrender thereof if fully paid -

First, to the payment of the costs and expenses of the Trustee in declaring such Event of Default and in carrying out the provisions of this Article VIII, including reasonable compensation to its agents, attorneys and counsel and to other amounts owing to the Trustee pursuant to Section 6.03 hereof; and

Second, to the payment of the whole amount of interest on and principal of the Bonds then due and unpaid, with interest on overdue installments of principal and interest to the extent permitted by law at the net effective rate of interest then borne by the Outstanding Bonds; provided, however, that in the event such amounts shall be insufficient to pay in full the full amount of such interest and principal, then such amounts shall be applied in the following order of priority:

(a) first, to the payment of all installments of interest on the Bonds then due and unpaid, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full,

(b) second, to the payment of principal of all installments of the Bonds then due and unpaid, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full,

(c) third, to the payment of the redemption price (including principal and interest accrued to the redemption date) of the Bonds to be redeemed from Revenues derived from the acceleration of any Restated Loan, on a pro rata basis in the event that the available amounts are insufficient to pay the redemption price of all such Bonds in full, and

(d) fourth, to the payment of interest on overdue installments of principal and interest, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full.

Section 8.04. Power of Trustee to Control Proceedings. In the event that the Trustee, upon the happening of an Event of Default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties hereunder, whether upon its own discretion or upon the request of the Owners of at least a majority in aggregate principal amount of the Bonds then Outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Trustee shall not, unless there no longer continues an Event of Default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of a majority in aggregate principal amount of the Outstanding Bonds hereunder opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation. Any suit, action or proceeding which any Owner of Bonds shall have the right to bring to enforce any right or remedy hereunder may be brought by the Trustee for the equal benefit and protection of all Owners of Bonds similarly situated and the Trustee is hereby appointed (and the successive respective Owners of the Bonds issued hereunder, by taking and holding the same, shall be conclusively deemed so to have appointed it) the true and lawful attorney-in-fact of the respective Owners of the Bonds for the purpose of bringing any such suit, action or proceeding and to do and perform any and all acts and things for and on behalf of the respective Owners of the Bonds as a class or classes, as may be necessary or advisable in the opinion of the Trustee as such attorney-in-fact.

Section 8.05. Appointment of Receivers. Upon the occurrence of an Event of Default hereunder, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Bond Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Revenues and other amounts pledged hereunder, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 8.06. Non-Waiver. Nothing in this Article VIII or in any other provision of this Indenture, or in the Bonds, shall affect or impair the obligation of the Authority, which is absolute and unconditional, to pay the interest on and principal of the Bonds to the respective Owners of the Bonds at the respective dates of maturity, as herein provided, out of the Revenues and other moneys herein pledged for such payment.

A waiver of any default or breach of duty or contract by the Trustee or any Bond Owners shall not affect any subsequent default or breach of duty or contract, or impair any rights or remedies on any such subsequent default or breach. No delay or omission of the Trustee or any Owner of any of the Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy conferred upon the Trustee or Bond Owners by the Bond Law or by this Article VIII may be enforced and exercised from time

to time and as often as shall be deemed expedient by the Trustee or the Bond Owners, as the case may be.

Section 8.07. Rights and Remedies of Bond Owners. No Owner of any Bond issued hereunder shall have the right to institute any suit, action or proceeding at law or in equity, for any remedy under or upon this Indenture, unless (a) such Owner shall have previously given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of all the Bonds then Outstanding shall have made written request upon the Trustee to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (c) said Owners shall have tendered to the Trustee indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Trustee shall have refused or omitted to comply with such request for a period of sixty (60) days after such written request shall have been received by, and said tender of indemnity shall have been made to, the Trustee.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy hereunder; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to enforce any right under this Indenture, except in the manner herein provided, and that all proceedings at law or in equity to enforce any provision of this Indenture shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners of the Outstanding Bonds.

The right of any Owner of any Bond to receive payment of the principal of and interest and premium (if any) on such Bond as herein provided or to institute suit for the enforcement of any such payment, shall not be impaired or affected without the written consent of such Owner, notwithstanding the foregoing provisions of this Section or any other provision of this Indenture.

Section 8.08. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case, the Authority, the Trustee and the Bond Owners shall be restored to their former positions and rights hereunder, respectively, with regard to the property subject to this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Limited Liability of Authority. Notwithstanding anything in this Indenture contained, the Authority shall not be required to advance any moneys derived from any source of income other than the Revenues for the payment of the principal of or interest on the Bonds, or any premiums upon the redemption thereof, or for the performance of any covenants herein contained (except to the extent any such covenants are expressly payable hereunder from the Revenues or otherwise from amounts payable under the Loan Agreement). The Authority may, however, advance funds for any such purpose, provided that such funds are derived from a source legally available for such purpose and may be used by the Authority for such purpose without incurring indebtedness.

The Bonds shall be revenue bonds, payable exclusively from the Revenues and other funds as in this Indenture provided. The general fund of the Authority is not liable, and the credit of the Authority is not pledged, for the payment of the interest and premium (if any) on or principal of the Bonds. The Owners of the Bonds shall never have the right to compel the forfeiture of any property of the Authority. The principal of and interest on the Bonds, and any premiums upon the redemption of any thereof, shall not be a legal or equitable pledge, charge, lien or encumbrance upon any property of the Authority or upon any of its income, receipts or revenues except the Revenues and other funds pledged to the payment thereof as in this Indenture provided.

Section 9.02. Benefits of Indenture Limited to Parties. Nothing in this Indenture, expressed or implied, is intended to give to any person other than the Authority, the Trustee, the Members and the Owners of the Bonds, any right, remedy or claim under or by reason of this Indenture. Any covenants, stipulations, promises or agreements in this Indenture contained by and on behalf of the Authority shall be for the sole and exclusive benefit of the Trustee, the Members and the Owners of the Bonds.

Section 9.03. Discharge of Indenture. If the Authority shall pay and discharge any or all of the Outstanding Bonds in any one or more of the following ways:

(a) by well and truly paying or causing to be paid the principal of and interest and premium (if any) on such Bonds, as and when the same become due and payable;

(b) by irrevocably depositing with the Trustee, in trust, at or before maturity, money which, together with the available amounts then on deposit in the funds and accounts established with the Trustee pursuant to this Indenture and the Loan Agreements, is fully sufficient to pay such Bonds, including all principal, interest and redemption premiums; or

(c) by (i) irrevocably depositing with the Trustee or any other fiduciary, in trust, Federal Securities in such amount as an Independent Certified Public Accountant shall determine in a written report (a "Verification") filed with the Trustee (upon which

report the Trustee may conclusively rely) will, together with the interest to accrue thereon and available moneys then on deposit in the funds and accounts established with the Trustee pursuant to this Indenture and the Loan Agreements, be fully sufficient to pay and discharge the indebtedness on such Bonds (including all principal, interest and redemption premiums) at or before their respective maturity dates; (ii) delivering an Escrow Deposit Agreement, (iii) delivering an opinion of nationally recognized bond counsel to the effect that the Bonds are no longer "Outstanding" under this Indenture and (iv) delivering a certificate of discharge of the Trustee with respect to the Bonds; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the Authority and the Trustee.;

and if such Bonds are to be redeemed prior to the maturity thereof notice of such redemption shall have been mailed pursuant to Section 2.02(d) or provision satisfactory to the Trustee shall have been made for the mailing of such notice, then, at the Request of the Authority, and notwithstanding that any of such Bonds shall not have been surrendered for payment, the pledge of the Revenues and other funds provided for in this Indenture with respect to such Bonds, and all other pecuniary obligations of the Authority under this Indenture with respect to all such Bonds, shall cease and terminate, except only the obligation of the Authority to pay or cause to be paid to the Owners of such Bonds not so surrendered and paid all sums due thereon from amounts set aside for such purpose as aforesaid, and all expenses and costs of the Trustee. Any funds held by the Trustee following any payment or discharge of the Outstanding Bonds pursuant to this Section 9.03, which are not required for said purposes, shall be paid over to the Authority.

Section 9.04. Successor Is Deemed Included in All References to Predecessor.

Whenever in this Indenture or any Supplemental Indenture the Authority is named or referred to, such reference shall be deemed to include the successor to the powers, duties and functions, with respect to the management, administration and control of the affairs of the Authority, that are presently vested in the Authority, and all the covenants, agreements and provisions contained in this Indenture by or on behalf of the Authority shall bind and inure to the benefit of its successors whether so expressed or not.

Section 9.05. Content of Certificates. Every certificate with respect to compliance with a condition or covenant provided for in this Indenture shall include (a) a statement that the person or persons making or giving such certificate have read such covenant or condition and the definitions herein relating thereto; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate are based; (c) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such covenant or condition has been complied with; and (d) a statement as to whether, in the opinion of the signers, such condition or covenant has been complied with.

Any such certificate made or given by an officer of the Authority may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate may be based, as aforesaid, are erroneous, or in the exercise

of reasonable care should have known that the same were erroneous. Any such certificate or opinion or representation made or given by counsel may be based, insofar as it relates to factual matters, on information with respect to which is in the possession of the Authority, or upon the certificate or opinion of or representations by an officer or officers of the Authority, unless such counsel knows that the certificate or opinion or representations with respect to the matters upon which his certificate, opinion or representation may be based, as aforesaid, are erroneous, or in the exercise of reasonable care should have known that the same were erroneous.

Section 9.06. Execution of Documents by Bond Owners. Any request, consent or other instrument required by this Indenture to be signed and executed by Bond Owners may be in any number of concurrent writings of substantially similar tenor and may be signed or executed by such Bond Owners in person or by their agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and of the Authority if made in the manner provided in this Section 9.06.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument or writing acknowledged to him the execution thereof.

The ownership of Bonds shall be proved by the Registration Books. Any request, consent or vote of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of any Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Authority in pursuance of such request, consent or vote. In lieu of obtaining any demand, request, direction, consent or waiver in writing, the Trustee may call and hold a meeting of the Bond Owners upon such notice and in accordance with such rules and obligations as the Trustee considers fair and reasonable for the purpose of obtaining any such action.

Section 9.07. Disqualified Bonds. In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are owned or held by or for the account of the Cities or the Authority (but excluding Bonds held in any employees' retirement fund) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, provided, however, that for the purpose of determining whether the Trustee shall be protected in relying on any such demand, request, direction, consent or waiver, only Bonds which the Trustee knows to be so owned or held shall be disregarded.

Section 9.08. Waiver of Personal Liability. No officer, agent or employee of the Authority shall be individually or personally liable for the payment of the interest on or principal of the Bonds; but nothing herein contained shall relieve any such officer, agent or employee from the performance of any official duty provided by law.

Section 9.09. Partial Invalidity. If any one or more of the covenants or agreements, or portions thereof, provided in this Indenture on the part of the Authority (or of the Trustee) to be

performed should be contrary to law, then such covenant or covenants, such agreement or agreements, or such portions thereof, shall be null and void and shall be deemed separable from the remaining covenants and agreements or portions thereof and shall in no way affect the validity of this Indenture or of the Bonds; but the Bond Owners shall retain all rights and benefits accorded to them under the Bond Law or any other applicable provisions of law. The Authority hereby declares that it would have entered into this Indenture and each and every other section, paragraph, subdivision, sentence, clause and phrase hereof and would have authorized the issuance of the Bonds pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this Indenture or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 9.10. Destruction of Cancelled Bonds. Whenever in this Indenture provision is made for the surrender to the Authority of any Bonds which have been paid or cancelled pursuant to the provisions of this Indenture, the Authority is hereby directed to destroy such Bonds and furnish to the Authority a certificate of such destruction.

Section 9.11. Funds and Accounts. Any fund or account required by this Indenture to be established and maintained by the Authority or the Trustee may be established and maintained in the accounting records of the Authority or the Trustee, as the case may be, either as a fund or an account, and may, for the purpose of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account. All such records with respect to all such funds and accounts held by the Authority shall at all times be maintained in accordance with generally accepted accounting principles and all such records with respect to all such funds and accounts held by the Trustee shall be at all times maintained in accordance with industry practices; in each case with due regard for the protection of the security of the Bonds and the rights of every Owner thereof.

Section 9.12. Payment on Business Days. Whenever in this Indenture any amount is required to be paid on a day which is not a Business Day, such payment shall be required to be made on the Business Day immediately following such day, with the same force and effect as if done on the nominal date provided in this Indenture.

Section 9.13. Notices. Any notice, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, or sent by telegram, addressed as follows:

If to the Authority:	San Elijo Joint Powers Authority 2695 Manchester Avenue Cardiff by the Sea, California 92007 Attention: General Manager
----------------------	--

If to Encinitas:	City of Encinitas 505 South Vulcan Avenue Encinitas, California 92024 Attention: City Manager
------------------	--

If to Solana Beach: City of Solana Beach
635 South Highway 101
Solana Beach, California 92075
Attention: City Manager

If to the Trustee: Union Bank, N.A.
120 South San Pedro Street, Suite 400
Los Angeles, California 90012
Attention: Corporate Trust Dept.

The Authority and the Trustee may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 9.14. Unclaimed Moneys. Anything in this Indenture to the contrary notwithstanding, any moneys held by the Trustee in trust for the payment and discharge of any of the Bonds which remain unclaimed for one (1) year after the date when such Bonds have become due and payable, either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Trustee at such date, or for one (1) year after the date of deposit of such moneys if deposited with the Trustee after said date when such Bonds become due and payable, shall, at the Request of the Authority, be repaid by the Trustee to the Authority, as its absolute property and free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Bond Owners shall look only to the Authority for the payment of such Bonds; provided, however, that before being required to make any such payment to the Authority, the Trustee shall, at the expense of the Authority, cause to be mailed to the Owners of all such Bonds, at their respective addresses appearing on the Registration Books, a notice that said moneys remain unclaimed and that, after a date named in said notice, which date shall not be less than thirty (30) days after the date of mailing of such notice, the balance of such moneys then unclaimed will be returned to the Authority.

Section 9.15. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the SAN ELIJO JOINT POWERS AUTHORITY has caused this Indenture to be signed in its name by its General Manager and attested to by its Clerk of the Board and UNION BANK, N.A., in token of its acceptance of the trust created hereunder, has caused this Indenture to be signed in its corporate name by its officer identified below, all as of the day and year first above written.

SAN ELIJO JOINT POWERS AUTHORITY

By _____
General Manager

Attest:

Clerk of the Board

UNION BANK, N.A.
as Trustee

By _____
Authorized Officer

EXHIBIT A

[FORM OF BOND]

No. _____ ****\$ _____ ***

SAN ELIJO JOINT POWERS AUTHORITY
2012 REFUNDING REVENUE BOND
(SAN ELIJO WATER RECLAMATION FACILITY)

RATE OF INTEREST: _____% MATURITY DATE: ORIGINAL ISSUE DATE: CUSIP:
January __, 2012

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: _____ DOLLARS

The SAN ELIJO JOINT POWERS AUTHORITY, a joint powers authority organized and existing under the laws of the State of California (the "Authority"), for value received, hereby promises to pay (but only out of the Revenues and other moneys and securities hereinafter referred to) to the Registered Owner identified above or registered assigns (the "Registered Owner"), on the Maturity Date identified above or any earlier redemption date, the Principal Amount identified above in lawful money of the United States of America; and to pay interest thereon at the Rate of Interest identified above in like lawful money from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond (unless this Bond is authenticated on or before an Interest Payment Date and after the fifteenth calendar day of the month preceding such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or prior to August 15, 2012, in which event it shall bear interest from the Original Issue Date identified above; provided, however, that if, at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest hereon has previously been paid or made available for payment), payable semiannually on March 1 and September 1 in each year, commencing September 1, 2012 (the "Interest Payment Dates") until payment of such Principal Amount in full. The Principal Amount hereof is payable upon presentation and surrender hereof upon maturity or earlier redemption at the principal corporate trust office (the "Trust Office") of Union Bank, N.A., as trustee (the "Trustee"), in Los Angeles, California. Interest hereon is payable by check or draft of the Trustee mailed by first class mail on each Interest Payment Date to the Registered Owner hereof at the address of the

Registered Owner as it appears on the registration books of the Trustee as of the fifteenth calendar day of the month preceding such Interest Payment Date or by wire transfer at the written request of the registered owner of at least \$1,000,000 in aggregate principal of Bonds filed with the Trustee to an account in the United States designated in such written request.

This Bond is one of a duly authorized issue of bonds of the Authority designated the "San Elijo Joint Powers Authority 2012 Refunding Revenue Bonds (San Elijo Water Reclamation Facility)" (the "Bonds"), limited in principal amount to _____ Dollars (\$_____), secured by an Indenture of Trust, dated as of January 1, 2012 (the "Indenture"), by and between the Authority and the Trustee. Reference is hereby made to the Indenture and all indentures supplemental thereto for a description of the rights thereunder of the owners of the Bonds, of the nature and extent of the Revenues (as that term is defined in the Indenture), of the rights, duties and immunities of the Trustee and of the rights and obligations of the Authority thereunder; and all of the terms of the Indenture are hereby incorporated herein and constitute a contract between the Authority and the Registered Owner hereof, and to all of the provisions of which Indenture the Registered Owner hereof, by acceptance hereof, assents and agrees.

The Bonds are authorized to be issued pursuant to the provisions of Article 10 (commencing with Section 53570) of Chapter 3 of Division 2 of Title 5 of the Government Code of the State of California of the Government Code of the State (the "Bond Law"). The Bonds are special obligations of the Authority and, as and to the extent set forth in the Indenture, are payable solely from and secured by a first lien on and pledge of the Revenues and certain other moneys and securities held by the Trustee as provided in the Indenture. All of the Bonds are equally secured by a pledge of, and charge and lien upon, all of the Revenues and such other moneys and securities, and the Revenues and such other moneys and securities constitute a trust fund for the security and payment of the principal of and interest on the Bonds. The full faith and credit of the Authority is not pledged for the payment of the principal of or interest or redemption premiums (if any) on the Bonds. The Bonds are not secured by a legal or equitable pledge of, or charge, lien or encumbrance upon, any of the property of the Authority or any of its income or receipts, except the Revenues and such other moneys and securities as provided in the Indenture.

The Bonds have been issued to provide funds to refund bonds issued by the Authority in 2003 in the original principal amount of \$18,640,000 and a loan made by the California Energy Resources and Development Commission in 2007 in the original principal amount of \$1,193,500. The Bonds are secured by restated loans made to the City of Encinitas ("Encinitas") in the aggregate principal amount of _____ Dollars (\$_____) and to the City of Solana Beach ("Solana Beach") in the aggregate principal amount of _____ Dollars (\$_____). Each Loan has been restated pursuant to separate Third Amended and Restated Loan Agreements, each dated as of January 1, 2012 (collectively, the "Loan Agreements"), by and among Encinitas and Solana Beach, the Authority and the Trustee.

Except as provided below, Bonds maturing on or prior to March 1, 20__ are not subject to redemption prior to maturity. The Bonds maturing on or after March 1, 20__ are subject to redemption prior to maturity, at the option of the Authority, as a whole or in part, as directed by the Authority, and by lot among maturities, on any date on or after March 1, 20__, at a redemption price equal to the principal amount thereof, plus accrued interest to the date of redemption, plus a premium (expressed as a percentage of the total principal amount prepaid) at the Redemption Prices, set forth below:

<u>Redemption Date</u>	<u>Redemption Price</u>
March 1, 20__ through February 28, 20__	%
March 1, 20__ and thereafter	

The Bonds are also subject to mandatory redemption in whole, or in part pro rata among maturities and by lot within a maturity, on any date, solely from amounts credited towards the payment of principal of any Loan coming due and payable solely by reason of acceleration of such Loan pursuant to the related Loan Agreement, at a redemption price equal to the principal amount of the Bonds to be redeemed, without premium, together with accrued interest thereon to the redemption date.

The Trustee, on behalf and at the expense of the Authority, shall mail (by first class mail) notice of any redemption to the respective owners of any Bonds designated for redemption, at their respective addresses appearing on the registration books maintained by the Trustee, to the Securities Depositories and to EMMA (as such terms are defined in the Indenture), at least thirty (30) but not more than sixty (60) days prior to the redemption; provided, however, that neither failure to receive any such notice so mailed nor any defect therein shall affect the validity of the proceedings for the redemption of such Bonds or the cessation of the accrual of interest thereon. Such notice shall state the date of the notice, the redemption date, the redemption place and the redemption price and shall designate the CUSIP numbers, the serial numbers of each maturity or maturities (except that if the event of redemption is of all of the Bonds of such maturity or maturities in whole, the Trustee shall designate such maturities or the maturity in whole without referencing each individual number) of the Bonds to be redeemed, and shall require that such Bonds be then surrendered at the Trust Office of the Trustee for redemption at the redemption price, giving notice also that further interest on such Bonds will not accrue after the redemption date. To the extent funds for redemption of Bonds are not on deposit with the Trustee at the time the notice of redemption is sent to the Owners of the Bonds, the notice or redemption shall nevertheless be sent by the Trustee at the Written Request of the Authority, but such notice may be state that redemption is conditioned upon receipt by the Trustee of funds sufficient to effect said redemption.

The Bonds are issuable as fully registered Bonds without coupons in denominations of \$5,000 or any integral multiple thereof. Subject to the limitations and upon payment of the charges, if any, provided in the Indenture, fully registered Bonds may be exchanged at the Trust Office of the Trustee for a like aggregate principal amount and maturity of fully registered Bonds of other authorized denominations.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Trust Office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new fully registered Bond or Bonds, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. The Authority and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Authority and the Trustee shall not be affected by any notice to the contrary.

The Indenture and the rights and obligations of the Authority and of the owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time in the manner, to the extent, and upon the terms provided in the Indenture; provided that no such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Authority to pay the principal, interest or redemption premiums at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee, all as more fully set forth in the Indenture.

It is hereby certified that all things, conditions and acts required to exist, to have happened and to have been performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and statutes of the State of California and by the Bond Law and the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Constitution or statutes of the State of California or by the Bond Law.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, the Authority has caused this Bond to be executed in its name and on its behalf by the facsimile signatures of its Chairperson and attested to by the facsimile signature of its Secretary, all as of the Original Issue Date identified above.

SAN ELIJO JOINT POWERS AUTHORITY

By _____
General Manager

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture.

Date: January __, 2012

UNION BANK, N.A.,
as Trustee

Authorized Officer

(FORM OF ASSIGNMENT)

For value received, the undersigned do(es) hereby sell, assign and transfer unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within Bond and do(es) hereby irrevocably constitute and appoint _____
_____, attorney, to transfer the same on the registration books of the Trustee, with full
power of substitution in the premises.

Dated:

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a member
firm of the New York Stock Exchange or a
commercial bank or trust company

NOTICE: The signature on this assignment must
correspond with the name(s) as written on
the face of the within Bond in every
particular without alteration or enlargement
or any change whatsoever.

**THIRD AMENDED AND RESTATED
LOAN AGREEMENT**

Dated as of January 1, 2012

by and among the

**CITY OF ENCINITAS,
As Successor to the
CARDIFF SANITATION DISTRICT,**

UNION BANK, N.A., as trustee,

and the

SAN ELIJO JOINT POWERS AUTHORITY

Relating to

\$ _____

**San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)**

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**THIRD AMENDED AND RESTATED
LOAN AGREEMENT**

THIS THIRD AMENDED AND RESTATED LOAN AGREEMENT is made and entered into as of January 1, 2012, by and among the CITY OF ENCINITAS, a general law city duly organized and existing under the laws of the State of California (the "City"), as successor to the CARDIFF SANITATION DISTRICT, a county sanitation district duly organized and existing under the laws of the State of California (the "District"), UNION BANK, N.A., a national banking association duly organized and existing under the laws of the United States of America (formerly, Union Bank of California, N.A.), as trustee (the "Trustee"), and the SAN ELIJO JOINT POWERS AUTHORITY, a joint powers authority organized and existing under the laws of the State of California (the "Authority"), amends and restates in whole that certain Second Amended and Restated Loan Agreement, dated as of April 1, 2003, among the City, the Trustee and the Authority (the "2003 Agreement");

WITNESSETH:

WHEREAS, the District existed as a county sanitation district duly established and authorized to transact business and exercise powers under and pursuant to the provisions of Chapter 3, Part 3 of Division 5 of the Health and Safety Code of the State of California (the "County Sanitation District Act"), and had the power under Section 4764 of the County Sanitation District Act to borrow money and incur indebtedness; and

WHEREAS, the District borrowed amounts under a Loan Agreement, dated as of March 1, 1990, by and among the District, State Street Bank and Trust Company of California, N.A. (the "Prior Trustee") and the Authority (the "1990 Agreement") for the purpose of raising funds to assist in the financing of the wastewater treatment facilities; and

WHEREAS, concurrent with the execution and delivery of the 1990 Agreement, the Authority issued its \$24,465,000 aggregate principal amount of San Elijo Joint Powers Authority 1990 Revenue Bonds (San Elijo Water Pollution Control Facility Upgrade and Expansion Project) for the purpose of providing funds to make a loan in the principal amount of \$11,818,383.02 to the District pursuant to the Prior Loan Agreement, as well as a loan in the principal amount of \$12,776,616.98 to the Solana Beach Sanitation District ("Solana Beach"); and

WHEREAS, the District borrowed amounts under that certain Amended and Restated Loan Agreement, dated as of March 15, 1993, among the District, the Prior Trustee and the Authority (the "1993 Agreement") for the purpose of raising funds to refund the 1990 Agreement in part; and

WHEREAS, concurrent with the execution and delivery of the 1993 Agreement, the Authority issued its \$22,565,000 aggregate principal amount of San Elijo Joint Powers Authority

1993 Refunding Revenue Bonds (San Elijo Water Pollution Control Facility) (the "1993 Bonds") for the purpose of refunding in part the 1990 Bonds; and

WHEREAS, the District was merged into the City on October 18, 2001, and under Section 57531 of the California Government Code, the City is the successor in interest to all of the rights and obligations of the District under the 1993 Agreement; and

WHEREAS, the City borrowed amounts under the 2003 Agreement for the purpose of raising funds to refund the 1993 Agreement; and

WHEREAS, concurrent with the execution and delivery of the 2003 Agreement, the Authority issued its \$18,640,000 aggregate principal amount of San Elijo Joint Powers Authority 2003 Refunding Revenue Bonds (San Elijo Water Pollution Control Facility) (the "2003 Bonds") for the purpose of refunding the 1993 Bonds; and

WHEREAS, in 2007, the Authority entered into the Energy Conservation Assistance Account Loan Agreement between the California Energy Resources and Development Commission (the "Commission") and the Authority, pursuant to which the Commission made an unsecured loan to the Authority in the original principal amount of \$1,193,500, and of which \$_____ principal amount remains outstanding (the "CEC Loan"); and

WHEREAS, the City and the City of Solana Beach ("Solana Beach") have determined that interest savings will be achieved if the 2003 Agreement, the 2003 Bonds and the CEC Loan are refunded, with the result that the loan made to the City under the 2003 Agreement must be modified and restated under this Third Amended and Restated Loan Agreement (the "Loan Agreement");

WHEREAS, in order to establish and declare the terms and conditions upon which the Restated Loan (as hereinafter defined) is to be made and secured, the City, the Trustee and the Authority wish to enter into this Loan Agreement; and

WHEREAS, all acts and proceedings required by law necessary to make this Loan Agreement, when executed by the City, the Trustee and the Authority, the valid, binding and legal obligation of the City and to constitute this Loan Agreement a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Loan Agreement have been in all respects duly authorized;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the parties hereto do hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01. Definitions. Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Loan Agreement shall have the respective meanings which such terms have in the Indenture. In addition, the following terms defined in this Section 1.01 shall, for all purposes of this Loan Agreement, have the respective meanings herein specified. All terms defined in the recitals hereof shall have the meanings ascribed to those terms in the recitals.

“Basic Agreement” means the Basic Agreement, dated June 17, 1987, between the District and Solana Beach Sanitation District, as amended from time to time, under which the Authority was created.

“Bonds” means the \$_____ aggregate principal amount of San Elijo Joint Powers Authority 2012 Refunding Revenue Bonds (San Elijo Water Reclamation Facility), issued and at any time Outstanding under the Indenture.

“Costs of Issuance” means all expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds, including but not limited to all compensation, fees and expenses (including but not limited to fees and expenses for legal counsel) of the Authority and the Trustee, compensation to any financial consultants or underwriters, legal fees and expenses, filing and recording costs, rating agency fees, costs of preparation and reproduction of documents and costs of printing.

“Costs of Issuance Fund” means the fund by that name established and held by the Trustee pursuant to the Indenture of Trust.

“Due Date” means the date occurring four (4) business days before each September 1 and March 1, commencing four (4) business days prior to September 1, 2012.

“Enterprise” means any and all facilities of the Authority used for the treatment and disposal of wastewater, including sewage treatment plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, treatment, purification or disposal of sewage, and any necessary lands, rights of way and other real or personal property useful in connection therewith; provided, that the term “Enterprise” shall not include the Water Reclamation Facility.

“Event of Default” means any of the events described in Section 5.01.

“Fiscal Year” means any twelve-month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the City as its official fiscal year period.

“Gross Revenues” means all gross income and revenue received by the City for the collection and treatment of wastewater generated within the Cardiff Sanitation Division, including, without limiting the generality of the foregoing, (a) all income, rents, rates, fees, charges or other moneys derived from the services, facilities and commodities sold, furnished or supplied through the facilities of its wastewater collection system and the Enterprise, and (b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its wastewater collection system, and (c) transfers to the City’s Cardiff Sanitary Division Enterprise Fund from (but exclusive of any transfers to) any rate stabilization reserve accounts; provided, that the term “Gross Revenues” shall not include customers’ deposits or any other deposits subject to refund until such deposits have become the property of the City.

“Indenture” means the Indenture of Trust, dated as of January 1, 2012, by and between the Authority and the Trustee, authorizing the issuance of the Bonds.

“Loan Agreement” means this Third Amended and Restated Loan Agreement, by and among the City, the Trustee and the Authority, as originally entered into or as amended or supplemented pursuant to the provisions hereof.

“Loan Installments” means principal and interest installments of the Restated Loan, payable in the amounts and at the times specified in Section 2.02 hereof, together with any premium payable in connection with prepayment of the Restated Loan pursuant to Section 2.03 hereof.

“Net Revenues” means Gross Revenues less Operation and Maintenance Expenses.

“Operation and Maintenance Expenses” means: (i) all expenses and costs of management, operation, maintenance and repair incurred by the City for the collection of wastewater in the Cardiff Sanitation Division, as well as the cost of maintaining its collection system, and all incidental costs, fees and expenses properly chargeable to its wastewater collection system in the Cardiff Sanitation Division (but excluding debt service or other similar payments on Parity Debt or other obligations and depreciation and obsolescence charges or reserves therefor and amortization of intangibles and inter-fund transfers or other bookkeeping entries of a similar nature); and (ii) all expenses and costs of management, operation, maintenance and repair billed by the Authority to the City for the treatment of wastewater at the Enterprise, as well as the cost of maintaining the Enterprise, and all incidental costs, fees and expenses properly chargeable to the Enterprise, which expenses and costs are billed to the City. “Operation and Maintenance Expenses” does not include the Loan Installments or the expenses and costs of management, operation, maintenance and repair of the Water Reclamation Facility.

“Parity Debt” means indebtedness or other obligations (including leases and loan agreements) hereafter issued or incurred and secured by a pledge of and lien on Net Revenues equally and ratably with the Loan Installments.

“Proportionate Share” means fifty percent (50%).

"Restated Loan" means the loan made by the Authority to the City pursuant to the 1990 Agreement, the 1993 Agreement and the 2003 Agreement, as amended and restated pursuant to this Loan Agreement.

"Water Reclamation Facility" means the tertiary treatment system and reclaimed water distribution system of the Authority, including two 750,000 gallon reservoirs, 17 miles of distribution pipeline and two pumping stations, as more particularly described in the Authority's State Revolving Fund Loan Program No. C-06-4155-110.

"Written Request of the City" or **"Written Certificate of the City"** means a request or certificate, in writing, signed by the City Manager, the Finance Director or City Clerk of the City or by any other officer of the City duly authorized by the City for that purpose.

Section 1.02. Rules of Construction. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Loan Agreement, and the words "herein," "hereof," "hereunder" and other words of similar import refer to this Loan Agreement as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

**THE RESTATED LOAN; LOAN PAYMENTS AND PREPAYMENTS;
APPLICATION OF LOAN PROCEEDS**

Section 2.01. Authorization. The City hereby agrees to pay the Restated Loan, in the aggregate principal amount of _____ Dollars (\$_____) pursuant to the terms of this Loan Agreement. This Loan Agreement constitutes a continuing agreement with the Authority to secure the full and final payment of the Restated Loan, subject to the covenants, agreements, provisions and conditions herein contained.

Section 2.02. Loan Payments. The principal of the Restated Loan shall be payable in installments four (4) Business Days prior to each March 1 in each of the years and in the amounts, and interest on each installment of the Restated Loan shall be payable in installments four business days prior to each September 1 and March 1, in the amounts, set forth below:

<u>Payment Date*</u>	<u>Principal Amount</u>	<u>Interest Amount</u>	<u>Total Loan Payment</u>
3/1/2012			
9/1/2012	-		
3/1/2013			
9/1/2013	-		
3/1/2014			
9/1/2014	-		
3/1/2015			
9/1/2015	-		
3/1/2016			
9/1/2016	-		
3/1/2017			
9/1/2017	-		
3/1/2018			
9/1/2018	-		
3/1/2019			
9/1/2019	-		
3/1/2020			
[...]			

In the event the principal of the Restated Loan shall be prepaid pursuant to Section 2.03, the foregoing schedule of principal payments shall be reduced on a pro rata basis in integral multiples of \$5,000 such that approximately equal annual debt service remains on the Loan in each Bond Year.

Interest on each installment of principal of the Restated Loan shall be calculated on the basis of a 360-day year of twelve 30-day months, and shall accrue on each installment of principal from and including the Closing Date to but not including the September 1 or March 1 with respect to which such installment of principal is payable. Interest on the Restated Loan shall be payable on each Interest Payment Date. Any installment of principal or interest which

* Payments to be made 4 Business Days prior to the dates shown.

is not paid when due shall continue to accrue interest from and including the Interest Payment Date with respect to which such principal or interest is payable to but not including the date of actual payment.

Principal of and interest on the Restated Loan shall be payable by the City to the Trustee, as assignee of the Authority under the Indenture, in immediately available funds which constitute lawful money of the United States of America. Payment of such principal and interest shall be secured, and amounts for the payment thereof shall be deposited with the Trustee at the times, as set forth in Article III.

Section 2.03. Optional Prepayment. The Restated Loan shall not be subject to optional prepayment prior to March 1, 20___. The principal components of the Loan Installments due on or after March 1, 20__ are subject to optional prepayment, at the option of the City, as a whole or in part, as directed by the City and by lot among the principal components of Loan Installments, on any date on or after March 1, 20___, from any available source of funds, at a prepayment price (expressed as a percentage of the principal amount of the Bonds to be redeemed from the proceeds of such prepayment pursuant to Section 2.02(a) of the Indenture) as set forth in the following table, in each case together with accrued interest thereon to the prepayment date.

<u>Prepayment Dates</u>	<u>Prepayment Prices</u>
March 1, 20__ through February 28, 20__	%
March 1, 20__ and thereafter	

The City shall be required to give the Trustee written notice (which may be revocable) of its intention to prepay the Restated Loan under this subsection (a) at least sixty (60) days prior to the date fixed for such prepayment, and shall transfer to the Trustee all amounts required for such prepayment at least four (4) Business Days prior to the date fixed for such prepayment.

Section 2.04. Validity of Restated Loan. The validity of the Restated Loan shall not be dependent upon the operation or functioning of the Enterprise or upon the performance by any person of its obligation with respect to the Enterprise.

ARTICLE III

PLEDGE OF NET REVENUES; RATE COVENANT; PARITY DEBT

Section 3.01. Pledge of Net Revenues; Deposits to Pay Loan Installments. (a) Pledge of Net Revenues. The City hereby agrees that the payment of the Loan Installments shall be secured by a first and prior pledge, charge and lien upon Net Revenues, and Net Revenues sufficient to pay the Loan Installments as they become due and payable are hereby pledged, charged, assigned, transferred and set over by the City to the Authority and its assigns for the purpose of securing payment of the Loan Installments. The Net Revenues shall constitute a trust fund for the security and payment of the Loan Installments. If Net Revenues are ever insufficient to pay Loan Installments as the same becomes due and payable, the City shall pay Loan Installments from funds of the City lawfully available therefor. The City further agrees that none of the Net Revenues shall be transferred or paid into its general fund unless and until the then required payments of the Loan Installments have been made and the City's pro rata share (based upon the City's percentage share of debt service as of the date of the transfer) of the Reserve Requirement deposit in the Reserve Account has been met.

(b) Transfer to Pay Loan Installments. In order to provide for the payment of Loan Installments when due, the City shall, on or before each Due Date, transfer to the Trustee for deposit into the Revenue Fund the amount indicated in Section 2.02 as required for the next occurring Interest Payment Date; provided, however, that, to the extent interest or income earned on the Revenue Fund are remaining in the Revenue Fund, the City's payment obligations for interest on such Due Date shall be paid from such interest or income.

Section 3.02. Rate Covenant. The City hereby covenants that it shall prescribe, revise and collect such charges for the services and facilities provided by its wastewater collection system and the Enterprise which, after allowances for contingencies and error in the estimates, shall produce Gross Revenues sufficient in each Fiscal Year to: (1) replenish the Reserve Account, as required by Section 3.05; and (2) provide Net Revenues equal to at least 1.3 times the sum of (i) the Loan Installments coming due and payable during such Fiscal Year and (ii) all payments required with respect to Parity Debt coming due and payable during such Fiscal Year.

Section 3.03. Limitations on Future Obligations Secured by Net Revenues.

(a) No Obligations Superior to Loan Installments. In order to protect further the availability of the Net Revenues and the security for the Loan Installments and any Parity Debt, the City hereby agrees that the City shall not, so long as any Bonds are outstanding, issue or incur any obligations payable from the Net Revenues superior to the Loan Installments or such Parity Debt.

(b) Parity Debt. The City further covenants that, except for obligations issued or incurred to prepay the Loan Installments pursuant to Section 2.03 hereof, the City shall not issue or incur any Parity Debt unless each of the following conditions is satisfied:

(i) The City is not in default under the terms of this Loan Agreement;

(ii) Net Revenues, calculated on sound accounting principles, as shown by the books of the City for the latest Fiscal Year or any more recent twelve (12) month period selected by the City ending not more than sixty (60) days prior to the adoption of the resolution pursuant to which instrument such Parity Debt is issued or incurred, as shown by the books of the City, plus, at the option of the City, either or both of the items hereinafter in this subsection designated (1) and (2), shall have amounted to at least 1.3 times the sum of the maximum Loan Installments coming due and payable in any future Fiscal Year and the maximum annual debt service on all Parity Debt outstanding immediately subsequent to the incurring of such additional obligations.

Either or both of the following items may be added to such Net Revenues for the purpose of applying the restriction contained in this subsection (b)(ii):

(1) An allowance for revenues from any additions to or improvements or extensions of its wastewater collection system and the Enterprise to be made with the proceeds of such additional obligations, and also for net revenues from any such additions, improvements or extensions which have been made from moneys from any source but which, during all or any part of such Fiscal Year, were not in service, all in an amount equal to 75% of the estimated additional average annual revenues to be derived from such additions, improvements and extensions for the first 36-month period following closing of the proposed Parity Debt, all as shown by the certificate or opinion of a qualified independent engineer employed by the City or the Authority; and

(2) An allowance for earnings arising from any increase in the charges made for service from its wastewater collection system and the Enterprise which has become effective prior to the incurring of such additional obligations but which, during all or any part of such Fiscal Year, was not in effect, in an amount equal to 100% of the amount by which revenues would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year and any period prior to the incurring of such additional obligations, as shown by the certificate or opinion of a qualified independent engineer or rate consultant employed by the City or the Authority.

Section 3.04. Additional Payments. In addition to the Loan Installments, the City shall pay, from Net Revenues, when due, its Proportionate Share of all costs and expenses incurred by the Authority to comply with the provisions of the Indenture of Trust and this Loan Agreement, including, without limitation all Costs of Issuance (to the extent not paid from amounts on deposit in the Costs of Issuance Fund), compensation due to the Trustee for its fees, costs and expenses incurred under the Indenture of Trust and all costs and expenses of the Trustee.

Section 3.05. Payments to Reserve Account. In addition to the Loan Installments, the City shall pay to the Trustee, from Net Revenues, such amounts as shall be required to replenish the Reserve Account in the event of: (i) a draw therefrom caused by the City's failure

to pay Loan Installments due and payable hereunder in a timely manner; and (ii) a deficiency in the Reserve Account due to market fluctuation of the Permitted Investments held in the Reserve Account, on a pro rata basis (based upon the City's proportionate responsibility for debt service as of the date of the valuation) all in accordance with Section 4.02(c) of the Trust Indenture. In no event shall the City be liable for a deficiency in the Reserve Account resulting from Solana Beach's failure to make a Loan Payment due under its Loan Agreement.

ARTICLE IV

OTHER COVENANTS OF THE CITY

Section 4.01. Punctual Payment. The City will punctually pay or cause to be paid the principal of and interest on the Restated Loan together with any prepayment premiums thereon, in strict conformity with the terms of this Loan Agreement, and it will faithfully observe and perform all of the conditions, covenants and requirements of this Loan Agreement.

Section 4.02. Limitation on Superior Debt. The City hereby covenants that, so long as the Restated Loan remains unpaid, the City shall not issue any bonds, notes or other obligations, enter into any agreement or otherwise incur any loan, advances or indebtedness, which are in any case secured by a lien on all or any part of the Net Revenues which is superior to or on a parity with the lien established hereunder for the security of the Restated Loan, excepting only Parity Debt issued pursuant to Section 3.03. Nothing herein is intended or shall be construed in any way to prohibit or impose any limitations upon the issuance by the City of loans, bonds, notes, advances or other indebtedness which are unsecured or which are secured by a junior lien on the Net Revenues.

Section 4.03. Payment of Claims. The City will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the properties owned by the City or upon the Net Revenues or any part thereof, or upon any funds in the hands of the Trustee, or which might impair the security of the Restated Loan. Nothing herein contained shall require the City to make any such payment so long as the City in good faith shall contest the validity of said claims.

Section 4.04. Books and Accounts; Financial Statements. The City will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City and the Authority, in which complete and correct entries shall be made of all transactions relating to the Net Revenues. Such books of record and accounts shall at all times during business hours be subject, upon prior written request, to the reasonable inspection of the Authority, the Trustee and the Owners of any Bonds then Outstanding, or their representatives authorized in writing.

The City will cause to be prepared and filed with the Trustee annually, within 6 months after the close of each Fiscal Year so long as any of the Bonds are Outstanding, complete audited financial statements with respect to such Fiscal Year showing the Net Revenues, all disbursements from its wastewater collection system revenues and the financial condition of the City, including the balances in all funds and accounts relating to its wastewater collection system as of the end of such Fiscal Year. The City will furnish a copy of such statements, upon reasonable request, to any Bond Owner. The City shall review in each fiscal year, and take appropriate action to provide for, the future availability of sufficient Net Revenues for the timely payments of debt service on the Restated Loan and any Parity Debt.

Section 4.05. Protection of Security and Rights. The City will preserve and protect the security of the Restated Loan and the rights of the Trustee and the Bond Owners with respect to the Restated Loan. From and after the Closing Date, the Restated Loan shall be incontestable by the City.

Section 4.06. Payments of Taxes and Other Charges. The City will pay and discharge, or cause to be paid and discharged, all taxes, service charges, assessments and other governmental charges which may hereafter be lawfully imposed upon the City or the properties then owned by the City, when the same shall become due. Nothing herein contained shall require the City to make any such payment so long as the City in good faith shall contest the validity of said taxes, assessments or charges. The City will duly observe and conform with all valid requirements of any governmental authority relative to its wastewater collection and treatment system or any part thereof.

Section 4.07. Operation of its Wastewater Collection System. The City covenants to operate, or cause to be operated, its wastewater collection system in accordance with customary standards and practices applicable to similar facilities, and to cause the Authority to operate, or cause to be operated, the Enterprise in accordance with customary standards and practices applicable to similar facilities.

Section 4.08. Payment of Expenses; Indemnification. The City shall pay to the Trustee from time to time its Proportionate Share of all compensation for all services rendered under this Loan Agreement and the Indenture, including but not limited to all reasonable expenses, charges, legal and consulting fees and other disbursements and those of its attorneys, agents and employees, incurred in and about the performance of its powers and duties hereunder and thereunder. Upon the occurrence of an Event of Default, the Trustee shall have a first lien on the Net Revenues and the Reserve Account to secure the payment to the Trustee of all fees, costs and expenses, including reasonable compensation to its experts, attorneys and counsel incurred in declaring such Event of Default and in exercising the rights and remedies set forth in Article V hereof.

The City further covenants and agrees to indemnify and save the Trustee and its officers, directors, agents and employees, harmless against any losses, expenses and liabilities which it may incur arising out of or in the exercise and performance of its powers and duties under the Indenture, including the costs and expenses of defending against any claim of liability, but excluding any and all losses, expenses and liabilities which are due to the negligence or willful misconduct of the Trustee, its officers, directors, agents or employees. The obligations of the City under this paragraph shall survive the resignation or removal of the Trustee under the Indenture, this Loan Agreement and payment of the Restated Loan and the discharge of this Loan Agreement.

Section 4.09. Private Activity Bond Limitation. The City shall assure that the proceeds of the Loan are not so used as to cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

Section 4.10. Federal Guarantee Prohibition. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

Section 4.11. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Loan Agreement, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default; however, the Trustee may (and, at the request of any Participating Underwriter or the holders of at least 25% aggregate principal amount of Outstanding Bonds, shall) or any holder or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

Section 4.12. No Termination of Basic Agreement. The City, as successor in interest to the District, will not terminate the Basic Agreement so long as the Bonds are Outstanding.

Section 4.13. Further Assurances. The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Loan Agreement and for the better assuring and confirming unto the Trustee, the Authority and the Owners of the Bonds of the rights and benefits provided in this Loan Agreement.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.01. Events of Default and Acceleration of Restated Loan. The following events shall constitute Events of Default hereunder:

(a) Failure by the City to pay the principal of or interest or prepayment premium (if any) on the Restated Loan or any Parity Debt when and as the same shall become due and payable.

(b) Failure by the City to observe and perform any of the covenants, agreements or conditions on its part contained in this Loan Agreement, other than as referred to in the preceding clause (a), for a period of sixty (60) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Trustee, or to the City and the Trustee by the Owners of not less than twenty-five percent (25%) in aggregate principal amount of the Outstanding Bonds; provided, however, that if in the reasonable opinion of the City the failure stated in such notice can be corrected, but not within such sixty (60) day period, the Trustee shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within such sixty (60) day period and diligently pursued until such failure is corrected; provided, that in no event shall the cure period specified above exceed 90 days.

(c) The filing by the City of a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the City, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property.

If an Event of Default has occurred and is continuing, the Trustee may, and at the written direction of the Owners of a majority in aggregate principal amount of the Outstanding Bonds the Trustee shall (a) declare the principal of the Restated Loan, together with the accrued interest on all unpaid installments thereof, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything in this Loan Agreement to the contrary notwithstanding, and (b) exercise any other remedies available to the Trustee in law or at equity. Immediately upon becoming aware of the occurrence of an Event of Default, the Trustee shall give notice of such Event of Default to the City by telephone, telecopier or other telecommunication device, promptly confirmed in writing. This provision, however, is subject to the condition that if, at any time after the principal of the Restated Loan shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the City shall deposit with the Trustee a sum sufficient to pay all installments of principal of the Restated Loan matured prior to such declaration and all accrued interest thereon, with interest on such overdue installments

of principal and interest at the net effective rate then borne by the Outstanding Bonds, and the reasonable expenses of the Trustee (including but not limited to attorneys fees), and any and all other defaults known to the Trustee (other than in the payment of principal of and interest on the Restated Loan due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Owners of a majority in aggregate principal amount of the Outstanding Bonds may, by written notice to the Trustee and the City, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

Section 5.02. Application of Funds Upon Default. All amounts received by the Trustee pursuant to any right given or action taken by the Trustee under the provisions of this Loan Agreement, or otherwise held by the Trustee upon the occurrence of an Event of Default, shall be applied by the Trustee in the following order:

First, to the payment of the costs and expenses of the Trustee in declaring such Event of Default and in carrying out the provisions of this Article V, including reasonable compensation to its agents, attorneys and counsel and other amounts owing to the Trustee and secured by the lien granted to the Trustee pursuant to Section 4.08 hereof; and

Second, to the payment of the whole amount of interest on and principal of the Loan then due and unpaid, with interest on overdue installments of principal and interest to the extent permitted by law at the net effective rate of interest then borne by the Outstanding Bonds; provided, however, that in the event such amounts shall be insufficient to pay in full the full amount of such interest and principal, then such amounts shall be applied in the following order of priority:

(a) first, to the payment of all installments of interest on the Restated Loan then due and unpaid, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full,

(b) second, to the payment of principal of all installments of the Restated Loan then due and unpaid, other than principal having come due and payable solely by reason of acceleration pursuant to Section 5.01, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full,

(c) third, to the payment of principal of the Restated Loan then due and unpaid and having come due and payable solely by reason of acceleration pursuant to Section 5.01, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full, and

(d) fourth, to the payment of interest on overdue installments of principal and interest, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full.

Section 5.03. No Waiver. Nothing in this Article V or in any other provision of this Loan Agreement, shall affect or impair the obligation of the City, which is absolute and unconditional, to pay from the Net Revenues and other amounts pledged hereunder, the principal of and interest and premium (if any) on the Loan to the Trustee on the respective Interest Payment Dates, as herein provided, or affect or impair the right of action, which is also absolute and unconditional, of the Trustee to institute suit to enforce such payment by virtue of the contract embodied in this Loan Agreement.

A waiver of any default by the Trustee shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of the Trustee to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the Trustee by law or by this Article V may be enforced and exercised from time to time and as often as shall be deemed expedient by the Trustee.

If a suit, action or proceeding to enforce any right or exercise any remedy shall be abandoned or determined adversely to the Trustee, the City and the Trustee shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

Section 5.04. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by law.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Benefits Limited to Parties. Nothing in this Loan Agreement, expressed or implied, is intended to give to any person other than the City, the Trustee and the Authority, any right, remedy or claim under or by reason of this Loan Agreement. All covenants, stipulations, promises or agreements in this Loan Agreement contained by and on behalf of the City shall be for the sole and exclusive benefit of the Authority and of the Trustee acting as trustee for the benefit of the Owners of the Bonds.

Section 6.02. Successor is Deemed Included in All References to Predecessor. Whenever in this Loan Agreement either the City, the Authority or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Loan Agreement contained by or on behalf of the City, the Authority or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 6.03. Discharge of Loan Agreement. If the City shall pay and discharge the entire indebtedness on the Restated Loan in any one or more of the following ways:

(a) by well and truly paying or causing to be paid the entire principal of and all interest and prepayment premiums (if any) on the Restated Loan, as and when the same become due and payable;

(b) by irrevocably depositing with the Trustee, in trust, at or before maturity, cash in an amount which, together with the available amounts then on deposit in any of the funds and accounts established pursuant to the Indenture or this Loan Agreement, is fully sufficient to pay all principal of and interest and prepayment premiums (if any) on the Restated Loan; or

(c) by irrevocably depositing with the Trustee or any other fiduciary, in trust, Federal Securities in such amount as an Independent Certified Public Accountant shall determine in a written report filed with the Trustee (upon which report the Trustee may conclusively rely) will, together with the interest to accrue thereon and available moneys then on deposit in the funds and accounts established pursuant to the Indenture or pursuant to this Loan Agreement, be fully sufficient to pay and discharge the indebtedness on the Restated Loan (including all principal, interest and prepayment premiums) at or before maturity;

then, at the election of the City, but only if the Bonds relating to this Loan Agreement have been paid or defeased, and all other amounts then due and payable hereunder shall have been paid or provision for their payment made, the pledge of and lien upon the Net Revenues and other funds provided for in this Loan Agreement and all other obligations of the Trustee, the Authority and the City under this Loan Agreement with respect to the Restated Loan shall cease and terminate, except only the obligation of the City to pay or cause to be paid to the Trustee,

from the amounts so deposited with the Trustee or such other fiduciary, all sums due with respect to the Restated Loan and all expenses and costs of the Trustee. Notice of such election shall be filed with the Authority and the Trustee.

Any funds thereafter held by the Trustee hereunder, which are not required for said purpose, shall be paid over to the City.

Section 6.04. Amendment. This Loan Agreement may be amended by the parties hereto but only under the circumstances set forth in, and in accordance with, the provisions of Section 5.11 of the Indenture. The Authority and the Trustee covenant that the Indenture shall not be amended without the prior written consent of the City.

Section 6.05. Waiver of Personal Liability. No member, officer, agent or employee of the City shall be individually or personally liable for the payment of the principal of or interest on the Loan; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

Section 6.06. Payment on Business Days. Whenever in this Loan Agreement any amount is required to be paid on a day which is not a Business Day, such payment shall be required to be made on the Business Day immediately following such day, with the same force and effect as if done on the nominal date provided in this Loan Agreement.

Section 6.07. Notices. All written notices to be given under this Loan Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective 48 hours after deposit in the United States mail, postage prepaid or, in the case of any notice to the Trustee or in the case of personal delivery to any person, upon actual receipt at the address set forth below:

If to the Authority: San Elijo Joint Powers Authority
2695 Manchester Avenue
Cardiff by the Sea, California 92007
Attention: General Manager

If to Solana Beach: City of Solana Beach
380 Stevens Avenue, Suite 305
Solana Beach, California 92075
Attention: City Manager

If to the City of Encinitas : City of Encinitas
505 South Vulcan Avenue
Encinitas, California 92024
Attention: Finance Director

If to the Trustee:

Union Bank, N.A.
120 South San Pedro Street, Suite 400
Los Angeles, CA 90012
Attention: Corporate Trust Dept.

Section 6.08. Partial Invalidity. If any Section, paragraph, sentence, clause or phrase of this Loan Agreement shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the validity of the remaining portions of this Loan Agreement. The City hereby declares that it would have adopted this Loan Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the Restated Loan irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Loan Agreement may be held illegal, invalid or unenforceable.

Section 6.09. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State.

Section 6.10. Capacity of Trustee. The Trustee is entering into this Agreement solely in its capacity as Trustee under the Indenture, and the duties, powers and liabilities of the Trustee in acting hereunder shall be subject to the provisions of the Indenture, including, without limitation, the provisions of Article VI thereof.

IN WITNESS WHEREOF, the CITY OF ENCINITAS, SAN ELIJO JOINT POWERS AUTHORITY and UNION BANK, N.A., as trustee, have caused this Loan Agreement to be signed by their respective officers, all as of the day and year first above written.

CITY OF ENCINITAS

By _____
Finance Manager

[SEAL]

Attest:

City Clerk

SAN ELIJO JOINT POWERS AUTHORITY

By _____
General Manager

UNION BANK, N.A.
as Trustee

By _____
Authorized Officer

**THIRD AMENDED AND RESTATED
LOAN AGREEMENT**

Dated as of January 1, 2012

by and among the

CITY OF SOLANA BEACH,

UNION BANK, N.A., as trustee,

and the

SAN ELIJO JOINT POWERS AUTHORITY

Relating to

\$ _____

**San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)**

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**THIRD AMENDED AND
RESTATED LOAN AGREEMENT**

THIS THIRD AMENDED AND RESTATED LOAN AGREEMENT, which is made and entered into as of January 1, 2012, by and among the CITY OF SOLANA BEACH, a general law city duly organized and existing under the laws of the State of California (the "City"), UNION BANK, N.A., a national banking association duly organized and existing under the laws of the United States of America (formerly, Union Bank of California, N.A.), as trustee (the "Trustee"), and the SAN ELIJO JOINT POWERS AUTHORITY, a joint powers authority organized and existing under the laws of the State of California (the "Authority"), amends and restates in whole that certain Second Amended and Restated Loan Agreement, dated as of April 1, 2003, among the City, as successor to the Solana Beach Sanitation District (the "District"), the Trustee and the Authority (the "2003 Agreement");

WITNESSETH:

WHEREAS, the District existed as a county sanitation district duly established and authorized to transact business and exercise powers under and pursuant to the provisions of Chapter 3, Part 3 of Division 5 of the Health and Safety Code of the State of California (the "County Sanitation District Act"), and had the power under Section 4764 of the County Sanitation District Act to borrow money and incur indebtedness; and

WHEREAS, the District borrowed amounts under a Loan Agreement, dated as of March 1, 1990, among the District, State Street Bank and Trust Company of California, N.A. the ("Prior Trustee") and the Authority (the "1990 Agreement") for the purpose of raising funds to assist in the financing of wastewater treatment facilities; and

WHEREAS, concurrent with the execution and delivery of the 1990 Agreement, the Authority issued its \$24,465,000 aggregate principal amount of San Elijo Joint Powers Authority 1990 Revenue Bonds (San Elijo Water Pollution Control Facility Upgrade and Expansion Project) (the "1990 Bonds") for the purpose of providing funds to make a loan in the principal amount of \$12,776,616.98 to the District pursuant to the 1990 Agreement, as well as a loan in the principal amount of \$11,688,383.02 to the Cardiff Sanitation District ("Cardiff"); and

WHEREAS, the District was merged into the City on July 1, 1990, and under Section 57531 of the California Government Code, the City is the successor in interest to all of the rights and obligations of the District under the 1990 Agreement; and

WHEREAS, the City borrowed amounts under that certain Amended and Restated Loan Agreement, dated as of March 15, 1993, among the City, the Prior Trustee and the Authority (the "1993 Agreement") for the purpose of raising funds to refund the 1990 Agreement in part; and

WHEREAS, concurrent with the execution and delivery of the 1993 Agreement, the Authority issued its \$22,565,000 aggregate principal amount of San Elijo Joint Powers Authority 1993 Refunding Revenue Bonds (San Elijo Water Pollution Control Facility) (the "1993 Bonds") for the purpose of refunding in part the 1990 Bonds; and

WHEREAS, the City borrowed amounts under the 2003 Agreement for the purpose of raising funds to refund the 1993 Agreement; and

WHEREAS, concurrent with the execution and delivery of the 2003 Agreement, the Authority issued its \$18,640,000 aggregate principal amount of San Elijo Joint Powers Authority 2003 Refunding Revenue Bonds (San Elijo Water Pollution Control Facility) (the "2003 Bonds") for the purpose of refunding the 1993 Bonds; and

WHEREAS, in 2007, the Authority entered into the Energy Conservation Assistance Account Loan Agreement between the California Energy Resources and Development Commission (the "Commission") and the Authority, pursuant to which the Commission made an unsecured loan to the Authority in the original principal amount of \$1,193,500, and of which \$_____ principal amount remains outstanding (the "CEC Loan"); and

WHEREAS, the City and the City of Encinitas ("Encinitas"), as successor to Cardiff, have determined that interest savings will be achieved if the 2003 Agreement, the 2003 Bonds and the CEC Loan are refunded, with the result that the loan made to the City under the 2003 Agreement must be modified and restated under this Third Amended and Restated Loan Agreement (the "Loan Agreement");

WHEREAS, in order to establish and declare the terms and conditions upon which the Restated Loan (as hereinafter defined) is to be made and secured, the City, the Trustee and the Authority wish to enter into this Loan Agreement; and

WHEREAS, all acts and proceedings required by law necessary to make this Loan Agreement, when executed by the City, the Trustee and the Authority, the valid, binding and legal obligation of the City and to constitute this Loan Agreement a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Loan Agreement have been in all respects duly authorized;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the parties hereto do hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01. Definitions. Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Loan Agreement shall have the respective meanings which such terms have in the Indenture. In addition, the following terms defined in this Section 1.01 shall, for all purposes of this Loan Agreement, have the respective meanings herein specified. All terms defined in the recitals hereof shall have the meanings ascribed to those terms in the recitals.

“Basic Agreement” means the Basic Agreement, dated June 17, 1987, between the District and the Cardiff Sanitation District, as amended from time to time, under which the Authority was created.

“Bonds” means the \$_____ aggregate principal amount of San Elijo Joint Powers Authority 2012 Refunding Revenue Bonds (San Elijo Water Reclamation Facility), issued under the Indenture.

“Costs of Issuance” means all expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds, including but not limited to all compensation, fees and expenses (including but not limited to fees and expenses for legal counsel) of the Authority and the Trustee, compensation to any financial consultants or underwriters, legal fees and expenses, filing and recording costs, rating agency fees, costs of preparation and reproduction of documents and costs of printing.

“Costs of Issuance Fund” means the fund by that name established and held by the Trustee pursuant to the Indenture of Trust.

“Due Date” means the date occurring four (4) business days before each September 1 and March 1, commencing four (4) business days prior to September 1, 2012.

“Enterprise” means any and all facilities of the Authority used for the treatment and disposal of wastewater, including sewage treatment plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, treatment, purification or disposal of sewage, and any necessary lands, rights of way and other real or personal property useful in connection therewith; provided, that the term “Enterprise” shall not include the Water Reclamation Facility.

“Fiscal Year” means any twelve-month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the City as its official fiscal year period.

“Gross Revenues” means all gross income and revenue received by the City for the collection and treatment of wastewater, including, without limiting the generality of the

foregoing, (a) all income, rents, rates, fees, charges or other moneys derived from the services, facilities and commodities sold, furnished or supplied through the facilities of its wastewater collection system and the Enterprise, and (b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its wastewater collection system and (c) transfers to the City's Sanitation Enterprise Fund from (but exclusive of any transfers to) any rate stabilization reserve accounts; provided, that the term "Gross Revenues" shall not include customers' deposits or any other deposits subject to refund until such deposits have become the property of the City.

"Indenture" means the Indenture of Trust dated as of January 1, 2012, by and between the Authority and the Trustee, authorizing the issuance of the Bonds.

"Loan Agreement" means this Third Amended and Restated Loan Agreement, by and among the City, the Trustee and the Authority, as originally entered into or as amended or supplemented pursuant to the provisions hereof.

"Loan Installments" means principal and interest installments of the Restated Loan, payable in the amounts and at the times specified in Section 2.02 hereof, together with any premium payable in connection with prepayment of the Restated Loan pursuant to Section 2.03 hereof.

"Net Revenues" means Gross Revenues less Operation and Maintenance Expenses.

"Operation and Maintenance Expenses" means: (i) all expenses and costs of management, operation, maintenance and repair incurred by the City for the collection of wastewater, as well as the cost of maintaining its collection system, and all incidental costs, fees and expenses properly chargeable to its wastewater collection system (but excluding debt service or other similar payments on Parity Debt or other obligations and depreciation and obsolescence charges or reserves therefor and amortization of intangibles and inter-fund transfers or other bookkeeping entries of a similar nature); and (ii) all expenses and costs of management, operation, maintenance and repair billed by the Authority to the City for the treatment of wastewater at the Enterprise, as well as the cost of maintaining the Enterprise, and all incidental costs, fees and expenses properly chargeable to the Enterprise, which expenses and costs are billed to the City. "Operation and Maintenance Expenses" does not include the Loan Installments or the expenses and costs of management, operation, maintenance and repair of the Water Reclamation Facility.

"Parity Debt" means indebtedness or other obligations (including leases and loan agreements) hereafter issued or incurred and secured by a pledge of and lien on Net Revenues equally and ratably with the Loan Installments.

"Proportionate Share" means fifty percent (50%).

"Restated Loan" means the loan made by the Authority to the City pursuant to the 1990 Agreement, the 1993 Agreement and the 2003 Agreement, as amended and restated pursuant to this Loan Agreement.

“Water Reclamation Facility” means the tertiary treatment system and reclaimed water distribution system of the Authority, including two 750,000 gallon reservoirs, 17 miles of distribution pipeline and two pumping stations, as more particularly described in the Authority’s State Revolving Fund Loan Program No. C-06-4155-110.

“Written Request of the City” or **“Written Certificate of the City”** means a request or certificate, in writing, signed by the City Manager or City Clerk of the City or by any other officer of the City duly authorized by the City for that purpose.

Section 1.02. Rules of Construction. All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Loan Agreement, and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Loan Agreement as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

**THE RESTATED LOAN; LOAN PAYMENTS AND PREPAYMENTS;
APPLICATION OF LOAN PROCEEDS**

Section 2.01. Authorization. The City hereby agrees to repay the Restated Loan, in the aggregate principal amount of _____ Dollars (\$_____) pursuant to the terms of this Loan Agreement. This Loan Agreement constitutes a continuing agreement with the Authority to secure the full and final payment of the Restated Loan, subject to the covenants, agreements, provisions and conditions herein contained.

Section 2.02. Loan Payments. The principal of the Restated Loan shall be payable in installments four (4) Business Days prior to March 1 in each of the years and in the amounts, and interest on each installment of the Restated Loan shall be payable in installments four (4) Business Days prior to each September 1 and March 1, in the amounts, set forth below:

<u>Payment Date*</u>	<u>Principal Amount</u>	<u>Interest Amount</u>	<u>Total Loan Payment</u>
3/1/2012			
9/1/2012	-		
3/1/2013			
9/1/2013	-		
3/1/2014			
9/1/2014	-		
3/1/2015			
9/1/2015	-		
3/1/2016			
9/1/2016	-		
3/1/2017			
9/1/2017	-		
3/1/2018			
9/1/2018	-		
3/1/2019			
9/1/2020	-		
3/1/2020			
[...]			

In the event the principal of the Restated Loan shall be prepaid pursuant to Section 2.03, the foregoing schedule of principal payments shall be reduced on a pro rata basis in integral multiples of \$5,000 such that approximately equal annual debt service remains on the Restated Loan in each Bond Year.

Interest on each installment of principal of the Restated Loan shall be calculated on the basis of a 360-day year of twelve 30-day months, and shall accrue on each installment of principal from and including the Closing Date to but not including the September 1 or March 1 with respect to which such installment of principal is payable. Interest on the Restated Loan shall be payable on each Interest Payment Date. Any installment of principal or interest which is not paid when due shall continue to accrue interest from and including the Interest Payment

* Payment to be made 4 Business Days prior to the dates shown.

Date with respect to which such principal or interest is payable to but not including the date of actual payment.

Principal of and interest on the Restated Loan shall be payable by the City to the Trustee, as assignee of the Authority under the Indenture, in immediately available funds which constitute lawful money of the United States of America. Payment of such principal and interest shall be secured, and amounts for the payment thereof shall be deposited with the Trustee at the times, as set forth in Article III.

Section 2.03. Optional Prepayment. The Restated Loan shall not be subject to optional prepayment prior to March 1, 20___. The principal components of the Loan Installments due on or after March 1, 20__ are subject to optional prepayment, at the option of the City, as a whole or in part, as directed by the City, and by lot among the principal components of Loan Installments, on any date on or after March 1, 20___, from any available source of funds, at a prepayment price (expressed as a percentage of the principal amount of the Bonds to be redeemed from the proceeds of such prepayment pursuant to Section 2.02(a) of the Indenture) as set forth in the following table, in each case together with accrued interest thereon to the prepayment date.

<u>Prepayment Dates</u>	<u>Prepayment Prices</u>
March 1, 20__ through February 28, 20__	%
March 1, 20__ and thereafter	

The City shall be required to give the Trustee written notice (which may be revocable) of its intention to prepay the Loan under this subsection (a) at least sixty (60) days prior to the date fixed for such prepayment, and shall transfer to the Trustee all amounts required for such prepayment at least four (4) Business Days prior to the date fixed for such prepayment.

Section 2.04. Validity of Restated Loan. The validity of the Restated Loan shall not be dependent upon the operation or functioning of the Enterprise, or upon the performance by any person of its obligation with respect to the Enterprise.

ARTICLE III

PLEDGE OF NET REVENUES; RATE COVENANT; PARITY DEBT

Section 3.01. Pledge of Net Revenues; Deposits to Pay Loan Installments. (a) Pledge of Net Revenues. The City hereby agrees that the payment of the Loan Installments shall be secured by a first and prior pledge, charge and lien upon Net Revenues, and Net Revenues sufficient to pay the Loan Installments as they become due and payable are hereby pledged, charged, assigned, transferred and set over by the City to the Authority and its assigns for the purpose of securing payment of the Loan Installments. The Net Revenues shall constitute a trust fund for the security and payment of the Loan Installments. If Net Revenues are ever insufficient to pay Loan Installments as the same become due and payable, the City shall pay Loan Installments from funds of the City lawfully available therefor. The City further agrees that none of the Net Revenues shall be transferred or paid into its general fund unless and until the then required payments of the Loan Installments have been made and the City's pro rata share (based upon the City's percentage share of debt service as of the date of the transfer) of the Reserve Requirement deposit in the Reserve Account has been met.

(b) Transfer to Pay Loan Installments. In order to provide for the payment of Loan Installments when due, the City shall, on or before each Due Date, transfer to the Trustee for deposit into the Revenue Fund the amount indicated in Section 2.02 as required for the next occurring Interest Payment Date; provided, however, that, to the extent interest or income earned on the Revenue Fund are remaining in the Revenue Fund, the City's payment obligations for interest on such Due Date shall be paid from such interest, income or Bond proceeds.

Section 3.02. Rate Covenant. The City hereby covenants that it shall prescribe, revise and collect such charges for the services and facilities provided by its wastewater collection system and the Enterprise which, after allowances for contingencies and error in the estimates, shall produce Gross Revenues sufficient in each Fiscal Year to: (1) replenish the Reserve Account, as required by Section 3.05; and (2) provide Net Revenues equal to at least 1.3 times the sum of (i) the Loan Installments coming due and payable during such Fiscal Year and (ii) all payments required with respect to Parity Debt due and payable during such Fiscal Year.

Section 3.03. Limitations on Future Obligations Secured by Net Revenues.

(a) No Obligations Superior to Loan Installments. In order to protect further the availability of the Net Revenues and the security for the Loan Installments and any Parity Debt, the City hereby agrees that the City shall not, so long as any Bonds are outstanding, issue or incur any obligations payable from the Net Revenues superior to the Loan Installments or such Parity Debt.

(b) Parity Debt. The City further covenants that, except for obligations issued or incurred to prepay the Loan Installments pursuant to Section 2.03 hereof, the City shall not issue or incur any Parity Debt unless each of the following conditions is satisfied:

(i) The City is not in default under the terms of this Loan Agreement;

(ii) Net Revenues, calculated on sound accounting principles, as shown by the books of the City for the latest Fiscal Year or any more recent twelve (12) month period selected by the City ending not more than sixty (60) days prior to the adoption of the resolution pursuant to which instrument such Parity Debt is issued or incurred, as shown by the books of the City, plus, at the option of the City, either or both of the items hereinafter in this subsection designated (1) and (2), shall have amounted to at least 1.3 times the sum of the maximum Loan Installments coming due and payable in any future Fiscal Year and the maximum annual debt service on all Parity Debt outstanding immediately subsequent to the incurring of such additional obligations.

