

**AGENDA**  
**SAN ELIJO JOINT POWERS AUTHORITY**  
**MONDAY JUNE 9, 2014 AT 9:00 AM**  
**SAN ELIJO WATER RECLAMATION FACILITY – CONFERENCE ROOM**  
**2695 MANCHESTER AVENUE**  
**CARDIFF BY THE SEA, CALIFORNIA**

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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 MAY 12, 2014 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. \* AWARD OF ANNUAL SUPPLIES AND SERVICES CONTRACTS FOR THE SAN ELIJO JOINT POWERS AUTHORITY
12. \* 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**

13. **ADOPTION OF SAN ELIJO JOINT POWERS AUTHORITY FISCAL YEAR 2014-2015 BUDGET, INVESTMENT POLICY, AND APPOINTMENT OF SEJPA TREASURER**

1. Adopt Resolution No. 2014-03, Resolution Approving the San Elijo Joint Powers Authority Operating and Capital Improvement Budgets for Fiscal Year 2014-2015;
2. Adopt Resolution No. 2014-04, Resolution Approving the San Elijo Joint Powers Authority Investment Policy and Guidelines and Appointment of SEJPA Treasurer; and
3. Discuss and take action as appropriate.

Staff Reference: Director of Finance/Administration

14. **CONSIDERATION OF PROVIDING WASTEWATER TREATMENT SERVICE TO THE CITY OF DEL MAR**

1. Authorize the General Manager to enter into agreement with the City of Del Mar for providing wastewater treatment services, contingent upon the City of Solana Beach and the City of Del Mar entering into agreement for wastewater conveyance; and
2. Discuss and take action 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**

A closed session will be held per Government Code Section 54957: Employee Performance Evaluation. Title: General Manager

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 Monday, July 14, 2014 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](http://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: June 4, 2014



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

SAN ELIJO JOINT POWERS AUTHORITY  
MINUTES OF THE BOARD MEETING  
HELD ON MAY 12, 2014  
AT THE  
SAN ELIJO WATER RECLAMATION FACILITY

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Mark Muir, Chair

David Zito, Vice Chair

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A meeting of the Board of Directors of the San Elijo Joint Powers Authority (SEJPA) was held Monday, May 12, 2014, at 9:00 a.m., at the San Elijo Water Reclamation Facility at 2695 Manchester Avenue, Cardiff by the Sea, California.

1. CALL TO ORDER

Chair Muir called the meeting to order at 9:00 a.m.

2. ROLL CALL

*Directors Present:*

Teresa Barth  
Thomas M. Campbell  
Mark Muir  
David Zito

*Directors Absent:*

None

*Others Present:*

General Manager  
Director of Operations  
Director of Finance & Administration  
Administrative Assistant

Michael Thornton  
Christopher Trees  
Paul Kinkel  
Jennifer Basco

*SEJPA Counsel:*

Procopio, Cory, Hargreaves & Savitch

Adriana Sanchez  
Natalie Valdes

*City of Encinitas:*

Director of Engineering and Public Works  
Public Works Management Analyst

Glenn Pruim  
Bill Wilson

*City of Solana Beach:*

City Manager  
Director of Engineering/Public Works

David Ott  
Mohammad "Mo" Sammak

3. PLEDGE OF ALLEGIANCE

Chair Muir led the Pledge of Allegiance.

4. ORAL COMMUNICATIONS

None

5. PRESENTATION OF AWARDS

None

6. CONSENT CALENDAR

Moved by Board Member Barth and seconded by Vice Chair Zito to approve the Consent Calendar.

Motion carried with unanimous vote of approval:

Consent Calendar:

Agenda Item No. 7	Approval of Minutes for the April 14, 2014 and April 21, 2014 meetings
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

11. ITEMS REMOVED FROM CONSENT CALENDAR

None

12. PRESENTATION OF THE SAN ELIJO JOINT POWERS AUTHORITY FISCAL YEAR 2014-2015 RECOMMENDED BUDGET

Paul F. Kinkel, Director of Finance/Administration, reported that the Recommended Budget for FY 2014-2015 was provided to both Member Agencies and the participating government agencies that receive services from the SEJPA. The proposed budget has been received positively and Staff has not received any proposed changes to the budget. Mr. Kinkel stated that the budget will be presented to the Board of Directors for adoption consideration at the June meeting.

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

13. CONSIDERATION OF PROVIDING WASTEWATER TREATMENT SERVICE TO THE CITY OF DEL MAR

General Manager Thornton presented a proposal for providing wastewater treatment

services to the City of Del Mar. The driving reason for considering this proposal is economics and for expanding local recycled water supplies. Treating more wastewater at the San Elijo WRF will improve the cost effectiveness of the facility through improved economies of scale in the treatment and increased utilization of fixed assets. The additional wastewater can also be recycled and reused locally. Recycled water is an important part of the region's water portfolio, and the SEJPA has the facilities in place to receive and recycle this additional flow from Del Mar.

General Manager Thornton stated that the SEJPA, Solana Beach, and Del Mar partnered in the development of a feasibility study in order to examine the proposal in more detail. The report, prepared by Dudek, concluded that "there are no fatal flaws identified in the proposal to accept 0.5 mgd of wastewater flow from Del Mar." Cost savings to the SEJPA created by this agreement are projected to be on the order of \$300,000 per year after funding a capital incentive credit to Del Mar for the construction of the necessary connecting infrastructure, which is estimated at \$60,000 per year.

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

1. Authorize the General Manager to finalize an agreement with the City of Del Mar for the provision of wastewater treatment services and bring back to the Board of Directors for approval.

Motion carried with unanimous vote of approval.

14. GENERAL MANAGER'S REPORT

General Manager Thornton informed the Board Members that the State Water Resources Control Board released a draft order for a proposed new Recycled Water General Permit. The intent of this effort is to streamline permitting of non-potable recycled water producers, distributors, and other legal entities, such as joint powers authorities and irrigation districts.

The General Manager also stated that the Water Resources Reform and Development Act (WRRDA) is looking very promising to passing in Congress. Through WRRDA, Congress authorizes the U.S. Army Corps of Engineers to carry out its mission to develop, maintain, and support the Nation's vital port and waterways infrastructure needs, and support effective and targeted flood protection and environmental restoration needs. The SEJPA is pursuing WRRDA funding for recycled water projects through the North San Diego Water Reuse Coalition.

15. GENERAL COUNSEL'S REPORT

None

16. BOARD MEMBER COMMENTS

None

17. CLOSED SESSION

None

18. ADJOURNMENT

The meeting adjourned at 9:34 a.m. The next Board of Directors meeting will be held on June 9, 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Thornton", is written over a horizontal line.

Michael T. Thornton, P.E.  
General Manager

**SAN ELIJO JOINT POWERS AUTHORITY****PAYMENT OF WARRANTS****14-06****For the Month of May-2014**

Check #	Vendor Name	Description	Amount	
30176	Action Chemical Co.	Supplies - Chemicals	Corrosion inhibitor	160.40
30177	Arrowhead	Supplies - Lab	Kitchen and lab supplies	345.97
30178	AT & T - 9777	Utilities - Telephone	Phone service - 03/13/14 - 04/12/14	398.34
30179	AT&T	Utilities - Telephone	DSL - 03/10/14 - 04/09/14	78.61
30180	AT&T	Utilities - Telephone	DSL - 03/20/14 - 04/19/14	79.17
30181	Atlas Pumping Service Inc.	Services - Grease & Scum	Grease and scum pumping	554.88
30182	Barracuda Networks, Inc	Utilities - Internet	Network back-up	50.00
30183	California Water Technologies	Supplies - Chem - Ferrous Chlo	Ferric chloride	5,287.10
30184	Cerilliant	Supplies - Lab	Lab supplies	578.24
30185	Complete Office	Supplies - Office	Office supplies	104.77
30186	CS-Amsco	Repair Parts Expense	Swing check valve	886.24
30187	D&H Water Systems	Repair Parts Expense	Polyblend power frame	706.57
30188	Dudek & Associates	Services - Engineering	Emergency Power Project - Final Design	27,413.34
30189	Fastenal Company	Vehicle Maintenance	Washer fluid and motor oil	61.78
30190	Ferguson Waterworks #1082	Repair Parts Expense	Plumbing supplies	783.08
30191	Gierlich Mitchell, Inc.	Capital Outlay	Primary clarifier parts	24,882.32
30192	Guardian	Dental/Vision	Dental - 05/01/14 - 05/31/14	1,778.44
30193	Hach Company	Repair Parts Expense	Sensors	1,161.12
30194	Harrington Industrial Plastics	Repair Parts Expense	Plumbing supplies	699.14
30195	Health and Human Resource	Employee Assistance Program	May	317.68
30196	Hoch Consulting, APC	Services - Engineering	Project engineering services	4,890.00
30197	Home Depot Credit Services	Supplies - Shop & Field	Drill press, shelves, and repair items	290.47
30198	Jennifer Basco	Subsistence - Travel	Mileage	58.26
30199	The Lawton Group	Services - Intern Program	Weeks worked - 04/07/14 - 04/20/14	2,474.30
30200	LCI Backhoe Service	Subcontractors	Valve repair and paving	2,400.00
30201	Marine Taxonomic Services, LTD	Subcontractors	Nearshore, offshore, and intensive monitoring	1,850.00
30202	McMaster-Carr Supply Co.	Supplies - Shop & Field	Cabinet and plumbing supplies	427.54
30203	MegaPath Corporation	Utilities - Internet	T-1 service - May	283.58
30204	Miramar Bobcat, Inc.	Vehicle Maintenance	Tire service	27.24
30205	Nobel Systems	Services - Professional	Recycled water data conversion; annual license	16,500.00
30206	OneSource Distributors, Inc.	Repair Parts Expense	Electrical supplies	529.81
30207	Pacific Green Landscape	Services - Landscape	Landscape services - April	1,125.00
30208	Pacific Pipeline Supply	Repair Parts Expense	Rebuild kits	1,011.14
30209	P.E.R.S.	Medical Insurance - Pers	Health - May	18,138.69
30210	Public Employees- Retirement	Retirement Plan - PERS	Retirement - 04/12/14 - 04/25/14	14,982.36
30211	Polydyne Inc.	Supplies - Chem - Polymer	Clarifloc	11,426.40
30212	Rohan & Sons, Inc	Services - Maintenance	Bi-annual maintenance	527.50
30213	RSF Security Systems	Services - Maintenance	CPU batteries	73.00
30214	San Diego Gas & Electric	Utilities - Gas & Electric	03/06/14 - 04/06/14	46,245.60
30215	Sun Life Financial	Life Insurance/Disability	Life and disability insurance - May	1,333.46
30216	Sunbelt Rentals	Equipment Rental/Lease	Diesel generator - 03/27/14 - 04/23/14	1,890.00
30217	Terminix Processing Center	Services - Maintenance	Pest control	217.00
30218	Trussell Technologies, Inc	Services - Engineering	Process engineering and evaluation	2,038.00
30219	Unifirst Corporation	Services - Uniforms	Uniform service	110.18
30220	UPS	Postage/Shipping	Mailing parts	113.65
30221	USA Bluebook	Repair Parts Expense	Pump and tubing kit	425.80
30222	Vantagepoint Transfer Agents	EE Deduction Benefits	ICMA - 457	5,816.45
30223	Vantagepoint Transfer Agents	ICMA Retirement	ICMA - 401a	2,637.98
30224	Verizon Wireless	Utilities - Telephone	Cell phone service	1,035.10
30225	VWR International, Inc.	Supplies - Lab	Lab supplies	1,847.01
30226	WageWorks	Payroll Processing Fees	FSA administration and compliance fee	113.00
30227	WEX Bank	Fuel	Fuel - April	905.75
30228	Aflac	EE Deduction Benefits	Medical and supplemental life insurance	1,216.62
30229	Ag Tech, LLC	Services - Biosolids Hauling	Biosolid Hauling - March and April	23,842.55
30230	Applied Industrial Tech.	Repair Parts Expense	Bearings	75.11
30231	AT & T	Utilities - Telephone	Alarm service	382.82
30232	Atlas Pumping Service Inc.	Services - Grease & Scum	Grease and scum pumping	1,574.67
30233	BankCard Center	Supplies - Shop & Field	Meetings, seminars, parts, and equipment	1,831.20
30234	The Brickman Group LTD	Services - Landscape	Landscape service - May	385.00
30235	Brithinee Electric	Repair Parts Expense	Motors - recycled water system	13,102.56
30236	Marisa Buckles	Subsistence - Travel	CWEA presentation	52.00



**SAN ELIJO JOINT POWERS AUTHORITY****PAYMENT OF WARRANTS****14-06****For the Month of May-2014**

<b>Check #</b>	<b>Vendor Name</b>	<b>Description</b>	<b>Amount</b>	
30237	Carlson & Beauloye Air Power	Services - Maintenance	Air compressor	1,060.92
30238	Coast Waste Management, Inc.	Utilities - Trash	Grit and screening - storm drains	631.08
30239	Corodata	Rent	Record storage - April	73.74
30240	Department of Consumer Affairs	Dues & Memberships	License renewal	115.00
30241	Dudek & Associates	Services - Engineering	Emergency power project - final design	1,843.00
30242	EDCO Waste & Recycling Service	Utilities - Trash	Trash service - April	202.41
30243	Emed Co. Inc.	Supplies - Safety	Barricade sign	300.13
30244	City of Encinitas	Services - Professional	Administration network	2,422.45
30245	Flo-Systems, Inc.	Repair Parts Expense	Liner cone	438.48
30246	Hach Company	Supplies - Shop & Field	Covers and sun shields	980.80
30247	Harrington Industrial Plastics	Repair Parts Expense	Transmitter	661.18
30248	Hilts Consulting Group, Inc.	Services - Engineering	Engineering - Replacement covers for F.E.B.	12,327.00
30249	Jani-King of CA, Inc. - SEO	Services - Janitorial	Janitorial service - May	882.64
30250	Konica Minolta	Services - Maintenance	Monthly copier maintenance	232.89
30251	The Lawton Group	Services - Intern Program	Weeks worked - 04/21/14 - 05/04/14	742.50
30252	McMaster-Carr Supply Co.	Repair Parts Expense	Fluorescent light, goggles, and solenoid valve	964.04
30253	Mine Safety Appliances Co.	Repair Parts Expense	Sensors	2,062.64
30254	Oceanside Driveline	Repair Parts Expense	Steel shaft	675.00
30255	Olin Corp - Chlor Alkali	Supplies - Chem - Sodium Hypo	Sodium hypochlorite	2,931.98
30256	Olivenhain Municipal Water District	Rent/Services - Lobbying	OMWD pipeline (\$6,295.50); RMC (\$1,442.52)	7,738.02
30257	Public Employees- Retirement	Retirement Plan - PERS	Retirement - 04/26/14 - 05/09/14	15,008.72
30258	U.S. Postal Service	Postage/Shipping	Stamps	381.80
30259	Preferred Benefit Insurance	Dental/Vision	Vision insurance - 05/01/14 - 05/31/14	333.00
30260	ProBuild	Supplies - Shop & Field	Repairs, shop, and field supplies	463.89
30261	Pumping Solutions, Inc.	Repair Parts Expense	Leak repair kit and air pump	1,784.13
30262	SAIA, Inc.	Repair Parts Expense	Freight	114.28
30263	San Dieguito Water District	Utilities - Water	Recycled water usage	8,109.26
30264	Santa Fe Irrigation District	Utilities - Water; SFID Pipeline	Recycled water usage; pipeline purchase	1,509.88
30265	San Diego Concrete Cutting	Subcontractors	Trench	1,540.00
30266	Smart & Final	Supplies - Office	Kitchen supplies	138.03
30267	SoCoGroup, Inc.	Repair Parts Expense	Oil	386.46
30268	Specialty Seals & Accessories	Services - Maintenance	Seals	889.22
30269	Sunbelt Rentals	Equipment Rental/Lease	Diesel generator - 04/24/14 - 05/21/14	1,890.00
30270	Terminix Processing Center	Services - Maintenance	Pest control	40.00
30271	Toyotalift, Inc.	Vehicle Maintenance	Oil change and filter	150.19
30272	Unifirst Corporation	Services - Uniforms	Uniform service	440.78
30273	The San Diego Union-Tribune	Advertising	Public notice inviting bids	496.40
30274	UPS	Postage/Shipping	Mailing compliance reports	61.88
30275	Underground Service Alert/SC	Services - Alarm	Dig alert - April	54.00
30276	Vantagepoint Transfer Agents	EE Deduction Benefits	ICMA-457	5,827.03
30277	Vantagepoint Transfer Agents	ICMA Retirement	ICMA-401a	2,642.21
30278	VWR International, Inc.	Supplies - Lab	Lab supplies	974.00
30279	Western Hose & Gasket	Repair Parts Expense	Hose	325.69
30280	Western Water Works Support	Repair Parts Expense	Ball valve	688.46
30281	Encinitas Ford	Capital Outlay	Ford F-150 Standby Truck	27,948.35
	San Elijo Payroll Account	Payroll	Payroll - 05/02/14 (Less Retirement Plans)	56,379.74
	San Elijo Payroll Account	Payroll	Payroll - 05/16/14 (Less Retirement Plans)	57,887.87
	San Elijo Payroll Account	Payroll	Payroll - 05/30/14 (Less Retirement Plans)	57,335.02
	Bank Fee		VOD	26.00
				<u>\$531,646.18</u>

SAN ELIJO JOINT POWERS AUTHORITY

PAYMENT OF WARRANTS SUMMARY

**For the Month of May-2014  
As of May 28, 2014**

PAYMENT OF WARRANTS		\$ 531,646.18
Reference Number	14-06	

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.



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Paul F. Kinkel

Director of Finance & Administration

STATEMENT OF FUNDS AVAILABLE FOR PAYMENT OF WARRANTS  
AND INVESTMENT INFORMATION  
As of May 28, 2014

FUNDS ON DEPOSIT WITH	AMOUNT
<b>LOCAL AGENCY INVESTMENT FUND</b> <i>(JANUARY 2014 YIELD 0.23%)</i>	
RESTRICTED SRF RESERVE	\$ 630,000.00
UNRESTRICTED DEPOSITS	\$ 5,278,573.57
<b>CALIFORNIA BANK AND TRUST</b> <i>(JANUARY 2014 YIELD 0.01%)</i>	
REGULAR CHECKING	\$ 310,025.84
PAYROLL CHECKING	\$ 5,000.00
 TOTAL RESOURCES	 \$ 6,223,599.41

SAN ELIJO JOINT POWERS AUTHORITY  
MEMORANDUM

June 9, 2014

TO: Board of Directors  
San Elijo Joint Powers Authority

FROM: General Manager

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

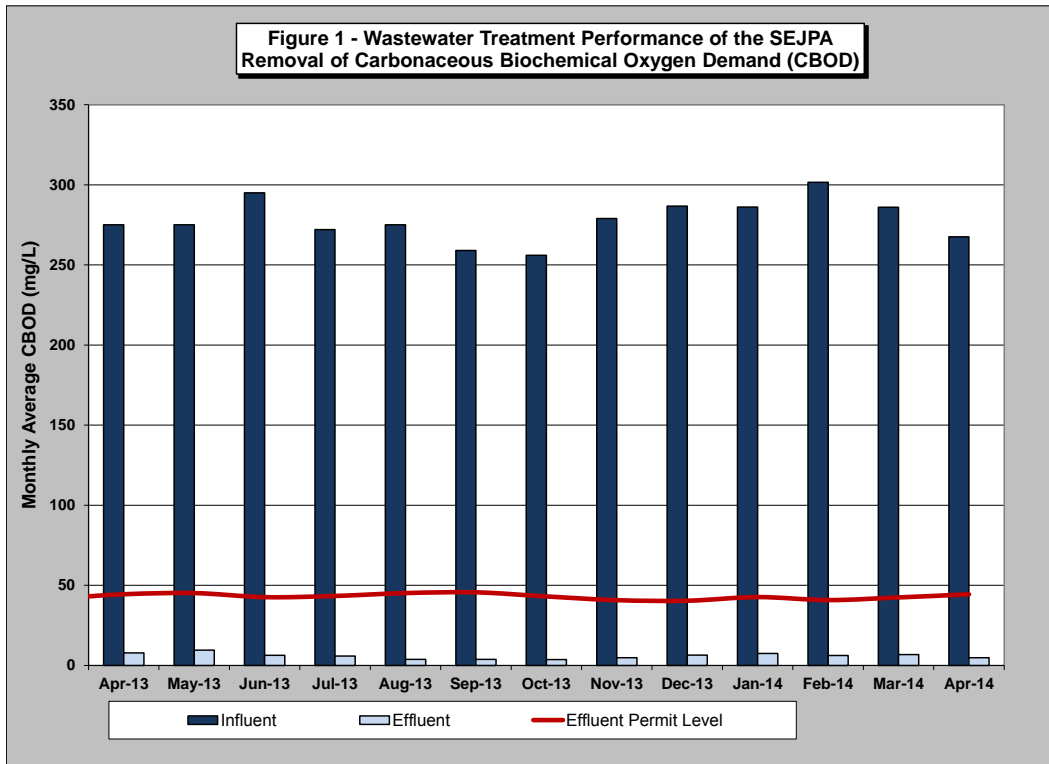
RECOMMENDATION

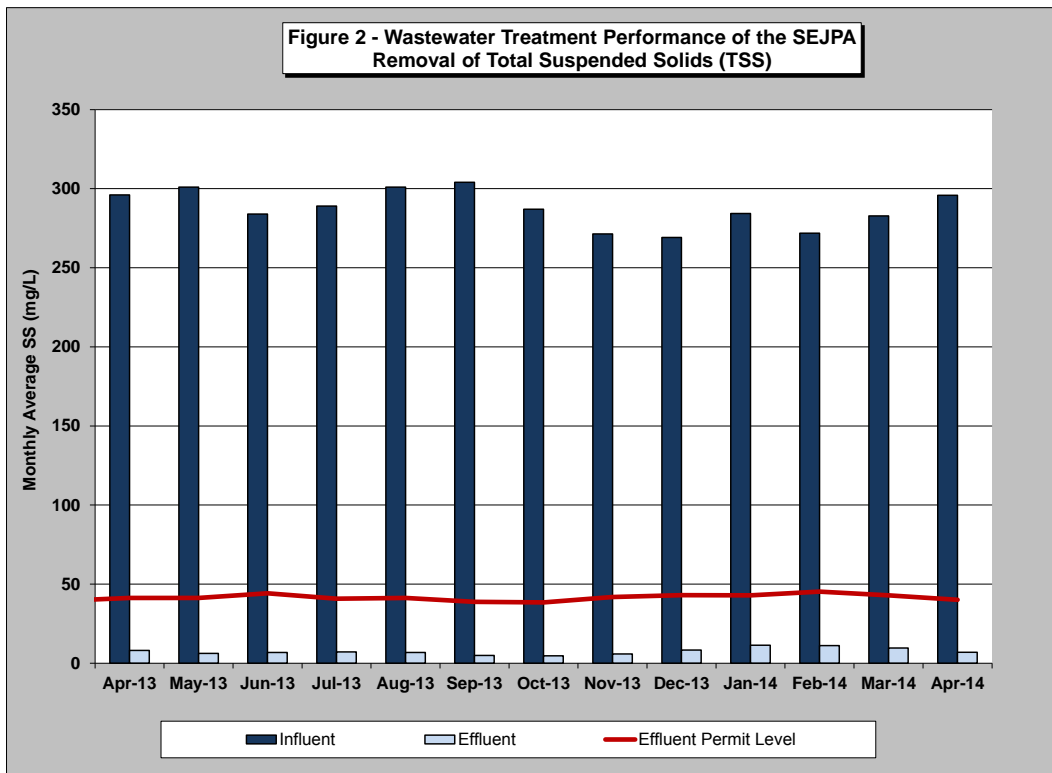
No action required. This memorandum is submitted for information only.

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 April 2014. 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 98.2 and 97.7 percent removal, respectively, in the period (as shown in Figure 1 and Figure 2).