Either or both of the following items may be added to such Net Revenues for the purpose of applying the restriction contained in this subsection (b)(ii):

(1) An allowance for revenues from any additions to or improvements or extensions of its wastewater collection system and the Enterprise to be made with the proceeds of such additional obligations, and also for net revenues from any such additions, improvements or extensions which have been made from moneys from any source but which, during all or any part of such Fiscal Year, were not in service, all in an amount equal to 75% of the estimated additional average annual revenues to be derived from such additions, improvements and extensions for the first 36-month period following closing of the proposed Parity Debt, all as shown by the certificate or opinion of a qualified independent engineer employed by the City or the Authority; and

(2) An allowance for earnings arising from any increase in the charges made for service from its wastewater collection system and the Enterprise which has become effective prior to the incurring of such additional obligations but which, during all or any part of such Fiscal Year, was not in effect, in an amount equal to 100% of the amount by which revenues would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year and any period prior to the incurring of such additional obligations, as shown by the certificate or opinion of a qualified independent engineer or rate consultant employed by the City or the Authority.

Section 3.04. Additional Payments. In addition to the Loan Installments, the City shall pay, from Net Revenues, when due, its Proportionate Share of all costs and expenses incurred by the Authority to comply with the provisions of the Indenture of Trust and this Loan Agreement, including, without limitation all Costs of Issuance (to the extent not paid from amounts on deposit in the Costs of Issuance Fund), compensation due to the Trustee for its fees, costs and expenses incurred under the Indenture of Trust and all costs and expenses of the Trustee.

Section 3.05. Payments to Reserve Account. In addition to the Loan Installments, the City shall pay to the Trustee, from Net Revenues, such amounts as shall be required to replenish the Reserve Account in the event of: (i) a draw therefrom caused by the City's failure

to pay Loan Installments due and payable hereunder in a timely manner; and (ii) a deficiency in the Reserve Account due to market fluctuation of the Permitted Investments held in the Reserve Account on a pro rata basis (based upon the City's proportionate responsibility for debt service as of the date of the valuation), all in accordance with Section 4.02(c) of the Trust Indenture. In no event shall the City be liable for a deficiency in the Reserve Account resulting from Encinitas's failure to make a Loan Payment due under its Loan Agreement.

ARTICLE IV

OTHER COVENANTS OF THE CITY

Section 4.01. Punctual Payment. The City will punctually pay or cause to be paid the principal of and interest on the Restated Loan, together with any prepayment premiums thereon, in strict conformity with the terms of this Loan Agreement, and it will faithfully observe and perform all of the conditions, covenants and requirements of this Loan Agreement.

Section 4.02. Limitation on Superior Debt. The City hereby covenants that, so long as the Restated Loan remains unpaid, the City shall not issue any bonds, notes or other obligations, enter into any agreement or otherwise incur any loan, advances or indebtedness, which are in any case secured by a lien on all or any part of the Net Revenues which is superior to or on a parity with the lien established hereunder for the security of the Restated Loan, excepting only Parity Debt issued pursuant to Section 3.03. Nothing herein is intended or shall be construed in any way to prohibit or impose any limitations upon the issuance by the City of loans, bonds, notes, advances or other indebtedness which are unsecured or which are secured by a junior lien on the Net Revenues.

Section 4.03. Payment of Claims. The City will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the properties owned by the City or upon the Net Revenues or any part thereof, or upon any funds in the hands of the Trustee, or which might impair the security of the Restated Loan. Nothing herein contained shall require the City to make any such payment so long as the City in good faith shall contest the validity of said claims.

Section 4.04. Books and Accounts; Financial Statements. The City will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City and the Authority, in which complete and correct entries shall be made of all transactions relating to the Net Revenues. Such books of record and accounts shall at all times during business hours be subject, upon prior written request, to the reasonable inspection of the Authority, the Trustee and the Owners of any Bonds then Outstanding, or their representatives authorized in writing.

The City will cause to be prepared and filed with the Trustee annually, within 6 months after the close of each Fiscal Year so long as any of the Bonds are Outstanding, complete audited financial statements with respect to such Fiscal Year showing the Net Revenues, all disbursements from its wastewater collection system revenues and the financial condition of the City, including the balances in all funds and accounts relating to its wastewater collection system as of the end of such Fiscal Year. The City will furnish a copy of such statements, upon reasonable request, to any Bond Owner. The City shall review in each fiscal year, and take appropriate action to provide for, the future availability of sufficient Net Revenues for the timely payments of debt service on the Restated Loan and any Parity Debt.

Section 4.05. Protection of Security and Rights. The City will preserve and protect the security of the Restated Loan and the rights of the Trustee and the Bond Owners with respect to the Restated Loan. From and after the Closing Date, the Restated Loan shall be incontestable by the City.

Section 4.06. Payments of Taxes and Other Charges. The City will pay and discharge, or cause to be paid and discharged, all taxes, service charges, assessments and other governmental charges which may hereafter be lawfully imposed upon the City or the properties then owned by the City, when the same shall become due. Nothing herein contained shall require the City to make any such payment so long as the City in good faith shall contest the validity of said taxes, assessments or charges. The City will duly observe and conform with all valid requirements of any governmental authority relative to its wastewater collection and treatment system or any part thereof.

Section 4.07. Operation of its Wastewater System. The City covenants to operate, or cause to be operated, its wastewater collection system in accordance with customary standards and practices applicable to similar facilities, and to cause the Authority to operate, or cause to be operated, the Enterprise in accordance with customary standards and practices applicable to similar facilities.

Section 4.08. Payment of Expenses; Indemnification. The City shall pay to the Trustee from time to time its Proportionate Share of all compensation for all services rendered under this Loan Agreement and the Indenture, including but not limited to all reasonable expenses, charges, legal and consulting fees and other disbursements and those of its attorneys, agents and employees, incurred in and about the performance of its powers and duties hereunder and thereunder. Upon the occurrence of an Event of Default, the Trustee shall have a first lien on the Net Revenues and the Reserve Account to secure the payment to the Trustee of all fees, costs and expenses, including reasonable compensation to its experts, attorneys and counsel incurred in declaring such Event of Default and in exercising the rights and remedies set forth in Article V hereof.

The City further covenants and agrees to indemnify and save the Trustee and its officers, directors, agents and employees, harmless against any losses, expenses and liabilities which it may incur arising out of or in the exercise and performance of its powers and duties under the Indenture, including the costs and expenses of defending against any claim of liability, but excluding any and all losses, expenses and liabilities which are due to the negligence or willful misconduct of the Trustee, its officers, directors, agents or employees. The obligations of the City under this paragraph shall survive the resignation or removal of the Trustee under the Indenture, this Loan Agreement and payment of the Restated Loan and the discharge of this Loan Agreement.

Section 4.09. Private Activity Bond Limitation. The City shall assure that the proceeds of the Loan are not so used as to cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

Section 4.10. Federal Guarantee Prohibition. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Tax Code.

Section 4.11. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Loan Agreement, failure of the City to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default; however, the Trustee may (and, at the request of any Participating Underwriter or the holders of at least 25% aggregate principal amount of Outstanding Bonds, shall) or any holder or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

Section 4.12. No Termination of Basic Agreement. The City, as successor in interest to the District, will not terminate the Basic Agreement so long as the Bonds are Outstanding.

Section 4.13. Further Assurances. The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Loan Agreement and for the better assuring and confirming unto the Trustee, the Authority and the Owners of the Bonds of the rights and benefits provided in this Loan Agreement.

ARTICLE V

EVENTS OF DEFAULT AND REMEDIES

Section 5.01. Events of Default and Acceleration of Restated Loan. The following events shall constitute Events of Default hereunder:

(a) Failure by the City to pay the principal of or interest or prepayment premium (if any) on the Restated Loan or any Parity Debt when and as the same shall become due and payable.

(b) Failure by the City to observe and perform any of the covenants, agreements or conditions on its part contained in this Loan Agreement, other than as referred to in the preceding clause (a), for a period of sixty (60) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Trustee, or to the City and the Trustee by the Owners of not less than twenty-five percent (25%) in aggregate principal amount of the Outstanding Bonds; provided, however, that if in the reasonable opinion of the City the failure stated in such notice can be corrected, but not within such sixty (60) day period, the Trustee shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within such sixty (60) day period and diligently pursued until such failure is corrected; provided, that in no event shall the cure period specified above exceed 90 days.

(c) The filing by the City of a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America, or if a court of competent jurisdiction shall approve a petition, filed with or without the consent of the City, seeking reorganization under the federal bankruptcy laws or any other applicable law of the United States of America, or if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property.

If an Event of Default has occurred and is continuing, the Trustee may, and at the written direction of the Owners of a majority in aggregate principal amount of the Outstanding Bonds the Trustee shall (a) declare the principal of the Loan, together with the accrued interest on all unpaid installments thereof, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything in this Loan Agreement to the contrary notwithstanding, and (b) exercise any other remedies available to the Trustee in law or at equity. Immediately upon becoming aware of the occurrence of an Event of Default, the Trustee shall give notice of such Event of Default to the City by telephone, telecopier or other telecommunication device, promptly confirmed in writing. This provision, however, is subject to the condition that if, at any time after the principal of the Restated Loan shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the City shall deposit with the Trustee a sum sufficient to pay all installments of principal of the Restated Loan matured prior to such declaration and all accrued interest thereon, with interest on such overdue installments

of principal and interest at the net effective rate then borne by the Outstanding Bonds, and the reasonable expenses of the Trustee (including but not limited to attorneys fees), and any and all other defaults known to the Trustee (other than in the payment of principal of and interest on the Restated Loan due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Owners of a majority in aggregate principal amount of the Outstanding Bonds may, by written notice to the Trustee and the City, rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

Section 5.02. Application of Funds Upon Default. All amounts received by the Trustee pursuant to any right given or action taken by the Trustee under the provisions of this Loan Agreement, or otherwise held by the Trustee upon the occurrence of an Event of Default, shall be applied by the Trustee in the following order:

First, to the payment of the costs and expenses of the Trustee in declaring such Event of Default and in carrying out the provisions of this Article V, including reasonable compensation to its agents, attorneys and counsel and other amounts owing to the Trustee and secured by the lien granted to the Trustee pursuant to Section 4.08 hereof; and

Second, to the payment of the whole amount of interest on and principal of the Loan then due and unpaid, with interest on overdue installments of principal and interest to the extent permitted by law at the net effective rate of interest then borne by the Outstanding Bonds; provided, however, that in the event such amounts shall be insufficient to pay in full the full amount of such interest and principal, then such amounts shall be applied in the following order of priority:

(a) first, to the payment of all installments of interest on the Restated Loan then due and unpaid, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full,

(b) second, to the payment of principal of all installments of the Restated Loan then due and unpaid, other than principal having come due and payable solely by reason of acceleration pursuant to Section 5.01, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full,

(c) third, to the payment of principal of the Restated Loan then due and unpaid and having come due and payable solely by reason of acceleration pursuant to Section 5.01, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full, and

(d) fourth, to the payment of interest on overdue installments of principal and interest, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full.

Section 5.03. No Waiver. Nothing in this Article V or in any other provision of this Loan Agreement, shall affect or impair the obligation of the City, which is absolute and unconditional, to pay from the Net Revenues and other amounts pledged hereunder, the principal of and interest and premium (if any) on the Loan to the Trustee on the respective Interest Payment Dates, as herein provided, or affect or impair the right of action, which is also absolute and unconditional, of the Trustee to institute suit to enforce such payment by virtue of the contract embodied in this Loan Agreement.

A waiver of any default by the Trustee shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of the Trustee to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the Trustee by law or by this Article V may be enforced and exercised from time to time and as often as shall be deemed expedient by the Trustee.

If a suit, action or proceeding to enforce any right or exercise any remedy shall be abandoned or determined adversely to the Trustee, the City and the Trustee shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken.

Section 5.04. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by law.

ARTICLE VI

MISCELLANEOUS

Section 6.01. Benefits Limited to Parties. Nothing in this Loan Agreement, expressed or implied, is intended to give to any person other than the City, the Trustee and the Authority, any right, remedy or claim under or by reason of this Loan Agreement. All covenants, stipulations, promises or agreements in this Loan Agreement contained by and on behalf of the City shall be for the sole and exclusive benefit of the Authority and of the Trustee acting as trustee for the benefit of the Owners of the Bonds.

Section 6.02. Successor is Deemed Included in All References to Predecessor. Whenever in this Loan Agreement either the City, the Authority or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Loan Agreement contained by or on behalf of the City, the Authority or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 6.03. Discharge of Loan Agreement. If the City shall pay and discharge the entire indebtedness on the Restated Loan in any one or more of the following ways:

(a) by well and truly paying or causing to be paid the entire principal of and all interest and prepayment premiums (if any) on the Restated Loan, as and when the same become due and payable;

(b) by irrevocably depositing with the Trustee, in trust, at or before maturity, cash in an amount which, together with the available amounts then on deposit in any of the funds and accounts established pursuant to the Indenture or this Loan Agreement, is fully sufficient to pay all principal of and interest and prepayment premiums (if any) on the Restated Loan; or

(c) by irrevocably depositing with the Trustee or any other fiduciary, in trust, Federal Securities in such amount as an Independent Certified Public Accountant shall determine in a written report filed with the Trustee (upon which report the Trustee may conclusively rely) will, together with the interest to accrue thereon and available moneys then on deposit in the funds and accounts established pursuant to the Indenture or pursuant to this Loan Agreement, be fully sufficient to pay and discharge the indebtedness on the Restated Loan (including all principal, interest and prepayment premiums) at or before maturity;

then, at the election of the City, but only if the Bonds relating to this Loan Agreement have been paid or defeased, and all other amounts then due and payable hereunder shall have been paid or provision for their payment made, the pledge of and lien upon the Net Revenues and other funds provided for in this Loan Agreement and all other obligations of the Trustee, the Authority and the City under this Loan Agreement with respect to the Restated Loan shall cease and terminate, except only the obligation of the City to pay or cause to be paid to the

Trustee, from the amounts so deposited with the Trustee or such other fiduciary, all sums due with respect to the Loan and all expenses and costs of the Trustee. Notice of such election shall be filed with the Authority and the Trustee.

Any funds thereafter held by the Trustee hereunder, which are not required for said purpose, shall be paid over to the City.

Section 6.04. Amendment. This Loan Agreement may be amended by the parties hereto but only under the circumstances set forth in, and in accordance with, the provisions of Section 5.11 of the Indenture. The Authority and the Trustee covenant that the Indenture shall not be amended without the prior written consent of the City.

Section 6.05. Waiver of Personal Liability. No member, officer, agent or employee of the City shall be individually or personally liable for the payment of the principal of or interest on the Restated Loan; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

Section 6.06. Payment on Business Days. Whenever in this Loan Agreement any amount is required to be paid on a day which is not a Business Day, such payment shall be required to be made on the Business Day immediately following such day, with the same force and effect as if done on the nominal date provided in this Loan Agreement.

Section 6.07. Notices. All written notices to be given under this Loan Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective 48 hours after deposit in the United States mail, postage prepaid or, in the case of any notice to the Trustee or in the case of personal delivery to any person, upon actual receipt at the address set forth below:

If to the Authority: San Elijo Joint Powers Authority
2695 Manchester Avenue
Cardiff by the Sea, California 92007-1077
Attention: General Manager

If to the City: City of Solana Beach
635 South Highway 101
Solana Beach, California 92075
Attention: City Manager

If to the City of Encinitas: City of Encinitas
505 South Vulcan Avenue
Encinitas, California 92024
Attention: City Manager

If to the Trustee:

Union Bank, N.A.
120 South San Pedro Street, Suite 400
Los Angeles, California 90012
Attention: Corporate Trust Dept.

Section 6.08. Partial Invalidity. If any Section, paragraph, sentence, clause or phrase of this Loan Agreement shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the validity of the remaining portions of this Loan Agreement. The City hereby declares that it would have adopted this Loan Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the Restated Loan irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Loan Agreement may be held illegal, invalid or unenforceable.

Section 6.09. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State.

Section 6.10. Capacity of Trustee. The Trustee is entering into this Agreement solely in its capacity as Trustee under the Indenture, and the duties, powers and liabilities of the Trustee in acting hereunder shall be subject to the provisions of the Indenture, including, without limitation, the provisions of Article VI thereof.

IN WITNESS WHEREOF, the CITY OF SOLANA BEACH, SAN ELIJO JOINT POWERS AUTHORITY and UNION BANK, N.A., as trustee, have caused this Loan Agreement to be signed by their respective officers, all as of the day and year first above written.

CITY OF SOLANA BEACH

By _____
City Manager

[SEAL]

Attest:

City Clerk

SAN ELIJO JOINT POWERS AUTHORITY

By _____
General Manager

UNION BANK OF CALIFORNIA, N.A.
as Trustee

By _____
Authorized Officer

This Preliminary Official Statement and the information contained herein are subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy, nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation, or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

PRELIMINARY OFFICIAL STATEMENT DATED _____, 2012

NEW ISSUE – FULL BOOK-ENTRY ONLY

**RATINGS: Standard & Poor's: “__”
Fitch: “__”
(See “MISCELLANEOUS – Ratings” herein)**

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however, to certain qualifications described herein, under existing law, the interest received by the owners of the Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purpose of the federal individual and corporate alternative minimum taxes, although it is included in adjusted net book income and current earnings in computing the alternative minimum tax imposed on certain corporations. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes. See “Tax Exemption.”

\$ _____ *
SAN ELIJO JOINT POWERS AUTHORITY
San Diego County, California
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)

Dated: Date of Delivery

Due: March 1, as shown on the inside cover hereof

This cover page contains certain information for quick reference only. It is not a summary of all factors relating to an investment in the Bonds. Investors must review the entire Official Statement including the section “BONDOWNER’S RISKS,” for a discussion of special factors which should be considered before determining the investment quality of the Bonds. Capitalized terms used on this cover page and not otherwise defined shall have the meanings set forth in the Official Statement.

The Bonds are being issued by the San Elijo Joint Powers Authority (the “Authority”) for the purpose of refunding on a current basis the Authority’s 2003 Refunding Revenue Bonds (San Elijo Water Pollution Control Facility) (the “Prior Bonds”) and prepaying a note to the California Energy Commission. The Prior Bonds were issued for the purpose of providing funds to refinance the cost of acquiring and constructing certain improvements (the “Project”) to the San Elijo Water Reclamation Facility (the “Facility”) owned by the Authority. The Authority is a joint exercise of powers authority between the City of Encinitas, as successor to the Cardiff Sanitation District (“Encinitas”) and the City of Solana Beach (“Solana Beach”), as successor to the Solana Beach Sanitation District (Encinitas and Solana Beach collectively referred to herein as the “Local Agencies”). The Authority was formed pursuant to Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California. The Bonds are authorized to be issued pursuant to the provisions of the Article 10 (commencing with Section 53570), Chapter 3, Division 2, Title 5 of the Government Code of the State of California (the “Act”).

The Bonds are subject to optional and mandatory redemption prior to maturity as described herein.

Each Local Agency will enter into a Third Amended and Restated Loan Agreement, each dated as of January 1, 2012 (each, a “Loan Agreement” and collectively, the “Loan Agreements”), to assist in the financing of the Local Agencies’ respective share of the Bonds. The Loan Agreements will amend and restate the original Loan Agreements, each dated as of March 1, 1990, as amended and restated on March 15, 1993, and as amended and restated on April 1, 2003 (the “Original Loan Agreements”). Each Loan Agreement is an obligation of Solana Beach and Encinitas, respectively, and Loan Installments payable thereunder are secured by a pledge of Net Revenues (defined below) and other funds of each respective Local Agency lawfully available therefor, and does not constitute an obligation of the other Local Agency. Each of the Local Agencies has agreed to make its respective Loan Installments solely from the gross revenues of its wastewater enterprise described in the Loan Agreement, after a deduction for maintenance and operation expenses (the “Net Revenues”), in an amount sufficient to pay the annual principal and interest due with respect to its Loan Agreement. In addition, each Local Agency has made covenants under each respective Loan Agreement with respect to the collection of its respective wastewater revenues and the Authority has made certain covenants with respect to the maintenance of the Enterprise. Loan Installments from Encinitas are calculated to pay approximately ___% of total debt service on the Bonds, and Loan Installments from Solana Beach are calculated to pay approximately ___% of total debt service on the Bonds. AMOUNTS ON DEPOSIT IN THE RESERVE ACCOUNT CONSTITUTING THE RESERVE REQUIREMENT ARE AVAILABLE TO THE TRUSTEE TO MAKE UP ANY DEFICIENCY CAUSED BY THE FAILURE OF EITHER LOCAL AGENCY TO DEPOSIT WITH THE TRUSTEE AMOUNTS REQUIRED BY THE LOAN AGREEMENTS. HOWEVER, IN NO EVENT SHALL EITHER LOCAL AGENCY OR THE AUTHORITY BE REQUIRED TO MAKE UP A DEFICIENCY IN THE RESERVE ACCOUNT CAUSED BY THE OTHER LOCAL AGENCY’S NONPAYMENT OF A LOAN INSTALLMENT. **NEITHER LOCAL AGENCY IS RESPONSIBLE FOR THE LOAN INSTALLMENT OWED BY THE OTHER LOCAL AGENCY, AND A DEFAULT UNDER ONE LOAN AGREEMENT WILL NOT RESULT IN A DEFAULT UNDER THE OTHER LOAN AGREEMENT.**

[The scheduled payment of the principal of and interest on the Bonds will be guaranteed under an insurance policy to be issued concurrently with the delivery of the Bonds by _____. See “Security for the Bonds – Bond Insurance.”]

[TO COME]

THE BONDS ARE LIMITED OBLIGATIONS OF THE AUTHORITY, PAYABLE SOLELY FROM AND SECURED SOLELY BY THE REVENUES PLEDGED THEREFOR IN THE INDENTURE, AND ARE NOT SECURED BY A LEGAL OR EQUITABLE PLEDGE OF, OR CHARGE OR LIEN UPON ANY PROPERTY OF THE AUTHORITY OR THE LOCAL AGENCIES, OR ANY OF THE AUTHORITY’S INCOME OR RECEIPTS, EXCEPT THE REVENUES. THE BONDS ARE NOT A DEBT OF THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS. THE FAITH AND CREDIT OF THE LOCAL AGENCIES IS NOT OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION THEREFOR. NONE OF THE LOCAL AGENCIES OR THE STATE OR ANY OF THEIR RESPECTIVE POLITICAL SUBDIVISIONS IS LIABLE THEREFOR, NOR IN ANY EVENT SHALL THE BONDS OR ANY INTEREST OR REDEMPTION PREMIUM, IF ANY, THEREON BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE OF THE AUTHORITY AS SET FORTH IN THE INDENTURE. NEITHER THE BONDS NOR THE OBLIGATION TO MAKE LOAN INSTALLMENTS CONSTITUTES AN INDEBTEDNESS OF THE AUTHORITY, THE LOCAL AGENCIES, THE STATE OR ANY OF THEIR RESPECTIVE POLITICAL SUBDIVISIONS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION.

Neither the full faith and credit nor the taxing power of the Authority, the Local Agencies, the State or any other political subdivision thereof is pledged to the payment of the Bonds. THE AUTHORITY HAS NO TAXING POWER.

MATURITY SCHEDULE
(See inside cover hereof)

The Bonds will be offered when, as and if issued and delivered, and received by the Underwriter, subject to the approval of their legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for the Authority by Procopio, Cory, Hargreaves & Savitch LLP, San Diego, California, its general counsel, and by Best Best & Krieger LLP, Riverside, California, as Disclosure Counsel, and for each of the Local Agencies by its counsel. It is anticipated that the Bonds will be available for delivery to DTC on or about _____, 2012.

BRANDIS TALLMAN LLC

Dated: _____, 2012

* Preliminary, subject to change.

MATURITY SCHEDULE

\$ _____ Serial Bonds

<u>Maturity Date</u> <u>(March 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>CUSIP No.</u> ⁽¹⁾	<u>Maturity Date</u> <u>(March 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>CUSIP No.</u> ⁽¹⁾
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CUSIP is a registered trademark of the American Bankers Association. CUSIP Global Services (CGS) is managed on behalf of the American Bankers Association by Standard & Poor's. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Services. CUSIP numbers are provided only as a convenience for reference. Neither the District nor the Underwriter assumes any responsibility for the accuracy of such numbers.

SAN ELIJO JOINT POWERS AUTHORITY

BOARD OF DIRECTORS

Teresa Barth, Chair
Thomas Campbell, Vice Chair
Dave Roberts, Member

AUTHORITY OFFICERS

Michael T. Thornton, P.E., General Manager/Secretary of the Board
Gregory Lewis, Director of Finance/Administration
Christopher A. Trees, P.E., Director of Operations
Monica Blake, Board Clerk

GOVERNING BOARDS OF LOCAL AGENCIES

City of Encinitas

James Bond, Mayor
Jerome Stocks, Mayor Pro Tem
Teresa Barth, Councilmember
Kristin Gaspar, Councilmember

City of Solana Beach

Lesa Heebner, Mayor
Joe G. Kellejian, Deputy Mayor
David W. Roberts, Councilmember
Mike Nichols, Councilmember
Thomas M. Campbell, Councilmember

PROFESSIONAL SERVICES

Bond Counsel

Jones Hall, A Professional Law Corporation
San Francisco, California

Authority General Counsel

Procopio, Cory, Hargreaves & Savitch LLP
San Diego, California

Trustee

Union Bank, N.A.
Los Angeles, California

Disclosure Counsel

Best Best & Krieger, LLP
Riverside, California

Escrow Agent

Union Bank, N.A.
Los Angeles, California

IN CONNECTION WITH THE OFFERING OF THE BONDS, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE UNDERWRITER MAY OFFER AND SELL THE BONDS TO CERTAIN DEALERS, DEALER BANKS AND BANKS ACTING AS AGENTS AT PRICES LOWER THAN THE PUBLIC OFFERING PRICES STATED ON THE INSIDE COVER PAGE HEREOF, AND SAID PUBLIC OFFERING PRICES MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITER.

THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON AN EXEMPTION CONTAINED IN SUCH ACT. THE BONDS HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE.

This Official Statement speaks only as of its date, and the information contained herein is subject to change. This Official Statement and any continuing disclosure documents of the Local Agencies and the Authority are intended to be made available by the Authority at the address indicated below. The Local Agencies and the Authority have undertaken to provide certain continuing disclosure pursuant to Continuing Disclosure Agreements, as described herein. Copies of the resolutions and other documents relating to the issuance of the Bonds are available upon request and upon payment to the Authority of a charge for copying, mailing and handling, from the San Elijo Joint Powers Authority at 2695 Manchester Avenue, Cardiff by the Sea, California 92007.

No dealer, broker, salesperson or other person has been authorized to give any information or to make any representations in connection with the offer or sale of the Bonds described herein, other than as contained in this Official Statement, and, if given or made, such information or representations must not be relied upon as having been authorized by the Authority, the Local Agencies or the Underwriter. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of, the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

FORWARD-LOOKING STATEMENTS

Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Exchange Act of 1934, as amended, and Section 27A of the United States Securities Act of 1933, as amended. Such statements are generally identifiable by the terminology used, such as "plan," "expect," "estimate," "budget" or other similar words and include, but are not limited to, statements under the captions "ENCINITAS AND SOLANA BEACH."

The achievement of certain results or other expectations contained in such forward-looking statements involves known and unknown risks, uncertainties and other factors which may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. While the Authority and the Local Agencies have agreed to provide certain on-going financial and operating data, except as specifically described under the caption "CONTINUING DISCLOSURE," the Authority and the Local Agencies do not plan to issue any updates or revisions to those forward-looking statements if or when its expectations or events, conditions or circumstances on which such statements are based change.

The information set forth herein has been obtained from the Authority and the Local Agencies, and other sources believed to be reliable, but the accuracy or completeness of such information is not guaranteed by, and should not be construed as a representation by, the Authority and the Local Agencies or the Underwriter. The information and expressions of opinions herein are subject to change without notice and neither delivery of this Official Statement nor any sale made hereunder will, under any circumstances, create any implication that there has been no change in the Authority and the Local Agencies since the date hereof. All summaries contained herein of any resolutions, the Indenture, the Loan Agreements, and other documents are made subject to the provisions of such documents and do not purport to be complete statements of any or all such provisions.

THE UNDERWRITER HAS REVIEWED THE INFORMATION SET FORTH IN THIS OFFICIAL STATEMENT IN ACCORDANCE WITH ITS RESPONSIBILITIES UNDER THE FEDERAL SECURITIES LAWS AS APPLIED TO THE FACTS AND CIRCUMSTANCES PERTAINING TO THE BONDS, BUT DOES NOT GUARANTEE THE ACCURACY OR COMPLETENESS OF THE INFORMATION.

Each of the Authority and the Local Agencies maintains an internet website, however, the information on the website is not incorporated in this Official Statement.

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OFFICIAL STATEMENT

\$ _____*

San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)

This introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in this entire Official Statement, including the cover page and appendices hereto, and the documents summarized or otherwise described herein. A full review should be made of this entire Official Statement and such documents prior to making an investment in the Bonds. The sale and delivery of the Bonds to potential investors is made only by means of the entire Official Statement.

INTRODUCTION

The purpose of this Official Statement, including the Appendices hereto, is to provide certain information concerning the issuance and sale of \$ _____ 2012 Refunding Revenue Bonds (San Elijo Water Reclamation Facility) (the “Bonds”) to be issued by the San Elijo Joint Powers Authority (the “Authority”) for the purposes of: (i) refunding the 2003 Refunding Revenue Bonds (San Elijo Wastewater Treatment Facilities) maturing after September 1, 2012 (the “Prior Bonds”), (ii) to fund a Reserve Account, and (iii) to pay the expenses of the Authority in connection with the issuance of the Bonds.

The Bonds are being issued pursuant to the Constitution and the laws of the State of California (the “State”), including the Refunding Bond Law (the “Act”), constituting Article 10, Chapter 3, Division 2, Title 5 (commencing with Section 53570), of the California Government Code, as amended, a resolution (the “Resolution”) adopted by the Board of Directors of the Authority on _____, 2011 and an Indenture of Trust (the “Indenture”), dated as of January 1, 2012, by and between Union Bank, N.A., as trustee (the “Trustee”) and the Authority.

Each of the City of Encinitas (“Encinitas”) and the City of Solana Beach (“Solana Beach”) will enter into separate Third Amended and Restated Loan Agreements, each dated as of January 1, 2012 (each a “Loan Agreement” and, together, the “Loan Agreements”), to assist in the financing of their respective share of the refunding obligations. The Loan Agreements will amend and restate the loan agreements, each dated as of March 1, 1990, as amended and restated on March 15, 1993, and as further amended and restated on April 1, 2003 (the “Original Loan Agreements”).

The Facility

The San Elijo Water Reclamation Facility (the “Facility”) means the tertiary treatment system and reclaimed water distribution system of the Authority, including two 750,000 gallon reservoirs, 17 miles of distribution pipeline and two pumping stations. The Facility, which serves as the sole wastewater treatment facility for the Local Agencies, is located approximately 23 miles north of the City of San Diego, in a small valley on the north side of San Elijo Lagoon immediately west of Interstate Highway 5. The Facility serves (i) Encinitas’ Cardiff Sanitary Division (“Cardiff Sanitation Division”) service area covers approximately 5,250 gross acres, or approximately 38% of the city limits of Encinitas in the northern portion of San Diego County along the coast and extending inland, and currently serves an estimated population of approximately 9,500, and (ii) Solana Beach’s service area which covers approximately 2,211 gross acres, or the entire city limits of Solana Beach along the coast, also in the northern portion of San Diego County, and currently serves an estimated population of approximately 12,900.

The Facility provides for wastewater treatment for the Local Agencies as well as Improvement Areas 2 and 3 of Rancho Santa Fe Community Services District and portions of the City of San Diego, which agencies

* Preliminary, subject to change.

have no financial participation with respect to the Bonds or Loan Agreements. See “The San Elijo Water Reclamation Facility.”

The Authority was formed by the Cardiff Sanitation District and the Solana Beach Sanitation District pursuant to Article I of Chapter 5 of Division 7 of Title 1 of the California Government Code (the “JPA Law”). The Facility was developed as the wastewater treatment facility for the Local Agencies pursuant to a joint powers agreement between Cardiff Sanitation District and the Solana Beach Sanitation District dated March 26, 1963. Subsequently, a Joint Exercise of Powers Agreement dated June 17, 1987, as amended, (the “Basic Agreement”), replaced the earlier agreement and provided for the joint ownership of wastewater conveyance, treatment and disposal facilities as well as management of the Facility. On July 1, 1990, the City of Solana Beach succeeded to the powers and responsibilities of the Solana Beach Sanitation District and assumed obligations of the Solana Beach Sanitation District with respect to the Authority. On October 18, 2001, the City of Encinitas succeeded to the powers and responsibilities of the Cardiff Sanitation District and assumed its obligations with respect to the Authority. On June 25, 2008, the Local Agencies entered into a Restatement of Agreement between Cardiff Sanitation District and Solana Beach Sanitation District establishing the San Elijo Joint Powers Authority (the “Restated Agreement”). Each Local Agency owns and operates facilities for the provision of sewer services within their respective jurisdictions. The Facility was initially constructed in 1964 and was subsequently expanded in 1974, 1982 and 1993. See “The San Elijo Water Reclamation Facility.”

Security for the Bonds

Loan Installments. Pursuant to the Loan Agreements, the Local Agencies are to make Loan Installment payments that are payable by the Local Agencies from the Net Revenues of the wastewater collection systems for Solana Beach and Encinitas Cardiff Sanitary Division, respectively. Each Loan Agreement provides that, as long as the Bonds remain outstanding and unpaid, the Local Agencies are legally required to make Loan Installments as payment for the Facility whether or not the Facility is operating or operable.

Under the Loan Agreements, the Local Agencies have covenanted to make payments of Loan Installments in each year from the Net Revenues (defined herein as Gross Revenues less Operation and Maintenance Expenses) derived from the operation of each Local Agency’s wastewater collection system. The Local Agencies have covenanted and agreed to prescribe, revise and collect such charges from the services and facilities of their respective wastewater collection systems which will produce gross revenues sufficient in each Fiscal Year to (1) replenish the Reserve Account, as required under each Loan Agreement; and (2) provide Net Revenues equal to at least 1.1 times the sum of (i) the Loan Installments coming due and payable during such Fiscal Year and (ii) all payments required with respect to Parity Debt (as defined herein) due and payable during such Fiscal Year. Aggregate payments by the Local Agencies are intended to be sufficient, in both time and amount, to pay, when due, the annual principal and interest on the Bonds.

Each Loan Agreement defines “Gross Revenues” as all gross income and revenue received by the Local Agency, party thereto, for the collection and treatment of wastewater generated in the Cardiff Sanitary Division with respect to Encinitas, and generated in Solana Beach, including, without limiting the generality of the foregoing: (a) all income, rents, rates, fees, charges or other moneys derived from the services, facilities and commodities sold, furnished or supplied through the facilities of its respective wastewater collection system and the Enterprise (defined below), (b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its respective wastewater collection system; and (c) transfers to that Local Agency’s Enterprise Fund from (but exclusive of any transfers to) any rate stabilization reserve accounts; provided, that the term “Gross Revenues” shall not include customers’ deposits or any other deposits subject to refund until such deposits have become the property of the Local Agency.

“Enterprise” means any and all facilities of the Authority used for the treatment and disposal of wastewater, including sewage treatment plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, treatment, purification or disposal of sewage, and any necessary lands, rights of

way and other real or personal property useful in connection therewith; provided that the term “Enterprise” shall not include the Facility.

Operation and Maintenance Expenses of each Local Agency’s wastewater collection system, are defined in the Loan Agreements to be (i) all expenses and costs of management, operation, maintenance and repair of the respective wastewater collection system, as well as the cost of maintaining its collection system, of the Cardiff Sanitary Division with respect to Encinitas, and the City of Solana Beach with respect to Solana Beach and all incidental costs, fees and expenses properly chargeable to the respective Local Agency (but excluding debt service or other similar payments on Parity Debt, as defined herein, or other obligations and depreciation and obsolescence charges or reserves therefor and amortization of intangibles and inter-fund transfers or other bookkeeping entries of a similar nature); and (ii) all expenses and costs of management, operation, maintenance and repair billed by the Authority to each Local Agency for the treatment of wastewater at the Enterprise as well as the cost of maintaining the Enterprise, and all incidental costs, fees and expenses properly chargeable to the Enterprise, which expenses and costs are billed to each respective Local Agency. “Operation and Maintenance Expenses” do not include expenses and costs of management, operation, maintenance and repair of the Facility. See “The Water Reclamation Facility” herein.

The City of Encinitas is also served by its Encinitas Sanitary Division and the Leucadia County Water District. The revenues of these two other enterprises are separate from the revenues of the Cardiff Sanitary Division and are not pledged to the payment of debt service on the Bonds.

A Reserve Account will contain an amount equal to the “Reserve Requirement,” which means an amount equal to the lesser of (i) maximum annual debt service on the Bonds; (ii) 10% of the principal amount of the Bonds; or (iii) 125% of average annual debt service on the Bonds will be held by the Trustee for the benefit of the owners of the Bonds (the “Owners”). AMOUNTS ON DEPOSIT IN THE RESERVE ACCOUNT ARE AVAILABLE TO THE TRUSTEE TO MAKE UP ANY DEFICIENCY CAUSED BY THE FAILURE OF EITHER LOCAL AGENCY TO DEPOSIT ANY AMOUNTS REQUIRED BY THE LOAN AGREEMENTS. HOWEVER, IN NO EVENT SHALL EITHER LOCAL AGENCY BE REQUIRED TO MAKE UP A DEFICIENCY IN THE RESERVE ACCOUNT CAUSED BY THE OTHER LOCAL AGENCY’S NONPAYMENT OF A LOAN INSTALLMENT. See “BONDOWNER’S RISKS,” herein. See APPENDIX B – “Summary of Principal Legal Documents – The Indenture – Establishment of Funds and Accounts; Flow of Funds.”

Bond Insurance

[The scheduled payments of the principal of and interest with respect to the Bonds when due will be guaranteed under an insurance policy to be issued concurrently with the delivery of the Bonds by _____]. See “Security for the Bonds – Bond Insurance.”]

Payment of the Bonds

Interest with respect to the Bonds will be payable on September 1, 2012, and semi-annually thereafter on each March 1 and September 1 to and including the date of maturity or redemption, whichever is earlier. See “The Bonds – General.”

Redemption

The Bonds are subject to optional and mandatory redemption prior to maturity as described herein.

EACH LOAN AGREEMENT IS AN OBLIGATION OF THE RESPECTIVE LOCAL AGENCY, AND LOAN INSTALLMENTS PAYABLE THEREUNDER ARE SECURED BY A PLEDGE OF NET REVENUES AND OTHER FUNDS OF THE LOCAL AGENCY LAWFULLY AVAILABLE THEREFOR, AND DOES NOT CONSTITUTE AN OBLIGATION OF THE OTHER LOCAL AGENCY. THE OBLIGATION OF THE LOCAL AGENCIES TO MAKE LOAN INSTALLMENT PAYMENTS UNDER THE LOAN AGREEMENTS IS AN OBLIGATION OF THE RESPECTIVE LOCAL AGENCY, PAYABLE

FROM NET REVENUES OF THE RESPECTIVE WASTEWATER COLLECTION SYSTEM AND OTHER SOURCES IDENTIFIED IN THE LOAN AGREEMENTS AND INDENTURE. THE LOCAL AGENCIES ARE NOT OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION IN ORDER TO PAY THE LOAN INSTALLMENTS UNDER THE LOAN AGREEMENTS. NEITHER THE BONDS NOR THE OBLIGATION OF THE LOCAL AGENCIES TO MAKE LOAN INSTALLMENT PAYMENTS UNDER THE LOAN AGREEMENTS CONSTITUTES A DEBT OF THE CITY OF ENCINITAS, THE CITY OF SOLANA BEACH, THE AUTHORITY, THE STATE OF CALIFORNIA OR ANY OF THEIR RESPECTIVE POLITICAL SUBDIVISIONS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMITATION OR RESTRICTION. NEITHER THE AUTHORITY'S OR THE LOCAL AGENCIES' OFFICERS, EMPLOYEES AND AGENTS, NOR ANY PERSONS EXECUTING THE LOAN AGREEMENTS OR THE BONDS, SHALL BE PERSONALLY LIABLE ON THE LOAN AGREEMENTS OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE DELIVERY THEREOF. THE AUTHORITY HAS NO TAXING POWER.

Description of the Bonds

Unless otherwise directed by the Underwriter, the Bonds will be issued and delivered as fully registered bonds, registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York ("DTC"), and will be available to actual purchasers of the Bonds (the "Beneficial Owners") in denominations of \$5,000 or any integral multiple in excess thereof, under the book-entry system maintained by DTC, only through brokers and dealers who are or act through DTC Participants as described herein. Beneficial Owners will not be entitled to receive physical delivery of the Bonds. In the event that the book-entry-only system described herein is no longer used with respect to the Bonds, the Bonds will be registered and transferred in accordance with the Indenture. See "THE BONDS – General" and "BOOK ENTRY SYSTEM," herein.

Principal of, premium, if any, and interest on the Bonds is payable by the Trustee to DTC. Disbursement of such payments to DTC Participants is the responsibility of DTC and disbursement of such payments to the Beneficial Owners is the responsibility of DTC Participants. In the event that the book-entry-only system is no longer used with respect to the Bonds, the Beneficial Owners will become the registered owners of the Bonds and will be paid principal and interest by the Trustee, all as described herein. See "THE BONDS – General" and "BOOK ENTRY SYSTEM," herein. So long as the Bonds are in book-entry-only form, all references in the Official Statement to the owners or holders of the Bonds shall mean DTC and not the Beneficial Owners of the Bonds.

Tax Matters

In the opinion of Jones Hall, a Professional Law Corporation, San Francisco, California, Bond Counsel, subject to certain qualifications described herein, under existing statutes, regulations, rules and court decisions, and assuming certain representations and compliance with certain covenants and requirements described herein, the interest on the Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, although for the purpose of computing the alternative minimum tax imposed on certain corporations, such interest is taken into account in determining certain income and earnings. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes. A copy of the form of opinion of Bond Counsel is set forth in APPENDIX E hereto.

Bond Counsel is further of the opinion that interest on the Bonds is not a specific preference item for purposes of federal individual or corporate alternative minimum taxes. However, Bond Counsel observes that interest on the Bonds is included in adjusted current earnings in calculating federal corporate alternative minimum taxable income. Although Bond Counsel is of the opinion that interest on the Bonds is excluded from federal gross income, the accrual or receipt of interest on the Bonds may otherwise affect a Bondholder's federal income tax liability. The nature and extent of these other consequences will depend upon the holder's particular tax status and the holder's other items of income or deduction. Bond Counsel expresses no opinion regarding any such other tax consequences. See "TAX EXEMPTION" herein.

Professionals Involved in the Offering

Union Bank, N.A., Los Angeles, California, will act as Trustee under the Indenture and as Escrow Bank under the Escrow Agreement. Brandis Tallman LLC is the Underwriter for the Bonds. All proceedings in connection with the issuance and delivery of the Bonds are subject to the approval of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will be passed on for the Authority by Procopio, Cory, Hargreaves & Savitch LLP, San Diego, California, as General Counsel, and Best Best & Krieger LLP, Riverside, California, as Disclosure Counsel.

For information concerning circumstances in which certain of the above-named professionals may have a financial or other interest in the offering of the Bonds, see “PROFESSIONAL FEES.”

Special Risks

See the section of this Official Statement entitled “BONDOWNER’S RISKS” for a discussion of risk factors which should be considered, in addition to the other matters set forth herein, in considering the investment quality of the Bonds. The purchase of the Bonds involves risks, and the Bonds may only be appropriate investments for some types of investors.

CONTINUING DISCLOSURE

The Authority and the Local Agencies, with Union Bank, N.A., as Dissemination Agent, entered into a Continuing Disclosure Certificate whereby the Authority and the Local Agencies have covenanted for the benefit of the Owners of the Bonds to provide to the Electronic Municipal Market Access System of the Municipal Securities Rulemaking Board (“EMMA”), which can be found at www.emma.msrb.org, certain financial information and operating data relating to the Authority and the Local Agencies by not later than six months after the end of each fiscal year (the “Annual Reports”), and to provide notices of the occurrence of certain listed events.

The Annual Reports will be filed by the Dissemination Agent, on behalf of the Authority and the Local Agencies, with EMMA. The specific nature of the information to be contained in the Annual Reports or the notices of listed events is set forth in “APPENDIX F – FORM OF CONTINUING DISCLOSURE CERTIFICATE.” The Authority and the Local Agencies have timely filed all continuing disclosure reports.

PLAN OF REFUNDING

Refunding Prior Bonds

Concurrently with the issuance of the Bonds, the Authority will enter into an Escrow Deposit and Trust Agreement (the “Escrow Agreement”) dated as of January 1, 2012, between the Authority and Union Bank, N.A., as Escrow Bank. Upon delivery of the Bonds, a portion of proceeds of the Bonds, together with certain moneys held by the Prior Trustee with respect to the Prior Bonds, will be deposited into an escrow fund (the “Escrow Fund”) established under the Escrow Agreement which will be held as cash and which shall be available to pay, when due, interest due with respect to the Prior Bonds through March 1, 2012, and to pay the principal and redemption premium on the Prior Bonds on March 1, 2012.

The mathematical accuracy of the calculation as to the sufficiency of anticipated receipts from the Federal Securities in the Escrow Fund to meet the payment requirements of the Bonds and the calculation of yield relating to the Bonds will be verified by Berens Tate LLP, independent certified public accountants. See “Verification of Mathematical Computations” herein.

Estimated Sources and Uses of Funds

The proceeds to be received from the sale of the Bonds and amounts available under the Prior Indenture are expected to be applied as follows:

<u>Sources:</u>	
Bond Par Amount	\$
Prior Bond Funds ⁽¹⁾	
Original Issue Premium	_____
Total	\$
 <u>Uses:</u>	
Escrow Fund	\$
Reserve Account	
Costs of Issuance ⁽²⁾	_____
Total	\$

-
- (1) Represents amounts to be transferred under the Prior Indenture and accrued principal and interest payments from Local Agencies.
 - (2) Includes, without limitation, all compensation, fees and expenses (including but not limited to fees and expenses for legal counsel) of the Authority and the Trustee, compensation to any financial consultants or underwriters, legal fees and expenses, filing and recording costs, rating agency fees, costs of preparation and reproduction of documents[, bond insurance premium,] and costs of printing..

Debt Service

The Loan Agreements require Loan Installments to be paid on the fourth Business Day (as defined herein) preceding the principal or interest payment date for the Bonds in an amount equal to principal or interest payments with respect to the Bonds on the next succeeding principal or interest payment date, respectively. The Indenture requires that Loan Installments be deposited in the Revenue Fund maintained by the Trustee. Pursuant to the Indenture, the Trustee will apply such amounts in the Revenue Fund as are necessary to make principal and interest payments due with respect to the Bonds on March 1 and September 1 of each year, in amounts sufficient to meet the following amortization schedule:

TABLE 1
 \$ _____ *
San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)
Debt Service Schedule

Bond Year Ending			Annual
<u>(March 1)</u>	<u>Principal</u>	<u>Interest</u>	<u>Debt Service</u>

* Preliminary, subject to change.

THE BONDS

Capitalized terms used but not defined in this section have the meanings attributed to them in APPENDIX B – “Summary of Principal Legal Documents.”

General

The Bonds will be dated the date of delivery thereof and issued without coupons as one fully registered bond for each maturity, in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"), as registered owner of all the Bonds, or in such other manner as directed by the Underwriter. The Bonds will be available to ultimate purchasers in denominations of \$5,000 or any integral multiple thereof, under the book-entry system maintained by DTC, or in such other manner as directed by the Underwriter. Ultimate purchasers of Bonds held in book-entry form will not receive physical certificates representing their interest in the Bonds. So long as the Bonds held in book-entry form are registered in the name of Cede & Co., as nominee of DTC, references herein to the owners shall mean Cede & Co., and shall not mean the purchasers or Beneficial Owners of the Bonds. See APPENDIX G – THE BOOK ENTRY SYSTEM.

So long as the Bonds are held in book-entry only form, principal of, premium, if any, and interest on the Bonds will be paid directly to DTC for distribution to the beneficial owners of the Bonds in accordance with the procedures adopted by DTC. Bonds not held in book-entry form will be paid directly by the Trustee in the manner described in the Indenture. See APPENDIX G – THE BOOK ENTRY SYSTEM.

Principal of the Bonds will be paid, subject to prior redemption as described herein, on the dates and in the amounts set forth on the cover page hereof. Interest with respect to the Bonds is payable on September 1, 2012, and semi-annually thereafter on each March 1 and September 1 to and including the date of maturity or redemption, whichever is earlier (each an “Interest Payment Date”) at the respective rates per annum set forth on the inside cover page hereof.

Each Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (b) it is authenticated on or before September 1, 2012, in which event it shall bear interest from its date of delivery; provided, however, that if, as of the date of authentication of any Bond, interest thereon is in default, such Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Method of Payment

Payments of the principal of, premium, if any, and interest on the Bonds will be made directly to DTC, or its nominee, Cede & Co., by the Trustee, so long as DTC or Cede & Co. is the registered owner of the Bonds. Disbursements of such payments to Participants is the responsibility of DTC and disbursements of such payments to the Beneficial Owners is the responsibility of Participants and Indirect Participants, as more fully described herein. Bonds not held in book-entry form will be paid directly by the Trustee in the manner described in the Indenture. See APPENDIX G – THE BOOK ENTRY SYSTEM.

For any Bond not held in book-entry form, interest on the Bonds is payable by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date, to the registered Owner thereof at such registered Owner’s address as it appears on the registration books maintained by the Trustee at the close of business on the Record Date preceding the Interest Payment Date. The principal of the Bonds and any premium on the Bonds are payable in lawful money of the United States of America by check of the Trustee upon surrender of such Bonds at the Principal Office of the Trustee; provided, however, that at the written request of the Owner of at least \$1,000,000 in aggregate principal amount of Outstanding Bonds filed with the Trustee prior to any Record Date, interest on such Bonds shall be paid to such Owner on each succeeding Interest Payment Date by wire transfer of immediately available funds to an account in the United States of America designated in such written request. All Bonds paid by the Trustee pursuant to this subsection shall be canceled by the Trustee.

Optional Redemption

Bonds maturing on or prior to March 1, ____ are not subject to redemption prior to maturity. The Bonds maturing on or after March 1, ____ are subject to redemption prior to maturity, at the option of the Authority, as a whole at any time, or in part as directed by the Authority and by lot among maturities on any date on or after March 1, ____, at a redemption price (expressed as a percentage of the principal amount of the Bonds to be redeemed) as set forth below, plus accrued interest thereon to the date of redemption:

<u>Redemption Date</u>	<u>Redemption Price</u>
March 1, 20__ through February 28, 20__	
March 1, 20__ and thereafter	

Mandatory Redemption upon Acceleration of Loan

The Bonds are subject to mandatory redemption in whole, or in part pro rata among maturities and by lot within a maturity, on any date, solely from amounts credited towards the payment of principal of any Loan coming due and payable solely by reason of acceleration of such Loan pursuant to the provisions of the related Loan Agreement, at a redemption price equal to the principal amount of the Bonds to be redeemed, without premium, together with accrued interest thereon to the redemption date.

Notice of Redemption

Notice of redemption will be mailed no less than thirty (30), nor more than sixty (60), days prior to the redemption date (i) to DTC or (ii) in the event the book-entry only system is discontinued, to the respective registered owners of the Bonds designated for prepayment at their addresses appearing on the bond registration books, and to certain securities depositories and information services. Neither failure to receive such notice nor any defect in the notice so mailed nor any failure on the part of DTC or failure on the part of the nominee of the Beneficial Owner to notify the Beneficial Owner so affect the sufficiency of the proceedings for prepayment of such Bonds or the cessation of interest on the prepayment date.

To the extent funds for redemption of Bonds are not on deposit with the Trustee at the time the notice of redemption is sent to the Owners of the Bonds, the notice of redemption shall nevertheless be sent by the Trustee at the Written Request of the Authority, but such notice may state that redemption is conditioned upon receipt by the Trustee of funds sufficient to said redemption.

Transfer or Exchange of Bonds

So long as the Bonds are registered in the name of Cede & Co., as nominee of DTC, transfers and exchanges of Bonds shall be made in accordance with DTC procedures. See APPENDIX G – THE BOOK ENTRY SYSTEM. If the book-entry only system for the Bonds is ever discontinued, any Bond may, in accordance with its terms, be transferred or exchanged by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a duly written instrument of transfer in a form approved by the Trustee. Whenever any Bond or Bonds shall be surrendered for transfer or exchange, the Authority shall execute and the Trustee shall authenticate and deliver a new Bond or Bonds, for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity. The Trustee shall collect from the Owner requesting such transfer any tax or other governmental charge required to be paid with respect to such transfer or exchange.

SECURITY FOR THE BONDS

Capitalized terms used but not defined in this section have the meanings attributed to them in APPENDIX B – “Summary of Principal Legal Documents.”

General

The Bonds are limited obligations of the Authority and, pursuant to the Indenture, the Bonds are secured by a first lien on and pledge of all of the Revenues and a pledge of all of the moneys in the Reserve Account, the Interest Account and the Principal Account, including all amounts derived from the investment of such moneys.

“Revenues” means: (a) all amounts payable by the Local Agencies pursuant to the Loan Agreements (taking into account any limitations contained therein with respect to such payment), other than (i) administrative fees and expenses and indemnity against claims payable to the Authority and the Trustee and (ii) taxes and other charges payable to the United States of America pursuant to each Loan Agreement; (b) any proceeds of Bonds originally deposited with the Trustee and all moneys deposited and held from time to time by the Trustee in the funds and accounts established under the Indenture; (c) income and gains with respect to the investment of amounts on deposit in such funds and accounts; and (d) earnings on the amounts on hand in the Reserve Account.

The Authority has assigned to the Trustee for the benefit of the Owners its right to receive all of the Revenues, and all of the right, title and interest of the Authority in the Loan Agreements.

The obligation of the Local Agencies to make Loan Installments constitutes an obligation of each respective Local Agency, payable from a first and prior lien on its Net Revenues, together with other funds of the respective Local Agency lawfully available therefor, and certain interest and other income derived from the investment of the funds and accounts held by the Trustee for the Local Agencies pursuant to the Indenture.

The obligation of the Local Agencies to make Loan Installments does not constitute an obligation of either Local Agency for which the Local Agency is obligated to levy or pledge any form of taxation or for which the Local Agency has levied or pledged any form of taxation. Neither the Bonds nor the obligation of either Local Agency to make Loan Installments constitute an indebtedness of the Local Agencies, the Authority, the State of California or any of its political subdivisions within the meaning of the Constitution of the State of California nor a pledge of the faith and credit of either Local Agency.

In the event that either Local Agency fails to make any Loan Installment when due, the delinquent Loan Installment shall continue as an obligation of that Local Agency, and that Local Agency shall pay the same with interest thereon, to the extent permitted by law, from the date thereof at the net effective interest rate then borne by the Outstanding Bonds. Should either Local Agency default under its respective Loan Agreement, the Trustee may, and at the written direction of the Owners of a majority in aggregate principal amount of the Outstanding Bonds the Trustee shall (a) declare the principal of the Loan, together with the accrued interest on all unpaid installments thereof, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, anything in this Loan Agreement to the contrary notwithstanding, and (b) exercise any other remedies available to the Trustee in law or at equity. Each Local Agency’s liability to pay its Loan Installments is limited to Net Revenues and other funds of such Local Agency lawfully available therefor.

Each Loan Agreement is an obligation of the respective Local Agency, and does not constitute an obligation of the other Local Agency. As a result, a default in the payment of a Loan Installment under either Loan Agreement would constitute an event of default under such Loan Agreement and may result in acceleration of the related Loan Installments. Such a default under one Loan Agreement would not constitute an event of default under the other Loan Agreement, but may result in a payment default on the Bonds.

An event of default under either Loan Agreement, except to the extent of moneys on deposit in the Reserve Account may result in insufficient monies with which to pay the principal of and interest on the Bonds.

See APPENDIX B - "Summary of Principal Legal Documents - Loan Agreements - Events of Default and Remedies". AMOUNTS ON DEPOSIT IN THE RESERVE ACCOUNT ARE AVAILABLE TO THE TRUSTEE TO MAKE UP ANY DEFICIENCY CAUSED BY THE FAILURE OF EITHER LOCAL AGENCY TO DEPOSIT ANY AMOUNTS REQUIRED BY THE LOAN AGREEMENTS. HOWEVER, IN NO EVENT SHALL EITHER LOCAL AGENCY BE REQUIRED TO MAKE UP A DEFICIENCY IN THE RESERVE ACCOUNT CAUSED BY THE OTHER LOCAL AGENCY'S NONPAYMENT OF A LOAN INSTALLMENT. See APPENDIX B - "Summary of Principal Legal Documents - Indenture - Establishment of Funds and Accounts; Flow of Funds".

Encinitas is also served by the Encinitas Sanitary Division of the City of Encinitas and the Leucadia County Water District. The revenues of the two other enterprises are separate from the revenues of the Cardiff Sanitary Division and are not pledged to the payment of debt service on the Bonds.

Shares of Capacity

The Facility has a rated capacity of 5.25 million gallons per day ("mgd"). Each of the Local Agencies own 50% of the Facility. The total amount of each payment of principal and interest with respect to the Bonds maturing in each of the following years is comprised of interests in Loan Installments to be made by the respective Local Agency will be approximately 47%* with respect to Encinitas and 53%* with respect to Solana Beach of debt service on the Bonds.

The percentages differ from the 50% ownership share of the Local Agencies due to the refunding of prior indebtedness as well as different equity contributions by each of the Local Agencies at the time of the issuance of the Prior Bonds. Under the Basic Agreement, the Local Agencies are entitled to purchase and use the capacity of the Facilities from each other based on pro-rata responsibility for ongoing capital costs as well as operation and maintenance expenses with the result that the responsibility of either Local Agency for debt service on the Bonds can change under certain circumstances from that shown above. See APPENDIX B - "Summary of Principal Legal Documents - Indenture - Establishment of Funds and Accounts; Flow of Funds".

Rate Covenants

Each Local Agency has covenanted that it will prescribe, revise and collect such charges for the services and facilities provided by its respective wastewater collection system (in the case of Encinitas, its Cardiff Sanitary Division and in the case of Solana Beach, the City of Solana Beach Sanitation Enterprise Fund), which will produce Gross Revenues sufficient in each Fiscal Year to (1) replenish the Reserve Account, as required under each Loan Agreement; and (2) provide Net Revenues equal to at least 1.30 times the sum of (i) the Loan Installments coming due and payable during such Fiscal Year and (ii) all payments required with respect to Parity Debt (as defined herein) due and payable during such Fiscal Year.

"Enterprise" means any and all facilities of the Authority used for the treatment and disposal of wastewater, including sewage treatment plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, treatment, purification or disposal of sewage, and any necessary lands, rights of way and other real or personal property useful in connection therewith; provided, that the term "Enterprise" does not include the Water Reclamation Facilities.

The San Elijo Water Reclamation Facility (the "Facility") means the tertiary treatment system and reclaimed water distribution system of the Authority, including two 750,000 gallon reservoirs, 17 miles of distribution pipeline and two pumping stations, as more particularly described in the Authority's State Revolving Fund Loan Program No. C 06-4155-110.

* Preliminary, subject to change.

Parity Debt

Each Local Agency has the right to issue or incur Parity Debt, on a parity with its respective Loan Agreement, provided:

(i) The Local Agency is not in default under the terms of its respective Loan Agreement; and

(ii) Net Revenues, calculated on sound accounting principles, as shown by the books of the Local Agency for the latest fiscal year, currently July 1 to June 30 in the succeeding year (the “Fiscal Year”), or any more recent twelve (12) month period selected by the Local Agency ending not more than sixty (60) days prior to the adoption of the resolution pursuant to which instrument such Parity Debt is issued or incurred, as shown by the books of the Local Agency, plus at the option of the Local Agency, either or both of the items below designated (1) and (2), shall have amounted to at least 1.30 times the sum of the maximum Loan Installments of the Local Agency coming due and payable in any future Fiscal Year and the maximum annual debt service on all Parity Debt outstanding immediately subsequent to the incurring of such additional obligations.

Either or both of the following items may be added to such Net Revenues of the Local Agency for the purpose of applying the restriction contained above.

(1) An allowance for revenues from any additions to or improvements or extensions of the wastewater collection system and the Enterprise to be made with the proceeds of such additional obligations, and also for net revenues from any such additions, improvements or extensions which have been made from moneys from any source but which, during all or any part of such Fiscal Year, were not in service, all in an amount equal to 75% of the estimated additional average annual revenues to be derived from such additions, improvements and extensions for the first 36-month period following closing of the proposed Parity Debt, all as shown by the certificate or opinion of a qualified independent engineer employed by either of the Local Agencies or the Authority, and

(2) An allowance for earnings arising from any increase in the charges made for service from the wastewater collection system of the Local Agency and the Enterprise which has become effective prior to the incurring of such additional obligations but which, during all or any part of such Fiscal Year, was not in effect, in an amount equal to 100% of the amount by which revenues would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year and any period prior to the incurring of such additional obligations, as shown by the certificate or opinion of a qualified independent engineer employed by the Local Agency or the Authority.

Reserve Account

A Reserve Account is established by the Indenture and is required to be maintained in an amount, as of any date of calculation, equal to the lesser of (i) maximum annual debt service on the Bonds; (ii) 10% of the principal amount of the Bonds; or (iii) 125% of average annual debt service on the Bonds (the “Reserve Requirement”).

If, on any date of computation, amounts on hand in the Reserve Account are less than the Reserve Requirement because of a transfer therefrom, the Local Agencies are required to restore the Reserve Requirement, from Net Revenues. However, the Local Agencies are only obligated to make up a deficiency in the Reserve Account caused by its own nonpayment of a Loan Installment of the Local Agency. If there is a deficiency in the Reserve Account due to market fluctuations in the investments in the Reserve Account, the Local Agency must make up the deficiency on a pro rata basis (based upon each Local Agency’s proportionate responsibility for debt service as of the date of the valuation). Amounts in the Reserve Account are to be used only for the payment of Loan Installments to the extent amounts in the Interest Account or the Principal Account are insufficient therefor. Whenever any amounts are withdrawn from the Reserve Account for transfer to the Interest Account, then upon receipt of the delinquent Loan Installment(s), such Loan Installments shall be

deposited in the Reserve Account to the extent of such transfer. In the event that the amount on deposit in the Reserve Account on the second Business Day preceding any Interest Payment Date (other than the final Interest Payment Date) exceeds the Reserve Requirement, the Trustee shall thereupon withdraw from the Reserve Account all amounts in excess of the Reserve Requirement and, at the Written Request of the Local Agencies, either (a) credit such amounts on a pro rata basis, towards the deposit then required to be made by Local Agencies pursuant to the Loan Agreements, or (b) pay such amounts to the Local Agencies on a pro rata basis (based upon the Local Agencies' respective responsibility for debt service as of the date of the withdrawal) to be used for any lawful purpose. See APPENDIX B - "Summary of Principal Legal Documents — The Indenture — Reserve Account".

[The Reserve Requirement may be satisfied by crediting to the Reserve Account moneys, a letter of credit, a bond insurance policy, any other comparable credit facility or any combination thereof, which in the aggregate make funds available in the Reserve Account in an amount equal to the Reserve Requirement; provided however, the provider of any such letter of credit, bond insurance policy or other comparable credit facility, must be rated in one of the two highest rating categories by S&P or Moody's at the time of delivery of such letter of credit, bond insurance policy or other comparable credit facility; and provided further that such letter of credit, bond insurance policy or other comparable credit facility shall comply with the requirements of the Bond Insurer. Upon the deposit with the Trustee of such letter of credit, bond insurance policy or other comparable credit facility, the Trustee shall release moneys then on hand in the Reserve Account to the Local Agencies on a pro rata basis (based upon the Local Agencies' respective responsibility for debt service as of the date of the withdrawal), in an amount equal to the face amount of the letter of credit, bond insurance policy or other comparable credit facility.]

Neither Local Agency is responsible for the Loan Installments owed by the other Local Agency, and a default under one Loan Agreement will not result in a default under the other Loan Agreement. Correspondingly, the Reserve Account is only available to pay debt service on the Bonds and one Local Agency is not responsible to cure the deficiency in payments of the Loan Agreement of the other Local Agency. See "BONDOWNERS RISKS - Limited Recourse on Default," herein.

BOND INSURANCE

[TO COME]

SAN ELIJO JOINT POWERS AUTHORITY

The Authority is a joint exercise of powers authority organized and existing under and by virtue of California Government Code Section 6500 et seq. (Title 1, Division 7, Chapter 5, Article 1). The Cardiff Sanitation District and the Solana Beach Sanitation District originally approved a joint powers agreement on March 26, 1963, as amended, under which a wastewater conveyance, treatment and disposal facility was constructed. The joint powers agreement set forth the criteria for joint ownership of conveyance, treatment and disposal facilities, and originally authorized the County to maintain and operate the facilities. The joint powers agreement contemplates the possible inclusion of adjacent communities as users of the Facility. Under the original joint powers agreement, 56% of the capacity of the Facility and related Ocean Outfall was acquired by the Cardiff Sanitation District and 44% was acquired by the Solana Beach Sanitation District.

Subsequently, it was determined that it would be in the mutual best interests of Cardiff Sanitation District and the Solana Beach Sanitation District to rescind the joint powers agreement and to create a joint powers authority. Therefore, on June 17, 1987, the Authority was established by the terms of the Basic Agreement as a separate entity with the power to own, operate, maintain and upgrade the Facility. On July 1, 1990, the City of Solana Beach succeeded to the powers and responsibilities of the Solana Beach Sanitation District and assumed the obligations and benefits of the Solana Beach Sanitation District with respect to the Authority. On October 18, 2001, the City of Encinitas succeeded to the powers and responsibilities of the Cardiff Sanitation District and assumed the obligations and benefits of the Cardiff Sanitation District with respect to the Authority on behalf of its Cardiff Sanitary Division. The Authority is governed by a four member Board of Directors with two members representing each of the Local Agencies. The Authority has hired its own staff to operate and maintain the Facilities as well as manage the business of the Authority. By means of the Basic Agreement, the Local Agencies have conveyed their ownership interests in the Facility to the Authority. In general, the Basic Agreement establishes the Authority's right to finance expansion of the Facility as well as to determine, by agreement of the Local Agencies, capacity rights resulting from any upgrade of the Facilities. Each Local Agency maintains its respective collection facilities located within the service territory of each respective Local Agency. However, the Authority maintains the pump stations and force mains for each Local Agency's service area.

Under the Basic Agreement, each Local Agency owns a specified percentage, or capacity rights, of the sewage treatment capacity provided by the Facility. Each Local Agency may lease, sell or purchase capacity without the consent of any other party. Any such transaction, however, will not relieve the Local Agency of any of its obligations under the Basic Agreement. The Basic Agreement may be rescinded and the Authority terminated upon the written consent of the Local Agencies, however, under the Basic Agreement prior to termination, all expenses of any Local Agency terminating its participation in the Authority would become payable. The Local Agencies have covenanted in each respective Loan Agreement not to terminate the Basic Agreement until their respective obligations under the Loan Agreement have been satisfied.

The Authority is governed by a Board of Directors. The Basic Agreement establishes a Board of Directors consisting of four members, two of whom are to be members of the City Council of the City of Encinitas and two of whom are to be members of the City Council of the City of Solana Beach. The Board of Directors meets regularly and an affirmative vote of three members of the Authority's Board of Directors is required for any actions of the Authority. Whenever, after consideration of a matter for two meetings, the Authority Board of Directors is unable to decide a matter because of a tie vote, the issue shall be referred to the City Council of the City of Encinitas and the City Council of the City of Solana Beach for resolution.

The Basic Agreement also provides for the appointment of a manager responsible for the administrative operation of the Authority under the direction and control of the Authority's Board of Directors. Pursuant to the

Basic Agreement, the manager has been given the following powers as needed to fulfill the duties assigned by the Authority: (i) participating in the design of and supervision of the construction of any improvement, or expansion of the Facilities, (ii) making and entering into contracts in connection with capital costs, costs of special services, equipment, materials, supplies, maintenance or repair that involves an expenditure of less than \$35,000, (iii) employing agents and employees to maintain and operate the Facilities, (iv) in an emergency, making and entering into contracts where required to keep the Facility in operation or to restore the Facility to operating conditions that involves an expenditure of less than \$75,000, (v) preparing and submitting annual budgets, (vi) applying for all permits, licenses or approvals necessary for operation of the Facility from any local, state or federal government or agency with jurisdiction over the Facilities and to file all reports required by any local, state or federal government or agency with jurisdiction over the facilities of the Authority, and (vii) to supervise the acquisition, construction, management, maintenance and operation of the Facility.

The Authority acts as the wholesale provider of wastewater treatment services for the Local Agencies. The Local Agencies have agreed to contribute from their respective wastewater enterprise funds the actual cost of the administration, operation and maintenance of the Facility as divided among the Local Agencies pursuant to the Basic Agreement. Such costs shall include the actual costs of (i) all materials and supplies used or purchased for the operation and maintenance of the Authority, (ii) all contracts let by Authority for the performance of any work incidental to providing such service, and (iii) the salaries and wages of all Authority employees providing such services. Each Local Agency individually sets its own rates for the provision of wastewater treatment capacity for its wastewater collection system. See "San Elijo Water Reclamation Facility - Service Area".

The Authority has separate sources of operating income, primarily from its water reuse operations. The facilities of the Authority were upgraded in 1998 for water reuse through capital contribution from the Local Agencies of \$4 million, a loan from the State of California Water Resources Department in the amount of \$12 million, and a \$4 million loan from the United States Bureau of Reclamation. Currently, the Authority has 72 customers of the water reuse program including CalTrans, Encinitas Ranch Golf Course, Del Mar Fairgrounds, and Lomas Santa Fe Golf Club and Executive Golf Course located in the service area of the Authority.

The Authority manager is responsible for the day to day operation and management of the Facility. Michael T. Thornton, who serves at the pleasure of the Authority's Board of Directors, acts as the manager for the Authority. In addition to the manager, the Authority's Board of Directors also selects the Treasurer/Auditor. The manager selects and hires all other administrative staff of the Authority. The backgrounds of the current General Manager, Director of Finance/Administration, and Director of Operations of the Facility are as follows:

Michael T. Thornton, P.E., General Manager. Michael Thornton is the General Manager of the San Elijo Joint Powers Authority, and has been with the Authority since 2000. His duties include overseeing the administration and operation of the 5.25-mgd secondary wastewater treatment plant and the recently constructed 2.48-mgd tertiary treatment system. Prior to joining the Authority, Mr. Thornton was employed by Camp Dresser & McKee Inc., in various capacities including marketing, engineering and construction engineering oversight. Mr. Thornton is a graduate of San Diego State University, earning a B.S. in Civil Engineering, and is a registered engineer in the State of California.

Gregory E. Lewis, Director of Finance/Administration. Gregory E. Lewis has worked for the Authority since its inception in 1988. Mr. Lewis became a full-time employee of the Authority in 2000. Prior to that, he worked for Camp, Dresser & McKee Inc. as a finance consultant to the Authority. Mr. Lewis was hired by John S. Murk Engineers, Inc. in 1987, and was retained by the firm after its acquisition by Camp, Dresser & McKee Inc. From 1984 to 1987, he was a Finance Manager for a construction contractor for the San Onofre Nuclear Generating Station. Mr. Lewis has a Bachelor of Business Administration in Financial Accounting from National University where he graduated Summa Cum Laude. He received an honorable discharge as a Sergeant in the United States Marine Corps.

Christopher Trees is the Director of Operations for the San Elijo Joint Powers Authority, and has been with the Agency since 2009. His duties include overseeing the operation and maintenance of the 5.25-mgd secondary wastewater treatment plant, the 2.48-mgd tertiary treatment and distribution system, and the Agency

laboratory. Prior to joining the Agency, Mr. Trees was employed by Dudek & Associates, in various capacities including marketing, engineering and construction engineering oversight. As a Dudek employee, Mr. Trees served the Rainbow Municipal Water District as the District Engineer for 6 years and the General Manager for 2 years. Mr. Trees is a graduate of Purdue University, earning a B.S. in Mechanical Engineering, and is a registered engineer in the State of California with over 23 years of engineering experience.

THE SAN ELIJO WATER RECLAMATION FACILITY

General

The Facility consists of a wastewater treatment plant and water reuse facility located approximately 23 miles north of the City of San Diego in a small valley on the north side of the San Elijo Lagoon and immediately west of Interstate 5. The Facility is situated on 27 acres of land owned by the Authority. The Facility serves as a regional sewage treatment and disposal facility for a service area encompassing approximately 18.9 square miles and a population of approximately 34,000. Wastewater effluent is discharged directly to the Pacific Ocean from an associated effluent outfall jointly owned with the City of Escondido.

Service Area

General. The joint service area served by the Facility is located 23 miles north of the City of San Diego and encompasses approximately 7,150 gross acres (5,971 net acres) in the northern portion of the County. The sewage agencies served by the Facility include Cardiff Sanitary Division of the City of Encinitas, the City of Solana Beach, Rancho Santa Fe Community Services District Improvement Areas 2 and 3, and a portion of the City of San Diego. The water agencies within the joint service area are the Olivenhain Water District, the Santa Fe Irrigation District and the San Dieguito Water District which agencies are not financially obligated with respect to the Bonds or the Loan Agreements.

The joint service area is situated on a coastal plain, bordered by the communities of Cardiff-by-the-Sea in the City of Encinitas to the north and the City of Solana Beach to the south. The major hydrological features in the area consist of surface water, which includes creeks, lakes, lagoons and groundwater basins. The principal water features are the Escondido Creek, the San Dieguito River and the San Elijo Lagoon. The groundwater levels are generally less than 50 feet below the ground surface and the groundwater is of poor quality.

Collection System. Each Local Agency is responsible for the maintenance, operation, expansion and installation of all wastewater transmission facilities located within the service territory of the Local Agency. While the Local Agencies may delegate responsibilities to the Authority for certain activities, the delegating Local Agency would remain liable for any costs associated with such a delegation. In general, the Local Agencies have similar but distinct service areas and operations all as described herein. See “Encinitas and Solana Beach”.

The Local Agencies own sewage systems to collect and transport wastewater to the Facility. The Facility serves approximately 5,971 net acres (approximately 80% of a gross acre), with the Cardiff Sanitary Division of the City of Encinitas serving approximately 4,202 net acres and Solana Beach serving approximately 1,769 net acres. Solana Beach has 4 pump stations and the Cardiff Sanitation Division has 3 pump stations.

The area served by the Cardiff Sanitary Division of the City of Encinitas consists of approximately 1,550 net acres of sewered area. The land use in the area served by the Cardiff Sanitary Division is almost exclusively residential, including a mix of single-family, duplex and multi-family units.

Solana Beach serves approximately 1,605 net acres of sewered area with an additional build-out potential of approximately 214 net acres. The existing land use in Solana Beach involves mainly residential and commercial uses. The remaining undeveloped tracts of land in Solana Beach include mainly single family units and a smaller portion of commercial uses.

The current overall population of the Encinitas and Solana Beach service areas consists of approximately 19,000 for Encinitas and 13,300 for Solana Beach. Both Solana Beach and the service area of the Cardiff Sanitary Division of Encinitas are near build-out and have experienced slight growth over the last several years. Estimates of build-out population include a “population” equivalent which includes allowances for commercial and industrial discharge. Encinitas and Solana Beach will have approximately 9,000 and 6,660, respectively, dwelling units, 0 and 10, respectively, acres of developed industrial land, and 10 and 115, respectively, acres of developed commercial land.

The residential build-out of Encinitas is characterized by growth primarily east of Interstate 5, and primarily on lands which are currently vacant. However, some growth is occurring as a result of “in-fill” activity in older areas of Encinitas, including some neighborhoods west of Interstate 5 planned for higher ultimate densities. The number of persons per household has remained at 2.5 for the last ten years. The overall Encinitas population is expected to grow by an average of 1% per year. There is no significant developable land located in the Cardiff Sanitary Division Service Area which is zoned for commercial and industrial use.

The residential build-out of Solana Beach is expected to be characterized by minimal growth in the southeast and northwest quadrants with some development elsewhere. The number of persons per household is expected to decline slightly to a level of 2.1 persons per household. The existing inner-city residential areas near the train station are expected to undergo redevelopment. The overall City of Solana Beach population will increase at a rate of less than .10% annually.

The commercial growth anticipated for Solana Beach consists of general commercial development along Highway 101, the major north-south thoroughfare in Solana Beach. Overall, Solana Beach has approximately 151 acres of commercially zoned land, of which 115 acres are developed and 5 acres are vacant. Projected development includes small offices and shops, financial institutions, community shopping centers and automobile sales and repair shops.

Population

The land use planning projections for the service area were developed by the respective Local Agency. The estimates of population in the service area were based upon projected future land use. The population projections at ultimate build-out are as follows:

<u>Service Area</u>	<u>Buildout Population</u> ⁽¹⁾
Cardiff Sanitary Division of the City of Encinitas	19,000 ⁽²⁾
City of Solana Beach	<u>14,924</u>
Total	33,924

Source: City of Encinitas and City of Solana Beach.

⁽¹⁾ Population shown is a “population equivalent”, which includes allowances for commercial and industrial discharges.

⁽²⁾ This total represents the maximum under current land use classifications of Encinitas, however, it is not expected to be reached.

Existing Water Reclamation Facility

The Authority’s water reclamation facility can treat 5.25 mgd of wastewater to “secondary” level, and 2.48 mgd can be treated to “tertiary” levels. The plant treats domestic wastewater flows from the Cardiff Sanitary Division of the City of Encinitas, City of Solana Beach, Rancho Santa Fe Community Services District Improvement Areas 2 and 3 and a portion of the City of San Diego. Rancho Santa Fe Community Services District and the City of San Diego have no financial participation with respect to the Bonds or the Loan Agreements.

Waste Discharge Requirements

The existing wastewater treatment, collection and disposal systems of the Authority and the Local Agencies is subject to waste discharge requirements established by the Regional Board as well as the State Water Resources Control Board.

On July 1, 1981, the Regional Board adopted Order No. 81-12, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0107999, Waste Discharge Requirements for the San Elijo Water Pollution Control Facility, San Diego County. Order No. 81-12, and Addenda Nos. 1 and 2 thereto, established requirements for the discharge of up to 3.7 mgd of treated wastewater from the San Elijo Water Pollution Control Facility (SEWPCF) to the Pacific Ocean via the Ocean Outfall. Order No. 81-12 had an expiration date of June 1, 1986.

On June 6, 1988, the Regional Board adopted Order No. 88-21, NPDES No. CA0107999, Waste Discharge Requirements for the San Elijo Water Pollution Control Facility Discharge Through the San Elijo Ocean Outfall, San Diego County, which superseded Order No. 81-12. Order No. 88 21, and Addenda Nos. 1 and 2 thereto, established requirements for the discharge of an average dry weather flow rate of 3.7 mgd of treated wastewater from the SEWPCF to the Pacific Ocean via the Ocean Outfall. Order No. 88-21, as amended, had an expiration date of June 6, 1993, Monitoring and Reporting Program No. 81-12, as modified by Technical Change Order Nos. T-1 and T-2 remained in effect with the adoption of Order No. 88 21, as no new monitoring and reporting program was issued with Order No. 88-21.

On December 9, 1992, the Authority submitted an application for renewal of its NPDES permit, pursuant to Reporting Requirement No. E.11 of Order No. 88-21, and requested an increase in authorized flow rate from 3.7 mgd to the discharger's upgraded design flow of 5.25 mgd.

On June 26, 1993, the Authority notified the Regional Board that it had completed construction of and start up operations for the secondary treatment facilities at the SEWPCF.

On November 10, 1994, the Regional Board established Order No. 94-105, which contains requirements for the discharge of an average dry weather flow rate of 3.7 mgd of treated wastewater from the SEWPCF to the Pacific Ocean via the Ocean Outfall, superseding Order No. 88-21. Order No. 94-105 did not authorize an increase in flow rate from 3.7 mgd to 5.25 mgd. On July 1, 1995 Technical Change Order No. 1 substituted Monitoring and Reporting Program 94-105 in its entirety.

On May 10, 1999 the Authority submitted an application for renewal of its NPDES permit, requesting a permitted discharge of 5.25 mgd at the SEWRF. On July 13, 1999, the Authority resubmitted the application with a few modifications, and after minor revisions on August 11, 1999, the permit application was determined to be complete.

On November 10, 1999, the Regional Board adopted Order No. 99-71, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0107999, Waste Discharge Requirements for the San Elijo Water Reclamation Facility. Order No. 99-71, with errata, established requirements for the discharge of up to 5.25 MGallons/Daymgd of treated wastewater from the San Elijo Water Reclamation Facility (SEWRF) to the Pacific Ocean via the San Elijo Ocean Outfall. Order No. 99-71 had an expiration date of November 10, 2004.

On June 8, 2005, the Regional Board adopted Order No. R9-2005-0100, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0107999, Waste Discharge Requirements for the San Elijo Water Reclamation Facility. Order No. R9-2005-0100 established requirements for the discharge of up to 5.25 mgd of treated wastewater from the San Elijo Water Reclamation Facility (SEWRF) to the Pacific Ocean via the San Elijo Ocean Outfall. Order No. R9-2005-0100 had an expiration date of June 8, 2010.

On September 8, 2010, the Regional Board adopted Order No. R9-2010-0087, National Pollutant Discharge Elimination System (NPDES) Permit No. CA0107999, Waste Discharge Requirements for the San Elijo Water Reclamation Facility. Order No. R9-2010-0087 established requirements for the discharge of up to

5.25 mgd of treated wastewater from the San Elijo Water Reclamation Facility (SEWRF) to the Pacific Ocean via the San Elijo Ocean Outfall. Order No. R9-2010-0087 is the current permit for operation of the facility and has an expiration date of October 27, 2015.

Sewage flows to the influent structure through three forcemains, gravity sewer. The influent structure contains three bar screens. Large solids are removed by the bar screen to protect downstream equipment. Grit is removed by an aerated grit chamber. The existing grit removal system also includes two air lift pumps and a washer. Existing facilities add chemicals, polymer and ferric chloride to the aerated grit chamber to aid in the settling of solids of the primary sedimentation tank.

The wastewater flows from the grit chamber to two of the six covered primary sedimentation tanks with flights and chains for a sludge collection, scum skimmers and positive displacement sludge pumps. Two of the primary sedimentation tanks are in service, two are standby, and two are currently out of service and available for future expansion. The sludge from the primary sedimentation tanks is pumped through a grinder to the anaerobic digesters. Effluent flow from the primary sedimentation tanks is flow equalized in one of two 700,000 gallon flow equalization basins prior to secondary treatment. Secondary treatment involves flow of primary treated wastewater to one of four aeration basins where organic materials are oxidized through a bacterial process. Two of the aeration basins have been equipped with a selector zone and only one aeration basin is required to accommodate the current ADWF of 3.0 mgd. The other two aeration basins are out of service and available for future expansion. Flow from the aeration basins goes to two of five secondary sedimentation basins where additional solids settle, and then treated water from the secondary sedimentation tanks is discharged to the ocean or pumped through the tertiary treatment system for reclamation. Waste solids from the bottom of the secondary clarifiers are pumped through one of two DAF (dissolved air flotation) units to further concentrate solids and then to two of the four anaerobic digesters for further biological treatment prior to dewatering by belt filter press and disposal. The dewatered sludge is hauled away and disposed of pursuant to an agreement with a private hauler. See "Bondowners' Risks - Sludge Disposal".

The final secondary treated effluent flows by gravity or is pumped by three (3) existing vertical turbine pumps with variable speed drives through the Ocean Outfall. The San Elijo Ocean Outfall was commissioned in 1965 to discharge treated effluent from the San Elijo Water Pollution Control Facility (now named the San Elijo Water Reclamation Facility). The outfall was upgraded and expanded in 1974 to include discharge capacity for the City of Escondido's Hale Avenue Resource Recovery Facility. The length of the outfall is 8,000 feet with an end depth of approximately 150 feet below mean sea level. The diffuser section of pipe is composed of 1,176 feet of 48-inch pipe with 200 individual 2-inch diameter diffuser ports. The discharge of treated wastewater to the ocean is subject to environmental regulations that stipulate dilution requirements, distance from shore, and depth of water for which the effluent is discharged. To ensure that the ocean outfall is in sound operating condition and that environmental regulations are being met, the San Elijo Joint Powers Authority (SEJPA) inspects the outfall annually.

The SEJPA also owns and operates tertiary treatment facilities for recycled water production and distribution. The secondary effluent water can be pumped through four sand filters and a chlorine contact tank for disinfection. The sand filters operate with a flash mix tank where polymer and aluminum sulfate may be added to enhance the filtration process. Once the water is filtered and disinfected in accordance with Title 22 tertiary treatment requirements, it is pumped into 17 miles of distribution piping and two storage tanks that are owned and operated by the SEJPA. The Authority sells approximately 1,200 acre-feet per year of recycled water as a wholesaler to three local water agencies for irrigation use in their service area.

Other Obligations

In addition to the Bonds, the Authority has other obligations payable from various revenue sources of the Authority.

State Water Resources Loan. In 1988, the Authority entered into a State Revolving Fund Loan for reclamation projects. As of June 30, 2011, the remaining balance on the loan was [\$7,300,000]. [The loan is payable from operating revenues of the Authority.]

California Energy Commission Note Payable. In 2007, the Authority entered into a promissory note with the California Energy Resources Conservation and Development Commission in the amount of \$1,193,500. The remaining principal balance as of July 1, 2011, is \$1,009,320.44. The note is payable from legally available funds of the Authority. The Authority expects to use a portion of the proceeds of the Bonds to pre-pay this note.

Future Borrowings. The Authority is considering a \$2 million private placement payable from its water reclamation revenues.

Sewer Rates and Revenues

Both Local Agencies recover the cost of wastewater treatment system operation, maintenance, renewal and replacement and capital expansion through a user fee system consisting of four major components plus federal and State Clean Water Grants. Each Local Agency establishes user fees adequate to provide for their pro-rata responsibility of the Authority’s costs as well as their own costs. The four components of the user fees imposed by the Local Agencies are:

1. *Sewer Service Charges.* Charges based on a measure of Equivalent Dwelling Units (“EDUs”).
2. *Sewer Connection Fees.* A charge designed to recover the depreciated original cost of the capacity required by new sewer connections and to properly recognize the equity of existing sewer users who financed current treatment capacity.
3. *Miscellaneous Fees.* Charges derived from interest income and miscellaneous fees and charges.

The sewer rates for the entire wastewater treatment system of each Local Agency are set by the City Councils of Encinitas and Solana Beach, respectively, and are not subject to review by any state or local government agency. In the past, rate changes have been enacted by the respective Encinitas and Solana Beach based upon the recommendations of the respective staffs of Encinitas and Solana Beach.

TABLE 2
San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)

City of Encinitas
Cardiff Sanitary Division
Sewer Rates and Charges

<u>Fiscal Year</u>	<u>Sewer Service Charge</u>	<u>Connection Fee</u>
2007/08	\$667.90	\$3,417
2008/09	682.38	3,417
2009/10	673.57	3,417
2010/11	663.76	3,417
2011/12	675.86	3,417

TABLE 3
San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)

City of Solana Beach
Sanitation Enterprise Fund
Sewer Rates and Charges

<u>Fiscal Year</u>	<u>Sewer Service Charge</u>	<u>Connection Fee</u>
2006/07	\$495	\$4,500
2007/08	\$508	4,500
2008/09	\$534	4,500
2009/10	\$560	4,500
2010/11	\$560	4,500

Source: City of Encinitas and City of Solana Beach.

Encinitas last conducted a rate study in 2003. A ten year rate schedule was adopted January 14, 2004, after its introduction and a public hearing held on December 17, 2003. Encinitas adopted a subsequent ordinance implementing adjustments to sewer service charges for fiscal years 2009-2013 and reaffirming previous adjustments for fiscal year 2006-2008 on May 28, 2008; after a public hearing May 14, 2008. Encinitas' approved rate schedule and structure was adopted to meet certain goals, which include, (1) maintaining a formal reserve policy for capital and operating funds, (2) adopting a billing structure and formula to recover fixed and variable costs, (3) adopting a ten-year financial plan with full funding of operation and maintenance, debt service and projected capital needs including automatic rate increases, and (4) adopting "safety triggers" providing for administrative increase in rates and charges to ensure the recovery of unforeseen costs. Encinitas, by administrative policy, maintains a minimum level of reserves for operating cash flow, rate stabilization and capital of \$4,000,000. Under the plan, the annual average single family charge is anticipated to increase to approximately \$675.86 in the next fiscal year. Currently, Encinitas is improving the Cardiff Division Enterprise with the construction of the Olivenhain Pump Station and the Olivenhain trunk line. Both projects are pay as you go funded by the City.

Solana Beach annually reviews its rates for wastewater services. The financial goal for the wastewater system is to provide funding for operation and maintenance, payment of debt service, and payment of project capital costs. Planned improvements to the wastewater system include a pump station upgrade and building repair and pipeline repair and replacement throughout the system.

Rate Setting Process

The Local Agencies are required by their respective Loan Agreements to establish rates and charges for the use of their wastewater collection systems to produce Gross Revenues sufficient to provide Net Revenues equal to at least 1.30 times (i) the Loan Installments coming due and payable during such Fiscal Year, (ii) all payments required with respect to Parity Debt, and (iii) amounts required to replenish the Reserve Account as required by the Indenture. The sewer service charges, the sewer connection fees, and other miscellaneous fees and charges are established by ordinance adopted by a super majority (4/5) vote of the City Council of Encinitas and the City Council of Solana Beach and become effective after a posting period of 30 days.

The Local Agencies' service charges are designed to comply with the Revenue Program guidelines of the California State Water Resources Control Board. California recipients of State and federal grants for sewage facilities are required to adopt rates in conformity with the guidelines as a condition of receiving the grants. The guidelines require all customers to pay for sewer service in proportion to their demand on the wastewater treatment system from which they receive sewer service.

Utility rates and charges may be reviewed as part of each Local Agencies' budgetary process. Once results of operations for the Local Agencies' wastewater collection systems are known, a determination is made as to whether it is appropriate for rate adjustments to be made. The timing of rate adjustments may or may not coincide with the budget adoption process, but the implications of any rate adjustments are considered in budget development. The process used to set rates follows State regulations concerning the operation of local government utilities. Based upon the actual amounts of fees received by the Local Agency, sewer rates and connection fees are reviewed and adjusted as needed. Typically, several public hearings are held to review staff studies and recommendations concerning rate adjustments before final adoption of rate changes.

The Authority develops annual budgets for both operations and maintenance and capital improvement programs. The operations and maintenance budget which includes treatment plant and pump station operations and maintenance is based upon salary and expenditure trends, anticipated inflationary and cost change impacts, and a planned maintenance program. The capital improvement program budget identifies current year planned expenses and revenues.

The recommended budget is provided to the Authority's Board of Directors for review in April and revised as necessary for final adoption at the May board meeting. Recommended budget information is also provided to the Local Agencies, to allow opportunity for comment and inclusion in the Local Agencies' annual budget process.

Each year prior to June 1, the Manager of each Local Agency submits to its respective Legislative Body a proposed preliminary budget for the fiscal year commencing the following July 1. The proposed budget includes all funds of each Local Agency except for the funds for capital projects. The proposed budgets include expected expenditures (or expenses, as appropriate) and the means for their financing. Review occurs during May, and public hearings are conducted in June to obtain citizen comments relating to the budget. The fund budget is legally adopted prior to July 1.

Each year the Manager of the each Local Agency presents a budget for capital projects to its respective Legislative Body which includes a five year plan of spending for the capital project funds. Although it is a five year plan, the budget for capital expenditures is legally adopted on an annual basis.

In each year total expenditures of any fund may not exceed total appropriations for that fund. However, each Local Agency's Legislative Body may legally amend the budget at any time during the fiscal year by the adoption of supplemental appropriations and transfers within the programs.

Billing and Collection

Sewer Service Charge. Billing and collection services for sewer service charges for both Local Agencies are provided by the County of San Diego (the "County"). Sewer service charges are included with the County's property tax billing. The County remits collected sewer service charges to each Local Agency, less delinquencies, in 13 payments throughout the fiscal year with a majority of the money remitted in January and May, after property tax payments are processed. Delinquencies are budgeted by the Local Agencies based upon estimates provided by the County. The Local Agencies are ultimately at risk for any reduction in revenues arising from delinquencies. However, shortfalls in collections are typically offset by collections of prior period delinquencies. In addition, the Local Agencies maintain reserves against various contingencies, including variations in revenues. A limited number of customers are not billed through the County property tax collection system. Public schools, churches and other public entities are billed by the respective public agencies within the Local Agencies' boundaries.

Connection Fees. Connection charges are collected by each Local Agency from new customers as a precondition to issuance of a wastewater discharge permit for connection to the wastewater collection system of the respective Local Agency, generally at the time of issuance of a certificate of occupancy.

Tax Levies and Delinquencies

Property taxes are due in two installments, on November 1 and February 1 of each fiscal year, and if unpaid become delinquent on December 10 and April 10, respectively. A penalty of 10 percent attaches immediately to all delinquent payments. Property with respect to which taxes are delinquent becomes tax defaulted on or about June 30 of the fiscal year. Such property may thereafter be redeemed by payment of a penalty of 1.5 percent per month to the time of redemption, plus costs and a redemption fee. If taxes are unpaid for a period of five years or more, the property is subject to sale by the County Treasurer/Tax Collector.

By policy, the County of San Diego does not include the fees and charges for the collection of wastewater in any Teeter Plan.

Permits, Licenses and Approvals

Permits held by the Authority include a permit issued jointly by the Environmental Protection Agency and the Regional Board. The Authority also holds current permits for operation of all facilities at the Facility, including Air Pollution Control District emission permits and Hazardous Materials storage permits. See “The San Elijo Water Pollution Control Facility -Waste Discharge Requirements”.

BONDOWNERS’ RISKS

The following describes certain special considerations and risk factors affecting the payment of and security for the Bonds. The following discussion is not meant to be an exhaustive list of the risks associated with the purchase of any Bonds and does not necessarily reflect the relative importance of the various risks. Potential investors in the Bonds are advised to consider the following special factors along with all other information in this Official Statement in evaluating the Bonds. There can be no assurance that other considerations will not materialize in the future.

Sewer Revenues and Demand for Sewer Service

There can be no assurance that the demand for wastewater collection and treatment services will occur as described in this Official Statement. Reduction in levels of demand could require an increase in rates or charges in order to comply with the Rate Covenant. See “Security for the Bonds-Rate Covenants”.

Sewer System Expenses

There can be no assurance that the Local Agencies expenses for their respective wastewater collection system will be consistent with the levels described in this Official Statement. Changes in technology, new regulatory requirements, increases in the cost of energy or other expenses would reduce Net Revenues of a Local Agency, and could require substantial increases in rates or charges in order to comply with the rate covenant. Such rate increases could increase the likelihood of nonpayment, and could also decrease demand.

Proposition 218

Proposition 218, a State ballot initiative known as the “Right to Vote on Taxes Act,” was approved by the voters on November 5, 1996. The initiative added Articles XIIC and XIID to the California Constitution, creating additional requirements for the imposition by most local governments of “general taxes,” “special taxes,” “assessments,” “fees,” and “charges.” Proposition 218 became effective, pursuant to its terms, as of November 6, 1996, although compliance with some of its provisions was deferred until July 1, 1997, and certain of its provisions purport to apply to any tax imposed for general governmental purposes (i.e., “general taxes”) imposed, extended or increased on or after January 1, 1995 and prior to November 6, 1996.

Article XIID imposes substantive and procedural requirements on the imposition, extension or increase of any “fee” or “charge” subject to its provisions. A “fee” or “charge” subject to Article XIID includes any levy, other than an ad valorem tax, special tax or assessment, imposed by an agency upon a parcel or upon a

person as an incident of property ownership. Article XIID prohibits, among other things, the imposition of any proposed fee or charge, and, possibly, the increase of any existing fee or charge, in the event written protests against the proposed fee or charge are presented at a required public hearing on the fee or charge by a majority of owners of the parcels upon which the fee or charge is to be imposed. Except for fees and charges for water, sewer and refuse collection services, the approval of a majority of the property owners subject to the fee or charge, or at the option of the agency, by a two-thirds vote of the electorate residing in the affected area, is required within 45 days following the public hearing on any such proposed new or increased fee or charge. The California Supreme Court decisions in *Richmond v. Shasta Community Services District*, 32 Cal. 4th 409 (2004) (“*Richmond*”), and *Bighorn Desert View Water Agency v. Verjil* (published July 24, 2006) (“*Bighorn*”) have clarified some of the uncertainty surrounding the applicability of Section 6 of Article XIID to service fees and charges. In *Richmond*, the Shasta Community Services District charged a water connection fee, which included a capacity charge for capital improvements to the Enterprise and a fire suppression charge. The Court held that both the capacity charge and the fire suppression charge were not subject to Article XIID because a water connection fee is not a property-related fee or charge because it results from the property owner’s voluntary decision to apply for the connection. In both *Richmond* and *Bighorn*, however, the Court stated that a fee for ongoing water service through an existing connection is imposed “as an incident of property ownership” within the meaning of Article XIID, rejecting, in *Bighorn*, the water agency’s argument that consumption-based water charges are not imposed “as an incident of property ownership” but as a result of the voluntary decisions of customers as to how much water to use.

Article XIID also provides that “standby charges” are considered “assessments” and must follow the procedures required for “assessments” under Article XIID and imposes several procedural requirements for the imposition of any assessment, which may include (1) various notice requirements, including the requirement to mail a ballot to owners of the affected property; (2) the substitution of a property owner ballot procedure for the traditional written protest procedure, and providing that “majority protest” exists when ballots (weighted according to proportional financial obligation) submitted in opposition exceed ballots in favor of the assessments; and (3) the requirements that the levying entity “separate the general benefits from the special benefits conferred on a parcel” of land. Article XIID also precludes standby charges for services that are not immediately available to the parcel being charged.

Article XIID provides that all existing, new or increased assessments are to comply with its provisions beginning July 1, 1997. Existing assessments imposed on or before November 5, 1996, and “imposed exclusively to finance the capital costs or maintenance and operations expenses for “among other things water” are exempted from some of the provisions of Article XIID applicable to assessments.

Article XIIC extends the people’s initiative power to reduce or repeal existing local taxes, assessments, fees and charges. This extension of the initiative power is not limited by the terms of Article XIIC to fees, taxes, assessment fees and charges imposed after November 6, 1996 and absent other authority could result in retroactive reduction in any existing taxes, assessments, fees or charges. In *Bighorn*, the Court concluded that under Article XIIC local voters by initiative may reduce a public agency’s water rates and delivery charges. The Court noted, however, that it was not holding that the authorized initiative power is free of all limitations, stating that it was not determining whether the electorate’s initiative power is subject to the public agency’s statutory obligation to set water service charges at a level that will “pay the operating expenses of the agency, ... provide for repairs and depreciation of works, provide a reasonable surplus for improvements, extensions, and enlargements, pay the interest on any bonded debt, and provide a sinking or other fund for the payment of the principal of such debt as it may become due.”

Constitutional Limit on Appropriations, Fees and Charges

Under Article XIIB of the California Constitution, state and local government entities have an annual “appropriations limit” which limits their ability to spend certain moneys called “appropriations subject to limitation,” which consists of tax revenues, certain state subventions and certain other moneys, including user charges to the extent they exceed the costs reasonably borne by the entity in providing the service for which it is levying the charge. In general terms, the “appropriations limit” is to be based on certain fiscal year 1978/79 expenditures, and is to be adjusted annually to reflect changes in the consumer price index, population, and the

expenditures provided by these entities. Among other provisions of Article XIIB, if an entities' revenues in any year exceed the amount permitted to be spent, the excess would have to be returned by revising tax rates or fee schedules over the subsequent two years. The Local Agencies are of the opinion that the rates and use charges imposed by each Local Agency in connection with their respective wastewater collection system do not exceed the costs it reasonably bears in providing such services.

If a portion of a wastewater collection system's rates or connection charges were determined by a court to exceed the reasonable costs of providing service, any fee which the related Local Agency charges may be considered to be a "special tax," which under Article XIII A or XIII D of the California Constitution must be authorized by a two-thirds vote of the affected electorate. This requirement is applicable to the Local Agencies' rates for service provided by their related wastewater collection system. The reasonable cost of service provided by each wastewater collection system has been determined by the State Controller to include depreciation and allowance for the cost of capital improvements. In addition, the California courts have determined that fees such as connection fees (capacity charges) will not be special taxes if they approximate the reasonable cost of constructing wastewater collection system improvements contemplated by the local agency imposing the fee. Such court determinations have been codified in the Government Code of the State of California (Section 66000 et seq.).

Limited Recourse on Default

If either Local Agency defaults on its obligations to make Loan Installments, the Trustee has the right to accelerate the total unpaid principal amount of the Loan Installments payable under the terms of the defaulting Local Agency's Loan Agreement. However, in the event of a default and such acceleration there can be no assurance that the defaulting party will have sufficient funds to pay the accelerated Loan Installments.

Such acceleration will not affect the Loan Installments owed by the non-defaulting Local Agency, and in such event, a Bond Owner may not receive the entire amount of scheduled principal of or interest on the Bonds.

Neither Local Agency is responsible for the Loan Installments owed by the other Local Agency, and a default under one Loan Agreement will not result in a default under the other Loan Agreement. Correspondingly, the Reserve Account is only available to pay debt service on the Bonds and one Local Agency is not responsible to cure the deficiency in payments of the Loan Agreement of the other Local Agency.

Limitations on Remedies Available

The enforceability of the rights and remedies of the Owners and the obligations of the Authority and the Local Agencies may become subject to the following: the federal bankruptcy code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter in effect, usual equitable principles which may limit the specific enforcement under state law of certain remedies; the exercise by the United States of America of the powers delegated to it by the Federal Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the State of California and its governmental bodies in the interest of servicing a significant and legitimate public purpose bankruptcy proceedings, or the exercising of powers by the federal or state government, if initiated, could subject the Owners to judicial discretion and interpretation of their rights in bankruptcy or otherwise and consequently may entail risks of delay, limitation, or modification of their rights.

No Obligation to Tax

The obligation of the Authority to pay the principal of and interest on the Bonds does not constitute an obligation of the Authority for which the Authority is obligated to levy or pledge any form of taxation or for which the Authority has levied or pledged any form of taxation. The operating income of the Authority is not pledged to the payment of debt service on the Bonds. The operating income of the Authority is not pledged to

the payment of debt service on the Bonds. The obligation of the authority to pay principal of and interest on the Bonds does not constitute a debt or indebtedness of the Authority, Encinitas, Solana Beach, the State of California or any of its political subdivisions, within the meaning of any constitutional or statutory debt limitation or restriction.

Change in Law

In addition to the other limitations described herein, the California electorate or Legislature could adopt a constitutional or legislative property tax decrease or an initiative with the effect of reducing revenues payable to or collected by the Local Agencies. There is no assurance that the California electorate or Legislature will not at some future time approve additional limitations that could reduce the revenues and adversely affect the security of the Bonds.

Sludge Disposal

Currently, the Authority disposes of all of the sludge produced at the Facility pursuant to an agreement with a private sector contractor. The private sector contractor hauls the sludge out of the State of California and processes it for commercial distribution as the sludge is nonhazardous material. If the Authority is unable to dispose of the sludge it produces, it may be forced to curtail or cease operations.

Loss of Tax-Exemption

As discussed under the caption "TAX EXEMPTION," interest on the Bonds could become includable in gross income for purposes of federal income taxation retroactive to the date the Bonds were issued, as a result of future acts or omissions of the Authority in violation of its covenants in the Indenture. Additionally, the President and Congress continue to search for solutions to the nation's deficit, which include proposals that may impact the treatment of tax-exempt interest by certain taxpayers. Potential bond owners should consult with their tax advisors when considering the purchase of the Bonds.

Natural Disasters

The Local Agencies, like all California communities, may be subject to unpredictable seismic activity, fires, flood or other natural disasters. Southern California is a seismically active area. Seismic activity represents a potential risk for damage to buildings, roads, bridges and property within the Local Agencies. Portions of Southern California are subject to wildfires.

In the event of a severe earthquake, fire, flood or other natural disaster, there may be significant damage to both property and infrastructure in the service areas of the Local Agencies. As a result, a substantial portion of the property owners may be unable or unwilling to pay for wastewater service.

ENCINITAS AND SOLANA BEACH

Encinitas

The Cardiff Sanitation District was formed following an election held on October 6, 1953. The Board of Supervisors of the County acted as the Cardiff Sanitation District's Board of Directors until October 1, 1986. On that date, pursuant to an election approving the San Dieguito Reorganization, the City Council of the City of Encinitas became the new Board of Directors of the District. Also pursuant to the San Dieguito Reorganization, certain boundary changes resulted in fixed assets being transferred from Cardiff Sanitation District to Solana Beach Sanitation District and Rancho Santa Fe Community Services District Improvement Areas 2 and 3. On October 18, 2001, the City of Encinitas merged with the Cardiff Sanitation District which now operates as a separate enterprise of the City of Encinitas known as the Cardiff Sanitary Division.

The service area of Cardiff Sanitary Division presently encompasses an area of approximately 4,202 acres, or approximately 38% of City of Encinitas, and provides sewer service to approximately 7,636

connections. The service area of the Cardiff Sanitary Division is located along Interstate Highway 5 and the Pacific Ocean just north of the San Elijo Lagoon.

City Government

The Cardiff Sanitation District was formed, pursuant to Sections 4700 et seq. of the Health and Safety Code of the State of California and, until the time of the San Dieguito Reorganization referenced above, was under the jurisdiction of the County Board of Supervisors. Pursuant to the Local Agency Formation Commission orders for the incorporation of the City of Encinitas in 1986, Cardiff Sanitation District became a subsidiary district to the newly incorporated City. Upon the completion of the merger of the Cardiff Sanitation District with the City of Encinitas, the City Council governs the activities of the Cardiff Sanitary Division as a separate enterprise of the City of Encinitas. The City of Encinitas staff are responsible for collection system engineering, budget and accounting and new connections. The City of Encinitas is also served by the Encinitas Sanitary Division of the City of Encinitas and the Leucadia County Water District. The revenues of the two other enterprises are separate from the revenues of the Cardiff Sanitary Division and are not pledged to the payment of debt service on the Bonds.

Description of Existing System

The service area of the Cardiff Sanitary Division's wastewater collection system is located approximately 23 miles north of City of San Diego and extends about 2 miles northwest along the coast and about 6 miles inland. The potential service area of approximately 4,202 net acres in the north coastal County includes land in both the San Dieguito River and Escondido Creek watersheds.

The service area of the Cardiff Sanitary Division's wastewater collection system generally slopes westerly to the Pacific Ocean, thereby allowing the majority of wastewater to be collected and transported by gravity along the coastal plain where the topography is relatively flat, however, pumping stations are required. the Cardiff Sanitary Division's sewerage system consists of approximately 400,000 linear feet of collection and trunk sewer lines. Wastewater collected by the Cardiff Sanitary Division's wastewater collection system is conveyed to a pumping station located a short distance from the Facility on the north shore of the San Elijo Lagoon. Wastewater is then pumped to the Facility through a 1,500 foot long, 10-inch diameter forcemain.

Number of Connections

The majority of the past decade has witnessed a gradual suburban residential-type growth within the Cardiff Sanitary Division's service area. The table below shows the last five years growth in connections. Encinitas estimates that 83% of sewer service users are residential while 17% consist of commercial-industrial.

TABLE 4
San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)

City of Encinitas
Cardiff Sanitary Division
Number of Service Connections and EDU's

Fiscal Year	Total Connections (Billed Parcels)	Residential EDU's	Commercial Industrial EDU's	Total EDU's
2007	6,241	6,840	1,112	7,952
2008	6,283	6,976	1,122	8,097
2009	6,312	6,990	1,124	8,114
2010	6,317	7,011	1,124	8,136
2011	6,329	7,033	1,124	8,187

Source: City of Encinitas.

Secured Tax Charges and Delinquencies

The assessed valuation of Cardiff Sanitary Division is established by the County Assessor, except for utility property which is assessed by the State Board of Equalization. Included in the table below are assessed values in the Cardiff Sanitation Division for the last five fiscal years. The City no longer receives an annual breakdown of assessed values with the Cardiff Sanitation Division since it has merged with the City of Encinitas. Taxes within Cardiff Sanitary Division are levied against the assessed valuation of land and improvements only before exemption. The table below shows secured service charges and rates of delinquencies for the past five years within the Cardiff Sanitation Division of the City of Encinitas.

TABLE 5
San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)

City of Encinitas
Cardiff Sanitary Division
Assessed Valuations (Land and Improvement)

2003-04	\$2,544,879,587
2004-05	2,774,912,253
2005-06	3,021,825,558
2006-07	3,300,627,664
2007-08	3,534,836,073
2008-09	3,726,246,488
2009-10	3,735,235,461
2010-11	3,717,123,826

Secured Service Charges and Delinquencies

<u>Fiscal Year</u>	<u>Secured Service Charge⁽¹⁾</u>	<u>Amount Del. June 30</u>	<u>% Del. June 30</u>
2006-07	\$4,633,325.22	\$192,086.29	4.15%
2007-08	4,723,040.02	110,512.30	2.34%
2008-09	4,831,651.64	119,910.89	2.48%
2009-10	4,736,723.96	141,027.40	2.98%
2010-11	4,602,824.00	81,410.00	1.80%

Source: California Municipal Statistics, Inc.

⁽¹⁾ 1% General Fund apportionment.

Ten Largest Ratepayers

The top 10 wastewater collection customers of the Cardiff Sanitary Division for the 12-month billing period ended June 30, 2011 are set forth in the table below. The Cardiff Sanitary Division's ten largest users accounted collectively for approximately 10 % of the Cardiff Sanitary Division's total revenues for such period.

TABLE 6
San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)

City of Encinitas
Cardiff Sanitary Division
Largest Wastewater Customers
(For 12 Months Ended June 30, 2011)

<u>Customer</u>	<u>Actual Charges</u>	<u>Percent of Total Charges</u>
Scripps Memorial Hospital	\$117,288	2.47%
Collwood Pines Apartments LP	85,619	1.81
State of California Parks & Recreation	48,932	1.03
San Dieguito Union High School Dist.	46,601	.98
Avolencia Investment Group LLP	44,212	.93
K&K Lumber Co.	44,659	.88
944 Regal Road LLC	39,238	.83
Cardiff Town Center LLC	26,708	.56
Newport Taft Inc.	19,731	.42
West Village Inc.	<u>19,642</u>	<u>.41</u>
Total	\$492,630	10.32%

Source: City of Encinitas.

The Cardiff Sanitary Division's Summary Financial Information

The following table presents a five year summary of the revenues, expenses and net income of the Cardiff Sanitary Division. The summary was derived by City of Encinitas' Finance Manager from the amounts included in the City's annual combined statements for the fiscal years ending June 30, 2007 through 2011.

TABLE 7
San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)

City of Encinitas
Cardiff Sanitary Division
Statements of Revenues and Expenses
For Fiscal Years Ended June 30

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011⁽²⁾</u>
Operating Revenue:					
Charges for services ⁽¹⁾	\$ 4,826,970	\$ 4,926,104	\$ 5,009,340	\$ 4,979,238	\$ 4,830,204
Rental income	-	-	-	-	-
Internal support services	-	-	-	-	-
Other revenues	541	3,528	469	-	14,932
Total operating revenues	<u>\$ 4,827,511</u>	<u>\$ 4,929,632</u>	<u>\$ 5,009,809</u>	<u>\$ 4,979,238</u>	<u>\$ 4,845,136</u>
Operating Expenses:					
General operations and maintenance	\$ 596,725	\$ 744,074	\$ 732,298	\$ 804,867	\$ 1,070,596
Facility operations and maintenance	1,291,172	1,144,969	1,250,163	1,209,308	1,216,385
Depreciation and amortization	255,546	169,474	303,930	-	932,273
Administrative support	-	-	-	-	-
Operational support services	-	-	-	-	-
General and administrative	256,163	321,086	265,910	357,879	251,386
Change in investment in other agencies	221,639	290,609	-	-	-
Lease payments	-	-	-	-	-
Total operating expenses	<u>\$ 2,621,245</u>	<u>\$ 2,670,212</u>	<u>\$ 2,552,301</u>	<u>\$ 3,284,080</u>	<u>\$ 3,470,640</u>
Operating income (loss)	<u>\$ 2,206,266</u>	<u>\$ 2,259,420</u>	<u>\$ 2,457,508</u>	<u>\$ 1,695,158</u>	<u>\$ 1,374,496</u>
Nonoperating Revenues (Expenses):					
Use of money and property	\$ 421,162	\$ 688,423	\$ 392,505	\$ 162,601	\$ 101,544
Gain on sale of capital assets	-	-	-	-	(8,575)
Grant revenue	-	-	-	-	-
Interest expense on revenue bonds	-	-	-	-	-
Interest expense on notes payable	(326,867)	(315,700)	(302,067)	(285,800)	(267,533)
Other nonoperating expenses	-	-	-	-	-
Total nonoperating revenues (expenses), net	<u>\$ 94,295</u>	<u>\$ 372,723</u>	<u>\$ 90,438</u>	<u>(\$ 123,199)</u>	<u>(\$ 174,564)</u>
Income (loss) before capital contributions	<u>\$ 2,300,561</u>	<u>\$ 2,632,143</u>	<u>\$ 2,547,946</u>	<u>\$ 1,571,959</u>	<u>\$ 1,199,932</u>
Capital Contributions:					
Change in net assets	\$ 132,238	\$ 492,971	\$ 52,964	\$ 69,801	\$ 223,692
Total net assets – Beginning of year, as restated ⁽³⁾	<u>\$ 2,432,799</u>	<u>\$ 3,125,114</u>	<u>2,600,910</u>	<u>1,641,760</u>	<u>1,423,624</u>
Total net assets – Beginning of year, as restated ⁽³⁾	<u>\$25,413,464</u>	<u>\$27,846,263</u>	<u>\$30,216,977</u>	<u>\$34,129,055</u>	<u>\$36,390,212</u>
Total net assets – End of year ⁽³⁾	<u>\$27,846,263</u>	<u>\$30,971,377</u>	<u>\$32,817,887</u>	<u>\$35,770,815</u>	<u>\$37,813,836</u>

Source: Derived from City of Encinitas Audited Financial Statements by City of Encinitas.

⁽¹⁾ Charges for services do not include income relating to reclaimed water.

⁽²⁾ Unaudited Financial Statements.

⁽³⁾ For Fiscal Year 2010, Encinitas implemented GASB Statement No. 51 Accounting and Financial Reporting for Intangible Assets, which required the City to record land easement that the City had from previous year in enterprise funds. See Audited Financial Statements of Local Agencies, Appendix C.

The following table shows historical debt service coverage on the Encinitas Loan from fiscal year 2006-07 to 2010-11

TABLE 8
San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)

City of Encinitas
Cardiff Sanitary Division
Historic Debt Service Coverage
For Fiscal Years Ended June 30

<u>Fiscal Year</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11⁽²⁾</u>
Revenues:					
Operating Revenues – Service Charges & Connection Fees	\$4,959,749	\$5,422,603	\$5,062,773	\$5,049,039	\$5,068,828
Non-Operating Revenues	<u>421,162</u>	<u>688,423</u>	<u>392,505</u>	<u>162,601</u>	<u>101,544</u>
Gross Revenues	\$5,380,911	\$6,111,026	\$5,455,278	\$5,211,640	\$5,170,372
Total Operating & Non-Operating Expenses	<u>\$2,948,112</u>	<u>\$2,985,912</u>	<u>\$2,854,368</u>	<u>\$3,569,880</u>	<u>\$3,746,748</u>
Net Income	\$2,432,799	\$3,125,114	\$2,600,910	\$1,641,760	\$1,423,624
Add Back					
Interest Expense	326,867	315,700	302,067	285,800	267,533
Depreciation and Amortization	255,546	169,474	303,930	912,026	932,273
Change in Investment in Other Agencies	<u>221,639</u>	<u>290,609</u>	<u>0</u>	<u>0</u>	<u>0</u>
Net Revenues Available for Debt Service	\$3,236,851	\$3,900,897	\$3,206,907	\$2,839,586	\$2,623,430
Debt Service					
2003 Bonds ⁽¹⁾					
Interest Charges	\$ 330,325	\$ 319,950	\$ 307,200	\$ 450,000	\$ 470,000
Principal Repayments	<u>415,000</u>	<u>425,000</u>	<u>440,000</u>	<u>291,800</u>	<u>273,800</u>
Total Debt Service	\$ 745,325	\$ 744,950	\$ 747,200	\$ 741,800	\$ 743,800
Coverage by Net Revenues Available for Debt Service	4.34%	5.24%	4.29%	3.83%	3.53%

Source: Derived from City of Encinitas Audited Financial Statements by City of Encinitas.

⁽¹⁾ 2003 Bonds to be refunded with proceeds of Bonds.

⁽²⁾ Unaudited Financial Statements.

The following table shows assets, liabilities and retained earnings of the Cardiff Sanitation Division's wastewater treatment system as of June 30, 2007 through 2010 as reported in the City of Encinitas' combined financial statements.

TABLE 9
San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)

City of Encinitas
Cardiff Sanitary Division
Balance Sheets
For Fiscal Year Ended June 30

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011⁽²⁾</u>
ASSETS:					
Current assets:					
Cash and investments	\$11,851,702	\$14,627,870	\$16,566,649	\$17,778,447	\$18,692,351
Cash with fiscal agent	-	-	-	-	-
Accounts and taxes receivable	387,477	233,993	239,758	282,470	245,905
Interest receivable	101,987	98,190	71,120	36,446	21,411
Other assets	-	-	-	-	-
Inventory	-	-	-	-	-
Total Current Assets	<u>\$12,341,166</u>	<u>\$14,960,053</u>	<u>\$16,877,527</u>	<u>\$18,097,363</u>	<u>\$18,959,667</u>
NONCURRENT ASSETS:					
Restricted assets:					
Cash and investments with fiscal agent	<u>\$ 747,048</u>	<u>\$ 754,400</u>	-	-	-
Total Restricted Assets	<u>\$ 747,048</u>	<u>\$ 754,400</u>	-	-	-
Other noncurrent assets:					
Investment in other agencies	<u>\$17,551,052</u>	<u>\$17,392,634</u>	<u>\$17,584,957</u>	<u>\$17,169,523</u>	<u>\$17,354,853</u>
Total other noncurrent assets	<u>\$17,551,052</u>	<u>\$17,392,634</u>	<u>\$17,584,957</u>	<u>\$17,169,523</u>	<u>\$17,354,853</u>
Capital assets:					
Land	\$ 8,575	\$ 8,575	\$ 8,575	\$ 8,575	-
Land easements	-	-	-	1,311,168	\$ 1,358,591
Public Works facility right of use	-	-	-	-	-
Construction in progress	23,446	371,695	574,484	1,128,970	1,760,013
Capacity rights, net of accumulated amortization	-	-	-	-	-
Utility, plant and equipment, net of accumulated depreciation	<u>4,380,077</u>	<u>4,264,736</u>	<u>4,091,954</u>	<u>3,919,172</u>	<u>3,992,641</u>
Total capital assets (net of accumulated depreciation)	<u>\$ 4,412,098</u>	<u>\$ 4,645,006</u>	<u>\$ 4,675,013</u>	<u>\$ 6,367,885</u>	<u>\$ 7,111,245</u>
Total noncurrent assets	<u>\$22,710,198</u>	<u>\$22,792,040</u>	<u>\$22,259,970</u>	<u>\$23,537,408</u>	<u>\$24,466,098</u>
Total assets	<u>\$35,051,364</u>	<u>\$37,752,093</u>	<u>\$39,137,497</u>	<u>\$41,634,771</u>	<u>\$43,425,765</u>
LIABILITIES:					
Current liabilities:					
Accounts payable and accrued liabilities	\$ 12,295	\$ 18,316	\$ 2,343	\$ 2,689	\$ 226,929
Accrued interest payable	106,650	102,400	97,267	91,267	85,000
Deposits and other liabilities	1,156	-	-	-	-
Current portion of long term debt	<u>425,000</u>	<u>440,000</u>	<u>450,000</u>	<u>470,000</u>	<u>490,000</u>
Total current liabilities	<u>\$ 545,101</u>	<u>\$ 560,716</u>	<u>\$ 549,610</u>	<u>\$ 563,956</u>	<u>\$ 801,929</u>
Noncurrent liabilities:					
Notes and mortgages payable	\$ 6,660,000	\$ 6,220,000	\$ 5,770,000	\$ 5,300,000	\$ 4,810,000
Advances from other funds	-	-	-	-	-
Total noncurrent liabilities	<u>\$ 6,660,000</u>	<u>\$ 6,220,000</u>	<u>\$ 5,770,000</u>	<u>\$ 5,300,000</u>	<u>\$ 4,810,000</u>
Total liabilities	<u>\$ 7,205,101</u>	<u>\$ 6,780,716</u>	<u>\$ 6,319,610</u>	<u>\$ 5,863,956</u>	<u>\$ 5,611,929</u>
NET ASSETS:					
Invested in capital assets, net of related debt	\$ 4,412,098	\$ 4,645,006	\$ 4,675,013	\$ 6,367,885	\$ 7,111,245
Restricted for debt service	747,048	754,400	-	-	-
Unrestricted	<u>22,687,117</u>	<u>25,571,971</u>	<u>28,142,874</u>	<u>29,402,930</u>	<u>30,702,591</u>
Total net assets ⁽¹⁾	<u>\$27,846,263</u>	<u>\$30,971,377</u>	<u>\$32,817,887</u>	<u>\$35,770,815</u>	<u>\$37,813,836</u>

Source: City of Encinitas Audited Financial Statements.

(1) For Fiscal Year 2010, Encinitas implemented GASB Statement No. 51 Accounting and Financial Reporting for Intangible Assets, which required the City to record land easements that the City had from previous years in enterprise funds. See Audited Financial Statements, Appendix C.

(2) Unaudited Financial Statements.

Solana Beach

The Solana Beach Sanitation District was formed following an election held on November 12, 1946. The Board of Supervisors of the County acted as the Solana Beach Sanitation District Board of Directors until July 1, 1986. On that date, pursuant to an election approving a plan of reorganization, as approved by resolution of the Board of Supervisors of the County, Solana Beach Sanitation District became a subsidiary district of Solana Beach. After the reorganization, the City Council of Solana Beach became the new Board of Directors of the Solana Beach Sanitation District. Also pursuant to the reorganization, certain boundary changes resulted in fixed assets being transferred from Encinitas to the Solana Beach Sanitation District. The transition of day-to-day management of the Solana Beach Sanitation District, first from the County Public Works Department to Solana Beach Sanitation District, and more recently to Solana Beach Sanitation Enterprise Fund, has occurred since the incorporation of Solana Beach. City staff are responsible for collection system engineering, budget and accounting, and new connections. The operating functions of line maintenance are provided by contract with Encinitas.

The Board of Directors of the Solana Beach Sanitation District passed a resolution dated September 14, 1989 requesting that Solana Beach undertake all actions necessary to dissolve or merge the Solana Beach Sanitation District into Solana Beach. Following acceptance by Solana Beach Sanitation District's plan of reorganization on September 18, 1989 and a hearing before the Local Agency Formation Commission, the merger was completed on July 1, 1990. Upon the completion of the reorganization of the Solana Beach Sanitation District and Solana Beach, Solana Beach established a City Sanitation Enterprise Fund. The City Council serves as the governing board of the City Sanitation Department. The reorganization in no way effects the rights and obligations of Solana Beach Sanitation District under the Basic Agreement. The validity of the Original Loan Agreement entered into between the Solana Beach Sanitation District and the Authority in regard to the 1993 Bonds is also not impacted.

City Government

The City was incorporated in July 1986 after an election held June 3, 1986. The City's incorporation involved a reorganization consisting primarily of the incorporation of Solana Beach; the detachment of territory from Encinitas and annexation of the same territory to the Solana Beach Sanitation District and the establishment of the Solana Beach Sanitation District as a subsidiary district of the City of Solana Beach.

The City is a general law city and operates under a council-manager form of government. The City Council consists of five members elected at large. Council members serve four-year terms, with elections every two years for either two or three seats. The Mayor is selected by a majority vote of the City Council and serves a one year term. The City Manager is appointed by the City Council and serves as the City Council's administrative head of the City of Solana Beach. All other city employees are appointed by and are responsible to the City Manager, except the City Attorney who is appointed by the City Council.

The service area of Solana Beach wastewater collection system generally slopes westerly to the Pacific Ocean, thereby allowing the majority of wastewater to be collected and transported by gravity along the coastal plain where the topography is relatively flat, however, pumping stations are required. The City's wastewater collection system consists of approximately 196,470 linear feet of collection and trunk sewer lines. Wastewater collected by Solana Beach's wastewater collection system is conveyed to Solana Beach's pumping station located on the south shore of the San Elijo Lagoon. Wastewater is then pumped to the Facility through a 5,500 foot long, 12-inch diameter force main. The remaining wastewater is conveyed to the Olivenhain Pump Station, which is owned by the City of Encinitas and operated by the Authority, from where it is pumped to the San Elijo Water Reclamation Facility.

Number of Connections

The majority of the past decade has witnessed a gradual suburban residential-type growth within Solana Beach's service area. The table below shows the last five years growth in connections. The City estimates that 62 % of sewer service users are residential while 38 % consist of commercial-industrial.

TABLE 10
San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)

City of Solana Beach
Number of Service Connections and EDU's

<u>Fiscal Year</u>	<u>Residential EDU's⁽¹⁾</u>	<u>Commercial Industrial EDU's</u>	<u>Total EDU's</u>
2007	2,421	1,639	4,060
2008	2,421	1,645	4,066
2009 ⁽²⁾	2,729	1,713	4,442
2010 ⁽²⁾	2,730	1,733	4,463
2011 ⁽²⁾	2,728	1,735	4,463

Source: City of Solana Beach

⁽¹⁾ Single family only.

⁽²⁾ Includes 300 EDU's billed to the City of San Diego for services outside of the City.

Assessed Valuations

The assessed valuation of Solana Beach is established by the County Assessor, except for utility property which is assessed by the State Board of Equalization. Taxes within Solana Beach are levied against the assessed valuation of land and improvements only before exemptions. The table below shows the assessed valuation of Solana Beach together with tax collections and delinquency rates for the past five fiscal years.

**TABLE 11
San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)**

**City of Solana Beach
Assessed Valuations**

	<u>Local Secured</u>	<u>Utility</u>	<u>Unsecured</u>	<u>Total</u>
2007-08	\$3,136,904,631	\$0	\$42,571,014	\$3,179,475,645
2008-09	3,340,906,670	0	44,075,393	3,384,982,063
2009-10	3,395,706,773	0	45,112,840	3,440,819,613
2010-11	3,387,231,619	0	41,730,069	3,428,961,688
2011-12	3,458,751,909	0	43,334,921	3,502,086,830

Secured Tax Charges and Delinquencies

	<u>Secured Service Charge⁽¹⁾</u>	<u>Amount Del. June 30</u>	<u>% Del. June 30</u>
2006-07	\$4,382,503.63	\$127,521.03	2.91%
2007-08	4,719,563.84	185,009.49	3.92
2008-09	5,004,106.84	187,231.77	3.74
2009-10	5,066,039.00	160,409.00	3.17
2010-11	5,034,194.19	101,857.03	2.02

Source: California Municipal Statistics, Inc.

⁽¹⁾ 1% General Fund apportionment.

Ten Largest Ratepayers

The top 10 wastewater collection customers of the Sanitation Enterprise Fund for the 12-month billing period ended June 30, 2010 are set forth in the table below. The Sanitation Enterprise Fund ten largest users collectively accounted for approximately 11.4% of the Sanitation Enterprise Fund total revenues for such period.

TABLE 12
San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)

City of Solana Beach
Largest Wastewater Customers
(For 12 Months Ended June 30, 2010)

<u>Customers</u>	<u>Amount Billed</u>	<u>Percent of Total</u>
Fenton Solana Highlands LLC	\$ 75,600	1.8%
S B Towne Center LLC	74,838	1.8
Pacific Solana Beach Holdings LP	59,214	1.4
Muller-Beachwalk LLC	56,622	1.3
ERP Operating Ltd Ptnship	56,000	1.3
Urschel Laboratories Inc.	44,240	1.0
SB Corporate Centre III-IV LLC	40,376	1.0
S B Corporate Centre LLC	38,080	0.9
Pinnacle Solana LP	34,160	0.8
Solana Partners LP	<u>29,680</u>	<u>0.7</u>
Total	\$508,810	12.1%

Source: City of Solana Beach.

City Sanitation Department Summary Financial Information

The following table presents a five year summary of the revenues, expenses and net income of the City's Sanitation Enterprise Fund. The summary was derived by the City of Solana Beach Finance Director from the amounts included in Solana Beach's Enterprise Fund annual combined financial statements for the years ending June 30, 2007 through 2011.

TABLE 13
San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)

City of Solana Beach
Sanitation Enterprise Fund
Statements of Revenues and Expenses
For Fiscal Years Ended June 30

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011⁽¹⁾</u>
Operating Revenue:					
Charges for services	\$ 3,846,613	\$ 4,084,886	\$ 4,283,087	\$ 4,498,181	\$ 4,501,364
Other	-	14,009	13,803	217,552	13,803
Intergovernmental	<u>\$ 13,803</u>	<u>1,821,970</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total Operating Revenues	\$ 3,860,416	\$ 5,920,865	\$ 4,296,890	\$ 4,715,733	\$ 4,515,167
Operating Expenses:					
Costs of sales and services	\$ 1,809,123	\$ 1,916,925	\$ 2,472,042	\$ 2,269,659	\$ 2,687,830
Administration	232,986	241,609	285,836	372,779	328,920
Depreciation	<u>169,845</u>	<u>170,429</u>	<u>237,649</u>	<u>240,413</u>	<u>182,143</u>
Total Operating Expenses	\$ 2,211,954	\$ 2,328,963	\$ 2,995,527	\$ 2,882,851	\$ 3,198,893
Operating Income (Loss)	<u>\$ 1,648,462</u>	<u>\$ 3,591,902</u>	<u>\$ 1,301,363</u>	<u>\$ 1,832,882</u>	<u>\$ 1,316,274</u>
Non-Operating Revenues (Expenses):					
Intergovernmental	-	-	-	-	-
Interest income	\$ 451,527	\$ 488,749	\$ 261,554	\$ 73,634	\$ 51,294
Interest expense	(542,867)	(785,782)	(748,726)	(723,659)	(696,026)
Amortization of bond issuance costs	(31,066)	(36,620)	(36,621)	(36,621)	(36,621)
Amortization of investment premium	(10,945)	(10,945)	(10,945)	(10,945)	(10,945)
Share in joint venture net gain/capital contribution	<u>(70,702)</u>	<u>(158,419)</u>	<u>192,323</u>	<u>203,963</u>	<u>159,319</u>
Total Non-Operating Revenues (Expenses)	<u>(\$ 204,053)</u>	<u>(\$ 503,017)</u>	<u>(\$ 342,415)</u>	<u>(\$ 493,628)</u>	<u>(\$ 532,979)</u>
Income (Loss) Before Transfers	<u>\$1,444,409</u>	<u>\$3,088,885</u>	<u>\$ 958,948</u>	<u>\$ 1,339,254</u>	<u>\$ 783,295</u>
Capital Contributions:			-	-	-
Transfers:					
Transfer in	-	-	-	-	-
Transfers out	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total Transfers	-	-	-	-	-
Change in net assets	\$ 1,444,409	\$ 3,088,885	\$ 958,948	\$ 1,339,254	\$ 783,295
Net Assets:					
Beginning of year	\$21,749,362	\$23,193,771	\$26,282,656	\$27,241,604	\$28,580,858
End of year	<u>\$23,193,771</u>	<u>\$26,282,656</u>	<u>\$27,241,604</u>	<u>\$28,580,858</u>	<u>\$29,364,153</u>

Source: Derived from City of Solana Beach Audited Financial Statements.

⁽¹⁾ Unaudited Financial Statements.

The following table shows historical debt service coverage from fiscal years ending 2007 through 2011.

TABLE 14
San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)

City of Solana Beach
Sanitation Enterprise Fund
Historic Debt Service Coverage
For Fiscal Years Ended June 30

<u>Fiscal Year</u>	<u>2006-07</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11⁽⁷⁾</u>
Revenues:					
Operating Revenue – Service Charges & Connection Fees ⁽¹⁾	\$3,846,613	\$ 4,084,886	\$4,283,087	\$4,498,181	\$4,501,364
Intergovernmental revenue	-	1,821,970	-	-	-
Other Operating ⁽²⁾	13,803	14,009	13,803	217,552	13,803
Non-Operating Revenues	<u>477,002</u>	<u>488,749</u>	<u>453,867</u>	<u>277,597</u>	<u>210,613</u>
Gross Revenues	\$4,337,418	\$ 6,409,614	\$4,750,757	\$4,993,330	\$4,725,780
Less: Operations, Non-Operations and Maintenance Expenses	<u>2,893,009</u>	<u>3,320,729</u>	<u>3,791,819</u>	<u>3,654,075</u>	<u>3,942,485</u>
Net Income	\$1,444,409	\$ 3,088,885	\$ 958,938	\$1,339,255	\$ 783,295
Deduct from:					
Intergovernmental revenue	-	(\$1,821,970)	-	-	-
Add Back:					
Interest Expense (accrual method of accounting) ⁽³⁾	\$ 373,483	\$ 785,782	\$ 748,726	\$ 723,659	\$ 696,026
Depreciation and Amortization ⁽⁴⁾	169,845	170,429	237,749	240,413	182,153
Amortization of Bond Issuance Costs ⁽⁵⁾	48,765	36,620	36,621	36,621	36,621
Amortization of Investment in JPA ⁽⁵⁾	<u>10,945</u>	<u>10,945</u>	<u>10,945</u>	<u>10,945</u>	<u>10,945</u>
Net Revenues Available for Debt Service	\$2,047,447	\$ 2,270,691	\$1,992,979	\$2,350,893	\$1,709,040
Debt Service:					
2003 Refunding Revenue Bonds ⁽⁶⁾					
Interest Charges	\$ 373,483	\$ 360,800	\$ 342,350	\$ 333,600	\$ 313,000
Principal Repayment	<u>470,000</u>	<u>485,000</u>	<u>500,000</u>	<u>515,000</u>	<u>535,000</u>
Total Debt Service	\$ 843,483	\$ 845,800	\$ 842,350	\$ 848,600	\$ 848,000
Coverage by Net Revenues Available for Debt Service	2.43	2.68	2.37	2.77	2.02

Source: City of Solana Beach Audited Financial Statements, as adjusted for reclaimed water activity.

⁽¹⁾ Operating Revenues Sewer Service and Connection Fees.

⁽²⁾ Operating Revenues, Other.

⁽³⁾ Non-Operating Expense, Interest Expense.

⁽⁴⁾ Operating Expense, Depreciation.

⁽⁵⁾ Operating Expense, part of General and Administrative. Reduces value of asset on balance sheet under Investment in Joint Venture and Deferred Debt Issuance Costs.

⁽⁶⁾ 2003 Bonds to be refunded with proceeds of Bonds.

⁽⁷⁾ Unaudited Financial Statements.

Other Obligations of Solana Beach Enterprise. On January 18, 2007, the Solana Beach Financing Authority issued its \$9,825,000, series 2006 subordinate Wastewater Revenue Bonds (the “2006 Bonds”) to finance certain capital improvements to the Solana Beach wastewater system. The 2006 Bonds are secured by installment payments to be made by the Solana Beach Sanitation Enterprise Fund on a basis subordinate to the payment of the 2003 Loan Installments and the Loan Installments. The 2006 Bonds mature on September 1, 2037, and annual debt service payments are approximately \$590,000.

The following table shows assets, liabilities and retained earnings of the City's Sanitation Department as of June 30, 2007 through 2011 as reported in the City's combined financial statements.

TABLE 15
San Elijo Joint Powers Authority
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)

City of Solana Beach
Sanitation Enterprise Fund
Balance Sheet
For Fiscal Years Ended June 30

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011⁽¹⁾</u>
ASSETS					
Current assets:					
Cash and investments	\$ 3,468,280	\$ 8,438,529	\$ 7,523,590	\$ 5,766,100	\$ 7,310,688
Cash and investments with fiscal agents	8,749,326	8,380,786	8,313,612	8,316,287	3,442,146
Receivables:					
Sewer fees, due within one year	3,590,011	672,154	557,771	422,988	240,750
Accounts	-	9,858	220,186	245,889	239,017
Taxes	2,461	14,555	31,991	32,766	20,598
Interest	47,677	49,190	26,367	6,320	5,163
Advance to General Fund (current)	-	-	-	-	352,249
Due from other governments	-	530,028	-	-	-
Due from other funds	-	-	-	-	-
Due from joint venture	130,035	50,793	-	-	-
Total Current Assets	<u>\$15,987,790</u>	<u>\$18,145,893</u>	<u>\$16,673,517</u>	<u>\$14,790,350</u>	<u>\$11,610,611</u>
Noncurrent assets::					
Sewer fees receivable	\$ 15,512	-	-	-	-
Deferred issuance costs, net	1,026,092	\$ 963,996	\$ 901,901	\$ 839,806	\$ 777,710
Investment in joint venture	17,790,000	17,620,636	17,802,014	17,995,032	18,143,406
Advance to General Fund	-	-	-	-	2,780,338
Capital assets:					
Non-depreciable	-	-	2,716,351	5,304,744	213,861
Depreciable, net	-	-	<u>6,735,219</u>	<u>6,633,023</u>	<u>11,548,113</u>
Total net capital assets	<u>\$ 7,581,699</u>	<u>\$ 7,476,418</u>	<u>\$ 9,451,570</u>	<u>\$11,937,767</u>	<u>\$11,761,974</u>
Total noncurrent assets	<u>\$26,413,303</u>	<u>\$26,061,050</u>	<u>\$28,155,485</u>	<u>\$30,772,605</u>	<u>\$33,463,428</u>
Total Assets	<u>\$42,401,093</u>	<u>\$44,206,943</u>	<u>\$44,829,002</u>	<u>\$45,562,955</u>	<u>\$45,074,039</u>
LIABILITIES					
Current liabilities:					
Account payable	\$ 639,159	\$ 42,399	\$ 417,955	\$ 545,194	\$ 49,039
Accrued salaries and benefits	4,093	5,099	6,130	10,320	10,716
Interest payable	291,267	252,239	244,248	235,164	225,697
Loans payable	615,000	685,000	-	-	-
Due to other funds	-	-	-	-	-
Compensated absences, due within one year	1,802	1,154	1,570	1,806	1,263
Long term debt, due within one year	-	-	<u>705,000</u>	<u>735,000</u>	<u>765,000</u>
Total current liabilities	<u>\$ 1,551,321</u>	<u>\$ 985,891</u>	<u>\$ 1,374,903</u>	<u>\$ 1,527,484</u>	<u>\$ 1,051,715</u>
Noncurrent liabilities:					
Compensated absences, due in more than one year	\$ 19,824	\$ 12,694	\$ 17,268	\$ 19,861	\$ 13,895
Loan payable	17,305,000	16,620,000	-	-	-
Premium on debt issuance	331,177	305,702	-	-	-
Premium on long term debt	-	-	280,227	254,752	229,276
Long term debt, due in more than one year	-	-	<u>15,915,000</u>	<u>15,180,000</u>	<u>14,415,000</u>
Total noncurrent liabilities	<u>\$17,656,001</u>	<u>\$16,938,396</u>	<u>\$16,212,495</u>	<u>\$15,454,613</u>	<u>\$14,658,171</u>
Total liabilities	<u>\$19,207,322</u>	<u>\$17,924,287</u>	<u>\$17,587,398</u>	<u>\$16,982,097</u>	<u>\$15,709,886</u>
NET ASSETS					
Invested in capital assets, net of related debt	\$ 5,655,824	\$ 5,300,163	\$ 9,451,570	(\$3,977,233)	(\$3,418,026)
Restricted for:					
Debt service	1,021,293	1,021,293	1,021,293	8,316,287	3,442,146
Capital projects	-	-	-	-	-
Unrestricted	<u>16,516,654</u>	<u>19,961,200</u>	<u>16,768,741</u>	<u>24,241,804</u>	<u>29,340,033</u>
Total net assets	<u>\$23,193,771</u>	<u>\$26,282,656</u>	<u>\$27,241,604</u>	<u>\$28,580,858</u>	<u>\$29,364,153</u>

Source: Derived from City of Solana Beach Audited Financial Statements.

⁽¹⁾ Unaudited Financial Statements.

TAX EXEMPTION

General

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to the qualifications set forth below, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, provided, however, that, for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining certain income and earnings.

The opinions set forth in the preceding paragraph are subject to the condition that the Authority comply with all requirements of the Internal Revenue Code of 1986 (the "Code") that must be satisfied subsequent to the issuance of the Bonds in order that such interest be, or continue to be, excluded from gross income for federal income tax purposes. The Authority has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of such interest in gross income for federal income tax purposes to be retroactive to the date of issuance of the Bonds.

If the initial offering price to the public (excluding bond houses and brokers) at which a Bond is sold is less than the amount payable at maturity thereof, then such difference constitutes "original issue discount" for purposes of federal income taxes and State of California personal income taxes. If the initial offering price to the public (excluding bond houses and brokers) at which each Bond is sold is greater than the amount payable at maturity thereof, then such difference constitutes "original issue premium" for purposes of federal income taxes and State of California personal income taxes. De minimis original issue discount is disregarded.