Member Agency Flows

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

	April	
	<u>Influent (mgd)</u>	<u>Effluent (mgd)*</u>
Cardiff Sanitary Division	1.211	0.410
City of Solana Beach	1.243	0.421
Rancho Santa Fe SID	0.128	0.043
<b>Total San Elijo WRF Flow</b>	<b>2.582</b>	<b>0.874</b>

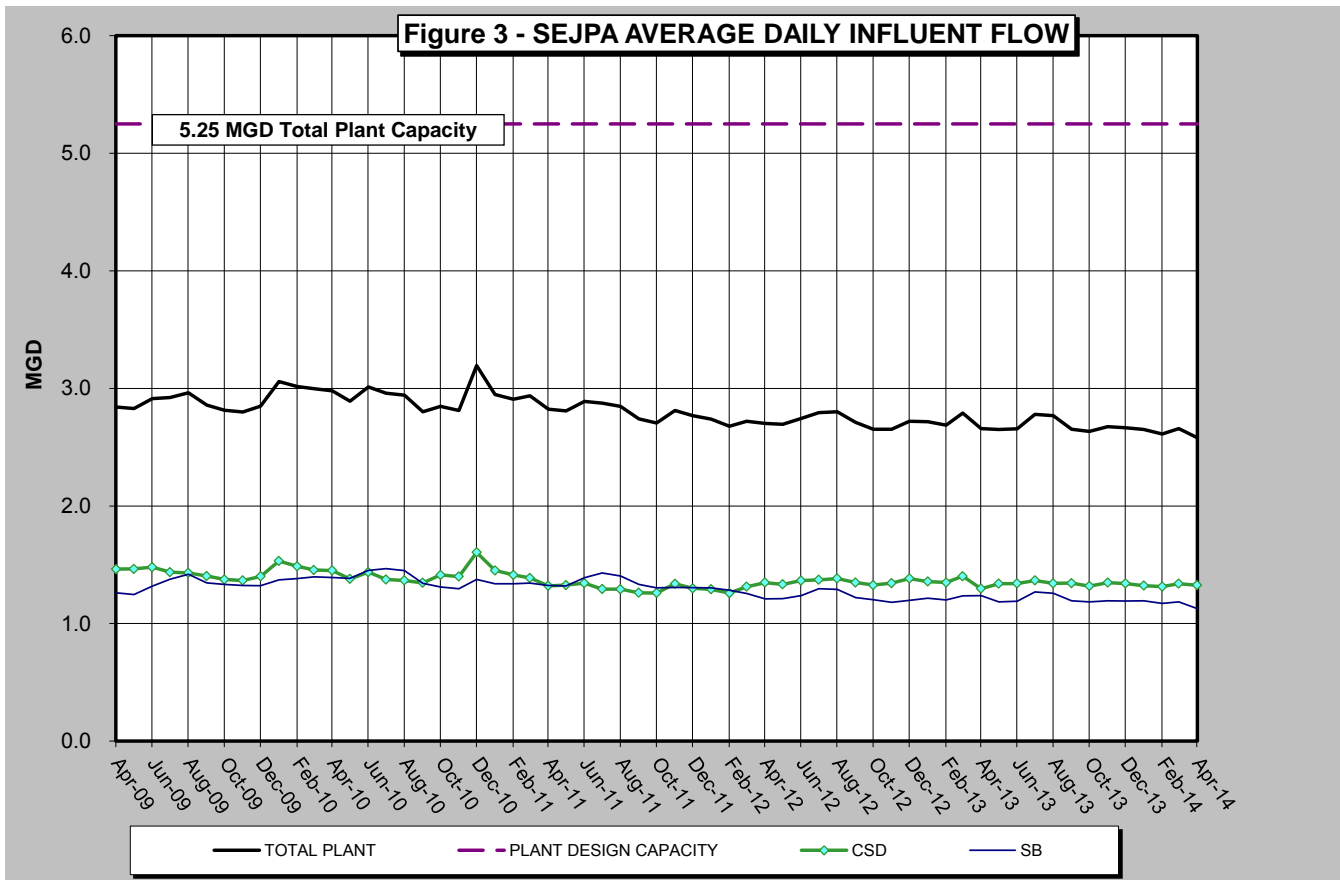
Notes: As of July 1995, Rancho Santa Fe Community Services District (CSD) combined SID #2 and SID #3 into one Sewer Improvement District (SID).

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

Table 1 (next page) presents the historical average, maximum, and unit influent and effluent flow rates per month for each of the Member Agencies during the past 5 years. 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 5-year 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 has been approximately 2.8 million gallons per day (mgd), down from 3.0 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.



City of Escondido Flows

The average and peak flow rate from the City of Escondido 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 April.

	<b>Flow (mgd)</b>
Escondido (Average flow rate)	9.5
Escondido (Peak flow rate)	18.0

Connected Equivalent Dwelling Units

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

	<b>Connected (EDU)</b>
Cardiff Sanitary Division	8,328
Rancho Santa Fe SID	498
City of Solana Beach	7,428
San Diego (to Solana Beach)	300
<b>Total EDUs to System</b>	<b>16,554</b>

Respectfully submitted,



Michael T. Thornton, P.E.  
General Manager



SAN ELIJO JOINT POWERS AUTHORITY  
MEMORANDUM

June 9, 2014

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 April 2014, recycled water demand was 150.09 acre-feet (AF), which was met using 150.09 AF of recycled water and 0.00 AF of supplementation with potable water.

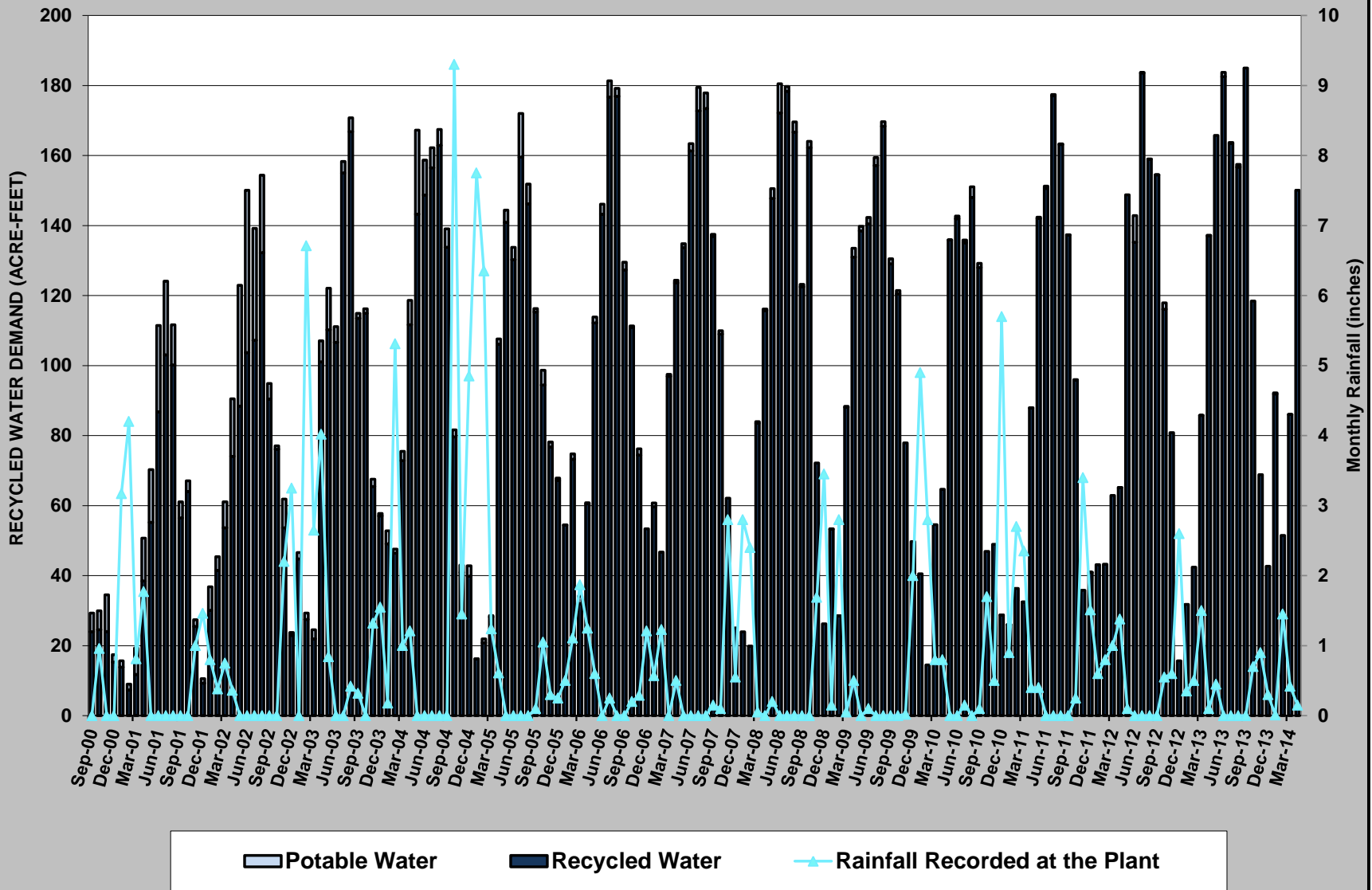
Figure 1 (attached) provides monthly supply demands for recycled water since September 2000. Figure 2 (attached) provides a graphical view of annual recycled water demand spanning thirteen fiscal years. Figure 3 (attached) shows the monthly recycled water demand for each month since the program began.

Respectfully submitted,

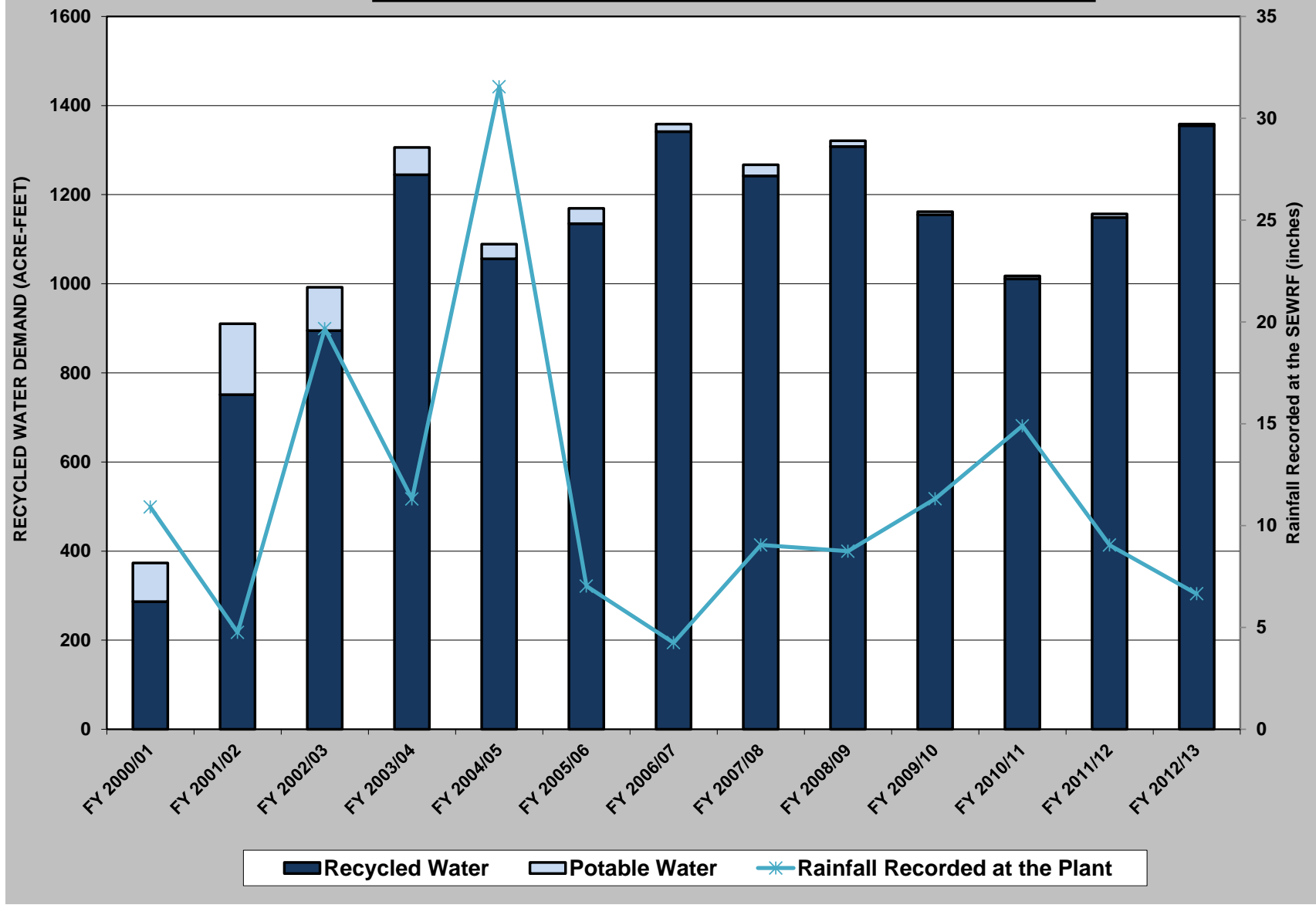


Michael T. Thornton, P.E.  
General Manager

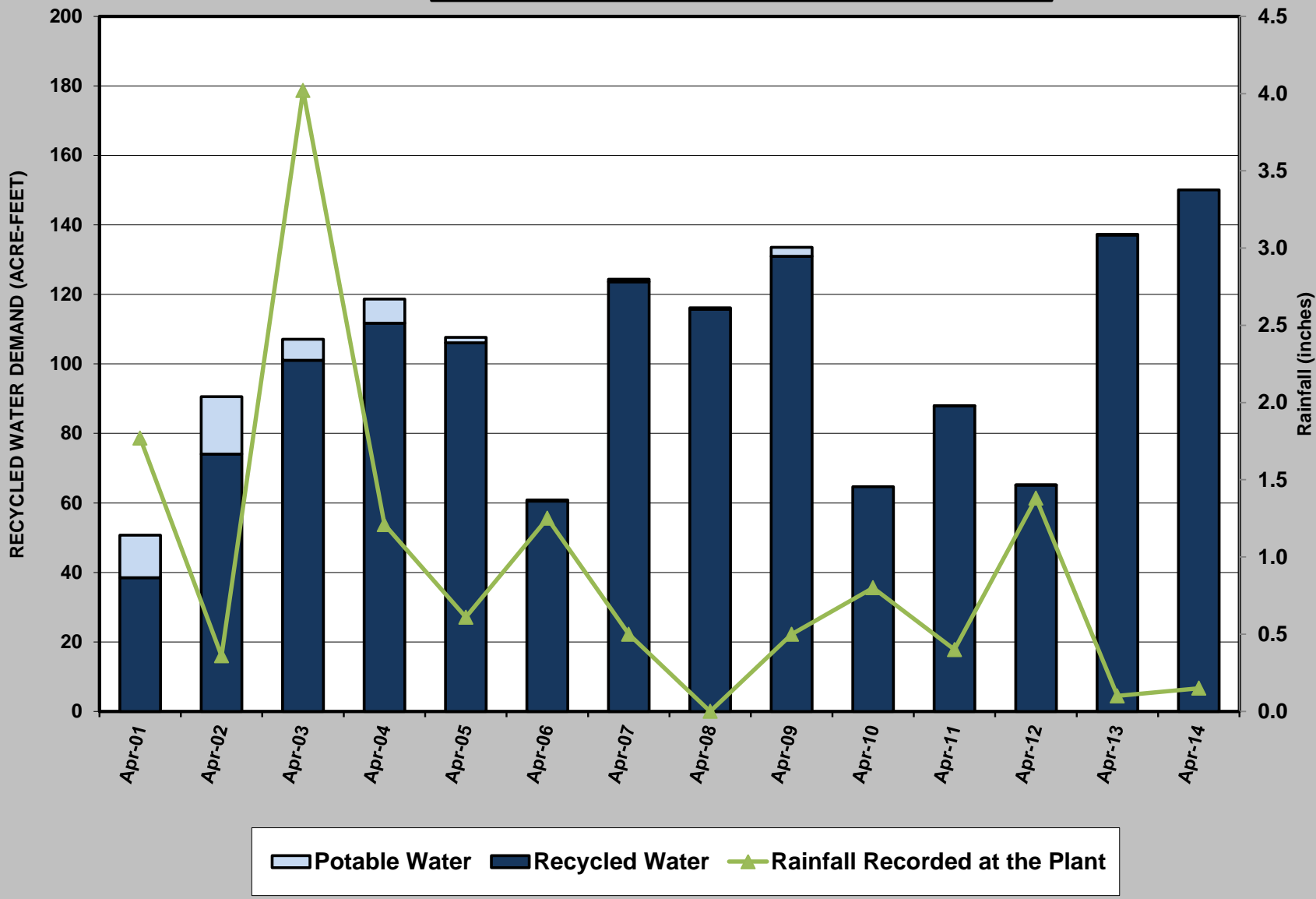
**Figure 1 - MONTHLY RECYCLED WATER DEMAND**



**Figure 2 - RECYCLED WATER DEMAND by FISCAL YEAR**



**Figure 3 - APRIL RECYCLED WATER DEMAND**



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AGENDA ITEM NO. 11

SAN ELIJO JOINT POWERS AUTHORITY  
MEMORANDUM

June 9, 2014

TO: Board of Directors  
San Elijo Joint Powers Authority

FROM: Director of Finance/Administration

SUBJECT: AWARD OF ANNUAL SUPPLIES AND SERVICES CONTRACTS FOR THE SAN  
ELIJO JOINT POWERS AUTHORITY

RECOMMENDATION

It is recommended that the Board of Directors:

1. Approve the recommendations of the Director of Finance/Administration regarding award of supplies and services contracts for ferric chloride, sodium hypochlorite, and biosolids hauling and reuse;
2. Authorize the Chair to execute the contracts with the lowest responsive bidder; and
3. Discuss and take action as appropriate.

DISCUSSION

The SEJPA uses various chemicals in the treatment process to enhance settling, disinfect the recycled water, control and enhance the treatment process, and control odors. Ferric chloride is used to improve settling in the primary settling tanks and to decrease sulfide generation in the primary treatment and anaerobic digestion processes. Uncontrolled sulfide generation can lead to significant odors, accelerated corrosion, and hazardous confined space conditions. Sodium hypochlorite is used to disinfect the recycled water prior to distribution and to control filament growth in the biological treatment process.

SEJPA purchasing policy requires that all purchase contracts in excess of \$35,000 be formally bid. Each year formal bids are solicited for supplies and services contracts that may have an annual cost in excess of \$35,000. For the Fiscal Year 2014-2015, bids for the provision of ferric chloride, for sodium hypochlorite, and for biosolids hauling and disposal were advertised on April 15, 2014, and publicly opened on May 15, 2014.

The results of the formal bids are as follows:

### Ferric Chloride

<u>Contractor</u>	<u>Unit Cost</u>	<u>Estimated Annual Amount</u>
* California Water Technologies	PER DRY TON: \$463.32	\$41,698.80
Sierra Chemical Co.	No Bid	
Univar USA, Inc.	No Bid	

\* *Low Bidder*

It is SEJPA policy to solicit three or more bids for supply and service contracts. However, ferric chloride has a very limited supply chain and only three suppliers have been identified for Southern California, of which only one elected to provide a contract bid. The SEJPA contacted other public agencies regarding the limited bid interest and found that other agencies have experienced similar results. The unit cost of \$463.32 per dry ton of ferric chloride is within bid expectations.

### Sodium Hypochlorite

<u>Contractor</u>	<u>Unit Cost</u>	<u>Estimated Annual Amount</u>
* Olin Corp.	PER GALLON: \$0.615	\$49,200.00
Jones Chemical	PER GALLON: \$0.650	\$52,000.00
Univar USA, Inc.	PER GALLON: \$0.971	\$77,680.00

\* *Low Bidder*

### Biosolids Hauling and Reuse (Disposal) Services

<u>Contractor</u>	<u>Unit Cost</u>	<u>Estimated Annual Amount</u>
* Ag Tech, LLC	PER WET TON: \$47.50	\$103,740.00
Liberty Composting, Inc.	PER WET TON: \$115.39	\$252,011.76
Synagro Technologies	NO BID	
Terra Renewal	NO BID	

\* *Low Bidder*

It is recommended that the annual supplies and services contracts for provision of ferric chloride, sodium hypochlorite, and biosolids hauling and reuse be awarded to the lowest bidders as noted above. Both chemical providers have had contracts with the SEJPA in the past and the contracts were fulfilled successfully. Ag Tech, LLC is our current biosolids hauling and reuse (disposal) services provider and has performed to our requirements. Ag Tech has included a potential fuel surcharge in their bid that would adjust the cost slightly if fuel prices increase or decrease during the term of the agreement. Contract award is contingent upon the verification that the apparent low bidders meet all bid requirements, including bonding and insurance.

## FINANCIAL IMPACT

Funds to support these contracts have been incorporated into the Fiscal Year 2014-2015 Recommended Budget. An annual cost of \$55,000 was budgeted for the provision of ferric chloride and the apparent low bid is for \$41,698.80. An annual cost of \$53,818 was budgeted for the provision of sodium hypochlorite and the apparent low bid is for \$49,200. An annual cost of \$162,000 was budgeted for the provision of biosolids hauling and reuse services and the apparent low bid is for \$103,740 with a baseline fuel cost of \$4.126 per gallon. If the price of diesel fuel increases by 20% then the cost of disposal would increase 4.7% and if the cost of fuel decreases 20% then the cost of disposal would decrease by 4.7%. The biosolids contract is a 5-year agreement with a total value of \$518,700.

It is therefore recommended that the Board of Directors:

1. Approve the recommendations of the Director of Finance/Administration regarding award of supplies and services contracts for ferric chloride, sodium hypochlorite, and biosolids hauling and reuse;
2. Authorize the Chair to execute the contracts with the lowest responsive bidder; and
3. Discuss and take action as appropriate.

Respectfully submitted,



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Paul F. Kinkel  
Director of Finance/Administration

Attachment 1: AGREEMENT: California Water Technologies for Ferric Chloride

Attachment 2: AGREEMENT: Olin Corporation for Sodium Hypochlorite

Attachment 3: AGREEMENT: Ag Tech, LLC for Biosolids Hauling and Reuse (Disposal) Services

# ATTACHMENT 1

## **AGREEMENT**

THIS AGREEMENT is made and entered into on this 9<sup>th</sup> day of June, 2014, by and between the San Elijo Joint Powers Authority, a municipal corporation, hereinafter referred to as AUTHORITY, and California Water Technologies, Inc., hereinafter referred to as CONTRACTOR.

### WITNESSETH:

WHEREAS, on April 14, 2014, AUTHORITY invited bids for the provision of Ferric Chloride per Specifications No. SE 2015-FC.

WHEREAS, pursuant to said invitation, CONTRACTOR submitted a bid which was accepted by AUTHORITY for said services.

NOW THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. TERM. The term of this Agreement shall be from the date this Agreement is made and entered, as first written above, until June 30, 2015. (Service shall be provided from July 1, 2014 to June 30, 2015.)
2. INCORPORATION BY REFERENCE. The Notice Inviting Bids, the General Bid Terms and Conditions, the Special Bid Terms and Conditions, Bid Submission Form(s), and the Bid Specifications (collectively, "Contract Documents"), are hereby incorporated in and made a part of this Agreement.
3. AUTHORITY'S OBLIGATIONS. For furnishing services or supplies as specified in the Agreement, AUTHORITY will pay and CONTRACTOR shall receive compensation for Ferric Chloride at the unit price of \$463.32 per dry ton. The total amount of Ferric Chloride to be purchased under this Agreement has been estimated to be 90 dry tons per year, but actual usage may be considerably less. In no case will total compensation exceed \$41,698.80. The unit cost and total cost shall include all delivery, tax and shipping charges.

Payments to the CONTRACTOR shall be made within forty-five (45) days after receipt of an original invoice from the CONTRACTOR and provision of said services to AUTHORITY. CONTRACTOR shall invoice no more frequently than monthly for services or supplies provided. 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 any cause of action arising out of the performance of this Agreement.

4. CONTRACTOR'S OBLIGATIONS. For and in consideration of the payments and agreements hereinbefore mentioned to be made and performed by AUTHORITY, CONTRACTOR agrees with AUTHORITY to furnish the said services and to do everything required by this Agreement and the said specifications. Without limiting the generality of the foregoing, CONTRACTOR warrants on behalf of itself and all subcontractors engaged for the performance of this Agreement that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder. In performing services under this Agreement, CONTRACTOR agrees to



comply with all laws, rules and regulations and ordinances, whether federal, state or local, and any and all AUTHORITY policies, procedures, departmental rules or other directives applicable to the services to be performed by provided by AUTHORITY'S General Manager or his designee, to CONTRACTOR. Any changes to AUTHORITY'S policies and procedures that relate to CONTRACTOR will be provided to CONTRACTOR in writing. CONTRACTOR agrees to review such policies, procedures, rules and directives and the contents of which CONTRACTOR will be deemed to have knowledge. CONTRACTOR shall ensure that any report generated under this Agreement complies with California Government Code section 7550.