Under the Code, original issue discount is treated as interest excluded from federal gross income and exempt from State of California personal income taxes to the extent properly allocable to each owner thereof subject to the limitations described in the first paragraph of this section. The original issue discount accrues over the term to maturity of the Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). The amount of original issue discount accruing during each period is added to the adjusted basis of such Bonds to determine taxable gain upon disposition (including sale, redemption, or payment on maturity) of such Bond. The Code contains certain provisions relating to the accrual of original issue discount in the case of purchasers of the Bonds who purchase the Bonds after the initial offering of a substantial amount of such maturity. Owners of such Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Bonds with original issue discount, including the treatment of purchasers who do not purchase in the original offering, the allowance of a deduction for any loss on a sale or other disposition, and the treatment of accrued original issue discount on such Bonds under federal individual and corporate alternative minimum taxes.

Under the Code, original issue premium is amortized on an annual basis over the term of the Bond (said term being the shorter of the Bond's maturity date or its call date). The amount of original issue premium amortized each year reduces the adjusted basis of the owner of the Bond for purposes of determining taxable gain or loss upon disposition. The amount of original issue premium on a Bond is amortized each year over the term to maturity of the Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). Amortized Bond premium is not deductible for federal income tax purposes. Owners of premium Bonds, including purchasers who do not purchase in the original offering, should consult their own tax advisors with respect to State of California personal income tax and federal income tax consequences of owning such Bonds.

In the further opinion of Bond Counsel, interest on the Bonds is exempt from California personal income taxes.

Owners of the Bonds should also be aware that the ownership or disposition of, or the accrual or receipt of interest on, the Bonds may have federal or state tax consequences other than as described above. Bond

Counsel expresses no opinion regarding any federal or state tax consequences arising with respect to the Bonds other than as expressly described above.

VERIFICATION OF MATHEMATICAL COMPUTATIONS

Upon delivery of the Bonds, the arithmetical accuracy of certain computations included in the schedules provided by the Underwriter on behalf of the Authority relating to the computation of (a) the adequacy of forecasted receipts of principal and interest on the Federal Securities and cash to be held pursuant to the Escrow Agreement, (b) the forecasted payments of principal and interest with respect to the Prior Bonds on and prior to their respective maturity dates, and (c) the yields with respect to the Bonds and the Federal Securities to be deposited to the Escrow Fund upon the delivery of the Bonds, will be verified by Berens Tate LLP, independent certified public accountants. Such verification of the accuracy of the mathematical computations shall be based upon certain information and assumptions supplied to Berens Tate LLP, by the Underwriter on behalf of the Authority. Berens Tate LLP has restricted its procedures to examining the arithmetical accuracy of certain computations and has not made a study or evaluation of the information and assumptions on which the computations are based, and accordingly, has not expressed an opinion on the data used, the reasonableness of the assumptions, or the achievability of the forecasted outcome.

CERTAIN LEGAL MATTERS

Legal matters incident to the authorization, issuance, sale and delivery by the Authority of the Bonds are subject to the approval of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will be passed upon for the Authority by its general counsel, Procopio, Cory, Hargreaves & Savitch LLP, San Diego, California, and Best Best & Krieger LLP, Riverside, California, disclosure counsel, and for the Local Agencies by their respective counsels.

ABSENCE OF LITIGATION

There is no litigation pending against the Authority or the Local Agencies, nor, to the knowledge of the officers or attorneys of the Authority or the Local Agencies, threatened, in any court or other tribunal of competent jurisdiction, state or federal, in any way (i) restraining or enjoining the issuance, sale or delivery of any of the Bonds, (ii) questioning or affecting the validity of the Bonds, (iii) questioning or affecting the validity of any of the proceedings for the authorization, sale, execution or delivery of the Bonds, or (iv) questioning or affecting the validity or enforceability of the Loan Agreements or the Indenture.

RATINGS

Standard & Poor's and Fitch Investors Service, Inc. have assigned their municipal bond ratings of “___” and “___”, respectively, to the Bonds with the understanding that, upon delivery of the Bonds, the Policy will be issued by _____. Such ratings reflect only the view of such organizations and an explanation of the significance of such rating may be obtained from them as follows: Standard & Poor's Corporation, 25 Broadway, New York, New York 10004, (212) 208-8000; and Fitch Investors Service, Inc., One State Street Plaza, New York, New York 10004. The Authority has also obtained underlying ratings on the Bonds from Standard & Poor's and Fitch Investors Service, Inc. of “___” and “___”, respectively. There is no assurance that such ratings will continue for any given period of time or that it will not be revised downward or withdrawn entirely by such rating agencies, if in the judgment of such rating agencies circumstances so warrant. Any such downward revision or withdrawal of such ratings may have an adverse effect on the market price of the Bonds.

UNDERWRITING

The Bonds are being purchased for reoffering by Brandis Tallman LLC (the “Underwriter”). The Underwriter has agreed to purchase the Bonds at a purchase price of \$_____ plus accrued interest inclusive of original issuance premium. The obligation to make such purchase is subject to certain terms and conditions set forth in the Purchase Agreement. The Underwriter may offer and sell the Bonds to certain dealers

and others at prices lower than the public offering price stated on the cover page hereof. The offering price may be changed from time to time by the Underwriter.

The Underwriter reserves the right to join with dealers and other underwriters in offering the bonds to the public. The Underwriter may offer and sell Bonds to certain dealers (including dealers depositing Bonds into investment trusts) at prices lower than the public offering prices, and such dealers may reallow any such discounts on sales to other dealers.

PROFESSIONAL FEES

In connection with the issuance of the Bonds, fees payable to Jones Hall, A Professional Corporation, as Bond Counsel, Best Best & Krieger LLP, as Disclosure Counsel and Union Bank, N.A., as Trustee are contingent upon the issuance of the Bonds.

AVAILABILITY OF DOCUMENTS

Copies of the Loan Agreements and the Indenture will be available, upon written request, from the Manager of the Authority.

ADDITIONAL INFORMATION

The quotations from, and summaries and explanations of the Indenture and other statutes and documents contained herein do not purport to be complete, and reference is made to such documents, the Indenture, the Loan Agreements and statutes for full and complete statements of their provisions.

This Official Statement is submitted only in connection with the sale of the Bonds by the Authority. All estimates, assumptions, statistical information and other statements contain herein, while taken from sources considered reliable, are not guaranteed by the Authority. The information contain herein should not be construed as representing all conditions affecting the Authority, the Local Agencies or the Bonds.

Any statements in this Official Statement involving matters of opinion, whether expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the Authority and the purchasers or owners of any of the Bonds.

SAN ELIJO JOINT POWERS AUTHORITY

By: _____
General Manager

APPENDIX A

Economic and Demographic Information Regarding the Cities of Encinitas and Solana Beach

The following information regarding the Encinitas, Solana Beach and the surrounding area is presented as general background data. The Bonds are payable solely from the sources described herein (see ‘SECURITY FOR THE BONDS’). The taxing power of the City of Encinitas, the City of Solana Beach, the State of California or any political subdivision thereof is not pledged to the payment of the Bonds. See the information under the caption “THE BONDS.”

CITY OF ENCINITAS

History and Location

The City was incorporated in October, 1986. The City’s incorporation involved a reorganization consisting primarily of the incorporation of the City of Encinitas; the detachment of territory from the Cardiff Sanitation District and annexation of the same territory to the Solana Beach Sanitation District; and the establishment of the Encinitas Fire Protection District, the San Dieguito Water District, and the Encinitas Sanitary District as subsidiary districts of the City (the “Districts”).

The City is located in the northern coastal area of San Diego County (the “County”) overlooking the Pacific Ocean. The City encompasses approximately 21.4 square miles and is located 30 miles north of the City of San Diego and immediately north of the City of Solana Beach. Topography of the surrounding area varies from broad coastal plains to fertile inland valleys backed up by mountain ranges to the east. The climate is equable in the coastal and valley regions. The community has long, dry summers and mild temperatures, with mean temperatures of 70 degrees and an average annual rainfall of 10.36 inches.

City Organization

The City is a general law city and operates under a council-manager form of government. The City Council consists of five members elected at large, who also serve as the Board of Directors of the three subsidiary districts of the City. Council members serve four-year terms, with elections every two years for either two or three seats. The Mayor is selected by a majority vote of the City Council and serves a one year term. The City Manager is appointed by the City Council and serves as the City Council’s administrative head of the City. All other city employees are appointed by and are responsible to the City Manager, except the City Attorney and the City Clerk, who are appointed by the City Council.

Population

At incorporation in 1986, there were about 48,558 people in the City limits. As of January 1, 2010, the California Department of Finance estimates that Encinitas has grown to a population of 59,518, and expects to be built out according to general plan estimates at 73,060. Encinitas is a low density community consisting predominately of single family homes. The table below shows population estimates for Encinitas, San Diego County and the State.

**City of Encinitas
Population Estimates**

<u>Year</u>	<u>City of Encinitas</u>	<u>San Diego County</u>	<u>State of California</u>
2006	59,532	3,065,312	36,116,202
2007	59,378	3,096,975	36,399,676
2008	59,411	3,141,700	36,704,375
2009	59,453	3,185,462	36,966,713
2010	59,518 ⁽¹⁾	3,095,313 ⁽¹⁾	37,253,956 ⁽¹⁾

Source: California State Department of Finance.

⁽¹⁾ Date as of April 1. Includes U.S. Census data released May 19, 2011.

Assessed Valuation and Collections

The following Table sets forth assessed valuation growth in Encinitas.

**CITY OF ENCINITAS
ASSESSED VALUATION
(Fiscal Year 2011-12)**

	<u>Local Secured</u>	<u>Utility</u>	<u>Unsecured</u>	<u>Total</u>
2007-08	\$10,539,452,529	\$0	\$149,460,274	\$10,688,912,803
2008-09	11,097,895,097	0	160,815,739	11,258,710,836
2009-10	11,175,029,435	0	163,857,938	11,338,887,373
2010-11	11,186,889,197	0	157,142,326	11,344,031,523
2011-12	11,388,978,126	0	138,583,972	11,527,562,098

Source: California Municipal Statistic.

**CITY OF ENCINITAS
LARGEST TAXPAYERS
(Fiscal Year 2011-2012)**

<u>Property Owner</u>	<u>Primary Land Use</u>	<u>2011-12 Assessed Valuation</u>	<u>Percent of Total⁽¹⁾</u>
1. Collwood Pines Apartments LP	Apartments	\$ 54,972,120	0.49%
2. Pacific Station Property LLC	Commercial	46,467,461	0.41
3. North Coast Health Center LLC	Professional Buildings	32,409,699	0.29
4. Encinitas Town Center Asses I LLC	Shopping Center	32,288,675	0.29
5. WRI El Camino LP	Shopping Center	31,977,500	0.28
6. Belmont Village Cardiff LP	Convalescent Home	29,255,866	0.26
7. PK III Encinitas Marketplace LP	Shopping Center	28,600,000	0.25
8. Urschel Laboratories Inc.	Apartments	22,443,243	0.20
9. ASN Encinitas LLC	Apartments	22,335,652	0.20
10. KSL Encinitas Resort Corp.	Commercial	21,647,020	0.19
11. Vons Companies Inc.	Shopping Center	21,517,793	0.19
12. Lofts at Moonlight Beach LLC	Commercial	20,107,555	0.18
13. Encinitas Plaza LP	Commercial	17,367,711	0.15
14. Sterling Family Trust	Apartments	17,226,857	0.15
15. Keith B. and Sara S. Harrison	Residential and Commercial	17,141,367	0.15
16. Plenc El Camino LLC	Shopping Center	16,888,954	0.15
17. Hughes/Encinitas Ltd.	Shopping Center	16,612,808	0.15
18. Home Depot USA Inc.	Commercial	16,560,628	0.15
19. Golden Eagle Annuity Investment LP	Shopping Center	16,120,480	0.14
20. Quailpointe Apartments LP	Apartments	<u>15,010,089</u>	<u>0.13</u>
		\$496,951,478	4.39%

Source: California Municipal Statistics, Inc.

⁽¹⁾ 2011-12 Local Secured Assessed Valuation: \$11,321,440,297.

City Audits

The City and all its funds are currently audited annually by the certified public accounting firm of Moreland & Associates, San Marcos, California. Copies of the audited financial statements are on file with the City.

Retail and Total Taxable Sales

The following table presents the retail taxable transactions of the City of Encinitas for the calendar years 2005 through 2010.

CITY OF ENCINITAS TAXABLE RETAIL SALES (\$ in thousands)

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010⁽¹⁾</u>
Apparel Stores	\$ 22,983	\$ 25,626	\$ 26,378	\$ 28,118	\$ 80,620	\$ 25,690
General Merchandise Stores	91,208	96,977	101,819	94,883	59,344	13,468
Food Stores	70,618	71,703	69,015	66,638	85,057	22,015
Eating and Drinking Places	127,224	130,857	138,204	138,632	74,801	18,456
Home Furnishing and Appliances	79,601	80,770	69,015	63,536	100,110	28,742
Building Material and Farm Implements	-	-	-	-	33,402	8,790
Auto Dealers and Auto Supplies	151,760	119,270	98,533	84,025	-	-
Service Stations	80,081	87,069	93,987	115,805	134,441	34,151
Other Retail Stores	287,766	289,446	276,077	250,506	194,488	46,825
Retail Stores Totals	911,241	901,718	873,669	842,141	762,263	198,137
All Other Outlets	<u>116,219</u>	<u>122,082</u>	<u>122,630</u>	<u>113,682</u>	<u>93,299</u>	<u>24,126</u>
Total All Outlets	\$1,027,460	\$1,023,800	\$996,299	\$955,823	\$855,562	\$222,264

⁽¹⁾ Second Quarter of 2010.

Source: State of California, Board of Equalization

Construction Activity

The City's General Plan projects a build-out population of approximately 73,000 and promotes gradual movement toward that amount. Annual total building permit valuation and the annual unit total of new residential permits since 2006-07 for the City is shown in the following table:

CITY OF ENCINITAS NEW BUILDING UNITS PERMITS

<u>Fiscal Year</u>	<u>Number of Permits</u>
06-07	2,769
07-08	2,573
08-09	2,332
09-10	2,242
10-11	<u>2,381</u>
Total	12,297

Source: City of Encinitas

CITY OF SOLANA BEACH

General

The City of Solana Beach (“Solana Beach”) is located on the northern coast of San Diego County. The City is bounded on the south by Del Mar, on the east by the City of San Diego and unincorporated portions of San Diego County, on the west by the Pacific Ocean, and on the north by San Elijo Lagoon. Solana Beach was incorporated in 1986 as a general law city with a council-manager form of government. The Solana Beach City Council consists of five members elected at large by Solana Beach voters. Council members serve a four year term. Council members appoint the City Manager who is responsible for the proper administration of Solana Beach. The table below shows population estimates for Solana Beach, San Diego County and the State.

City of Solana Beach Population Estimates

<u>Year</u>	<u>City of Solana Beach</u>	<u>San Diego County</u>	<u>State of California</u>
2007	12,797	3,065,312	36,116,202
2008	12,790	3,096,975	36,399,676
2009	12,780	3,141,700	36,704,375
2010	12,805	3,141,700	36,966,713
2011	12,867 ⁽¹⁾	3,095,313 ⁽¹⁾	37,253,956 ⁽¹⁾

⁽¹⁾Date as of April 1. Includes U.S. Census data released May 19, 2011.

Source: California State Department of Finance.

The following table shows annual taxable retail store sales in Solana Beach in the last five years for which figures are available, as reported by the State Board of Equalization. During fiscal year 2011, total taxable sales that were reported in Solana Beach were reported to be \$2,447,917, a 4% increase of the total taxable sales of \$2,344,322 that were reported for calendar year 2010.

CITY OF SOLANA BEACH Taxable Retail Sales (in thousands)

State Board of Equalization Major Business Categories	2006-07 Fiscal Year <u>Totals</u>	2007-08 Fiscal Year <u>Totals</u>	2008-09 Fiscal Year <u>Totals</u>	2009-10 Fiscal Year <u>Totals</u>	2010-11 Fiscal Year <u>Totals</u>
Retail Group					
Apparel Stores	\$ 258,257	\$ 267,639	\$ 248,710	\$ 254,015	\$ 270,134
Auto Dealers and Supplies	63,901	66,628	63,158	62,675	63,708
Building Materials	271,028	265,881	261,362	182,533	184,779
Eating and Drinking Places	531,180	558,273	553,087	538,844	548,069
Food Stores	127,002	124,561	123,307	123,693	129,014
Furniture and Appliances	341,069	309,654	288,567	198,093	228,069
Other Retail Stores	896,866	729,729	667,200	717,419	772,183
Total Retail Group	\$ 2,489,302	\$ 2,322,366	\$ 2,205,392	\$ 2,077,273	\$ 2,195,956
Non-Store & Part Time Retailers	\$ 4,962	\$ 7,532	\$ 9,671	\$ 5,935	\$ 3,864
Business, Service and Repair Group	\$ 126,827	\$ 119,179	\$ 105,698	\$ 81,761	\$ 85,978
Manufacturers & Wholesalers Group					
Contractors & Material	\$ 8,588	\$ 16,483	\$ 12,938	\$ 11,988	\$ 19,372
Furniture & Textiles	24,762	4,625	2,802	1,441	4,145
Industrial Equipment	20,534	15,278	11,433	11,657	14,982
All Other Equipment	160,091	120,911	149,203	147,224	123,620
Total Mfg & Wholesale Group	\$ 213,975	\$ 157,297	\$ 176,376	\$ 172,310	\$ 162,120
State Adjustments & Transfers	\$ 0	\$ 0	\$ 0	\$ 7,043	\$ 0
Total Sales All Outlets	\$ 2,835,065	\$ 2,606,373	\$ 2,497,136	\$ 2,344,322	\$ 2,447,917

Source: State of California, Board of Equalization

Construction Activity

The following table shows the number of building permits and valuation in the City of Solana Beach for the last five fiscal years.

CITY OF SOLANA BEACH New Building Units and Total Valuation

<u>Fiscal Year</u>	<u>No. of Permits</u>	<u>Total Valuation</u>
2006/07	285	\$15,506,544
2007/08	281	\$26,012,554
2008/09	222	\$13,566,424
2009/10	248	\$10,870,018
2010/11	184	\$12,514,047

Source: City of Solana Beach.

Property Taxes

Assessed Valuation. The following table shows historical assessed valuation for Solana Beach.

CITY OF SOLANA BEACH Assessed Valuation

	<u>Local Secured</u>	<u>Utility</u>	<u>Unsecured</u>	<u>Total</u>
2007-08	\$3,136,904,631	\$0	\$42,571,014	\$3,179,475,645
2008-09	3,340,906,670	0	44,075,393	3,384,982,063
2009-10	3,395,706,773	0	45,112,840	3,440,819,613
2010-11	3,387,231,619	0	41,730,069	3,428,961,688
2011-12	3,458,751,909	0	43,334,921	3,502,086,830

Source: San Diego County Assessor.

Principal Taxpayers. The twenty largest secured taxpayers in Solana Beach are shown below.

**CITY OF SOLANA BEACH
Principal Taxpayers
2011-12 Secured Tax Roll**

<u>Property Owner</u>	<u>Primary Land Use</u>	<u>2011-12 Assessed Valuation</u>	<u>Percent of Total⁽¹⁾</u>
1. SBTC Holdings LLC	Commercial	\$41,307,683	1.19%
2. Sanyo Foods Corp. of America	Industrial	29,241,915	0.85
3. Pacific Solana Beach Holdings LP	Shopping Center	29,235,554	0.85
4. Fenton Solana Highlands LLC	Apartments	27,669,189	0.80
5. SB Corporate Centre III-IV LLC	Commercial	27,222,158	0.79
6. Muller-Beachwalk LLC	Commercial	22,400,000	0.65
7. ERP Operating LP	Apartments	17,708,254	0.51
8. Lavidia Delmar Associates LP	Convalescent Home	15,649,998	0.45
9. 445 Marine View LLC	Commercial	15,000,000	0.43
10. Urschel Laboratories Inc.	Apartments	12,823,692	0.37
11. Price Self Storage Solana Beach LLC	Industrial	12,494,603	0.36
12. Pinnacle Solana LP	Hotel	11,113,586	0.32
13. Ozawa Farms Inc.	Shopping Center	8,943,277	0.26
14. Generation Properties LP	Commercial	7,974,620	0.23
15. Keith and Sara Harrison	Commercial	7,688,642	0.22
16. Long's Drug Stores California Inc.	Commercial	7,547,998	0.22
17. Beckman Lomas LLC	Commercial	6,804,671	0.20
18. Sloan Norton Revocable Trust	Residential Properties	6,623,081	0.19
19. ALPS Hospitality Inc.	Hotel	6,168,164	0.18
20. Solana/F&G Partners	Commercial	<u>5,999,746</u>	<u>0.17</u>
		\$319,616,831	9.24%

Source: California Municipal Statistics, Inc.

⁽¹⁾ 2011-12 Local Secured Assessed Valuation: \$3,458,751,909.

INFORMATION RELATING TO BOTH ENCINITAS AND SOLANA BEACH

Employment

The cities of Encinitas and Solana Beach are primarily a residential communities, and thus, there are few major employers in the communities. Numerous small businesses primarily make up the employment base in the community. Civilian labor force statistics for the City are unavailable. Encinitas and Solana Beach are part of the Metropolitan Statistical Area (MSA) comprised of San Diego County. The two tables which follow set forth information with respect to employment by industry groups and the labor force in general in the County of San Diego MSA.

COUNTY OF SAN DIEGO-CARLSBAD-SAN MARCOS MSA EMPLOYMENT BY MAJOR INDUSTRY GROUP (2006 - 2009)

<u>Major Industry Group</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Total All Industries ⁽¹⁾	1,312,500	1,319,700	1,309,300	1,240,900
Total Farm	10,900	10,900	10,500	9,500
Mining	500	400	400	400
Construction	92,700	87,000	76,100	61,100
Manufacturing	103,900	102,500	102,800	95,300
Wholesale Trade	45,100	45,500	44,900	40,600
Retail Trade	148,300	148,100	142,000	131,600
Transportation, Warehousing and Utilities	28,700	28,800	29,000	27,400
Publishing	10,700	10,400	9,700	8,900
Broadcasting	4,600	4,800	4,900	4,600
Finance and Insurance	53,200	50,200	46,100	43,300
Real Estate	30,500	30,100	29,200	26,500
Professional and Business Services	219,200	223,200	222,300	206,800
Educational Services	21,300	22,000	24,400	26,700
Health Services	103,800	107,600	112,900	117,500
Leisure and Hospitality	156,500	161,800	164,000	154,800
Other Services	48,400	48,300	48,400	46,800
Federal Government	40,400	40,900	41,600	43,700
State and Local Government	177,500	181,500	183,500	180,800

Source: State of California Employment Development Department.

⁽¹⁾ Figures may not add to total due to independent rounding.

Since the industry employment data referenced above is organized by standard industrial classification codes, employment in the various high tech categories, such as Telecommunications, Software and Biotechnology may not fall into a single employment sector alone. For example, some telecommunications firms appear in Manufacturing, while certain other telecommunications firms appear in Services.

**COUNTY OF SAN DIEGO
EMPLOYMENT TRENDS-ANNUAL AVERAGES 2006-2010
BY PLACE OF RESIDENCE
(in thousands)**

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
County of San Diego					
Labor Force	1,499,900	1,518,300	1,547,300	1,554,100	1,558,200
Employment (000s)	1,440,400	1,449,500	1,455,100	1,404,500	1,393,900
Unemployment Rate (%)	4.0%	4.5%	6.0%	9.6%	10.5%
State of California					
Labor Force (000s)	17,686,700	17,928,700	18,191,000	18,204,200	18,176,200
Employment (000s)	16,821,300	16,970,200	16,883,400	16,141,500	15,916,300
Unemployment Rate (%)	4.9%	5.3%	7.2%	11.3%	12.4%

Sources: California Employment Development Department; California Labor Market Bulletin; Employment Development Department, Labor Market Conditions in California.

Encinitas is experiencing growth throughout its city limits, whereas Solana Beach is presently 97% developed. Growth management is concentrated more on the future redevelopment of Solana Beach than current building. Sections of Solana Beach’s General Plan provide all guidelines relating to growth management.

Population

Both Solana Beach and Encinitas are low density communities consisting primarily of single family homes. Solana Beach is near build-out at 12,867 and Encinitas’ projected build-out under the general plan estimates a population of 73,600 [CONFIRM].

APPENDIX B

SUMMARY OF PRINCIPAL LEGAL DOCUMENTS

The following is a brief summary of the provisions of the Indenture of Trust and the Loan Agreements. Such summary is not intended to be definitive, and reference is made to the complete documents for the complete terms thereof.

DEFINITIONS

Except as otherwise defined in this summary, the terms previously defined in this Official Statement have the respective meanings previously given. In addition, the following terms have the following meanings when used in this summary:

“Act” means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State, as in existence on the Closing Date or as thereafter amended from time to time.

“Agreement” means that certain Joint Exercise of Powers Agreement, dated June 17, 1987, entered into under the Act by and between Encinitas and Solana Beach, together with any amendments thereof and supplements thereto.

“Authority” means the San Elijo Joint Powers Authority, a joint powers authority duly organized and existing under the Agreement and the laws of the State.

“Authority Representative” means the Manager of the Authority.

“Basic Agreement” means the Basic Agreement, dated June 17, 1987, between the Cardiff Sanitation District and the Solana Beach Sanitation District, as amended from time to time, under which the Authority was created.

“Board” means the Board of the Authority.

“Bond Insurance Policy” means the insurance policy issued by the Bond Insurer guaranteeing the scheduled payment of principal of and interest on the Bonds when due.

“Bond Insurer” means **[to come]**.

“Bond Law” means the Marks-Roos Local Bond Pooling Act of 1985, constituting Article 4 of the Act (commencing with Section 6584), as in existence on the Closing Date or as thereafter amended from time to time.

“Bond Year” means each twelve-month period extending from March 2 in one calendar year to March 1 of the succeeding calendar year, both dates inclusive, except that the 1st Bond Year shall extend from the Closing Date to _____.

“Bonds” means the \$_____ aggregate principal amount of San Elijo Joint Powers Authority 2012 Refunding Revenue Bonds (San Elijo Water Reclamation Facility), authorized by and at any time Outstanding pursuant to the Bond Law and this Indenture.

“Business Day” means a day of the year on which banks in New York, New York, and Los Angeles, California, are not required or authorized to remain closed and on which The New York Stock Exchange is not closed.

“Certificate of the Authority” means a certificate in writing signed by the Chairperson, Vice-Chairperson, Authority Representative or Secretary of the Authority, or by any other officer of the Authority duly authorized by the Board for that purpose.

“Cities” mean Encinitas and Solana Beach.

“Closing Date” means _____, 2012, being the date of delivery of the Bonds to Brandis Tallman LLC as the original purchaser thereof.

“Costs of Issuance” means all expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds and the making of the Loans pursuant to the Loan Agreements, including but not limited to all compensation, fees and expenses (including but not limited to fees and expenses for legal counsel) of the Authority and the Trustee, compensation to any financial consultants or underwriters, legal fees and expenses, filing and recording costs, rating agency fees, costs of preparation and reproduction of documents, costs of printing, bond insurance and surety bond premiums, if any.

“Costs of Issuance Fund” means the fund by that name established and held by the Trustee pursuant to the Indenture.

“Debt Service” means, during any period of computation, the amount obtained for such period by totaling the following amounts:

(a) The principal amount of all Outstanding Serial Bonds coming due and payable by their terms in such period; and

(b) The interest which would be due during such period on the aggregate principal amount of Bonds which would be Outstanding in such period if the Bonds are retired as scheduled, but deducting and excluding from such aggregate amount the amount of Bonds no longer Outstanding.

“Depository” means (a) initially DTC, and (b) any other Securities Depository acting as Depository pursuant to Section 2.05 of the Indenture.

“Depository System Participant” means any participant in the Depository’s book-entry system.

“Encinitas” means the City of Encinitas, as successor to the Cardiff Sanitation District.

“Enterprise” or “Facility” means any and all facilities of the Authority used for the treatment and disposal of wastewater, including sewage treatment plants, intercepting and collecting sewers, outfall sewers, force mains, pumping stations, ejector stations, pipes, valves, machinery and all other appurtenances necessary, useful or convenient for the collection, treatment, purification or disposal of sewage, and any necessary lands, rights of way and other real or personal property useful in connection therewith; provided that the term “Enterprise” shall not include the Water Reclamation Facilities.

“Escrow Bank” means U.S. Bank National Association, acting as Escrow Bank under the Escrow Deposit and Trust Agreement.

“Escrow Deposit and Trust Agreement” means the Escrow Deposit and Trust Agreement, dated as of _____, by and between the Authority and the Escrow Bank.

“Escrow Fund” means the fund of that name established and maintained under the Escrow Deposit and Trust Agreement.

“Event of Default” means any of the events described as such in the Indenture.

“Fair Market Value” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell

the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Tax Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, (iii) the investment is a United States Treasury Security—State and Local Government Series that is acquired in accordance with the applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the City and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of the investment. To the extent required by the Regulations, the term “investment” will include a hedge.

“Federal Securities” means any direct, noncallable general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), or other noncallable obligations of any entity the timely payment of principal of and interest on which are directly or indirectly guaranteed by the United States of America.

“Fiscal Year” means any twelve-month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the Authority as its official fiscal year period.

“Gross Revenues” means all gross income and revenue received by the Cities for the collection and treatment of wastewater generated in the Cardiff Sanitary Division with respect to Encinitas, and generated in the City of Solana Beach with respect to Solana Beach, including, without limiting the generality of the foregoing, (a) all income, rents, rates, fees, charges or other moneys derived from the services, facilities and commodities sold, furnished or supplied through the facilities of their wastewater collection systems and the Enterprise, and (b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to the law to their wastewater collection systems and the Enterprise; provided, that the term “Gross Revenues” shall not include customers’ deposits or any other deposits subject to refund until such deposits have become the property of the Cities.

“Indenture” means the Indenture of Trust, dated as of _____, by and between the Authority and the Trustee, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture pursuant to the provisions of the Indenture.

“Information Services” means Financial Information, Inc.’s “Daily Called Bond Service”, 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; Kenny Information Services’ “Called Bond Service,” 55 Broad Street, 28th Floor, New York, New York 10004; Moody’s Investors Service “Municipal and Government,” 99 Church Street, 8th Floor, New York, New York 10007, Attention: Municipal News Reports; Standard & Poor’s Corporation “Called Bond Record,” 25 Broadway, 3rd Floor, New York, New York 10004; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to called bonds as the Authority may designate in a Certificate of the Authority delivered to the Trustee.

“Interest Account” means the account by that name established and held by the Trustee pursuant to Section 4.02(a) of the Indenture.

“Interest Payment Date” means March 1 and September 1 in each year, beginning September 1, 2012, and continuing thereafter so long as any Bonds remain Outstanding.

“Loan Agreements” means, collectively, (a) the Third Amended and Restated Loan Agreement, dated as of _____, by and among the Authority, the Trustee and Encinitas relating to the loan of \$_____ to Encinitas, and (b) the Third Amended and Restated Loan Agreement, dated as of _____

_____, by and among the Authority, the Trustee and Solana Beach, relating to the loan of \$_____ to Solana Beach.

“Loans” means the loans made by the Authority to the Cities under and pursuant to the Loan Agreements.

“Moody’s” means Moody’s Investors Service, Inc., and its successors and assigns.

“Net Revenues” means Gross Revenues less Operation and Maintenance Expenses.

“Nominee” means (a) initially, Cede & Co. as nominee of DTC, and (b) any other nominee of the Depository designated pursuant to Section 2.05(a) of the Indenture.

“Operation and Maintenance Expenses” means all expenses and costs of management, operation, maintenance and repair incurred by the cities for the collection of wastewater in the Cardiff Sanitary Division with respect to Encinitas and in the City of Solana Beach with respect to Solana Beach, as well as the costs of maintaining their respective collection systems, and all incidental costs, fees and expenses properly chargeable to their wastewater collection systems in the Cardiff Sanitary Division with respect to Encinitas and in the City of Solana Beach with respect to Solana Beach (but excluding debt service or other similar payments on parity Debt or other obligations an depreciation and obsolescence charges or reserves therefor and amortization of intangibles and inter-fund transfers or other bookkeeping entries of a similar nature). “Operating and Maintenance Expenses” does not include expenses and costs of management, operation, maintenance and repair of the Water Reclamation Facilities.

“Outstanding”, when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 9.07 of the Indenture) all Bonds theretofore executed, issued and delivered by the Authority under the Indenture except -

- (a) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation;
- (b) Bonds paid or deemed to have been paid within the meaning of Section 9.03 of the Indenture; and
- (c) Bonds in lieu of or in substitution for which other Bonds shall have been executed, issued and delivered pursuant to the Indenture or any Supplemental Indenture.

“Owner” or ‘Bond Owner”, when used with respect to any Bond, means the person in whose name the ownership of such Bond shall be registered on the Registration Books.

“Parity Debt” means indebtedness or other obligations (including leases and loan agreements) hereafter issued or incurred by either of the Cities and secured by a pledge of and lien on Net Revenues equally and ratably with the Loan Installments.

“Permitted Investments” means the following, but only to the extent that the same are acquired at Fair Market Value, which at the time of investment are legal investments under the laws of the State for the moneys proposed to be invested therein:

- (a) Federal Securities;
- (b) any of the following direct or indirect obligations of the following agencies of the United States of America and other entities: (i) direct obligations of the Export-Import Bank; (ii) certificates of beneficial ownership issued by the Farmers Home Administration; (iii) participation certificates issued by the General Services Administration; (iv) mortgage-backed bonds or pass-through obligations issued and guaranteed by the Government National Mortgage Association, the Federal

National Mortgage Association, the Federal Home Loan Mortgage Corporation or the Federal Housing Administration; (v) project notes issued by the United States Department of Housing and Urban Development; and (vi) public housing notes and bonds guaranteed by the United States of America;

(c) interest-bearing demand or time deposits (including certificates of deposit) in federal or State chartered savings and loan associations or in federal or State banks (including the Trustee), provided that: (i) in the case of a savings and loan association, such demand or time deposits shall be fully insured by the Federal Deposit Insurance Corporation, or the unsecured obligations of such savings and loan association shall be rated A or better by Moody's or S&P; and (ii) in the case of a bank, such demand or time deposits shall be fully insured by the Federal Deposit Insurance Corporation, or the unsecured obligations of such bank (or the unsecured obligations of the parent bank holding company of which such bank is the lead bank) shall be rated A or better by Moody's and S&P;

(d) commercial paper rated in the highest rating category by Moody's and S&P;

(e) obligations the interest on which is excludable from gross income pursuant to Section 103 of the Tax Code and which are either (a) rated A or better by Moody's or S&P, or (b) fully secured as to the payment of principal and interest by Federal Securities;

(f) obligations issued by any corporation organized and operating within the United States of America having assets in excess of \$500,000,000, which obligations are rated A or better by Moody's and S&P;

(g) money market funds the policy of which is to invest solely in Federal Securities or in obligations which are fully guaranteed or collateralized by Federal Securities; and

(h) any investment agreement which is either (i) fully collateralized with cash or Federal Securities, or (ii) entered into with a financial institution the long-term unsecured obligations of which are rated A or better by S&P.

(i) the Local Agency Investment Fund - Bond Proceeds Pool established and maintained by the Treasurer of the State of California.

"Principal Account" means the account by that name established and held by the Trustee pursuant to Section 4.02(b) of the Indenture.

"Prior Bonds" means the \$_____ original aggregate principal amount of San Elijo Joint Powers Authority 2003 Refunding Revenue Bonds (San Elijo Water Reclamation Facility), authorized by the Bond Law and issued under the Prior Indenture.

"Prior Indenture" means the Indenture of Trust, dated as of April 1, 2003, by and between the Authority and Union Bank, N.A., authorizing the issuance of the Prior Bonds.

"Private Business Use" means use directly or indirectly in a trade or business carried on by a 'natural person or in any activity carried on by a person other than a natural person, excluding use by a governmental unit (other than the federal government) and use by any person as a member of the general public.

"Qualified Surety Bond" means any irrevocable standby or direct-pay letter of credit or surety bond issued by a commercial bank or insurance company approved by the Bond Insurer and deposited with the Trustee as provided in the Indenture, provided that all of the following requirements are met at the time of acceptance thereof by the Trustee: (a) the long-term credit rating of such bank or insurance company is "AA" or "Aa" or better from each rating agency which then maintains a rating on the Bonds; (b) such letter of credit or surety bond has a term of at least twelve (12) months; (c) such letter of credit or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released pursuant to the Indenture; and (d) the Trustee is authorized pursuant to the terms of such letter of credit or surety

bond to draw thereunder an amount equal to any deficiencies which may exist from time to time in the Debt Service Fund for the purpose of making payments required pursuant to the Indenture.

“Record Date” means, with respect to any Interest Payment Date, the fifteenth (15th) calendar day of the month immediately preceding such Interest Payment Date, whether or not such day is a Business Day.

“Registration Book” means the records maintained by the Trustee pursuant to the Indenture for the registration and transfer of ownership of the Bonds.

“Request of the Authority” means a request in writing signed by the Authority Representative, the Treasurer of the Authority, or by any other officer of the Authority duly authorized by the Board for that purpose.

“Reserve Account” means the account by that name established and held by the Trustee pursuant to 4.02(c) of the Indenture.

“Reserve Requirement” means an amount equal to the lesser of: (i) maximum annual Debt Service on the Bonds; (ii) ten percent (10%) of the principal amount of the Bonds; or (iii) 125% of average annual Debt Service on the Bonds. On the Closing date, the Reserve Requirement for the Bonds is \$_____. Of such amount, Encinitas’ pro rata share of the Reserve Requirement is \$_____, and Solana’s pro rata share of the Reserve Requirement is \$_____. From the Closing Date until payment in full or retirement or discharge of the Bonds in full, each Cities’ pro rata share of the Reserve Requirement shall be equal to each Cities’ pro rata responsibility to pay debt service on the Bonds on the date such pro rata share is determined.

“Revenue Fund” means the fund by that name established pursuant to the Indenture.

“Revenues” means: (a) all amounts payable by the Cities pursuant to the Loan Agreements (taking into account any limitations contained therein with respect to such payment), other than (i) administrative fees and expenses and indemnity against claims payable to the Authority and the Trustee and (ii) amounts payable to the United States of America pursuant to each of the Loan Agreements; (b) any proceeds of Bonds originally deposited with the Trustee and all moneys deposited and held from time to time by the Trustee in the funds and accounts established under the Indenture; (c) income and gains with respect to the investment of amounts on deposit in the funds and accounts established under the Indenture; (d) earnings on the amounts on hand in the Reserve Account.

“S&P” means Standard & Poor’s Corporation, and its successors and assigns.

“Securities Depositories” means The Depository Trust Company, 711 Stewart Avenue, Garden City, New York 11530, Fax-(516) 227-4039 or 4190; Midwest Securities Trust Company, Capital Structures-Call Notification, 440 South LaSalle Street, Chicago, Illinois 60605, Fax-(312) 663-2343; Philadelphia Depository Trust Company, Reorganization Division, 1900 Market Street, Philadelphia, Pennsylvania 19103, Attention: Bond Department, Fax-(215) 496-5058; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the Authority may designate in a Certificate of the Authority delivered to the Trustee.

“Solana Beach” means the City of Solana Beach, a general law city duly organized and existing under the laws of the State.

“State” means the State of California.

“Supplemental Indenture” means any indenture, agreement or other instrument hereafter duly executed by the Authority and the Trustee in accordance with the provisions of the Indenture.

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the date of issuance of the Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of

issuance of the Bonds, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Tax Code.

“Tax Regulations” means temporary and permanent regulations promulgated under or with respect to Section 103 and Sections 141 through 150, inclusive, of the Tax Code.

“Trust Office” means the principal corporate trust office of the Trustee at Union Bank, N.A., 120 S. San Pedro Street, Suite 400, Los Angeles, CA 90012, or such other offices as may be specified to the Authority by the Trustee in writing.

“Trustee” means Union Bank, N.A., and its successors and assigns, and any other corporation or association which may at any time be substituted in its place as provided in Article VI of the Indenture.

“Water Reclamation Facilities” means tertiary treatment system and reclaimed water distribution system of the Authority, including two 750,000 gallon reservoirs, 17 miles of distribution pipeline and two pumping stations, as more particularly described in the Authority’s State Revolving Fund Loan Program No. C 06-4155-110.

INDENTURE

Establishment of Funds and Accounts; Flow of Funds

The proceeds of sale of the Bonds will be deposited with the Trustee in the Reserve Account and the Costs of Issuance Fund and transferred to the Escrow Bank for deposit in the Escrow Fund established under the Escrow Agreement. The Escrow Fund established under the Escrow Agreement will be applied by the Escrow Bank to refund the Prior Bonds in full on or about _____, 2012.

Costs of Issuance Fund. Pursuant to the Loan Agreements, a portion of the proceeds of each Loan will be deposited with the Trustee in the Costs of Issuance Fund on the Closing Date. The moneys in the Costs of Issuance Fund will be disbursed to pay costs of issuing the Bonds and other related financing costs from time to time upon receipt of written requests of the Authority. On the 60th day following the Closing Date, or upon the earlier request of the Authority stating that all such costs have been paid, the Trustee will transfer all remaining amounts in the Costs of Issuance Fund to the Revenue Fund.

Revenue Fund: Receipt, Deposit and Application of Amounts Therein. All Revenues described in clause (a) of the definition thereof will be deposited by the Trustee in the Revenue Fund promptly upon receipt. On or before each Interest Payment Date, the Trustee will transfer from the Revenue Fund and deposit into the following respective accounts (each of which the Trustee will establish and maintain within the Revenue Fund), the following amounts in the following order of priority, the requirements of each such account (including the making up of any deficiencies in any such account resulting from lack of Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any transfer is made to any account subsequent in priority:

(a) Interest Account. On or before each Interest Payment Date, the Trustee will deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to equal the amount of interest becoming due and payable on such Interest Payment Date on all outstanding Bonds. All moneys in the Interest Account will be used and withdrawn by the Trustee solely for the purpose of paying the interest on the Bonds as it will become due and payable (including accrued interest on any Bonds redeemed prior to maturity). All amounts on deposit in the Interest Account on the first day of any Bond Year, to the extent not required to pay any interest then having come due and payable on the outstanding Bonds, will be withdrawn therefrom by the Trustee and transferred upon a written request of the Cities, either (a) credited on a pro-rata basis (based upon the Cities’ respective responsibility for debt service as of the date of the withdrawal) towards any amounts to be paid by the Cities pursuant to the Loan Agreements, or (b) transferred to the Cities on a pro rata

basis (based upon the Cities' respective responsibility for debt service as of the date of the transfer) to be used for any lawful purposes of the Cities.

(b) Principal Account. On or before each Interest Payment Date on which the principal of the Bonds will be payable, the Trustee will deposit in the Principal Account an amount required to cause the aggregate amount on deposit therein to equal the principal amount of the Bonds coming due and payable on such date, or the redemption price of the Bonds (consisting of the principal thereof and any applicable redemption premiums) required to be redeemed on such date. All moneys in the Principal Account will be used and withdrawn by the Trustee solely for the purpose of paying the principal of and redemption premium (if any) on the Bonds at the maturity thereof or upon the redemption thereof. All amounts on deposit in the Principal Account on the first day of any Bond Year, to the extent not required to pay the principal of any outstanding Bonds then having come due and payable, will be withdrawn therefrom and transferred to the Cities on a pro rata basis (based upon the Cities' respective responsibility for debt service as of the date of the withdrawal) to be used for any lawful purpose of the Cities.

(c) Reserve Account. The amount on deposit in the Reserve Account shall be maintained at the Reserve Requirement at all times so long as the Loans remain unpaid. In the event that either of the Cities shall fail to deposit with the Trustee the full amount required to be deposited pursuant to the Loan Agreements on or before the second (2nd) Business Day preceding any Interest Payment Date, on such Business Day the Trustee shall withdraw from the Reserve Account and transfer to the Interest Account and the Principal Account, in such order, an amount equal to the difference between (a) the amount required to be deposited pursuant to the Loan Agreements and (b) the amount actually deposited by the Cities. In the event that the amount on deposit in the Reserve Account shall at any time be less than the Reserve Requirement, the Trustee shall promptly notify the Cities of the amount required to be deposited therein to restore the balance to the Reserve Requirement, such notice to be given by telephone, telefax or other form of telecommunication promptly confirmed in writing, and the Cities shall thereupon transfer to the Trustee their pro rata share (based upon the Cities' respective responsibility for debt service as of the date of the required transfer) of the amount needed to restore the Reserve Account to the Reserve Requirement; except that in no event shall either City be required to make up a deficiency in the Reserve Account caused by the other City's nonpayment of a Loan Installment. Amounts on deposit in the Reserve Account shall not be pledged or assigned as security for or applied in any way to, the payment of any obligations other than the obligation of the Authority under the Indenture.

In the event that the amount on deposit in the Reserve Account on the second (2nd) Business Day preceding any Interest Payment Date (other than the final Interest Payment Date) exceeds the Reserve Requirement, the Trustee shall thereupon withdraw from the Reserve Account all amounts in excess of the Reserve Requirement and, at the Written Request of the Cities, either (a) credit such amounts on a pro rata basis, towards the deposit then required to be made by the Cities pursuant to the Loan Agreements, or (b) pay such amounts to the Cities on a pro rata basis (based upon the Cities' respective responsibility for debt service as of the date of the withdrawal) to be used for any lawful purpose. At the Written Request of the Cities filed with the Trustee, all amounts in the Reserve Account shall either be (a) credited on a pro rata basis (based upon the Cities' respective responsibility for debt service as of the date of the withdrawal), on the second (2nd) Business Day preceding the final Interest Payment Date, to the deposit then required to be made by the Cities pursuant to the Loan Agreements, or (b) transferred on a pro rata basis, on the final Interest Payment Date, to the Cities to be used for any lawful purpose. Notwithstanding the foregoing provisions of this paragraph, however, no amounts shall be withdrawn from the Reserve Account and transferred to the Cities pursuant to this paragraph during any period in which an Event of Default shall have occurred and be continuing under the Indenture.

The Reserve Requirement may be satisfied by crediting to the Reserve Account moneys, a letter of credit, a bond insurance policy, any other comparable credit facility or any combination thereof, which in the aggregate make funds available in the Reserve Account in an amount equal to the Reserve Requirement; provided however, the provider of any such letter of credit, bond insurance policy or other comparable credit

facility, must be rated in one of the two highest rating categories by S&P or Moody's at the time of delivery of such letter of credit, bond insurance policy or other comparable credit facility; and provided further that such letter of credit, bond insurance policy or other comparable credit facility shall comply with the requirements of the Bond Insurer. Upon the deposit with the Trustee of such letter of credit, bond insurance policy or other comparable credit facility, the Trustee shall release moneys then on hand in the Reserve Account to the Cities on a pro rata basis (based upon the Cities' respective responsibility for debt service as of the date of the withdrawal), in an amount equal to the face amount of the letter of credit, bond insurance policy or other comparable credit facility.

Investment of Funds

All moneys in any of the funds or accounts held by the Trustee under the Indenture will be invested by the Trustee solely in Permitted Investments as directed by the Authority in advance of the making of such investments. In the absence of any such direction of the Authority, the Trustee will invest any such moneys solely in Federal Securities or money market funds described in paragraph (g) of the definition of Permitted Investments. Obligations purchased as an investment of moneys in any fund will be deemed to be part of such fund or account.

All interest or gain derived from the investment of amounts in any of the funds or accounts established under the Indenture will be deposited in the fund or account from which such investment was made. For the purpose of determining the amount in any fund or account, the value of Permitted Investments credited to such fund will be valued at the lesser of (a) the original cost thereof (excluding any brokerage commissions and excluding any accrued interest), or (b) the par amount thereof.

Acquisition, Disposition and Valuation of Investments

(a) Except as otherwise provided in subsection (b) of this Section, the Authority covenants that all investments of amounts deposited in any fund or account created by or pursuant to this Indenture, or otherwise containing gross proceeds of the Bonds (within the meaning of section 148 of the Tax Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Indenture or the Tax Code) at Fair Market Value.

(b) Investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Tax Code and (unless valuation is undertaken at least annually) investments in the Reserve Account shall be valued at their present value (within the meaning of section 148 of the Tax Code).

Covenants of the Authority

Payment of Bonds. The Authority will punctually pay or cause to be paid the principal of and interest to become due on all the Bonds, in strict conformity with the terms of the Bonds and of the Indenture, but only out of Revenues and other assets pledged for such payment as provided in the Indenture. The Authority will not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Revenues and other assets pledged or assigned under the Indenture while any of the Bonds are outstanding, except the pledge and assignment created by the Indenture.

Accounting Records and Financial Statements. The Trustee will at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with industry standards, in which complete and accurate entries will be made of all transactions relating to the proceeds of Bonds, the Revenues, the Loan Agreements and all funds and accounts established pursuant to the Indenture. Such books of record and account will be available for inspection by the Authority and the Cities, during regular business hours and upon reasonable prior notice.

No Additional Obligations. The Authority covenants that no additional bonds, notes or other indebtedness will be issued or incurred which are payable out of the Revenues in whole or in part.

Covenants. The Authority will not take, nor permit nor suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of any of the Bonds which would cause any of the Bonds to be “arbitrage bonds” or “private activity bonds” within the meaning of applicable federal tax law. The Authority will cause to be calculated annually all excess investment earnings which are required to be rebated to the United States of America under applicable federal tax law, and will cause all required amounts to be rebated from payments made by the Cities under the Loan Agreements.

Loan Agreements: Amendments Thereof. The Trustee will promptly collect all amounts due from the Cities pursuant to the Loan Agreements and will diligently enforce, and take all steps, actions and proceedings reasonably necessary for the enforcement of all of the rights of the Authority thereunder and for the enforcement of all of the obligations of the Cities thereunder. The Authority, the Trustee and the Cities may at any time amend or modify any Loan Agreement with the written consent of the Bond Insurer, but only (a) if the Trustee first obtains the written consent of the Owners of a majority in aggregate principal amount of the Bonds then outstanding to such amendment or modification, or (b) without the consent of any of the Bond Owners, if such amendment or modification is for any one or more of the following purposes-

(a) to add to the covenants and agreements of the City contained in such Loan Agreement, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power therein reserved to or conferred upon the City; or

(b) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in such Loan Agreement, or in any other respect whatsoever as the City may deem necessary or desirable, provided under any circumstances that such modifications or amendments shall not materially adversely affect the interests of the Owners of the Bonds; or

(c) to amend any provision thereof relating to federal tax law, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest on any of the Bonds under the federal tax law, in the opinion of nationally-recognized bond counsel.

Amendment of Indenture

The Indenture may be modified or amended at any time by a supplemental indenture with the written consent of the Bond Insurer and the Owners of a majority in aggregate principal amount of the Bonds then outstanding. No such modification or amendment may (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Authority to pay the principal, interest or redemption premiums (if any) at the time and place and at the rate and in the currency provided therein of any Bond without the express written consent of the Owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification, or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee.

The Indenture may also be modified or amended at any time by a supplemental indenture, without the consent of any Bond Owners, to the extent permitted by law, with the written consent of the Bond Insurer, but only for any one or more of the following purposes:

(a) to add to the covenants and agreements of the Authority, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power reserved to or conferred upon the Authority, so long as such limitation or surrender of such rights or power does not adversely affect the interests of the Bond Owners; or

(b) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in the Indenture, or in any other respect whatsoever as the Authority may deem necessary or desirable, provided under any circumstances that

such modifications or amendments shall not materially adversely affect the interests of the Owners of the Bonds in the reasonable judgment of the Authority; or

(c) to amend any provision of the Indenture relating to the federal tax law, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest on any of the Bonds under federal tax law, in the opinion of nationally recognized bond counsel.

Events of Default

Events of Default Defined. The following events constitute events of default under the Indenture:

(a) Default in the due and punctual payment of the principal of any Bond when and as the same becomes due and payable, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise (provided that in determining whether such payment has not been made, no effect shall be given to payments made under the Bond Insurance Policy).

(b) Default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable.

(c) Failure by the Authority to observe and perform any of the other covenants, agreements or conditions contained in the Indenture or in the Bonds, if such default continues for a period of 30 days after written notice thereof (unless such grace period is, with the consent of the Bond Insurer, extended to 60 days) (the "Grace Period"), specifying such failure and requesting that it be remedied, has been given to the Authority by the Trustee, or to the Authority and the Trustee by the Owners of not less than 25% in aggregate principal amount of the Bonds at the time outstanding; provided, however, that if in the reasonable opinion of the Authority the failure stated in such notice can be corrected, but not within such Grace Period, the Trustee and such Owners shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Authority within such Grace Period and diligently pursued until such failure is corrected.

(d) Certain events relating to bankruptcy or insolvency of the Authority.

(e) An event of default has occurred under either of the Loan Agreements.

Remedies. Upon the occurrence and during the continuance of an Event of Default, the Trustee may pursue any available remedy at law or in equity (including an action in mandamus) to enforce the payment of the principal of, premium, if any, and interest on the outstanding Bonds, and to enforce any rights of the Trustee under or with respect to the Indenture, subject to the prior written consent of the Bond Insurer. In the event the maturity of the Bonds is accelerated, the Bond Insurer may elect, in its sole discretion to pay accelerated principal and interest accrued on such principal to the date of acceleration (to the extent unpaid by the Authority) and the Trustee shall be required to accept such amounts. Upon payment of such accelerated principal and interest accrued to the acceleration date as provided above, the Bond Insurer's obligations under the Bond Insurance Policy with respect to such Bonds shall be fully discharged. Upon the occurrence of an event of default and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Bond Owners under the Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Revenues and other amounts pledged thereunder, pending such proceedings, with such powers as the court making such appointment shall confer. If an event of default has occurred and is continuing and if requested to do so by the Bond Insurer and the Owners of at least 25% in aggregate principal amount of Bonds then outstanding and upon being indemnified as provided in the Indenture, the Trustee is obligated to exercise such one or more of the rights and powers conferred by the Indenture as the Trustee, being advised by counsel, deems most expedient in the interests of the Bond Owners. No delay or omission to exercise any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver of any such event of default or acquiescence therein; such right or power may be exercised from time to time as often as may be deemed expedient.

Application of Revenues and Other Funds After Default. All amounts received by the Trustee pursuant to any right given or action taken by the Trustee under the Indenture shall be applied by the Trustee in the following order upon presentation of the Bonds -

First, to the payment of the costs and expenses of the Trustee in declaring such event of default and in carrying out the provisions of the Indenture, including reasonable compensation to its agents, attorneys and counsel; and

Second, to the payment of the whole amount of interest on and principal of the Bonds then due and unpaid, with interest on overdue installments of principal and interest to the extent permitted by law at the net effective rate of interest then borne by the outstanding Bonds; provided, however, that in the event such amounts shall be insufficient to pay in full the full amount of such interest and principal, then such amounts shall be applied in the following order of priority:

(a) first, to the payment of all installments of interest on the Bonds then due and unpaid, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full,

(b) second, to the payment of principal of all installments of the Bonds then due and unpaid, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full,

(c) third, to the payment of the redemption price (including principal and interest accrued to the redemption date) of the Bonds to be redeemed from Revenues derived from the acceleration of any Loan, on a pro rata basis in the event that the available amounts are insufficient to pay the redemption price of all such Bonds in full, and

(d) fourth, to the payment of interest on overdue installments of principal and interest, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full.

Limitation on Bond Owners' Right to Sue. No Owner of any Bond has the right to institute any suit, action or proceeding at law or in equity, for any remedy under the Indenture without the prior written consent of the Bond Insurer, and not unless (a) such Owner has previously given to the Trustee written notice of the occurrence of an event of default; (b) the Owners of a majority in aggregate principal amount of all the Bonds then outstanding have requested the Trustee in writing to exercise its powers under the Indenture; (c) said Owners have tendered to the Trustee indemnity reasonably acceptable to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request; and (d) the Trustee has refused or failed to comply with such request for a period of 60 days after such written request has been received by the Trustee and said tender of indemnity is made to the Trustee.

Non-Waiver. A waiver of any default or breach of duty or contract by the Trustee or any Bond Owner will not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach. No delay or omission of the Trustee or any Owner of any of the Bonds to exercise any right or power accruing upon any default will impair any such right or power or be construed to be a waiver of any such default or acquiesce therein.

Power of Trustee to Control Proceedings. In the event that the Trustee, upon the happening of an event of default, shall have taken any action, by judicial proceedings or otherwise, pursuant to its duties under the Indenture, whether upon its own discretion or upon the request of the Owners of a majority in aggregate principal amount of the Bonds then outstanding, it shall have full power, in the exercise of its discretion for the best interests of the Owners of the Bonds, with respect to the continuance, discontinuance, withdrawal, compromise, settlement or other disposal of such action; provided, however, that the Trustee shall not, unless there no longer continues an event of default, discontinue, withdraw, compromise or settle, or otherwise dispose of any litigation pending at law or in equity, if at the time there has been filed with it a written request signed by the Owners of a majority in aggregate principal amount of the outstanding Bonds opposing such discontinuance, withdrawal, compromise, settlement or other disposal of such litigation.

Discharge of Indenture

The Authority may pay and discharge the indebtedness on any or all outstanding Bonds in any one or more of the following ways:

(a) by paying or causing to be paid the principal of and interest and premium (if any) on such Bonds outstanding, as and when the same become due and payable;

(b) by irrevocably depositing with the Trustee, in trust, at or before maturity, money which, together with the available amounts then on deposit with the Trustee in the funds and accounts provided for in the Indenture and the Loan Agreements, is fully sufficient to pay such Bonds, including all principal, interest and premiums, if any; or

(c) by (i) irrevocably depositing with the Trustee or any other fiduciary, in trust, Federal Securities in such amount as an independent certified public accountant determines in a written report (a "Verification") will, together with the interest to accrue thereon and available moneys then on deposit with the Trustee in the funds and accounts provided for in the Indenture and the Loan Agreements, be fully sufficient to pay and discharge the indebtedness on such Bonds (including all principal, interest and premiums, if any) at or before their respective maturity dates; (ii) delivering an Escrow Deposit Agreement (which shall be acceptable in form and substance to the Bond Insurer), (iii) delivering an opinion of nationally recognized bond counsel to the effect that the Bonds are no longer "Outstanding" under this Indenture and (iv) delivering a certificate of discharge of the Trustee with respect to the Bonds; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed to the Authority, the Trust and the Bond Insurer. The Bond Insurer shall be provided with final drafts of the above referenced documentation not less than five business days prior to the funding of the escrow;

Upon such payment, and notwithstanding that any Bonds have not been surrendered for payment, the pledge of the Revenues and other funds provided for in the Indenture with respect to such Bonds, and all other pecuniary obligations of the Authority under the Indenture with respect to such Bonds, shall cease and terminate, except only the obligation of the Authority to pay or cause to be paid to the Owners of such Bonds not so surrendered and paid all sums due thereon from amounts set aside for such purpose. Any funds thereafter held by the Trustee, which are not required for said purposes, shall be paid over to the Authority.

Removal of Trustee

The Owners of a majority in aggregate principal amount of the Outstanding Bonds may at any time, and the Authority may (and at the request of either City shall) so long as no Event of Default shall have occurred and then be continuing, remove the Trustee initially appointed, and any successor thereto, by an instrument or concurrent instruments in writing delivered to the Trustee, whereupon the Authority or such Owners, as the case may be, shall appoint a successor or successors thereto; provided that any such successor shall be a bank or trust company meeting the requirements set forth in the Indenture.

LOAN AGREEMENTS

Terms of Loans; Payment of Principal and Interest

Pursuant to the Loan Agreements, the Authority agrees to restate the Loans made to the Cities on the Closing Date of the Prior Bonds. The principal of each Loan is payable in aggregate installments on March 1 in each of the years and in the amounts, and interest on each installment of the Loan is calculated at the rates per annum and is payable on each Interest Payment Date in the aggregate amounts, corresponding to the amounts of principal and interest then coming due with respect to the outstanding Bonds, including the principal amount of Bonds then subject to mandatory sinking fund redemption. Principal of and interest on the Loans is payable by the Cities to the Trustee, as assignee of the Authority under the Indenture, in immediately available funds, at least two (2) days prior to each Interest Payment Date.

Payment of Loans

The Loans are subject to optional prepayment in whole, or in part in any integral multiple of \$5,000, on any date on which the Bonds are subject to optional redemption, from any available source of funds of the City, at a prepayment price corresponding to the redemption price of the Bonds to be redeemed from such prepayments.

Rate Covenant

Each City covenants that it shall prescribe, revise and collect such charges for the services and facilities provided by its wastewater collection system which, after allowances for contingencies and error in the estimates, shall produce Gross Revenues sufficient in each Fiscal Year to provide (1) Net Revenues equal to at least 1.1 times (i) the Loan Installments coming due and payable during such Fiscal Year, (ii) all payments required with respect to Parity Debt, and (iii) amounts required to replenish the Reserve Account, as required by the Indenture.

Parity Debt

Either City may issue or incur Parity Debt on a parity with its respective Loan, subject to the following conditions:

(i) The City is not in default under the terms of its Loan Agreement;

(ii) Net Revenues, calculated on sound accounting principles, as shown by the books of the City for the latest Fiscal Year or any more recent twelve (12) month period selected by the City ending not more than sixty (60) days prior to the adoption of the resolution pursuant to which instrument such Parity Debt is issued or incurred, as shown by the books of the City, plus, at the option of the City, either or both of the items hereinafter in this subsection designated (1) and (2), shall have amounted to at least 1.2 times the sum of the maximum Loan Installments coming due and payable in any future Fiscal Year and the maximum annual debt service on all Parity Debt outstanding immediately subsequent to the incurring of such additional obligations.

Either or both of the following items may be added to such Net Revenues for the purpose of applying the above-described restriction:

(1) An allowance for revenues from any additions to or improvements or extensions of its wastewater collection system and the Enterprise to be made with the proceeds of such additional obligations, and also for net revenues from any such additions, improvements or extensions which have been made from moneys from any source but which, during all or any part of such Fiscal Year, were not in service, all in an amount equal to 75% of the estimated additional average annual revenues to be derived from such additions, improvements and extensions for the first 36-month period following closing of the proposed Parity Debt, all as shown by the certificate or opinion of a qualified independent engineer employed by the City; and

(2) An allowance for earnings arising from any increase in the charges made for service from its wastewater collection system and the Enterprise which has become effective prior to the incurring of such additional obligations but which, during all or any part of such Fiscal Year, was not in effect, in an amount equal to 100% of the amount by which revenues would have been increased if such increase in charges had been in effect during the whole of such Fiscal Year and any period prior to the incurring of such additional obligations, as shown by the certificate or opinion of a qualified independent engineer employed by the City.

Additional Payments

In addition to the Loan Installments, the Cities shall pay, from Net Revenues, when due, their respective Proportionate Share of all costs and expenses incurred by the Authority to comply with the provisions of the Indenture of Trust and the Loan Agreements, including, without limitation all Costs of Issuance (to the extent not paid from amounts on deposit in the Costs of Issuance Fund), compensation due to the Trustee for its fees, costs and expenses incurred under the Indenture of Trust and all costs and expenses of the Trustee.

Payments to Reserve Account

In addition to the Loan Installments, the Cities shall pay to the Trustee, from Net Revenues, such amounts as shall be required to replenish the Reserve Account in the event of: (i) a draw therefrom caused by the respective City's failure to pay Loan Installments due and payable under the Loan Agreements in a timely manner; and (ii) a deficiency in the Reserve Account due to market fluctuation of the Permitted Investments held in the Reserve Account, all in accordance with the Trust Indenture. If there is a deficiency in the Reserve Account due to market fluctuations in the investments in the Reserve Account, the Local Agency must make up the deficiency on a pro rata basis (based upon each Local Agency's proportionate responsibility for debt service as of the date of the calculation).

Pledge of Net Revenues

(a) Pledge of Net Revenues. Each City agrees in its Loan Agreement that the payment of the Loan Installments shall be secured by a first and prior pledge, charge and lien upon Net Revenues, and Net Revenues sufficient to pay the Loan Installments as they become due and payable are pledged, charged, assigned, transferred and set over by each City to the Authority and its assigns for the purpose of securing payment of the Loan Installments. The Net Revenues shall constitute a trust fund for the security and payment of the Loan Installments. If Net Revenues are ever insufficient to pay Loan Installments as the same become due and payable, the City shall pay Loan Installments from funds of the City lawfully available therefor. The Cities further agree that none of the Net Revenues shall be transferred or paid into its general fund unless and until the then required payments of the Loan Installments have been made and the Cities' pro rata share (based upon the respective City's percentage share of debt service as of the date of transfer) of the Reserve Requirement deposit in the Reserve Account has been met.

(b) Transfer to Pay Loan Installments. In order to provide for the payment of Loan Installments when due, the City shall, on or before each Due Date, transfer to the Trustee for deposit into the Revenue Fund the amount indicated in the Loan Agreement as required for the next occurring Interest Payment Date; provided, however, that, to the extent interest or income earned on the Revenue Fund or moneys representing capitalized interest and funded from Bond proceeds are remaining in the Revenue Fund, the City's payment obligations for interest on such Due Date shall be paid from such interest, income or Bond proceeds.

Other Covenants of the Cities

Limitation on Superior Debt. Each City covenants in its Loan Agreement that, so long as its Loan remains unpaid, the City shall not issue any bonds, notes or other obligations, enter into any agreement or otherwise incur any loan, advances or indebtedness, which are in any case secured by a lien on all or any part of the Net Revenues which is superior to or on a parity with the lien established under the Loan Agreement for the security of the Loan, excepting only Parity Debt issued pursuant to the Loan Agreement. Nothing herein is intended or shall be construed in any way to prohibit or impose any limitations upon the issuance by a City of loans, bonds, notes, advances or other indebtedness which are unsecured or which are secured either by a junior lien on the Net Revenues.

Payment of Claims. Each City will pay and discharge, or cause to be paid and discharged, any and all lawful claims for labor, materials or supplies which, if unpaid, might become a lien or charge upon the properties owned by the City or upon the Net Revenues or any part thereof, or upon any funds in the hands of

the Trustee, or which might impair the security of the Restated Loan. Nothing herein contained shall require the City to make any such payment so long as the City in good faith shall contest the validity of said claims.

Books and Accounts; Financial Statements. Each City will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City and the Authority, in which complete and correct entries shall be made of all transactions relating to the Net Revenues. Such books of record and accounts shall at all times during business hours be subject, upon prior written request, to the reasonable inspection of the Authority, the Trustee and the Owners of any Bonds then Outstanding, or their representatives authorized in writing.

Each City will cause to be prepared and filed with the Trustee annually, within 6 months after the close of each Fiscal Year so long as any of the Bonds are Outstanding, complete audited financial statements with respect to such Fiscal Year showing the Net Revenues, all disbursements from its wastewater collection system revenues and the financial condition of the City, including the balances in all funds and accounts relating to its wastewater collection system as of the end of such Fiscal Year. Each City will furnish a copy of such statements, upon reasonable request, to any Bond Owner. Each City shall review in each fiscal year, and take appropriate action to provide for, the future availability of sufficient Net Revenues for the timely payments of debt service on its respective Loan and any Parity Debt.

Protection of Security and Rights. Each City will preserve and protect the security of its Loan Agreement and the rights of the Trustee and the Bond Owners with respect to the Loan Agreement. From and after the Closing Date, the Loan Agreements shall be incontestable by either City.

Payments of Taxes and Other Charges. Each City will pay and discharge, or cause to be paid and discharged, all taxes, service charges, assessments and other governmental charges which may hereafter be lawfully imposed upon either City or the properties then owned by either City, when the same shall become due. Nothing herein contained shall require either City to make any such payment so long as either City in good faith shall contest the validity of said taxes, assessments or charges. Each City will duly observe and conform with all valid requirements of any governmental authority relative to its wastewater treatment system or any part thereof.

Operation of its Wastewater Collection System. Each City covenants to operate, or cause to be operated, its wastewater collection system in accordance with customary standards and practices applicable to similar facilities, and to cause the Authority to operate, or cause to be operated, the Enterprise in accordance with customary standards and practices applicable to similar facilities.

Payment of Expenses; Indemnification. Each City shall pay to the Trustee from time to time all compensation for all services rendered under its respective Loan Agreement and the Indenture, including but not limited to all reasonable expenses, charges, legal and consulting fees and other disbursements and those of its attorneys, agents and employees, incurred in and about the performance of its powers and duties under its Loan Agreement and under the Indenture. Upon the occurrence of an Event of Default, the Trustee shall have a first lien on the Net Revenues and the Reserve Account to secure the payment to the Trustee of all fees, costs and expenses, including reasonable compensation to its experts, attorneys and counsel incurred in declaring such Event of Default and in exercising the rights and remedies set forth in Article V of each Loan Agreement.

Compliance With Federal Tax Requirements. Neither City shall take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Loans which would cause any of the Bonds to be "arbitrage bonds" or "private activity bonds" under federal tax law. The Cities agree to furnish all information to, and cooperate fully with, the Authority, the Trustee and their respective officers, employees, agents and attorneys, in order to assure compliance with the provisions of federal tax law relating to the rebate of excess investment earnings. The Cities will pay to the Trustee from Net Revenues or any other source of legally available funds all amounts determined by the Authority to be subject to such rebate.

Continuing Disclosure. The Cities covenant and agree to comply with and carry out all of the provisions of the continuing Disclosure Certificate. Notwithstanding any other provision of the Loan Agreements, failure of the Cities to comply with the Continuing Disclosure Certificate shall not be considered

and Event of Default; however, the Trustee may (and, at the request of any Participating Underwriter or the holders of at least 25% aggregate principal amount of Outstanding bonds, shall) or any holder or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

No Termination of Agreement. The Cities will not terminate the Agreement so long as the Bonds are outstanding.

Amendment of Loan Agreements. The Loan Agreements may only be amended as provided in the Indenture. See “SUMMARY OF PRINCIPAL LEGAL DOCUMENTS -Indenture - Covenants of the Authority - Loan Agreement; Amendments Thereof” herein.

Events of Default and Remedies

The following events constitute events of default under each of the Loan Agreements:

(a) Failure by a City to pay the principal of or interest or prepayment premium (if any) on the related Loan or any Parity Debt when due and payable.

(b) Failure by a City to observe and perform any of the covenants, agreements or conditions on its part contained in such Loan Agreement, other than as referred to in the preceding clause (a), for a period of 60 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Trustee or to the City and the Trustee by the Owners of not less than twenty-five percent (25%) in aggregate principal amount of the Outstanding Bonds; provided, however, that if in the reasonable opinion of the City the failure stated in such notice can be corrected, but not within such 60 day period, the Trustee shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within such 60 day period and diligently pursued until such failure is corrected.

(c) Certain events relating to bankruptcy or insolvency of the City.

If an event of default has occurred and is continuing under a Loan Agreement, the Trustee may, and at the written direction of the Owners of a majority in aggregate principal amount of the outstanding Bonds the Trustee shall, (a) declare the principal of the related Loan, together with the accrued interest on all unpaid installments thereof, to be due and payable immediately, and upon any such declaration the same shall become immediately due and payable, and (b) exercise any other remedies available to the Trustee in law or at equity. This provision, however, is subject to the condition that if, at any time after the principal of such Loan shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the City shall deposit with the Trustee a sum sufficient to pay all installments of principal of such Loan matured prior to such declaration and all accrued interest thereon, with interest on such overdue installments of principal and interest at the net effective rate then borne by the outstanding Bonds, and the reasonable expenses of the Trustee, and any and all other defaults known to the Trustee (other than in the payment of principal of and interest on such Loan due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall have been made therefor, then the Owners of the majority in aggregate principal amount of the outstanding Bonds may, by written notice to the Trustee and the City, rescind and annul such declaration and its consequences.

Application of Funds Upon Default

All amounts received by the Trustee pursuant to any right given or action taken by the Trustee under the provisions of either Loan Agreement, or otherwise held by the Trustee upon the occurrence of any Event of Default, shall be applied by the Trustee in the following order:

First, to the payment of the costs and expenses of the Trustee in declaring such event of default and in carrying out the provisions of such Loan Agreement relating to remedies, including reasonable compensation to its agents, attorneys and counsel; and

Second, to the payment of the whole amount of interest on and principal of such Loan then due and unpaid, with interest on overdue installments of principal and interest to the extent permitted by law at the net effective rate of interest then borne by the outstanding Bonds; provided, however, that in the event such amounts shall be insufficient to pay in full the full amount of such interest and principal, then such amounts shall be applied in the following order of priority:

(a) first, to the payment of all installments of interest on such Loan then due and unpaid, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full,

(b) second, to the payment of principal of all installments of such Loan then due and unpaid, other than principal having come due and payable solely by reason of acceleration, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full,

(c) third, to the payment of principal of such Loan then due and unpaid and having come due and payable solely by reason of acceleration, on a pro rata basis in the event that the available amounts are insufficient to pay all such principal in full, and

(d) fourth, to the payment of interest on overdue installments of principal and interest, on a pro rata basis in the event that the available amounts are insufficient to pay all such interest in full.

No Waiver. Nothing in any Loan Agreement shall affect or impair the obligation of the City, which is absolute and unconditional, to pay from the Net Revenues and other amounts pledged thereunder, the principal of and interest and premium (if any) on the respective Loan to the Trustee on the respective Interest Payment Dates, or affect or impair the right of action, which is also absolute and unconditional, of the Trustee to institute suit to enforce such payment by virtue of the contract embodied in the Loan Agreement.

A waiver of any default by the Trustee shall not affect any subsequent default or impair any rights or remedies on the subsequent default. No delay or omission of the Trustee to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy conferred upon the Trustee by the Act or by the respective Loan Agreement may be enforced and exercised from time to time and as often as shall be deemed expedient by the Trustee.

Discharge of Loan Agreements

If either City shall pay and discharge the entire indebtedness on its Loan in any one or more of the following ways:

(a) by well and truly paying or causing to be paid the principal of and interest and prepayment premiums (if any) on such Loan, as and when the same become due and payable;

(b) by irrevocably depositing with the Trustee, in trust, at or before maturity, cash in an amount which, together with the available amounts then on deposit in any of the funds and accounts established pursuant to the Indenture or the related Loan Agreement, is fully sufficient to pay all principal of and interest and prepayment premiums (if any) on such Loan; or

(c) by irrevocably depositing with the Trustee or any other fiduciary, in trust, Federal Securities in such amount as an independent certified public accountant shall determine will, together

with the interest to accrue thereon and available moneys then on deposit in the funds and accounts established pursuant to the Indenture or the related Loan Agreement, be fully sufficient to pay and discharge the indebtedness on such Loan (including all principal, interest and prepayment premiums) at or before maturity;

then, at the election of the City prepaying its Loan but only if all other amounts then due and payable under the applicable Loan Agreement shall have been paid or provision for their payment has been made, the pledge of and lien upon the Net Revenues and other funds provided for in the related Loan Agreement and all other obligations of the Trustee, the Authority and the City under the related Loan Agreement with respect to such Loan shall cease and terminate, except only the obligation of the City to pay or cause to be paid to the Trustee, from the amounts so deposited with the Trustee or such other fiduciary, all sums due with respect to such Loan and all expenses and costs of the Trustee.

APPENDIX C

**AUDITED FINANCIAL STATEMENTS FOR THE LOCAL AGENCIES
FOR FISCAL YEAR ENDED JUNE 30, 2011**

APPENDIX D
FORM OF BOND INSURANCE POLICY

APPENDIX E

FORM OF BOND COUNSEL OPINION

[Closing Date]

San Elijo Joint Powers Authority
2695 Manchester Avenue
Cardiff by the Sea, California 92007

City of Encinitas
505 South Vulcan Avenue
Encinitas, California 92024

City of Solana Beach
380 Stevens Avenue, Suite 305
Solana Beach, California 92075

OPINION: \$_____ San Elijo Joint Powers Authority 2012 Refunding Revenue Bonds (San Elijo Water Reclamation Facility)

Members of the Authority and the Members:

We have acted as bond counsel to the San Elijo Joint Powers Authority (the “Authority”) in connection with the issuance by the Authority of \$_____ aggregate principal amount of San Elijo Joint Powers Authority 2012 Refunding Revenue Bonds (San Elijo Water Reclamation Facility) (the “Bonds”), pursuant to the provisions of Article 4 (commencing with Section 6584) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, and pursuant to the Indenture of Trust, dated as of January 1, 2012, by and between the Authority and State Street Bank and Trust Company of California, N.A., as trustee (the “Indenture”). The Bonds have been issued by the Authority to refund bonds issued by the Authority in 2003 in the original aggregate principal amount of \$_____ and a loan made by the California Energy Resources and Development Commission in 2007 in the original principal amount of \$1,193,500. The Bonds are secured by loans (the “Loans”) which have been made by the Authority to the City of Encinitas and the City of Solana Beach (together, the “Cities”) pursuant to Third Amended and Restated Loan Agreements, each dated as of January, 2012 (the “Loan Agreements”), by and among the respective Cities, the Authority and the Trustee. We have examined the law and such certified proceedings and other papers as we deem necessary to render this opinion.

As to questions of fact material to our opinion, we have relied upon representations of the Authority contained in the Indenture and in the certified proceedings and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation.

Based upon the foregoing we are of the opinion, under existing law, as follows:

1. The Authority is a joint exercise of powers agency duly organized and validly existing under the laws of the State of California, with the full power to enter into the Indenture and the Loan Agreements, to perform the agreements on its part contained therein and to issue the Bonds.
2. The City of Encinitas and the City of Solana Beach are both general law cities, both duly organized and validly existing under the laws of the State of California, with the full power to enter into the Loan Agreements and to perform the agreements on their part contained therein.
3. The Indenture and the Loan Agreements have been duly approved by the Authority and constitute valid and binding obligations of the Authority enforceable against the Authority in accordance with their respective terms. The Indenture creates a valid first and exclusive lien on and

pledge of the Revenues (as such term is defined in the Indenture) and other funds pledged thereby for the security of the Bonds, in accordance with the terms of the Indenture.

4. The Loan Agreements have been duly approved by the Cities and constitute valid and binding obligations of the Cities enforceable against the respective Cities in accordance with their respective terms. Each of the respective Loan Agreements creates a valid first lien on and pledge of the Net Revenues (as such term is defined in each of the respective Loan Agreements) and other funds pledged thereby for the security of the respective Loans, in accordance with the terms of each of the respective Loan Agreements.

5. The Bonds have been duly authorized, executed and delivered by the Authority, and are valid and binding special obligations of the Authority, payable solely from the sources provided therefor in the Indenture.

6. Interest on the Bonds is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; provided, however, that for the purpose of computing the alternative minimum tax imposed on such corporations (as defined for federal income tax purposes), such interest is required to be taken into account in determining certain income and earnings. The opinions set forth in the preceding sentence are subject to the condition that the Authority comply with all requirements of the Internal Revenue Code of 1986, as amended, which must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be, or continue to be, excludable from gross income for federal income tax purposes. The Authority has covenanted in the Indenture and in other instruments relating to the Bonds to comply with each of such requirements, and the Authority has full legal authority to make and comply with such covenants. Failure to comply with certain of such requirements may cause the inclusion of interest on the Bonds in gross income for federal income tax purposes to be retroactive to the date of issuance of the Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Bonds.

7. Interest on the Bonds is exempt from personal income taxation imposed by the State of California.

The rights of the owners of the Bonds and the enforceability of the Bonds, the Indenture and the Loan Agreements may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and may also be subject to the exercise of judicial discretion in appropriate cases. This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or changes in law that may hereafter occur.

Respectfully submitted,

APPENDIX F

FORM OF CONTINUING DISCLOSURE CERTIFICATE

CONTINUING DISCLOSURE CERTIFICATE

THIS CONTINUING DISCLOSURE CERTIFICATE (the "Disclosure Certificate") is executed and delivered by San Elijo Joint Powers Authority (the "Issuer"), the City of Encinitas ("Encinitas"), and the City of Solana Beach ("Solana Beach") (collectively, the "Cities"), in connection with the issuance and delivery by the Issuer of its 2012 Refunding Revenue Bonds (San Elijo Water Reclamation Facility) (the "Bonds"). The Bonds are being issued pursuant to an Indenture of Trust, dated as of January 1, 2012 (the "Indenture"). The Issuer and the Cities covenant as follows:

SECTION 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the Issuer and the Cities, for the benefit of the Owners of the Bonds and in order to assist the Participating Underwriter in complying with the Rule. The Dissemination Agent has entered into this Disclosure Certificate at the express direction of the Issuer evidenced by the Issuer's signature to this Disclosure Certificate. No party hereto or to the transaction regarding the issuance of the Bonds shall have any right to rely on the Dissemination Agent for any purpose other than the performance of its duties under this Disclosure Certificate.

SECTION 2. Definitions. In addition to the definitions set forth in the Indenture, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Report" shall mean any Annual Report provided by the Issuer and the Cities pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

"Bonds" means the Bonds.

"Disclosure Representative" shall mean the General Manager of the San Elijo Joint Powers Authority, the Finance Director of the City of Encinitas, and the Finance Director of the City of Solana Beach or his or her designee, or such other officer or employee as the Issuer and Cities shall designate in writing to the Dissemination Agent from time to time.

"Dissemination Agent" shall mean, initially, Union Bank, N.A., acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the then current Dissemination Agent a written acceptance of such designation.

"EMMA" shall mean the Electronic Municipal Market Access System of the Municipal Securities Rulemaking Board, which can be found at www.emma.msrb.org, or any other repository of disclosure information that may be designated by the Securities and Exchange Commission in the future.

"Indenture" shall mean the Indenture of Trust, dated as of January 1, 2012 by and between the Issuer and Union Bank, N.A. as Trustee.

"Listed Events" shall mean any of the events listed in Section 5(a) of this Disclosure Certificate.

"Participating Underwriter" shall mean Brandis Tallman LLC, whose address is 22 Battery Street, Suite 500, San Francisco, California 94111.

"Rule" shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“Tax-exempt” shall mean that interest on the Bonds is excluded from gross income for federal income tax purposes, whether or not such interest is includable as an item of tax preferences or otherwise includable directly or indirectly for purposes of calculating any other tax liability, including any alternative minimum tax or environmental tax.

SECTION 3. Provision of Annual Reports.

(a) The Issuer and the Cities shall, or shall cause the Dissemination Agent upon written direction to, not later than six (6) months after the end of the Issuer's fiscal year, commencing with the report for the fiscal year ending June 30, 2012, provide to EMMA an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Certificate. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the Issuer and the Cities may be submitted separately from and later than the balance of the Annual Report if they are not available by the date required above for the filing of the Annual Report.

The Annual Report shall be provided at least annually notwithstanding any fiscal year longer than twelve (12) calendar months. The Issuer's and the Cities' fiscal year is currently effective from July 1 to the immediately succeeding June 30 of the following year. The Issuer and the Cities will promptly notify EMMA and the Dissemination Agent of a change in the fiscal year dates. The Issuer shall provide a written certification with each Annual Report furnished to the Dissemination Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by it hereunder. The Dissemination Agent may conclusively rely upon such certification of the Issuer and the Cities and shall have no duty or obligation to review such Annual Report.

(b) Not later than fifteen (15) Business Days prior to the date specified in subsection (a) for providing the Annual Report to EMMA, the Issuer and the Cities shall provide the Annual Report to the Dissemination Agent. If by fifteen (15) Business Days prior to such date the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the Issuer and the Cities to determine if the Issuer and the Cities is in compliance with subsection (a).

(c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to EMMA by the date required in subsection (a), the Dissemination Agent shall send a notice to EMMA, in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall promptly after receipt of the Annual Report, file a report with the Issuer and the Cities certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, stating the date it was provided to EMMA. The Dissemination Agent's duties under this subsection (d) shall exist only if the Issuer and the Cities provide the Annual Report to the Dissemination Agent for filing.

(e) The Issuer and the Cities shall, or if received by the Dissemination Agent, the Dissemination Agent shall, deliver a copy of each Annual Report to the Participating Underwriter at the time that the Annual Report is provided to EMMA in accordance with this Section.

SECTION 4. Content of Annual Reports. The Issuer's and Cities' Annual Report shall contain or include by reference the following:

(a) The audited financial statements of the Issuer and Cities for the most recent fiscal year of the Issuer and Cities then ended. If the audited financial statements are not available by the time the Annual Report is required to be filed, the Annual Report shall contain any unaudited financial statements of the Issuer or Cities in a format similar to the financial statements, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available. Audited financial statements, if any, of the Issuer and Cities shall be audited by such auditor as shall then be required or permitted by State law or the Indenture. Audited financial statements shall be prepared in accordance with generally accepted accounting principles as prescribed for governmental units by the Governmental Accounting Standards Board; provided, however, that

the Issuer and Cities may from time to time, if required by federal or state legal requirements, modify the basis upon which its financial statements are prepared. In the event that the Issuer and Cities shall modify the basis upon which its financial statements are prepared, the Issuer and Cities shall provide a notice of such modification to EMMA, including a reference to the specific federal or state law or regulation specifically describing the legal requirements for the change in accounting basis.

(b) Encinitas' portion of the Annual Report shall also include updates of financial information and operating data with respect to the Cardiff Sanitation Division of the type included in tables ____, ____ and ____ in the Official Statement.

(c) Solana Beach's portion of the Annual Report shall also include updates of financial information and operating data with respect to its wastewater enterprise of the type included in tables ____, ____ and ____ in the Official Statement.

(d) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the Issuer or related public entities, which have been submitted to EMMA or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from EMMA. The Issuer shall clearly identify each such other document so included by reference.

SECTION 5. Reporting of Listed Events.

(a) Pursuant to the provisions of this Section 5, the Issuer shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, not more than ten (10) Business Days after the event:

1. principal and interest payment delinquencies;
2. unscheduled draws on debt service reserves reflecting financial difficulties;
3. unscheduled draws on credit enhancements reflecting financial difficulties;
4. substitution of credit or liquidity providers, or their failure to perform;
5. adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds;
6. defeasances;
7. tender offers;
8. bankruptcy, insolvency, receivership or similar proceedings; and
9. ratings changes.

(b) Pursuant to the provisions of this Section 5, the Issuer shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

1. mergers, consolidations, acquisitions, the sale of all or substantially all of the assets of the obligated persons or their termination;
2. appointment of a successor or additional trustee or the change of the name of a trustee;
3. non payment related defaults;

4. modifications to the rights of Bondholders;
5. notices of prepayment; and
6. release, substitution or sale of property securing repayment of the Bonds.

(c) Whenever the Issuer obtains knowledge of the occurrence of a Listed Event the Issuer shall as soon as possible determine if such event would be material under applicable federal securities laws.

(d) If the Issuer determines that knowledge of the occurrence of a Listed Event under Subsection (b) would be material under applicable federal securities laws, the Issuer shall promptly file a notice of such occurrence with EMMA or provide notice of such reportable event to the Dissemination Agent in format suitable for filing with EMMA. The Dissemination Agent shall have no duty to independently prepare or file any report of Listed Events. The Dissemination Agent may conclusively rely on the Issuer's determination of materiality pursuant to Section 5(c).

(e) If the Issuer determines that the Listed Event would not be material under applicable federal securities laws and if the Dissemination Agent is other than the Issuer, the Issuer shall so notify the Dissemination Agent in writing and instruct the Dissemination Agent not to report the occurrence.

(f) If the Dissemination Agent has been instructed by the Issuer to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with EMMA. Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(8) and (9) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to Owners of affected bonds pursuant to the Indenture. In each case of the Listed Event, the Dissemination Agent shall not be obligated to file a notice as required in this subsection (e) prior to the occurrence of such Listed Event.

(g) The Issuer agrees that the undertaking set forth in this Disclosure Certificate is the responsibility of the Issuer and, if the Dissemination Agent is other than the Issuer, the Dissemination Agent shall not be responsible for determining whether the Issuer's instructions to the Dissemination Agent under this Section 5 comply with the requirements of the Rule.

SECTION 6. Termination of Reporting Obligation. The obligations of the Issuer, the Trustee and the Dissemination Agent under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the Issuer shall give notice of such termination in the same manner as for a Listed Event under Section 5.

SECTION 7. Dissemination Agent. The Issuer may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent may resign by providing thirty (30) days written notice to the Issuer and the Trustee. The Dissemination Agent shall not be responsible for the content of any report or notice prepared by the Issuer. The Dissemination Agent shall have no duty to prepare any information report nor shall the Dissemination Agent be responsible for filing any report not provided to it by the Issuer in a timely manner and in a form suitable for filing.

SECTION 8. Amendment. (a) This Disclosure Certificate may be amended, by written agreement of the parties, without the consent of the Owners of the Bonds, if all of the following conditions are satisfied: (1) such amendment is made in connection with a change in circumstances that arises from a change in legal (including regulatory) requirements, a change in law (including rules or regulations) or in interpretations thereof, or a change in the identity, nature or status of the Issuer, the Cities or the type of business conducted thereby, (2) this Disclosure Certificate as so amended would have complied with the requirements of the Rule as of the date of this Disclosure Certificate, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, (3) there shall have been delivered to the Issuer an opinion of a nationally recognized bond counsel or counsel expert in federal securities laws, addressed to the Issuer, to the same effect

as set forth in clause (2) above, (4) the Issuer shall have delivered to the Dissemination Agent an opinion of nationally recognized bond counsel or counsel expert in federal securities laws, addressed to the Issuer, to the effect that the amendment does not materially impair the interests of the Owners of the Bonds, and (5) the Issuer shall have delivered copies of such opinion and amendment to EMMA.

(b) This Disclosure Certificate may be amended, by written agreement of the parties, upon obtaining consent of Owners at least 25% of the outstanding Bonds; provided that the conditions set forth in Section 8(a)(1), (2) and (3) have been satisfied; and provided, further, that neither the Trustee nor the Dissemination Agent shall be obligated to enter into any such amendment that modifies or increases its duties or obligations hereunder.

(c) To the extent any amendment to this Disclosure Certificate results in a change in the type of financial information or operating data provided pursuant to this Disclosure Certificate, the first Annual Report provided thereafter shall include a narrative explanation of the reasons for the amendment and the effect of the change.

(d) If an amendment is made to the basis on which financial statements are prepared, the Annual Report for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. Such comparison shall include a quantitative and, to the extent reasonably feasible, qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information.

SECTION 9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the Issuer chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the Issuer shall have no obligation under this Disclosure Certificate to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

The Issuer acknowledges and understands that other state and federal laws, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the Issuer, and that under some circumstances compliance with this Disclosure Certificate, without additional disclosures or other action, may not fully discharge all duties and obligations of the Issuer under such laws.

SECTION 10. Default. In the event of a failure of the Issuer or the Dissemination Agent to comply with any provision of this Disclosure Certificate, any Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Issuer to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Certificate in the event of any failure of the Issuer to comply with this Disclosure Certificate shall be an action to compel performance.

SECTION 11. Duties; Immunity and Liability of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and no other duties shall be implied hereunder, and the Issuer agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities (whether or not litigated) which either may incur arising out of or in the exercise or performance of the powers and duties provided hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's or preparation, review, form or content of any Annual Report or any notice of a Listed Event. The Dissemination Agent shall not be deemed to be the agent of or fiduciary to the Issuer. The Dissemination Agent shall be paid compensation by the Issuer for its services provided hereunder in accordance with its schedule of fees as amended from time to time and all expenses, legal

fees and advances made or incurred by the Dissemination Agent in the performance of its duties hereunder. The Dissemination Agent shall have no duty or obligation to review any information provided to them hereunder and shall not be deemed to be acting in any fiduciary capacity for the Issuer, the Owners of the Bonds, or any other party. The obligations of the Issuer under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds. No person shall have any right to commence any action against the Trustee or the Dissemination Agent hereunder, seeking any remedy other than to compel specific performance of this Disclosure Certificate. The Dissemination Agent shall not be liable under any circumstances for monetary damages to any person for any breach under this Disclosure Certificate.

SECTION 12. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the Issuer, the Dissemination Agent, the Participating Underwriters and Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 13. Notices. Notices should be sent in writing to the following addresses. The following information may be conclusively relied upon until changed in writing.

Disclosure Representative:	General Manager San Elijo Joint Powers Authority 2695 Manchester Avenue Cardiff by the Sea, CA 92007-1007
Dissemination Agent:	Union Bank, N.A. 120 South San Pedro Street, Suite 400 Los Angeles, CA 90012
Trustee:	Union Bank, N.A. 120 South San Pedro Street, Suite 400 Los Angeles, CA 90012

SECTION 14. Counterparts. This Disclosure Certificate may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SAN ELIJO JOINT POWERS AUTHORITY

By: _____
Executive Director

CITY OF ENCINITAS

By: _____
Finance Manager

CITY OF SOLANA BEACH

By: _____
City Manager

ACCEPTANCE OF DISSEMINATION AGENT:
The undersigned hereby accepts the designation of Dissemination Agent and agrees to further the duties set forth in Section 3(c) of the foregoing Continuing Disclosure Certificate

UNION BANK OF CALIFORNIA, N.A.

By: _____
Authorized Signatory

EXHIBIT A

NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer: San Elijo Joint Powers Authority
Name of Bond Issues: San Elijo Joint Powers Authority 2012 Refunding Revenue Bonds
Dates of Issuance: _____, 2012

NOTICE IS HEREBY GIVEN that San Elijo Joint Powers Authority (the "Issuer") has not provided an Annual Report with respect to the above-named Bonds as required by Section 3 of the Continuing Disclosure Certificate, dated as of _____, 2012, executed by the the Issuer and the Cities. [The Issuer anticipates that the Annual Report will be filed by _____.

Dated: _____

UNION BANK, N.A., as Dissemination Agent

APPENDIX G

THE BOOK ENTRY SYSTEM

The following description of the procedures and record-keeping of the Depository Trust Company ("DTC") with respect to beneficial ownership interests in the Bonds, payment of principal, interest and other payments on the Bonds to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interests in such Bonds and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and neither the DTC Participants nor the Beneficial Owners should rely on the following information with respect to such matters, but should instead confirm the same with DTC or the DTC Participants, as the case may be.

The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered certificate will be issued for each maturity of the Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments from over 100 countries that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation, and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has been rated by Standard & Poor's as AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com and www.dtc.org.

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose

accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Redemption notices will be sent to DTC. If less than all of the Bonds within a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Authority as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detailed information from the Authority or the Trustee, on the payment date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participants and not of DTC nor its nominee, the Trustee, or the Authority, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

A Beneficial Owner shall give notice to elect to have its Bonds purchased or tendered, through its Participant, to the Trustee, and shall effect delivery of such Bonds by causing the Direct Participant to transfer the Participant's interest in the Bonds, on DTC's records, to the Fiscal Agent. The requirement for physical delivery of Bonds in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Bonds are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Bonds to the Fiscal Agent's DTC account.

DTC may discontinue providing its services as depository with respect to the Bonds at any time by giving reasonable notice to the respective Authority or the Trustee. Under such circumstances, in the event that a successor depository is not appointed, physical Bonds are required to be printed and delivered.

The Authority may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, physical Bonds will be printed and delivered.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Authority believes to be reliable, but take no responsibility for the accuracy of such information.

SO LONG AS CEDE & CO. IS THE REGISTERED OWNER OF THE BONDS, AS NOMINEE OF DTC, REFERENCES HEREIN TO A "BOND OWNER" OR "OWNER OF BONDS" MEAN CEDE & CO., AS AFORESAID, AND SHALL NOT MEAN THE BENEFICIAL OWNERS OF THE BONDS.

The Authority cannot and do not give any assurances that DTC, DTC Participants or others will distribute payments of principal, interest or premium with respect to the Bonds paid to DTC or its nominee as the registered owner, or will distribute any redemption notices or other notices, to the Beneficial Owners, or that they will do so on a timely basis or will serve and act in the manner described in this Official Statement. The Authority is not responsible or liable for the failure of DTC or any DTC Participant to make any payment or give any notice to a Beneficial Owner with respect to the Bonds or an error or delay relating thereto.

The foregoing description of the procedures and record-keeping with respect to beneficial ownership interests in the Bonds, payment of principal, interest and other payments on the Bonds to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interests in such Bonds and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters, but should instead confirm the same with DTC or the DTC Participants, as appropriate.

\$ _____
SAN ELIJO JOINT POWERS AUTHORITY
San Diego County, California
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)

PURCHASE CONTRACT

[TO COME]

San Elijo Joint Powers Authority
2695 Manchester Avenue
P.O. Box 1077
Cardiff by the Sea, CA 92007-1007

City of Encinitas
505 South Vulcan Avenue
Encinitas, CA 92024-3633

City of Solana Beach
635 South Highway 101
Solana Beach, CA 92075

Ladies and Gentlemen:

The undersigned Brandis Tallman LLC (the “Underwriter”), offers to enter into this Purchase Contract (which, together with Exhibit A, is referred to as the “Purchase Contract”) with the San Elijo Joint Powers Authority (the “Authority”), the City of Encinitas (“Encinitas”), California, and the City of Solana Beach, California (“Solana Beach,” and, together with Encinitas, the “Local Agencies” or, individually, “Local Agency” or “City”), which, upon the acceptance of the Authority and the Local Agencies, will be binding upon the Authority, the Local Agencies and the Underwriter. This offer is made subject to acceptance by the Authority and by the Local Agencies by the execution of this Purchase Contract and delivery of the same to the Underwriter prior to 11:59 P.M., California time, on the date hereof, and, if not so accepted, will be subject to withdrawal by the Underwriter upon notice delivered to the Authority and the Local Agencies at any time prior to the acceptance hereof by the Authority and the Local Agencies. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Indenture, defined below.

Section 1. Purchase and Sale. Upon the terms and conditions and upon the basis of the representations, warranties and agreements herein set forth, the Underwriter hereby agrees to purchase from the Authority and the Local Agencies, and the Authority and the Local Agencies hereby agree to issue, sell and deliver to the Underwriter all (but not less than all) of the San Elijo Joint Powers Authority 2012 Refunding Revenue Bonds (San Elijo Water Reclamation Facility) in the aggregate principal amount of \$_____ (the “Bonds”). The Bonds will be dated as of their date of delivery. Interest on the Bonds shall be payable semiannually on March 1 and September 1 in each year (each an “Interest Payment Date”) commencing September 1, 2012 and will bear interest at the rates and on the dates as set forth in Exhibit A hereto. The Bonds shall have a purchase price of

\$_____ (which includes an Underwriter's discount of \$_____ and an original issue discount in the amount of \$_____).

Section 2. The Bonds. The Bonds shall be secured by Loan Installments (the "Loan Installments") to be paid by the Loan Agreements pursuant to separate Third Amended and Restated Loan Agreements, each dated as of January 1, 2012 (the "Loan Agreements") by and between the Local Agencies individually and the Authority for the purpose of refunding outstanding bonds of the Authority and a loan represented by a promissory note of the California Energy Commission. The Authority, pursuant to the Agency as defined below, will assign to the Trustee for the benefit of the Bond Owners substantially all of the Authority's rights, title and interest in and to the Loan Agreements, including, without limitation, its right to receive Loan Installments to be paid by the Local Agencies under and pursuant to the Loan Agreements. The Local Agencies will pay Loan Installments directly to the Trustee, as agent of the Authority.

The Bonds shall be as described in, and shall be secured under and pursuant to an Indenture of Trust, dated as of January 1, 2012 (the "Indenture"), by and between the Authority and Union Bank, N.A., Los Angeles, California, as trustee, substantially in the form previously submitted to the Underwriter with only such changes therein as shall be mutually agreed upon by the Authority, the Local Agencies and the Underwriter.

The proceeds of the Bonds shall be used for the purpose of providing funds to (i) satisfy the Reserve Requirement, (ii) refund on a current basis the 2003 Refunding Revenue Bonds (San Elijo Wastewater Treatment Facilities) (the "2003 Bonds") and to prepay a note to the California Energy Commission (the "Note"), and (iii) pay the costs of issuance of the Bonds.

Section 3. Public Offering. The Underwriter agrees to make an initial public offering of all the Bonds at the public offering prices (or yields) set forth on Exhibit A attached hereto and incorporated herein by reference. Subsequent to the initial public offering, the Underwriter reserves the right to change the public offering prices (or yields) as they deem necessary in connection with the marketing of the Bonds, provided that the Underwriter shall not change the interest rates set forth on Exhibit A. The Bonds may be offered and sold to certain dealers at prices lower than such initial public offering prices.

Section 4. The Official Statement. By its acceptance of this proposal, the Authority and the City ratify, confirm and approve of the use and distribution by the Underwriter prior to the date hereof of the preliminary official statement relating to the Bonds dated _____ (including the cover page, all appendices and all information incorporated therein, the "Preliminary Official Statement") that authorized officers of the Authority and Local Agencies deemed "final" as of its date, for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 ("Rule 15c2-12") except for certain omissions permitted to be omitted therefrom by Rule 15c2-12. The Authority and the Local Agencies hereby agree to deliver or cause to be delivered to the Underwriter, within seven business days of the date hereof, copies of the final official statement, dated the date hereof, relating to the Bonds (including all information previously permitted to have been omitted by Rule 15c2-12) the cover page, all appendices, all information incorporated therein and any amendments or supplements as have been approved by the Authority, the Local Agencies and the Underwriter (the "Official Statement") in such quantity as the Underwriter shall reasonably request to comply with Securities and Exchange Commission Rule 15c2-12(b)(4) and the rules of the Municipal Securities Rulemaking Board (the "MSRB").

The Underwriter hereby agrees that it will not request that payment be made by any purchaser of the Bonds prior to delivery by the Underwriter to the purchaser of a copy of the Official

Statement. The Underwriter agrees to (i) provide the Authority and the Local Agency with final pricing information on the Bonds on a timely basis and (ii) promptly file a copy of the final Official Statement, including any supplements prepared by the Authority or the Local Agency with a nationally recognized municipal securities information repository. The Authority and the Local Agency hereby approve of the use and distribution by the Underwriter of the Official Statement in connection with the offer and sale of the Bonds. The Authority and the Local Agency will cooperate with the Underwriter in the filing by the Underwriter of the Official Statement with a nationally recognized municipal securities information repository.

Section 5. Closing. At 8:00 a.m., California time, on _____, or at such other time or date as the Authority and the Underwriter agree upon, the Authority shall deliver or cause to be delivered to the Trustee, and the Trustee shall deliver or cause to be delivered to The Depository Trust Company, New York New York (“DTC”), the Bonds in definitive form, duly executed and authenticated. Concurrently with the delivery of the Bonds, the Authority and the Local Agencies will deliver the documents hereinafter mentioned at the offices of Jones Hall, A Professional Law Corporation, San Francisco, California or another place to be mutually agreed upon by the Authority, the Local Agencies and the Underwriter. The Underwriter will accept such delivery and pay the purchase price of the Bonds as set forth in Section 1 hereof by wire transfer in immediately available funds. This payment for and delivery of the Bonds, together with the delivery of the aforementioned documents, is herein called the “Closing.”

The Bonds shall be registered in the name of Cede & Co., as nominee of DTC in denominations of five thousand dollars (\$5,000) or any integral multiple thereof, at least three business days prior to the Closing and shall be made available to the Underwriter at least one (1) business day before the Closing for purposes of inspection and packaging. The Authority and the Local Agencies acknowledge that the services of DTC will be used initially by the Underwriter in order to permit the issuance of the Bonds in book-entry form, and agree to cooperate fully with the Underwriter in employing such services.

The Underwriter hereby agrees to make a bona fide public offering of all Bonds at prices not in excess of the initial public offering prices (or yields) set forth on the cover page of the Official Statement, reserving, however, the right to change such yields or prices after the initial public offering as the Underwriter shall deem necessary in connection with the offering of the Bonds upon reasonable notice to, and with the consent of the Authority and the Local Agencies. The Underwriter shall provide to the Authority and the Local Agencies on the Closing Date a certificate setting forth the offering prices to the public of each maturity of the Bonds at which a substantial amount of such maturities were sold, each certificate to be in a form acceptable to Bond Counsel.

Section 6. Representations, Warranties and Covenants of the Authority. The Authority represents, warrants and covenants to the Underwriter and the Local Agencies that:

(a) The Authority is and will be at the date of Closing a public body, corporate and politic, duly organized and existing pursuant to and under the Constitution and laws of the State of California and has all necessary power and authority to enter into and perform its duties under the Indenture, the Loan Agreement and this Purchase Contract (collectively, the “Authority Documents”).

(b) By official action of the Authority prior to or concurrently with the acceptance hereof, the Authority has duly approved the distribution of the Preliminary Official Statement and the distribution of the Official Statement (including in electronic form), and has duly authorized and approved the execution and delivery of, and the performance by the Authority of the

obligations on its part contained, in the Authority Documents. When executed and delivered, each Authority Document will constitute the legal, valid and binding obligation of the Authority enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or affecting creditors' rights generally.

(c) Prior to the date hereof, the Authority has provided to the Underwriter for its review the Preliminary Official Statement that an authorized officer of the Authority has deemed final for purposes of Rule 15c2-12, has approved the distribution of the Preliminary Official Statement and the Official Statement and has duly authorized the execution and delivery of the Official Statement (including in electronic form). The Preliminary Official Statement, at the date thereof, did not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein (other than the information relating to, The Depository Trust Company and its book-entry system, as to which no view is expressed), in the light of the circumstances under which they were made, not misleading. At the date hereof and on the Closing Date, the Final Official Statement did not and will not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein (other than the information relating to The Depository Trust Company and its book-entry system, as to which no view is expressed), in the light of the circumstances under which they were made, not misleading. The Authority hereby covenants and agrees that, within seven business days from the date hereof, the Authority shall cause a final printed form of the Official Statement to be delivered to the Underwriter in sufficient quantity to comply with paragraph (b)(4) of Rule 15c2-12 and Rules of the Municipal Securities Rulemaking Board.

(d) To the best knowledge of the undersigned officer of the Authority, the execution and delivery by the Authority of the Authority Documents and the approval and execution by the Authority of the Official Statement and compliance with the provisions on the Authority's part contained in the Authority Documents, will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Authority is a party or is otherwise subject to, which conflict, breach or default has or may have a material adverse effect on the ability of the Authority to carry out its obligations under the Authority Documents, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any material lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the Authority under the terms of any such law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided by the Authority Documents.

(e) The Authority will advise the Underwriter promptly of any proposal to amend or supplement the Official Statement and will not effect or consent to any such amendment or supplement without the consent of the Underwriter, which consent will not be unreasonably withheld. The Authority will advise the Underwriter promptly of the institution of any proceedings known to it by any governmental Authority prohibiting or otherwise affecting the use of the Official Statement in connection with the offering, sale or distribution of the Bonds.

(f) To the best knowledge of the undersigned officer of the Authority, after reasonable inquiry, the Authority is not in breach of or default under any applicable law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Authority is a party or is otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an

event of default under any such instrument, in each case which breach or default has or may have a material adverse effect on the ability of the Authority to perform its obligations under the Authority Documents.

(g) As of the time of acceptance hereof and as of the date of Closing, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government Authority, public board or body, is pending or, to the best knowledge of the officers of the Authority, threatened (i) in any way questioning the corporate existence of the Authority or the titles of the officers of the Authority to their respective offices, (ii) affecting, contesting or seeking to prohibit, restrain or enjoin the execution or delivery of any of the Bonds, or in any way contesting or affecting the validity of the Bonds or the Authority Documents or the consummation of the transactions contemplated thereby, or contesting the exclusion of the interest on the Bonds from gross income for federal income tax purposes or contesting the powers of the Authority to enter into the Authority Documents or (iii) contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto or asserting that the Preliminary Official Statement or the Official Statement contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and there is no basis for any action, suit, proceeding, inquiry or investigation of the nature described in clause (i) through (iii) of this sentence.

(h) Any certificate signed by any officer of the Authority authorized to execute such certificate in connection with the execution, sale and delivery of the Bonds and delivered to the Underwriter shall be deemed a representation and warranty of the Authority to the Underwriter and the Local Agencies as to the statements made therein but not of the person signing such certificate.

Section 7. Representations, Warranties and Covenants of the Local Agency. The Local Agencies, each, individually, represent, warrant and covenant to the Underwriter and the Authority that:

(a) The Local Agencies are and will be at the date of Closing a municipal corporations duly organized and existing pursuant to and under the Constitution and laws of the State of California and have all necessary power and authority to enter into and perform their respective duties under the Continuing Disclosure Certificate relating to the Bonds (the “Continuing Disclosure Certificate”), the Loan Agreement, and this Purchase Contract (collectively, the “City Documents,” and together with the Authority Documents, the “Legal Documents”) and have by official action duly authorized and approved the execution and delivery of, and the performance by the Local Agencies of the obligations on their part contained in the City Documents.

(b) By official action of the Local Agencies prior to or concurrently with the acceptance hereof, the Local Agencies have each duly approved the distribution of the Preliminary Official Statement and the distribution of the Official Statement (including in electronic form), and have duly authorized and approved the execution and delivery of, and the performance by each Local Agency of the obligations on its part contained, in the City Documents. When executed and delivered, each City Document will constitute the legally valid and binding obligation of the respective Local Agency enforceable in accordance with its respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles relating to or affecting creditors’ rights generally.

(c) The Preliminary Official Statement heretofore delivered to the Underwriter is hereby deemed final by each Local Agency as of its date and as of the date hereof, except for the

omission of such information as is permitted to be omitted in accordance with paragraph (b)(i) of Rule 15c2-12. The Preliminary Official Statement, at the date thereof, did not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein (other than the information relating to The Depository Trust Company and its book-entry system, as to which no view is expressed), in the light of the circumstances under which they were made, not misleading. At the date hereof and on the Closing Date, the Final Official Statement did not and will not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein (other than the information relating to The Depository Trust Company and its book-entry system, as to which no view is expressed), in the light of the circumstances under which they were made, not misleading. Each Local Agency hereby covenants and agrees that, within seven business days from the date hereof, the Local Agencies shall cause a final printed form of the Official Statement to be delivered to the Underwriter in sufficient quantity to comply with paragraph (b)(4) of Rule 15c2-12 and Rules of the Municipal Securities Rulemaking Board.

(d) To the best knowledge of the undersigned officer of the Local Agencies, the execution and delivery by the Local Agencies of the City Documents and the approval by the Local Agencies of the Official Statement and compliance with the provisions on the Local Agencies' part contained in the City Documents, will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Local Agencies are a party or are otherwise subject to, which conflict, breach or default has or may have a material adverse effect on the ability of each Local Agency to carry out its respective obligations under the City Documents, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any material lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of each Local Agency under the terms of any such law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided by the City Documents.

(e) The Local Agencies will advise the Underwriter promptly of any proposal to amend or supplement the Official Statement and will not effect or consent to any such amendment or supplement without the consent of the Underwriter, which consent will not be unreasonably withheld. The Local Agencies will advise the Underwriter promptly of the institution of any proceedings known to it by any governmental authority prohibiting or otherwise affecting the use of the Official Statement in connection with the offering, sale or distribution of the Bonds.

(f) To the best knowledge of the undersigned officer of each Local Agency, after reasonable inquiry, the Local Agencies are not in breach of or default under any applicable law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Local Agencies are a party or are otherwise subject, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument, in each case which breach or default has or may have a material adverse effect on the ability of the Local Agencies to perform their respective obligations under the City Documents.

(g) The financial statements relating to the receipts, expenditures and cash balances of the City as of June 30, 2011 attached as Appendix C to the Official Statement fairly represent the receipts, expenditures and cash balances of the sanitation funds of each Local Agency. Except as disclosed in the Official Statement or otherwise disclosed in writing to the Underwriter, there has not been any materially adverse change in the financial condition of the General Fund or in

its operations since June 30, 2011 and there has been no occurrence, circumstance or combination thereof which is reasonably expected to result in any such materially adverse change.

(h) As of the time of acceptance hereof and as of the date of Closing, no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government Authority, public board or body, is pending or, to the best knowledge of the officers of the Local Agencies, threatened (i) affecting the existence of the Local Agencies or the titles of the officers of the Local Agencies to their respective offices; (ii) affecting, contesting or seeking to prohibit, restrain or enjoin the execution or delivery of any of the Bonds, or in any way contesting or affecting the validity of the Bonds or the City Documents or the consummation of the transactions contemplated thereby, or contesting the exclusion of the interest on the Bonds from gross income for federal income tax purposes or contesting the power of the Local Agencies to enter into the City Documents; (iii) which may result in any material adverse change to the financial condition of the Local Agencies or to its ability to pay the Loan Installments when due; or (iv) contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto or asserting that the Preliminary Official Statement or the Official Statement contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and there is no basis for any action, suit, proceeding, inquiry or investigation of the nature described in clause (i) through (iv) of this sentence.

(i) To the extent required by law, the Local Agencies will undertake, pursuant to the Loan Agreement and the Continuing Disclosure Certificate, to provide annual reports and notices of certain events, if material. A description of this undertaking is set forth in Appendix F to the Preliminary Official Statement and will also be set forth in the final Official Statement.

(j) Any certificate signed by any officer of the Local Agencies authorized to execute such certificate in connection with the execution, sale and delivery of the Bonds and delivered to the Underwriter shall be deemed a representation and warranty of the Local Agencies to the Underwriter and the Authority as to the statements made therein but not of the person signing such certificate.

(k) Except as disclosed in the Official Statement, the Local Agencies have never failed to comply in all material respects with any previous undertakings with regard to Rule 15c2-12 to provide annual financial and operating data or notices of material events.

Section 8. Conditions to the Obligations of the Underwriter. The Underwriter has entered into this Purchase Contract in reliance upon the representations and warranties of the Authority and the Local Agencies contained herein. The obligations of the Underwriter to accept delivery of and pay for the Bonds on the date of the Closing shall be subject, at the option of the Underwriter, to the accuracy in all material respects of the statements of the officers and other officials of the Authority and of the Local Agencies, as well as authorized representatives of Bond Counsel, the Trustee, Disclosure Counsel and Bond Counsel made in any Bonds or other documents furnished pursuant to the provisions hereof; to the performance by the Authority and the Local Agencies of their obligations to be performed hereunder at or prior to the date of the Closing; and to the following additional conditions:

(a) The representations, warranties and covenants of the Local Agencies and the Authority contained herein shall be true, complete and correct at the date hereof and at the time of the Closing, as if made on the date of the Closing.

(b) At the time of Closing, the Legal Documents shall be in full force and effect as valid and binding agreements between or among the various parties thereto, and the Legal Documents and the Official Statement shall not have been amended, modified or supplemented except as may have been agreed to in writing by the Underwriter, and all such reasonable actions as, in the opinion of Bond Counsel or Disclosure Counsel, shall reasonably deem necessary in connection with the transactions contemplated hereby;

(c) At the time of the Closing, no default shall have occurred or be existing under the Authority Documents, the City Documents, or any other agreement or document pursuant to which any of the Local Agencies' financial obligations were executed and delivered, and the Local Agencies shall not be in default in the payment of principal or interest with respect to any of its financial obligations, which default would adversely impact the ability of the Local Agencies to make the Loan Installments.

(d) In recognition of the desire of the Authority, the Local Agencies and the Underwriter to effect a successful public offering of the Bonds, and in view of the potential adverse impact of any of the following events on such a public offering, this Agreement shall be subject to termination in the absolute discretion of the Underwriter by notification, in writing, to the Authority and the Local Agencies prior to delivery of and payment for the Bonds, if at any time prior to such time, regardless of whether any of the following statements of fact were in existence or known of on the date of this Purchase Contract:

(i) any event shall occur which makes untrue any statement or results in an omission to state a material fact necessary to make the statements in the Official Statement, in the light of the circumstances under which they were made, not misleading, which event, in the reasonable opinion of the Underwriter would materially or adversely affect the ability of the Underwriter to market the Bonds; or

(ii) the marketability of the Bonds or the market price thereof, in the opinion of the Underwriter, has been materially adversely affected by an amendment to the Constitution of the United States or by any legislation in or by the Congress of the United States or by the State of California, or the amendment of legislation pending as of the date of this Purchase Contract in the Congress of the United States, or the recommendation to Congress or endorsement for passage (by press release, other form of notice or otherwise) of legislation by the President of the United States, the Treasury Department of the United States, the Internal Revenue Service or the Chairman or ranking minority member of the Committee on Finance of the United States Senate or the Committee on Ways and Means of the United States House of Representatives, or the proposal for consideration of legislation by either such Committee or by any member thereof, or the presentment of legislation for consideration as an option by either such Committee, or by the staff of the Joint Committee on Taxation of the Congress of the United States, or the favorable reporting for passage of legislation to either House of the Congress of the United States by a Committee of such House to which such legislation has been referred for consideration, or any decision of any federal or state court or any ruling or regulation (final, temporary or proposed) or official statement on behalf of the United States Treasury Department, the Internal Revenue Service or other federal or State authority affecting the federal or State tax status of the Authority or the Local Agencies, or the interest on or with respect to bonds or notes (including the Bonds); or

(iii) any legislation, ordinance, rule or regulation shall be introduced in, or be enacted by any governmental body, department or Authority of the State, or a decision by any court of competent jurisdiction within the State shall be rendered which materially adversely affects the market price of the Bonds; or

(iv) an order, decree or injunction issued by any court of competent jurisdiction, or order, ruling, regulation (final, temporary or proposed), official statement or other form of notice or communication issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental Authority having jurisdiction of the subject matter, to the effect that: (i) obligations of the general character of the Bonds, or the Bonds, including any or all underlying arrangements, are not exempt from registration under the Securities Act of 1933, as amended, or that the Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended; or (ii) the issuance, offering or sale of obligations of the general character of the Bonds, or the issuance, offering or sale of the Bonds, including any or all underlying obligations, as contemplated hereby or by the Official Statement, is or would be in violation of the federal securities laws as amended and then in effect; or

(v) legislation shall be enacted by the Congress of the United States, or a decision by a court of the United States shall be rendered, to the effect that obligations of the general character of the Bonds, or the Bonds are not exempt from registration under or other requirements of the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and as then in effect, or that the Indenture is not exempt from qualification under or other requirements of the Trust Indenture Act of 1939, as amended and as then in effect; or

(vi) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any domestic governmental authority or by any domestic national securities exchange, which are material to the marketability of the Bonds; or

(vii) a general banking moratorium shall have been declared by federal, State or New York authorities, or the general suspension of trading on any national securities exchange; or

(viii) there shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war or other calamity or crisis the effect of which on financial markets is materially adverse such as to make it, in the sole judgment of the Underwriter, impractical or inadvisable to proceed with the purchase or delivery of the Bonds as contemplated by the Final Official Statement (exclusive of any amendment or supplement thereto); or

(ix) any rating of the Bonds or the rating of any obligations of the Local Agencies secured by the Local Agencies' general fund shall have been downgraded or withdrawn by a national rating service, which, in the opinion of the Underwriter, materially adversely affects the market price of the Bonds; or

(x) the commencement of any action, suit or proceeding described in Section 6(g) or Section 7(h);

(e) at or prior to the Closing, the Underwriter shall receive the following documents, in each case to the reasonable satisfaction in form and substance of the Underwriter:

(i) all resolutions relating to the Bonds adopted by the Authority and certified by an authorized official of the Authority authorizing the execution and delivery of the Bonds, the Authority Documents and the Official Statement;

(ii) all resolutions relating to the Bonds adopted by the Local Agencies and certified by an authorized official of each respective Local Agency authorizing the execution and delivery of the City Documents and the delivery of the Bonds and the Official Statement;

(iii) the Legal Documents duly executed and delivered by the respective parties thereto, with only such amendments, modifications or supplements as may have been agreed to in writing by the Underwriter;

(iv) the approving opinion of Jones Hall, A Professional Law Corporation, Bond Counsel, dated the date of Closing and addressed to the Authority and the City, in substantially the form attached as Appendix E to the Official Statement, and a reliance letter thereon addressed to the Underwriter and the Insurer;

(v) a supplemental opinion of Bond Counsel dated the date of Closing and addressed to the Underwriter, to the effect that:

(A) the statements on the cover of the Official Statement and in the Official Statement under the captions "INTRODUCTION," "THE BONDS," "SECURITY FOR THE BONDS," "TAX EXEMPTION," and in "APPENDIX B – SUMMARY OF PRINCIPAL LEGAL DOCUMENTS," AND "APPENDIX E –FORM OF FINAL OPINION OF BOND COUNSEL," insofar as such statements expressly summarize provisions of the Bonds, the Loan Agreements, the Indenture and Bond Counsel's final opinion concerning certain federal tax matters relating to the Bonds, are accurate in all material respects as of the date of Closing, provided that Bond Counsel need not express any opinion with respect to any financial or statistical data contained therein or with respect to the book-entry system in which the Bonds are initially delivered or with respect to the Insurer or its Policy;

(B) The Purchase Contract has been duly authorized, executed and delivered by each Local Agency and the Authority and is the valid, legal and binding agreement of each Local Agency and the Authority enforceable in accordance with its terms, except that the rights and obligations under the Purchase Contract are subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws affecting creditors' rights, to the application of equitable principles if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State, and provided that no opinion is expressed with respect to any indemnification or contribution provisions contained therein.

(C) The Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended.

(vi) an opinion of Best Best & Krieger, LLP, Disclosure Counsel, dated the date of Closing and addressed to the Underwriter to the effect that:

(A) based on the information made available to Disclosure Counsel, and without having undertaken to determine independently or assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Official Statement, nothing has come to its attention which would lead it to believe that the Official Statement as of its date and as of the date of Closing (excluding therefrom the financial and statistical data and forecasts included therein, information relating to The Depository Trust Company and its book entry system) contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(vii) the Official Statement, executed on behalf of the City;

(viii) evidence that the Bonds have been rated “___” by Standard & Poor’s and “___” by Fitch upon the delivery of the financial guaranty insurance policy issued by _____ concurrently sale of the Bonds on the date of Closing, with an underlying rating of “___” issued by Standard & Poor’s and “___” issued by Fitch.

(ix) a certificate, dated the date of Closing, signed by a duly authorized officer of the Authority satisfactory in form and substance to the Underwriter to the effect that: (i) the representations, warranties and covenants of the Authority contained in this Purchase Contract are true and correct in all material respects on and as of the date of Closing with the same effect as if made on the date of the Closing by the Authority, and the Authority has complied with all of the terms and conditions of this Purchase Contract required to be complied with by the Authority at or prior to the date of Closing; (ii) to the best of such officer’s knowledge, no event affecting the Authority has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purposes for which it is to be used or which is necessary to disclose therein in order to make the statements and information therein not misleading in any material respect; (iii) the information and statements contained in the Official Statement (other than information relating to The Depository Trust Company and its book-entry system) did not as of its date and do not as of the Closing contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect; and (iv) to the best of its knowledge after reasonable investigation, the Authority is not in breach of or default under any applicable law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Authority is a party or is otherwise subject, which would have a material adverse impact on the Authority’s ability to perform its obligations under the Authority Documents, and no event has occurred and is continuing which, with the

passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument;

(x) a certificate, dated the date of Closing, signed by a duly authorized officer of each Local Agency satisfactory in form and substance to the Underwriter to the effect that: (i) the representations, warranties and covenants of the Local Agency contained in this Purchase Contract are true and correct in all material respects on and as of the date of Closing with the same effect as if made on the date of the Closing by the Local Agency, and the Local Agency has complied with all of the terms and conditions of the Purchase Contract required to be complied with by the Local Agency at or prior to the date of Closing; (ii) to the best of such officer's knowledge, no event affecting the Local Agency has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purposes for which it is to be used or which is necessary to disclose therein in order to make the statements and information therein not misleading in any material respect; (iii) the information and statements contained in the Official Statement (other than information relating to The Depository Trust Company and its book-entry system) did not as of its date and do not as of the Closing contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect; and (iv) to the best of its knowledge after reasonable investigation, the Local Agency is not in breach of or default under any applicable law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement (including but not limited to the Loan Agreement) or other instrument to which the Local Agency is a party or is otherwise subject, which would have a material adverse impact on the Local Agency's ability to perform its obligations under the Legal Documents, and no event has occurred and is continuing which, with the passage of time or the giving of notice, or both, would constitute a default or an event of default under any such instrument;

(xi) an opinion dated the date of Closing and addressed to the Underwriter, of the Office of Procopio, Cory, Hargreaves & Savitch LLP as Counsel to the Authority, to the effect that:

(A) the Authority is a public body, corporate and politic duly organized and validly existing under the Constitution and laws of the State of California;

(B) the resolution of the Authority approving and authorizing the execution and delivery of the Authority Documents, the Bonds and the Official Statement and other actions of the Authority was duly adopted at a meeting of the governing body of the Authority which was called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and the resolution is now in full force and effect;

(C) the Authority Documents are valid, legal and binding agreements of the Authority (assuming due authorization, execution and delivery by and validity against the other parties thereto);

(D) to the best knowledge of such counsel there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court or public body pending with respect to which the Authority has been served or, to the best of such counsel's knowledge, threatened against or affecting the Authority, except as may be disclosed in the Official Statement, which would materially adversely impact the Authority's ability to complete the transactions contemplated by the Authority Documents, the Official Statement or any other document or certificate related to such transactions, restrain or enjoin the collection of Installment Payments with respect to the Installment Sale Agreement, or in any way contesting or affecting the validity of the Bonds, the Official Statement, the Authority Documents or the transactions described in and contemplated thereby wherein an unfavorable decision, ruling or finding would materially adversely affect the validity and enforceability of the Bonds or the Authority Documents or in which a final adverse decision could materially adversely affect the operations of the Authority;

(E) the execution and delivery of the Authority Documents and the issuance of the Bonds and compliance with the provisions thereof, do not and will not in any material respect conflict with or constitute on the part of the Authority a breach of or default under any agreement or other instrument to which the Authority is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the Authority is subject, which breach or default has or may have a material adverse effect on the ability of the Authority to perform its obligations under the Authority Documents;

(F) no authorization, approval, consent, or other order of the State of California or any other governmental body within the State of California is required for the valid authorization, execution and delivery of the Authority Documents or the Official Statement by the Authority or the consummation by the Authority of the transactions on its part contemplated therein, except such as have been obtained and except such as may be required under state securities or blue sky laws in connection with the purchase and distribution of the Bonds by the Underwriter; and

(G) based on the information made available to such counsel in its role as counsel to the Authority, and without having undertaken to determine independently or assume any responsibility for the accuracy, completeness or fairness of the statements contained in the Official Statement under the caption entitled "THE SAN ELIJO JOINT POWERS AUTHORITY," nothing has come to its attention which would lead it to believe that the statements contained in the above-referenced caption as of the date of the Official Statement and as of the date of Closing (excluding therefrom the financial and statistical data and forecasts included therein, as to which no opinion is expressed) contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(xii) an opinion dated the date of Closing and addressed to the Underwriter, of the Office of the City Attorney for each Local Agency, to the effect that:

(A) the City is a general law city and a municipal corporation duly organized and validly existing under the Constitution and laws of the State of California;

(B) the resolution of the City approving and authorizing the execution and delivery of the City Documents and approving and authorizing the issuance of the Bonds and the delivery of the Official Statement and other actions of the City was duly adopted at a meeting of the governing body of the City which was called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and the resolution is now in full force and effect;

(C) the City Documents are valid, legal and binding agreements of the City (assuming due authorization, execution and delivery by and validity against the other parties thereto);

(D) to the best knowledge of the City Attorney there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court or public body pending with respect to which the City has been served or, to the best of such City Attorney's knowledge, threatened against or affecting the City, except as may be disclosed in the Official Statement, which would materially adversely impact the City's ability to complete the transactions contemplated by the City Documents, the Official Statement or any other document or certificate related to such transactions, restrain or enjoin the collection of Revenues with respect to the Loan Agreement, or in any way contesting or affecting the validity of the Bonds, the Official Statement or the City Documents;

(E) the execution and delivery of the City Documents and compliance with the provisions thereof, do not and will not in any material respect conflict with or constitute on the part of the City a breach of or default under any agreement or other instrument to which the City is a party or by which it is bound or any existing law, regulation, court order or consent decree to which the City is subject, which breach or default has or may have a material adverse effect on the ability of the City to perform its obligations under the City Documents;

(F) no authorization, approval, consent, or other order of the State of California or any other governmental body within the State of California is required for the valid authorization, execution and delivery of the City Documents or the consummation by the City of the transactions on its part contemplated therein, except such as have been obtained and except such as may be required under state securities or blue sky laws in connection with the purchase and distribution of the Bonds by the Underwriter; and

(G) based on the information made available to City Attorney, and without having undertaken to determine independently or assume any

responsibility for the accuracy, completeness or fairness of the statements contained in the Official Statement, nothing has come to its attention which would lead it to believe that the Official Statement as of its date and as of the date of Closing (excluding therefrom the financial and statistical data and forecasts included therein, as to which no opinion is expressed and information relating to the Authority, the financial guaranty insurance policy, the Insurer and The Depository Trust Company and its book entry system) contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(xiii) an opinion of counsel to the Trustee, addressed to the Underwriter and the Authority, dated the date of the Closing, to the effect that:

(A) the Trustee is a national banking association duly organized and validly existing under the laws of the United States of America, having full corporate power to undertake the trust created under the Indenture;

(B) the Indenture has been duly authorized, executed and delivered by the Trustee and, assuming due authorization, execution and delivery by the other parties thereto, the Indenture constitutes the valid, legal and binding obligations of the Trustee enforceable in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles, if equitable remedies are sought;

(C) the Trustee has duly authenticated the Bonds upon the order of Authority;

(D) the Trustee's actions in executing and delivering the Indenture is in full compliance with, and do not conflict with any applicable law or governmental regulation and, to the best of such counsel's knowledge, after reasonable inquiry with respect thereto, do not conflict with or violate any contract to which the Trustee is a party or any administrative or judicial decision by which the Trustee is bound; and

(E) no consent, approval, authorization or other action by any governmental or regulatory authority having jurisdiction over the banking or trust powers of the Trustee that has not been obtained is or will be required for the execution and delivery of the Bonds or the consummation by the Trustee of its obligations under the Indenture.

(xiv) a certificate, dated the date of Closing, signed by a duly authorized official of the Trustee satisfactory in form and substance to the Underwriter, to the effect that:

(A) the Trustee is duly organized and existing as a national banking association under the laws of the United States, having the full corporate power and authority to enter into and perform its duties under the Indenture;

(B) the Trustee is duly authorized to enter into the Indenture and has duly executed and delivered the Indenture, and assuming due authorization and execution by the other parties thereto, the Indenture is legal, valid and binding upon the Trustee, and enforceable against the Trustee in accordance with its terms;

(C) the Trustee has duly authenticated the Bonds under the Indenture and delivered the Bonds to or upon the order of the Underwriter; and

(D) no consent, approval, authorization or other action by any governmental or regulatory authority having jurisdiction over the banking or trust powers of the Trustee that has not been obtained is or will be required for the execution and delivery of the Bonds or the consummation by the Trustee of its obligations under the Indenture.

(xv) the preliminary and final notice of sale required to be delivered to the California Debt and Investment Advisory Commission pursuant to Section 53583 of the Government Code and Section 8855(g) of the Government Code;

(xvi) a copy of the executed Blanket Issuer Letter of Representations by and between the City and DTC relating to the book-entry system, and a Copy of the Operational Arrangements Letter of Representations executed by the Trustee.

(xvii) the nonarbitrage certificate by the Authority in form and substance to the reasonable satisfaction of Bond Counsel and the Underwriter;

(xviii) a certificate, dated the date of the Preliminary Official Statement, of the Authority, as required under Rule 15c2-12;

(xix) a certificate, dated the date of the Preliminary Official Statement, of the Local Agencies, as required under Rule 15c2-12;

(xx) a certificate of the City certifying that the insurance requirements of Article ___ of the Loan Agreement have been satisfied and certificates of compliance have been issued; and

(xxi) such additional legal opinions, Bonds, proceedings, instruments or other documents as Bond Counsel or Disclosure Counsel may reasonably request.

(xxii) a policy of municipal bond insurance given by _____, [together with a reserve fund surety bond in satisfaction of the Reserve Requirement].

Section 9. Changes in Official Statement. After the Closing, neither the Authority nor the Local Agencies will adopt any amendment of or supplement to the Official Statement to which the Underwriter shall reasonably object in writing. Within 90 days after the Closing or within 25 days following the “end of the underwriting period” (as defined in Section 240 15c-12 in Chapter II of Title 17 of the Code of Federal Regulations (Rule “15c2-12”), whichever occurs first, if any event relating to or affecting the Bonds, the Trustee, the Local Agencies or the Authority shall occur as a result of which it is necessary, in the opinion of the Underwriter, to amend or supplement the Official Statement in order to make the Official Statement not misleading in any material respect in the light

of the circumstances existing at the time it is delivered to a purchaser, the Authority will forthwith prepare and furnish to the Underwriter an amendment or supplement that will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to purchaser, not misleading. The Local Agencies and the Authority shall cooperate with the Underwriter in the filing by the Underwriter of such amendment or supplement to the Official Statement with a nationally recognized municipal securities repository. The Underwriter acknowledges that the “end of the underwriting period” will be the date of Closing.

Section 10. Expenses. Whether or not the transactions contemplated by this Purchase Contract are consummated, the Underwriter shall be under no obligation to pay, and the Authority shall pay only from the proceeds of the Bonds, but only as the Authority and such other party providing such services may agree, all expenses and costs of the Authority and the Local Agencies incident to the performance of their obligations in connection with the authorization, execution, sale and delivery of the Bonds to the Underwriter, including, without limitation, printing costs, CUSIP Service Bureau charges, rating Authority fees and charges, initial fees of the Trustee, including fees and disbursements of its counsel, if any, fees and disbursements of Bond Counsel and Disclosure Counsel and other professional advisors employed by the Authority or the Local Agencies, costs of preparation, printing, signing, transportation, delivery and safekeeping of the Bonds and for expenses (included in the expense component of the spread) incurred by the Underwriter on behalf of Local Agencies’ employees which are incidental to implementing this agreement, including, but not limited to, meals, transportation, lodging, and entertainment of those employees. The Underwriter shall pay all out-of-pocket expenses of the Underwriter, including, without limitation, the fees and expenses of its counsel, advertising expenses, the California Debt and Investment Advisory Commission fee, CUSIP Services Bureau charges, regulatory fees imposed on new securities issuers and any and all other expenses incurred by the Underwriter in connection with the public offering and distribution of the Bonds, the Underwriter may be reimbursed by the Local Agencies and Authority as otherwise agreed.

Notices. Any notice or other communication to be given to the Underwriter under this Purchase Contract may be given by delivering the same in writing to Brandis Tallman LLC, 22 Battery Street, Suite 500, San Francisco, California 94111. All notices or communications hereunder by any party shall be given and served upon each other party. Any notice or communication to be given the Authority under this Purchase Contract may be given by delivering the same in writing to the San Elijo Joint Powers Authority, 2695 Manchester Avenue, P.O. Box 1077, Cardiff by the Sea, CA 92007-1007, Attention: General Manager. Any notice or communication to be given the Encinitas under this Purchase Contract may be given by delivering the same in writing to the City of Encinitas, 505 South Vulcan Avenue, Encinitas, California 92024-3633, Attention: City Manager, and to Solana Beach, 635 South Highway 101, Solana Beach, California 92075, Attention: City Manager.

Section 11. Parties in Interest. This Purchase Contract is made solely for the benefit of the Authority, the Local Agencies and the Underwriter (including the successors or assigns thereof) and no other person shall acquire or have any right hereunder or by virtue hereof. All representations, warranties and agreements of the Authority and the Local Agencies in this Purchase Contract shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Underwriter and shall survive the delivery of and payment for the Bonds.

Section 12. Counterparts. This Purchase Contract may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 13. Governing Law. This Purchase Contract shall be governed by the laws of the State of California.

BRANDIS TALLMAN LLC

By: _____
Authorized Signatory

Accepted:

SAN ELIJO JOINT POWERS AUTHORITY

By: _____
Authorized Officer

Accepted:

CITY OF ENCINITAS

By: _____
Authorized Officer

Accepted:

CITY OF SOLANA BEACH

By: _____
Authorized Officer

EXHIBIT A

**SAN ELIJO JOINT POWERS AUTHORITY
San Diego County, California
2012 Refunding Revenue Bonds
(San Elijo Water Reclamation Facility)**

MATURITY SCHEDULE

<i><u>Maturity Date</u></i> <i><u>(March 1)</u></i>	<i><u>Principal</u></i> <i><u>Amount</u></i>	<i><u>Interest</u></i> <i><u>Rate</u></i>	<i><u>Yield</u></i>	<i><u>Price</u></i>
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**ESCROW DEPOSIT AND TRUST AGREEMENT
(2003 Refunding Revenue Bonds and CEC Loan)**

by and between the

SAN ELIJO JOINT POWERS AUTHORITY

and

**UNION BANK, N.A.
as Escrow Bank**

Dated as of January 1, 2012

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EXHIBIT A REDEMPTION SCHEDULE OF 2003 BONDS AND CEC LOAN

ESCROW DEPOSIT AND TRUST AGREEMENT

This Escrow Deposit and Trust Agreement is made and entered into as of January 1, 2012, by and between the SAN ELIJO JOINT POWERS AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority"), and UNION BANK, N.A., a national banking association organized and existing under the laws of the United States of America (formerly, Union Bank of California, N.A.), having a corporate trust office in the City of San Francisco, California (the "Escrow Bank");

WITNESSETH:

WHEREAS, the Authority has heretofore issued its refunding revenue bonds pursuant to that certain Indenture of Trust, dated as of April 1, 2003 (the "2003 Indenture"), by and between the Authority and the Escrow Bank, as trustee (the "Trustee") in the principal amount of \$18,640,000 (the "2003 Bonds"); and

WHEREAS, in 2007, the Authority entered into the Energy Conservation Assistance Account Loan Agreement between the California Energy Resources and Development Commission (the "Commission") and the Authority (the "CEC Loan Agreement"), pursuant to which the Commission made an unsecured loan to the Authority in the original principal amount of \$1,193,500, and of which \$1,009,328 principal amount will be outstanding on January 1, 2012 (the "CEC Loan"); and

WHEREAS, of the original amounts of 2003 Bonds and the CEC Loan, \$11,360,000 and \$1,009,328 principal amounts, respectively, remain outstanding; and

WHEREAS, the Authority has determined that as a result of favorable financial market conditions, it is in its best interests at this time to refinance its obligation to pay debt service on the 2003 Bonds and the CEC Loan; and

WHEREAS, the Authority has entered into an Indenture of Trust, dated as of January 1, 2012, by and between the Trustee and the Authority (the "2012 Trust Indenture") pursuant to which \$_____ principal amount of refunding revenue bonds will be issued (the "2012 Bonds"); and

WHEREAS, the Authority proposes to make a deposit of moneys from the proceeds of the 2012 Bonds and other sources (as specified in Section 3), and to appoint the Escrow Bank as its agent for the purpose of applying said deposit to the payment and redemption of the 2003 Bonds in accordance with the 2003 Indenture and the prepayment of the CEC Loan in accordance with the CEC Loan Agreement, and the Escrow Bank desires to accept said appointment; and

WHEREAS, the Escrow Bank has full powers to act with respect to the irrevocable escrow created herein and to perform the duties and obligations to be undertaken pursuant to this Escrow Deposit and Trust Agreement:

NOW, THEREFORE, in consideration of the above premises and of the mutual promises and covenants herein contained, the parties hereto DO HEREBY AGREE as follows:

Section 1. Appointment of Escrow Bank. The Authority hereby appoints the Escrow Bank as escrow holder for all purposes of this Escrow Deposit and Trust Agreement, and the Escrow Bank hereby accepts such appointment.

Section 2. Establishment of Escrow Fund. There is hereby created by the Authority with, and to be held by, the Escrow Bank, as security for the payment of the redemption price of the 2003 Bonds and the prepayment price of the CEC Loan, an irrevocable escrow, to be held in trust by the Escrow Bank on behalf of the Authority and for the benefit of the owners of the 2003 Bonds and the Commission, said escrow to be designated the "San Elijo Joint Powers Authority Refunding Escrow Fund" (the "Escrow Fund"). All moneys in the Escrow Fund are hereby irrevocably transferred to the Escrow Bank, as security for payment of the redemption and prepayment price of the 2003 Bonds and the CEC Loan, to be held by the Escrow Bank in trust for the benefit of the owners of the 2003 Bonds and the Commission. If at any time the Escrow Bank shall receive actual knowledge that the moneys in the Escrow Fund will not be sufficient to make the payment required by Section 5 hereof, the Escrow Bank shall notify the Authority of such fact, and the Authority shall immediately cure such deficiency.

Section 3. Deposit into Escrow Fund. Concurrently with the delivery of the 2012 Bonds, the Authority shall cause to be transferred to the Escrow Bank for deposit in the Escrow Fund the amount of \$_____ in immediately available funds, which shall be derived as follows: (a) \$_____ shall be derived from the proceeds of sale of the 2012 Bonds; and (b) \$_____ shall be derived from amounts on deposit in the Reserve Account established for the 2003 Bonds.

Section 4. Investment of Deposit in Escrow Fund. The Escrow Bank shall hold all of the moneys deposited into the Escrow Fund pursuant to the preceding section in cash uninvested.

Section 5. Instructions as to Application of Deposit. The Authority hereby instructs the Escrow Bank as its agent to apply the moneys deposited in the Escrow Fund pursuant to Section 3 hereof to pay: (1) the redemption price of all outstanding 2003 Bonds on March 1, 2012, including premium and accrued interest, and (2) the prepayment of the CEC Loan on _____, 2012, including any accrued interest, in each case pursuant to and in accordance with the provisions of the 2003 Indenture and the CEC Loan Agreement, respectively, and in the amounts set forth in Exhibit A attached hereto and by this reference incorporated herein.