5. HOLD HARMLESS AND INDEMNIFICATION. CONTRACTOR agrees to defend, indemnify, and hold harmless AUTHORITY, its member agencies (to include the City of Encinitas and the City of Solana Beach), and each of their respective directors, officials, officers, employees, representatives, and agents (collectively, "Indemnified Parties"), from and against all claims, lawsuits, liabilities or damages, including attorney's fees and costs, of whatsoever nature arising out of or in connection with, or relating in any manner to any act or omission of CONTRACTOR, its agents, employees, and subcontractors of any tier and employees thereof in connection with the performance or non-performance of this Agreement. The CONTRACTOR shall thoroughly investigate any and all claims and indemnify the Indemnified Parties and do whatever is necessary to protect the Indemnified Parties as to any such claims lawsuits, liabilities, expenses, or damages.
  
6. INSURANCE. During the course of the Agreement, CONTRACTOR shall pay for and maintain, in full force and effect, all insurance required by any governmental agency having jurisdiction to require particular insurance of CONTRACTOR in connection with or related to the work covered hereby. CONTRACTOR SHALL FURTHER TAKE OUT AND SHALL FURNISH SATISFACTORY PROOF BY CERTIFICATE OR OTHERWISE AS MAY BE REQUIRED, THAT HE HAS TAKEN OUT COMPREHENSIVE GENERAL LIABILITY INSURANCE AND AUTO LIABILITY WITH AUTHORITY, ITS MEMBER AGENCIES (TO INCLUDE THE CITY OF ENCINITAS AND THE CITY OF SOLANA BEACH), AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS ("INSURED PARTIES") NAMED HEREIN AS ADDITIONAL INSUREDS, AS WELL AS ALL OTHER COVERAGE REQUIRED BY THIS AGREEMENT. Insurance carrier shall be satisfactory to AUTHORITY, and insurance shall purchased from insurance companies with a current A.M. Best rating of no less than A:VII, unless otherwise agreed in writing by AUTHORITY. Insurance shall be in such form approved by AUTHORITY so as to protect all Insured Parties against loss from liability assumed by contract or imposed by law from 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 directly or indirectly from the negligent performance or execution of this Agreement by CONTRACTOR or any subcontract with CONTRACTOR thereunder, and also to protect all Insured Parties against loss from liability imposed by law for damage to any property, caused directly or indirectly by the negligent performance or execution or the Agreement by CONTRACTOR; which insurance shall also cover accidents arising out of the use and operation of owned, non-owned and hired automobiles, trucks, and/or other mobile equipment. Automobile liability shall be at least as broad as form number CA 0001, covering code 1 (any auto), covering bodily injury and property damage, with a combined single limit of no less than \$1,000,000 per claim for bodily injury and property damage. General liability shall be at least as broad as occurrence form CG 0001,

covering bodily injury, personal injury and property damage. The amounts of coverage of said insurance shall not be less than the following:

Public Liability	\$1,000,000 single limit/\$3,000,000 aggregate
Property Damage	\$1,000,000 single limit/\$3,000,000 aggregate

CONTRACTOR shall further maintain adequate Worker's 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 \$1,000,000 per claim for bodily injury or disease, and shall require similar insurance to be provided by its subcontractors. A certificate shall be furnished to AUTHORITY showing compliance with above.

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, and a certificate of such insurance shall be furnished to AUTHORITY by direct mail from CONTRACTOR'S insurance carrier and shall specifically cover any contractual liability incurred hereunder.

All insurance policies shall be on an occurrence basis and cover the period of performance under this Agreement.

The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties.

CONTRACTOR'S Insurance shall be primary insurance as respects the Insured Parties, and each of them. Any insurance, self-insurance or other coverage maintained by Insured Parties shall be excess of the CONTRACTOR'S insurance and not contribute to it.

CONTRACTOR hereby agrees to waive rights of subrogation which any insurer of CONTRACTOR may acquire from CONTRACTOR by virtue of the payment of any loss. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the Insured Parties for all work performed by the CONTRACTOR, its employees, agents and subcontractors.

Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to Insured Parties.

CONTRACTOR'S insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of insurer's liability.

All insurance policies shall specifically cover any contractual liability incurred pursuant to this Agreement.

Any deductibles or self-insured retention limits must be disclosed to and approved by AUTHORITY prior to execution of this Agreement. At the option of AUTHORITY, either: the insurer shall reduce or eliminate such deductibles as respects the Insured Parties; or CONTRACTOR shall provide a financial guarantee satisfactory to AUTHORITY

guaranteeing payment of losses and related investigations, claim administration and defense expenses.

CONTRACTOR shall furnish to AUTHORITY certificates of insurance prior to the commencement of work under this Agreement, and as may be periodically requested by AUTHORITY. CONTRACTOR shall include all endorsements necessary to comply with this Agreement, including additional insured endorsements, signed by the insurer's representative. Such evidence shall include confirmation that coverage includes or has been modified to include all provisions required by this Agreement. CONTRACTOR shall, upon request of AUTHORITY at any time, deliver to AUTHORITY complete, certified copies of the policies of insurance, including endorsements, and receipts for payment or premiums thereon, required by this Agreement. Failure to obtain the required documents prior to the work beginning shall not waive CONTRACTOR'S obligation to provide them.

If any of the required coverages expire during the term of this Agreement, CONTRACTOR shall deliver the renewal certificate(s) including the general liability and auto liability additional insured endorsements to AUTHORITY at least ten (10) days prior to the expiration date.

In the event that CONTRACTOR employs subcontractors to perform any portion of the services to be performed pursuant to this Agreement, it shall be CONTRACTOR'S responsibility to require and confirm that each subcontractor meets the minimum insurance requirements specified in this Agreement.

7. AMENDMENTS. Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon written approval by the Manager of the AUTHORITY.
8. TERMINATION. If, during the term of this contract, AUTHORITY determines that CONTRACTOR is not faithfully abiding by any term or condition contained herein, AUTHORITY may notify CONTRACTOR in writing of such defect or failure to perform; which notice must give CONTRACTOR five (5) working days thereafter in which to perform said work or cure the deficiency. If CONTRACTOR has not performed the work or cured the deficiency within five (5) days specified in the notice, such shall constitute a breach of this contract and AUTHORITY may terminate this contract immediately by written notice to CONTRACTOR to said effect. Thereafter, neither party shall have any further duties, obligations, responsibilities, or rights under this Agreement, except, however, any and all indemnification, hold harmless and defense obligations of CONTRACTOR shall remain in full force and effect, and shall not be extinguished, reduced, or in any manner waived by the termination hereof. In said event, CONTRACTOR shall be entitled to the reasonable value of its services 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. AUTHORITY reserves the right to delay any such payment, to allow for a full and complete accounting of costs. In no event, however, shall CONTRACTOR be entitled to receive in excess of the compensation quoted in its bid.
9. STATUS OF CONTRACTOR. CONTRACTOR and its employee(s) are engaged in an independent contractor relationship with AUTHORITY in performing all work, duties and

obligations hereunder. AUTHORITY shall not exercise any control or direction over the methods by which CONTRACTOR shall perform its work 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. CONTRACTOR represents that its employee(s) have the qualifications and skills necessary to perform the services under this Agreement in a competent, professional manner, without the advice or direction of AUTHORITY. CONTRACTOR will supply all tools, materials and equipment required to perform the services under this Agreement. The parties agree that no work, act, commission or omission of CONTRACTOR or its employee(s) pursuant to this Agreement shall be construed to make CONTRACTOR and its employee(s) the agent, employee or servant of AUTHORITY. CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR or its employee(s). To the maximum extent allowable by law, CONTRACTOR agrees to indemnify, defend and hold AUTHORITY harmless from any and all liability, damages or losses (including attorney's fees, costs, penalties and fines) AUTHORITY suffers as a result of (a) CONTRACTOR'S failure to meet its employer obligations, or (b) a third party's designation of CONTRACTOR or its employee as an employee of AUTHORITY, regardless of any actual or alleged negligence by AUTHORITY.

10. ASSIGNMENT. Neither this Agreement nor any duties or obligations under this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of AUTHORITY. AUTHORITY has entered into this Agreement in order to receive the professional services of CONTRACTOR. The provisions of this Agreement shall apply to any subcontractor of CONTRACTOR. AUTHORITY shall have the right to approve any subcontractor agreements, in addition to the written consent required by this section.
11. PROPRIETARY RIGHTS. Any written, printed, graphic, or electronically or magnetically recorded information furnished by AUTHORITY for CONTRACTOR'S use are the sole property of AUTHORITY. CONTRACTOR and its employee(s) will keep any information identified by AUTHORITY as confidential in the strictest confidence, and will not disclose it by any means to any person except with AUTHORITY approval, and only the extent necessary to perform the services under this Agreement. This prohibition also applies to CONTRACTOR'S employees, agents, and subcontractors. On termination of this Agreement, CONTRACTOR will promptly return any confidential information in its possession to AUTHORITY.
12. 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.
13. 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.

14. 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 request of either party, the Agreement shall forthwith be physically amended to make such insertion.
15. GOVERNING LAW. This Agreement and all questions relating 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.
16. JURISDICTION, FORUM AND VENUE. The proper jurisdiction, forum and venue for any claims, causes of action or other proceedings concerning this Agreement shall be in the state and federal courts located in the State of California, County of San Diego. AUTHORITY and CONTRACTOR agree not to bring any action or proceeding arising out of or relating 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 purposes of any legal action or proceeding to enforce this Agreement, whether on grounds of inconvenient forum or otherwise.
17. COMPLETE AGREEMENT. This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the complete agreement between the parties hereto. No oral agreement, understanding, or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding, or representation be binding upon the parties hereto.
18. AUDIT. AUTHORITY shall have the option of inspecting and/or auditing all records and other written materials used by CONTRACTOR in preparing its statements to AUTHORITY as a condition precedent to any payment to CONTRACTOR. This Agreement 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. CONTRACTOR shall cooperate with AUTHORITY, including any authorized representatives of AUTHORITY, regarding any such audit at no charge to AUTHORITY.
19. NOTICE. All written notices to the parties hereto shall be sent by United States mail, postage prepaid by registered, certified, or first class mail addressed as follows:

AUTHORITY

General Manager  
 San Elijo Joint Powers Authority  
 2695 Manchester Avenue  
 Cardiff, CA 92007

CONTRACTOR

California Water Technologies, Inc.  
 8851 Dice Road  
 Santa Fe Springs, CA 90670

Notices shall be deemed communicated as of the day of receipt or the fifth day after mailing, whichever occurs first.

20. PROTECTION OF EXISTING FACILITIES AND NON-INTERFERENCE WITH PLANT OPERATIONS. CONTRACTOR shall perform his duties in such a way that there will be no damage done to existing facilities and all facilities shall be left in the condition they were in prior to the beginning of the contract. CONTRACTOR will also perform all work in such a way that there is no interference with plant operations.
21. AUTHORITY TO EXECUTE AGREEMENT. AUTHORITY and CONTRACTOR do covenant that the individual executing this agreement on their behalf is a person duly authorized and empowered to execute this Agreement for such party.

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

SAN ELIJO JOINT POWERS AUTHORITY

By: \_\_\_\_\_  
Mark Muir, Chair of the Board

CONTRACTOR

By: \_\_\_\_\_ (Signature)  
Name: \_\_\_\_\_ (Print)  
Title: \_\_\_\_\_

## ATTACHMENT 2

### **AGREEMENT**

THIS AGREEMENT is made and entered into on this 9<sup>th</sup> day of June, 2014, by and between the San Elijo Joint Powers Authority, a municipal corporation, hereinafter referred to as AUTHORITY, and Olin Corporation, dba Olin Chlor Alkali Products, hereinafter referred to as CONTRACTOR.

### WITNESSETH:

WHEREAS, on April 14, 2014, AUTHORITY invited bids for the provision of Sodium Hypochlorite per Specifications No. SE 2015-SH.

WHEREAS, pursuant to said invitation, CONTRACTOR submitted a bid which was accepted by AUTHORITY for said services.

NOW THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. TERM. The term of this Agreement shall be from the date this Agreement is made and entered, as first written above, until June 30, 2015. (Service shall be provided from July 1, 2014 to June 30, 2015.)
2. INCORPORATION BY REFERENCE. The Notice Inviting Bids, the General Bid Terms and Conditions, the Special Bid Terms and Conditions, Bid Submission Form(s), and the Bid Specifications (collectively, the "Contract Documents"), are hereby incorporated in and made a part of this Agreement. In the event of any inconsistencies or conflicts in the Contract Documents, the order of precedence from highest to lowest shall be: Any amendments to this Agreement, this Agreement, the Bid Specifications, the Special Bid Terms and Conditions, the General Bid Terms and Conditions, the Notice Inviting Bids and the Bid Submission Form(s).
3. AUTHORITY'S OBLIGATIONS. For furnishing services or supplies as specified in the Agreement, AUTHORITY will pay and CONTRACTOR shall receive compensation for Sodium Hypochlorite at the unit price of \$0.615 per gallon. The total amount of Sodium Hypochlorite to be purchased under this Agreement has been estimated to be 80,000 gallons per year, but actual usage may be considerably less. In no case will total compensation exceed \$49,200. The unit cost and total cost shall include all delivery, tax and shipping charges.

Payments to the CONTRACTOR shall be made within forty-five (45) days after receipt of an original invoice from the CONTRACTOR and provision of said services to AUTHORITY. CONTRACTOR shall invoice no more frequently than monthly for services or supplies provided. 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 any cause of action arising out of the performance of this Agreement.

4. CONTRACTOR'S OBLIGATIONS. For and in consideration of the payments and agreements hereinbefore mentioned to be made and performed by AUTHORITY, CONTRACTOR agrees with AUTHORITY to furnish the said services and to do everything required by this Agreement and the said specifications. Without limiting the generality of the foregoing, CONTRACTOR warrants on behalf of itself and all subcontractors engaged for the performance of this Agreement that only persons

authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder. In performing services under this Agreement, CONTRACTOR agrees to comply with all laws, rules and regulations and ordinances, whether federal, state or local, and any and all AUTHORITY policies, procedures, departmental rules or other directives applicable to the services to be performed by provided by AUTHORITY'S General Manager or his designee, to CONTRACTOR. Any changes to AUTHORITY'S policies and procedures that relate to CONTRACTOR will be provided to CONTRACTOR in writing. CONTRACTOR agrees to review such policies, procedures, rules and directives and the contents of which CONTRACTOR will be deemed to have knowledge. CONTRACTOR shall ensure that any report generated under this Agreement complies with California Government Code section 7550.

5. HOLD HARMLESS AND INDEMNIFICATION. CONTRACTOR agrees to defend, indemnify, and hold harmless AUTHORITY, its member agencies (to include the City of Encinitas and the City of Solana Beach), and each of their respective directors, officials, officers, employees, representatives, and agents (collectively, "Indemnified Parties"), from and against all claims, lawsuits, liabilities or damages, including attorney's fees and costs, of whatsoever nature arising out of or in connection with, or relating in any manner to any act or omission of CONTRACTOR, its agents, employees, and subcontractors of any tier and employees thereof in connection with the performance or non-performance of this Agreement. The CONTRACTOR shall thoroughly investigate any and all claims and indemnify the Indemnified Parties and do whatever is necessary to protect the Indemnified Parties as to any such claims lawsuits, liabilities, expenses, or damages.
  
6. INSURANCE. During the course of the Agreement, CONTRACTOR shall pay for and maintain, in full force and effect, all insurance required by any governmental agency having jurisdiction to require particular insurance of CONTRACTOR in connection with or related to the work covered hereby. CONTRACTOR SHALL FURTHER TAKE OUT AND SHALL FURNISH SATISFACTORY PROOF BY CERTIFICATE OR OTHERWISE AS MAY BE REQUIRED, THAT HE HAS TAKEN OUT COMPREHENSIVE GENERAL LIABILITY INSURANCE AND AUTO LIABILITY WITH AUTHORITY, ITS MEMBER AGENCIES (TO INCLUDE THE CITY OF ENCINITAS AND THE CITY OF SOLANA BEACH), AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS ("INSURED PARTIES") NAMED HEREIN AS ADDITIONAL INSUREDS, AS WELL AS ALL OTHER COVERAGE REQUIRED BY THIS AGREEMENT. Insurance carrier shall be satisfactory to AUTHORITY, and insurance shall purchased from insurance companies with a current A.M. Best rating of no less than A:VII, unless otherwise agreed in writing by AUTHORITY. Insurance shall be in such form approved by AUTHORITY so as to protect all Insured Parties against loss from liability assumed by contract or imposed by law from 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 directly or indirectly from the negligent performance or execution of this Agreement by CONTRACTOR or any subcontract with CONTRACTOR thereunder, and also to protect all Insured Parties against loss from liability imposed by law for damage to any property, caused directly or indirectly by the negligent performance or execution or the Agreement by CONTRACTOR; which insurance shall also cover accidents arising out of the use and operation of owned, non-owned and hired automobiles, trucks, and/or other mobile equipment. Automobile liability shall be at least as broad as form number CA 0001, covering code 1 (any auto), covering bodily injury and property damage, with a combined single limit of no less than \$1,000,000 per claim for bodily injury and property



damage. General liability shall be at least as broad as occurrence form CG 0001, covering bodily injury, personal injury and property damage. The amounts of coverage of said insurance shall not be less than the following:

Public Liability	\$1,000,000 single limit/\$3,000,000 aggregate
Property Damage	\$1,000,000 single limit/\$3,000,000 aggregate

CONTRACTOR shall further maintain adequate Worker's 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 \$1,000,000 per claim for bodily injury or disease, and shall require similar insurance to be provided by its subcontractors. A certificate shall be furnished to AUTHORITY showing compliance with above.

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, and a certificate of such insurance shall be furnished to AUTHORITY by direct mail from CONTRACTOR'S insurance carrier and shall specifically cover any contractual liability incurred hereunder.

All insurance policies shall be on an occurrence basis and cover the period of performance under this Agreement.

The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties.

CONTRACTOR'S Insurance shall be primary insurance as respects the Insured Parties, and each of them. Any insurance, self-insurance or other coverage maintained by Insured Parties shall be excess of the CONTRACTOR'S insurance and not contribute to it.

CONTRACTOR hereby agrees to waive rights of subrogation which any insurer of CONTRACTOR may acquire from CONTRACTOR by virtue of the payment of any loss. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the Insured Parties for all work performed by the CONTRACTOR, its employees, agents and subcontractors.

Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to Insured Parties.

CONTRACTOR'S insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of insurer's liability.

All insurance policies shall specifically cover any contractual liability incurred pursuant to this Agreement.

Any deductibles or self-insured retention limits must be disclosed to and approved by AUTHORITY prior to execution of this Agreement. At the option of AUTHORITY, either: the insurer shall reduce or eliminate such deductibles as respects the Insured Parties; or CONTRACTOR shall provide a financial guarantee satisfactory to AUTHORITY guaranteeing payment of losses and related investigations, claim administration and

defense expenses.

CONTRACTOR shall furnish to AUTHORITY certificates of insurance prior to the commencement of work under this Agreement, and as may be periodically requested by AUTHORITY. CONTRACTOR shall include all endorsements necessary to comply with this Agreement, including additional insured endorsements, signed by the insurer's representative. Such evidence shall include confirmation that coverage includes or has been modified to include all provisions required by this Agreement. CONTRACTOR shall, upon request of AUTHORITY at any time, deliver to AUTHORITY complete, certified copies of the policies of insurance, including endorsements, and receipts for payment or premiums thereon, required by this Agreement. Failure to obtain the required documents prior to the work beginning shall not waive CONTRACTOR'S obligation to provide them.

If any of the required coverages expire during the term of this Agreement, CONTRACTOR shall deliver the renewal certificate(s) including the general liability and auto liability additional insured endorsements to AUTHORITY at least ten (10) days prior to the expiration date.

In the event that CONTRACTOR employs subcontractors to perform any portion of the services to be performed pursuant to this Agreement, it shall be CONTRACTOR'S responsibility to require and confirm that each subcontractor meets the minimum insurance requirements specified in this Agreement.

7. AMENDMENTS. Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon written approval by the Manager of the AUTHORITY.
8. TERMINATION. If, during the term of this contract, AUTHORITY determines that CONTRACTOR is not faithfully abiding by any term or condition contained herein, AUTHORITY may notify CONTRACTOR in writing of such defect or failure to perform; which notice must give CONTRACTOR five (5) working days thereafter in which to perform said work or cure the deficiency. If CONTRACTOR has not performed the work or cured the deficiency within five (5) days specified in the notice, such shall constitute a breach of this contract and AUTHORITY may terminate this contract immediately by written notice to CONTRACTOR to said effect. Thereafter, neither party shall have any further duties, obligations, responsibilities, or rights under this Agreement, except, however, any and all indemnification, hold harmless and defense obligations of CONTRACTOR shall remain in full force and effect, and shall not be extinguished, reduced, or in any manner waived by the termination hereof. In said event, CONTRACTOR shall be entitled to the reasonable value of its services 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. AUTHORITY reserves the right to delay any such payment, to allow for a full and complete accounting of costs. In no event, however, shall CONTRACTOR be entitled to receive in excess of the compensation quoted in its bid.
9. STATUS OF CONTRACTOR. CONTRACTOR and its employee(s) are engaged in an independent contractor relationship with AUTHORITY in performing all work, duties and obligations hereunder. AUTHORITY shall not exercise any control or direction over the methods by which CONTRACTOR shall perform its work 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. CONTRACTOR represents that its employee(s) have the qualifications and skills necessary to perform the services under this Agreement in a competent, professional manner, without the advice or direction of AUTHORITY. CONTRACTOR will supply all tools, materials and equipment required to perform the services under this Agreement. The parties agree that no work, act, commission or omission of CONTRACTOR or its employee(s) pursuant to this Agreement shall be construed to make CONTRACTOR and its employee(s) the agent, employee or servant of AUTHORITY. CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR or its employee(s). To the maximum extent allowable by law, CONTRACTOR agrees to indemnify, defend and hold AUTHORITY harmless from any and all liability, damages or losses (including attorney's fees, costs, penalties and fines) AUTHORITY suffers as a result of (a) CONTRACTOR'S failure to meet its employer obligations, or (b) a third party's designation of CONTRACTOR or its employee as an employee of AUTHORITY, regardless of any actual or alleged negligence by AUTHORITY.

10. ASSIGNMENT. Neither this Agreement nor any duties or obligations under this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of AUTHORITY. AUTHORITY has entered into this Agreement in order to receive the professional services of CONTRACTOR. The provisions of this Agreement shall apply to any subcontractor of CONTRACTOR. AUTHORITY shall have the right to approve any subcontractor agreements, in addition to the written consent required by this section.
11. PROPRIETARY RIGHTS. Any written, printed, graphic, or electronically or magnetically recorded information furnished by AUTHORITY for CONTRACTOR'S use are the sole property of AUTHORITY. CONTRACTOR and its employee(s) will keep any information identified by AUTHORITY as confidential in the strictest confidence, and will not disclose it by any means to any person except with AUTHORITY approval, and only the extent necessary to perform the services under this Agreement. This prohibition also applies to CONTRACTOR'S employees, agents, and subcontractors. On termination of this Agreement, CONTRACTOR will promptly return any confidential information in its possession to AUTHORITY.
12. 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.
13. 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.
14. 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 request of either party, the Agreement shall forthwith be physically amended to make such insertion.

15. GOVERNING LAW. This Agreement and all questions relating 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.
16. JURISDICTION, FORUM AND VENUE. The proper jurisdiction, forum and venue for any claims, causes of action or other proceedings concerning this Agreement shall be in the state and federal courts located in the State of California, County of San Diego. AUTHORITY and CONTRACTOR agree not to bring any action or proceeding arising out of or relating 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 purposes of any legal action or proceeding to enforce this Agreement, whether on grounds of inconvenient forum or otherwise.
17. COMPLETE AGREEMENT. This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the complete agreement between the parties hereto. No oral agreement, understanding, or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding, or representation be binding upon the parties hereto.
18. AUDIT. AUTHORITY shall have the option of inspecting and/or auditing all records and other written materials used by CONTRACTOR in preparing its statements to AUTHORITY as a condition precedent to any payment to CONTRACTOR. This Agreement 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. CONTRACTOR shall cooperate with AUTHORITY, including any authorized representatives of AUTHORITY, regarding any such audit at no charge to AUTHORITY.
19. NOTICE. All written notices to the parties hereto shall be sent by United States mail, postage prepaid by registered, certified, or first class mail addressed as follows:

AUTHORITY

General Manager  
San Elijo Joint Powers Authority  
2695 Manchester Avenue  
Cardiff, CA 92007

CONTRACTOR

Olin Corporation, dba Olin Chlor  
Alkali Products  
26700 South Banta Road  
Tracy, CA 95304

Notices shall be deemed communicated as of the day of receipt or the fifth day after mailing, whichever occurs first.

20. PROTECTION OF EXISTING FACILITIES AND NON-INTERFERENCE WITH PLANT OPERATIONS. CONTRACTOR shall perform his duties in such a way that there will be no damage done to existing facilities and all facilities shall be left in the condition they were in prior to the beginning of the contract. CONTRACTOR will also perform all work in such a way that there is no interference with plant operations.
21. AUTHORITY TO EXECUTE AGREEMENT. AUTHORITY and CONTRACTOR do covenant that the individual executing this agreement on their behalf is a person duly authorized and empowered to execute this Agreement for such party.

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

SAN ELIJO JOINT POWERS AUTHORITY

By: \_\_\_\_\_  
Mark Muir, Chair of the Board

CONTRACTOR

By: \_\_\_\_\_ (Signature)  
Name: \_\_\_\_\_ (Print)  
Title: \_\_\_\_\_

## ATTACHMENT 3

### **AGREEMENT**

THIS AGREEMENT is made and entered into on this 9<sup>th</sup> day of June, 2014, by and between the San Elijo Joint Powers Authority, a municipal corporation, hereinafter referred to as AUTHORITY, and Ag Tech LLC, hereinafter referred to as CONTRACTOR.

### WITNESSETH:

WHEREAS, on April 15, 2014, AUTHORITY invited bids for the provision of Biosolids Hauling and Reuse (Disposal) per Specifications No. SE 2015-BH.

WHEREAS, pursuant to said invitation, CONTRACTOR submitted a bid which was accepted by AUTHORITY for said services.

NOW THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. TERM. The term of this Agreement shall be from the date this Agreement is made and entered, as first written above, until June 30, 2019. (Service shall be provided from July 1, 2014 to June 30, 2019).
2. INCORPORATION BY REFERENCE. The Notice Inviting Bids, the General Bid Terms and Conditions, the Special Bid Terms and Conditions, Bid Submission Form(s), and the Bid Specifications (collectively, the "Contract Documents"), are hereby incorporated in and made a part of this Agreement. In the event of any inconsistencies or conflicts in the Contract Documents, the order of precedence from highest to lowest shall be: Any amendments to this Agreement, this Agreement, the Bid Specifications, the Special Bid Terms and Conditions, the General Bid Terms and Conditions, the Notice Inviting Bids and the Bid Submission Form(s).
3. AUTHORITY'S OBLIGATIONS. For furnishing services or supplies as specified in the Agreement, AUTHORITY will pay and CONTRACTOR shall receive compensation for Biosolids Hauling and Reuse (Disposal) Services at the unit price of \$47.50 per wet ton for CONTRACTOR'S preferred reuse (disposal) site. The total amount of biosolids hauling and reuse (disposal) to be hauled and reused may be considerably less. In no case will total compensation exceed \$518,700.00, derived for hauling biosolids to the Contractor's preferred reuse (disposal) site. The unit cost and total cost shall include all delivery, tax and shipping charges.

Payments to the CONTRACTOR shall be made within forty-five (45) days after receipt of an original invoice from the CONTRACTOR and provision of said services to AUTHORITY. CONTRACTOR shall invoice no more frequently than monthly for services or supplies provided. 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 any cause of action arising out of the performance of this Agreement.

4. CONTRACTOR'S OBLIGATIONS. For and in consideration of the payments and agreements hereinbefore mentioned to be made and performed by AUTHORITY, CONTRACTOR agrees with AUTHORITY to furnish the said services and to do everything required by this Agreement and the said specifications. Without limiting the generality of the foregoing, CONTRACTOR warrants on behalf of itself and all

subcontractors engaged for the performance of this Agreement that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder. In performing services under this Agreement, CONTRACTOR agrees to comply with all laws, rules and regulations and ordinances, whether federal, state or local, and any and all AUTHORITY policies, procedures, departmental rules or other directives applicable to the services to be performed by provided by AUTHORITY'S General Manager or his designee, to CONTRACTOR. Any changes to AUTHORITY'S policies and procedures that relate to CONTRACTOR will be provided to CONTRACTOR in writing. CONTRACTOR agrees to review such policies, procedures, rules and directives and the contents of which CONTRACTOR will be deemed to have knowledge. CONTRACTOR shall ensure that any report generated under this Agreement complies with California Government Code section 7550.

5. HOLD HARMLESS AND INDEMNIFICATION. CONTRACTOR agrees to defend, indemnify, and hold harmless AUTHORITY, its member agencies (to include the City of Encinitas and the City of Solana Beach), and each of their respective directors, officials, officers, employees, representatives, and agents (collectively, "Indemnified Parties"), from and against all claims, lawsuits, liabilities or damages, including attorney's fees and costs, of whatsoever nature arising out of or in connection with, or relating in any manner to any act or omission of CONTRACTOR, its agents, employees, and subcontractors of any tier and employees thereof in connection with the performance or non-performance of this Agreement. The CONTRACTOR shall thoroughly investigate any and all claims and indemnify the Indemnified Parties and do whatever is necessary to protect the Indemnified Parties as to any such claims lawsuits, liabilities, expenses, or damages.

CONTRACTOR shall not add to the AUTHORITY biosolids hauled, reused, disposed, or in any other way handled by the CONTRACTOR, any material considered hazardous, or which created byproducts or residues considered to be hazardous under Federal, California or other states' laws.

In the event CONTRACTOR adds any material to the biosolids that cause the biosolids to be hazardous, CONTRACTOR will be responsible for all costs incurred to properly treat and dispose of the biosolids. Costs shall include any defense, remediation, and any damages incurred due to improper disposal and/or handling of biosolids. In the event any hazardous biosolids are disposed of by CONTRACTOR under the AGREEMENT, CONTRACTOR shall promptly notify the AUTHORITY of the nature of the biosolids and the proposed method of disposal.

6. INSURANCE. During the course of the Agreement, CONTRACTOR shall pay for and maintain, in full force and effect, all insurance required by any governmental agency having jurisdiction to require particular insurance of CONTRACTOR in connection with or related to the work covered hereby. CONTRACTOR SHALL FURTHER TAKE OUT AND SHALL FURNISH SATISFACTORY PROOF BY CERTIFICATE OR OTHERWISE AS MAY BE REQUIRED, THAT HE HAS TAKEN OUT COMPREHENSIVE GENERAL LIABILITY INSURANCE AND AUTO LIABILITY WITH AUTHORITY, ITS MEMBER AGENCIES (TO INCLUDE THE CITY OF ENCINITAS AND THE CITY OF SOLANA BEACH), AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS ("INSURED PARTIES") NAMED HEREIN AS ADDITIONAL INSUREDS, AS WELL AS ALL OTHER COVERAGE REQUIRED BY THIS AGREEMENT. Insurance carrier shall be satisfactory to

AUTHORITY, and insurance shall be purchased from insurance companies with a current A.M. Best rating of no less than A:VII, unless otherwise agreed in writing by AUTHORITY. Insurance shall be in such form approved by AUTHORITY so as to protect all Insured Parties against loss from liability assumed by contract or imposed by law from 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, pollution and environmental impairment resulting directly or indirectly from the negligent performance or execution of this Agreement by CONTRACTOR or any subcontract with CONTRACTOR thereunder, and also to protect all Insured Parties against loss from liability imposed by law for damage to any property, caused directly or indirectly by the negligent performance or execution of the Agreement by CONTRACTOR; which insurance shall also cover accidents arising out of the use and operation of owned, non-owned and hired automobiles, trucks, and/or other mobile equipment. Automobile liability shall be at least as broad as form number CA 0001, covering code 1 (any auto), covering bodily injury and property damage, with a combined single limit of no less than \$1,000,000 per claim for bodily injury and property damage. General liability shall be at least as broad as occurrence form CG 0001, covering bodily injury, personal injury and property damage. Pollution legal liability insurance to cover third party liability for pollution incidents and environmental impairment liability insurance shall be in a form acceptable to AUTHORITY. The amounts of coverage of said insurance shall not be less than the following:

Public Liability	\$1,000,000 single limit/\$3,000,000 aggregate
Property Damage	\$1,000,000 single limit/\$3,000,000 aggregate
Pollution Legal Liability	\$1,000,000 single limit/\$3,000,000 aggregate
Environmental Impairment Liability	\$1,000,000 single limit/\$3,000,000 annual aggregate

CONTRACTOR shall further maintain adequate Worker's 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 \$1,000,000 per claim for bodily injury or disease, and shall require similar insurance to be provided by its subcontractors. A certificate shall be furnished to AUTHORITY showing compliance with above.

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, and a certificate of such insurance shall be furnished to AUTHORITY by direct mail from CONTRACTOR'S insurance carrier and shall specifically cover any contractual liability incurred hereunder.

All insurance policies shall be on an occurrence basis and cover the period of performance under this Agreement.

The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties.

CONTRACTOR'S Insurance shall be primary insurance as respects the Insured Parties, and each of them. Any insurance, self-insurance or other coverage maintained by Insured Parties shall be excess of the CONTRACTOR'S insurance and not contribute to it.



CONTRACTOR hereby agrees to waive rights of subrogation which any insurer of CONTRACTOR may acquire from CONTRACTOR by virtue of the payment of any loss. CONTRACTOR agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the Insured Parties for all work performed by the CONTRACTOR, its employees, agents and subcontractors.

Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to Insured Parties.

CONTRACTOR'S insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of insurer's liability.

All insurance policies shall specifically cover any contractual liability incurred pursuant to this Agreement.

Any deductibles or self-insured retention limits must be disclosed to and approved by AUTHORITY prior to execution of this Agreement. At the option of AUTHORITY, either: the insurer shall reduce or eliminate such deductibles as respects the Insured Parties; or CONTRACTOR shall provide a financial guarantee satisfactory to AUTHORITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

CONTRACTOR shall furnish to AUTHORITY certificates of insurance prior to the commencement of work under this Agreement, and as may be periodically requested by AUTHORITY. CONTRACTOR shall include all endorsements necessary to comply with this Agreement, including additional insured endorsements, signed by the insurer's representative. Such evidence shall include confirmation that coverage includes or has been modified to include all provisions required by this Agreement. CONTRACTOR shall, upon request of AUTHORITY at any time, deliver to AUTHORITY complete, certified copies of the policies of insurance, including endorsements, and receipts for payment or premiums thereon, required by this Agreement. Failure to obtain the required documents prior to the work beginning shall not waive CONTRACTOR'S obligation to provide them.

If any of the required coverages expire during the term of this Agreement, CONTRACTOR shall deliver the renewal certificate(s) including the general liability and auto liability additional insured endorsements to AUTHORITY at least ten (10) days prior to the expiration date.

In the event that CONTRACTOR employs subcontractors to perform any portion of the services to be performed pursuant to this Agreement, it shall be CONTRACTOR'S responsibility to require and confirm that each subcontractor meets the minimum insurance requirements specified in this Agreement.

7. AMENDMENTS. Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon written approval by the Manager of the AUTHORITY.

8. TERMINATION. If, during the term of this contract, AUTHORITY determines that CONTRACTOR is not faithfully abiding by any term or condition contained herein, AUTHORITY may notify CONTRACTOR in writing of such defect or failure to perform; which notice must give CONTRACTOR five (5) working days thereafter in which to perform said work or cure the deficiency. If CONTRACTOR has not performed the work or cured the deficiency within five (5) days specified in the notice, such shall constitute a breach of this contract and AUTHORITY may terminate this contract immediately by written notice to CONTRACTOR to said effect. Thereafter, neither party shall have any further duties, obligations, responsibilities, or rights under this Agreement, except, however, any and all indemnification, hold harmless and defense obligations of CONTRACTOR shall remain in full force and effect, and shall not be extinguished, reduced, or in any manner waived by the termination hereof. In said event, CONTRACTOR shall be entitled to the reasonable value of its services 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. AUTHORITY reserves the right to delay any such payment, to allow for a full and complete accounting of costs. In no event, however, shall CONTRACTOR be entitled to receive in excess of the compensation quoted in its bid.
9. STATUS OF CONTRACTOR. CONTRACTOR and its employee(s) are engaged in an independent contractor relationship with AUTHORITY in performing all work, duties and obligations hereunder. AUTHORITY shall not exercise any control or direction over the methods by which CONTRACTOR shall perform its work 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. CONTRACTOR represents that its employee(s) have the qualifications and skills necessary to perform the services under this Agreement in a competent, professional manner, without the advice or direction of AUTHORITY. CONTRACTOR will supply all tools, materials and equipment required to perform the services under this Agreement. The parties agree that no work, act, commission or omission of CONTRACTOR or its employee(s) pursuant to this Agreement shall be construed to make CONTRACTOR and its employee(s) the agent, employee or servant of AUTHORITY. CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR or its employee(s). To the maximum extent allowable by law, CONTRACTOR agrees to indemnify, defend and hold AUTHORITY harmless from any and all liability, damages or losses (including attorney's fees, costs, penalties and fines) AUTHORITY suffers as a result of (a) CONTRACTOR'S failure to meet its employer obligations, or (b) a third party's designation of CONTRACTOR or its employee as an employee of AUTHORITY, regardless of any actual or alleged negligence by AUTHORITY.
10. ASSIGNMENT. Neither this Agreement nor any duties or obligations under this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of AUTHORITY. AUTHORITY has entered into this Agreement in order to receive the professional services of CONTRACTOR. The provisions of this Agreement shall apply to any subcontractor of CONTRACTOR. AUTHORITY shall have the right to

approve any subcontractor agreements, in addition to the written consent required by this section.

11. PROPRIETARY RIGHTS. Any written, printed, graphic, or electronically or magnetically recorded information furnished by AUTHORITY for CONTRACTOR'S use are the sole property of AUTHORITY. CONTRACTOR and its employee(s) will keep any information identified by AUTHORITY as confidential in the strictest confidence, and will not disclose it by any means to any person except with AUTHORITY approval, and only the extent necessary to perform the services under this Agreement. This prohibition also applies to CONTRACTOR'S employees, agents, and subcontractors. On termination of this Agreement, CONTRACTOR will promptly return any confidential information in its possession to AUTHORITY.
12. 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.
13. 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.
14. 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 request of either party, the Agreement shall forthwith be physically amended to make such insertion.
15. GOVERNING LAW. This Agreement and all questions relating 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.
16. JURISDICTION, FORUM AND VENUE. The proper jurisdiction, forum and venue for any claims, causes of action or other proceedings concerning this Agreement shall be in the state and federal courts located in the State of California, County of San Diego. AUTHORITY and CONTRACTOR agree not to bring any action or proceeding arising out of or relating 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 purposes of any legal action or proceeding to enforce this Agreement, whether on grounds of inconvenient forum or otherwise.
17. COMPLETE AGREEMENT. This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the complete agreement between the parties hereto. No oral agreement, understanding, or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any

such oral agreement, understanding, or representation be binding upon the parties hereto.

18. AUDIT. AUTHORITY shall have the option of inspecting and/or auditing all records and other written materials used by CONTRACTOR in preparing its statements to AUTHORITY as a condition precedent to any payment to CONTRACTOR. This Agreement 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. CONTRACTOR shall cooperate with AUTHORITY, including any authorized representatives of AUTHORITY, regarding any such audit at no charge to AUTHORITY.
19. NOTICE. All written notices to the parties hereto shall be sent by United States mail, postage prepaid by registered, certified, or first class mail addressed as follows:

AUTHORITY

General Manager  
San Elijo Joint Powers Authority  
2695 Manchester Avenue  
Cardiff, CA 92007

CONTRACTOR

Ag Tech LLC  
P.O. Box 2854  
Yuma, AZ 85.66

Notices shall be deemed communicated as of the day of receipt or the fifth day after mailing, whichever occurs first.

20. PROTECTION OF EXISTING FACILITIES AND NON-INTERFERENCE WITH PLANT OPERATIONS. CONTRACTOR shall perform his duties in such a way that there will be no damage done to existing facilities and all facilities shall be left in the condition they were in prior to the beginning of the contract. CONTRACTOR will also perform all work in such a way that there is no interference with plant operations.
21. AUTHORITY TO EXECUTE AGREEMENT. AUTHORITY and CONTRACTOR do covenant that the individual executing this agreement on their behalf is a person duly authorized and empowered to execute this Agreement for such party.

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

SAN ELIJO JOINT POWERS AUTHORITY

By: \_\_\_\_\_  
Mark Muir, Chair of the Board

CONTRACTOR

By: \_\_\_\_\_ (Signature)  
Name: \_\_\_\_\_ (Print)  
Title: \_\_\_\_\_

SAN ELIJO JOINT POWERS AUTHORITY  
MEMORANDUM

June 9, 2014

TO: Board of Directors  
San Elijo Joint Powers Authority

FROM: Director of Finance/Administration

SUBJECT: ADOPTION OF THE SAN ELIJO JOINT POWERS AUTHORITY FISCAL YEAR  
2014-2015 BUDGET, INVESTMENT POLICY, AND APPOINTMENT OF  
SEJPA TREASURER

RECOMMENDATION

It is recommended that the Board of Directors:

1. Adopt Resolution No. 2014-03, Resolution Approving the San Elijo Joint Powers Authority Operating and Capital Improvement Budgets for Fiscal Year 2014-2015;
2. Adopt Resolution No. 2014-04, Resolution Approving the San Elijo Joint Powers Authority Investment Policy and Guidelines and Appointment of SEJPA Treasurer; and
3. Discuss and take action as appropriate.

DISCUSSION

The Fiscal Year (FY) 2014-2015 Recommended Budget was presented publicly to the Board of Directors at the April and May 2014 Board meetings for discussion, comments, and direction. SEJPA staff has reached out to both Member Agencies and the other participating government agencies that the SEJPA serves for comments on the Proposed FY 2014-2015 Budget. In addition, the SEJPA has posted the budget on its website for public access. As of today, the SEJPA has received no comments or requested changes. Based on this, the recommended Fiscal Year 2014-2015 Budget is being presented to the Board of Directors for adoption under Resolution No. 2014-03.

The total recommended Fiscal Year (FY) 2014-2015 budget for the Wastewater Treatment Fund (which includes operations and maintenance for wastewater, laboratory, outfall, and pump stations, as well as bond debt for the 2011 SEJPA Revenue Bonds) is \$5,688,907. The total recommended FY 2014-2015 operating budget for the Water Reclamation Fund (which includes operations and maintenance, as well as debt service expenses) is \$2,111,282. The FY 2014-2015 appropriation for the Capital Project Fund is \$1,257,000.

SEJPA management has reviewed in detail all aspects of operations, including debt refinancing to control costs without impacting the agency's ability to perform its vital functions. The

proposed budget for all operating programs will increase by approximately \$134,107. The Wastewater Program has the largest single impact with an increase of \$95,129 due to the increase in electrical costs of \$27,934 or an estimated increase of 5.2% over the prior year's estimate. The Recycled Water Program had the second largest impact of \$75,171 or 3.7%, which will be offset by the additional recycled water sales. Ocean Outfall decreased \$52,188 as a result of the completion of the intensive monitoring program. All other programs averaged an increase of 1.4 percent.

The recommended FY 2014-2015 Budget is now ready for consideration for adoption as presented in the attached Resolution No. 2014-03.

### INVESTMENT POLICY

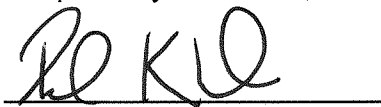
State law requires that the Investment Policy be reviewed and adopted annually. The SEJPA has evaluated alternative investment options including the California Asset Management Program ("CAMP") and no changes are recommended. The SEJPA investment policy allows for investment in the State Local Agency Investment Fund (LAIF) and in the San Diego County Investment Pool. These two tools have been the basis of all investment activity since the SEJPA became independent from the County of San Diego.

In addition, State law requires that a SEJPA Treasurer be appointed annually. The current SEJPA Treasurer is the Director of Operations, Christopher Trees. It is proposed that Paul F. Kinkel, Director of Finance/Administration, be appointed as the SEJPA Treasurer for FY 2014-2015.

It is therefore recommended that the Board of Directors:

1. Adopt Resolution No. 2014-03, Resolution Approving the San Elijo Joint Powers Authority Operating and Capital Improvement Budgets for Fiscal Year 2014-2015;
2. Adopt Resolution No. 2014-04, Resolution Approving the San Elijo Joint Powers Authority Investment Policy and Guidelines and Appointment of SEJPA Treasurer; and
3. Discuss and take action as appropriate.

Respectfully submitted,



Paul F. Kinkel  
Director of Finance/Administration

Attachment 1: Resolution No. 2014-03, "Resolution Approving the San Elijo Joint Powers Authority Operating and Capital Improvement Budgets for Fiscal Year 2014-15"

Attachment 2: Resolution No. 2014-04, "Resolution Approving the San Elijo Joint Powers Authority Investment Policy and Guidelines and Appointment of SEJPA Treasurer"

ATTACHMENT 1

**RESOLUTION NO. 2014-03**

**RESOLUTION APPROVING THE SAN ELIJO JOINT POWERS AUTHORITY  
OPERATING AND CAPITAL IMPROVEMENT BUDGETS  
FOR FISCAL YEAR 2014-2015**

WHEREAS, the San Elijo Joint Powers Authority (SEJPA) General Manager has submitted for the consideration of the SEJPA Board of Directors proposed SEJPA Operating and Capital Projects Budgets for Fiscal Year 2014-2015;

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SAN ELIJO JOINT POWERS AUTHORITY HEREBY RESOLVES AS FOLLOWS:

1. The Board of Directors has reviewed the proposed Operating Budgets and Capital Projects Budget and the funds included herein for the period of July 1, 2014 through June 30, 2015 and hereby finds that such budgets, as reviewed, are sound plans for the financing of required SEJPA operations and capital improvements during Fiscal Year 2014-2015. Such budgets are hereby adopted.

San Elijo Operations and Maintenance Fund	\$ 5,688,907
San Elijo Water Reclamation Operating Fund	2,111,282
San Elijo Capital Projects Fund	<u>1,257,000</u>
Total	\$9,057,189

2. The Board of Directors authorizes carrying forward unexpended capital project appropriations and encumbered operating funds for the Fiscal Year 2014-2015.

PASSED AND ADOPTED this 9<sup>th</sup> day of June, 2014, by the following vote:

AYES: Boardmembers:

NOES: Boardmembers:

ABSENT: Boardmembers:

ABSTAIN: Boardmembers:

---

Mark Muir, Chairperson  
SEJPA Board of Directors

ATTEST:

---

Michael T. Thornton, P.E.  
Secretary of the Board



ATTACHMENT 2

**RESOLUTION NO. 2014-04**

**RESOLUTION APPROVING THE SAN ELIJO JOINT POWERS AUTHORITY  
INVESTMENT POLICY AND GUIDELINES AND  
APPOINTMENT OF SEJPA TREASURER**

WHEREAS, the San Elijo Joint Powers Authority (SEJPA) General Manager has submitted for the consideration of the SEJPA Board of Directors, the proposed SEJPA Investment Policy and Guidelines;

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SAN ELIJO JOINT POWERS AUTHORITY HEREBY RESOLVES AS FOLLOWS:

1. The SEJPA Treasurer prepared an Investment Policy and Guidelines in 1996, attached hereto as Exhibit A, and incorporated herein by reference as if set forth in full. In order to comply with prudent financial management practices, these guidelines are reviewed and approved on an annual basis in conjunction with the annual budget adoption.
2. The policy is intended to provide guidelines for the prudent investment of the SEJPA's temporary idle cash and outline the policies for maximizing the efficiency of the SEJPA's cash management system.
3. The investment goal is to enhance the economic condition of the SEJPA while insuring the safety of funds invested.
4. The assignment of Paul F. Kinkel as SEJPA Treasurer for the 2014-2015 fiscal year.
5. The Board of Directors of the San Elijo Joint Powers Authority does hereby approve the Investment Policy and Guidelines attached hereto as Exhibit A.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the San Elijo Joint Powers Authority, California, held on this 9th day of June, 2014 by the following vote:

AYES: Boardmembers:

NOES: Boardmembers:

ABSENT: Boardmembers:

ABSTAIN: Boardmembers:

---

Mark Muir, Chairperson  
SEJPA Board of Directors

ATTEST:

---

Michael T. Thornton, P.E.  
Secretary of the Board

**EXHIBIT A  
TO  
RESOLUTION NO. 2014-04**

**SAN ELIJO JOINT POWERS AUTHORITY  
INVESTMENT POLICY AND GUIDELINES AND  
APPOINTMENT OF SEJPA TREASURER**

1. PURPOSE

This Statement is intended to provide guidelines for the prudent investment of the San Elijo Joint Powers Authority's (SEJPA) temporary idle cash, and outline the policies for maximizing the efficiency of the SEJPA's cash management system. The investment goal is to enhance the economic condition of the SEJPA while insuring the safety of funds invested.