Section 6. Notice of Redemption. The Authority has instructed the Escrow Bank to take all steps required to redeem all outstanding 2003 Bonds on March 1, 2012 (the "Redemption Date"), at a redemption price equal to the principal amount thereof, together with

accrued interest represented thereby to the redemption date, plus the premium required by Section 2.02(a) of the 2003 Indenture.

Section 7. Application of Certain Terms of the 2003 Indenture. All of the terms of the 2003 Indenture regarding the making of payments of principal, premium, and interest on the 2003 Bonds are incorporated in this Escrow Deposit and Trust Agreement as if set forth in full herein. Provisions of the 2003 Indenture relating to the resignation and removal of a trustee shall be the procedure to be followed with respect to any resignation or removal of the Escrow Bank hereunder.

Section 8. Compensation to Escrow Bank. The Escrow Bank hereby acknowledges that it has received on the date hereof full compensation for its duties under this Escrow Deposit and Trust Agreement representing its administration fees, except that the Authority shall indemnify and hold harmless the Escrow Bank for out-of-pocket costs such as mailing costs, redemption expenses, legal fees and other costs and expenses relating hereto, but under no circumstances shall amounts deposited in the Escrow Fund be deemed to be available for said purposes.

Section 9. Protection of Escrow Bank. Provisions of the 2003 Indenture relating to the protection, liability and indemnification of the Trustee shall apply to the Escrow Bank.

Section 10. Notices. All written notices to be given under this Escrow Deposit and Trust Agreement shall be given by mail to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other parties in writing from time to time.

If to the Authority: San Elijo Joint Powers Authority
2695 Manchester Avenue
Cardiff by the Sea, California 92007-1077
Attention: Director of Finance/Administration

If to Escrow Bank: Union Bank, N.A.
120 South San Pedro Street, Suite 400
Los Angeles, California 90012
Attention: Corporate Trust Department

Section 11. California Law. This Escrow Deposit and Trust Agreement shall be construed and governed in accordance with the laws of the State of California.

Section 12. Severability. Any provision of this Escrow Deposit and Trust Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Escrow Deposit and Trust Agreement.

Section 13. Execution in Counterpart. This Escrow Deposit and Trust Agreement may be executed in counterparts and each of said counterparts shall be deemed an original for all purposes of this Escrow Deposit and Trust Agreement. All of such counterparts taken together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the Escrow Bank and the Authority have each caused this Escrow Deposit and Trust Agreement to be executed by their respective duly authorized officers, all as of the date first above written.

SAN ELIJO JOINT POWERS AUTHORITY

By: _____
General Manager

UNION BANK, N.A., as Escrow Bank

By: _____
Authorized Officer

EXHIBIT A

PAYMENT AND REDEMPTION SCHEDULE OF 2003 BONDS

<u>Payment Date</u>	<u>Principal</u>	<u>Redemption Premium</u>	<u>Interest</u>	<u>Total Payment</u>
March 1, 2012	\$	\$	\$	\$

PREPAYMENT SCHEDULE OF CEC LOAN

<u>Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total Payment</u>
_____, 2012	\$	\$	\$

SAN ELIJO JOINT POWERS AUTHORITY
MEMORANDUM

November 14, 2011

TO: Board of Directors
San Elijo Joint Powers Authority

FROM: General Manager

SUBJECT: PROPOSED CONSTRUCTION PHASE OF THE ADVANCED WATER
(DEMINERALIZATION) TREATMENT SYSTEM AT THE SAN ELIJO WATER
RECLAMATION FACILITY

RECOMMENDATION

It is recommended that the Board of Directors:

1. Adopt resolution 2012-03 "A Resolution of the Board of Directors of the San Elijo Joint Powers Authority Authorizing the Execution of Leases and Related Agreements for the Advanced Water Treatment Project and Approving Certain Matters in Connection Therewith;
2. Authorize the General Manager to execute the agreement with Kennedy/Jenks Consultants to provide engineering services during construction of the recycled water demineralization facility for an amount not to exceed \$259,360; and
3. Discuss and take action as appropriate.

PROJECT BACKGROUND

Over the last three years the San Elijo Joint Powers Authority (SEJPA) has planned, designed, and permitted an advanced water treatment system at the San Elijo Water Reclamation Facility. This new treatment system will allow the agency to maximize its recycling efforts and to improve water quality. In recent years, the SEJPA Water Reclamation Program has had difficulties in consistently achieving permit compliance for total dissolved solids (TDS) in the recycled water. The source of the TDS, also referenced as salinity, is from the local water supply, TDS infiltration into the sanitary collection systems, and the use of salt-based water softeners by homes and businesses.

In 2008, the SEJPA Board of Directors approved the development of the conceptual design of the Advanced Water Treatment Project. In 2009, the SEJPA Board approved the preparation of the preliminary design and California Environmental Quality Act (CEQA) review for the proposed project. In 2010, the project moved in the final design and financing phase. As part of these efforts, the SEJPA successfully obtained approximately \$700,000 through a competitive grant process administered through Proposition 84 - Integrated Regional Water Management Program.

During the early part of 2011, staff pursued several options for financing the project. The project had an estimated construction cost of \$4.35 million and it was anticipated that construction management services would be approximately 8% of the construction cost or roughly \$350,000. Thus, the total cost of construction including construction management was estimated at \$4.7 million. The financial plan presented to the SEJPA Board proposed that the SEJPA would fund \$2 million from the recycled water program reserves, \$700,000 through grant funding, and the remaining \$2 million through third party financing.

At the June 2011 Board meeting, staff was authorized to negotiate a lease-purchase agreement with W.M. Lyles, LLC to be returned to the Board for consideration of approval. The lease-purchase agreement would serve both as the delivery method for project construction and financing. Concurrently, staff was also authorized to negotiate a financing agreement with Brandis Tallman, LLC, providing a fallback position in case the lease-purchase negotiations were unsuccessful.

Using a lease-purchase construction and finance method is new to the SEJPA. Government Code Section 6588 provides the legal basis for utilizing this method. SEJPA Purchasing Policy allows lease-purchase agreements under Section 11.2. SEJPA legal counsel has confirmed that this proposed construction and financing method is legally available to the SEJPA for this project. The SEJPA legal counsel developed the lease-purchase agreements that are being presented for approval in this staff report.

In October 2011, the lease-purchase negotiations were completed successfully, producing results that met or exceeded expectations. Staff achieved the best negotiated solution by combining the construction services from W.M. Lyles with private financing provide through Brandis Tallman. The overall negotiated construction cost is approximately \$400,000 less than the engineer's estimate for the Advanced Water Treatment and the financing terms are approximately 35 bases points below the project's targeted rate of 4.5%. Additionally, the SEJPA was able to include additional miscellaneous capital improvements to the construction contract that gained further economies of scale, producing even greater value to the SEJPA.

LEASE-PURCHASE AGREEMENTS

The lease-purchase method is comprised of three separate agreements; a Lease Agreement, a Sublease Agreement, and a Construction Services Agreement. These agreements are included as Attachments A, B, and C of this staff report. The function of the Lease Agreement is to allow the SEJPA to lease an area of property to W.M. Lyles where W.M. Lyles will build the advanced water treatment system. The sublease agreement allows W.M. Lyles the ability to sublease the property with the advanced water treatment facilities back to the SEJPA for a limited time while the project is being constructed, tested, and system startup is performed. This provides the SEJPA the right to access and use the facility that W.M. Lyles constructs. The function of the Construction Services Agreement is to specify the desired construction elements, design, and specifications as prepared by the SEJPA's engineer of record. The Construction Services Agreement also specifies that L.W. Lyles shall perform the construction in accordance to the applicable public works requirements such as prevailing wages, working hours, and safety requirements and specifies the maximum guaranteed price (GMP) that will be paid for the stated scope of work. The negotiated GMP for the Advanced Water Treatment is \$4.0 million. The negotiated GMP for the miscellaneous capital projects is approximately \$210,000. The scope of work for all construction components is detailed in the construction services agreement for a total GMP of \$4,209,868.

CONSTRUCTION MANAGEMENT

SEJPA staff has negotiated a contract for construction management services with Kennedy/Jenks Consultants. Kennedy/Jenks is the engineer of record for the project, which makes them uniquely qualified due to their detailed knowledge of the design. As such, Kennedy/Jenks was the preferred engineering firm to perform the construction management services. Staff initiated negotiations with Kennedy/Jenks to determine if an acceptable scope of work and fee could be reached. The construction management budget for the project is \$350,000. The negotiated agreement with Kennedy/Jenks is for a fee not to exceed \$259,360 based on time and materials.

The proposed agreement preserves \$91,000 of the construction management budget. These funds would then be available if it is determined that additional material testing, construction inspection, engineering services, litigation preparation, or other professional services necessary for the completion of the construction phase. These funds would only be released through Board approval.

It is recommended that the Board of Directors approve the following:

1. Adopt resolution 2012-03 "A Resolution of the Board of Directors of the San Elijo Joint Powers Authority Authorizing the Execution of Leases and Related Agreements for the Advanced Water Treatment Project and Approving Certain Matters in Connection Therewith;
2. Authorize the General Manager to execute the agreement with Kennedy/Jenks Consultants to provide engineering services during construction of the recycled water demineralization facility for an amount not to exceed \$259,360; and
3. Discuss and take action as appropriate.

Respectfully submitted,



Michael T. Thornton, P.E.
General Manager

Attachments: Resolution 2012-03 Advanced Water Treatment Project
Kennedy/Jenks Construction Management Agreement

RESOLUTION NO. 2012-03

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN ELIJO JOINT POWERS AUTHORITY AUTHORIZING THE EXECUTION OF LEASES AND RELATED AGREEMENTS FOR THE ADVANCED WATER TREATMENT PROJECT AND APPROVING CERTAIN MATTERS IN CONNECTION THEREWITH

RECITALS

WHEREAS, the San Elijo Joint Powers Authority (“SEJPA”) a joint powers authority duly organized and existing under the laws of the State of California, may enter into a lease-purchase agreement to pay the cost of any public capital improvement pursuant to Government Code section 6588, subdivision (c); and

WHEREAS, SEJPA may purchase by an installment agreement or otherwise any or all public capital improvements pursuant to Government Code section 6588, subdivision (n); and

WHEREAS, SEJPA may contract for engineering, architectural, or other services determined necessary by SEJPA for the successful development of a capital improvement pursuant to Government Code section 6588, subdivision (f); and

WHEREAS, SEJPA may receive and accept from any source, loans, contributions, or grants, in either money, property, labor, or other things of value for, in aid of, the construction financing, or refinancing of public capital improvement pursuant to Government Code section 6588, subdivision (i); and

WHEREAS, SEJPA desires to provide for the construction of certain public improvements at the site of the current San Elijo Water Reclamation Facility described as the Advanced Water Treatment Project (the “Project”); and

WHEREAS, SEJPA has selected W.M. Lyles Co. as the firm best qualified to meet the needs of SEJPA in providing such construction services for the Project; and

WHEREAS, the proposed lease and related agreements provide for the means or methods by which the Project shall be constructed and contain such other terms and conditions as the governing board of SEJPA may deem to be in the best interest of SEJPA;

NOW, THEREFORE, it is resolved by the Board of Directors (“Board”) of the San Elijo Joint Powers Authority as follows:

SECTION 1. Approval of Leases and Related Agreements. The Board does hereby approve the Site Lease, Sublease and Construction Services Agreement with W.M. Lyles Co., in substantially the form presented (attached hereto as Exhibits A, B and C hereto) for the Advanced Water Treatment Project.

SECTION 2. Authorization of Execution. This Board does hereby authorize the General Manager of SEJPA, or his designee, to execute said Site Lease, Sublease and Construction Services Agreement with W.M. Lyles Co., in substantially the form as presented to this Board, subject to such changes as may be acceptable to the General Manager and General Counsel.

SECTION 3. Authorize Validation Action. The Board does hereby authorize the firm of Procopio, Cory, Hargreaves & Savitch LLP to seek judicial validation of the Site Lease, Sublease and Construction Services Agreement with W.M. Lyles Co.

SECTION 4. Authorized Actions. Officers of the Board, and SEJPA officials and staff are hereby authorized and directed, jointly and severally, to do any and all matters and to execute and deliver any and all documents which they may deem necessary or advisable in order to proceed with the approval of these agreements and otherwise carry out, give effect to and comply with the terms and intent of this Resolution. Such actions heretofore taken by such officers, officials and staff are hereby ratified, confirmed and approved.

SECTION 5. Recitals. All the recitals in this Resolution above are true and correct and this Board so finds, certifies, determines and represents.

SECTION 6. Effective Date. This Resolution shall take effect immediately upon its passage.

PASSED, APPROVED AND ADOPTED this 14th day of November, 2011, by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

Approved:

Thomas M. Campbell, Chair of the Board

Attest:

Michael T. Thornton, Secretary of the Board

EXHIBIT A – SITE LEASE

EXHIBIT B – SUBLEASE

EXHIBIT C – CONSTRUCTION SERVICES AGREEMENT

ADVANCED WATER TREATMENT PROJECT

SITE LEASE

Dated as of November 14, 2011

Between

SAN ELIJO JOINT POWERS AUTHORITY

and

W.M. LYLES CO.

DRAFT

Initial: _____

Site Lease
San Elijo Joint Powers Authority
Advanced Water Treatment Project

SAN ELIJO JOINT POWERS AUTHORITY
MEMBRANE FILTRATION PROJECT SITE LEASE

This SITE LEASE is dated as of November 14, 2011 and is by and between the SAN ELIJO JOINT POWERS AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California (hereinafter called "SEJPA") as lessor and W.M. LYLES CO., a corporation organized and operating under the laws of the State of California (hereinafter called the "Lessee").

WHEREAS, SEJPA, as a joint powers authority duly organized and existing under the laws of the State of California may enter into a lease-purchase agreement to pay the cost of any public capital improvement pursuant to Government Code section 6588, subdivision (c); and

WHEREAS, SEJPA may purchase by an installment agreement or otherwise any or all public capital improvements pursuant to Government Code section 6588, subdivision (n); and

WHEREAS, SEJPA may contract for engineering, architectural, or other services determined necessary by the SEJPA for the successful development of a capital improvement pursuant to Government Code section 6588, subdivision (f); and

WHEREAS, SEJPA may receive and accept from any source, loans, contributions, or grants, in either money, property, labor, or other things of value for, in aid of, the construction financing, or refinancing of public capital improvement pursuant to Government Code section 6588, subdivision (i); and

WHEREAS, SEJPA desires to provide for the construction of certain public improvements at the site of the current San Elijo Water Reclamation Facility described as the Advanced Water Treatment Project (the "Project"); and

WHEREAS, SEJPA's governing board has determined that it is in the best interests of SEJPA and for the common benefit of the citizens it serves to construct the Project by leasing to the Lessee land at the site of the Project, as more specifically described in Exhibit "A," (the "Site"), at which the public improvements are to be constructed, and subleasing from the Lessee the Site and the Project under a Sublease Agreement (the "Sublease") attached hereto as Exhibit "B" and by this reference incorporated herein; and

WHEREAS, SEJPA and the Lessee have entered into a Construction Services Agreement ("Construction Services Agreement"), attached hereto as Exhibit "C" and by this reference incorporated herein, to ensure that the Project will meet SEJPA's expectations; and

WHEREAS, SEJPA's governing body has duly authorized the execution this Site Lease; and

WHEREAS, the Lessee is authorized to lease the Site and to construct the Project on the Site, and has duly authorized the execution and delivery of the Sublease and this Site Lease.

NOW THEREFORE, in consideration of the covenants hereinafter set forth, SEJPA and Lessee agree as follows:

SECTION 1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this lease, have the meanings as herein specified.

Initial: _____

Site Lease
San Elijo Joint Powers Authority
Advanced Water Treatment Project

- A. **"Construction Services Agreement"** means the Construction Services Agreement for construction of improvements on a portion of the SEJPA site by and between SEJPA and the Lessee dated as of even date herewith, a copy of which is attached as Exhibit "C" hereto.
- B. **"Contract Documents"** means the Construction Services Agreement, the Sublease and this Site Lease.
- C. **"SEJPA"** means the SAN ELIJO JOINT POWERS AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California.
- D. **"Effective Date"** shall mean the day on which SEJPA issues a notice to proceed to Lessee in accordance with Section 4 of the Construction Services Agreement (the "Notice").
- E. **"Lessee"** shall mean W.M. LYLES CO. and its successors and assigns.
- F. **"Project"** means the improvements and equipment to be constructed and installed by the Lessee, at the location more particularly described in Exhibit "A" of the Sublease hereto.
- G. **"Site"** means that certain parcel of real property and improvements thereon (if any) more particularly described in Exhibit "A" attached hereto.
- H. **"Site Lease"** means this Site Lease together with any duly authorized and executed amendment hereto under which SEJPA leases the Site to the Lessee.
- I. **"Sublease"** means the Sublease of even date herewith, by and between SEJPA and the Lessee together with any duly authorized and executed amendment thereto.
- J. **"Sublease Payment"** means any payment required to be made by SEJPA pursuant to Section 7 of the Sublease.
- K. **"Sublease Prepayment"** means any payment required to be made by SEJPA pursuant to Section 26 of the Sublease.
- L. **"Term of this Lease" or "Term"** means the time during which this Lease is in effect, as provided for in Section 3 of this Lease.

SECTION 2. **SITE LEASE.**

SEJPA leases to the Lessee, and the Lessee leases from SEJPA, on the terms and conditions set forth herein, the Site situated in the County of San Diego, State of California, more specifically described in Exhibit "A" attached hereto, including any real property improvements now or hereafter affixed thereto.

SECTION 3. **TERM.**

The term of this Site Lease shall become effective upon the Effective Date. The term of this Site Lease commences on the Effective Date and terminates twenty-four (24) months following the Effective Date unless sooner terminated as hereinafter provided, or as provided in the Sublease. If on the scheduled date of termination of this Site Lease, Sublease Payments

Initial: _____

Site Lease
San Elijo Joint Powers Authority
Advanced Water Treatment Project

then due shall not have been fully paid or have therefore been abated at any time and for any reason, then the term of this Site Lease shall be extended until the date upon which all such Sublease Payments shall be fully paid. At the termination of this Lease, natural or otherwise, title to the Site, and any improvements constructed thereon by the Lessee, shall vest in SEJPA.

SECTION 4. **REPRESENTATIONS, COVENANTS, AND WARRANTIES OF SEJPA.** SEJPA represents, covenants and warrants to the Lessee that:

- A. SEJPA has good and merchantable fee title to the Site and has authority to enter into and perform its obligations under this Site Lease;
- B. There are no liens on the Site other than Permitted Encumbrances;
- C. All taxes, assessments or impositions of any kind with respect to the Site, if applicable, except current taxes, have been paid in full;
- D. The Site is properly zoned for the intended purpose and utilization of the Site;
- E. There is no litigation of any kind currently pending or threatened regarding the Site or SEJPA's use of the Site for the purposes contemplated by this Site Lease;
- F. To the best of SEJPA's knowledge, after actual inquiry:
 - (1) the Site has not been used as or for a mine, a landfill, a dump or other disposal facility, industrial or manufacturing facility, or a gasoline service station;
 - (2) no underground storage tank is now located in the Site or has previously been located therein;
 - (3) no violation of any State or Federal Law governing dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances (herein collectively called "Environmental Regulations") now exists relating to the Site, no notice of any such violation or any alleged violation thereof has been issued or given by any governmental entity or agency, and there is not now any investigation or report involving the Site by any governmental entity or agency which in any way relates to dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any Environmental Regulations related thereto (hereinafter collectively called "Hazardous Substances");
 - (4) no person, party or private or governmental agency or entity has given any notice of or asserted any claim, cause of action, penalty, cost or demand for payment or compensation, whether or not involving any injury or threatened injury to human health, the environment or natural resources, resulting or allegedly resulting from any activity or event described in (3) above;
 - (5) there are not now any actions, suits, proceedings or damage settlements relating in any way to Hazardous Substances, in, upon, under over or from the Site;

Initial: _____

Site Lease
San Elijo Joint Powers Authority
Advanced Water Treatment Project

- (6) the Site is not listed in the United States Environmental Protection Agency's National Priorities List of Hazardous Waste Sites or any other list of Hazardous Substance sites maintained by any federal, state or local governmental agency; and
 - (7) the Site is not subject to any lien or claim for lien or threat of a lien in favor of any governmental entity or agency as a result of any release or threatened release-of any Hazardous Substance.
- G. To the extent permitted by law, SEJPA shall not abandon the Site for the use for which it is currently required by SEJPA and further, shall not seek to substitute or acquire property to be used as a substitute for the uses for which the Site and Project are to be maintained under the Site Lease.
- H. The term "Permitted Encumbrances" as used herein shall mean, as of any particular time:
- (1) liens for general ad valorem taxes and assessments, if any, not then delinquent;
 - (2) this Site Lease; the Sublease; any right or claim of any mechanic, laborer, materialman, supplier, or vendor, if applicable, not filed or perfected in the manner prescribed by law; easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions which exist of record as of the date of this Site Lease and which will not materially impair the use of the Site;
 - (3) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, or restrictions established following the date of recordation of this Site Lease and to which the Lessee and SEJPA consent in writing which will not impair or impede the operation of the Site.

SECTION 5. **REPRESENTATIONS AND WARRANTIES OF THE LESSEE.** The Lessee represents and warrants to SEJPA that:

- A. The Lessee is duly organized, validly existing and in good standing under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
- B. The Lessee has full power, authority and legal right to enter into and perform its obligations under this Site Lease, and the execution, delivery and performance of this Site Lease has been duly authorized by all necessary corporate actions on the part of the Lessee and does not require any further approvals or consents;
- C. Execution, delivery and performance of this Site Lease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Lessee is a party or by which it or its property is bound;
- D. There is no pending or, to the best knowledge of the Lessee, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Lessee to perform its obligations under this Site Lease; and

SECTION 6. **RENTAL.**

Initial: _____

Site Lease
San Elijo Joint Powers Authority
Advanced Water Treatment Project

The Lessee shall pay to SEJPA as and for advance rental hereunder \$1.00 per year or part thereof, or the aggregate sum of ten dollars (\$10.00), on or before the date of commencement of the term of this Site Lease. The Lessee shall have no obligation to make rental payments hereunder in the event the Effective Date of this Site Lease does not occur.

SECTION 7. **PURPOSE.**

The Lessee shall use the Site solely for the purpose of constructing the Project thereon and for subleasing the Site and the Project to SEJPA; provided, that upon the occurrence of an Event of Default by SEJPA under the Sublease, the Lessee may exercise the remedies provided for in the Construction Services Agreement or the Sublease.

SECTION 8. **TERMINATION.** The Lessee agrees, upon termination of this Site Lease:

- A. To quit and surrender the Site in the same good order and condition as it was in at the time of commencement of the term hereunder, reasonable wear and tear excepted;
- B. To release and reconvey to SEJPA any liens and encumbrances created or caused by the Lessee; and
- C. That any permanent improvements and structures existing upon the Site at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in SEJPA.

Notwithstanding SEJPA's foregoing rights in the event of termination, the Lessee shall retain the right to full compensation for all services rendered prior to the termination, including all rights they have under the Construction Services Agreement and the Sublease as well as all recourse provided by California law including common law, for the value of the work performed on the Site and/or the Project.

In the event the Construction Services Agreement is terminated pursuant to the provisions therein, this Site Lease shall immediately terminate.

SECTION 9. **QUIET ENJOYMENT.**

SEJPA covenants and agrees that it will not take any action to prevent the Lessee's quiet enjoyment of the Site during the term hereof; and, that in the event SEJPA's fee title to the Site is ever challenged so as to interfere with the Lessee's right to occupy, use and enjoy the Site, SEJPA will use all governmental powers at its disposal, including the power of eminent domain, to obtain unencumbered fee title to the Site and to defend the Lessee's right to occupy, use, and enjoy the Site. SEJPA, however, retains the right, throughout the Site Lease Term, to use the Site for SEJPA purposes, pursuant to the terms of the Sublease.

SECTION 10. **NO LIENS.**

SEJPA shall not mortgage, sell, assign, transfer or convey the Site or any part thereof to any person during the term of this Site Lease, without the written consent of the Lessee. Nothing herein shall preclude SEJPA from granting utility easements across the Site to facilitate the use and operation of the Project for which it is intended.

Initial: _____

SECTION 11. **RIGHT OF ENTRY.**

SEJPA reserves the right for any of its duly authorized representatives to enter upon the Site at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof, but in doing so shall not interfere with the Lessee's operations on the Project.

SECTION 12. **ASSIGNMENT AND SUBLEASING.**

The Lessee will not assign or otherwise dispose of or encumber the Site or this Site Lease without the written consent of SEJPA.

SECTION 13. **NO WASTE.**

The Lessee agrees that at all times that it is in possession of the Site it will not commit suffer or permit any waste on the Site, and it will not willfully or knowingly use or permit the use of the Site for any illegal act or purpose.

SECTION 14. **DEFAULT.**

In the event the Lessee shall be in default in the performance of any obligation on its part to be performed under the terms of the Construction Services Agreement and this Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to the Lessee, SEJPA may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Sublease shall be deemed to occur as a result thereof.

SECTION 15. **EMINENT DOMAIN.**

In the event the whole or any part of the Site or the improvements thereon, including but not limited to the Project, is taken by eminent domain, the financial interest of the Lessee shall be recognized and is hereby determined to be the amount of all Sublease Payments then due or past due, the next succeeding Sublease Payment and the purchase option price as set forth in Section 27 of the Sublease less any unearned interest as of the date the Lessee receives payment in full. The balance of the award in such eminent domain action, if any, shall be paid to SEJPA.

SECTION 16. **TAXES.**

The terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

SECTION 17. **INDEMNIFICATION.**

SEJPA covenants and agrees to indemnify, defend and hold the Lessee harmless from and against any and all losses, claims, suits, damages and expenses (including reasonable attorneys fees) arising out of the condition of the Site, or the breach of provision of Section 4, including but not limited to, all costs required to be incurred by the Lessee as a result of any condition described in Section 4, paragraph G hereof, unless the condition is caused or created

Initial: _____

Site Lease
San Elijo Joint Powers Authority
Advanced Water Treatment Project

by Lessee, whether or not known to SEJPA on the date of execution of this Site Lease, or unless such cost is contemplated to be paid by the Lessee pursuant to the provisions of the Construction Services Agreement. All other indemnification issues related to this Site Lease, the Site or the progress and prosecution of the Project shall be governed by the Construction Services Agreement and Sublease.

SECTION 18. **PARTIAL INVALIDITY.**

If any one or more of the terms, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 19. **NOTICES.**

Any notices or filings required to be given or made under this Site Lease shall be served, given or made in writing upon SEJPA or the Lessee, as the case may be, by personal delivery or registered mail to the respective addresses given below. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Lessee: Mr. Dave Dawson
W.M. LYLES CO.
1210 W. Olive
Fresno, CA 93728
Office: 951-973-7393
Fax: 951-698-3031

If to SEJPAT: Mr. Michael Thornton
SAN ELIJO JOINT POWERS AUTHORITY
2695 Manchester Avenue
Cardiff by the Sea, CA 92007
Office: 760-753-6203
Fax: 760-753-5935

SECTION 20. **BINDING EFFECT.**

This Site Lease shall inure to the benefit of and shall be binding upon SEJPA, the Lessee and their respective successors in interest and assigns.

SECTION 21. **AMENDMENTS AND MODIFICATIONS.**

Initial: _____

Site Lease
San Elijo Joint Powers Authority
Advanced Water Treatment Project

This Site Lease shall not be effectively amended, changed, modified, altered or terminated without the written agreement of SEJPA and the Lessee.

SECTION 22. **EXECUTION IN COUNTERPARTS.**

This Site Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 23. **LAWS, VENUE AND ATTORNEYS' FEES.**

The terms and provisions of this Site Lease shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Site Lease, the action shall be brought, and the exclusive jurisdiction, forum and venue shall be, in a state court situated in the County of San Diego, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county within California. SEJPA and Lessee hereby submit to personal jurisdiction in the State of California for the enforcement of this Site Lease and hereby waive any and all personal rights under the law of any state to object to jurisdiction within the State of California for purposes of any legal action or proceeding to enforce this Site Lease, whether on the ground of inconvenient forum or otherwise. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the courts or arbitrator(s).

SECTION 24. **INTEGRATION/MODIFICATION.**

This Site Lease represents the entire understanding of SEJPA and Lessee as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered herein and shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

SECTION 25. **HEADINGS.**

The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Site Lease.

[continued on following page.]

Initial: _____

Site Lease
San Elijo Joint Powers Authority
Advanced Water Treatment Project

SECTION 26. TIME.

Time is of the essence in this Site Lease and each and all of its provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Site Lease by their authorized officers as of the day and year first written above.

SAN ELIJO JOINT POWERS AUTHORITY
"SEJPA"

W.M. LYLES CO.
"LESSEE"

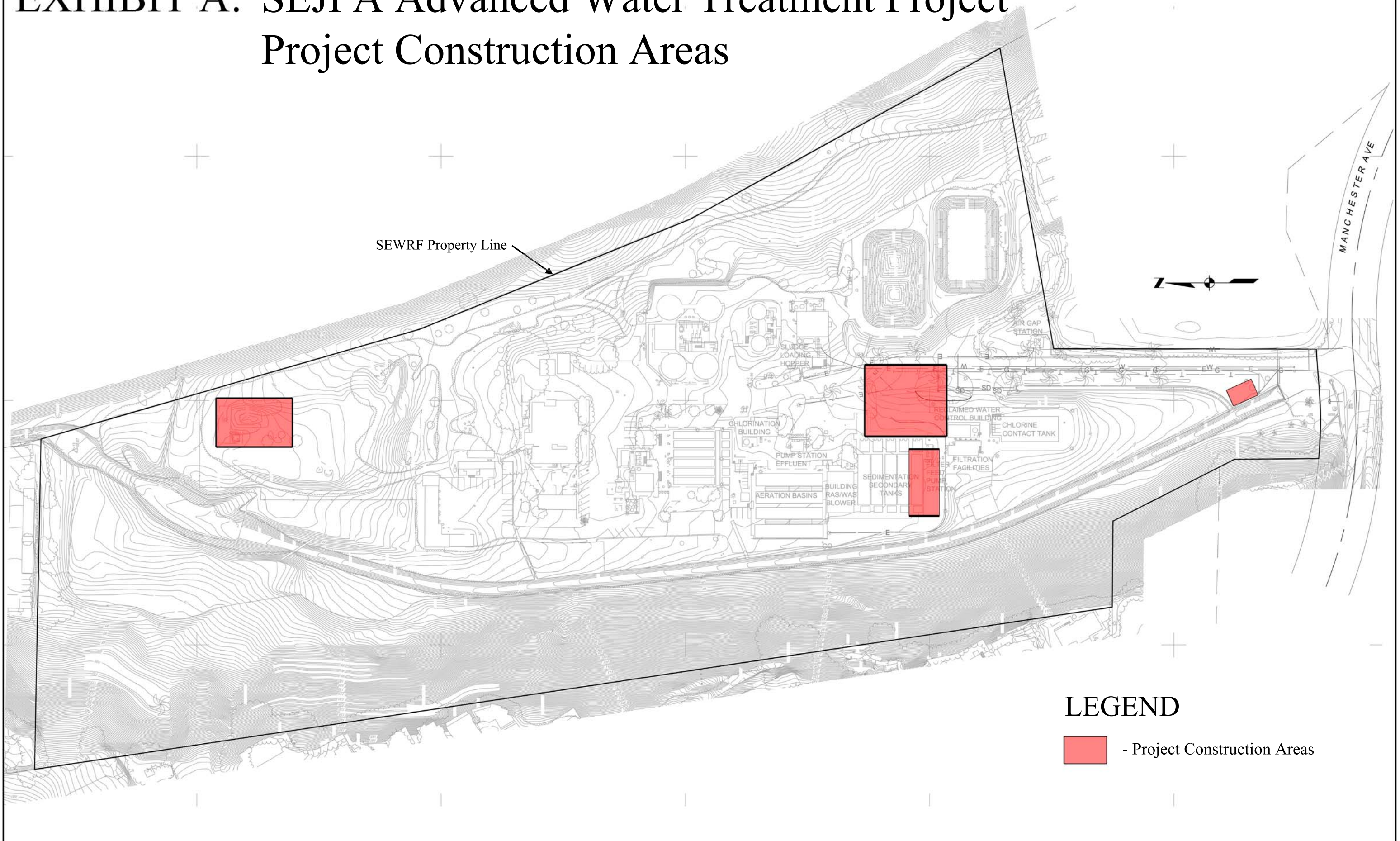
BY: _____
Michael Thornton
ITS: General Manager

BY: _____
Richard G. Nemmer
ITS: President and CEO

DRAFT

Initial: _____

EXHIBIT A: SEJPA Advanced Water Treatment Project Project Construction Areas



LEGEND

 - Project Construction Areas

EXHIBIT "B"
SUBLEASE

DRAFT

EXHIBIT B - 1

Initial: _____

EXHIBIT "C"
CONSTRUCTION SERVICES AGREEMENT

DRAFT

EXHIBIT C -1

Initial: _____

ADVANCED WATER TREATMENT PROJECT

SUBLEASE AGREEMENT

Dated as of November 14, 2011

Between

SAN ELIJO JOINT POWERS AUTHORITY

and

W.M. LYLES CO.

Sublease Agreement
San Elijo Joint Powers Authority
Advanced Water Treatment Project

SAN ELIJO JOINT POWERS AUTHORITY
ADVANCED WATER TREATMENT PROJECT SUBLEASE AGREEMENT

This SUBLEASE AGREEMENT ("Sublease") is dated as of November 14, 2011 and is by and between the SAN ELIJO JOINT POWERS AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California (hereinafter called "SEJPA"), and W.M. LYLES CO., a corporation organized and operating under the laws of the State of California (hereinafter called "Lessor").

RECITALS:

WHEREAS, SEJPA, as a joint powers authority duly organized and existing under the laws of the State of California may enter into a lease-purchase agreement to pay the cost of any public capital improvement pursuant to Government Code section 6588, subdivision (c); and

WHEREAS, SEJPA may purchase by an installment agreement or otherwise any or all public capital improvements pursuant to Government Code section 6588, subdivision (n); and

WHEREAS, SEJPA may contract for engineering, architectural, or other services determined necessary by the SEJPA for the successful development of a capital improvement pursuant to Government Code section 6588, subdivision (f); and

WHEREAS, SEJPA may receive and accept from any source, loans, contributions, or grants, in either money, property, labor, or other things of value for, in aid of, the construction financing, or refinancing of public capital improvement pursuant to Government Code section 6588, subdivision (i); and

WHEREAS, SEJPA deems it essential for its own governmental purpose, to finance the construction and installation of certain improvements described in Exhibit "A" attached hereto (the "Project") and situated on the SEJPA SITE described in Exhibit "B" attached hereto (the "Site"); and

WHEREAS, SEJPA is leasing the Site to Lessor under a lease agreement dated the date hereof (the "Site Lease") attached hereto as Exhibit "C" in consideration of Lessor leasing and subleasing the Project and the Site to SEJPA pursuant to the terms of this Sublease; and

WHEREAS, SEJPA owns the Site and pursuant, to that certain Construction Services Agreement entered into by and between SEJPA and Lessor of even date herewith (the "Construction Services Agreement") attached hereto as Exhibit "D," has or will have prepared and adopted plans and specifications for the completion of the Project; and

WHEREAS, SEJPA and Lessor agree to mutually cooperate now or hereafter, to the extent possible, in order to sustain the intent of this Sublease and the bargain of both parties hereto, and to provide Sublease Payments to be made on the dates and in the amount set forth herein.

WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, SEJPA and Lessor parties hereto agree as follows:

SECTION 1. **DEFINITIONS.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Sublease, have the meanings as herein specified.

Initial: _____

Sublease Agreement
San Elijo Joint Powers Authority
Advanced Water Treatment Project

- A. **"Certificate of Acceptance and Notice of Completion"** mean those certificates signed by a SEJPA Representative to the effect that the Project has been substantially completed.
- B. **"Construction Costs"** means those costs identified in Section 2.C. of the Construction Services Agreement.
- C. **"Construction Services Agreement"** means the Construction Services Agreement for construction of improvements on the Project SITE by and between SEJPA and the Lessor of even date herewith, a copy of which is attached as Exhibit "D" hereto.
- D. **"Contract Documents"** means the Construction Services Agreement, this Sublease and the Site Lease.
- E. **"SEJPA"** means the **SAN ELIJO JOINT POWERS AUTHORITY**, a joint powers authority duly organized and existing under the laws of the State of California.
- F. **"Effective Date"** shall mean the day on which SEJPA issues a notice to proceed to Lessee in accordance with Section 4 of the Construction Services Agreement ("Notice").
- G. **"Event of Default"** means one or more events of default as defined in Section 21 of this Sublease.
- H. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price established pursuant to Section 4 of the Construction Services Agreement.
- I. **"Lessor"** shall mean W.M. LYLES CO. and its successors and assigns.
- J. **"Prepayment Price"** means the price to be paid by SEJPA to exercise its option to purchase the Site and the Project prior to the natural termination of this Sublease, in accordance with the provisions of Section 26 herein.
- K. **"Project"** means the improvements and equipment to be constructed and installed by the Lessor, as more particularly described in Exhibit "A" attached hereto.
- L. **"Site"** means that certain parcel of real property and improvements thereon (if any) more particularly described in Exhibit "B" attached hereto.
- M. **"Site Lease"** means the Site Lease of even date herewith, by and between SEJPA and the Lessor as set forth in Exhibit "C" attached hereto, together with any duly authorized and executed amendment thereto under which SEJPA leases the Site to the Lessor.
- N. **"Sublease"** means this Sublease together with any duly authorized and executed amendment hereto.
- O. **"Sublease Payment"** means any payment required to be made by SEJPA pursuant to Section 7 of this Sublease.
- P. **"Sublease Prepayment"** means any payment made by SEJPA pursuant to Section 26 of this Sublease.

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- Q. **"Term of this Sublease" or "Term"** means the time during which this Sublease is in effect, as provided for in Section 3 of this Sublease.

SECTION 2. **SUBLEASE.**

Lessor hereby leases and subleases to SEJPA, and SEJPA hereby leases and subleases from Lessor the Project and the Site, including any real property improvements now or hereafter affixed thereto in accordance with the provisions herein for the full term of this Sublease. The leasing by the Lessor to SEJPA of the Site shall not effect or result in a merger of SEJPA's leasehold estate pursuant to this Sublease and its fee estate as lessor under the Site Lease, and the Lessor shall continue to have and hold a leasehold estate in said Site pursuant to the Site Lease throughout the term thereof and the term of this Sublease.

SECTION 3. **TERM OF THE SUBLEASE.**

The terms and conditions of this Sublease shall become effective upon the Effective Date. The term of the Sublease commences on the Effective Date, and terminates twenty-four (24) months following the Effective Date, unless sooner terminated as hereinafter provided. If on the scheduled date of termination of this Sublease the Sublease Payments shall not be fully paid, or provision therefor made, or if such Sublease Payments shall have been abated at any time and for any reason, then the term of this Sublease shall be extended until the date upon which all such Sublease Payments shall be fully paid.

- A. Termination of Term. Except as otherwise provided, the Term of this Sublease shall terminate upon the earliest of any of the following events:
- (1) An Event of Default and the Lessor's election to terminate this Sublease pursuant to the provisions of Sections 21 and 22, hereof;
 - (2) The arrival of the last day of the Term of this Sublease and payment of all Sublease Payments hereunder;
 - (3) The exercise of SEJPA's option under Section 26 hereof; or
 - (4) The termination of the Construction Services Agreement pursuant to the provisions contained therein.

SECTION 4. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF SEJPA.** SEJPA represents and warrants to Lessor that:

- A. SEJPA is a joint powers authority, duly organized and existing under the Constitution and laws of the State of California with authority to enter into this Sublease and to perform all of its obligations hereunder;
- B. SEJPA's governing body has duly authorized the execution and delivery of this Sublease and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability;

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- C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which SEJPA is a party by which it or its property is bound;
- D. There is no pending or, to the knowledge of SEJPA, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of SEJPA to perform its obligations under this Sublease;
- E. The Project and the Site are essential to SEJPA in the performance of its governmental functions and their estimated useful life to SEJPA exceeds the term of this Sublease;
- F. SEJPA shall take such action as may be necessary to include all Sublease Payments in its annual budget and annually to appropriate an amount necessary to make such Sublease Payments;
- G. SEJPA shall not abandon the Site for the use for which it is currently required by SEJPA and, to the extent permitted by law, SEJPA shall not seek to substitute or acquire property to be used as a substitute for the uses for which the site is maintained under the Sublease; and
- H. With the exception of any Hazardous Substances, including any asbestos or lead, which have been disclosed by SEJPA to Lessor, SEJPA shall not allow any Hazardous Substances (as such term is defined in the Site Lease) to be used or stored on, under or about the Site.

SECTION 5. **REPRESENTATIONS AND WARRANTIES OF LESSOR.** Lessor represent and warrant to SEJPA that:

- A. Lessor is duly organized, validly existing and in good standing as a corporation under the laws of the State of California, with full corporate power and authority to lease and own real and personal property;
- B. Lessor has full power, authority and legal right to enter into and perform its obligations under this Sublease, and the execution, delivery and performance of this Sublease has been duly authorized by all necessary corporate actions on the part of Lessor and does not require any further approvals or consents;
- C. The execution, delivery and performance of this Sublease does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which Lessor is a party by which they or their property is bound;
- D. There is no pending or, to the knowledge of Lessor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Lessor to perform their obligations under this Sublease; and
- E. Lessor will not mortgage or encumber the Site or the Sublease or assign this Sublease or their rights to receive Sublease Payments hereunder, except as permitted herein.

SECTION 6. **CONSTRUCTION/ACQUISITION.**

- A. Concurrent with the execution of this Sublease, SEJPA is executing a Construction Services Agreement and a Site Lease with Lessor in order to acquire and construct the Project. The

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cost of the construction and installation of the Project is determined by the GMP as set forth in Section 4 of the Construction Services Agreement.

- B. In order to ensure that moneys sufficient to pay all costs will be available for this purpose when required, SEJPA shall maintain on deposit in its Proposition V bond fund, and shall annually appropriate funds sufficient to make all Sublease Payments which become due to Lessor under this Sublease Agreement.

SECTION 7. SUBLEASE PAYMENTS.

- A. SEJPA shall pay Lesser lease payments (the "Sublease Payments") in the amount of Twenty Thousand dollars (\$20,000) for 23 months, and in an amount equal to the GMP minus all prior Sublease Payments and Sublease Prepayments for the 24th month, on the first day of each month following the Effective Date at the office of the Lessor or to such other person or at such other place as the Lessor may from time to time designate in writing. In no event shall the sum of the Sublease Payments due hereunder and/or any Sublease Prepayments exceed the GMP as it may be revised by SEJPA from time to time in accordance with the provisions set forth in the Construction Services Agreement. The Sublease Payments shall be adjusted to reflect any adjustment to the GMP agreed to in writing by SEJPA and the Contractor. SEJPA shall have no obligation to make Sublease Payments hereunder in the event the Effective Date of this Sublease does not occur.
- B. If the Effective Date falls upon a day other than the first day of the calendar month, SEJPA shall pay upon the Effective Date a pro rata portion of the Sublease Payment for the first calendar month pro rated on a per diem basis with respect to such fractional month. In such event, the difference between the rent for the first calendar month and Twenty Thousand dollars (\$20,000) shall be added to the payment for month 24, provided the sum of all Sublease Payments and Sublease Prepayments shall not exceed the GMP.
- C. Should SEJPA fail to pay any part of the Sublease Payments not otherwise excused pursuant to this Section or Section 9 hereof, within thirty (30) business days from the due date thereof, SEJPA shall, upon Lessor's written request, pay interest on such delinquent payment from the date said payment was due until paid at the rate of ten percent (10%) per annum or the maximum legal rate, whichever is less. The obligation of SEJPA to pay Sublease Payments hereunder shall constitute a current expense of SEJPA and shall not in any way be construed to be a debt of SEJPA in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by SEJPA, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of SEJPA.
- D. In the event that SEJPA exercises its option under Section 26(B) below, and purchases the Project by paying the Prepayment Price, SEJPA's obligations under this Lease, including but not limited to SEJPA's obligation to pay Sublease Payments under this Section, shall thereupon cease and terminate.
- E. Except as specifically provided in this Section and in Section 9 hereof or as otherwise provided by law, the obligation of SEJPA to make Sublease Payments when due and payable hereunder will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, abatement or recoupment for any reason whatsoever.
- F. The Lessor shall, as a courtesy to SEJPA, submit to SEJPA an invoice for the Sublease Payment on a monthly basis.

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SECTION 8. **FAIR RENTAL VALUE.**

Sublease Payments shall be paid by SEJPA in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Project and the Site during the lease. The parties hereto have agreed and determined that such total rental is not in excess of the fair rental value of the Project and the Site. In making such determination, consideration has been given to the fair market value of the Project and the Site, other obligations of the parties under this Sublease (including but not limited to costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Project and the Site and the benefits therefrom which will accrue to SEJPA and the general public, the ability of SEJPA to make additions, modifications and improvements to the Project and the Site which are not inconsistent with the Construction Services Agreement (Exhibit "D" hereof) and which do not interfere with the Lessor's work on the Project and the Site.

SECTION 9. **SUBLEASE ABATEMENT.**

In addition to delay of Sublease Payments provided in Section 7, above, Sublease Payments due hereunder with respect to the Project and the Site shall be subject to abatement prior to the commencement of the use of the Project and the Site by SEJPA or during any period in which, by reason of material damage to or destruction of the Project or the Site, there is substantial interference with the use and right of possession by SEJPA of the Project and the Site or any substantial portion thereof. For each potential incident of substantial interference, decisions to be made on i) whether or not abatement shall apply; ii) the date upon which abatement shall commence; iii) the applicable portion of Sublease Payments to be abated and; iv) the concluding date of the particular abatement shall all be subject to determinations by SEJPA in concert with the provider of the insurance issued pursuant to Section 18 herein. The amount of Sublease abatement shall be such that the Sublease Payments paid by SEJPA during the period of Project and Site restoration do not exceed the fair rental value of the usable portions of the Project and Site. In the event of any damage or destruction to the Project or the Site, this Sublease shall continue in full force and effect.

SECTION 10. **USE OF SITE AND PROJECT.**

During the term of this Sublease, Lessor shall provide SEJPA with quiet use and enjoyment of the Site without suit, or hindrance from Lessor or their assigns, provided SEJPA is in compliance with its duties under this Sublease. SEJPA will not use, operate or maintain the Site or Project improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Sublease. SEJPA shall provide all permits and licenses, if any, necessary for the operation of the Project and Site. In addition, SEJPA agrees to comply in all respects (including, without limitation, with respect to the time, maintenance and operation of the Project and Site) with laws of all jurisdictions in which its operations involving the Project and Site may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Site or the Project; provided, however, that SEJPA may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect the estate of Lessor in and to the Site or the Project or its interest or rights under this Sublease. Upon substantial completion of the Project or severable portions hereof, the Lessor shall provide SEJPA with quiet use and enjoyment of the Site without suit or hindrance from the Lessor or its assigns, subject to reasonable interference from ongoing construction operations on any remaining portion of the Site under construction by the Lessor.

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SECTION 11. **LESSOR'S INSPECTION/ACCESS TO THE SITE.**

SEJPA agrees that Lessor and any of Lessor's representatives shall have the right at all reasonable times to enter upon the Site or any portion thereof to construct and improve the Project, to examine and inspect the Site and the Project and to exercise its remedies pursuant to the section in this Sublease entitled "Remedies on Default." SEJPA further agrees that Lessor and any of Lessor's representatives shall have such rights of access to the Site as may be reasonably necessary to cause the proper maintenance of the Site and the Project in the event of failure by SEJPA to perform its obligations hereunder.

SECTION 12. **PROJECT ACCEPTANCE.**

SEJPA shall acknowledge final inspection and completion of the Project by executing a Certificate of Acceptance and recording a Notice of Completion. The validity of this Sublease will not be affected by any delay in or failure of completion of the Project.

SECTION 13. **ALTERATIONS AND ATTACHMENTS.** All permanent additions and improvements that are made to the Project shall belong to and become the property of Lessor, subject to the provisions of the Lease and Sections 26 and 27 hereof. Separately identifiable attachments added to the Project by SEJPA shall remain the property of SEJPA. At Lessor's request, SEJPA agrees to remove the attachments and restore the Project to substantially as good condition as when acquired and constructed, normal wear and tear excepted, in the event of failure by SEJPA to perform its obligations hereunder.

SECTION 14. **MAINTENANCE.**

SEJPA, at its own cost and expense, shall maintain the Project and the Site in good repair throughout the term of the Sublease, except as otherwise provided in the Construction Services Agreement.

SECTION 15. **UTILITIES.**

Unless otherwise so specified in the Construction Services Agreement, SEJPA shall, in its own name, contract for and pay the expenses of all utility services required for the Project once constructed and Site, such utilities, including but not limited to, all air conditioning, heating, electrical, gas, water, and sewer units. SEJPA shall be liable for payment as well as maintenance of all utility services received.

SECTION 16. **DAMAGE DESTRUCTION OR CONDEMNATION.**

With the exception of acts resulting from misconduct or negligence by Lessor, its agents and representatives, and except as otherwise provided in the Construction Services Agreement, SEJPA assumes all risk of loss of, damage to or condemnation of the Project or the Site from any cause or for any reason whatsoever, and no such loss of, damage to or condemnation of the Project or the Site shall relieve SEJPA of (i) the obligation to make the Sublease Payments hereunder subject to the provisions in Sections 7 and 9 hereof, or (ii) to perform any other obligation under this Sublease. Except as otherwise provided in the Construction Services Agreement, SEJPA waives the benefit of Civil Code sections 1932(2) and 1933(4) and any and all other rights to terminate this Sublease by virtue of any damage or destruction to the Project or the Site.

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SECTION 17. **PHYSICAL DAMAGE; PUBLIC LIABILITY INSURANCE.**

SEJPA shall keep the Project and the Site insured against all risks of loss or damage from every cause whatsoever for not less than the full replacement value thereof as determined by Lessor, and SEJPA shall carry public liability and property damage insurance covering the Project and the Site. All said insurance shall be in form and amount and with companies approved by Lessor and shall name Lessor as loss payees and as an additional insured. SEJPA shall pay the premiums therefor and deliver certification of said policies to Lessor. Each insurer shall agree, by endorsement upon the policy or policies issued by it or by independent instrument furnished to Lessor, that it will give Lessor thirty (30) days written notice before the policy or policies shall be altered or canceled. The proceeds of such insurance or the proceeds of any condemnation award received with respect to the Project and the Site, at the option of SEJPA, shall be applied: (a) toward the replacement, restoration, or repair of the Project and the Site, or (b) toward the payment of all amounts required in the exercise of SEJPA's purchase option under Section 26. Should SEJPA replace, restore, or repair the Project and the Site as set out in option (a) above, this Sublease shall continue in full force and effect. Subject to prior written consent of Lessor, SEJPA may self-insure up to specified limits as evidenced by a rider of self-insurance to be attached hereto (providing that all policies of self-insurance shall be governed by the provisions under this Sublease respecting cancellation and modification and payment of losses to Lessor.) Nothing contained herein shall limit SEJPA's equitable and contractual rights to indemnification and insurance coverage provided by Lessor or its subcontractors pursuant to the Construction Services Agreement and the Sublease. Notwithstanding any other provision of this Section 17, any insurance obtained under the Construction Services Agreement by Lessor shall be primary; and insurance maintained by SEJPA under this section shall be excess

SECTION 18. **SUBLEASE INTERRUPTION INSURANCE.**

SEJPA shall maintain or cause to be maintained, at its expense, beginning on the Sublease Effective Date rental interruption insurance to cover the amount of Sublease Payments payable by SEJPA for twenty-four (24) consecutive months; provided however, that SEJPA's obligation to maintain sublease Interruption Insurance shall cease upon SEJPA's exercise of its option pursuant to the provisions of Section 26 herein, or in the event the Construction Services Agreement, the Site Lease or this Sublease is terminated for any reason, or in the event the CPM Schedule provided under the Construction Services Agreement provides for completion of the Project in less than ninety (90) days. This coverage shall insure against abatement of Sublease Payments payable by SEJPA that come due hereunder resulting from SEJPA's loss of use of the Project and the Site or any substantial portion thereof and caused by any and all perils, either insured or uninsured. Such insurance may be maintained in conjunction with or separate from any other similar insurance maintained by SEJPA. The insurance proceeds shall be payable to Lessor in amounts proportionate to the loss of use of the Project and the Site and shall supplement SEJPA's applicable Sublease Payments, if any, during the restoration period in sufficient amount to make Lessor whole during the period of abatement.

SECTION 19. **TAXES.**

SEJPA shall keep the Project and the Site free and clear of all levies, liens, and encumbrances and shall pay all license fees, registration fees, assessments, charges, and taxes (municipal, state, and federal) if applicable, which may now or hereafter be imposed upon the ownership, leasing, renting, sale, possession, or use of the Project and the Site, excluding, however, all

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taxes on or measured by Lessor's income and all license fees, registration fees, charges and taxes required by to paid by Lessor pursuant to the Construction Services Agreement.

SECTION 20. **INDEMNITY.**

In addition to the indemnification set forth in Section 35 of the Construction Services Agreement and the Site Lease, to the extent permitted by law, SEJPA shall, with respect to the Project and the Site, indemnify Lessor against and hold Lessor harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorneys' fees, arising out of, connected with or resulting from any acts of omission or commission by SEJPA's employees and invitees under this Sublease, including without limitation, any and all claims, actions, suites, proceedings, costs, expenses, damages and liabilities brought by third parties under the supervision, direction or control of SEJPA including, but not limited to students and faculty. All other indemnification issues related to this Sublease, the Site or the progress and prosecution of the Project shall be governed by the Construction Services Agreement and Site Lease.

SECTION 21. **EVENTS OF DEFAULT.** The term "Event of Default," as used in this Sublease means the occurrence of any one or more of the following events:

- A. SEJPA fails to make any unexcused Sublease Payment (or any other payment) within thirty (30) days after the due date thereof or SEJPA fails to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure to either make the payment or perform the covenant, condition or agreement is not cured within ten (10) days after written notice thereof by Lessor;
- B. The Lessor discovers that any statement, representation or warranty made by SEJPA in this Sublease, or in any document ever delivered by SEJPA pursuant hereto or in connection herewith is misleading or erroneous in any material respect;
- C. SEJPA becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors unless consented to by Lessor, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of SEJPA or of all or a substantial part of its assets, or a petition for relief is filed by SEJPA under federal bankruptcy, insolvency or similar laws.

SECTION 22. **REMEDIES ON DEFAULT.** Upon the happening of any Event of Default, Lessor may exercise remedies set forth below in subsections (A) and (B) of this Section; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Sublease Payments or otherwise declare any Sublease Payments not then in default to be immediately due and payable. SEJPA shall continue to remain liable for the payment of Sublease Payments and damages for breach of this Sublease and the performance of all conditions herein such Sublease Payments and damages shall be payable to Lessor at the time and in the manner set forth in subsections (A) and (B) of this Section:

- A. In the event of termination of this Sublease by Lessor at its option and in the manner hereinafter provided on account of default by SEJPA, SEJPA shall pay Lessor Sublease Payments then owing for past Sublease Payments due and not paid. Neither notice to pay Sublease Payments or to deliver up possession of the Project and the Site given pursuant to law nor any proceeding in unlawful detainer taken by Lessor shall of itself operate to

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terminate this Sublease. The prevailing party shall be entitled to all reasonable costs incurred, including reasonable attorneys fees.

- B. In the event that Lessor does not elect to terminate this Sublease pursuant to subsection (A) above, SEJPA agrees to and shall remain liable for the payment of Sublease Payments and the performance of all conditions herein and shall reimburse Lessor for the full amount of the Sublease Payments to the end of the Sublease term.

No right or remedy herein conferred upon or reserved to Lessor is exclusive of any other right or remedy herein, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time; provided, however, that notwithstanding any provisions to the contrary herein, Lessor shall not under any circumstances have the right to accelerate the Sublease Payments that fall due in future Sublease periods or otherwise declare any Sublease Payments not then in default to be immediately due and payable.

SECTION 23. **NON-WAIVER.**

No covenant or condition to be performed by SEJPA or Lessor under this Sublease can be waived except by the written consent of the other party. Forbearance or indulgence by SEJPA or Lessor in any regard whatsoever shall not constitute a waiver of the covenant or condition in question. Until complete performance by SEJPA or Lessor of said covenant or condition, the other party shall be entitled to invoke any remedy available to it under this Sublease or by law or in equity despite said forbearance or indulgence.

SECTION 24. **ASSIGNMENT.**

Without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, SEJPA shall not (a) assign, transfer, pledge, or hypothecate this Sublease, the Project and the Site, or any part thereof, or any interest therein, or (b) sublet or lend the use of the Project or any part thereof. Consent to any of the foregoing prohibited acts applies only in the given instance and is not a consent to any subsequent like act by SEJPA or any other person. The Lessor acknowledges and consents to SEJPA's partial funding of the Project through a loan agreement, dated for convenience as of September 1, 2011, by and between Municipal Finance Corporation and SEJPA ("Loan Agreement"), and Municipal Finance Corporation's assignment of its rights and obligations under the Loan Agreement to City National Bank. The Lessor shall not assign its obligations under this Sublease with the exception of their obligation to issue default notices and to convey or reconvey their interest in the Project and Site to SEJPA upon full satisfaction of SEJPA's obligations hereunder; however, the Lessor may assign their right, title and interest in this Sublease, the Sublease Payments and other amounts due hereunder and the Project in whole or in part to one or more assignees or subassignees at any time upon written notice to SEJPA. No assignment shall be effective as against SEJPA unless and until SEJPA is so notified in writing. SEJPA shall pay all Sublease Payments due hereunder pursuant to the direction of Lessor or the assignee named in the most recent assignment or notice of assignment. During the Sublease term, SEJPA shall keep a complete and accurate record of all such assignments. Subject always to

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the foregoing, this Sublease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors, and assigns of the parties hereto.

SECTION 25. **OWNERSHIP.**

The Project is and shall at all times be and remain the sole and exclusive property of the Lessor, and SEJPA shall have no right, title, or interest therein or thereto except as expressly set forth herein.

SECTION 26. **SUBLEASE PREPAYMENTS/PURCHASE OPTION.**

A. **Sublease Prepayments.** At any time during the term of this Sublease, SEJPA may, upon the request of the Lessor or on upon its own initiative, make Sublease Prepayments to the Lessor. No Sublease Prepayments requested by the Lessor may be made by SEJPA in an amount which exceeds the aggregate true cost to the Lessor of the work on the Project completed to the date the Lessor submits the request for a Sublease Prepayment. Should the Lessor choose to submit a request for a Sublease Prepayment, Lessor shall submit (1) a request for Sublease Prepayment identifying the amount requested including all Sublease Prepayments previously made by SEJPA to the Lessor, along with evidence that the conditions precedent set forth in Section 26(A)(1), below, have been met; and (2) a statement reflecting the requested Sublease Prepayment amount less the aggregate amount of: (a) all Sublease Payments previously made by SEJPA to the Lessor. In the event SEJPA elects to make Sublease Prepayments, the Prepayment Price, contemplated in Section 26(B), below, shall be adjusted accordingly.

(1) The following are conditions precedent to any Sublease Prepayments made to the Lessor pursuant to a request of the Lessor:

- a. Satisfactory progress of the Construction pursuant to the time schedule required pursuant to Section 10(E) of the Construction Services Agreement (the "Time Schedule") shall have been made as determined in Section 26 (A)(2), below.
- b. Lessor shall also submit to SEJPA (i) duly executed conditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from the Lessor and all Subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons conditionally waive all lien and stop notice rights against SEJPA, the Project and the Project site with respect to the pending Sublease Prepayment to be made by SEJPA, (ii) duly executed unconditional lien releases and waivers (in the form provided in California Civil Code Section 3262) from the Lessor and all subcontractors, consultants and other persons retained by the Lessor in connection with the Project, whereby such persons unconditionally and irrevocably waive all lien and stop notice rights against SEJPA, the Project and the Project site with respect to all previous Sublease Prepayments made by SEJPA, and (iii) any other items that the Lessor may be required to collect and distribute to SEJPA pursuant to the terms and provisions of the Construction Services Agreement. Lessor shall promptly pay all amounts due to each subcontractor, consultant and other person retained by Lessor in connection with the Project in accordance with Business and Professions Code section 7108.5.

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- (2) The determination of whether satisfactory progress of the Construction pursuant to the Time Schedule has occurred shall be made by the inspector hired by SEJPA pursuant to Section 26 of the Construction Services Agreement. If SEJPA's inspector determines that pursuant to the Time Schedule, the work required to be performed, as stated in the Lessor's Sublease Prepayment request has not been substantially completed, the Lessor shall not be eligible to receive the requested Sublease Prepayment.

B. Purchase Option.

- (1) If SEJPA is not in default hereunder, SEJPA shall be granted options to purchase not less than the entire Project at any time on or after Final Completion of the Project, as that term is defined in Section 11 of the Construction Services Agreement; provided nothing herein affects or in any way reduces SEJPA's rights of termination as stated in the Construction Services Agreement.
- (2) If SEJPA does not exercise its option to purchase within ninety (90) days of Final Completion, interest shall accrue commencing on the ninety-first (91st) day after Final Completion on the amount of the GMP, as it may be revised from time to time, less the sum of any Sublease Payments and Sublease Prepayments made by SEJPA until paid or the end of the Term at a rate of Wall Street Journal Prime plus two percent (2%) per annum or the maximum rate legal rate, whichever is less.
- (3) The Prepayment Price at any given time on or after Final Completion of the Project shall be an amount equal to the GMP, as it may be revised from time to time, less the sum of any Sublease Payments and/or Sublease Prepayments made by SEJPA prior to the date on which SEJPA elects to exercise its option under this Section, plus any interest accrued pursuant to Section 26.B.(2). SEJPA may thereupon terminate this Sublease.
- (4) Following the purchase option date, SEJPA shall retain all rights to any claim or warranty arising under the Construction Services Agreement.

SECTION 27. RELEASE OF LIENS.

- A. In the event the Sublease is paid or prepaid in full in accordance with the provisions of the Construction Services Agreement and this Sublease, the Lessor or its assignee and SEJPA shall release Lessor's leasehold interest in the Site.
- B. Lessor shall authorize, execute and deliver to SEJPA all documents reasonably requested by SEJPA to evidence (i) the release of any and all liens created pursuant to the provisions of this Sublease and the Site Lease as they relate to the Project, the Sublease and the Site Lease and (ii) any other documents required to terminate the Site Lease and this Sublease.

SECTION 28. TERMINATION OF CONSTRUCTION SERVICES AGREEMENT.

In the event the Construction Services Agreement is terminated pursuant to the provisions contained therein, this Sublease shall immediately terminate, subject to all outstanding payment obligations as required by the Construction Services Agreement and this Sublease.

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SECTION 29. **SEVERABILITY.**

If any provision of this Sublease shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision of this Sublease, unless the purpose of this Sublease would be frustrated or elimination of such provision materially alters the rights and obligations embodied in this Sublease.

SECTION 30. **INTEGRATION/MODIFICATION.**

This Sublease constitutes the entire agreement between Lessor and SEJPA as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered herein, and it shall not be amended, altered, or changed except by a written agreement signed by the parties hereto.

SECTION 31. **NOTICES.**

Services of all notices under this Sublease shall be sufficient if given personally or mailed to the party involved at its respective address hereinafter set forth or at such address as such party may provide in writing from time to time. Any change in the addresses noted shall not be binding upon the other party unless preceded by no less than thirty (30) days prior written notice. Any such notices shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Lessor: Mr. Dave Dawson
W.M. LYLES CO.
1210 W. Olive
Fresno, CA 93728
Office: 951-973-7393
Fax: 951-698-3031

If to SEJPA: Mr. Michael Thornton
SAN ELIJO JOINT POWERS AUTHORITY
2695 Manchester Avenue
Cardiff by the Sea, CA 92001
Office: 760-753-6203
Fax: 760-753-5935

SECTION 32. **TITLES.**

The titles to the sections of this Sublease are solely for the convenience of the parties and are not an aid in the interpretation thereof.

SECTION 33. **TIME.**

Time is of the essence in this Sublease and each and all of its provisions.

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Sublease Agreement
San Elijo Joint Powers Authority
Advanced Water Treatment Project

SECTION 34. **LAWS, VENUE AND ATTORNEYS' FEES.**

The terms and provisions of this Sublease shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of this Sublease, the action shall be brought, and the exclusive jurisdiction, forum and venue shall be, in a state court situated in the County of San Diego, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county within California. SEJPA and Lessor hereby submit to personal jurisdiction in the State of California for the enforcement of this Sublease and hereby waive any and all personal rights under the law of any state to object to jurisdiction within the State of California for purposes of any legal action or proceeding to enforce this Sublease, whether on the ground of inconvenient forum or otherwise. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the courts or arbitrator(s).

SECTION 35. **AUDIT**

This Sublease is subject to examination and audit of the State Auditor, at the request of SEJPA or as part of any audit of SEJPA, for a period of three (3) years after final payment under this Sublease. Lessor shall cooperate with any such audit at no additional charge to SEJPA.

SECTION 36. **COUNTERPARTS.**

This Sublease may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute on and the same contract, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

IN WITNESS WHEREOF, the parties hereto have executed this Sublease by their authorized officers as of the day and year first written above.

SAN ELIJO JOINT POWERS AUTHORITY
"SEJPA"

W.M. LYLES CO.
"LESSEE"

BY: _____
Michael Thornton
ITS: General Manager

BY: _____
Richard G. Nemmer
ITS: President and CEO

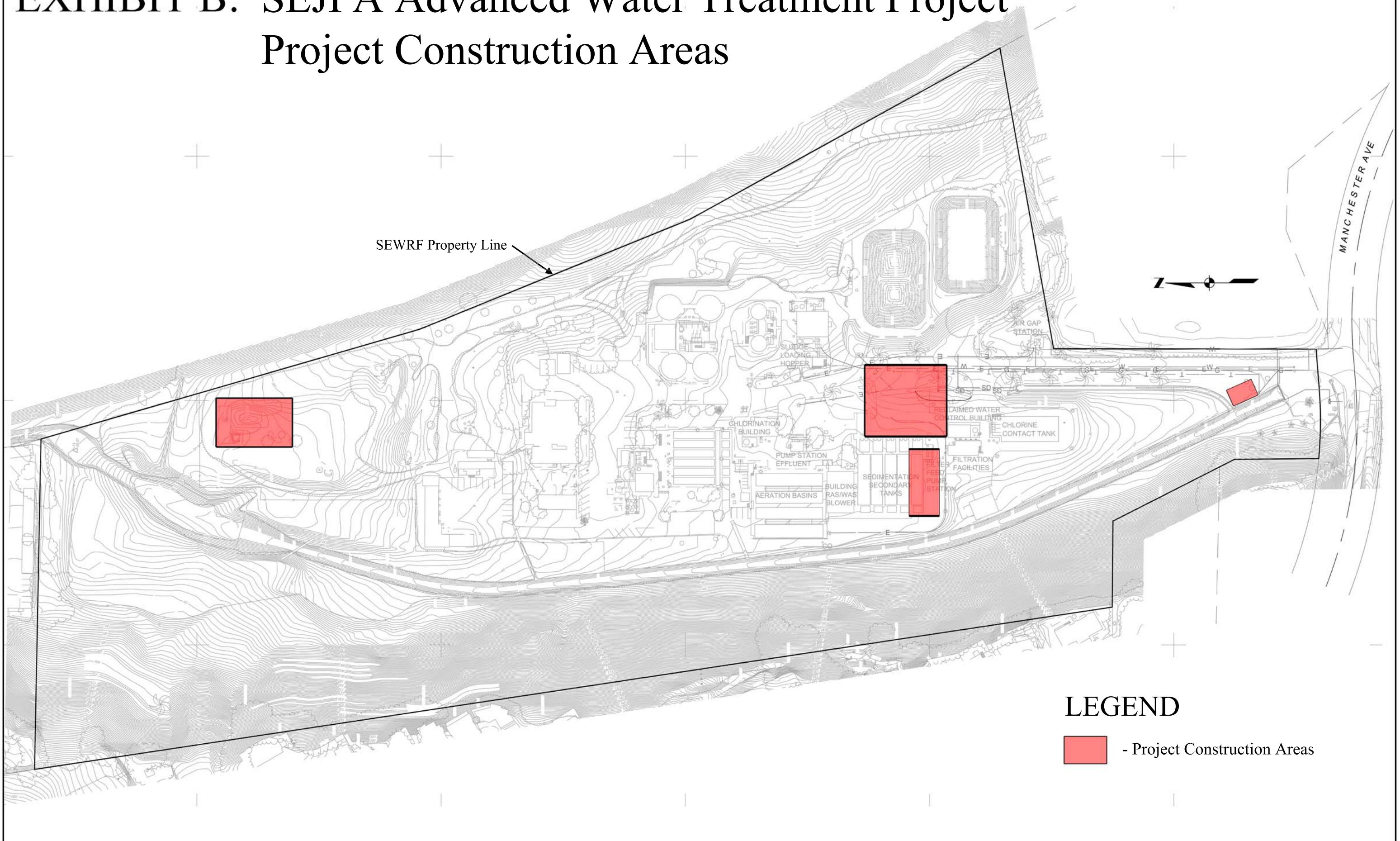
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**EXHIBIT A
DESCRIPTION OF PROJECT**

The SEJPA's Advanced Water Treatment Project includes (1) construction of an advanced water treatment system and modification of the existing plant to accommodate the new system, (2) construction of a low-flow urban runoff diversion system, (3) modification of an existing outfall bypass line, and (4) modification of an existing sediment drying pad, [as more specifically described in the Construction Services Agreement, a copy of which is attached as Exhibit D to the Sublease.](#)

DRAFT

EXHIBIT B: SEJPA Advanced Water Treatment Project Project Construction Areas



LEGEND

 - Project Construction Areas

**EXHIBIT C
SITE LEASE**

DRAFT

EXHIBIT C-1

Initial: _____

**EXHIBIT D
CONSTRUCTION SERVICES AGREEMENT**

DRAFT

EXHIBIT D-1

Initial: _____

ADVANCED WATER TREATMENT PROJECT
CONSTRUCTION SERVICES AGREEMENT

Dated as of November 14, 2011

Between

SAN ELIJO JOINT POWERS AUTHORITY

and

W.M. LYLES CO.

**CONSTRUCTION SERVICES AGREEMENT
FOR
ADVANCED WATER TREATMENT PROJECT**

This Construction Services Agreement is made this **November 14, 2011**, by and between the SAN ELIJO JOINT POWERS AUTHORITY, a California joint powers authority organized and existing under the laws of the State of California (hereinafter called "SEJPA"), and W.M. LYLES CO., a California corporation with its principal place of business at 1210 W. Olive, Fresno, California, 93728 (hereinafter called "Contractor").