2. OBJECTIVE

The SEJPA's cash management system is designed to accurately monitor and forecast expenditures and revenues, thus enabling the SEJPA to invest funds to the fullest extent possible. The SEJPA attempts to obtain the highest yield on its investments consistent with the criteria established for safety and liquidity.

3. POLICY

The SEJPA Treasurer is responsible for investing the surplus funds in the SEJPA Treasury in accordance with the California Government Code, Sections 53600 et seq. and 53635 et seq. The SEJPA makes investments in accordance with California Government Code 53600.3, which states "all governing bodies of local agencies or persons authorized to make investment decisions on behalf of those local agencies investing public funds pursuant to this chapter are trustees and therefore fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law."

The three principal factors of safety, liquidity and yield are to be taken into consideration when making investment decisions.

- A) Safety. Safety and the minimizing of risk associated with investing refer to attempts to reduce the potential for loss of principal, interest or a combination of the two. The SEJPA invests only in those instruments that are considered very safe.
- B) Liquidity. Liquidity refers to the ability to convert an investment to cash promptly with a minimum risk of losing some portion of principal or interest. A portion of the portfolio should be maintained in liquid short-term securities which can be converted to cash if necessary to meet disbursement requirements.

- C) Yield. Yield is the average annual return on an investment based on the interest rate, price, and length of time to maturity. The SEJPA attempts to obtain the highest yield possible, provided that the basic criteria of safety and liquidity have been met.

#### 4. INVESTMENT INSTRUMENTS

The SEJPA may invest in the following instruments under the guidelines as provided herein:

- A) Local Agency Investment Fund (LAIF). Investment of funds in the California LAIF which allows the State Treasurer to invest through the Pooled Money Investment Account. Maximum investment is subject to state regulation.
- B) County of San Diego County Treasury. Investment of funds in the Treasury of the County of San Diego that allows the County Treasurer to invest through the Pooled Money Investment Account.

#### 5. SAFEKEEPING

All investments of the SEJPA shall have the San Elijo Joint Powers Authority as registered owner or shall be kept in the custody of the SEJPA or by a qualified safekeeping institution.

#### 6. INVESTMENT REPORTS

- A) The SEJPA Treasurer shall submit a monthly investment report to the SEJPA General Manager and SEJPA Board of Directors containing the following information:
- Financial institution
  - Type of investment
  - Amount of deposit
  - Rate of interest
- B) The SEJPA Treasurer shall annually render a Statement of Investment Policy to the SEJPA Board of Directors.

#### 7. INVESTMENT OF BOND FUNDS

In accordance with Government Code Section 53601, moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds . . . may be invested in accordance with the statutory provisions governing the issuance of those bonds, in accordance with the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance as identified in an "Indenture of Trust".

\* \* \* End of Policy \* \* \*

SAN ELIJO JOINT POWERS AUTHORITY  
MEMORANDUM

June 9, 2014

TO: Board of Directors  
San Elijo Joint Powers Authority

FROM: General Manager

SUBJECT: CONSIDERATION OF PROVIDING WASTEWATER TREATMENT SERVICE TO THE CITY OF DEL MAR

RECOMMENDATION

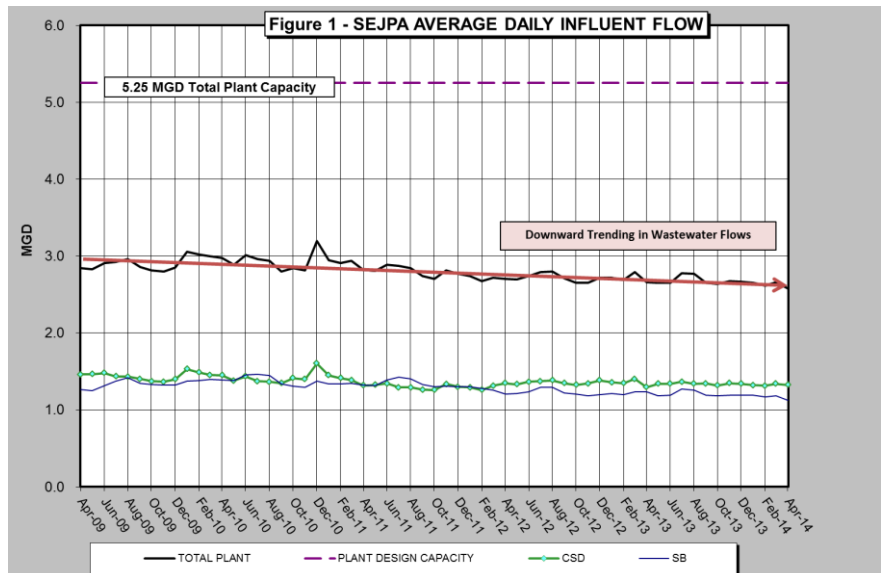
It is recommended that the Board of Directors:

1. Authorize the General Manager to enter into agreement with the City of Del Mar for providing wastewater treatment services, contingent upon the City of Solana Beach and the City of Del Mar entering into agreement for wastewater conveyance; and
2. Discuss and take action as appropriate.

BACKGROUND

The San Elijo Joint Powers Authority (SEJPA) owns and operates the San Elijo Water Reclamation Facility (San Elijo WRF). In 1992, the San Elijo WRF was upgraded and expanded to treat 5.25 million gallons per day (MGD), which was the forecast treatment needed for the service area by year 2020. However, these flow projections did not materialize. Last year, the facility received an average daily flow of approximately 2.8 MGD, which is slightly less than the average flow in the year 1990. As shown in Figure 1, the average daily flow for the last five years is in a modest downward trend.

The reasons for the lower wastewater flows appear to be: (1) low-flow shower heads, toilets, washing machines, and other conservation efforts have reduced the amount of indoor water use; (2) that the member agencies of the SEJPA have actively pursued



the reduction of rainwater inflow and infiltration into the sewer system; and (3) that the number of new homes and businesses being connected to the sewer system each year are relatively few. The net result is that water conservation efforts and sewer system maintenance have more than offset the increase of flows from new homes and businesses over the last twenty years. This is a significant accomplishment and the unused capacity creates an opportunity to provide service to other areas.

## DISCUSSION

In 2013, Del Mar approached the SEJPA to discuss the possibility of leasing unused wastewater treatment at the San Elijo WRF. The proposal was to send approximately 0.5 MGD of Del Mar's wastewater flow to the San Elijo WRF. The wastewater would be sent through the sewer system of Solana Beach to the San Elijo WRF. This would produce conveyance system cost savings for Solana Beach and Del Mar, and maximize the use of existing sewage conveyance infrastructure. The proposal also included safe guards for not overloading the existing facilities by having an allowance for sending peak flows from Del Mar to the San Diego Metro Wastewater Joint Powers Authority (Metro JPA). Metro JPA is Del Mar's current wastewater service provider.

Staff presented this proposal to the SEJPA Board of Directors at the May 2014 Board meeting for discussion and consideration. Since that meeting, staff has finalized the proposed agreement between the SEJPA and Del Mar (Attachment 1). The agreement is now ready for approval consideration. Del Mar City Council reviewed this agreement at their meeting on June 2, 2014 and passed a Resolution directing the City Manager to execute the agreement.

The agreement provides 0.6 MGD of wastewater treatment capacity on a leased basis for a 30-year term, with an optional second 30-year term. Treatment costs charged by the SEJPA to Del Mar will be based on actual flows received. Future capital costs incurred at the San Elijo WRF will be cost shared with Del Mar based on their leased capacity percentage of total capacity, which is approximately 11.4%. The agreement is contingent on Del Mar and Solana Beach agreeing to terms for wastewater conveyance. An agreement for conveyance between the parties has been drafted.

## FINANCIAL IMPACT

The financial impact of the proposed agreement results in cost savings through greater economies of scale in treatment costs and improved utilization of fixed assets. Estimated savings are on the order of \$300,000 per year to the SEJPA. These savings are net of all additional costs associated with treatment and the \$60,000 annual capital incentive credit to Del Mar for the construction of the necessary connecting infrastructure. Cost savings to the SEJPA created by this agreement will be shared by the governmental organizations served by the SEJPA based on the Agreements in place. Staff estimates that future annual savings should maintain at this level or slightly increase in future years.

It is recommended that the Board of Directors:

1. Authorize the General Manager to enter into agreement with the City of Del Mar for providing wastewater treatment services, contingent upon the City of Solana Beach and the City of Del Mar entering into agreement for wastewater conveyance; and
2. Discuss and take action as appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Thornton", written over a horizontal line.

Michael T. Thornton, P.E.  
General Manager

Attachment 1: Lease Agreement between the San Elijo Joint Powers Authority and City of Del Mar

LEASE AGREEMENT BETWEEN  
THE SAN ELIJO JOINT POWERS AUTHORITY  
AND CITY OF DEL MAR

WHEREAS, the City of Del Mar (herein "Del Mar") desires to lease wastewater treatment capacity in the San Elijo Water Reclamation Facility and the San Elijo Ocean Outfall, in part to increase the availability of recycled water to Del Mar and the region; and

WHEREAS, the San Elijo Joint Powers Authority ("SEJPA"), whose members are the Cities of Encinitas and Solana Beach, successors to the Cardiff and Solana Beach Sanitary Districts, respectively, under the June 25, 2008 "Restatement of Agreement Between Cardiff Sanitation District and Solana Beach Sanitation District Establishing the San Elijo Joint Powers Authority" ("Restatement"), desires to lease such capacity and make available for sale increased quantities of recycled water; and

WHEREAS, the parties agree that it is fair and reasonable for Del Mar to reimburse SEJPA for its fair share of the costs and risks of maintaining and operating the facilities necessary to make such capacity available, as described in the fee formula set forth in this Agreement; and

WHEREAS, the parties agree that Del Mar will be required to expend significant capital contributions in order to connect to and be a part of the SEJPA;

NOW THEREFORE the parties hereto agree as follows:

**1. Purpose and Intent.**

The foregoing recitals are true and correct, and it is the purpose and intent of this lease Agreement to establish a lease of capacity for a period of 30 years through June 30, 2045.

**2. Lease of Capacity to Del Mar.**

Effective July 1, 2014, the SEJPA hereby leases to Del Mar the right to utilize treatment capacity in the San Elijo Water Reclamation Facility and San Elijo Ocean Outfall on the terms and conditions set forth herein. The treatment capacity leased is only a part of the “Joint System” as defined in the Restatement as the San Elijo Water Reclamation Facility (attached as Exhibit A), consisting of the land, the wastewater treatment plant, the Escondido Regulator Structure and the San Elijo Ocean Outfall, as well as the Recycled Water and Advanced Water Treatment Facilities, the Oak Crest and Lomas Santa Fe Reservoirs, Lomas Santa Fe Booster Pump Station and the associated recycled water distribution systems, and includes all other facilities, improvements, land and other works acquired, installed, operated, or maintained by SEJPA. Del Mar has no rights in any portion of the Joint System except as expressly provided herein. Del Mar agrees that upon delivery of wastewater to SEJPA for treatment, reuse, and disposal under this agreement, SEJPA shall have the sole right in the water (as defined within the meaning of Water Code section 1210), biosolids, biogas, and other recycled or extracted byproducts from the wastewater (collectively “Byproducts”). In no event shall the use, control or resale of the Byproducts by SEJPA require any additional compensation, levy, tax or fee from Del Mar without the express written approval of Del Mar in its sole and absolute discretion. SEJPA shall provide recycled water to the City of Del Mar per the terms of the Agreement for Sale of Reclaimed Water to the City of Del Mar by the San Elijo Joint Powers Authority (Exhibit E), or superseding agreements.



**3. Treatment Capacity.**

The wastewater treatment capacity leased to Del Mar hereunder is 0.60 million gallons per day (mgd) average daily flow, as measured on an annual basis. Under this agreement, the maximum permitted flow from Del Mar from May 1 through September 30 shall not exceed a 30-day rolling average of 1.00 million gallons per day. The maximum permitted flow from Del Mar between October 1 through April 30 shall not exceed a 30-day rolling average of 0.60 million gallons per day. The maximum instantaneous flow permitted shall be 75,000 gallons per hour, and shall occur for a length of time not to exceed 90 minutes in any 24 hour period. The pumps at the Del Mar 21<sup>st</sup> Street Pump Station shall be equipped with variable frequency drive units and best efforts shall be made to operate the pump stations with the fewest possible start/stops of the pumps to produce a smooth and even pumped flow. During periods of high flow or during maintenance and construction work, SEJPA shall have the authority to direct Del Mar to divert flow to the San Diego Metro Wastewater System. Under such a circumstance Del Mar shall not be penalized by a reduction in credits. The maximum instantaneous flow may be adjusted for operational or economic benefit to all parties through the approval of the SEJPA General Manager. Such an adjustment will not affect the average daily flow calculation. Additional capacity allowance may be provided to Del Mar in the future by one or both SEJPA member agencies or following the re-rating of the treatment capacity of the San Elijo Water Reclamation Facility. Approval of additional capacity shall be completed through an administrative amendment of this agreement. Approval of additional capacity by SEJPA shall not be unreasonably withheld. Costs associated with the provision of additional capacity to Del Mar shall be borne by Del Mar.

**4. Term of Lease.**

The term of this lease shall be 30 years, to expire on June 30, 2045. After the Initial Term, the Parties may mutually elect to extend the term of the Lease Agreement for a subsequent thirty (30)-year term (“First Optional Extension”) provided that both parties provide at least 90 days written notice before expiration of the Initial Term.

**5. Credit to Del Mar.**

In recognition of the mutual benefits to SEJPA and Del Mar, the parties agree to provide a Capital Investment Credit to Del Mar to be applied against Del Mar's financial obligations under this agreement for the capital cost of the pipeline connection to the City of Solana Beach, as set forth on Exhibit B attached hereto and incorporated herein by this reference. The credit shall be available until 66.6% of the pipeline capital costs are recovered. SEJPA agrees to provide the credit to Del Mar in an amount not to exceed \$60,000 per year. (Exhibit D – Engineer’s Opinion of Project Cost). Exhibit D shall be updated with actual costs upon the completion of the project.

**6. Lease payments.**

Lease payments shall be made by Del Mar as set forth on Exhibit C attached hereto and incorporated herein by this reference. The actual lease payment due at any time shall be computed using the formulas set forth on said exhibit which shall include all of Del Mar's costs for its portion of such plant upgrading, expansion, administrative management, operation and maintenance of the facility, and such other costs as may be incurred in the future to handle Del Mar's wastewater at the facility. All such costs shall be allocated to Del Mar based on the formula set forth in Exhibit C.

**7. Capacity to be Supplied Equally by Two Districts.**

The capacity provided under this lease Agreement shall be drawn equally from the capacity rights of the Cities of Encinitas and Solana Beach under the Restatement, except as otherwise provided by amendment per section 3, above.

**8. Quality of Del Mar Effluent.**

This lease Agreement entitles Del Mar to deliver wastewater to the treatment plant, that conforms to the standards reasonably imposed from time to time by SEJPA, including the provisions of any industrial waste discharge ordinance, regarding the quality and method of delivery of wastewater imposed upon users of its treatment and or systems (collectively “Effluent Standard”). Del Mar shall not transmit any wastewater which does not meet such standards in place at the time this Agreement is executed. Del Mar shall have 180 days to comply with any updated, amended or revised Effluent Standard reasonably imposed by the SEJPA . Such Effluent Standard shall be generally applicable to all wastewater received by the San Elijo Water Reclamation Facility and shall not be imposed solely on the City of Del Mar. In addition, Del Mar shall be responsible for complying with the terms and conditions of the NPDES and waste discharge permits issued to SEJPA, as amended from time to time and shall prohibit users of every kind and nature from discharging any sewage, wastewater, industrial waste, or storm water which would be detrimental to the Joint Facilities or any part thereof.

**9. Meter to be Maintained by Del Mar.**

Del Mar shall install and maintain, at its expense, a meter to measure the flow of its effluent to the Facility. Both Del Mar and SEJPA shall maintain the right to receive direct readouts from the meter. The meter shall be calibrated on an annual basis. Written certification of the meter calibration shall be provided to SEJPA within thirty (30) days of calibration.

**10. Assignment; Subleasing; Sale.**

A. Assignment; Subleasing.

Del Mar may not assign its rights, or any of them, under this Agreement without the prior written approval of SEJPA. Del Mar may not enter into any sublease, nor may it sell, hypothecate, loan, or otherwise transfer any of its rights under this Agreement to another entity without the prior written approval of the SEJPA.

B. Sale.

Del Mar may sell its capacity rights, or a portion thereof, to another party at the same price that Del Mar pays SEJPA, including future capital contributions by Del Mar, provided that Del Mar first obtains the written consent of the SEJPA, which shall not be unreasonably withheld, subject to a right of first refusal in the SEJPA members and any other conditions as may be required to correct or cure any then-existing violations of this Agreement.

**11. Penalty for Exceeding Capacity.**

In the event, for any reason, the flow from Del Mar should at any time exceed the capacity limits set forth herein without prior approval of the General Manager of SEJPA, Del Mar shall pay increased lease payments in the following amounts until the capacity overage is remedied. Upon receipt of notice from the SEJPA that a capacity overage has occurred, Del Mar shall have three months to develop a plan for remedying the overage, which plan shall be transmitted to the SEJPA in writing. Del Mar shall have an additional three months to implement the plan and correct the overage. The SEJPA may grant additional extension, in its discretion, in one month increments not to exceed a one year total. Penalty for exceeding lease capacity during the first six months following violation notice of capacity rights, Del Mar shall pay lease

payments 1.25 times the normal payments set forth above. Penalty for exceeding lease capacity during the second six months following violation notice of capacity rights, Del Mar shall pay lease payments 1.50 times the normal payments set forth above. Starting one year following the initial violation notice of capacity rights, Del Mar shall pay the greater of lease payments that are 2.00 times the normal payments set forth above, or the actual cost, capital and operations and maintenance of replacing said exceeded capacity by SEJPA.

If for any reason Del Mar fails, refuses, or is unable to cure the capacity overage by the final deadline set by SEJPA, the SEJPA shall have the right to demand that Del Mar disconnect as many connections as necessary from its systems to cure the capacity overage. In the event that Del Mar fails to take appropriate action, the SEJPA shall be entitled to seek injunctive relief, specific performance, or other appropriate relief from the Court to ensure that Del Mar does not continue to exceed its capacity rights under this lease.

**12. Late Payment.**

If any lease payment due hereunder is more than 90 calendar days late, a late payment penalty accruing at a rate of 10% per annum shall be due in addition to the lease payment.

**13. Remedy for Breach.**

A. By Del Mar.

In the event that Del Mar should breach the terms of this lease, by failing to make lease payments within 120 days of when due, by delivering effluent which does not meet the requirements of this lease, by exceeding its capacity rights, or by other substantial breach, the SEJPA may give Del Mar written notice of the alleged breach. If the breach is not corrected within 180 days, or within such other time period as may be specified in this lease or in the notice of breach, then the JPA shall have the right to terminate this lease. In that event, Del Mar

shall make immediate payment for all services actually received up to the time of termination, including any interest charges owed, and shall send no more effluent to the San Elijo Water Reclamation Facility.

In the alternative, and in addition to such payments, after 12 months of exceeding capacity limits, SEJPA may give notice to Del Mar that SEJPA will commence steps to make any capital improvements or take other steps necessary to increase the capacity available to Del Mar to be leased to remedy the overage at Del Mar's expense. After such notice is given, SEJPA and Del Mar may commence planning, design, permitting, construction or other steps which are reasonably necessary to increase the capacity available to Del Mar in the amount of the overage, plus a reasonable margin for expected changes in flows for Del Mar, and Del Mar shall be liable for its share of the costs of such activities. SEJPA shall provide estimates of the expected costs of such activities with the notice or as soon thereafter as practicable. Should Del Mar correct the breach after notice has been given, and remain in compliance with this Agreement for a period of 30 days, it shall be responsible for all reasonable costs incurred by SEJPA pursuant to this paragraph, but SEJPA shall cease making further expenditures or incurring additional obligations without the consent of Del Mar.

B. By SEJPA.

In the event that SEJPA materially breaches this lease agreement by failing to provide treatment, or by other material breach, then Del Mar shall give the SEJPA written notice of the alleged breach. If the SEJPA fails or refuses to cure the breach within 180 days of receipt of such notice, or within such other time period as may be specified by this lease or in the notice of alleged breach, then Del Mar may at its sole discretion terminate this Agreement or pursue other remedies to meet its obligations to lawfully treat and dispose of the quantity of wastewater

covered by this Agreement. In that event, Del Mar will pay for any services actually received and will not send further effluent to the Facility, SEJPA will pay to Del Mar the credits due under Section 5 for the remainder of the balance of SEJPA's 66.6% portion of the compensation for Del Mar's required capital contributions.

**14. Notices.**

Any notices required to be given to any parties under this Agreement to SEJPA shall be delivered either personally or by first-class mail, postage pre-paid, addressed as follows:

General Manager  
San Elijo Joint Powers Authority  
2695 Manchester Avenue  
Cardiff by the Sea, CA 92007-7077

Any notices required to be given to any parties under this Agreement to Del Mar shall be delivered either personally or by first-class mail, postage pre-paid, addressed as follows:

City Manager  
City of Del Mar  
1050 Camino del Mar  
Del Mar, CA 92014

**15. Time of the Essence.**

Time is of the essence of this Agreement.

**16. Governing Law.**

This Agreement shall be governed by the laws of the State of California.

**17. Severability.**

Should any part, term, clause or provision of this Agreement be determined by final

judgment of a court of competent jurisdiction to be illegal or in conflict with any law of this state, or otherwise be rendered unenforceable or ineffectual by a final court determination, the validity of the remaining portions of provisions shall not be affected thereby.

**18. Termination for Convenience**

Del Mar may terminate this Agreement at any time and for any reason by giving written notice to SEJPA of such termination, and specifying the effective date thereof, at least one year prior to the effective date. If the Agreement is terminated as provided in this Section, SEJPA shall be entitled to receive compensation for any effluent treated up to the date of receipt by SEJPA of notice of termination, less any payments theretofore made and not to exceed the amount payable for treatment completed between the receipt of notice of termination and the effective date of termination. All capital funding provided by Del Mar to the SEJPA is non-refundable.

**19. Binding Nature.**

This Agreement shall be binding upon, and shall inure to the benefit of, the successors and interest of the parties, subject to the prohibitions on assignment and subletting set forth above.

**20. Attorney's Fees.**

In the event of litigation or arbitration to interpret or enforce the terms of this lease Agreement, the prevailing party in such proceeding shall be entitled its reasonable attorney's fees in addition to costs.

**21. Authority to Execute; Indemnification.**

The parties hereto represent that they have full authority to enter into this Agreement and that carrying out this Agreement is not inconsistent with any of its contractual obligations to any other person or entity. In the event of any demand, claim, suit or other proceeding brought by

Page 10 of 12

Initials \_\_\_\_\_ Initials \_\_\_\_\_



any Interested Party against SEJPA or its members or against Del Mar, arising out of or relating to this Agreement, or performance of the parties' obligations hereunder, Del Mar agrees to defend, indemnify and hold SEJPA (and its members) harmless against any costs (including defense costs), damages or losses incurred in carrying out this Agreement and in defense of such "Interested Party Claims;" provided that SEJPA and its members shall reasonably cooperate in defense of such claims, suits or proceedings. For purposes of this Agreement, an Interested Party shall mean any third party (which is not a member of the SEJPA) which has and maintains a direct contractual interest in the wastewater and/or outflow of Del Mar. Del Mar may select any legal counsel acceptable to SEJPA to defend such Interested Party Claims, provided that if such counsel is not counsel to SEJPA, Del Mar's counsel shall keep SEJPA's counsel reasonably informed and cooperate with SEJPA's counsel in the defense of any claim. Neither Del Mar, nor SEJPA shall make any claim or demand upon SEJPA's insurer for any matter to which this indemnity applies.