RECITALS

WHEREAS, in 2009, SEJPA entered into an agreement with Kennedy/Jenks Consultants (the "Engineer") to provide engineering services for the purpose of designing and developing construction plans and specifications and approving the PALL Microfiltration System specifications for the Advanced Water Treatment Project (the "Project"); and

WHEREAS, SEJPA has determined that it is necessary to retain the services of a construction firm to provide for the construction of the Project; and

WHEREAS, after soliciting proposals for construction services for the Project, pursuant to California law, SEJPA has selected Contractor as the firm best qualified to meet the needs of SEJPA in providing such construction services for the Project; and

WHEREAS, in connection with the approval of this Construction Services Agreement, SEJPA will enter into a site lease with Contractor (the "Site Lease"), under which it will lease to the Contractor the Site, and improvements thereon, as described in Exhibit "A" of the Site Lease (the "Site") in order for Contractor to construct improvements to the Project; and

WHEREAS, the Contractor will lease the Site and the Project back to SEJPA pursuant to a Sublease Agreement (the "Sublease") under which SEJPA will be required to make Sublease Payments and may make Sublease Prepayments to the Contractor for the use and occupancy of the Site and Project; and

WHEREAS, at the expiration of the Site Lease and Sublease terms, title in the Project shall vest in SEJPA; and

WHEREAS, SEJPA and Contractor desire to enter into this Construction Services Agreement to ensure that the Project will meet SEJPA's expectations prior to the construction of the Project and the Lease of the Project back to SEJPA; and

WHEREAS, Contractor is experienced in construction of the type of improvements included in the Project that are desired by SEJPA, is duly licensed as a contractor in the State of California, and is willing to perform construction work for SEJPA, all as more fully set forth herein.

NOW, THEREFORE, in consideration of the covenants hereinafter set forth, SEJPA and Contractor agree as follows:

SECTION 1 CONTRACTOR'S DUTIES AND STATUS

Contractor accepts the contractual relationship established between it and SEJPA by this Construction Services Agreement, and Contractor covenants with SEJPA to furnish reasonable skill and judgment in constructing the Project as set forth in the Construction Documents for the Project, as defined in Section 2(D) for the Project which are described and/or set forth herein as Exhibit "A." Contractor agrees to furnish efficient business administration and superintendence

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Advanced Water Treatment Project

and to attempt to furnish at all times an adequate supply of professionals, workers, and materials and to perform the work appropriately, expeditiously, economically, and consistent with the Construction Services Agreement and Construction Documents as defined in Section 2 (A) and (D), below.

SECTION 2 **DEFINITIONS**

- A. **"Construction Services Agreement"** means this Construction Services Agreement, together with any duly authorized and executed amendments hereto.
- B. **"Construction" or "Construction Services"** means all labor and services necessary for the construction of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction as fully described in the Construction Scope of Work set forth in Section 8 and Exhibit "A." Unless otherwise expressly stipulated, Contractor shall perform all work and provide and pay for all materials, labor, tools, equipment and utilities necessary for the proper execution and completion of the Project shown on the drawings and described in the Construction Documents for the Project as defined in Section 2 (D), which are described and/or set forth in Exhibit "A."
- C. **"Construction Costs"** means any and all costs incurred by the Contractor, including, but not limited to, costs for labor, materials, equipment and general conditions, with respect to the construction and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, Contractors' overhead and supervisors' fees and costs directly allocable to the Project, all costs and expenses including any taxes or insurance premiums paid by the Contractor with respect to the Property, administrative and other expenses necessary or incident to the Project. The term "Construction Costs" includes all Contractor's costs associated with preparing or generating additional copies of any Construction Documents, as defined below, related to or required for the Project, including preparation or generation of additional plans and specifications for Contractor's subcontractors. Construction Costs shall not exceed the Guaranteed Maximum Price as defined in Section 2(F) below.
- D. **"Construction Documents"** means the Draft Lease Purchase drawings and the 90% submittal drawings, profiles, cross sections, design development drawings, construction drawings with various dates including May 2011 and November 2011, as listed in Exhibit A, and supplemental drawings based on the plans and specifications developed for the Project, including any reference specifications or reproductions prepared by the Engineer and plans and specifications approved by SEJPA and which show or describe the location, character, dimensions or details of the Project and specifications for construction thereof.

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- E. **"Contract Documents"** means those documents which form the entire Contract by and between SEJPA and Contractor. The Contract Documents consist of this Construction Services Agreement, including all exhibits and attachments thereto, the Construction Documents, the Site Lease and the Sublease.
- F. **"Guaranteed Maximum Price" or "GMP"** means the Guaranteed Maximum Price, including any contingency, established pursuant to Section 4 to be paid to Contractor for Contractor's construction of the Project hereunder, subject to any adjustments for Extra Work/Modifications as provided in Section 9.
- G. **"Project"** means the improvements and equipment to be constructed and installed by the Contractor, as more particularly described and/or referenced in Exhibit "A" attached hereto.
- H. **"Punch List"** means the written and dated document from the Contractor to SEJPA identifying the remaining Work to be completed prior to final acceptance. The Punch List shall be provided to SEJPA no later than ten (10) days prior to the anticipated substantial completion. The Parties shall use their respective good faith efforts to mutually agree upon the written Punch List within five (5) days of the date Contractor proposes the punch list to SEJPA and, in any event, prior to substantial completion.
- I. **"Site"** means those certain parcels of real property and improvements thereon (if any) more particularly described in Exhibit "A" of the Site Lease.
- J. **"Site Lease"** means the Site Lease of even date herewith, by and between SEJPA and the Contractor together with any duly authorized and executed amendment thereto under which SEJPA leases the Site to the Contractor.
- K. **"Subcontractor"** means any person or entity, including trade contractors, who have a contract with Contractor to perform any work on the improvements to the Site.
- L. **"Sublease"** means the Sublease of even date herewith by and between SEJPA and Contractor together with any duly authorized and executed amendment hereto under which SEJPA subleases the Site from the Contractor.
- M. **"Sublease Payment"** means any payment to be made by SEJPA pursuant to Section 7 of the Sublease.
- N. **"Sublease Prepayment"** means any payment to be made by SEJPA pursuant to Section 26 of the Sublease.

SECTION 3 **ADDITIONAL SERVICES**

If SEJPA requests Contractor to perform additional services ("Additional Services") not described in this Construction Services Agreement, Contractor shall provide a cost estimate and a written description of the Additional Services required to perform such work. Compensation for such Additional Services shall be negotiated and agreed upon in writing, in advance of Contractor's performing or contracting for such Additional Services and paid to Contractor in addition to the GMP established pursuant to Section 4 hereof. In the absence of such written agreement, SEJPA will not compensate Contractor for such work, and the Contractor will not be required to perform it. Nothing in this Construction Services Agreement shall be construed as limiting the valuation and amount to be paid to Contractor for such Additional Services or its implementation should a

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written agreement for such services be executed. Contractor shall not be entitled to compensation for Additional Services required as a result of Contractor's acts, errors or omissions.

SECTION 4 **ESTABLISHMENT OF GUARANTEED MAXIMUM PRICE "GMP"**

- A. The GMP for the Project shall be four million, two hundred and nine thousand, eight hundred and sixty-eight and no/100 dollars, **(\$4,209,868.00)**. The GMP is based upon plans and specifications existing and reviewed by the Contractor at the time this Construction Services Agreement is entered into as more fully described and referenced in the Scope of Work set forth in Exhibit "A."
- B. Sublease Payments and/or Sublease Prepayments by SEJPA pursuant to the Sublease and Section 22 hereof shall be commensurate with the GMP. The GMP shall be subject to adjustments for Extra Work/Modifications in accordance with the provisions of Section 9 and adjustments for reductions in the Scope of Work pursuant to the provisions of Section 4(B), below. The GMP includes the cost of all labor, materials, equipment, general conditions, overhead, profit, taxes, includes sales and use taxes, incidentals and Contractor contingency. Contractor shall be responsible for payment of all applicable sales and use tax.
- (1) Contractor and SEJPA hereby create a contingency fund ("Contingency Fund") which shall originally consist of seventy thousand and no/100 dollars **(\$70,000.00)**. Irrespective of any approved Change Orders that may result in cost additions or reductions in the scope of work and/or any design changes that will be reimbursed to the Contractor or credited to SEJPA pursuant to Section 9 herein, the Contingency Fund may be increased from any Savings as set forth in Section 6 herein. This Contingency Fund is a line item within the GMP and shall be utilized for the payment of: (1) unforeseen actual construction costs for which there are no specific allocations in the approved GMP amount; (2) actual construction costs for certain materials and subcontractors included in the GMP amount that exceed the specific amount allocated as construction costs for such items as identified by Exhibit A; or (3) additional work desired by SEJPA pursuant to Section 9 of these Construction Provisions as agreed to by both parties should the contingency funds prove sufficient.
 - (2) The Contingency Fund may be credited with (a) cost savings through competitive bidding of certain items by the Contractor; and/or (b) cost savings through value engineering initiated by any party. Cost savings through competitive bidding shall credited entirely to the SEJPA. Cost savings through value engineering initiated by any party shall be shared equally between the SEJPA and Contractor. SEJPA may credit the Contingency Fund with cost savings through competitive bidding and its share of cost savings through value engineering.
 - (3) Contractor and SEJPA hereby agree that 10% of the Contingency Fund shall be set aside to be used solely at SEJPA's discretion. Prior to commencing any work that would result in the utilization of the Contingency Fund, SEJPA and Contractor shall agree in writing singularly, or by way of approved construction meeting minutes, upon the cost of such work. In the event that Contractor commences such work without SEJPA and Contractor agreeing upon the cost for such work or mutually acceptable method for determining the cost for such work, Contractor shall, for all purposes, be deemed to have waived any rights to compensation with respect to such work.
 - (4) Upon final completion, any funds remaining in the Contingency Fund shall be credited to SEJPA.

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- C. SEJPA at all times shall have the right to reduce the scope of the Project. If SEJPA reduces the scope of the Project, the GMP shall be reduced to contemplate the reduced Scope of Work, pursuant to the provisions of Section 9. To the extent possible, it is the mutual goal of SEJPA and Contractor to maximize the Scope of Work as allowed by the GMP.
- D. In executing this Agreement, the Contractor certifies that the GMP includes sufficient funds to allow the Contractor to comply with all applicable laws or regulations governing the labor or services to be provided under this Agreement and agrees to indemnify SEJPA for liabilities and penalties for violations of California Labor Code section 2810 related to this Agreement.

SECTION 5 NOTICE TO PROCEED

- A. After SEJPA Board public meeting and approval of this Construction Services Agreement, SEJPA shall issue a notice to the Contractor to proceed with the Project, except that SEJPA shall not be obligated to issue the Notice to Proceed until completion of validation proceedings pursuant to California Code of Civil Procedure Sections 860 through 870 validating the Contract Documents including but not limited to this Construction Services Agreement, the Site Lease and Sublease, and the expiration of the sixty (60) day statute of limitations period (“validation period”) for filing any such action against the Project.
- B. In the event that SEJPA issues the Notice to Proceed prior to the expiration of the sixty (60) day validation period and the Contractor proceeds with any scope of work services related to the Project, the Contractor shall be at risk for any costs and/or expenses incurred in proceeding with the work as described herein.
- C. In the event a Notice to Proceed for the Project is not issued up to the sixty (60) day validation period for the reason set forth in this Section, SEJPA will notify the Contractor in writing of its decision not to issue a Notice to Proceed for the Project, and Contractor shall not be entitled to any compensation for work performed in connection with the services set forth in this Construction Services Agreement.
- D. In the event that the validation period has expired and the contract is deemed authorized as of the date of adoption by SEJPA (governing body of the public agency), then both SEJPA and the Contractor will proceed with the Project scope of work. If thereafter a taxpayer action is served upon SEJPA or SEJPA has been notified of such action or contest against the Project, then upon written notice to Contractor, SEJPA may choose to either defend the validation period under law or terminate this Construction Services Agreement pursuant to Section 12(B) herein.

SECTION 6 SAVINGS

- A. The purpose of Savings is to minimize the expenditure of funds for the construction of the Project on items that exceed the minimum criteria required without a corresponding benefit to SEJPA. SEJPA also wishes to eliminate any excess quality levels or performance criteria provided in the Construction Documents so long as such elimination does not alter the design, aesthetics, safety standards or configuration or space, and does not increase future maintenance and operation costs. SEJPA and the Contractor shall work cooperatively with each other, in good faith, to identify appropriate opportunities to reduce the Project costs and promote Savings.
- B. If Contractor realizes a Savings on any aspect of the Project, and SEJPA has agreed to such in writing, the savings shall be added to the contingency portion of the GMP as provided in Section 4(B) and shall be expended in a manner consistent with other funds in the contingency portion of

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the GMP pursuant to Section 4(B)(1). Contractor shall document all savings on an ongoing Project budget tracking summary and presented to SEJPA at regularly scheduled construction meetings with SEJPA. Except with respect to Contractor's share of cost savings through value engineering, any Savings, including unspent contingency, realized on the Project will be returned to SEJPA at Project completion.

SECTION 7 **SELECTION OF SUBCONTRACTORS**

In the interest of minimizing the expenditure of funds for the construction of the Project, the Contractor agrees to select appropriately State of California licensed subcontractors for each trade component of the Project, except as to any excluded work as agreed to by SEJPA, in a manner that fosters competition. Contractor shall select any subcontractors through competitive means which may include but are not limited to the preparation and circulation of a request for bids to an adequate number of qualified sources to permit reasonable competition consistent with the nature and purpose of the proposed scope of work. In any event, Contractor shall ensure that it allows any interested qualified subcontractors to participate in the bidding process. Contractor shall inform all bidders that SEJPA will not be a party to any contracts for construction services executed by Contractor and selected bidders. Contractor will also be required to submit a listing of proposed subcontractors to SEJPA for SEJPA's review, and allow SEJPA to observe and participate in the evaluation and selection of subcontractors. This Agreement is exempt from the Subletting and Subcontracting Fair Practices Act, Public Contract Code section 4107, et seq. Contractor shall provide SEJPA with full documentation regarding the bids or competitive quotes received by Contractor. In no event shall such documentation be redacted or obliterated. In the event the Contractor does not comply with this provision, SEJPA may terminate this Construction Services Agreement in accordance with the provisions of Section 12 below.

SECTION 8 **CONSTRUCTION SCOPE OF WORK**

- A. **CPM Master Schedule.** Prior to commencing construction, Contractor shall submit to SEJPA a reasonably detailed CPM (Critical Path Method) Master Schedule for the construction, as set forth in Section 11(E) herein.

- B. **Pre-Construction Orientation/Construction Meetings.** The Contractor, in conjunction with the Engineer, shall conduct pre construction orientation conferences for the benefit of Subcontractors to orient the Subcontractors to the various reporting procedures and site rules prior to the commencement of actual construction. The Contractor shall also conduct construction and progress meetings with SEJPA Representatives and other interested parties, as requested by SEJPA, to discuss such matters as procedures, progress problems and scheduling. The Contractor shall prepare and promptly distribute official minutes of such meetings to all parties in attendance including Engineer, SEJPA and Inspector.

- C. **Budget/Cash Flow Reports.** The Contractor shall incorporate approved changes as they occur, and develop cash flow reports and forecasts for submittal to SEJPA on a monthly basis. The Contractor shall provide regular monitoring of the approved estimates of Construction Costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. The Contractor shall identify variances between actual and budgeted or estimated costs, and advise SEJPA and the Engineer whenever Project costs exceed budgets or estimates. The Contractor shall maintain cost accounting records on authorized additional services or work performed using unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.

- D. **Progress Reports.** The Contractor shall record the progress of the Project, and shall submit monthly written progress reports to SEJPA and the Engineer including information on the entire

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Project, showing percentages of completion and the number and amounts of proposed Extra Work/Modifications and their effect on the Construction Costs as of the date of the report. The Contractor shall also keep a daily log containing a record of weather, Contractors, work on the site, number of workers, work accomplished, problems encountered, and other similar relevant data as SEJPA may require. The Contractor shall make the log available to SEJPA and the Engineer. SEJPA shall be promptly informed of all anticipated delays. In the event that the Contractor determines that a schedule modification is necessary, the Contractor shall promptly submit a revised Schedule for approval by SEJPA.

- E. **Scheduling.** Contractor shall complete the construction pursuant to the CPM Construction Documents, performing all work set forth in the Scope of Work (Exhibit "A" to this Construction Services Agreement) and shall make reasonable efforts in scheduling to prevent disruption to classes.
- F. **SEJPA Permit and Other Obligations.** It is expressly understood that SEJPA shall pay inspection costs for soils testing, special testing, etc. If additional review or permits become necessary for reasons not due to Contractor's fault or because of regulations implemented after the date the GMP is approved by the SEJPA Board of Directors and not reasonably anticipated at that time, Contractor may seek additional compensation for the cost of that review as an additional cost.
- G. **Contractor Permit Obligations.** Contractor shall pay for all remaining general permits and ancillary permits and licenses not paid by SEJPA prior to the execution of this Construction Services Agreement by both parties. SEJPA shall pay for any building permit, if needed. Unless otherwise expressly stated in this Construction Services Agreement, Contractor shall not be responsible for arranging, paying for and overseeing, all necessary inspections and tests, permits and occupancy permits. Contractor shall ensure compliance with any Federal and State laws in the performance of this Construction Services Agreement as they apply to the scope of work. Contractor shall be responsible for arranging and overseeing safety procedures and requirements, construction employee training programs which cover among other items, hazardous chemicals and materials.
- H. **Protection.** The Contractor shall establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on site and off site, including securing and locking all areas with property exposure.
- I. **Nuisance Abatement.** The Contractor shall develop a mutually agreed upon program with SEJPA to abate and minimize noise, dust, and disruption to normal activities at the existing facilities on the Site, including procedures to control on site noise, dust, and pollution during construction.
- J. **Site Mitigation and Remediation.** SEJPA shall perform any required Site mitigation or remediation at its sole cost, unless such Site mitigation or remediation is necessitated by any of the conditions described in Section 33 hereof, in which event the provisions of that section shall govern. SEJPA shall be responsible for any asbestos and lead abatement and/or remediation work.
- K. **Utilities.** The Contractor shall perform and pay for all temporary hook ups and connections to SEJPA utilities. SEJPA shall pay for use of utilities during construction.
- L. **California Contractor's License.** The Contractor shall have a valid California contractor's license for the type of work required by this Agreement. The Contractor shall be licensed under the classification of General Contracting, Class A as of the date of execution of this Agreement and shall maintain such license until final acceptance of the work.

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- M. **Drug/Tobacco Free Facilities.** All SEJPA facilities are drug and tobacco free facilities. Any drug and/or tobacco use (smoked or smokeless) is prohibited at all times on all areas of SEJPA facilities, including the Site.

SECTION 9 **EXTRA WORK/MODIFICATIONS**

- A. SEJPA may prescribe extra work or a modification or reduction of requirements or of methods of performing the Construction which differ from the work or requirements set forth in the Construction Documents ("Extra Work/Modifications"); and for such purposes, SEJPA may at any time during the life of this Construction Services Agreement by written order, make such changes as it shall find necessary in the design, line, grade, form, location, dimensions, plan, or material of any part of the work or equipment specified herein or in the Construction Documents, or in the quantity or character of the work or equipment to be furnished. In the event conditions develop which make strict compliance with the specifications impractical, Contractor shall notify SEJPA of the need for such Extra Work/Modification by placing the matter on the agenda of regularly scheduled construction meetings with SEJPA for discussion as soon as practicable after the need for such Extra Work/Modification is determined. Additionally, Contractor shall submit to SEJPA for its consideration and approval or disapproval, a written request for Extra Work/Modifications before such work is performed. If SEJPA approves such request in writing, the costs of the Extra Work/Modifications, as established pursuant to this Section 9, shall be added to or deducted from the GMP, as applicable.
- B. Value of any such Extra Work/Modification, change, or deduction shall be determined, in consultation with the Engineer, in one or more of the following ways:
- (1) By acceptable lump sum proposal from Contractor with itemization as required by SEJPA and/or the Engineer.
 - (2) By unit prices contained in Contractor's cost estimates and incorporated in the Contract Documents or fixed by subsequent agreement between SEJPA and Contractor.
 - (3) By time and material ("T&M") application of the cost of material, equipment and labor and a percentage for the Contractor's construction management fee including applicable insurance, overhead and bond premiums as identified in a submitted T&M worksheet by the Contractor.

EXTRA/ (CREDIT)

- | | | |
|-----|---|-------|
| (a) | Material (attach itemized quantity and unit cost plus sales tax) | _____ |
| (b) | Labor and equipment including subcontractor's labor and profit/overhead (and subcontractor's profit/overhead not to exceed 15%) (attach itemized hours and base rates from identified prevailing wage rate schedules) | _____ |
| (c) | Commercial General Liability and Property Damage Insurance, Workers' Compensation Insurance, Builder's Risk Insurance, Social Security and Unemployment taxes at actual and verified | _____ |

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cost.

(d)	Subtotal	_____
(e)	Contractor's profit/overhead/general conditions equal to 16.5% of Item (d) for extra work and 5.12% for any applicable credits	_____
(f)	Subtotal	_____
(g)	Bond Premium, not to exceed .00563% of Item (f)	_____
(h)	Total	_____

- C. Regardless of whether the cost of the Extra Work/Modification is determined pursuant to 1, 2, or 3, above, in addition to the cost of the material and labor for deleted items, Contractor shall credit back the bonding premium for deleted items at the time of the request for the Extra Work/Modification.

- D. Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates SEJPA to pay additional compensation to the Contractor; or (ii) obligates SEJPA to grant an extension of time for the completion of the Construction Services Agreement; or (iii) constitutes a waiver of any provision in this Construction Services Agreement, CONTRACTOR SHALL NOTIFY SEJPA, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT MORE THAN TEN (10) BUSINESS DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE SEJPA WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM including in the documentation items (B)(3) a-h described in this Section. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. The Contractor's failure to notify SEJPA within such ten (10) business day period shall be deemed a waiver and relinquishment of the claim against SEJPA. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this Section.

- E. In the event a mutual agreement cannot be reached on the cost of an Extra Work/Modification item, Contractor and SEJPA agree that the work shall proceed on a force account basis with the Contractor submitting daily time and material (T&M) reports to SEJPA for verification pursuant to the pricing indicated in Section 9(B)(3) above.

- F. All costs associated with the Extra Work/Modification may be in terms of time, money or both.

- G. Expenses of reconstruction and/or costs to replace and/or repair damaged materials and supplies, provided that Contractor is not fully compensated for such expenses and/or costs by insurance or otherwise, may be added to the GMP, if said expenses are the result of the sole established negligent acts or omissions or willful misconduct of SEJPA, or its subcontractors, principals, agents, servants, or employees, or in accordance with SEJPA's percentage of fault to the extent caused by the active negligence of SEJPA, or its subcontractors, principals, agents, servants, or employees.

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- H. The term "profit/overhead" for any subcontractors shall be considered to include insurance other than mentioned in Section 9(B)(3)(c) above, field and office supervisors and assistants, watchmen, use of small tools, consumables and general field and home office expenses, and no separate allowance will be made therefor.

SECTION 10 SUBSTITUTION OF AN "OR EQUAL"

- A. For purposes of this provision the term "substitution" shall mean the substitution of any material, product, thing or service that is substantially equal or better in every respect to that so indicated or specified in the plans and specifications.
- B. Unless specifically designated in Exhibit "B," whenever in specifications any material, product, thing or service is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, product thing, or service desired and shall be deemed to be followed by words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, product, thing or service which shall be substantially equal or better in every respect to that so indicated or specified. However, SEJPA has adopted certain uniform standards for certain materials, products, things, and/or services. If any material, product, thing, or service offered for substitution by Contractor is not, in the opinion of the Engineer and SEJPA, substantially equal or better in every respect to that specified, Contractor shall furnish the material, product, thing, or service specified. The burden of proof as to the equality of any material, product, thing, or service shall rest with the Contractor.
- C. Contractor shall submit requests together with substantiating data for substitution of any "or equal" material, product, thing, or service in a timely manner which will allow SEJPA reasonable and appropriate time to review and evaluate the request. Provisions authorizing submission of "or equal" substitution justification data shall not in any way authorize an extension of time for performance of this Contract. SEJPA shall not be responsible for any costs of Contractor associated with "or equal" substitution requests. SEJPA has the complete and sole discretion to determine if a material, product, thing, or service is an "or equal" material, product, thing, or service that may be substituted.
- D. For purposes of subdivision (C) above, data required to substantiate requests for substitutions of an "or equal" material, product, thing, or service data shall include a signed affidavit from the Contractor stating that the substituted "or equal" material, product, thing, or service is equivalent to that specified in the specification in every way except as listed on the affidavit. Substantiating data shall also include any and all illustrations, specifications, and other relevant data including catalogue information which describes the requested substituted "or equal" material, product, thing, or service and substantiates that it is an "or equal" to the material product, thing, or service specified. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution of the "or equal" material, product, thing, or service will reduce or increase the GMP. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, product, thing, or service. Failure to submit all the needed substantiating data, including the signed affidavit, to the Engineer in a timely fashion so that the substitution can be adequately reviewed may result in the rejection of the proposed substitution. The Engineer is not obligated to review multiple substitution submittals for the same materials, products, things, or services due to the Contractor's failure to submit a complete package initially.
- E. In no case will an extension of time for completion be granted because of Contractor's failure to request the substitution of an alternative item at the times and manner set forth herein in

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subdivision (D). Further, the Contractor shall bear the costs of all engineering work associated with the review of submittals for substitution of equals.

- F. In event Contractor furnishes material, product, thing, or service more expensive than that specified, the difference in cost of such material, product, thing, or service so furnished shall be borne by Contractor.
- H. Contractor hereby agrees to notify its subcontractors of the requirements set forth in this Section 10 and shall require any and all subcontractors to submit requests together with substantiating data for substitution of any "or equal" material, product, thing or service in the same reasonable manner as stated above.

SECTION 11 TIME OF COMPLETION

- A. Once SEJPA has issued a Notice to Proceed, Contractor shall proceed with the Construction of the Project with reasonable diligence. Contractor agrees that the Project will be substantially completed within **390 calendar days** from SEJPA's issuance of the Notice to Proceed pursuant to the provisions of Section 5, above, with an intended fully completed and accepted date before **December 31, 2012**, as said time may be extended for such periods of time as Contractor is prevented from proceeding with or completing the Project for any cause described in this Section 11, or as extended by SEJPA for not issuing the Notice to Proceed until after the validation period pursuant to Section 5, or as otherwise agreed to in writing by SEJPA and Contractor. Time is of the essence in the performance of this Agreement. If the work is not completed in accordance with the foregoing, it is understood that SEJPA will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to SEJPA as fixed and liquidated damages, and not as a penalty, the sum of **three hundred dollars and no/100 (\$300)** per day for each calendar day of delay until work is substantially completed and accepted. Contractor and its surety shall be liable for the amount thereof. Any money due or to become due the Contractor may be retained by SEJPA to cover said liquidated damages. Should such money not be sufficient to cover said liquidated damages, SEJPA shall have the right to recover the balance from the Contractor or its sureties, who will pay said balance forthwith.
- B. In the event that the performance and/or completion of the Project is delayed at any time by any act or omission of SEJPA or of any employee, agent or tenant of SEJPA, by any separate contractor employed by SEJPA, by changes or alterations in the Project not caused by any fault or omission by Contractor, by strikes, by lockouts, by fire, by embargoes, by windstorm, by flood, by earthquake, by acts of war or God, by changes in public laws, regulations or ordinances enacted after the date of execution of this Construction Services Agreement by acts of public officials not caused by any fault or omission of Contractor, by an inability to obtain materials or equipment not caused by any act or omission of Contractor, or by any other cause beyond the reasonable control of Contractor, the aforesaid date for substantial completion of the Project shall be extended for a period commensurate with the delay. Contractor shall not be charged liquidated damages because of such delays in completion of work or delays otherwise due to unforeseeable causes beyond the control and without the fault or negligence of Contractor.
- C. The term "substantially completed" or "substantial completion" as used herein shall mean that the Contractor has completed the following: (1) installed the Equipment for the Project with the required connections and controls to operate and treat water as intended ; (2) all instrumentation is operational in accordance with manufacturers' standards and guidelines; (3) the Project has been completed and physically constructed in accordance with the Scope of Work; (4) the Project is mechanically and electrically sound; (5) all systems, per the Scope of Work, are functional, and all utilities are connected and operate normally; (6) all material Work has been completed by the Contractor and only work associated with the Punch List remains uncompleted; and (7) the work

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is completed in such fashion as to enable SEJPA, upon performance of any separate work to be done by SEJPA under separate contract or by day labor, beneficially occupy the Project and to commence operation therein, provided such occupancy and use does not substantially interfere with Contractor's performance of the remainder of the work, as agreed upon between the Contractor and SEJPA, which may be accomplished prior to the completion of the work.

- D. The term "Fully Completed and Accepted," as used herein, shall mean the following: (1) that all remaining work has been completed in accordance with the Construction Documents and successful testing, startup and satisfactory operation of the Project as a total unit has been accomplished in substantial conformance with the Construction Documents,(2) all of Contractor's cleanup and related obligations have been completed and (3) all items on the Punch List have been completed except for those specific scope of work/punch list items that SEJPA and the Contractor both agree will be completed at a later date with a maximum cost of 150% of the remaining item(s) to be held back until final completion pursuant to law.

- E. Within fourteen (14) business days after SEJPA's delivery of a Notice to Proceed for the Project, Contractor shall furnish SEJPA with a reasonably detailed CPM (Critical Path) Schedule, setting forth the expected dates for commencement and completion of each of the various stages of construction to be performed by Contractor pursuant to this Construction Services Agreement (the "Time Schedule"). The Contractor shall submit the master schedule to SEJPA for acceptance and update the master schedule as appropriate on at least a monthly basis. The Contractor shall incorporate the activities of Contractors on the Project and delivery of products requiring long lead time procurement. The Contractor shall also include SEJPA's occupancy requirements showing portions of the Projects having occupancy priority. The Contractor shall be responsible for providing SEJPA with a Schedule of Values within ten (10) working days of SEJPA's issuance of a Notice to Proceed, which will be updated as needed. It is specifically understood that SEJPA will utilize said Time Schedule as it is revised from time to time to determine completion dates of various aspects of the Project. Sublease Prepayments under the Sublease shall be conditioned upon completion of various aspects of the Project as determined by SEJPA's Inspector pursuant to the Time Schedule and the Schedule of Values.

- F. The Contractor shall not be assessed liquidated damages for this Construction Services Agreement and shall not be subject to any damages for delay in completion of the Project, when such delay was caused by the failure of SEJPA or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when the Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify SEJPA and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation. In accordance with Section 4215 of the Government Code, if the Contractor while performing the work on the project discovers any existing main or trunkline utility facilities not identified by the public agency (SEJPA) in the contract plans or specifications, he shall immediately notify the public agency (SEJPA) and utility in writing. The public utility, where they are the owner, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Such compensation shall be in accordance with the extra work provisions set out in Section 9 hereof.

SECTION 12 **TERMINATION OF AGREEMENT**

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A. **Termination for Breach.**

- (1) If the Contractor refuses or fails to prosecute the construction of the Project or any separable part thereof with such diligence as will insure its completion within the time specified by this Construction Services Agreement or any extension thereof, or fails to complete the Project within such time, or if the Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of this Construction Services Agreement, SEJPA may serve written notice upon the Contractor and its Surety of SEJPA's intention to terminate this Construction Services Agreement. This notice of intent to terminate shall contain the reasons for such intention to terminate this Construction Services Agreement and a statement to that effect that the Contractor's right to perform work on the Project shall cease and terminate upon the expiration of ten (10) calendar days unless such violations have ceased and arrangements satisfactory to SEJPA have been made for correction of said violations.
- (2) In the event that SEJPA serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform this Construction Services Agreement. If the Surety does not: (1) give SEJPA written notice of Surety's intention to take over and commence performance of this Construction Services Agreement within fifteen (15) calendar days of SEJPA's service of said notice of intent to terminate upon Surety; and (2) actually commence performance of this Construction Services Agreement within thirty (30) calendar days of SEJPA's service of said notice upon Surety; then SEJPA may take over the Project and prosecute the same to completion by separate contract or by any other method it may deem advisable for the account and at the expense of the Contractor.
- (3) In the event that SEJPA elects to obtain an alternative performance of the Construction Services Agreement as specified above: (1) SEJPA may, without liability for so doing, take possession of and utilize in completion of the Project such materials, appliances, plants and other property belonging to the Contractor that are on the site and reasonably necessary for such completion; and (2) Surety shall be liable to SEJPA for any cost or other damage to SEJPA necessitated by SEJPA securing an alternate performance pursuant to this Section 12.

B. **Termination for Convenience.**

- (1) SEJPA may terminate performance of the Project called for by the Contract Documents in whole or, from time to time, in part, if SEJPA determines that a termination is in SEJPA's interest.
- (2) The Contractor shall terminate all or any part of the Project upon delivery to the Contractor of a "Notice of Termination" specifying that the termination is for the convenience of SEJPA, the extent of termination, and the effective date of such termination.
- (3) After receipt of Notice of Termination, and except as directed by SEJPA's representative, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:
 - a. Stop work as specified in the Notice of Termination.

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- b. Complete any work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
 - c. Leave the Property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
 - d. Terminate all subcontracts to the extent that they relate to the portions of the work terminated.
 - e. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Construction Services Agreement.
 - f. Submit to SEJPA's Representative, within ten (10) calendar days from the effective date of the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the effective date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of SEJPA's exercise of its right to terminate this Construction Services Agreement pursuant to this clause, which costs the Contractor is authorized under the Construction Services Agreement to incur, shall: (i) be submitted to and received by SEJPA no later than thirty (30) calendar days after the effective date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by SEJPA's Termination for Convenience."
- (4) Termination of the Construction Services Agreement by SEJPA for convenience shall not relieve the Surety of its obligation for any just claims arising out of or relating to the work performed to that date on the Project.
- (5) In the event that SEJPA exercises its right to terminate this Construction Services Agreement pursuant to this clause, SEJPA shall pay the Contractor, upon the Contractor's submission of the documentation required by this provision, and other applicable provisions of the Construction Services Agreement the following amounts:
- a. All actual costs incurred according to the provisions of this Construction Services Agreement including but not limited to insurance costs incurred in connection with the Project.
 - b. A reasonable allowance for profit on the cost of the work on the Project performed, provided Contractor establishes to the satisfaction of SEJPA, that it is reasonably probable that the Contractor would have made a profit had the Construction Services Agreement been completed and provided further, that the profit allowed shall in no event exceed **four and one quarter** percent (4.25%) costs. In no event shall the total amount exceed GMP.
 - c. A reasonable allowance for Contractor's administrative costs in determining the amount payable due to termination of the Construction Services Agreement under this Section 12.

C. **Termination of Agreement by Contractor.**

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- (1) The Contractor may terminate the Construction Services Agreement upon ten (10) working days written notice to SEJPA, whenever: (1) the entire Project has been suspended for ninety (90) consecutive calendar days through no fault or negligence of the Contractor and notice to resume the Construction Services Agreement or to terminate the Construction Services Agreement has not been received from SEJPA within this time period; or (2) SEJPA should fail to pay the Contractor any substantial sums due it in accordance with the terms of the Construction Services Agreement and within the time limits prescribed; or (3) SEJPA shall elect not to appropriate funds and/or elect not to make two (2) successive Sublease Prepayments following the receipt by SEJPA or a request from the Contractor in its capacity as Lessor for each such Sublease Prepayment submitted pursuant to Section 26 (A) of the Sublease. In the event of such termination, the Contractor shall have no claims against SEJPA except for work performed on the Project as of the date of termination.

SECTION 13 PERSONNEL ASSIGNMENT

- A. Within ten (10) days after the Notice to Proceed, the Contractor shall assign and advise SEJPA of the project team including Project Manager, Superintendent or Foreman that may be assigned to the Project. So long as the project team remain in the employ of the Contractor, such persons shall not be changed or substituted from the Project, or cease to be fully committed to the Project except as provided in this Section. In the event Contractor deems it necessary, Contractor shall replace any assigned individuals for the Project with a replacement with like qualifications and experience, subject to the prior written consent of SEJPA, which consent shall not be unreasonably withheld. Any violation of the terms and provisions of this Section 13 (A) shall entitle SEJPA to terminate this Construction Services Agreement for breach, pursuant to the provisions of Section 12.
- B. Notwithstanding the foregoing provisions of Section 13 (A), above, if any project team individual proves not to be satisfactory to SEJPA, upon written notice from SEJPA to the Contractor, such person shall be promptly replaced by a person who is acceptable to SEJPA in accordance with the following procedures:
 - (1) Within five (5) business days after receipt of a notice from SEJPA requesting the replacement of any project team individual or promptly following the discovery by the Contractor that any team individual is leaving the employ of the Contractor, as the case may be, the Contractor shall provide SEJPA with the name of an acceptable replacement/substitution (together with such person's resume and other information regarding such person's experience and qualifications). The replacement/substitution shall commence work on the Project no later than five (5) business days following SEJPA's approval of such replacement, which approval shall not be unreasonably withheld. In the event that SEJPA and Contractor cannot agree as to the substitution of replacement individual(s), SEJPA shall be entitled to terminate this Construction Services Agreement for breach, pursuant to the provisions of Section 12.

SECTION 14 MAINTENANCE OF RECORDS; AUDIT.

- A. The Contractor, and any subcontractors, shall keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the course of its activities and operations related to the Project. These documents may include sales slips, invoices, payrolls, personnel records, requests for subcontractor payment, and other data relating to all matters covered by the Contract Documents. At all times during the construction of the Project, and for a minimum of four (4) years following the termination of the term of the last Document, or longer if required by law, the Contractor, and any subcontractors, shall retain such data and records. During

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construction of the Project, the Contractor shall make available all requested data and records at reasonable locations within the County of San Diego, at any time during normal business hours, and as often as SEJPA deems necessary. If records are not made available within the County of San Diego during the construction of the Project, the Contractor shall pay SEJPA's travel costs to the location where the records are maintained. Upon completion of the construction of the Project, Contractor shall provide SEJPA with one (1) complete copy of all books, records and accounts of all financial transactions in the course of its activities and operations related to the Project, including but not limited to sales slips, invoices, payrolls, personnel records, requests for subcontractor payment and other data relating to all matters covered by the Contract Documents. Failure to make requested records available for audit by the date requested will result in immediate termination of this Construction Services Agreement.

- B. At its own cost, SEJPA shall have the right to review and audit, upon reasonably notice, the books and records of the Contractor concerning any monies associated with the Project. This right does not extend to books and records that do not, in any way, relate to or concern the accounting of monies associated with the Project. Any such audit shall be performed by an independent auditor, having no direct or indirect relationship with the functions or activities being audited or with the business conducted by the Contractor or SEJPA. In the event the independent auditor determines that savings realized during the prosecution and progress of the Project were not added to the contingency portion of the GMP, as provided for in Section 6 of this Construction Services Agreement, SEJPA shall be entitled to deduct the amount of such savings from the next Sublease Payment due or next requested Sublease Prepayments, as applicable, under the provisions of the Sublease between SEJPA and Contractor. If the Contractor disputes the findings of the independent auditor, such dispute shall be handled in accordance with the provisions of Section 36 of this Construction Services Agreement.
- C. This Agreement is subject to examination and audit of the State Auditor, at the request of SEJPA or as part of any audit of SEJPA, for a period of three (3) years after final payment under this Agreement. Contractor shall cooperate with any such audit at no additional charge to SEJPA.

SECTION 15 LABOR COMPLIANCE PROGRAM

The Contractor acknowledges that SEJPA intends to use funds in part from The Safe Drinking Water, Water Quality And Supply, Flood Control, River and Coastal Protection Bond Act of 2006 to make Sublease Payments and Sublease Prepayments, and therefore Public Resources Code section 75075 requires SEJPA to adopt and enforce, or contract with a third party to enforce, a labor compliance program pursuant to subdivision (b) of Labor Code section 1771.5 for application to the Project. The Contractor, and any subcontractors, shall comply with SEJPA's labor compliance plan and related statutory and regulatory requirements. SEJPA reserves the right to implement any plans, procedures and rules to implement a labor compliance plan. The labor compliance plan shall include, but is not limited to, a prejob conference with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract and a requirement that the Contractor and subcontractors maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury. SEJPA or a designated third party shall review, and if appropriate, audit payroll records to verify compliance with Chapter 1, Part 7, Division 2 of the Labor Code. SEJPA shall withhold payments when payroll records are delinquent or incomplete. SEJPA shall withhold payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred. The Contractor agrees to comply with any such plans, procedures, rules and the like that are implemented by SEJPA at no additional cost to SEJPA. The Contractor shall include the language of this Section 15 in all subcontracts and require all subcontractors to comply with these provisions at no additional cost to SEJPA.

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SEJPA's notice of labor compliance program approval ("Notice") is attached hereto and incorporated herein as Exhibit "F." The Contractor shall post a copy of the Notice at each job site.

SECTION 16 **PREVAILING RATES OF WAGES**

- A. The Contractor is aware of the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq. ("Prevailing Wage Laws") which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Construction Services Agreement involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages applicable to the work to be performed by subcontractors from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, SEJPA shall provide Contractor with a copy of the prevailing rates of per diem wages applicable to the work to be performed by subcontractors. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold SEJPA, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. When determining GMP, Contractor shall include to the extent possible anticipated general prevailing wage rates for the time when work on the Project will actually be performed.
- B. The Contractor and each subcontractor shall forfeit as a penalty to SEJPA not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing rate for any work done by him, or by any subcontract under him, in violation of the provisions of the California Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.
- C. As a further material part of this Construction Services Agreement, Contractor agrees to hold harmless and indemnify SEJPA, its Board and each member of the Board, its officers, employees and agents from any and all claims, liability, loss, costs, damages, expenses, fines and penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Contractor or its subcontractors to comply with the Prevailing Wage Laws. If SEJPA or any of the indemnified parties are named as a party in any dispute arising from the failure of Contractor or its subcontractors to pay prevailing wages, Contractor agrees that SEJPA and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to pay all attorneys' fees and defense costs of SEJPA and the other indemnified parties as billed, in addition to all other damages, fines, penalties and losses incurred by SEJPA and the other indemnified parties as a result of the action.

SECTION 17 **DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS**

The Contractor, or any subcontractor working under the Contractor may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between the Contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been

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paid to a debarred subcontractor by the Contractor on the Project shall be returned to SEJPA. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

SECTION 18 EMPLOYMENT OF APPRENTICES

- A. The Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by the Contractor or any subcontractor under it. Contractor and any subcontractor under him shall comply with the requirements of the California Labor Code in the employment of apprentices. Contractor has the responsibility of compliance with these requirements for all apprenticeable occupations. In addition, Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code. Prior to commencing work under this Agreement, the Contractor and/or subcontractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the work. The information submitted shall include an estimate of the journeyman hours to be performed under this Agreement, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. Within sixty (60) days after concluding the work under this Agreement, the Contractor and any subcontractors shall submit to SEJPA, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed pursuant to this Agreement, including any subcontract thereunder.
- B. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.
- C. Knowing violations of Section 1777.5 will result in forfeiture not to exceed \$100 for each calendar day of non-compliance pursuant to Section 1777.7.

SECTION 19 HOURS OF WORK

- A. Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to SEJPA, twenty five dollars (\$25) for each worker employed in the execution of work on the Project by the Contractor or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of the Contractor and his subcontractors in excess of eight hours per day at not less than one and one half times the basic rate of pay, as provided in Labor Code section 1815.
- B. Generally, construction work on the Project shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m., however nothing herein shall prevent Contractor from working weekends and after school hours in order to complete the Project so long as not otherwise prohibited by law or local ordinances or regulations.
- C. Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed and included within the GMP, unless otherwise agreed to in writing before the work in question is commenced pursuant to Section 9, Extra Work/Modifications.

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SECTION 20 **PAYROLL RECORDS**

- A. Pursuant to Labor Code section 1776, as amended from time to time, the Contractor and each subcontractor shall keep records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the work.
- B. The payroll records enumerated above shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
- (1) A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.
 - (2) A certified copy of all payroll records enumerated above shall be made available for inspection or furnished upon request, or as required by law including Labor Code section 1771.7, to SEJPA, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - (3) A certified copy of all payroll records enumerated above shall be made available upon request to the public for inspection or copies thereof made; provided, however, that if request by the public shall be made through either SEJPA, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, if as requested, payroll records have been provided pursuant to Paragraph (2), the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, subcontractors and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
- C. The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division.
- D. Each Contractor shall file a certified copy of the records enumerated above with the entity that requested such records within ten (10) calendar days after receipt of a written request.
- E. Any copy of records made available for inspection as copies and furnished upon request to the public or SEJPA, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor or any subcontractor performing work on the Project shall not be marked or obliterated.
- F. The Contractor shall inform SEJPA of the location of the records enumerated above, including the street address, city and county, and shall, within five (5) business days, provide a notice of a change of location and address.
- G. In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Section. Should noncompliance still be evident after such ten (10) calendar day period, the Contractor shall, as a penalty to SEJPA, forfeit Twenty five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, such penalties shall be withheld from Sublease Payments then due or from any Sublease Prepayment, as applicable.

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SECTION 21 **BONDING REQUIREMENTS**

The Contractor shall provide the following bonds:

- A. A "Payment Bond" (material and labor bond) from a California admitted surety and in the form attached hereto, shall be provided by Contractor for the Project within five (5) working days after SEJPA has issued a Notice to Proceed for the Project. The Payment Bond shall be for One Hundred Percent (100%) of the GMP of the Project, to satisfy claims of materials suppliers and of mechanics and laborers employed on the Project. The Payment Bond shall be maintained by the Contractor in full force and effect for the Project until the Project is fully completed and accepted and until all claims for materials and labor are paid, and shall otherwise comply with California law. The Payment Bond, once obtained, shall be attached to this Construction Services Agreement as Exhibit "C." In the event the GMP is increased in accordance with the provisions set forth in Section 9 above, the Contractor must increase the Payment Bond to equal the revised GMP. The Payment Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure section 995.120 and is authorized by the State of California.
- B. A "Faithful Performance Bond" from a California admitted surety and in the form attached hereto shall be provided by Contractor for the Project within five (5) working days after SEJPA has issued a Notice to Proceed on the Project. The Faithful Performance Bond shall be for One Hundred Percent (100%) of the GMP for the Project to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to SEJPA, and that all materials and workmanship shall be free from material or workmanship defects. The Faithful Performance Bond shall be in the form attached hereto and shall be maintained by the Contractor in full force and effect until the Project is fully completed and accepted, all claims for materials and labor are paid, and the one year warranty of work pursuant to Section 23 has expired and shall otherwise comply with California law. The Faithful Performance Bond shall name SEJPA as the entity to which the Principal and Surety, as defined in the Faithful Performance Bond, are bound. The Faithful Performance Bond shall be attached to this Construction Services Agreement as Exhibit "D." In the event the GMP is increased in accordance with the provisions set forth in Section 9 above, Contractor must increase the Faithful Performance Bonds to equal the revised GMP. The Performance Bond must be executed by an admitted Surety approved to conduct business in the State of California, pursuant to California Code of Civil Procedure section 995.120 and is authorized by the State of California.
- C. The bonds required by this Section shall meet the following criteria:
- (1) Each bond shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California. Each bond shall be signed by both the Contractor and a notary and the signature of the authorized agent of the surety shall be notarized. Each bond shall comply with California Code of Civil Procedure section 995.630.
 - (2) Should any bond become insufficient, the Contractor shall renew or amend the bond within ten (10) calendar days after receiving notice from SEJPA.
 - (3) Should any surety at any time not be a California admitted surety, notice will be given to SEJPA to that effect. No further payments shall be deemed due or shall be made under this Construction Services Agreement until a new surety shall qualify and be accepted by SEJPA.

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- (4) Changes in the work, or extensions of time, made pursuant to the Construction Services Agreement shall in no way release the Contractor or the surety from its obligations. Notice of such changes or extensions shall be waived by the surety.
- D. Contractor is hereby authorized to obtain a Performance and Payment Bond from any subcontractors selected by Contractor at its discretion. Any bonds required by this subsection shall comply with the requirements set forth above in Section 21 (A)-(C).

SECTION 22 SUBLEASE PAYMENTS

- A. Contractor shall provide for the cost of construction of the Project which costs shall not exceed the GMP, except as otherwise provided in this Construction Services Agreement. SEJPA shall pay the Contractor monthly Sublease Payments pursuant to the Sublease. SEJPA may also pay Contractor Sublease Prepayments pursuant to the terms and conditions set forth in Section 26 of the Sublease and this Section 22. In no event shall the sum of the Sublease Payments and Sublease Prepayments exceed the GMP.

SECTION 23 CORRECTION OF WORK: WARRANTY

Neither final payment under the Sublease nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project. Contractor warrants that all work under this Construction Services Agreement will be free of faulty materials or workmanship and hereby agrees, within ten (10) working days upon receiving notification from SEJPA, to remedy, repair or replace, without cost to SEJPA, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning with commencement of the Project and ending one (1) year after the date of substantial completion of the Project, as defined in Section 11 herein. The foregoing warranty of Contractor also applies to the remedy, repair or replacement of defects which may appear as a result of faulty designs prepared by Contractor and/or any party retained by, through or under Contractor in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by use, wear, intentional acts, accidents, or lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Contractor, except where such changes or additions to the Project are made in accordance with Contractor's directions. No guarantee furnished by a party other than Contractor with respect to equipment manufactured or supplied by such party shall relieve Contractor from the foregoing warranty obligation of Contractor. The warranty period set forth herein above shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. Contractor agrees to provide SEJPA with all equipment and materials warranties provided by manufacturers to SEJPA but has no obligation to assist in processing such warranty claims after said one (1) year warranty period.

SECTION 24 ASSIGNMENT OF ANTI TRUST CLAIMS

The Contractor and any subcontractors offers and agrees to assign to SEJPA all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchase of goods, services, or materials pursuant to the Construction Services Agreement or any subcontract thereunder. This assignment shall become effective at the time SEJPA tenders the final Payment to Contractor under the Sublease, without further acknowledgment by the parties, or upon termination of the Contract Documents. The Contractor shall include the language of this Section 24 in any subcontract under this Agreement.

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SECTION 25 PROTECTION OF PERSONS AND PROPERTY

- A. Contractor shall at all times enforce orderly and disciplined conduct among those performing work on the Project and shall not employ on the work any unfit person not skilled in the task assigned to him, except as provided in Section 18 hereof.
- B. Contractor, in performing the work, shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. Contractor shall erect and maintain, as required by existing conditions and progress of the Project, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, and shall promulgate safety regulations and notify owners and users of adjacent utilities. Contractor shall designate a responsible member of Contractor's organization employed at the Site of the Project whose duty shall be the prevention of accidents. Such person shall be Contractor's Project Manager/Superintendent unless otherwise designated in writing by Contractor to SEJPA.
- C. In any emergency affecting the safety of persons or property, Contractor shall act at its discretion to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by Contractor on account of such emergency shall be determined by mutual agreement between SEJPA and Contractor.

SECTION 26 INSPECTION OF WORK

- A. SEJPA shall hire its own inspector as required by law. SEJPA, SEJPA's representatives, and the SEJPA hired inspector shall at all times have access to the work whether it is in preparation or progress, and Contractor shall provide proper facilities for such access and for inspection.
- B. If the specifications, SEJPA's timely instructions, or any public authority shall require the Site or the Project to be specially tested or approved, Contractor shall give SEJPA forty-eight (48) hour notice of its readiness for inspection and, if the inspection is to be performed by a party other than SEJPA, of the date fixed for such inspection. Inspections by SEJPA shall be promptly made, and, where practicable, shall be at the source of supply. If any work required to be inspected by the specifications, SEJPA's timely instruction or by a public authority should be covered up without the approval or consent of SEJPA, it must, if required by SEJPA, be uncovered for examination at Contractor's expense.
- C. Re-examination of questioned work may be ordered by SEJPA and if so ordered, such work shall be uncovered by Contractor. If such work is found to be in accordance with the Contract Documents, SEJPA shall pay the cost of re examination and replacement. If such work is not in accordance with the Contract Documents, Contractor shall pay such costs, unless Contractor can demonstrate to the reasonable satisfaction of SEJPA that the defects in such work were caused by persons or entities other than Contractor or any of its subcontractors or employees.

SECTION 27 SUPERVISION

- A. Contractor shall maintain on site a competent project team with a project manager, superintendent, foreman and/or necessary assistants during the work. The project manager of the team shall represent Contractor and all directions given to him or her shall be deemed to have been given to Contractor. Important directions shall be confirmed in writing to Contractor, and other direction shall be so confirmed to Contractor upon the written request of Contractor, in accordance with Section 45 hereof and the address listed therein. Replacement of any project team individual(s) shall be subject to the provisions of Section 13 above.

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- B. Contractor shall give efficient supervision to the work, using its skill and attention and shall cause working drawings and specifications to be prepared and submitted to the SEJPA. Following agreement by contractor and SEJPA with respect to said working drawings and specifications, it shall be Contractor's responsibility to perform the work described in said working drawings and specifications in substantial compliance with the Construction Documents. Notwithstanding the foregoing, Contractor may from time to time make minor and insignificant changes in said working drawings and specifications and perform the construction in accordance with such changed drawings and specifications without the consent of SEJPA, provided that any such work performed by Contractor in accordance with such changed drawings and specifications shall be consistent with that specifically required to be performed by Contractor under the Construction Documents. For purposes of this Section, the term "minor and insignificant" shall mean changes which result in no change in quality, aesthetics or integrity of the original specifications of the Project. All changes, including minor and insignificant changes to the extent possible, should be placed on the agenda for regularly scheduled construction meetings between Contractor and SEJPA to ensure that SEJPA is aware of such changes. SEJPA agrees to promptly respond to Contractor's requests for information and approvals; and if it fails to do so, Construction Services Agreement completion dates will be extended.

SECTION 28 SEPARATE CONTRACTS

- A. SEJPA reserves the right to let other contracts in connection with the construction of portions of the Project which are not being performed by Contractor hereunder. Any such contracts entered into by SEJPA, and the work they provide for shall in no event interfere with the activities of the Contractor on the Project, but if they do, SEJPA shall be liable to Contractor for its damages in connection with such interference. Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate the Project with the work of such contractors. Such contractors shall comply with all applicable State safety laws and regulations and shall provide a certificate of insurance naming Contractor as additional insured.
- B. If the proper execution of any part of the Contractor's work on the Project depends upon the work of any such contractors, Contractor shall inspect and promptly report to SEJPA any patent defects or other problems it identifies in such work that render it unsuitable for such proper execution and results. Contractor is only required to inspect the work of such other contractors prior to commencing its own further work in connection with or in relation to that other work. Further, Contractor is only expected to identify patent defects or other problems, and is not required to do any destructive testing or to monitor the progress of such work by other contractors prior to its completion. In no event shall the work of such other contractors be covered by the warranty given by Contractor to SEJPA, nor shall Contractor be required to provide insurance for such work.

SECTION 29 USE OF PREMISES

Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Construction Documents and shall not unreasonably encumber the Site or existing facilities on the Site with any materials or equipment. Contractor shall not load or permit any part of the work to be loaded with a weight so as to endanger the safety of persons or property at the Site.

SECTION 30 CLEANING UP

Contractor shall at all times keep the Site of the Construction free from accumulations of waste material or rubbish caused by the performance of the Construction by Contractor, and at the

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completion of the Construction, Contractor shall remove from the Site of the Construction all such waste material and rubbish and all tools, scaffolding and surplus materials belonging to Contractor and/or Contractor's subcontractors, laborers or materialmen, it being specifically understood that at the close of construction and prior to turning over the premises to SEJPA for beneficial use and occupancy, Contractor shall leave the Site "broom clean," or its equivalent, unless more exactly specified.

SECTION 31 **SITE REPRESENTATIONS**

SEJPA warrants and represents that SEJPA has, and will continue to retain at all times during the course of construction, legal title to the Site and that said land is properly subdivided and zoned so as to permit the construction and use of said Site. SEJPA further warrants and represents that title to said land is free of any easements, conditions, limitation, special permits, variances, agreements or restrictions which would prevent, limit, or otherwise restrict the construction or use of said facility. Reference is made to the fact that SEJPA has provided information on the Site to Contractor. Such information shall not relieve the Contractor of its responsibility; and the interpretation of such data regarding the Site, as disclosed by any borings or other preliminary investigations, is not warranted or guaranteed, either expressly or implicitly, by SEJPA. The Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site and for having satisfied himself as to the conditions under which the work is to be performed. No claim for any allowances because of Contractor's error or negligence in acquainting himself with the conditions at the Site will be recognized.

SECTION 32 **TRENCH SHORING**

A. **Trenches Five Feet or More in Depth.** The Contractor shall submit to SEJPA, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. The Contractor shall also submit a copy of its annual trench/excavation permit approved by CAL-OSHA. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.

- (1) All shoring submittal shall include surcharge loads from adjacent embankments, construction loads and spoil bank. Submittal shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.
- (2) Nothing in this Section shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer and shall be approved by CAL-OSHA. No excavation of such trench or trenches shall be commenced until said plan has been accepted by SEJPA or the person to whom authority to accept has been delegated by SEJPA.

SECTION 33 **HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS**

A. Contractor shall promptly, and before the following conditions are disturbed or further disturbed, notify SEJPA, in writing, of any:

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- (1) Material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - (2) Subsurface or latent physical conditions at the Site differing from those indicated, including geological, soils, and or water table issues which impede construction or increase Construction Costs.
 - (3) Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Construction Services Agreement.
- B. SEJPA shall promptly investigate the conditions, and if it finds that the conditions to materially so differ, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Construction Services Agreement. If asbestos related work or hazardous substance removal is discovered which is not disclosed in the construction documents, such work shall be performed pursuant to a contract separate from any other work to be performed as required by Section 25914.2 of the Health and Safety Code, as may from time to time be amended.
- C. In the event that a dispute arises between SEJPA and Contractor whether the conditions set forth in Paragraph A above materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by this Construction Services Agreement but shall proceed with all work to be performed under the Construction Services Agreement. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.
- D. This Section 33 shall also apply to this Construction Services Agreement if this Construction Services Agreement involves digging trenches or other excavations that extend deeper than four feet below the surface.

SECTION 34 **INSURANCE**

A. **Contractor's Insurance Requirements**

- (1) The Contractor shall purchase and maintain, during the performance of all work under this Construction Services Agreement insurance in amounts as specified below.
 - a. Commercial General Liability
 - a. Coverage for Commercial General Liability insurance shall be at least as broad as the following:
 - (a) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001)
 - (b) Commercial General Liability Insurance must include coverage for the following:
 - (i) Bodily Injury and Property Damage

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- (ii) Personal Injury/Advertising Injury
- (iii) Premises/Operations Liability
- (iv) Products/Completed Operations Liability
- (v) Aggregate Limits that Apply per Project
- (vi) Explosion, Collapse and Underground (UCX) exclusion deleted
- (vii) Contractual Liability with respect to this Construction Services Agreement
- (viii) Broad Form Property Damage
- (ix) Independent Contractors Coverage

- b. All such policies shall name SEJPA, the board and each member of the board, its officers, employees, agents and volunteers, as well as SEJPA's member agencies (including City of Encinitas and City of Solana Beach) and their governing boards, each member of their boards, officers, employees, agents and volunteers, as Additional Insureds under the policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations.
- c. The general liability program may utilize either deductibles or provide coverage excess of a self insured retention, subject to written approval by SEJPA.

(2) Automobile Liability

- a. At all times during the performance of the work under this Construction Services Agreement the Contractor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non owned and hired vehicles, in a form and with insurance companies acceptable to SEJPA, in the amount specified below.
- b. Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 (ed. 6/92) covering automobile liability, Code 1 (any auto).
- c. The automobile liability program may utilize deductibles, but not a self insured retention, subject to written approval by SEJPA.
- d. All such policies shall name SEJPA, the governing board and each member of the board, its officers, employees, agents and volunteers, as well as SEJPA's member agencies (including City of Encinitas and City of Solana Beach) and their governing boards, each member of their boards, officers, employees, agents and volunteers, as Additional Insureds under the policies with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor.

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(3) Workers' Compensation/Employer's Liability

- a. At all times during the performance of the work under this Construction Services Agreement the Contractor shall maintain Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage in an amount no less than One Million Dollars (\$1,000,000).
- b. Such insurance shall include an insurer's Waiver of Subrogation in favor of SEJPA for all work performed by the Contractor, its employees, agents and subcontractors and will be in a form and with insurance companies acceptable to SEJPA.
- c. If insurance is maintained, the workers' compensation and employer's liability program may utilize either deductibles or provide coverage excess of a self insured retention, subject to written approval by SEJPA.
- d. Before beginning work, the Contractor shall furnish to SEJPA satisfactory proof that it has taken out for the period covered by the work under this Construction Services Agreement full compensation insurance for all persons employed directly by it or through subcontractors in carrying out the work contemplated under this Construction Services Agreement all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof.
- e. Contractor shall sign a Certificate Regarding Workers' Compensation Insurance which is attached to this Construction Services Agreement as Exhibit "F" incorporated herein by this reference.

(4) Builder's Risk "All Risk" Insurance

- a. At all times during the performance of the work, Contractor shall maintain builder's risk insurance on an "all risk" completed value basis upon the entire project which is the subject of the Construction Services Agreement with applicable sublimits for separate flood and/or earthquake/land movement coverage. Coverage shall include completed work as well as work in progress. Such insurance shall include San Elijo Joint Powers Authority as Loss Payee.
- b. Such insurance may have a deductible clause but not to exceed the smaller of: five percent (5%) of the total amount of the Contract; or \$10,000.00 for all risks, except flood and earthquake. The deductible for flood and/or earthquake/land movement coverage shall not exceed five percent (5%) of the total amount of the Construction Services Agreement.
- c. Such policies shall name the San Elijo Joint Powers Authority as Loss Payee.
- d. The making of Sublease Payments or Sublease Prepayments to the Contractor shall not be construed as creating an insurable risk interest by or for SEJPA such that it would result in a reduction in, or entitle the Contractor to reduce, the amount or scope of Builder's Risk coverage required by this Agreement, or be construed as relieving the Contractor or his subcontractors of responsibility for loss from any direct physical loss, damage, or destruction occurring prior to final acceptance of the work by SEJPA.

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- e. The insurer shall waive all rights of subrogation against the San Elijo Joint Powers Authority and shall provide SEJPA with a Certificate of Insurance for Builder's Risk insurance coverage and evidence of waiver of rights of subrogation against the San Elijo Joint Powers Authority.

B. Minimum Policy Limits Required

The following insurance limits are required for the Contract:

	Combined Single Limit
Commercial General Liability	\$5,000,000 per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
Excess Liability	\$10,000,000 Excess/Umbrella Liability per occurrence and aggregate
Automobile Liability	\$5,000,000 Combined Single Limit – Each Accident
Builder's Risk	Completed value or replacement cost for All Other Perils (“AOP”) with applicable flood sublimit of \$1,000,000 and Earthquake/Land Movement sublimit of \$1,000,000

C. Evidence Required

- (1) Prior to proceeding with construction of the Project, the Contractor shall file with SEJPA evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of additional insured endorsements at least as broad as CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions are used signed by the insurer's representative and Certificate of Insurance (ACORD Form 25 S or equivalent). All evidence of insurance shall be certified by a properly authorized officer, agent or qualified representative of the insurer and shall certify the names of the insured, any additional primary insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance. Failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them.

D. Policy Provisions Required

- (1) Each insurance policy required by this Construction Services Agreement shall be endorsed to state that coverage shall not be cancelled except after thirty (30) days prior written notice (10 days for non-payment) has been provided to SEJPA.
- (2) All policies shall contain a provision stating that the Contractor's policies are primary insurance and that the insurance of SEJPA or any named insureds or additional insureds

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shall be excess of the Contractor's insurance and shall not be called upon to contribute to any loss.

- (3) The Contractor hereby agrees to waive rights of subrogation which any insurer of the contractor may acquire from the Contractor by virtue of the payment of any loss. The Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

E. Qualifying Insurers

- (1) All policies required shall be issued by acceptable insurance companies, as determined by SEJPA, which satisfy the following minimum requirements:
 - a. Insurance carriers shall be qualified to do business in California and maintain an agent for process within the state. Such insurance carrier shall have not less than an "A" policyholder's rating and a financial rating of not less than "VII" according to the latest Best Key Rating Guide.

F. Additional Insurance Provisions

- (1) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor and any approval of said insurance by SEJPA, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Construction Services Agreement including but not limited to, the provisions concerning indemnification.
- (2) If at any time during the life of the Construction Services Agreement the Contractor fails to maintain in full force any insurance required by the Construction Services Agreement, including required limits, SEJPA may acquire the necessary insurance for the Contractor and deduct the cost thereof from the appropriate Sublease Payments due the Contractor, or Sublease Prepayments made by SEJPA.
- (3) The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Construction Services Agreement. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold SEJPA harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by SEJPA as a result thereof.
- (4) If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:
 - a. The policy retroactive date coincides with or precedes Contractor's commencement of work under this Construction Services Agreement (including subsequent policies purchased as renewals or replacements). The retroactive date must be shown.
 - b. Insurance must be maintained, including the requirement of adding all additional insureds, and evidence of insurance must be provided for at least five (5) years after completion of contract work.

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- c. If insurance is canceled, non-renewed or terminated for any reason, Contractor shall purchase an extended reporting provision of at least five years after completion of contract work to report claims arising in connection with the Construction Services Agreement.
 - d. The policy allows for reporting of circumstances or incidents that might give rise to future claims.
 - e. A copy of the claims reporting requirements must be submitted to SEJPA for review.
- (5) SEJPA may require the Contractor at any time to provide complete, certified copies of all insurance policies, including endorsements, in effect for the duration of the Project.
- (6) Neither SEJPA nor the Board, nor any member of the Board, nor any of the officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of the Construction Services Agreement.
- (7) Any deductibles or self-insured retentions must be declared to and approved by SEJPA. At the option of SEJPA, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SEJPA, its officers, officials, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to SEJPA guaranteeing payments of losses and related investigations, claim administration, and defense expenses.

SECTION 35 HOLD HARMLESS

Pursuant to California Civil Code Section 2782, SEJPA, its Board and each member of the Board, its officers, employees and agents, and SEJPA's member agencies (including City of Encinitas and City of Solana Beach, their boards and each member of their boards, their officers, employees and agents, (collectively referred to as "Indemnified Parties") shall not be liable for, and Contractor shall defend, indemnify and hold harmless Indemnified Parties from and against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, injuries to property or persons (including death), expenses, charges or costs of any kind or character, including attorneys' fees and court costs (herein collectively referred to as "Claims") which arise out of or are in any way connected to the work covered by this Construction Services Agreement, arising either directly or indirectly from any act, error, omission or negligence of Contractor or its contractors, consultants, , engineers, licensees, agents, servants or employees, including, without limitation, Claims caused by the concurrent act, error, omission or negligence of SEJPA or its agents or employees, except that the Contractor shall have no obligation to defend or indemnify SEJPA from a Claim if it is determined that such Claim was caused by the active negligence, sole negligence, or willful misconduct of SEJPA or its agents or employees.

SECTION 36 RESOLUTION OF AGREEMENT CLAIMS

- A. For purposes of this Section only and subject to the limitations of Section 56 below, the term "Claim" has the meaning as set forth in Public Contract Code section 20104(b)(2), as that section may be amended from time to time. Section 20104(b)(2) currently defines "claim" to mean a separate demand by the Contractor for (a) time extension, (b) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Construction Services Agreement and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (c) an amount the payment of which is disputed by SEJPA.

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- B. Notwithstanding any other provision herein, all claims that are equal to or less than Three Hundred Seventy-five Thousand Dollars (\$375,000) shall be resolved utilizing the process described in Public Contract Code section 20104 et seq., as may be amended from time to time, and which provisions are incorporated herein by reference.
- C. For claims not addressed in Section 36 (A) and (B) above, the dispute review process set forth in this subsection (C) shall apply
- (1) The dispute review process set forth in this Section 36 shall be administered by the American Arbitration Association (AAA) and governed by their rules in effect at the time of filing, or by any other neutral organization agreed to by the parties (hereinafter called "Administrator".)
 - (2) If a dispute arises out of, or relates to this Construction Services Agreement or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the parties agree to first endeavor to settle the dispute using mediation.
 - (3) The costs for all mediation, including the Administrative fees and mediator compensation, will be shared equally by all parties. Fees shall be jointly negotiated by all parties directly with the Administrator. If all parties agree, then the mediation costs may increase as required for resolution of the dispute. The expenses of witnesses for any party shall be paid by the party producing such witnesses.
 - (4) A single mediator, acceptable to all parties, shall be used to mediate the dispute. The mediator will be knowledgeable in construction aspects and will be selected from lists furnished by the Administrator. The initial mediation session shall commence within thirty (30) days of filing, unless otherwise agreed by the parties, or at the direction of the mediator.
 - (5) Mediation hearings will be conducted in an informal manner and discovery will not be allowed unless agreed by all parties. All discussions, statements, or admissions will be confidential to the proceedings and will not be used for any other purpose as it relates to the party's legal position.
 - (6) Spokespersons shall be limited to SEJPA, Contractor, Subcontractor, and Supplier personnel and their consultants. Contractor, Subcontractor and Supplier may have an attorney present and shall advise the other parties no less than five (5) business days before the mediation so that the other parties may also have their attorneys present.
 - (7) Any resultant agreements from mediation shall be documented in writing, and may be used as the basis for a change order or other directive as appropriate. All mediation results and documentation shall be non-binding and inadmissible for any purpose in any legal proceedings, in accordance with Evidence Code section 1152, unless such admission is otherwise agreed in writing by all parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.
 - (8) If mediation is unsuccessful, the parties thereafter may, but are not required to, agree to submit the matter to the Administrator for binding arbitration. If the parties so agree to arbitrate, the following provision shall govern such arbitration, unless the parties otherwise agree in writing. The parties agree that the matter shall be submitted to one (1) arbitrator, unless they agree in writing to three (3) arbitrators. A judgment of a court having competent jurisdiction may be entered upon the award, and such judgment shall be enforceable as a final judgment to the fullest extent under the law. The parties agree

Initial: _____

Construction Services Agreement
San Elijo Joint Powers Authority
Advanced Water Treatment Project

to split evenly all arbitration and arbitrator(s)' fees and expenses, subject to readjustment by the arbitrator as part of any award. The arbitration shall be subject to, and proceed in accordance with California Code of Civil Procedure sections 1280 through 1294.2. If the parties do not agree to submit to binding arbitration, neither party is prevented from pursuing other legal remedies.

SECTION 37 SUBSTITUTION OF SECURITY

In accordance with the procedures set forth in Public Contract Code section 22300, SEJPA will permit the substitution of securities for any Retention moneys withheld by SEJPA, pursuant to the Construction Services Agreement and the Sublease, to ensure performance under the Construction Services Agreement. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with SEJPA, or with a state or federally chartered bank as the escrow agent, who shall then pay such moneys to the Contractor. Upon satisfactory completion of the Construction Services Agreement the securities shall be returned to the Contractor.

Alternatively, the Contractor may request and SEJPA shall make payment of retentions earned directly to the escrow agent at the expense of the Contractor. At the expense of the Contractor, the Contractor may direct the investment of the payments into securities and the Contractor shall receive the interest earned on the investments upon the same terms provided for in section 22300 for securities deposited by the Contractor. Upon satisfactory completion of the Agreement, the Contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from SEJPA, pursuant to the terms of section 22300. Securities eligible for investment under section 22300 shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and SEJPA. The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

If the Contractor who elects to receive interest on moneys withheld in retention by SEJPA, the Contractor shall at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the subcontractor. If the Contractor elects to receive interest on any moneys withheld in retention by SEJPA, then the subcontractor shall receive the identical rate of interest received by the Contractor on any retention moneys withheld from the subcontractor by the Contractor, less any actual pro rata costs associated with administering and calculating that interest. In the event that the interest rate is a fluctuating rate, the rate for the subcontractor shall be determined by calculating the interest rate paid during the time that retentions were withheld from the subcontractor. If the Contractor elects to substitute securities in lieu of retention, then, by mutual consent of the Contractor and subcontractor, the subcontractor may substitute securities in the exchange for the release of moneys held in retention by the Contractor. This provision shall apply only to those subcontractors performing more than five percent of the GMP. The Contractor shall not require any subcontractors to waive any provisions of section 22300.

In the event the Contractor chooses to make security deposits in lieu of retention, the escrow agreement form shall utilize the procedures described in Public Contract Code section 22300, subsection (f).

SECTION 38 TITLE TO WORK

Title to all work completed and in the course of construction paid for by SEJPA and title to all materials on account of which payment has been made by SEJPA to Contractor shall vest in SEJPA pursuant to the applicable provisions of the Lease and Sublease.

Initial: _____

SECTION 39 CONTRACT DOCUMENTS AND INTERPRETATIONS

- A. The Contract Documents, pursuant to Section 2(D) identifying contract documents received by Contractor, shall be executed, and/or initialed as appropriate, in duplicate by SEJPA and Contractor. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, services and materials reasonably necessary for the proper execution of the work.
- B. It is not intended that work and/or services not covered under any heading, section, branch, class or trade of the specifications shall be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results, in which case such work and/or services shall be supplied by Contractor. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings. Mutual agreement shall be reached with respect to words which do not have a well known technical or trade meaning and the definition of which come into question.
- C. Drawings and specifications are intended to be fully cooperative and to agree. All drawing and specification changes shall be dated and sequentially recorded. All modifications to drawings and specifications shall be interpreted in conformity with the Contract Documents, which shall govern, unless otherwise specified.

SECTION 40 COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

- A. The Contractor shall be required to comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Permit) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. Unless an existing site Permit and SWPPP can be adequately utilized for the scope of work, the Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) prior to initiating Work. It shall be the Contractor's responsibility to evaluate the cost of procuring the Permit and preparing the SWPPP as well as complying with the SWPPP and any necessary revision to the SWPPP. The Contractor shall comply with all requirements of the State Water Resources Control Board. The Contractor shall include all costs of compliance with specified requirements in the contract amount.
- B. Contractor shall be responsible for procuring, implementing and complying with the provisions of the existing or new, if applicable, Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to SEJPA and the Engineer.
- C. The Contractor shall comply with the lawful requirements of any applicable municipality, the County, drainage SEJPA, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- D. Storm, surface, nuisance or other waters may be encountered at various times during construction of the Project. Contractor, by entering into this Agreement, hereby acknowledges that it has investigated the risk arising from such waters, has prepared the GMP accordingly, and assumes any and all risks and liabilities arising therefrom.

Initial: _____

- E. Failure to comply with the Permit is in violation of federal and state law. The Contractor hereby agrees to indemnify and hold harmless SEJPA, its Board members, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which SEJPA, its Board members, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the sole established negligence, willful misconduct or active negligence of SEJPA, its Board members, officers, agents, employees or authorized volunteers. SEJPA may seek damages from the Contractor for delay in completing the Contract in accordance with Section 11 hereof, caused by the Contractor's failure to comply with the Permit.

SECTION 41 EQUAL OPPORTUNITY CLAUSE

- A. The Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age or physical handicap in the performance of this Construction Services Agreement and to comply with the provisions of the following laws:
- (1) California Fair Employment and Housing Act (Gov. Code 12900 et seq., prohibiting discrimination in employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex, and prohibiting harassment of an employee or applicant because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age);
 - (2) Federal Civil Rights Act of 1964 (42 USC '2000e et seq., prohibiting discrimination in employment on the basis of race, color, national origin, religion, or sex); Title I of the Americans With Disabilities Act of 1990 (42 USC 12101 et seq., prohibiting discrimination against qualified individuals with a disability in hiring and employment practices);
 - (3) The Age Discrimination in Employment Act (29 USC 621 et seq., prohibiting age discrimination in employment against individuals who are at least forty years of age);
 - (4) California Labor Code section 1102.1 (prohibiting discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation); and
 - (5) Any other laws or regulations prohibiting discrimination as may be applicable to Contractor.

SECTION 42 COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL

If the Project requires the use of imported soils, the Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law and the California Health and Safety Code. SEJPA reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify SEJPA of the source of material and comply with the San Diego Regional Water Quality Control Board rules, regulations and resolution, and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC).

Initial: _____

SECTION 43 **OMITTED**

SECTION 44 **AGREEMENT MODIFICATIONS**

No waiver, alteration or modification of any of the provisions of this Construction Services Agreement shall be binding upon either SEJPA or Contractor unless the same shall be in writing and signed by both SEJPA and Contractor.

SECTION 45 **NOTICES**

- A. All communications in writing between SEJPA and Contractor, including without limitation, applications for payment, shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed as follows:

If to Contractor: Mr. Dave Dawson
W.M. Lyles Co.
1210 W. Olive
Fresno, CA 93728
Office: 559-441-1900
Fax: 559-487-7949
Local Phone: 951-973-7393
Local Fax: 951-698-3031

If to SEJPA: Mr. Michael Thornton
SAN ELIJO JOINT POWERS AUTHORITY
2695 Manchester Avenue
Cardiff by the Sea, CA 92007
Office: 760-753-6203
Fax: 760-753-5935

- B. For the purpose of directions, representatives from Contractor shall be Dave Dawson, and SEJPA's representative shall be Mike Thornton unless otherwise specified in writing.

SECTION 46 **THIRD-PARTY CLAIMS**

SEJPA shall provide Contractor with timely notification of the receipt of any third-party claim, relating to the Construction Services Agreement. SEJPA is entitled to recover its reasonable costs incurred in providing such notification.

SECTION 47 **ASSIGNMENT**

Neither party to this Construction Services Agreement shall assign this Construction Services Agreement or sublet it as a whole without the written consent of the other, nor shall Contractor assign any monies due or to become due to it hereunder without the prior written consent of SEJPA. The Contractor acknowledges and consents to SEJPA's partial funding of the Project through a loan agreement, dated for convenience as of September 1, 2011, by and between Municipal Finance Corporation and SEJPA ("Loan Agreement"), and Municipal Finance Corporation's assignment of its rights and obligations under the Loan Agreement to City National Bank.

SECTION 48 **HEADINGS**

Initial: _____

The headings herein contained are inserted only as a matter of convenience and reference and are not meant to define, limit or describe the scope or intent of the Contract Documents or in any way to affect the terms and provisions set forth herein.

SECTION 49 **INTEGRATION/MODIFICATION**

This Construction Services Agreement, including any documents incorporated by reference, represents the entire understanding of SEJPA and Contractor as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered herein, and it shall not be amended, altered or changed except by a written agreement signed by the parties hereto.

SECTION 50 **APPLICABLE LAW**

The terms and provisions of this Construction Services Agreement shall be construed in accordance with the laws of the State of California.

SECTION 51 **JURISDICTION, FORUM, VENUE AND ATTORNEYS' FEES**

If any action is brought in a court of law to enforce any term of this Construction Services Agreement the action shall be brought, and the exclusive jurisdiction, forum and venue shall be, in a state court situated in the County of San Diego, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county within California. SEJPA and Contractor hereby submit to personal jurisdiction in the State of California for the enforcement of this Agreement and hereby waive any and all personal rights under the law of any state to object to jurisdiction within the State of California for purposes of any legal action or proceeding to enforce this Agreement, whether on the ground of inconvenient forum or otherwise. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the courts or arbitrator(s).

SECTION 52 **SUCCESSION OF RIGHTS AND OBLIGATIONS**

All rights and obligations under this Construction Services Agreement shall inure to and be binding upon the successors and assigns of the parties hereto.

SECTION 53 **SEVERABILITY**

If any provision of this Construction Services Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision of this Agreement, unless the purpose of this Agreement would be frustrated or elimination of such provision materially alters the rights and obligations embodied in this Agreement.

SECTION 54 **CERTIFICATION AGAINST FALSE CLAIMS**

In signing this Construction Services Agreement, performing the work and requesting and receiving payment, the Contractor certifies that it has not and will not commit false claims pursuant to Government Code section 12650 et seq.

Initial: _____

SECTION 55 **COUNTERPARTS**

This Construction Services Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same contract, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

SECTION 56 **LIMITATION OF PUBLIC CONTRACT CODE REFERENCES**

The references to the Public Contract Code contained herein, including but not limited to, Section 36 and 37 hereinabove are intended to be limited to the interpretation of the specified terms and conditions of this Agreement between the parties. Said references are not intended to otherwise require compliance with any other provisions of the Public Contract Code.

SECTION 57 **ORDER OF PRECEDENCE**

The Contract Documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be coordinated and to describe and provide for a complete Project. In the event of there being a conflict between one Contract Document and any of the other Contract Documents, the document highest in precedence shall control and supersede the document which is contrary to it. The order of precedence of the Contract Documents from highest to lowest in precedence shall be as follows: (First) Supplemental Agreements, the last in time being the first in precedence; (Second) Sections 1 through 57 in the body of the Construction Services Agreement; (Third) Exhibits to the Construction Services Agreement. Project specific plans and specifications shall govern over any inconsistent standard specifications.

IN WITNESS WHEREOF, the parties hereto have, by their duly authorized representatives, executed this Construction Services Agreement, in duplicate, as of the day and year first above written.

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

SAN ELIJO JOINT POWERS AUTHORITY
"SEJPA"

W.M. LYLES CO.
"CONTRACTOR"

BY: _____
Michael Thornton
ITS: General Manager

BY: _____
Richard G. Nemmer
ITS: President and CEO

Contractor's License Number 422390, Exp 5/31/2012

Initial: _____

EXHIBIT "A"
SCOPE OF WORK

FINAL DRAFT

EXHIBIT A

Initial: _____

EXHIBIT "B"
"OR EQUAL" SUBSTITUTION

As described in Section 10 of this Agreement the following specific material(s), product(s), thing(s), and/or service(s) that must be utilized for the Project in order to match other products in use on a particular public improvement either completed or in the course of completion:

Pall Microfiltration System, including related equipment, parts, materials and services (including warranties), as further described in the plans and specifications stated in this Construction Services Agreement.

FINAL DRAFT

EXHIBIT B

Initial: _____

EXHIBIT "C"
PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the SAN ELIJO JOINT POWERS AUTHORITY (hereinafter designated as "Public Entity" or "SEJPA"), by action taken or a resolution passed November 14, 2011, has awarded to W.M. LYLES CO. , (hereinafter designated as the "Principal"), a contract for the work described as follows: Advanced Water Treatment Project (hereinafter designated as the "Project"); and

WHEREAS, said Principal is required by Chapter 5 (commencing at Section 3225) and Chapter 7 (commencing at Section 3247), Title 15, Part 4, Division 3 of the California Civil Code to furnish a bond in connection with said contract;

NOW THEREFORE, we, the Principal and _____, as Surety, are held and firmly bound unto the Public Entity in the penal sum of

_____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay (1) any of the persons named in Section 3181 of the California Civil Code, (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or (3) for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to such work and labor the surety or sureties will pay for the same, in an amount not exceeding the sum hereinabove specified, and also, in case suit is brought upon this bond, all litigation expenses incurred in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the California Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Public Entity and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 3110, 3111 or 3112 of the California Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned. The Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

EXHIBIT C

Initial: _____

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the _____ day of _____, 2011.

Principal

By _____

[Attach required acknowledgments]

Surety _____

By Attorney in Fact

FINAL DRAFT

EXHIBIT C

Initial: _____

EXHIBIT "D"
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the SAN ELIJO JOINT POWERS AUTHORITY (hereinafter designated as "Public Entity" or "SEJPA") by action taken or a resolution passed November 14 2011, has awarded to W.M. LYLES CO. (hereinafter designated as the "Contractor"), hereinafter designated as the "Principal," a contract for the work described as follows: Advanced Water Treatment Project (hereinafter designated as the "Project"); and

WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract to SEJPA;

NOW THEREFORE, we, the Principal and _____, as Surety, are held and firmly bound unto the Public Entity in the penal sum of

_____ Dollars (\$ _____)

lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform, the covenants, conditions, and agreements in the said contract and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Public Entity, its officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise, it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of said contract, the above obligation in the said amount shall remain in effect for a period of one (1) year after the completion and acceptance of the Owner of the work, undertaken pursuant to the contract during which time if the above bounden Principal, his or its heirs, executors, administrators, successors or assigns shall fail to make full, complete and satisfactory repair and replacements or totally protect the Owner from loss of damage made evident during said period of one year from the date of acceptance of the work, and resulting from or caused by defective materials and/or faulty workmanship in the prosecution of the work done, the above obligation in the said amount shall remain in full force and effect. However, notwithstanding anything in this paragraph to the contrary, the obligation of the Surety shall continue in effect so long as any obligation of the Principal remains.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in anywise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work, or to the specifications. The Surety hereby waives the provisions of Section 2819 and 2845 of the Civil Code of the State of California.

EXHIBIT D

Initial: _____

In the event suit is brought upon this bond by the Public Entity and judgment is recovered, the Surety shall pay all litigation expenses incurred by SEJPA in such suit, including attorneys' fees, court costs, expert witness fees and investigation expenses. Nothing herein shall limit the Public Entity's remedies or surety's obligations under the Contract, law, or equity, including but not limited to, California Code of Civil Procedure Section 337.15.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on the _____ day of _____, 2011.

Principal

[Attach required acknowledgments]

By _____

Surety

By _____ Attorney in Fact

FINAL DRAFT

EXHIBIT D

Initial: _____

EXHIBIT "E"
CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self insure, either as an individual employee or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Construction Services Agreement.

Contractor: W.M. LYLES CO.

Title: _____

Date: _____

(In accordance with article 5 (commencing at section 1860), chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this Construction Services Agreement.)

EXHIBIT E

Initial: _____

**Items Subject to Potential Contingency Adjustment
for GMP Final revised 11-08-11**

	Description	Amount in GMP
	Rebar including pipe encasement	\$ 42,263
	Arch. Concrete / masonry Column wraps	\$ 31,831
	Ready Mix Concrete, 4000 and 3000 psi	\$ 54,237
	Masonry at Screening DP	\$ 10,800
	Sun Shades Material	\$ 39,210
	Aluminum Trellis	\$ 10,566
	Fabricated Suspended Piping Tray System	\$ 17,900
	Street Cleaning	\$ 7,000
	Paving Subcontract	\$ 38,890
	Valley Gutter and 6" Curb & Gutter Subcontract	\$ 11,140
	MF Vertical Turbine Feed Pmps & Appurtenances	\$ 38,000

Exhibit A: Scope

San Elijo Joint Power Authority - Recycled Water Demineralization Facility Construction Services Agreement with W. M. Lyles Co.				
Exhibit A - Scope	Specifications			
TOC				
Division	Title	Section	Dated	Received
Division 0 - Front Ends	Notice Inviting Bids	00010	Feb-11	Jun-11
	Information for Bidders	00110	Feb-11	Jun-11
	Information Available to Bidders	00200	Feb-11	Jun-11
	Proposal	00300	Feb-11	Jun-11
	Bid Bond	00410	Feb-11	Jun-11
	Agreement	00500	Feb-11	Jun-11
	Performance Bond	00610	Feb-11	Jun-11
	Payment Bond	00620	Feb-11	Jun-11
	Worker's Compensation Insurance Certificate	00630	Feb-11	Jun-11
	I-9 Compliance Certification Form	00650	Feb-11	Jun-11
	Safety Certification Form	00660	Feb-11	Jun-11
	Contractor Safety Information	00665	Feb-11	Jun-11
	General Conditions	00700	Feb-11	Jun-11
Division 1 - General Requirements	Summary of Work	01010	Feb-11	Jun-11
	Project Requirements	01020	Feb-11	Jun-11
	Measurement and Payment	01025	Feb-11	Jun-11
	Modification Procedures	01035	Feb-11	Jun-11
	Project Coordination	01040	Feb-11	Jun-11
	References	01090	Feb-11	Jun-11
	Environmental Protection	01140	Feb-11	Jun-11
	Seismic Requirements	01190	Feb-11	Jun-11
	Project Meetings	01200	Feb-11	Jun-11
	Submittals	01300	Feb-11	Jun-11
	Progress Schedules	01310	Feb-11	Jun-11
	Shop Drawings, Product Data and Samples	01340	Feb-11	Jun-11
	Quality Control	01400	Feb-11	Jun-11
	Inspection Services	01420	Feb-11	Jun-11
	Temporary Utilities	01510	Feb-11	Jun-11
	Security	01540	Feb-11	Jun-11
Facility Startup	01650	Feb-11	Jun-11	
Project Record Documents	01720	Feb-11	Jun-11	
Division 2 - Site Work	Demolition	02050	May-11	Jun-11
	Controlled Low Strength Material	02065	May-11	Jun-11
	Earthwork	02301	May-11	Jun-11
	Paving and Surfacing	02700	May-11	Jun-11
	Concrete Curb, Gutters and Sidewalks	02775	May-11	Jun-11
	Landscape Planting and Irrigation	02905	May-11	Jun-11
Division 3 - Concrete	Reinforcing Steel	03200	May-11	Jun-11
	Cast-In-Place Concrete	03300	May-11	Jun-11
	Concrete Finishes	03350	May-11	Jun-11
Division 4 - Masonry	Concrete Unite Masonry	04221	May-11	Jun-11
Division 5 - Metals	Structural Metal Fasteners	05090	May-11	Jun-11
	Structural Metal Framing	05100	May-11	Jun-11
	Miscellaneous Metals	05500	May-11	Jun-11
	Aluminum Component Railing Systems	05724		**
Division 6 - Wood and Plastics	Fiberglass Fabrications	06600	May-11	Jun-11
Division 7 - Thermal and Moisture Protection	Aluminum Wall Panels	07420	Deleted	Jun-11
	Flashing and Sheet Metal	07600	*	Jun-11
	Joint Sealants	07900	*	Jun-11
Division 8 - Doors and Windows	Not Used			

Exhibit A: Scope

Division 9 - Finishes	Painting	09900	*	Jun-11	
	Protective Coatings	09960	Sep-11	09/22/11	
Division 10 - Specialties	Building Specialties	10050	*	Jun-11	
	Louvers	10200		**	
	Identifying Devices	10400		**	
	Sun Shade Devices	10700		Jun-11	
Division 11 - Equipment	General Equipment and Mechanical Requirement	11001		**	
	Electric Motor Drives	01002		**	
	Packaged Centrifugal Pump System	11211		**	
	Vertical Turbine Pumps	11215		**	
	Chemical Feed Equipment	11240		**	
	Submersible Wastewater Pumps	11303		**	
	Air Compressor and Receivers	11372	Sep-11	09/30/11	
Division 12 - Furnishings	Not Used				
Division 13 - Special Construction	Rigid Frame Pre-Engineered Metal Buildings	13122	*	Jun-11	
	Packaged Reverse Osmosis System	13350	May-11	Jun-11	
	Chemical Storage (Fiberglass) Tanks	13416	Sep-11	09/21/11	
Division 14 - Conveying Systems	Not Used				
Division 15 - Mechanical	Piping, Valves and Accessories	15050	Sep-11	09/21/11	
	Plumbing	15400	Sep-11	09/21/11	
Division 16 - Electrical	General Electrical Requirements	16010	Aug-11	09/21/11	
	Conduits, Raceways and Fittings	16110	Aug-11	09/21/11	
	Low voltage Wire and Cable	16120	Aug-11	09/21/11	
	Signal Cable	16124	Aug-11	09/21/11	
	Boxes	16130	Aug-11	09/21/11	
	Wiring Devices	16140	Aug-11	09/21/11	
	Motor Starters	16155		**	
	Panelboards	16160		**	
	Protective Devices and Switches	16180	Aug-11	09/21/11	
	Integrated Surge Protective Device	16280	Aug-11	09/21/11	
	Underground Electrical Work	16402	Aug-11	09/21/11	
	Electrical Grounding	16450	Aug-11	09/21/11	
	Dry Type Transformers	16460		**	
	Motor Control Centers	16480	Aug-11	09/21/11	
	Motor Control Center Adjustable Frequency Drive	16482	Aug-11	09/21/11	
	Lighting	16500		09/21/11	
	Fire Alarm Systems	16721		**	
	Intrusion Alarm System	16731		**	
	Modifications to Existing Facilities	16800	Aug-11	09/21/11	
	Control Devices	16955	Aug-11	09/21/11	
Div 17 - Instrumentation & Controls	Instrumentation and controls, General Requireme	17010	Aug-11	09/21/11	
	Flow Measuring Systems	17030		**	
	In-Line Flow Measuring Systems	17031	Aug-11	09/21/11	
	Level Measuring Systems	17040	Aug-11	09/21/11	
	Pressure Measuring Systems	17050	Aug-11	09/21/11	
	Process Analyzer Measuring Systems	17060	Aug-11	09/21/11	
	Temperature Measuring Systems	17070	Aug-11	09/21/11	
	Process Control System Hardware	17120	Aug-11	09/21/11	
	Control Panels	17250	Aug-11	09/21/11	
	Control Strategies	17330	Aug-11	09/21/11	
	IO List	17330	Aug-11	09/21/11	
	Description of specifications for Pall Microfiltration System, including related equipment, parts, materials and services (including warranties)				
	<u>Legend</u>				
	*Undated - reference to Job No. 1087100				
**Not Received prior to GMP estimate preparation					

Exhibit A

San Elijo Joint Power Authority - Recycled Water Demineralization Facility Construction Services Agreement with W. M. Lyles Co.				
Exhibit A - Scope				
Division	No.	Drawings	Dated	Rcvd
		Exhibit A Project Construction Areas	undated	11/3/2011
General Sheets	G1.1	Title Sheet, Location Maps, and Sheet Index	Nov 2011	09/21/11
	G1.2	General Notes, Legend, and Abbreviations	May 2011	Jun-11
	G1.3	RWD Facility - Plant Flow Schematic	May 2011	Jun-11
	G1.4	Hydraulic Profile	May 2011	Jun-11
	G1.5	Design Criteria	May 2011	Jun-11
	G1.6	Piping Symbols, Schedules, Notes and Designations	Nov 2011	09/21/11
Civil Sheets	C1.1	Overall Site Plan	May 2011	Jun-11
	C1.2	Demolition Plan	Nov 2011	09/21/11
	C1.3	RWD Grading, Paving and Drainage Plan	Nov 2011	09/21/11
	C1.4	RWD Utilities Plan	May 2011	Jun-11
	C1.5	RWD Plan and Profile - 8" RO Permeate	May 2011	Jun-11
	C1.6	RWD Plan and Profile - 6" Recycled Water	May 2011	Jun-11
	C1.8	Misc. Civil Details - In Original Set	May 2011	Jun-11
	Architectural Sheets	A2.1	RWD Facility - Floor Plan & Lower Intermediate Plan	May 2011
A2.2		RWD Facility - Intermediate Plan & Roof Plan	May 2011	Jun-11
A2.3		RWD Facility - Exterior Elevations	May 2011	Jun-11
A2.4		Trellis & Sun Screen Details	May 2011	Jun-11
A6.1		Finish Schedule & Typical Details	May 2011	Jun-11
		KCC Sketch Building Construction Joint Locations rev 1	09/02/11	09/02/11
Structural Sheets	S1.1	Structural General Notes, Abbreviations, Special Inspection and	May 2011	Jun-11
	S1.2	Structural Reinforced Concrete Notes and Standard Details	May 2011	Jun-11
	S1.3	Structural Reinforced Concrete Standard Details and Miscellane	May 2011	Jun-11
	S2.1	RWD Facility - Foundation Plan	Nov 2010	Jun-11
	S2.2	RWD Facility - Floor Plan	Nov 2011	09/21/11
	S2.3	RWD Facility - Roof Framing Plan	Nov 2010	Jun-11
	S2.4	RWD Facility - Sections	Nov 2010	Jun-11
	S2.5	RWD Facility - Sections and Details	Nov 2010	Jun-11
	S2.6	RWD Facility - Sections and Details	Nov 2010	Jun-11
	S2.6	Trellis and Screen Details		**
Mechanical Sheets	M1.2	Mechanical Demolition Plan	May 2011	Jun-11
	M2.1	RWD Facility - Process and Plumbing Plan Above EL. 33.00	May 2011	Jun-11
	M2.2	RWD Facility - Process and Plumbing Plan Below EL. 33.00	May 2011	Jun-11
	M2.3	RWD Feed Pumps and SWW Sump Plan and Sections	May 2011	Jun-11
	M2.4	RWD Facility - Sections and Details		**
Electrical Sheets	E1.1	Electrical Symbols, Abbreviations and Legend	May 2011	Jun-11
	E1.2	Main Distribution Modifications to Existing MS-2	May 2011	Jun-11
	E1.3	Electrical Site Plan	May 2011	Jun-11
	E2.1	RWD Facility MCC-M Single Line Diagram	May 2011	Jun-11
	E2.2	RWD Facility Electrical Plan	May 2011	Jun-11

Exhibit A

	E2.3	RWD Facility Lighting and Receptacle Plan	May 2011	Jun-11
	E2.4	Non-Potable Water Pump Station Demolition Plan		**
	E6.1	Panelboard, Fixture and Conduit Schedules - Not Complete	May 2011	Jun-11
	E6.2	Miscellaneous Electrical Details		**
	E6.3	RWD Facility Source Water VFD Control Diagram		**
	E6.4	Spent Washwater Sump Pump Control Diagram		**
	E6.6	Miscellaneous Electrical Details	May 2011	Jun-11
Instrument Sheets	I1.1	Instrumentation Legend	May 2011	Jun-11
	I1.2	Scada Block Diagram	May 2011	Jun-11
	I1.3	Process and Instrumentation Diagram - RWD MF Pretreatment	Nov 2011	9/21/11
	I1.4	Process and Instrumentation Diagram - RWD RO Treatment Sys	Nov 2011	9/21/11
	I1.5	Process and Instrumentation Diagram - MF and RO CIP Systems	Nov 2011	9/21/11
	I1.6	Process and Instrumentation Diagram - Spent Washwater Syste	Nov 2011	9/21/11
	I1.7	Process and Instrumentation Diagram - Antiscalant and Spare C	Nov 2011	9/21/11
	I1.8	Process and Instrumentation Diagram - MF CIP Chemical Feed S	Nov 2011	9/21/11
	I1.9	Process and Instrumentation Diagram - RO CIP Chemical Feed S	Nov 2011	9/21/11
	I1.10	Process and Instrumentation Diagram - Hypochlorite System Co	Nov 2011	9/21/11
	I1.11	Process and Instrumentation Diagram - Air Compressor System	Nov 2011	9/30/11
Screening Drying Pad	G-1	Title Sheet	5/12/2010	Jun-11
	G-2	Civil Site Plan	5/12/2010	Jun-11
	G-3	Details Sheet	5/12/2010	Jun-11
Low-Flow Storm Water Diversion Structure		Site plan/vicinity map with photographs	undated	10/21/11
		Plan view	undated	10/21/11
		Section A-A	undated	10/21/11
As-builts		10 drawing; Storm Drainage Facility for the Enlargement and Upgrade of the San Elijo WPCF	04/25/80	10/31/11
As-builts	A-1	Compressor Bldg Floor Plan, elevations	7/31/2001	9/28/2011
	S-11	Compressor Bldg Foundation Plan	7/31/2001	9/28/2011
	M-8	Compressor Bldg Piping and Mechanical	7/31/2001	9/28/2011
<u>Legend</u>				
**Not Received prior to GMP estimate preparation				

All contents of the GMP submittal are included herein by reference.

GMP Table of Contents for summary reference:

Tab A	Estimate Setup
Tab A	Summary
Tab A	Assumptions
Tab B	Estimate Breakdown
Tab C	General Conditions
Tab D	Schedule
Tab E	Detailed Pricing and Quotes

AGREEMENT

THIS AGREEMENT is made and entered into on this _____ day of _____, 2011 by and between the San Elijo Joint Powers Authority, hereinafter referred to as "AUTHORITY", and Kennedy/Jenks, hereinafter referred to as "CONSULTANT".

WITNESSETH:

WHEREAS, AUTHORITY requires the professional services for engineering services during construction of the recycled water demineralization facility for the San Elijo Water Reclamation Facility, and

WHEREAS, CONSULTANT represents that it has available, adequate personnel who are well-qualified by reason of education and experience in these matters to perform the necessary professional services under the direction of the AUTHORITY, and

WHEREAS, AUTHORITY desires, and CONSULTANT is willing, to provide professional services as described in Attachment 1 of this Agreement,

NOW THEREFORE, AUTHORITY and CONSULTANT do hereby enter into the following agreement ("Agreement").

1. TERM OF AGREEMENT. The term of this Agreement shall be from the date this Agreement is made and entered, as first written above, until completion and acceptance of the work effort by the General Manager of AUTHORITY.

2. AUTHORITY OBLIGATIONS.
 - 2.1 DATA FURNISHED BY AUTHORITY. For the purpose of aiding CONSULTANT in the performance of its obligations under this Agreement, AUTHORITY shall furnish CONSULTANT with all data in its possession relevant to the project and shall direct its officers, agents and employees to render all reasonable assistance to CONSULTANT in connection with its performance under this Agreement. AUTHORITY is responsible for the reasonable correctness of data so furnished, but it shall likewise be the responsibility of CONSULTANT to apply reasonable caution in its use and interpretation of the data and to promptly advise AUTHORITY of any incorrectness or inconsistencies in the data furnished.

 - 2.2 PAYMENT TO CONSULTANT.
 - 2.2.1 DETERMINATION OF COMPENSATION. The compensation by AUTHORITY to CONSULTANT for services under this Agreement shall be billed on a time and material basis not to exceed \$259,360. The scope of work is detailed in Attachment 1.

 - 2.2.2 PAYMENT OF COMPENSATION. Compensation shall be billed monthly in increments based on the work completed, and AUTHORITY shall make payment to CONSULTANT within forty-five (45) calendar days of approval of invoices.

All monthly invoices from CONSULTANT to AUTHORITY shall include detailed breakdowns with a summary of the hours spent by each individual, a budget summary for each task showing the original contract amount, the amount billed for the current

invoice period, the amount previously billed, the amount remaining, and the percentage of work completed.

2.3 AUTHORITY'S PROJECT OFFICER. AUTHORITY's Project Officer, who shall be empowered to act for the AUTHORITY in accordance with law or AUTHORITY ordinance, shall be the General Manager of AUTHORITY. AUTHORITY's Project Officer or duly-authorized representative shall act on behalf of AUTHORITY in administrative matters concerning this Agreement. This includes, but is not limited to, review of invoices, correspondence, notices, proposed amendments, etc.

3. CONSULTANT'S OBLIGATIONS.

3.1 SERVICES TO BE PERFORMED.

3.1.1 PROFESSIONAL SERVICES. CONSULTANT shall perform the professional services as described in the scope of work and included herein as Attachment 1 and made a part of this Agreement. Any changes to the scope of work must be authorized by AUTHORITY in writing.

3.1.2 TOOLS, MATERIALS AND EQUIPMENT. CONSULTANT will supply all tools, materials and equipment required to perform the services under this AGREEMENT.

3.1.3 PROJECT TEAM. AUTHORITY has a primary interest in maintaining the individual services of the following key project team members:

1. Patrick Huston

No member of the project team shall be removed from the project team or reassigned by CONSULTANT without prior approval of AUTHORITY. Such approval shall not be unreasonably withheld or delayed. CONSULTANT shall immediately inform AUTHORITY should any of the key members become unavailable. The credentials of substitutes for key project members must be submitted to AUTHORITY for review and approval. An interview may also be required if so desired by AUTHORITY.

3.1.4 REPORTS. CONSULTANT shall ensure that any report generated under this Agreement complies with California Government Code section 7550.

3.2 TIME PERIOD.

3.2.1 PROFESSIONAL SERVICES. CONSULTANT will commence performance of services after a Notice to Proceed is issued by AUTHORITY.

3.3 STATUS OF CONSULTANT.

3.3.1 INDEPENDENT CONTRACTOR. CONSULTANT and its employee(s) are engaged in an independent contractor relationship with AUTHORITY in performing all services, duties and obligations hereunder. AUTHORITY

shall not exercise any control or direction over the methods by which CONSULTANT will perform its services and functions. AUTHORITY's sole interest and responsibility is to ensure that the services covered by this Agreement are performed and rendered in a competent, satisfactory and legal manner. The parties agree that no services, act, commission or omission of CONSULTANT or its employee(s) pursuant to this Agreement shall be construed to make CONSULTANT or its employee(s) the agent, employee or servant of AUTHORITY. CONSULTANT and its employee(s) are not entitled to receive from AUTHORITY vacation pay, sick leave, retirement benefits, Social Security, workers' compensation, disability benefits, unemployment benefits or any other employee benefit of any kind.

3.3.2 PAYMENT OF INCOME TAXES. CONSULTANT shall be solely responsible for paying all federal and state employment and income taxes, for carrying workers' compensation insurance and for otherwise complying with all other employment law requirements with respect to CONSULTANT or its employee(s). CONSULTANT agrees hold harmless, indemnify and defend AUTHORITY from any and all liability, damages or losses (including attorneys' fees, costs, penalties and fines) AUTHORITY suffers as a result of (a) CONSULTANT's failure to met its obligations this Section 3, subsection 3.3, or (b) a third party's designation of CONSULTANT or its employee as an employee of AUTHORITY, regardless of any actual or alleged negligence by AUTHORITY.

3.4 RESPONSIBILITY OF CONSULTANT.

3.4.1 CONSULTANT shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all services furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his analysis, reports, and other services.

3.4.2 CONSULTANT will perform all services under this Agreement in good faith and in the best interests of AUTHORITY. In performing the services specified in this Agreement, CONSULTANT agrees to comply with all federal and state laws, rules and regulations, applicable AUTHORITY policies, procedures and other directives applicable to the services to be performed. Any changes to AUTHORITY policies and procedures that relate to CONSULTANT will be provided to CONSULTANT in writing. CONSULTANT agrees to review such policies, procedures, rules and directives the contents of which CONSULTANT will be deemed to have knowledge.

3.4.3 CONSULTANT shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, and in accordance with the project schedule contained in Attachment 1.

3.4.4 Acceptance by AUTHORITY of reports, and incidental professional work or materials furnished hereunder, shall not in any way relieve CONSULTANT of responsibility for the technical adequacy of his work.

Neither AUTHORITY's acceptance of, nor payment for any of the services, shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

- 3.4.5 Upon award of this Agreement and periodically thereafter, CONSULTANT may be required to complete and file with AUTHORITY a Conflict of Interest form, to be provided to CONSULTANT by AUTHORITY.
- 3.4.6 CONSULTANT shall be and remain liable in accordance with applicable law for all damages to AUTHORITY caused by CONSULTANT's willfull misconduct, recklessness, or negligent performance of any of the services furnished under this Agreement. CONSULTANT shall not be responsible for any time delays in the project caused by circumstances beyond CONSULTANT's control.
- 3.4.7 "Negligent performance" shall include, but not be limited to, acts of CONSULTANT in preparing drawings, specifications, reports, or other work under this Agreement, which are the result of CONSULTANT's failure to perform in accordance with the standard of practice normally exercised in the performance of professional services of a similar nature, and which result in cost to AUTHORITY in excess of what the cost would have been had such act not occurred. Nothing contained herein shall serve to expand or increase the responsibility of CONSULTANT to any party beyond that imposed by the common law of the State of California.
- 3.4.8 This Section 3.4 shall not limit CONSULTANT's hold harmless, indemnity and defense obligation as stated in Section 5 of this Agreement.

4. INSURANCE.

- 4.1 During the course of the Agreement, CONSULTANT shall pay for and maintain, in full force and effect, all insurance required by any governmental agency having jurisdiction to require particular insurance of CONSULTANT in connection with or related to the work covered hereby.
- 4.2 CONSULTANT shall further provide and keep in full force and effect during the term of this Agreement the insurance policies listed below.
 - 4.2.1 Commercial General Liability and Automobile Liability. CONSULTANT shall provide and maintain the following commercial general liability and automobile liability insurance:
 - (a) Coverage. Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:
 - (i) Insurance Services Office ("ISO") Commercial General Liability Coverage (Occurrence Form CG 0001)
 - (ii) ISO Business Auto Coverage (Form CA 0001), covering Symbol 1 (any auto)

- (b) Limits. CONSULTANT shall maintain limits no less than the following:
- (i) General Liability. Combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage, and a minimum annual aggregate of Three Million Dollars (\$3,000,000).
 - (ii) Automobile Liability. Combined single limit of no less than One Million Dollars (\$1,000,000) per claim.
- (c) Required Provisions.
- (i) AUTHORITY, its Member Agencies (including City of Encinitas and City of Solana Beach), and their officers, officials, directors, employees, agents, consultants, representatives and volunteers (collectively referred to as "INSURED PARTIES") are to be given additional insured status under the general liability and automobile liability policies. The coverage shall contain no special limitations on the scope of protection afforded to INSURED PARTIES.
 - (ii) CONSULTANT'S insurance shall be primary insurance as respects INSURED PARTIES, and each of them. Any insurance, self-insurance or other coverage maintained by INSURED PARTIES shall not contribute to it.
 - (iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to INSURED PARTIES.
 - (iv) CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of insurer's liability.
 - (v) Such liability insurance shall include indemnification against loss from liability imposed by law upon, or assumed under contract by, CONSULTANT or his/her subcontractors for damages on account of bodily injury, including death resulting therefrom, suffered or alleged to have been suffered by any person or persons, other than employees, resulting from the performance or execution of this Agreement by CONSULTANT or his/her subcontractors.
 - (vi) Such liability insurance shall cover accidents arising out of the use and operation of owned, non-owned and hired automobiles, trucks and/or other mobile equipment.
 - (vii) Said policies shall have a non-cancellation clause providing that thirty (30) days written notice shall be given to AUTHORITY prior to any material modification or cancellation.

(viii) Said policies shall specifically cover any contractual liability incurred hereunder.

- 4.2.2 Professional Liability. CONSULTANT further agrees to provide AUTHORITY within seven (7) days from the date of execution of this Agreement and prior to the commencement of any services under this Agreement, proof of insurance verifying that CONSULTANT maintains Professional Liability Insurance (Errors and Omissions) with a combined single limit of One Million Dollars (\$1,000,000) per claim. Said Professional Liability Insurance shall be paid for by CONSULTANT, and shall be maintained in full force and effect throughout the term of the Agreement.
- 4.2.3 Workers' Compensation and Employers Liability Insurance. CONSULTANT shall further maintain adequate Workers' Compensation Insurance, including occupational disease provisions, under the laws of the State of California and employer's general liability insurance for the benefit of its employees with a combined single limit of no less than One Million Dollars (\$1,000,000) per claim, and shall require similar insurance to be provided by its subcontractors. A certificate shall be furnished to AUTHORITY showing compliance with above.
- 4.2.4 All insurance shall be provided on forms and through companies satisfactory to AUTHORITY. Insurance is to be obtained from California admitted insurers having a current A.M. Best rating of no less than A:VII or equivalent or as otherwise approved by DISTRICT.
- 4.2.5 Any deductible or self-insured retention must be declared to and approved by AUTHORITY. The minimum deductible or self-insured retention shall be Twenty-Five Thousand Dollars (\$25,000). In the event any deductible or self-insured retention is greater than the minimum required by this Agreement, at the option of AUTHORITY, either: the insurer shall reduce or eliminate such deductibles, or CONSULTANT shall provide proof of financial responsibility satisfactory to AUTHORITY.
- 4.2.6 Within seven (7) days from the execution of this Agreement, and prior to the commencement of any services under this Agreement, a certificate of insurance signed by the insurer's representative evidencing the coverage required by this Agreement shall be furnished to AUTHORITY by direct mail from CONSULTANT's insurance carrier. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall include confirmation that cover includes or has been modified to include all provisions required by this Agreement. CONSULTANT shall, upon request of AUTHORITY, deliver to AUTHORITY such policy or policies of insurance and the receipts for payment of premiums thereon.
- 4.2.7 If any of the required coverages expire during the term of this Agreement, CONSULTANT shall deliver the renewal certificate(s) including the general liability and auto liability additional insured endorsements to AUTHORITY within at least ten (10) days prior to the expiration date.

4.2.8 In the event that CONSULTANT employs subcontractors to perform any portion of the services to be performed pursuant to this Agreement, it shall be CONSULTANT's responsibility to require and confirm that each subcontractor meets the minimum insurance requirements specified in this Agreement.

5. HOLD HARMLESS, INDEMNIFICATION AND DEFENSE.

- 5.1 To the maximum extent allowable by law, CONSULTANT agrees to hold harmless, indemnify and defend AUTHORITY, its Member Agencies (including City of Encinitas and City of Solana Beach), and each of their officers, officials, directors, employees, agents, consultants, representatives and volunteers (collectively referred to as "INDEMNIFIED PARTIES") from and against all claims, demands, lawsuits, losses, liabilities, costs, expenses, obligations, recoveries, deficiencies and damages, including interest, penalties, attorneys' fees and costs (collectively referred to as "Liabilities") that such entities and/or persons may incur that pertain to, arise out of or relate to the alleged negligence, recklessness or willful misconduct, whether an act or omission, of CONSULTANT, including CONSULTANT's officers, officials, directors, employees, subcontractors, agents, representatives, volunteers, successors and assigns.
- 5.2 CONSULTANT shall cooperate with and do whatever is necessary to protect INDEMNIFIED PARTIES as to any such Liabilities.
- 5.3 CONSULTANT represents that it knows of no allegations, claims or threatened claims that the materials, services, hardware or software (collectively referred to as "Consultant Products") provided to AUTHORITY under this Agreement infringe on any patent, copyright or other proprietary right. CONSULTANT shall hold harmless, indemnify and defend INDEMNIFIED PARTIES from all Liabilities pertaining to, arising out of, related to or in connection with an assertion or allegation that any Consultant Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. In the case of any such claim, suit or assertion of infringement, CONSULTANT shall either, at its option, (1) procure for AUTHORITY the right to continue using the Consultant Products; or (2) replace or modify the Consultant Products so that they become non-infringing, but equivalent in functionality and performance. All provisions of Section 5 shall apply to the allegations, claims or threatened claims addressed specifically by this Section 5, subsection 5.3.
- 5.4 CONSULTANT shall defend, at CONSULTANT's own cost, expense and risk, any all such aforesaid claims, demands, suits, actions, arbitrations, mediations or other proceedings of every kind that may be brought or instituted against INDEMNIFIED PARTIES. CONSULTANT and INDEMNIFIED PARTIES shall be jointly represented by legal counsel, unless there is a conflict of interest, and CONSULTANT shall pay INDEMNIFIED PARTIES' reasonable attorneys' fees and costs as they are incurred. AUTHORITY shall be consulted regarding and approve the selection of legal counsel. Should separate counsel be necessary for INDEMNIFIED PARTIES, as determined by AUTHORITY, CONSULTANT shall pay for the reasonable attorneys' fees and costs including expert witness fees, as such fees and costs are incurred and within thirty (30) days of receipt of an invoice, for INDEMNIFIED PARTIES' legal counsel in addition to

CONSULTANT's own legal fees and costs. In all circumstances, INDEMNIFIED PARTIES reserve the right to retain their own attorneys. CONSULTANT shall not agree without INDEMNIFIED PARTIES' prior written consent to any settlement on INDEMNIFIED PARTIES' behalf.

- 5.5 If CONTRACTOR is obligated to defend INDEMNIFIED PARTIES pursuant to this Section 5 and fails to do so after reasonable notice from AUTHORITY, INDEMNIFIED PARTIES may defend themselves and/or settle such claims, suit or assertion, and CONSULTANT shall pay to INDEMNIFIED PARTIES any and all Liabilities incurred in relationship with INDEMNIFIED PARTIES' defense and/or settlement of such proceeding.
- 5.6 CONSULTANT shall pay and satisfy any judgment, award, liability or decree that may be awarded, imposed or rendered against INDEMNIFIED PARTIES as a result of and all claims, demands, suits, actions, arbitrations, mediations or other proceedings whether legal, administrative or otherwise, including any settlement related thereto.
- 5.7 CONSULTANT's hold harmless, indemnification and defense obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT, subcontractor, supplier or other person under workers' compensation acts, disability acts or other employee acts or the insurance required by this Agreement. CONSULTANT's obligation to hold harmless, indemnify and defend shall not be restricted to insurance proceeds, if any, received by INDEMNIFIED PARTIES.
- 5.8 CONSULTANT's hold harmless, indemnification and defense obligation is intended to apply to any acts, errors and/or omissions of CONSULTANT, including its officers, officials, directors, employees, subcontractors, agents, representatives, volunteers, successors and assigns and shall survive the termination or expiration of this AGREEMENT.

6. TERMINATION.

- 6.1 Termination for Breach. If, during the term of this Agreement, AUTHORITY determines that CONSULTANT is not faithfully abiding by any term of condition contained herein, AUTHORITY may notify CONSULTANT in writing of such defect of failure to perform; which notice must give CONSULTANT a ten (10) day notice time thereafter in which to perform said work or cure the deficiency. If CONSULTANT has not performed the work or cured the deficiency within the number of days specified in the notice, such shall constitute a breach of this Agreement, and AUTHORITY may terminate this Agreement immediately by written notice to CONSULTANT to said effect. Thereafter, except as otherwise stated, neither party shall have any further duties, obligations, responsibilities, or rights under this Agreement. In said event, CONSULTANT shall be entitled to the reasonable value of its service performed from the beginning of the period in which the breach occurs up to the day it received AUTHORITY's notice of termination, minus any offset from such payment representing AUTHORITY's damages from such breach. In no event, however, shall CONSULTANT be entitled to receive in excess of the maximum compensation stated in Section 2, subsection 2.2.1 of this Agreement.

6.2 Termination without Cause. Either party may terminate this Agreement without cause upon thirty (30) days written notice. AUTHORITY will pay to CONSULTANT for services performed prior to the termination. In no event, however, shall CONSULTANT be entitled to receive in excess of the maximum compensation stated in Section 2, subsection 2.2.1 of this Agreement. No amount shall be allowed for anticipated profit, unperformed services or deliveries.

7. OWNERSHIP OF DOCUMENTS. Reports, model database, electronic maps, as herein required, are the property of AUTHORITY following payment in full to the CONSULTANT for services rendered. Upon completion of all work under this Agreement, or in the event this Agreement is terminated prior to completion of all such work, all documents, plans, specifications, photograph rendering, drawings of the facility, and all other material provided to assist CONSULTANT in performing under this Agreement shall be delivered forthwith to AUTHORITY.

Any use of the aforesaid completed documents for other AUTHORITY projects at other sites and/or any use of the aforesaid incomplete documents without specific, written verification by CONSULTANT will be at AUTHORITY's sole risk and without liability or legal exposure to CONSULTANT, and AUTHORITY shall indemnify and hold harmless CONSULTANT from all claims, damages, losses and expense, including attorneys' fees, arising out of or resulting therefrom.

8. CONFIDENTIAL INFORMATION. Any written, printed, graphic or electronically or magnetically recorded information furnished by AUTHORITY for CONSULTANT's use are and shall remain the sole property of AUTHORITY. AUTHORITY may provide to CONSULTANT confidential information which may include, but is not limited to, information concerning AUTHORITY's employees, services and operations. CONSULTANT and its employee(s) will keep this confidential information in the strictest confidence, and will not disclose it by any means to any person except with AUTHORITY approval, and only to the extent necessary to perform the services under this Agreement. This prohibition also applies to CONSULTANT's officers, officials, directors, employees, subcontractors, representatives, agents, volunteers, successors and assigns. On termination of this Agreement, CONSULTANT shall promptly return any confidential information in its possession to AUTHORITY.

9. DISPUTE RESOLUTION. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, shall be submitted to mediation the cost of which shall be borne equally by the parties, if not resolved pursuant to the Government Claims Act, Government Code section 900 et seq. if applicable, and prior to the commencement of any legal action or other proceeding, unless waived by both parties in writing. Any mediation shall take place in the State of California, County of San Diego.

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in the State of California, County of San Diego, before one arbitrator, if not resolved pursuant to the Government Claims Act, Government Code section 900 et seq., if applicable. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures if the amount in controversy is equal or greater than Two Hundred Fifty Thousand Dollars (\$250,000), or pursuant to its Streamlined Arbitration Rules and Procedures if the amount in

controversy is less than Two Hundred Fifty Thousand Dollars (\$250,000). Judgment on the award may be entered in any court having jurisdiction. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction. The arbitrator may, in the award, allocate all or a part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party. If either party petitions to confirm, correct or vacate the award as provided by Chapter 4, of Title 9 of the California Code of Civil Procedure (commencing with Section 1285), the prevailing party shall be entitled as part of his or its costs to reasonable attorneys' fees to be fixed by the Court. CONSULTANT agrees that AUTHORITY may consolidate an arbitration conducted under this Agreement with any other arbitration to which AUTHORITY is a party, provided that the arbitrations to be consolidated substantially involve common questions of law or fact, or CONSULTANT's conduct or performance of professional services is in any way relevant to the subject of the dispute. In the event of any construction dispute that AUTHORITY is required to resolve pursuant to Public Contract Code section 20104 et seq., or any similar provision of law, the procedures for arbitration pursuant to Public Contract Code section 20104 et seq., shall apply to all parties, including CONSULTANT.

10. CONSTRUCTION DISPUTE. In the event of any construction dispute that AUTHORITY is required to resolve pursuant to Public Contract Code section 20104, et seq., or any similar provision of law, and CONSULTANT's performance is at issue as determined by AUTHORITY, AUTHORITY may require, in its sole discretion, that CONSULTANT participate as a party in such arbitration (including any trial de novo that may follow such arbitration) or in concurrent arbitration to resolve outstanding disputes between AUTHORITY and CONSULTANT, afford the parties complete relief or avoid inconsistent results. In such event, the procedures for arbitration pursuant to Public Contract Code section 20104 et seq. shall apply to all parties, including CONSULTANT, and shall control in the event of any inconsistency with Section 9 of this Agreement, regarding dispute resolution.
11. NO ASSIGNMENT WITHOUT PRIOR CONSENT. This Agreement shall not be assignable by either party without the prior written consent of the other party hereto. No assignment of this Agreement shall relieve the assignor until the Agreement shall have been assumed by the assignee. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall insure to the benefit of the assignee.
12. AMENDMENT OR MODIFICATION. This Agreement may not be amended or modified orally or in any manner other than by an agreement in writing signed by both of the parties.
13. AUDIT DISCLOSURE. Pursuant to Government Code section 8546.7, if this Agreement is over ten thousand dollars (\$10,000), it is subject to examination and audit of the State Auditor, at the request of AUTHORITY or as part of any audit of AUTHORITY, for a period of three (3) years after final payment under the Agreement.
14. SUBCONTRACTS. AUTHORITY has entered into this Agreement in order to receive the professional service of CONSULTANT. The provisions of the Agreement shall apply to any subcontractor to CONSULTANT. AUTHORITY shall have the right to approve all subcontractor agreements.
15. ENTIRE AGREEMENT. This Agreement constitutes the whole Agreement between the parties hereto with respect to the subject matter hereof, and neither party nor any of its

agents or employees had made any representation except as specifically provided herein. Neither of the parties in executing or performing this Agreement is relying upon any statement or information to whosoever made or given directly or indirectly, verbally or in writing by any individual or corporation except as specifically provided herein.

16. PROHIBITED EMPLOYMENT DISCRIMINATION. In the performance of the terms of this Agreement, CONTRACTOR agrees that it will not engage in, nor permit such subcontractors as it may employ to engage in, discrimination in employment of persons in violation of Labor Code Section 1735, which reads as follows:

A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all penalties imposed for a violation of this chapter.

Violation of this provision may result in the imposition of penalties referred to in Labor Code Section 1735.

17. NOTICES. All communications, notices, and demands of any kind which either party hereto may be required or may desire to give to or serve upon the other party or any office hereof or by enclosing it in a sealed envelope and depositing it in the United States mail, postage prepaid, certified return-receipt, and addressed to the respective parties as follows:

AUTHORITY:

San Elijo Joint Powers Authority
2695 Manchester Avenue, P.O. Box 1077
Cardiff by the Sea, California 92007-7077

CONSULTANT:

Kennedy/Jenks Consultants
10920 Via Frontera, Ste 110
San Diego, Ca 92127

18. ATTORNEYS' FEES. In the event an action is filed by either party to enforce any rights or obligations under this Agreement, including an action for declaratory relief, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs, in addition to any other relief granted by the Court.
19. AUTHORITY TO EXECUTE AGREEMENT. Both AUTHORITY and CONSULTANT do covenant that each individual executing this Agreement on behalf of each party is a person duly authorized and empowered to execute agreements for such party.
20. THIRD PARTY RIGHTS. Except as expressly stated herein, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than AUTHORITY and CONSULTANT.
21. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same agreement, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.
22. PARTIAL INVALIDITY. If any non-material provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

23. PROVISIONS REQUIRED BY LAW. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though they were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Agreement shall forthwith be physically amended to make such insertion.

24. GOVERNING LAW. This Agreement and all questions related to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance with the laws of the State of California, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary and without the aid of any canon, custom or rule of law requiring construction against the draftsman.

25. JURISDICTION, FORUM AND VENUE. The proper jurisdiction, forum and venue for any claims, disputes, causes of action or other proceedings concerning this Agreement shall be located in the State of California, County of San Diego. AUTHORITY and CONTRACTOR agree not to bring any action or proceeding pertaining to, arising out of or related to this Agreement in any other jurisdiction, forum or venue. AUTHORITY and CONTRACTOR hereby submit to personal jurisdiction in the State of California for the enforcement of this Agreement and hereby waive any and all personal rights under the law of any state to object to jurisdiction within the State of California for the purpose of any legal action or proceeding to enforce this Agreement, whether on the grounds of inconvenient forum or otherwise.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

SAN ELIJO JOINT POWERS AUTHORITY

By: _____
 Michael T. Thornton, P.E.
 General Manager

Date: _____

CONSULTANT

By: _____ (Sign)

Date: _____

Name: _____ (Print)

Title: _____

Kennedy/Jenks Consultants

Engineers & Scientists

10920 Via Frontera, Suite 110
San Diego, California 92127
858-676-3620
858-676-3625 (Fax)

2 November 2011

Mr. Michael T. Thornton, P.E.
General Manager
San Elijo Joint Powers Authority
2695 Manchester Avenue
Cardiff by the Sea, California 92007-1077

Subject: Proposal for Engineering Services during Construction of the Recycled Water
Demineralization Facility for the San Elijo Water Reclamation Facility

Dear Mr. Thornton:

Kennedy/Jenks presents the following proposal for the above-referenced project, building from San Elijo Joint Powers Authority's (SEJPA's) and Kennedy/Jenks efforts to finalize the engineering design for a lease-purchase construction approach.

The following summarizes our proposed scope of work, schedule and budget for the construction phase of the project.

Project Description

The SEJPA owns and operates the San Elijo Water Reclamation Facility (SEWRF), a 5.25 million gallons per day (mgd) wastewater treatment and 2.48 mgd water reclamation facility.

The SEWRF receives an average daily flow of 3 mgd, with wet weather peak flows of approximately 5 mgd. The SEJPA recycled water program, which began operations in September 2000, serves the San Dieguito Water District (SDWD), Santa Fe Irrigation District (SFID), and the City of Del Mar. Currently the recycled water program serves an annual demand of approximately 1,300 acre-feet (AF).

A challenge that faces the existing recycled water system is high TDS levels in the influent treated at the SEWRF. Currently, the TDS in the recycled water ranges between 1,100 to 1,200 mg/l with peak periods over 1,300 mg/l. High TDS is problematic as it exceeds the SEJPA's contractual obligations with the water districts it serves and can limit the marketability of the recycled water.

The SEJPA seeks to improve its existing recycled water treatment system such that it is capable of producing 1,600 acre-ft/year of high quality recycled water in an efficient and reliable manner. The project includes the construction of a 0.5 mgd recycled water demineralization facility to

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complement the existing 2.48 mgd tertiary treatment system by increasing the overall treatment capacity and to allow for the removal of TDS to maintain levels in the recycled water at less than 1,000 mg/L.

This project is intended to be constructed through a Lease-Purchase Agreement with W.M. Lyles Co. and thus, the following scope of services is based on this method of procurement.

Scope of Services

This scope of work is also based on a collaborative approach between SEJPA and Kennedy/Jenks during the construction phase of this project, with SEJPA leading construction management and onsite inspection and Kennedy/Jenks leading shop drawing and RFI reviews and providing supplemental inspection services. The scope builds from Kennedy/Jenks work during the preliminary and final design phases of the project and includes the following tasks:

- Task 13 – Project Management and Quality Control
- Task 14 – Construction Management and Administration Services
- Task 15 – Field Services

The scope of work for each task is further separated into distinct subtasks as follows:

Task 13 – Project Management and Quality Control

Task 13.1 Project Management

Kennedy/Jenks will provide project management focused on control of project costs, maintaining the project schedule requirements, identifying and addressing key issues, and delivering quality review of shop drawing submittal, responding to requests for information (RFIs), preparing requests for quotation (RFQ) for out of scope construction tasks, and reviewing draft change orders. Project management will include directing the work of the Kennedy/Jenks team so that the work is accomplished on-time and within budget. This process will include internal review of work progress, assessing against hours and dollars spent compared to the work accomplished. Communications with SEJPA will include periodic telephone calls to discuss current construction activities and responding to requests for clarification or additional information. A project file will be maintained including copies of correspondence, shop drawing review letters, responses to RFIs, field notes, meeting minutes, and memoranda.

Provide overall project management, which includes supervision of in-house staff, planning and monitoring contract budget and schedule, reviewing and submitting monthly invoices and associated monthly status reports, and coordination with the SEJPA. Our schedule and budget is based on the scheduled project duration of 12 months.

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Task 13.2 Monthly Progress Meetings

Kennedy/Jenks' Project Manager or Project Engineer shall attend monthly progress meetings with the Contractor and the SEJPA to discuss work progress/schedule, review submittal status, coordination issues, changes etc. and to schedule needed testing and critical inspections. The Project Manager shall attend these meetings as required providing adequate coordination between the design team and construction services staff. These meetings will be held in addition to the regularly scheduled weekly coordination meetings held between the SEJPA's Inspector, Kennedy/Jenks and the Contractor.

The estimated level of effort assumes a total of 10 progress meetings.

Task 13.3 QA/QC

Quality assurance and quality control (QA/QC) are integrated into our engineering services during construction. We use experienced senior staff familiar with the project work to provide QA/QC review of shop drawing review letters, RFIs and RFQs. Kennedy/Jenks uses a multiple-step process to maintain effective QA/QC on all our projects. The following is a brief outline of our QA/QC Plan:

- **Policy and Procedures** - The policy of our firm is that quality control is a continuous process and is everyone's responsibility. The Project Manager has final responsibility for QC. We have established quality control procedures used by project managers and teams for specific types of projects. The project specific quality control review procedures are described in the internal Project Memorandum for the project.
- **Technical Reviews** - The QA/QC reviewer and technical advisors will be involved on an ongoing basis and provide detailed reviews of work products, including shop drawing review letters, responses to RFIs, and RFQs. Each of the project submittals will be reviewed for conformance with the contract documents including drawings and specifications, as well as for content, clarity and presentation.

Task 14 – Construction Administration Services

Task 14.1 Preconstruction Conference

Kennedy/Jenks' Project Manager and Project Engineer shall attend the preconstruction conference facilitated by SEJPA. During this meeting Kennedy/Jenks will answer questions from SEJPA and the Contractor, discuss contract administration procedures, clarify contract requirements and the roles and communication channels for each party.

Kennedy/Jenks assumes that SEJPA will prepare and distribute the agenda and prepare meeting minutes for the pre-construction conference.

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Task 14.2 RFIs and Clarifications

Kennedy/Jenks shall respond to RFI's from the Contractor. Responses shall include sketches and details, if required, to clarify the design intent and/or to make minor revisions.

Kennedy/Jenks shall also prepare clarifications based on Kennedy/Jenks' own review of the Contract Documents and submittals. A log of all RFI's and clarifications shall be maintained by Kennedy/Jenks.

The estimated level of effort assumes a combined total of 30 RFI's and clarifications.

Kennedy/Jenks' RFI responses do not include items pertaining to the Escondido pipeline connection or the on-site storm drain low flow diverter, as these items are the design responsibility of SEJPA.

Task 14.3 Submittal Review

Kennedy/Jenks shall review submittals (shop drawings, material samples, equipment data, technical manuals, O&M Manuals, warranties, certifications, substitutions and/or equals) for substantial conformity with the intent of the contract drawings and specifications. Such review shall be only for conformance with the design concepts and general compliance with the project's Contract Documents. It shall not include review of quantities, dimensions, weights or gauges, fabrication processes, construction methods, coordination with the work of other trades, or construction safety precautions, all of which are the sole responsibility of the Contractor.

Kennedy/Jenks' review shall be conducted with reasonable promptness consistent with sound professional practice. Review of a specific item shall not indicate acceptance of an assembly of which the item is a component. Kennedy/Jenks shall not be required to review and shall not be responsible for any deviations from the Contract Documents not clearly noted by the Contractor, nor shall the Kennedy/Jenks be required to review partial submissions or those for which submissions for correlated items have not been received. Kennedy/Jenks shall also maintain a submittal review log including the date received, date returned, submittal number, submittal title and review action. A total of 90 submittals are estimated for the project.

Kennedy/Jenks submittal reviews do not include items pertaining to the Escondido pipeline connection or the on-site storm drain low flow diverter, as these items are the design responsibility of SEJPA.

Task 14.4 RFQs and Change Orders

Kennedy/Jenks will assist SEJPA in preparing RFQ's and Change Orders for potential changes in the work, as necessary, including dealing with differing site conditions discovered during construction, additional work requested by the SEJPA, design refinements and design enhancements. Our proposal assumes that SEJPA will take the lead in reviewing and responding to RFQs and change order requests. Our estimated level of effort assumes that Kennedy/Jenks will be involved in responding to a total of 4 RFQ's/Change Orders.

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Task 14.5 Engineering Services during Construction

This task provides budget to address engineering services during construction, including design of a low-flow storm drain diverter in the vicinity of Seascape Sur as part of the recently awarded Prop. 84 grant. Our estimated level of effort assumes 62 hours for engineering services related to this design, anticipating that Lyles Construction will construct the recommended improvements.

Task 14.6 Record Drawing Preparation

Kennedy/Jenks shall prepare Record Drawings for the project based on marked-up drawings received from the Contractor and SEJPA's field staff at the end of construction. The mark-ups will be in the form of a red-line set of contract drawings maintained during construction. The mark-ups are expected to contain clarifications, change order work, and other significant construction revisions. One set of original Mylar record drawings will be delivered to the District upon completion.

Task 15 – Field Services

Task 15.1 Construction Observation

The SEJPA will perform the day-to-day onsite inspection during the construction phase of this project. Kennedy/Jenks will perform supplemental construction observation on an as-needed basis. For budgeting purposes, Kennedy/Jenks' construction observation effort is assumed to total 275 hours, with specialty inspections and oversight provided by electrical, mechanical, and process engineers for an additional 128 hours during construction.

Kennedy/Jenks will provide observation of construction for the purposes of determining compliance with the technical provisions of the project specifications. This observation service is not in any way an assumption on the part of SEJPA or Kennedy/Jenks of responsibility for methods or appliances used by the Contractor; for the sufficiency of design or installation of scaffolding, sheeting, or shoring; for the safety of the job; or for compliance by the Contractor with laws and regulations. Acceptance of Contractor's designs of sheeting and shoring by Kennedy/Jenks on behalf of the SEJPA will not include review or approval of designs. Kennedy/Jenks shall not be held in any way to guarantee the Contractor's work, nor to assume responsibility for means, methods or appliances used by the Contractor nor to assume responsibility for the Contractor's compliance with laws and regulations or for the Contractor's errors, omissions, or defective work.

Task 15.2 Deficiency List

When construction is approaching substantial completion, Kennedy/Jenks shall prepare a deficiency list (preliminary final punch list) to help ensure the project was constructed as designed. After the Contractor has completed a substantial portion of those deficiencies, SEJPA shall prepare a final punch list.

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The estimated level of effort assumes the Project Engineer of Kennedy/Jenks' design staff will spend one day at the project site during preparation of the deficiency list with the Construction Inspector, with 4 hours of follow-up correspondence with the Construction Inspector to verify the adequacy of completed punch list items.

Task 15.3 Startup Support

Kennedy/Jenks' Project Engineer will participate in the SEJPA led start up activities. As part of this effort, we will respond to questions and provide assistance with system process adjustments and optimization during the start-up period. SEJPA staff will operate the new Recycled Water Demineralization Facility.

The budget for this task includes 3 consecutive days of site visits by Kennedy/Jenks' Project Engineer to provide as-needed operational assistance, particularly with the MF and RO process equipment, with an additional 14 hours of support via phone and email correspondence.

Summary of Deliverables

The following list summarizes the deliverables for this scope of work:

- Copies of construction correspondence
- Submittal Shop Drawings and the Review Letters
- Responses to Requests for Information and Clarification
- Photographs taken as part of Kennedy/Jenks' construction observation efforts
- Daily inspection reports and correspondence prepared as part of Kennedy/Jenks' construction observation efforts
- Record Drawings

Services Not Included

For the sake of clarifying the Scope of Work, the following services are not included within the Kennedy/Jenks's Scope of Work, nor are costs included in the Kennedy/Jenks' budget:

- A. Preparation of conformed set of bid documents.
- B. Surveying services during construction.
- C. Geotechnical materials testing and observation during construction; it is assumed that SEJPA with contract directly with the geotechnical engineering firm to conduct this work.
- D. Materials testing (concrete, masonry, pavement, etc.) during construction; it is assumed that SEJPA with contract directly with the materials testing firm to conduct this work.
- E. Witnessing of factory certification testing and inspections at the factory.
- F. Evaluation of formal claims by the Contractor.

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- G. Preparation of an Operations Manual.
- H. Review of the Contractor's certified payrolls.
- I. Assistance to SEJPA during warrantee period.
- J. Preparation and transmittal of notices of completion.
- K. Review of partial payment requests.
- L. Operator training and operational assistance subsequent to start up.
- M. Engineering or construction assistance services related to the proposed Escondido pipeline connection and the on-site storm drain low flow diverter.
- N. Meeting agendas and minutes will be prepared and distributed by SEJPA construction inspector.

Schedule and Fee

Kennedy/Jenks is prepared to initiate work on this project following receipt of a notice to proceed. Our project schedule anticipates award of the lease-purchase construction contract in November 2011, submittal reviews conducted in November and December 2011, and on-site construction beginning January 2012 and finishing November 2012.

Kennedy/Jenks proposes to perform the above-described scope of work on a time-and-materials basis consistent with the attached 2011 rate schedule. Our estimated fee for this project is \$259,360. The attached table outlines our estimated fee by task.

We greatly appreciate the opportunity to work with you on this exciting project. If you have any questions about this proposal, please do not hesitate to contact me.

Very truly yours,
KENNEDY/JENKS CONSULTANTS, INC.



Patrick Huston, P.E.
Vice President

cc: M. Tebbetts
C. Young
T. Reynolds

Proposal Fee Estimate

Kennedy/Jenks Consultants

CLIENT Name: San Elijo Joint Powers Authority

PROJECT Description: Recycled Water Demineralization Facility - CA Services

Proposal/Job Number: 1087100*00 Date: 11/1/2011

January 1, 2011 Rates	Eng-Sci-8	Eng-Sci-7	Eng-Sci-6	Eng-Sci-5	Eng-Sci-4	Eng-Sci-3	Designer	Admin. Assist.	Total	KJ	Subconsultants	Expenses	Total Fee
Classification:									Hours	Total Labor Fees			Total Fees
Hourly Rate:	\$230	\$220	\$195	\$175	\$160	\$145	\$130	\$75					
Task 13 - Project Management and Quality Control													
Subtask 13.1 - Project Management	8			36				36	80	\$10,840	\$0	\$600	\$11,440
Subtask 13.2 - Monthly Progress Meetings (10)	20			30				4	54	\$10,150	\$1,100	\$855	\$12,105
Subtask 13.3 - QA/QC	18	10							28	\$6,340	\$0	\$190	\$6,530
Task 13 - Subtotal	46	10	0	66	0	0	0	40	162	\$27,330	\$1,100	\$1,645	\$30,075
Task 14 - Construction Administration Services													
Subtask 14.1 - Preconstruction Conference	4			6		6			16	\$2,840	\$0	\$110	\$2,950
Subtask 14.2 - RFI's and Clarifications (30)	10	12	15	50	30	15	30		162	\$27,490	\$4,400	\$1,375	\$33,265
Subtask 14.3 - Submittal Review (90)	8	40	40	120	60	60		32	360	\$60,140	\$5,500	\$2,904	\$68,544
Subtask 14.4 - RFQ's and Change Orders (4)	2	10	4	12		10		2	40	\$7,140	\$1,800	\$764	\$10,104
Subtask 14.5 - Engineering During Construction		2	8	36			12	4	62	\$10,160	\$0	\$306	\$10,466
Subtask 14.6 - Record Drawing Preparation (54)				8		32	48		88	\$12,280	\$3,300	\$918	\$16,498
Task 14 - Subtotal	24	64	67	232	90	123	90	38	728	\$120,050	\$15,000	\$6,377	\$141,827
Task 15 - Field Services													
Subtask 15.1 - Construction Observation		80	8	40		275		30	433	\$68,285	\$1,650	\$5,085	\$75,020
Subtask 15.2 - Deficiency List				12				2	14	\$2,250	\$0	\$178	\$2,428
Subtask 15.3 - Startup Support	14	24						2	40	\$8,650	\$1,650	\$1,360	\$10,010
Task 15 - Subtotal	14	104	8	52	0	275	0	34	487	\$79,185	\$3,300	\$6,622	\$87,457
All Tasks Total	84	178	75	350	90	398	90	112	1377	\$226,565	\$19,400	\$14,645	\$259,360