For all other claims, the parties agree to defend, indemnify, save and hold each other, its officers, agents, and employees harmless from any liability for any claims, accusations, or suits at law or in equity, or in any administrative proceeding, that may be brought by third persons for any claim arising from any act or omission by a party, its officers, agents, or employees while performing operations under the Agreement.

The SEJPA shall operate the treatment and disposal systems in accordance with industry standards and best management practices and that the City of Del Mar will not be held responsible for SEJPA's failure to perform.

BY:

BY:

CITY OF DEL MAR

SAN ELIJO JOINT POWERS AUTHORITY

\_\_\_\_\_  
Scott W. Huth, City Manager

\_\_\_\_\_  
Michael T. Thornton, General Manager

ATTEST:

\_\_\_\_\_  
Andrew J. Potter,  
Administrative Services Director

\_\_\_\_\_  
Name/title of signatory [if necessary]

\_\_\_\_\_  
Signature

APPROVED AS TO FORM:

\_\_\_\_\_  
Leslie Devaney, City Attorney

## EXHIBIT A

### RESTATEMENT OF AGREEMENT BETWEEN CARDIFF SANITATION DISTRICT AND SOLANA BEACH SANITATION DISTRICT ESTABLISHING THE SAN ELIJO JOINT POWERS AUTHORITY

This agreement is entered into this 25<sup>th</sup> day of June, 2008 by and between the City of Encinitas, as successor to the Cardiff Sanitation District, a county sanitation district, and the City of Solana Beach, as successor to the Solana Beach Sanitation District, a county sanitation district, (hereinafter referred to as the "parties" or "Member Agencies"), pursuant to the laws of the State of California.

#### RECITALS

A. The Cardiff Sanitation District and the Solana Beach Sanitation District jointly constructed and operated a water pollution control facility known as the San Elijo Water Pollution Control Facility, pursuant to a joint powers agreement, commonly referred to as the "Basic Agreement."

B. The Basic Agreement was superseded by the "Agreement Between Cardiff Sanitation District and Solana Beach Sanitation District Establishing A Joint Powers Authority For The Operation, Maintenance, Construction, Upgrade and Expansion Of A Joint Sewage System," dated June 17, 1987. That agreement created the San Elijo Joint Powers Authority (hereinafter "SEJPA"), as a separate public entity with the power to own, operate, maintain and upgrade the San Elijo Water Pollution Control Facility. Under the terms of that agreement, SEJPA was empowered to exercise the authority of the sanitation districts to provide for the transmission, collection, treatment, disposal of sewage and wastewater, and to develop water reclamation facilities, and was vested with all of their rights, obligations, liabilities and duties.

C. Upon the dissolution and merger of the Solana Beach Sanitation District with the City of Solana Beach on July 1, 1990, and the dissolution and merger of the Cardiff Sanitation District with the City of Encinitas on October 18, 2001, these cities became entitled to continue to exercise the rights of the county sanitation districts in accordance with Government Code Sections 56886, 57461 and 57462, with respect to the provision of sewer service pursuant to the contracts under which the San Elijo Joint Powers Authority was created and operated.

D. The agreement establishing the SEJPA was amended a number of times between 1989 and 2005. It is the intent of the parties to supersede the June 1987 agreement, as so amended, by the adoption of this "Restatement of Agreement Between Cardiff Sanitation District and Solana Beach Sanitation District Establishing the San Elijo Joint Powers Authority," (hereinafter the "Agreement.") The purpose of this Agreement is to incorporate prior amendments into a single document, update the Agreement, and to clarify and supplement the duties and responsibilities of SEJPA and the parties.

In consideration of these recitals and the mutual covenants contained herein, the Member Agencies agree as follows:

## **ARTICLE 1**

### **DEFINITIONS**

Section 1.1. For the purposes of this agreement, the words and terms defined in this Article have the meaning established by this Article, unless from the context of the paragraph, sentence, phrase or clause in which the word or term appears it is evident that a different meaning is intended. Unless otherwise defined, the words or terms used in this agreement shall have their customary and common meanings.

Section 1.2. "Act" means the Joint Exercise of Powers Act, Title 1, Division 7, Chapter 5, (commencing with Section 6500) of the California Government Code.

Section 1.3. "Joint System" means the San Elijo Water Pollution Control Facility, consisting of the land, the sewage treatment plant, the Escondido Regulator Structure and the San Elijo Ocean Outfall, as well as the San Elijo Water Reclamation Facility, the Oak Crest and Lomas Santa Fe Reservoirs, Lomas Santa Fe Booster Pump Station and the associated recycled water distribution systems.

Section 1.4. "Joint Facilities" means the Joint System together with all other facilities, improvements, land and other works acquired, installed, operated, or maintained by SEJPA pursuant to this agreement.

Section 1.5. "MGD" means million gallons per day. Unless otherwise specified, the term MGD is used in reference to treatment capacity determined by average daily dry weather flow.

Section 1.6. “Member Agency” means either the City of Solana Beach, as successor to the Solana Beach Sanitation District, or the City of Encinitas, as successor to the Cardiff Sanitation District. When used in the plural, the term shall mean both cities.

Section 1.7. “Person” means person, corporation, partnership, joint venture, public entities, or unincorporated association of any type or nature.

Section 1.8. “Plant” is a term used to refer generally to the San Elijo Water Pollution Control Facility and San Elijo Water Reclamation Facility, and may include either the Joint System or the Joint Facilities, depending upon the context of the sentence in which the term is used.

Section 1.9. “SEJPA” means the San Elijo Joint Powers Authority created by this Agreement.

Section 1.10. “Transmission facilities” means sewers, pipes, force mains, laterals, pump stations, meters and other improvements for the collection or transmission of sewage, wastewater or reclaimed water.

## **ARTICLE 2**

### **CREATION OF AUTHORITY/ SEJPA BOARD**

Section 2.1. This Agreement is made pursuant to the Act, providing for the joint exercise of powers common to the Member Agencies. The purpose of this Agreement is to establish a single agency authorized to manage, operate, maintain and expand the Plant for the treatment and disposal of sewage or wastewater and for the treatment, storage, transmission, sale and disposal of recycled water, and to determine the joint and separate obligations of the Member Agencies concerning the transmission, treatment, disposal and reclamation of sewage and wastewater within the respective service territories of the Member Agencies.

Section 2.2. The San Elijo Joint Powers Authority (“SEJPA”) is hereby created. The San Elijo Joint Powers Authority is a public entity, separate and apart from the Member Agencies.

#### Section 2.3. Organization of SEJPA Board

(a) The SEJPA shall be governed by a Board consisting of four members. Two members of the SEJPA Board shall be members of the City Council of the City of Solana Beach and two members shall be members of the City Council of the City of Encinitas. Each Member

Agency may appoint an alternate to serve in the absence of a regular member of the SEJPA Board, who must also be a council member or an employee of the Member Agency.

(b) Each member of the SEJPA Board shall serve a term determined by the appointing authority. A member may serve any number of consecutive terms. A member or alternate member shall be disqualified to serve on the SEJPA Board if the member ceases to hold office on the city council of the appointing Member Agency, or in the case of an employee alternate, ceases to be an employee of the appointing Member Agency. Alternate members, if any, shall serve at the pleasure of the appointing authority. Each Member Agency shall provide written notice to SEJPA of any appointments made, and of any vacancies which may occur. However, the Board of SEJPA shall have the power to determine when a vacancy exists, in accordance with Government Code Section 1770, *et seq.*, for the purposes of conducting its business and notifying the Member Agencies of the need for an appointment.

(c) Each member of the SEJPA Board may receive compensation for each day of service to the joint powers authority, as defined by resolution adopted by the SEJPA Board. The rate of compensation, total per diem and annual compensation available, and compensable services established by such resolution shall not exceed the limits set forth in Water Code Sections 20201 and 20202. Such a resolution may be effective upon its adoption, but shall in no event have retroactive effect. It shall provide compensation of not less than the amount of \$160.00 per meeting for each regular, adjourned or special meeting of the SEJPA Board. Members shall also be reimbursed for actual and necessary expenses for travel and meetings as authorized by the SEJPA Board.

Section 2.4. Meetings of the SEJPA Board

(a) Annually, the SEJPA Board shall establish the time, date and place of its regular meetings; provided however, that the SEJPA Board shall hold at least one regular meeting every two months.

(b) All meetings of the SEJPA Board shall be noticed, called, held, and conducted in accordance with the Ralph M. Brown Act.

(c) The SEJPA Board shall keep minutes of all meetings, except for authorized closed sessions. The minutes shall be prepared as soon as practicable after each meeting of the SEJPA Board and a copy shall be delivered to each member of the Member Agencies, and to their respective city managers.

Section 2.5. Voting; Tie Votes

(a) Each member of the SEJPA Board shall have one vote. When a regular member of the SEJPA Board is absent, the regular member of the SEJPA Board of the same Member Agency shall be entitled to cast a vote on behalf of the absent member.

(b) Three members shall constitute a quorum for the transaction of business except that less than a quorum may adjourn any meeting from time to time. The existence of a quorum shall be determined based on the number of members present.

(c) The affirmative vote of three members of the SEJPA Board shall be required for any action of the SEJPA Board.

(d) Whenever, after consideration of a matter for two meetings, the SEJPA Board is unable to decide the matter because of a tie vote, the issue shall be referred to the City Councils of the Member Agencies for resolution within 45 days, except as otherwise provided in Sections 4.7 and 6 of this Agreement.

(e) The SEJPA Board may adopt, amend or repeal by-laws, rules or regulations for the conduct of its meetings and other business.

(f) The voting procedures established by this section, including the ability of one member to cast a vote on behalf of another member from the same Member Agency under the described circumstances, shall only apply to duly noticed regular and special meetings of the SEJPA Board. The voting procedures established by this section shall not apply to any standing or ad hoc committee of SEJPA.

**ARTICLE 3**

**OFFICERS AND EMPLOYEES OF SEJPA BOARD**

Section 3.1. Election of Officers

(a) By the second meeting of each calendar year, the SEJPA Board shall appoint a chairperson and vice-chairperson and shall establish the time and place for its regular meetings. The chairperson shall conduct and may call meetings of the SEJPA Board, adopt resolutions and ordinances, and execute contracts and other documents, and take such other actions as may be legally required or authorized by the SEJPA Board on behalf of the joint powers authority.

(b) The vice-chairperson shall act and perform all of the chairperson's duties in the absence of the chairperson.

Section 3.2. Secretary

(a) The general manager of the SEJPA will serve as the secretary to the Board. The Board may appoint any deputy secretaries as may be necessary or convenient. The secretary shall be responsible for preparing the minutes of the SEJPA Board, attesting to the signatures of the chairperson, vice-chairperson, or general manager on all resolutions, ordinances, contracts or other documents, and keeping all files and records of the SEJPA.

(b) The secretary shall cause a copy of this Agreement, and all amendments, to be filed with the Secretary of State pursuant to the Act.

(c) The secretary of the SEJPA is designated as the official for service of process or other documents on the SEJPA, and is authorized to accept service of process or other documents on behalf of the SEJPA, together with any deputy secretaries, if so authorized by the SEJPA Board.

Section 3.3. Treasurer; Auditor

(a) The SEJPA Board may appoint the general manager or other qualified officer, employee, or consultant of the SEJPA as treasurer, pursuant to the provisions of Section 6506.6 of the Act.

(b) The treasurer shall be the depository and shall have custody of all of the accounts, funds and money of the SEJPA from whatever source.

(c) The treasurer shall have the duties established by Sections 6505 and 6505.5 of the Act. SEJPA shall contract with a certified public accountant to perform the annual audit.

(d) Pursuant to Section 6505.1 of the Act, the treasurer shall have charge of, handle and have access to all accounts, funds and money of the SEJPA and all records of the SEJPA relating thereto. The secretary shall have charge of, handle and have access to all other records of the SEJPA.

(e) The SEJPA Board shall establish the amount of the official bond required of the treasurer and general manager. The premium of the bond shall be a proper charge against SEJPA.

Section 3.4. General Manager

(a) The SEJPA Board shall appoint a general manager of SEJPA. The general manager will be a qualified, registered engineer, or a qualified, registered designee of an engineering firm with experience in managing sewage and wastewater treatment facilities.



(b) The general manager shall be responsible for the administrative operations of the SEJPA under the direction and control of the SEJPA Board. The general manager shall be responsible for the effective functioning of the SEJPA and the physical facilities owned and operated by the SEJPA.

(c) The general manager shall have the following powers in addition to those powers necessary and proper to the effective administration of the SEJPA, and not by way limitation on those powers:

(1) To participate in the design of and supervise the construction of any improvements to, or expansion of, the SEJPA facilities authorized or contemplated by this agreement;

(2) To execute any contract for capital costs, costs of special services, equipment, materials, supplies, maintenance or repair that involves an expenditure by the SEJPA of less than \$35,000; or any contract with any consultant (except for consultants to perform the duties of the auditor or treasurer) for services, the cost of which is included in the budget for the then current fiscal year, and which involve an expenditure by the SEJPA of less than \$35,000;

(3) To employ and approve payroll for all personnel of the SEJPA required for administration, maintenance and operation of the Joint Facilities and all other employees authorized by the SEJPA's budget or by the SEJPA Board;

(4) To expend funds of the SEJPA and enter into contracts, not exceeding in the aggregate expenditures of \$75,000 of funds of the SEJPA, whenever required for urgent sewer maintenance or repair work or in the event of any emergency to keep the Joint Facilities in operation or to restore them to operating condition. Following the exercise of this authority, the general manager shall make the report required by section 22050 of the Public Contract Code regarding the necessity of the actions taken. For the purposes of this authorization, urgent sewer maintenance or repair work and emergency work is that required as a result of a physical condition of the Plant or any of the Joint Facilities which threatens the public health or safety or the environment, and requires immediate remedial action in order to avoid the threat to the public health or safety or to the environment;

(5) To approve demands for payments by the SEJPA of \$35,000 or less, provided such demands are made pursuant to a valid contract to which the SEJPA is a party,

or are demands for payment for items for which funds have been approved in the adopted SEJPA budget;

(6) To prepare and submit to the SEJPA Board, in time for revision and adoption by it prior to June 30 of each year, the annual budget for the next succeeding fiscal year referred to in Section 6.1;

(7) To apply for all permits, licenses, or approvals necessary for operation of the Joint Facilities from any local, state or federal government or agency with jurisdiction over the facilities of the SEJPA, and to file all reports required by any local, state or federal government or agency with jurisdiction over the facilities of the SEJPA, unless otherwise directed to the contrary by the SEJPA Board; and

(8) Generally to supervise the acquisition, construction, management, maintenance and operation of the Joint Facilities.

(9) To process, investigate, respond to and resolve claims filed against SEJPA, and to settle claims in amounts not exceeding \$50,000 (or the maximum amount authorized pursuant to Government Code section 935.4), provided that the SEJPA Board may, by resolution, reduce the settlement authority of the general manager.

(d) The general manager shall perform such other duties as may be delegated by the SEJPA Board, and shall report to the SEJPA Board at such times and concerning such matters as the SEJPA Board may require.

(e) The general manager shall on an ongoing basis inform the city manager of each party of the operation of the SEJPA and of the decisions of the general manager in operating and administering the SEJPA which affect the Member Agencies.

#### Section 3.5. General Counsel

(a) The SEJPA Board shall appoint General Counsel of SEJPA on such terms and conditions as it may see fit. General Counsel shall be a person or firm with experience with public law and the operations of utilities.

(b) General Counsel shall advise SEJPA officials in all legal matters pertaining to SEJPA business. General Counsel shall frame all ordinances and resolutions required by the Board. General Counsel shall perform other legal services as required from time to time by the Board. Notwithstanding the foregoing, the SEJPA Board may also retain Special Counsel, as needed.

Section 3.6. Other Employees and Consultants

(a) The SEJPA Board shall have the power to appoint and employ such other employees, consultants, advisers and independent contractors as may be necessary for the purposes of this Agreement.

(b) Except as expressly approved by the SEJPA Board, none of the officers, agents, or employees directly employed by the SEJPA Board shall be deemed, by reason of their employment by the SEJPA to be employed by either Member Agency, or by reason of their employment by the SEJPA to be subject to any of the requirements of either Member Agency.

**ARTICLE 4**

**POWERS**

Section 4.1. The SEJPA shall exercise, in a manner provided in this agreement, the powers common to each of the county sanitation districts organized under Health & Safety Code section 4700, et seq. (which created this joint powers authority) as necessary to the accomplishment of the purposes of this Agreement.

As provided in the Act, SEJPA shall be a public entity separate from the Member Agencies. The SEJPA shall have the power to finance, acquire, construct, manage, maintain and operate the Joint Facilities.

In exercising its powers hereunder, the SEJPA shall use its best efforts to maximize water reclamation, beneficial use of biogas and re-use of biosolids.

Section 4.2. The SEJPA shall have the authority to finance, construct, acquire, manage, operate and maintain any improvements or facilities necessary to upgrade the Joint Facilities.

Section 4.3. The SEJPA shall have the authority to finance, construct, acquire, manage, operate and maintain any improvements or facilities necessary to expand the treatment capacity of the Plant in order to provide wastewater treatment capacity necessary to serve the continuing needs of the property within areas served by the Member Agencies and such other territories as it may, by contract or otherwise, be authorized to serve.

Section 4.4. The SEJPA is, in its own name, authorized to do all acts necessary for the exercise of the foregoing powers, including, but not limited to, any or all of the following:

- (a) To make and enter into contracts.

- (b) To employ agents, employees, advisors, consultants and independent contractors.
- (c) To acquire, construct, manage, maintain or operate any buildings, works, or improvements.
- (d) To acquire, hold or dispose of property.
- (e) To sue and be sued in its own name.
- (f) To incur debts, liabilities or obligations, provided that no debt, liability or obligation shall constitute a debt, liability or obligation of either Member Agency.
- (g) To apply for, accept, receive and disburse grants, loans and other aid from any agency of the United States of America or of the State of California.
- (h) To purchase insurance, including, but not limited to, general liability, property and worker's compensation insurance.
- (i) To invest any money in the treasury pursuant to Section 6505.5 of the Act that is not required for the immediate necessities of the SEJPA, as the SEJPA determines is advisable, in the same manner and upon the same conditions as local agencies, pursuant to Section 53601 of the Government Code of the State.
- (j) To carry out and enforce all the provisions of this Agreement.
- (k) To act as lead agency for purposes of the California Environmental Quality Act with regard to any upgrade or expansion of the Joint Facilities.
- (l) To establish charges and fees for sewage treatment and other services provided by the SEJPA.

Section 4.5. The SEJPA shall have the power to issue revenue bonds under the Act, commencing with Section 6540, the Revenue Bond Act of 1941, commencing with Section 51300 of the Government Code, the Mello-Roos Community Facilities Act, commencing with Government Code Section 53330, or other provisions of law applicable to joint powers authorities, or to finance Joint Facilities expansion or upgrade by any other revenue-based financing method which either Member Agency is authorized to use.

Section 4.6. The SEJPA is authorized to charge to each Member Agency its proportionate or contracted share of the maintenance, operation, financing, construction, acquisition or expansion of the Joint Facilities, or the debt service on any revenue bonds. The Member Agencies agree to levy within their respective service areas service, stand-by,

annexation, connection and other fees and charges as authorized by law as may be necessary to pay the charges established by the SEJPA.

Section 4.7. All casualty losses resulting from claims for damages or litigation, and all related attorneys' fees, investigative fees, and other expenses, shall be deemed included within the operation and maintenance expenses of the Joint Facilities and shall be processed, investigated, and resolved by SEJPA. SEJPA shall bill, and the Member Agencies shall pay for such casualty losses and related expenses in proportion to their flow in the Joint System as part of their regular operation and maintenance expense payments pursuant to Sections 6.7 and 6.8 of this Agreement, unless said loss or expense is solely the result of actions by one member agency, in which case that member agency shall be solely responsible for payment of loss or expense.

Section 4.8. The powers of the SEJPA shall be exercised in the manner provided in the Act, in the applicable revenue bond laws, in the Federal Water Pollution Control Act, and in the Porter-Cologne Water Quality Control Act; and, except for those powers set forth in any Bond Law and in Article 2 of the Act, as the same now reads or may be hereafter amended, shall be subject, to the extent required by Section 6509 of the Act, to the restrictions upon the manner of exercising such powers that are imposed upon County Sanitation Districts in the exercise of similar powers.

Section 4.9. Unless otherwise specified by resolution of the Member Agency passed in connection with the issuance of bonds or other financing methods for the financing or refinancing of improvements, the debts, liabilities and obligations of the SEJPA shall not be the debts, liabilities and obligations of either Member Agency.

Section 4.10. The SEJPA is hereby designated lead agency for the purposes of the California Environmental Quality Act as it applies to all undertakings for expansion or upgrade of the Joint Facilities, unless otherwise agreed by the Member Agencies.

Section 4.11. The SEJPA may allow either Member Agency to conduct temporary operations, provided that: (1) such Member Agency agrees to defend, indemnify and hold harmless both the SEJPA and the other Member Agency against any costs, damages, or liabilities arising out of such operations involving the Joint Facilities; and (2) SEJPA determines that such use will not be injurious to, nor interfere with the lawful operation of the Joint Facilities; and (3) the Member Agency bears any and all costs which SEJPA may incur which arise out of such

operations. The Board of SEJPA may authorize the general manager to permit such operations on such terms and conditions as it may specify.

## ARTICLE 5

### METHODS OF PROCEDURE: CAPITAL COSTS

Section 5.1. The Member Agencies previously conveyed their respective property interests in the Plant to the SEJPA, together with rights of access over, across, and through any real property owned by the Member Agencies necessary for the operation of the Plant. All real or personal property, facilities, improvements, fixtures or other property interests necessary for operation, maintenance, upgrade, or expansions of the Joint Facilities shall be acquired in the name of the SEJPA.

Section 5.2. The Member Agencies previously transferred all records, accounts, funds and money relating to the Joint Facilities to SEJPA.

Section 5.3. The SEJPA is responsible for operation and maintenance of the Joint Facilities. Either Member Agency may contract with the SEJPA to perform operation and maintenance of the transmission and collection systems, or other non-Joint Facilities of the Member Agency, provided that all costs and liabilities incurred by SEJPA, its employees, officers or agents, arising out of SEJPA's operation or maintenance of such systems or facilities for one Member Agency shall be discharged by payment by such Member Agency; and further provided that such Member Agency shall defend, indemnify and hold harmless the other Member Agency from all liabilities arising out of SEJPA's operation or maintenance of such systems or facilities.

Section 5.4. Work performed by one Member Agency at the request of the SEJPA for the SEJPA, the SEJPA shall hold harmless, defend, and indemnify said Member Agency.

Section 5.5. SEJPA may undertake all steps and procedures necessary to plan, finance, construct and operate any upgrade or expansion of the Joint Facilities, as approved by the SEJPA Board, including, but not limited to, preparation of plans and specifications; acquisition of permits, licenses, rights-of-way and land, construction, issuance of bonds, acceptance of grants and any other activity necessary or convenient to the accomplishment of the project.

## ARTICLE 6

### **BUDGET; ADMINISTRATION MAINTENANCE AND OPERATION COSTS; OTHER COSTS AFTER COMPLETION OF CONSTRUCTION OF THE PROJECT**

Section 6.1. The SEJPA Board shall adopt a budget for administration, maintenance and operation costs, capital costs, costs of special services, capital reserve expenses (if any) and bond interest and redemption expenses (if any) annually prior to June 30 of each year. If the SEJPA Board fails to adopt a budget by June 30 of any year (i.e., the end of the agency's fiscal year), SEJPA shall continue to operate using the budget approved for administration, maintenance and operation costs, bond interest and redemption expenses, and other non-discretionary spending, for the preceding year, and until such time as a budget is approved. The Member Agencies shall be obligated to continue to make timely payments to SEJPA based upon such prior year's budgeted amounts until such time as a budget is approved by the SEJPA Board.

Section 6.2. The SEJPA shall cause to be kept accurate and correct books of account, showing in detail the capital costs, costs of special services, maintenance and operation costs, and planning and construction costs of the Joint Facilities and all financial transactions of the SEJPA relating to the Joint Facilities, which books of account shall correctly show any receipts and also any costs, expenses or charges paid or to be paid by all or any of the Member Agencies hereunder, and also records of the sewage flow from each of the Member Agencies or other users, together with the strength of effluent delivered from each of the Member Agencies or other users. Said books and records shall be open to inspection at all times during normal business hours by any representative of the Member Agencies, or by any accountant or other person authorized by the Member Agencies to inspect said books or records.

Section 6.3. After adoption of the annual budget prior to June 30 of each year, pursuant to Section 6.1, the SEJPA shall furnish to each of the Member Agencies an estimate of the total annual maintenance and operation costs, capital costs, costs of special services, capital reserve expenses (if any), bond interest and redemption expenses (if any), and the proportion thereof allocated to each Member Agency for the ensuing fiscal year.

Section 6.4. Each Member Agency, and other public entity using the Plant, shall provide facilities to meter or measure the total of all wastewater, grease, sludge, sediment, or other material discharged or delivered to the Joint Facilities, including equipment to facilitate the

monitoring of the characteristics of the material so discharged by such agency. Meters or measuring devices shall be read, waste characteristics established, and the charges based thereon determined as often as required for each Member Agency to make the deposits in the maintenance and operation fund of the SEJPA. The allocation of maintenance and operational costs between the Member Agencies for wastewater treatment and/or disposal will be based on the average daily flows and may be also be based, in part, upon the strength of effluent delivered from each of the Member Agencies or other users, as reported to the SEJPA Board monthly, for the calendar year ending prior to the beginning of each fiscal year. The methodology to be used for allocation of costs based on the effluent delivered by the Member Agencies shall be included in and adopted as part of the annual budget approved by the Member Agencies. Dischargers utilizing the San Elijo Ocean Outfall for disposal of flows which are not treated at the San Elijo Water Pollution Control Facility will not be charged for wastewater treatment operations, but will be required to pay for operation and maintenance of the outfall. Dischargers solely utilizing the plants solids handling, treatment, and/or disposal, will be charged based on a case-by-case basis determined by the general manager.

Section 6.5. The SEJPA shall maintain a Wastewater Operation & Maintenance fund, a Water Reclamation fund, and a Capital Improvement fund. All monies in these funds shall be paid out for the administration, maintenance and operation costs of the Joint Facilities, upon approval of demands for payment by the general manager, or the SEJPA Board as provided in this Agreement, and in accordance with Section 6505.5 of the Act.

Section 6.6. The SEJPA shall establish a Capital Reserve Fund. The annual capital reserve expenses of the SEJPA for each component of the Joint Facilities shall be allocated by the SEJPA to the Member Agencies on the basis of equal ownership. All moneys received in payment of capital reserve expenses shall be paid out as directed by the SEJPA Board and upon approval of demands for payment by the general manager, as provided in this Agreement, and in accordance with Section 6505.5 of the Act.

Section 6.7. Each Member Agency agrees to pay the SEJPA its allocated share of the total estimated annual costs and expenses of the SEJPA in periodic payments within 30 days of receipt of invoice. The SEJPA shall submit to each Member Agency a final detailed statement of the final costs and expenses for the fiscal year, allocated in the same manner as estimated expenses were allocated, within 30 days after completion of the fiscal year end audit, whereupon



final adjustments of debits and credits shall be made by the SEJPA. If the amount of any allocated share of any estimated item of expense due from a Member Agency was less than the final allocation of such item to the Member Agency, the Member Agency shall forthwith pay the difference to SEJPA. If the amount of any allocated share of any estimated items of expense due from Member Agency was in excess of the final allocation of such item to that Member Agency, SEJPA shall credit such excess to the appropriate account of such agency.

Section 6.8. Each Member Agency shall provide the funds required to be paid by it to the SEJPA under this Agreement, from any source of funds legally available for such purposes, subject only to the limitations of the Porter-Cologne Water Quality Control Act and the Federal Water Pollution Control Act.

## ARTICLE 7

### CAPACITY RIGHTS

Section 7.1.

(a) Based upon completion of expansion as described in the 1989 agreement between the parties, each Member Agency has a right to 50 percent of the available treatment capacity of the Plant (equal to 2.625 MGD each, as of the date of this Agreement). However, to the extent a portion of this capacity is leased to the Rancho Santa Fe Community Services District, the parties agree that such demands shall be supplied equally from the capacity of each Member Agency. Nothing in this section shall be construed to grant any rights to the Rancho Santa Fe Community Services District.

(b) Neither Member Agency shall issue sewer treatment commitments, availability letters, or permits totaling more than 100 percent of its allocated capacity rights. The SEJPA shall meter the amount of sewage from each Member Agency being treated at the Plant. When the SEJPA finds that a Member Agency is utilizing 75 percent or more of its maximum capacity rights, SEJPA shall immediately notify the Member Agency in writing. The Member Agency shall immediately take steps to reduce its use of the Plant so as to be within its maximum capacity rights. If a Member Agency is unable to reduce its use of the Plant it shall either;

1. Purchase or lease capacity from the other Member Agency, at a price negotiated between the Member Agencies, if the other Member Agency has surplus or unused capacity rights; or

2. At its own expense, provide for modifications to pumping and conveyance or treatment facilities so as to accommodate its excess use of the Plant.

Should any party fail to comply with the provisions of this Section, SEJPA may take any necessary action under Section 7.3 or Section 7.5.

Section 7.2. Transfers.

Either Member Agency may contract with any person, firm, association, corporation or public agency for any portion of its maximum capacity rights under this Agreement, but no such contract shall relieve the Member Agency of any of its obligations under this Agreement.

Either Member Agency may sell any portion of its maximum capacity to the other Member Agency. Upon such sale, the SEJPA Board will adjust the maximum capacity of the Member Agencies to reflect the sale.

Section 7.3. At no time shall the flow to or into the Plant from a Member Agency exceed the party's capacity rights. The SEJPA shall have the power to limit the sewage treatment commitments, availability letters or permits, or the sewage flowing to or into the Plant from a party to the capacity rights of that party. The SEJPA shall have the power to prohibit the discharge to the Plant of any substance in a concentration which exceeds the maximum limit that may have been established by resolution or ordinance of the SEJPA, or of either party, as necessary to safeguard the sewage treatment processes of the Plant. The SEJPA shall cause the combined effluent treatment of the Plant to be monitored, as well as the combined discharge, to determine whether federal and/or state discharge requirements or permit limits are being met. In addition, the SEJPA shall cause the effluent of each Member Agency to be monitored. If the combined effluent of the Plant, at the point of ultimate discharge into the receiving water, fails at any time to meet all discharge requirements or permit limits, the Member Agency responsible for each violation shall be solely responsible for any fines or penalties levied or criminal sanctions imposed. In this regard, the Member Agency responsible for any such violation shall hold harmless the SEJPA and the non-violating Member Agency from all liability and damages, fines or penalties, incurred by them or any of them as a direct and proximate result of such violation, including, but not limited to, legal, engineering and administrative expenses, and direct or indirect damages incurred by the SEJPA or any non-violating Member Agency as a result of a cease and desist order, or court injunction from any state or federal agency restricting construction within the jurisdictional limits of the SEJPA or the Member Agency. Upon

notification of any such violation, the Member Agency in violation shall take prompt, corrective action as necessary to meet said discharge requirements or permit limits.

Section 7.4. The Member Agencies agree that the SEJPA shall be empowered, in any case in which the SEJPA is a party, to a grant contract with the State of California or the United States of America, to impose to the extent permitted by law on each of the Member Agencies, the duty of compliance with all conditions in such grant contract, and each Member Agency agrees to comply with such conditions by enactment of appropriate ordinances, regulations or otherwise.

Section 7.5. Each Member Agency, as required by law, shall adopt and maintain a uniform industrial waste ordinance that will establish criteria for, and restrictions on, the nature and quality of industrial waste discharged either directly or indirectly into the Plant. The SEJPA, acting through the general manager with the approval of the SEJPA Board, shall be responsible for the design, implementation and operation of a program for inspection and monitoring all industrial waste produced in each Member Agency and discharge into the Plant, including field inspection employees of the SEJPA. The industrial waste ordinance of each Member Agency will authorize field inspection employees of the SEJPA to act as enforcement agents of the Member Agency with power to inspect and issue notices for violations of such ordinance; provided that all actual prosecutions for violations of such ordinances (including, without limitation, levying of fines, disconnection of discharge lines, and civil and criminal court actions) shall be the exclusive responsibility of the respective parties. All costs and expenses of the SEJPA under this section shall be allocated by the SEJPA to the parties on the basis of the actual costs incurred for each party and as a part of maintenance and operation costs provided for in Section 6.3.

Section 7.6. Each Member Agency, and any other agency using the plant, shall adopt and enforce ordinances, resolutions, rules and regulations, regulating the type and condition of sewage and wastewater permitted to be discharged into the transmission facilities under the control of the Member Agency or other agency, and shall prohibit users of every kind and nature from discharging any sewage, wastewater or storm water which would be detrimental to the Joint Facilities or any part thereof. Each Member Agency, and any other agency, shall comply with all applicable laws of the United States, the State of California, or any other city having jurisdiction over the collection, transmission, treatment and disposal of sewage, wastewater or

storm water. For the purposes of this Section, laws shall include statutes, ordinances or regulations duly adopted by a regulatory agency of the United States or the State of California.

Section 7.7. To the maximum extent practicable, no party to this Agreement shall permit excessive infiltration of surface or storm water into the Joint Facilities or its transmission facilities.

Section 7.8. The SEJPA is hereby authorized to take any and all legal or equitable actions, including, but not limited to seeking injunctive relief or specific performance, as necessary to enforce this Agreement.

## **ARTICLE 8**

### **RIGHT TO EXPAND**

Section 8.1. Notwithstanding anything in this Agreement to the contrary, if the SEJPA fails to expand the Plant to meet the service needs of a Member Agency, either Member Agency may undertake any expansion to the Joint Facilities deemed necessary by the Member Agency to provide service within the service territory of the Member Agency. The party undertaking the expansion shall be responsible for all costs associated with such expansion and shall be entitled to all capacity resulting from the expansion.

## **ARTICLE 9**

### **PREVIOUS AGREEMENTS**

Section 9.1. Prior agreements between the Member Agencies shall be of no force and effect after the date of this Agreement, except insofar as it defined the rights and obligations of the parties with regard to the Joint System prior to the date of this Agreement. Such prior agreements may be used to interpret this Agreement as it pertains to the operation, maintenance and ownership of the Joint System.

Section 9.2. The Agreement between the Rancho Santa Fe Community Services District, SEJPA, and the Cardiff and Solana Beach Sanitation Districts for treatment and disposal of 0.25 MGD of sewage, as amended through January 3, 1991, shall be administered by SEJPA on behalf of the Member Agencies.

Section 9.3. SEJPA is hereby delegated the duties and assigned the rights of the Cardiff Sanitation District and the Solana Beach Sanitation District, and either or both of them under the Agreement between Buena, Cardiff, Fairbanks Ranch, Rancho Santa Fe, Solana Beach, and

Whispering Palms Sanitation Districts; regarding a Joint Sewage Collection and Transmission Operation Center dated November 17, 1981.

Section 9.4. The SEJPA shall administer the San Elijo Ocean Outfall Agreement dated October 4, 2000, and as amended from time to time, between the SEJPA and the City of Escondido.

## **ARTICLE 10**

### **OBLIGATION FOR TRANSMISSION SYSTEM**

Section 10.1. Each Member Agency shall be responsible for the maintenance, operation, expansion and installation of all transmission facilities located within the service territory of the Member Agency. A Member Agency may delegate this responsibility to the SEJPA; provided, however, that the Member Agency shall remain responsible for all costs and liabilities arising out of the assumption of this responsibility by SEJPA.

Section 10.2. The Member Agencies shall share the maintenance and operating costs of any transmission facility, not part of the Joint Facilities, used jointly by both parties, in proportion to the actual use by the respective parties.

Section 10.3. Meters used to measure the flow from a Member Agency to the Joint Facilities shall be operated and maintained as part of the Joint Facilities.

## **ARTICLE 11**

### **RECLAIMED WATER AND OTHER BY-PRODUCTS**

Section 11.1. All reclaimed water, biosolids and other by-products of the Joint Facilities operation shall be the property of the SEJPA.

Section 11.2. The SEJPA may sell any reclaimed water, groundwater, biosolids other byproducts of the Joint System.

Section 11.3. Before selling reclaimed water, groundwater, biosolids or other byproduct to any person other than a Member Agency, the SEJPA shall offer the product to the Member Agencies. The Member Agencies shall have 60 days to accept the offer.

## ARTICLE 12

### TERMINATION

Section 12.1. This Agreement shall continue until terminated by an agreement executed by the parties, such agreement being authorized by a four-fifths vote of the governing body of each Member Agency. Such agreement shall provide for the disposition of the assets and liabilities of SEJPA.

Section 12.2. Notwithstanding section 12.1, either Member Agency may terminate this Agreement by giving the other party not less than 12 months written notice of its intent to withdraw from SEJPA. In such event, the withdrawing party shall remain liable for payment of its pro rata share of any debts or legal obligations of the SEJPA which are outstanding at the time of withdrawal, including but not limited to obligations to repay any loan, grant or other indebtedness incurred for the purpose of developing or constructing any wastewater or water recycling facility. The withdrawing party shall also be responsible for any and all costs or expenses of the non-withdrawing party incurred as a result of the termination, such as the costs of permit modifications to maintain Joint Facilities' operations or obtaining lenders' consents to modify obligees on outstanding grants, leases or loans. The withdrawing party may transfer its interests in the assets of SEJPA to any other public agency with authority to operate a wastewater and water recycling facility, provided that: (1) the non-withdrawing party shall have a right of first refusal to acquire the assets of the withdrawing party on terms and conditions no less favorable than those on which the withdrawing party is transferring the assets to another public agency; and (2) the transferee shall either have no right to manage or govern the operations of the wastewater or water recycling facilities (i.e., the non-withdrawing party shall have sole right and responsibility for management and governance of the operations of the Joint Facilities) following the transfer, or the terms and conditions of the transfer affecting the operations of the Joint Facilities ( including the transferee's proposed governance rights, if any) shall be acceptable to and approved by the non-withdrawing party. The non-withdrawing party shall have a reasonable period of time to exercise its rights under this paragraph.

## ARTICLE 13

### MISCELLANEOUS PROVISIONS

Section 13.1. Notices required to be given to any party under this agreement shall be delivered either personally or by first class mail, postage pre-paid, addressed as follows:

City of Solana Beach	City of Encinitas
City Manager	City Manager
635 S. Highway 101	505 S Vulcan Ave
Solana Beach, California 92075	Encinitas, California 92024

provided that either party may give notice, in writing, of a different address to which notices shall be given in the future.

Section 13.2. Each party to this Agreement shall, to the maximum extent feasible, prohibit the Joint Facilities from being used for any purpose other than the treatment, disposal or reclamation of wastewater, groundwater or stormwater, unless such other use is lawful and mutually agreed to by the parties to this Agreement, in writing, to be in their best interests.

In the event that any portion of the Joint Facilities is used for such other purposes, any lease payments, rents, or other income derived from such use shall inure to the benefit of the SEJPA.

Section 13.3. Time is of the essence in this agreement.

Section 13.4. Whenever this Agreement requires consent or approval, such consent or approval shall not be unreasonably withheld.

Section 13.5. This Agreement shall be governed by the laws of the State of California.

Section 13.6. This Agreement may be amended at any time, or from time to time, except as limited by contract with the holders of bonds issued by the SEJPA, or by applicable regulations or laws of any jurisdiction having authority, by one or more supplemental agreements executed by all the parties, either as required in order to carry out any of the provisions of this Agreement or for any other purpose, including, without limitation, adjustment of capacity rights or addition of new parties (including any legal entities or taxing areas heretofore or hereafter created) in pursuance of the purposes of this Agreement.

Section 13.7. Should any part, term, or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State, or otherwise be rendered

unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

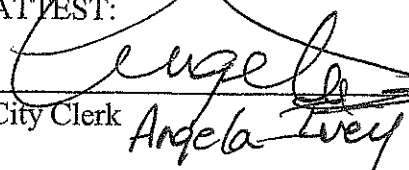
Section 13.8. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Member Agencies. No party may assign any right or obligation hereunder without the written consent of the other Member Agencies.


Section 13.9. Either Member Agency may amend or modify its service territory at any time, provided however, that no modification shall alter the capacity rights of a Member Agency or include the service territory of the other Member Agency without the consent of the other Member Agency and an amendment to this Agreement.

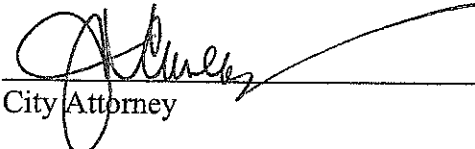


IN WITNESS WHEREOF, the parties hereto have, by resolution, caused this Agreement to be executed on the day and year set opposite the name of each of the parties.

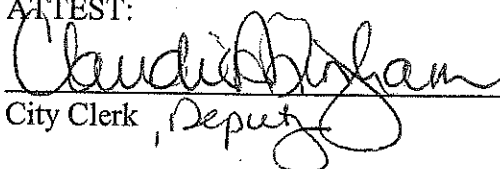
City of Solana Beach, as successor to the  
SOLANA BEACH SANITATION DISTRICT

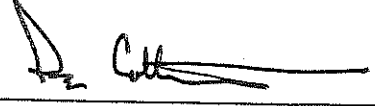
DATED: 6-25-2008  
ATTEST:  
  
\_\_\_\_\_  
City Clerk  
APPROVED AS TO FORM

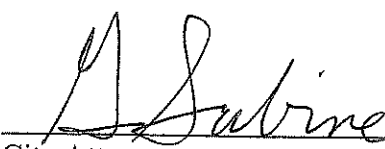
  
\_\_\_\_\_  
CITY MANAGER  
CITY of SOLANA BEACH  
DAVID OTT

  
\_\_\_\_\_  
City Attorney

City of Encinitas, as successor to the  
CARDIFF SANITATION DISTRICT

DATED: 6-23-08  
ATTEST:  
  
\_\_\_\_\_  
City Clerk, Deputy

  
\_\_\_\_\_  
CITY MANAGER  
CITY of ENCINITAS  
PHIL COTTON

APPROVED AS TO FORM  
  
\_\_\_\_\_  
City Attorney

**EXHIBIT B**

**CAPITAL INVESTMENT CREDIT AGREEMENT BETWEEN  
THE SAN ELIJO JOINT POWERS AUTHORITY  
AND CITY OF DEL MAR**

The Lease Agreement between the San Elijo Joint Powers Authority (SEJPA) and the City of Del Mar (CITY), Section 5, "Credit to Del Mar", provides the financial terms for cost considerations of capital improvements by the CITY for the expressed purpose of conveying wastewater to the SEJPA for treatment and recycling or disposal.

Infrastructure Description: Connecting pipeline from the 21st Street wastewater pump station to the Cedros trunk sewer that will allow the wastewater from the CITY to be conveyed to the SEJPA's water reclamation facility. Approximate pipeline length is 6,200 linear feet, several manholes and valves. The Project Costs include the above described infrastructure as well as the design, engineering, environmental, mitigation, construction management and permitting.

Estimated Project Cost: \$1.2 million to \$1.5 million (Exhibit D)

Infrastructure Owner: City of Del Mar

Agreement Term: 30 years

Cost Sharing Methodology: SEJPA shall provide the CITY a lease credit in the amount equal to 66.6% of the project costs. SEJPA agrees to provide the credit to Del Mar in an amount not to exceed \$60,000 per year until SEJPA's 66.6% portion of the Project Costs are paid to Del Mar. Del Mar agrees to provide SEJPA an average annual flow volume of at least 0.3 million gallons per day (mgd). If the CITY provides the SEJPA an annual average flow rate of less than 0.3 mgd, then the lease credit shall be prorated proportionately. If the CITY provides the SEJPA an annual average flow rate of 0.3 mgd or more, then the maximum lease credit of \$60,000 shall be awarded.

Payment Method: Payment method shall be in the form of a lease credit. For each year of the agreement that the CITY is a lessee of wastewater treatment capacity from the SEJPA, the SEJPA shall provide the CITY a lease credit. The lease credit shall be applied to the CITY's quarterly lease invoice(s).

Example of Payment Method:

In Year X of the agreement, the CITY provides the SEJPA an annual average flow rate of 0.3 mgd. For that year, the budgeted annual lease cost for the CITY is \$536,706. For each of the 4 quarters, the CITY will be invoiced \$119,177. This is calculated by taking annual costs \$536,706 less the \$60,000 wastewater treatment credit equals \$119,177 per quarter.

**EXHIBIT C**

CITY OF DEL MAR  
LEASE PAYMENTS

Del Mar’s lease payment to the SEJPA shall be comprised of the following two components:

Facility Administration, Management, Operation and Maintenance Component

Capital Program Component

**Facility Administration, Management, Operation and Maintenance Component**

Del Mar shall pay for the Administration, Management, Operation and Maintenance (“Expenses”) as set forth below:

The SEJPA shall develop and adopt an Annual Budget for each fiscal year (July 1<sup>st</sup> to June 30<sup>th</sup>) that includes Administration, Management, Operation and Maintenance expenses.

The proposed Annual Budget shall be provided to Del Mar for comment at least 60 days before the start of the fiscal year.

Del Mar will be provided a 30-day comment period for the proposed Annual Budget.

Cost sharing of the SEJPA’s Expenses shall be determined by multiplying the Expenses by the percentage of wastewater flows for each of the respective agencies (City of Encinitas, City of Solana Beach, Rancho Santa Fe Community Districts, City of Escondido, and City of Del Mar).

An estimate of influent and effluent flows for the coming fiscal year shall be determined for Encinitas, Solana Beach, Rancho Santa Fe Community Districts, City of Escondido, and City of Del Mar by using the average of the measured flow during the prior calendar year (January 1<sup>st</sup> to December 31<sup>st</sup>), from each of the respective agencies.

Del Mar shall then owe to the SEJPA its share of the Expenses (Annual Expense Payment), based upon its budgeted percentage of estimated flows and the budgeted Expenses as determined above.

SEJPA shall reconcile Budgeted versus Actual Expenses and Estimated versus Actual Flow Data no later than March 31<sup>st</sup> of the following fiscal year. Over collected funds shall be returned to Del Mar within 30 calendar days or applied to the following quarter invoice, as directed by Del Mar. Under collected funds shall be invoiced to Del Mar on the following quarterly invoice.

Below is an example of the Annual Facility Administration, Management, Operation and Maintenance (“A,M,O & M”), and Quarterly Payments:

	<b>Influent</b>		<b>Treatment &amp; Laboratory Costs</b>	<b>Quarterly Payments</b>
	<b>Flows (mgd)</b>	<b>% of Flow</b>		
Encinitas	1.332	40.2%	\$ 1,160,674	\$ 290,169
Solana Beach	1.345	40.6%	1,172,002	293,000
Rancho Santa Fe	0.162	4.9%	141,163	35,291
Del Mar	0.473	14.3%	412,161	103,040
Escondido	-	0.0%	-	-
<b>Totals</b>	<b>3.312</b>	<b>100.0%</b>	<b>\$ 2,886,000</b>	<b>\$ 721,500</b>

	<b>Effluent</b>		<b>Outfall Costs</b>	<b>Quarterly Payments</b>
	<b>Flows (mgd)</b>	<b>% of Flow</b>		
Encinitas	0.834	6.5%	\$ 26,860	\$ 6,715
Solana Beach	0.829	6.4%	26,698	6,675
Rancho Santa Fe	0.102	0.8%	3,285	821
Del Mar	0.298	2.3%	9,597	2,399
Escondido	10.792	84.0%	347,560	86,890
<b>Totals</b>	<b>12.855</b>	<b>100.0%</b>	<b>\$ 414,000</b>	<b>\$ 103,500</b>

	<b>Total A, M, O &amp; M Costs</b>	<b>Quarterly Payments</b>
Encinitas	\$ 1,187,534	\$ 296,884
Solana Beach	1,198,700	299,675
Rancho Santa Fe	144,448	36,112
Del Mar	421,758	105,439
Escondido	347,560	86,890
<b>Totals</b>	<b>\$ 3,300,000</b>	<b>\$ 825,000</b>

**Capital Program Component**

Del Mar shall pay for the Capital Program Components for Wastewater Treatment, Laboratory Services, and Ocean Outfall going forward from the date that Del Mar’s wastewater enters the SEJPA System (“Capital Expense Program”) as set forth below:

Del Mar shall not be responsible for any Capital Expense “buy-in costs” incurred prior to it using the SEJPA System.

The SEJPA shall develop and adopt a Capital Program Expense Budget for the each fiscal year (July 1<sup>st</sup> to June 30<sup>th</sup>) prior to the start of the fiscal year.

The proposed Capital Program Expense Budget shall be provided to Del Mar for comment at least 60 days before the start of the fiscal year.

Del Mar will be provided a 30-day comment period for the proposed Annual Budget.

The Capital Program Expense for each agency shall be determined by calculating the lifecycle of the capital improvement then proportionally allocating the cost to each year of the calculated projected life of the improvement. The expense allocation will be determined by multiplying the Capital Program Expense by the percentage of capacity allocated to each of the respective agencies based on agreed upon capacity. For those new Capital Program Expenses that have a useful life cycle greater than the remaining term of Del Mar’s contract, than an adjustment to the Capital Program Expense will be made in calculating Del Mar’s share. The goal is that Del Mar will pay its fair share for the improvements that it will use during the life of the agreement. If Capital improvements are to expand capacity beyond what is identified for the Plant at the time of the signing of this agreement, those agencies that require the additional capacity shall be responsible for that additional costs.

Del Mar shall then owe to the SEJPA its share of the Capital Program Expense, based upon its percentage of capacity allocated, and the budgeted Capital Program Expense as determined above.

Below is an example of the Treatment Capital Component that is for a lifecycle of the same of the term of this agreement:

	Treatment Capacity		Capital	Quarterly
	Flows (mgd)	% of Capacity	Program Exp	Payments
Encinitas	2.200	41.9%	\$ 405,000	\$ 101,250
Solana Beach	2.200	41.9%	405,000	101,250
Rancho Santa Fe	0.250	4.8%	46,000	11,500
Del Mar	0.600	11.4%	110,000	27,500
Escondido	-	0.0%	-	-
Totals	5.250	100.0%	\$ 966,000	\$ 241,500

Below is an example of the Ocean Outfall Capital Component:

	Outfall Capacity		Capital	Quarterly
	Flows (mgd)	% of Capacity	Program Exp	Payments
Encinitas	2.250	8.8%	17,647	\$ 4,412
Solana Beach	2.250	8.8%	17,647	4,412
Rancho Santa Fe	0.250	1.0%	1,961	490
Del Mar	0.600	2.4%	4,706	1,176
Escondido	20.150	79.0%	158,039	39,510
Totals	25.500	100.0%	\$ 200,000	\$ 50,000

Below is a summary example of the total Capital Expense:

	Total	Quarterly
	Capital Expense	Payments
Encinitas	\$ 422,647	\$ 105,662
Solana Beach	422,647	105,662
Rancho Santa Fe	47,961	11,990
Del Mar	114,706	28,676
Escondido	158,039	39,510
Totals	\$ 1,166,000	\$ 291,500

Total Annual Lease Payment

The Total Annual Lease Payment is computed by summing the Operating and Maintenance, and the Capital Program Expense components. The Annual Lease Payment will be paid in quarterly installments, consisting of one-quarter of the Total Annual Lease. Payment shall be made by the City of Del Mar to the SEJPA on July 1<sup>st</sup>, October 1<sup>st</sup>, January 1<sup>st</sup> and April 1<sup>st</sup> of each fiscal year.

	Total	Quarterly
	Costs	Payments
Encinitas	\$ 1,610,181	\$ 402,546
Solana Beach	1,621,347	405,337
Rancho Santa Fe	192,409	48,102
Del Mar	536,464	134,115
Escondido	505,599	126,400
Totals	\$ 4,466,000	\$ 1,116,500

**EXHIBIT D**

**ENGINEER'S OPINION OF PROJECT COST**

**3.1 Proposed City of Del Mar Force Main**

To convey its wastewater to the SEWRF, the City of Del Mar would first construct a force main from the 21<sup>st</sup> Street pump station to the Solana Beach collection system. The nearest connection point in the Solana Beach collection system is the Cedros trunk sewer. A proposed force main alignment is shown in Figure 1. The alignment is approximately 6,200 ft in length. It begins at Del Mar's 21<sup>st</sup> Street pump station, runs north along Camino del Mar, east on Via de la Valle, and north on S. Cedros Ave. before connecting to Solana Beach's Cedros trunk sewer at Cedros Ave. and Cofair Ave. There are bridge crossings on Camino del Mar at the San Dieguito River and on Via de la Valle at the railroad crossing. An assumed cost of \$20 per inch pipe diameter per linear foot for 8-inch HDPE force main with an added 20% contingency cost results in an estimated piping and construction cost of \$1,190,400; financed over 20 years at a 4% rate results in an annual payment of approximately \$88,000.

**Figure 1. Proposed Del Mar force main alignment.**





**AGREEMENT FOR SALE OF RECLAIMED WATER  
TO THE CITY OF DEL MAR  
BY THE SAN ELIJO JOINT POWERS AUTHORITY**

This Reclaimed Water Sales Agreement (AGREEMENT) is made and entered into by and between the San Elijo Joint Powers Authority (JPA) and the City of Del Mar (CITY), a municipal corporation.

**RECITALS:**

WHEREAS, the JPA will become the producer of reclaimed water (treated wastewater) in accordance with the requirements of Order No. 93-71, Waste Discharge Requirements for the San Elijo Joint Powers Authority Control Facility And San Elijo Water Pollution Control Facility (WPCF), San Diego County (Order No. 93-71), as adopted by the California Regional Water Quality Control Board, San Diego Region (Regional Water Board) on June 21, 1993, which incorporate California's Title 22 Regulations, and amendments thereto; and

WHEREAS, the CITY is responsible for the distribution of potable and reclaimed water within its city wide jurisdiction and outside its jurisdiction to the 22nd District Agricultural Association (DISTRICT); and

WHEREAS, the JPA, CITY and the DISTRICT, recognizing that the use of reclaimed water is a positive and achievable future means of helping to meet the growing water demands within the CITY and Southern California, entered into a separate "Reclaimed Water Sales Agreement" for the production and delivery of reclaimed water to the DISTRICT (the "District Agreement"), a copy of which is attached hereto as Attachment 1; and

WHEREAS, the District Agreement is contingent in part upon the negotiation of an agreement between the JPA and the CITY for the purchase of reclaimed water; and

WHEREAS, the JPA and the CITY desire to enter into this AGREEMENT to satisfy the contingency and further define the mutual rights and obligations of the parties with respect to and consistent with the provisions of the District Agreement;

**AGREEMENT**

NOW, THEREFORE, in consideration of these recitals and the covenants contained herein, the JPA and the CITY agree as follows:

Date of Execution

November 5, 1997

SECTION 1. SCOPE OF AGREEMENT

The subject matter of this AGREEMENT is the mutual rights and obligations of the CITY and the JPA with respect to the production and delivery of reclaimed water to the DISTRICT under the District Agreement. This AGREEMENT is not intended to cover the production and delivery of reclaimed water to other CITY customers. The sale and delivery of reclaimed water produced by the JPA to the CITY for sale to other CITY customers shall be accomplished by a separate agreement negotiated between the JPA and the CITY. It is intended that only future agreement for the sale and delivery of reclaimed water to the CITY for sale to other CITY customers provide similar pricing and conditions to establish and maintain equity among all CITY customers.

SECTION 2. OWNERSHIP, OPERATION, AND MAINTENANCE RESPONSIBILITIES

The JPA shall at all times operate its WPCF and reclaimed water distribution system in order that the system and delivered water are in conformance with the requirements of the Water Reclamation Law, Water Code Section 13500, et. seq., including those minimum standards for statewide criteria contained in section 13521 of the Water Code, the requirements of the Regional Water Board, including but not limited to, Order No. 93-71, Title 22 of the California Code of Regulations, and the terms of this AGREEMENT.

The JPA shall conduct tests of the reclaimed water being produced in accordance with Order No. 93-71. In addition, the JPA, at its sole expense, shall install a conductivity probe and will monitor, record the results, and maintain records on a continuous basis.

The JPA shall be responsible for the construction, operation, and maintenance of its reclaimed water treatment, storage and distribution system up to the upstream side of the DISTRICT's reclaimed water meter and backflow device including replacement of old/or outdated components or repairs to components, including all pipes, valves, and meters located in public rights of way or easements, damaged by flood, storm, or other causes. The JPA shall also provide customer relation services, such as responding to telephone and written inquiries about reclaimed water.

The JPA shall be responsible for the initial installation of a reclaimed water flow meter and associated backflow prevention devices in a meter box pre-installed by the JPA at a location at or near the DISTRICT's property boundary to measure the quantity of reclaimed water provided to the DISTRICT. The CITY shall own and be responsible for the operation, calibration, and maintenance of the reclaimed water meter and associated backflow prevention devices.

As provided in the District Agreement, the DISTRICT shall be responsible for the installation, operation, and maintenance of any irrigation pipelines, pumps, sprinklers, storage facilities, and appurtenances located downstream of the CITY's reclaimed water meter and

backflow device, and neither the CITY nor the JPA shall assume any responsibility therefor.

### SECTION 3. RECLAIMED WATER QUALITY

The JPA shall produce and deliver to the CITY for delivery to the DISTRICT only reclaimed water that meets the requirements of Order No. 93-71. In addition to the requirements of Order No. 93-71, the JPA agrees that the quality of the reclaimed water that will be provided for delivery to the DISTRICT will at all times be of sufficient quality as outlined in Sections 2 and 3 of this AGREEMENT.

From April 1 through September 30 of each year the JPA will provide reclaimed water at 1,000 parts per million of total dissolved solids (TDS) or less, and from October 1 through March 31 of each year the JPA will provide reclaimed water at 1,100 parts per million of TDS or less. The JPA may add domestic water to achieve the above TDS limit. Should domestic water be added for water quality purposes, the quantity of domestic water added to meet these TDS limits shall be included in the total quantity of reclaimed water per contract year specified in Section 4. The CITY is not required to purchase the reclaimed water if the quality of the reclaimed water is not in conformance with the criteria specified in Order No. 93-71 and this AGREEMENT.

To achieve the necessary quality of reclaimed water as set forth in this AGREEMENT, the JPA and the CITY shall work together and with the DISTRICT to achieve such quality through either blending by adding domestic potable water or a higher level of treatment. Any blending of domestic potable water with reclaimed water to enhance the quality of reclaimed water provided by the JPA shall be accomplished by the JPA at its facilities, and the domestic potable water used for blending shall be provided at the domestic potable water rate charged to the JPA by the supplying water agency, which costs may exceed the cost of reclaimed water. In the event DISTRICT requests a higher level of treatment, CITY and JPA shall cooperate with each other and the DISTRICT in that regard to the extent feasible, and the JPA shall charge the CITY only such additional actual costs as are incurred by the JPA to meet the DISTRICT's requested level of higher treatment.

### SECTION 4. RECLAIMED WATER QUANTITY

The JPA shall supply to the CITY for delivery to the DISTRICT at the DISTRICT's reclaimed water meter, and the CITY agrees to accept, 150 acre-feet of reclaimed water annually to meet the DISTRICT's estimated annual reclaimed water demand. If the CITY accepts and pays for more than 150 acre-feet of reclaimed water in any given year, the CITY shall be entitled to carry forward credit for every acre-foot (or portion thereof) so purchased over the 150 acre-foot annual use requirement to be applied to future years to meet said average demand. The year for measuring reclaimed water usage begins at the start of reclaimed water service to the DISTRICT and continues on the same date every year.

Should the CITY not accept the per year quantity of reclaimed water specified by this

AGREEMENT for any reason other than the JPA's failure to supply such quantity and/or quality of reclaimed water as provided for in this AGREEMENT, then the JPA shall have the right to charge the CITY and the CITY agrees to pay the JPA the current reclaimed water price for the difference between the quantity of reclaimed water the CITY is obligated to purchase each year from the JPA in accordance with this AGREEMENT and the actual quantity of reclaimed water purchased by the CITY that same year minus any previous years' credits as described hereinabove.

Reclaimed water and domestic potable water used for blending or as supplemental water furnished to the CITY by the JPA shall be measured by a totalizing meter installed, owned, operated, and read by the CITY referenced in Section 4 of the District Agreement. The CITY shall report the water flow usage to the JPA at each billing period. Fees and charges for reclaimed and other water and retrofit loan payments are contained in Sections 3, 5, 8 and 9.

#### SECTION 5. POTABLE WATER SUPPLEMENTATION

The CITY and the JPA understand that the volume of reclaimed water required will vary and that the months of May through October are anticipated to be the peak periods for usage of reclaimed water by the DISTRICT. The JPA agrees to make every effort to provide reclaimed water to satisfy the demand during these peak periods of usage. If the JPA is unable to supply reclaimed water during times of peak usage, then domestic water will be supplied to supplement the shortfall. Supplemental water is the domestic potable water supplied to meet demand during emergency outages and interruptions of service and to meet peak day demands. Supplemental water is not domestic potable water used to enhance the quality of reclaimed water. Any supplemental domestic potable water provided to the DISTRICT shall be provided at the domestic potable water rate of the water agency supplying the supplemental water for delivery to the DISTRICT. The cost of supplemental potable water may exceed the cost of reclaimed water. The quantity of supplemental water shall be included in the total quantity of reclaimed water per contract year specified in Section 4.

The CITY recognizes and acknowledges that there are other reclaimed water customers, that the JPA does not control the amount of raw wastewater received at the WPCF, and that the availability of reclaimed water cannot be guaranteed above the amount provided in this AGREEMENT. However, the JPA shall make every reasonable effort to satisfy the demand.

#### SECTION 6. RECLAIMED WATER DELIVERY PRESSURE

Reclaimed water provided by the JPA at the DISTRICT's meter shall be provided at the following pressures: 100psi minimum pressure, and 150psi maximum pressure.

#### SECTION 7. COMPLIANCE WITH REGULATORY REQUIREMENTS

The JPA agrees to provide reclaimed water for the DISTRICT upon application by the DISTRICT to the CITY for such service and upon certification by the Regulatory Agencies, such

as the California Department of Health Services, The California Regional Water Quality Control Board, San Diego Region and the County Department of Health Services that the DISTRICT is in compliance with applicable regulations and specifications including but not limited to the JPA Rules and Regulations for Reclaimed Water Service set forth in Exhibit A attached to the District Agreement.

#### SECTION 8. PRICE OF RECLAIMED WATER

The CITY agrees to pay the JPA a price for reclaimed water that shall not exceed 85% of the domestic water rate per acre foot. This rate shall be applied to the reclaimed water portion of the total volume of flow recorded at the DISTRICT's reclaimed water meter. The price of the reclaimed water to the CITY may be adjusted from time-to-time as detailed in Section 8 of Attachment 1 (the District Agreement). The JPA shall provide the CITY the basic calculations of determining reclaimed water costs including the applications of any incentives, rebates, grants and/or loans. The parties agree that if the JPA acquires funding in excess of presently calculated amounts in its State Revolving Fund (SRF) program, it shall advise the CITY and enter into negotiations to consider appropriate adjustments to the cost of purchasing reclaimed water.

Both parties agree that the cost of the reclaimed water to the DISTRICT shall never exceed the price provided in the District Agreement. The term "domestic water rate per acre foot" as used in this Section 8 means the lowest of the total domestic potable water rates for the non-residential class charged per acre foot during a particular billing period by the San Dieguito Water District, The Santa Fe Irrigation District, and the City of Del Mar, including any service availability, demand or similar charges which the DISTRICT would have paid had it been a customer of the water purveyor agency.

#### SECTION 9. TERMS OF PAYMENT

The JPA will invoice the CITY bi-monthly for reclaimed water, any retrofit loan payments, domestic water used for blending, and any supplemental water delivered to the DISTRICT's reclaimed water meter at the price established in Sections 3, 5, and 8 of this AGREEMENT. Concurrently, the JPA will credit the CITY for the same service period for any administration costs and for any supplemental water provided by the CITY and not separately invoiced to the DISTRICT by the CITY, which will be considered together as credits against the JPA's invoice amount for reclaimed water sales.

"Administration costs" means the CITY's in-house costs for reclaimed water meter installation, calibration, maintenance, repair, replacement, and flow readings, including the costs for calibration, maintenance, repair, and replacement of appurtenant backflow prevention and flow control devices installed by the JPA or others at the site of the reclaimed water meter.

"Administration costs" may also include costs for use permits and mandatory cross-connection control inspections but do not include the costs of invoicing and collecting revenues from the DISTRICT. The JPA agrees to credit the CITY an initial administration cost of \$35.00 per acre-

foot used based on the total volume of reclaimed water flow recorded by the CITY at the DISTRICT's reclaimed water meter. The CITY shall prepare and submit to the JPA justification for its administration costs no later than January 1st of each year. The administration costs may be adjusted by agreement of both parties no later than March 1st of each year. Adjustment of administration costs will not be unreasonably withheld.

The adjusted balance of the JPA's invoice for that period will be paid by the CITY to the JPA within thirty (30) days after receipt of the invoice.

SECTION 10.           ACCESS TO RECORDS

The JPA and the CITY shall keep and maintain proper books and records. Such records shall include, but not be limited to, all entries concerning the quantity and quality of reclaimed water delivered to the DISTRICT during the term of this AGREEMENT, all tests performed by the JPA and the CITY concerning the quality of reclaimed water, all reports and associated records required by Order No. 93-71, all complaints, investigations, or other reports associated with the production and delivery of reclaimed water, and all cost information, capital expenditures, maintenance records, and other financial data associated with the production and delivery of reclaimed water to the DISTRICT. All such records except those exempt from disclosure by law shall, upon written request, be made available and subject to inspection by any duly authorized representative of either party, the DISTRICT, the San Diego County Water Authority, the Metropolitan Water District of Southern California, the California and San Diego County Departments of Health Services, and the California Water Quality Control Board, San Diego Region, within 10 days after receipt of such notification

SECTION 11.           NOTICE

Notices required or permitted under this AGREEMENT shall be sufficiently given if in writing and if either served personally upon the party to whom it is directed or by deposit in the United States mail, postage prepaid, certified, return receipt requested, addressed to the parties at the following addresses:

CITY:                   City of Del Mar  
                              1050 Camino Del Mar  
                              Del Mar, CA 92014

JPA:                     San Elijo Joint Powers Authority  
                              1925 Palomar Oaks Way, Suite 300  
                              Carlsbad, CA 92008

It shall be the sole responsibility of each party to this AGREEMENT to promptly notify the other of any change of title and/or address as long as this AGREEMENT remains in effect.

SECTION 12. ASSIGNMENT

Neither this AGREEMENT nor any interest therein nor any monies due or to become due thereunder shall be assigned, hypothecated or otherwise disposed of without the prior written consent of the parties to this AGREEMENT, which consent shall not be unreasonably withheld.

SECTION 13. EFFECTIVE DATE

This AGREEMENT shall become effective upon the date on which it is executed by the parties to this AGREEMENT subject to satisfaction of the following contingency. This AGREEMENT is contingent upon the JPA negotiating a separate retrofit agreement with the DISTRICT securing a loan from the JPA for costs related to retrofitting. This contingency shall be fulfilled within six months of the signing of this AGREEMENT with written notice to all parties, or this AGREEMENT will be void.

SECTION 14. TERMINATION OF AGREEMENT

The term of this AGREEMENT shall be from the effective date to the date which is 20 years after the date on which reclaimed water is first available for delivery to the DISTRICT at the real property described in Section 1 of the District Agreement, unless modified or amended in writing by the parties. This AGREEMENT shall continue in full force and effect from year to year after the initial term until any party gives the other party one (1) year written notice of its intention to terminate or re-negotiate the AGREEMENT. Both parties acknowledge SECTION 14 of the District Agreement which provides that in the event the DISTRICT is given notice by either the JPA or the CITY of its intent to terminate or re-negotiate, the DISTRICT shall have the right of first refusal for any extended term purchase agreement of reclaimed water on terms which are acceptable to the JPA, the CITY, and the DISTRICT.

The JPA may terminate this AGREEMENT upon 180 days notice if treatment standards change such that upgraded treatment is required and reclaimed water cannot feasibly be produced and delivered meeting those standards or should the CITY or the DISTRICT breach their respective obligations in any material respect, to include: (1) the DISTRICT repeatedly misuses the reclaimed water; (2) the CITY repeatedly fails to pay for the reclaimed water; (3) the CITY fails to accept the reclaimed water as required; and, (4) the CITY or the DISTRICT fail to maintain necessary facilities.

The CITY may terminate this AGREEMENT upon 180 days notice should the JPA breach its obligations in any material respect, to include: (1) the JPA repeatedly fails to provide the quantity of reclaimed water at the agreed upon price, excepting acts of God where diligent repair is undertaken; (2) the JPA repeatedly fails to provide the appropriate quality of reclaimed water as required in this AGREEMENT; (3) the JPA fails to maintain necessary facilities and records; and (4) the Regional Board commences enforcement action against the JPA for failure or refusal to comply with any of its orders.

SECTION 15.            ENTIRE AGREEMENT

This AGREEMENT constitutes the entire understanding between the parties hereto with respect to the subject matter hereof superseding all negotiations, prior discussions and preliminary AGREEMENTS and understandings, written or oral. This AGREEMENT shall not be amended, except by written consent of the parties affected by the amendment, and no waiver or any rights under this AGREEMENT shall be binding unless it is in writing signed by the party waiving such rights. In the event any provision of this AGREEMENT shall be invalid and unenforceable, the other provisions of this AGREEMENT shall be held to be valid and binding on the parties hereto.

In the event of a dispute under this AGREEMENT, neither party shall be deemed to be the party who caused the uncertainty to exist and the prescriptions of Civil Code Section 1654 shall not be applicable to such a dispute under this AGREEMENT.

SECTION 16.            BINDING EFFECT

This AGREEMENT shall be binding upon the parties according to its terms and their respective successors in interest and permitted assigns.

SECTION 17.            INDEMNIFICATION

The JPA agrees to indemnify, defend, and hold harmless the CITY and its Council Members, officers, consultants, employees, and agents from any and all claims for damage arising out of or related to the JPA's negligent or intentional acts or omissions in the operation and maintenance of the San Elijo WPCF and the reclaimed water distribution facilities upstream of the DISTRICT's reclaimed water meter.

The CITY agrees to indemnify, defend, and hold harmless the JPA and its members, directors, officers, consultants, agents, and employees from any and all claims for damage, suits, or other demands arising out of or related to the CITY's negligent or intentional acts or omissions in the operation and maintenance of the CITY's facilities for distribution of the reclaimed water.

This indemnity paragraph is not intended by the parties to waive any legal rights for defenses and immunities and other legal safeguards and protections from liability which are granted to public agencies and their employees under the California Tort Claims Act.

SECTION 18.            RESERVATION OF RIGHTS; NO VESTED RIGHTS

It is hereby expressly understood and agreed that the CITY by execution of this AGREEMENT and the exercise of the rights granted to it by this AGREEMENT shall not acquire any vested right to reclaimed water, and shall not acquire any vested right, title, or interest in or to the JPA's wastewater treatment facilities, reclaimed water distribution system, or any other JPA facilities. The JPA expressly reserves all of its rights except as expressly provided



otherwise herein.

SECTION 19. ATTORNEY'S FEES


If any arbitration proceeding or action at law is brought to enforce or interpret the provisions of this AGREEMENT, the prevailing party shall be entitled to a reasonable attorney's fees and expert witnesses' fees which may be set by the Court in the same action brought for that purpose, in addition to any other relief to which a party may be entitled.

SECTION 20. VENUE

In any action brought by one party of this AGREEMENT against another party to this AGREEMENT to enforce or interpret the provisions of this AGREEMENT, the parties agree that the proper place of venue is in the state courts within San Diego County.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed and effective as of 11/5/97.

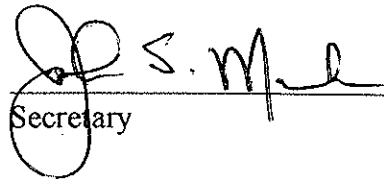
CITY OF DEL MAR:

By: 

SAN ELIJO JOINT POWERS AUTHORITY

  
Chair of the Board

ATTEST:

  
Secretary