

**RESIDUALS MANAGEMENT AND DISPOSAL AGREEMENT
RELATING TO THE EAST COUNTY ADVANCED WATER
PURIFICATION PROJECT AND THE METRO SYSTEM**

THIS RESIDUALS MANAGEMENT AND DISPOSAL AGREEMENT (this "Agreement") is made and entered into by and between the CITY OF SAN DIEGO, a charter city ("City") and the EAST COUNTY ADVANCED WATER PURIFICATION JOINT POWERS AUTHORITY, a joint powers agency composed of the City of El Cajon ("El Cajon"), the Padre Dam Municipal Water District ("Padre Dam"), and the San Diego County Sanitation District ("Sanitation District"). The City and ECAWP JPA are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

RECITALS

- A. In 1998, the City, El Cajon, Padre Dam, Sanitation District, and other cities and districts providing wastewater service in the central San Diego area (or their predecessors in interest) entered into that certain Regional Wastewater Disposal Agreement dated May 18, 1998 (the "Metro Agreement"), which provided, among other things, for certain contract rights to capacity in the Metropolitan Sewerage System, a system of wastewater conveyance, treatment, and disposal facilities owned by the City ("Metro System"). The Metro Agreement also established a mechanism to fund the planning, design, construction, operation, and maintenance of the Metro System by the City and the other agencies participating in the Metro System (the "Participating Agencies").
- B. On April 29, 2014, the San Diego City Council adopted Resolution No. R-308906, which approved and supported the City's efforts to develop a strategy to offload wastewater flow from the Point Loma Wastewater Treatment Plant through implementation of potable reuse, resulting in effluent discharged to the Pacific Ocean being equivalent to what would be achieved by upgrading the Point Loma Wastewater Treatment Plant to a secondary treatment plant ("Secondary Equivalency"). The City's potable reuse program envisioned in Resolution R-308906 is known as the "Pure Water Program."
- C. Relatedly, on December 9, 2014, the City and certain environmental stakeholders entered into a Cooperative Agreement in Support of Pure Water San Diego (the "Cooperative Agreement"). The Cooperative Agreement provides, among other things, that the City and the stakeholders would use reasonable efforts to have federal legislation known as the "Ocean Pollution Reduction Act II" (or "OPRA II") adopted. Generally, OPRA II would allow the City's Clean Water Act permit for the Point Loma Wastewater Treatment Plant to be based on Secondary Equivalency, with a goal to produce a regional annual average of at least 83 MGD of water suitable for potable reuse by December 31, 2035.
- D. Generally, the Pure Water Program is a phased, multi-year program designed to regionally produce at least 83 MGD of safe, reliable potable water using new, expanded, or modified facilities, some of which will include Metro System facilities, in order to achieve Secondary Equivalency at the Point Loma Wastewater Treatment Plant. The Pure Water Program generally consists of two phases. Phase 1 includes 30 MGD of production capacity, will be located in the vicinity of the North City Water Reclamation Plant, and will be completed in or around 2025. Phase 2 includes up to 53 MGD of production capacity, will be located at one or more locations yet to be determined, and will be completed in or around 2035.

- E. El Cajon, Padre Dam, and Sanitation District are Participating Agencies in, and own contract capacity in, the Metro System pursuant to the Metro Agreement. Since 2014, El Cajon, Padre Dam, Sanitation District, and Helix Water District ("Helix") have engaged in a collaborative partnership to study and establish a program to recycle wastewater and to create a new, local, sustainable, and drought proof potable water supply for East San Diego County. The "East County Advanced Water Purification Project" (or "ECAWP Project") is a project intended to produce approximately 11.5 MGD of safe, reliable potable water for East San Diego County using wastewater that would otherwise be treated and disposed of through the Point Loma Wastewater Treatment Plant.
- F. In order to implement the ECAWP Project, on November 1, 2019, El Cajon, Padre Dam, and Sanitation District (the "ECAWP Member Agencies") entered into a Joint Exercise of Powers Agreement establishing the ECAWP JPA as a separate public entity for the purpose of planning for, designing, constructing, owning and operating wastewater treatment and advanced water purification facilities (the "ECAWP Project"). The ECAWP JPA will be the owner and operator of the ECAWP Project. The ECAWP Project will receive, treat, and dispose of wastewater from El Cajon, Padre Dam, and Sanitation District and will produce recycled and potable water for purchase by Padre Dam and Helix.
- G. Since 2016, the City and the Participating Agencies have negotiated and developed a proposed amended and restated version of the Metro Agreement ("Amended and Restated Metro Agreement") with the purpose of comprehensively and equitably addressing the costs and revenues associated with the Pure Water Program and the related construction, expansion, and/or modification of Metro System facilities.
- H. Section 2.9.2 of the proposed Amended and Restated Metro Agreement provides that the City and the Participating Agencies intend to meet and negotiate in good faith regarding the disposal, treatment, and/or management of wastewater treatment residuals (solids, brine, and centrate) produced at any new non-Metro System wastewater treatment facilities upstream of any Pure Water-related Metro System facilities that currently exist or may exist in the future. Under Section 2.9.2, such negotiations may result in a further amendment to the Metro Agreement, or in one or more separate agreements between the City and the involved Participating Agencies, regarding the disposal, treatment, and/or management of residuals at such non-Metro System facilities.
- I. Section 2.9.3 of the proposed Amended and Restated Metro Agreement provides that the City and the other Participating Agencies will cooperate, coordinate, and negotiate in good faith with El Cajon, Padre Dam, and Sanitation District on issues that relate to the ECAWP Project, including, but not limited to, the potential transfer of the Mission Gorge Pump Station, the disposal of residuals, and a source control program.
- J. In addition, Section 2.9.3.2 of the proposed Amended and Restated Metro Agreement provides that, absent a further amendment to the Metro Agreement or a separate agreement between the City and involved Participating Agencies as described above, the involved Participating Agencies shall not dispose of residuals from new non-Metro System wastewater treatment facilities at any point upstream of Pure Water-related Metro System facilities that currently exist or may exist in the future.
- K. The Parties to this Agreement acknowledge and agree as follows:

- a. The City and the ECAWP JPA share the mutual objective of long-term compliance by the Metro System with the Clean Water Act for wastewater treatment and disposal at the Point Loma Wastewater Treatment Plant, with applicable state law, and with potable reuse regulations;
 - b. The ECAWP Project furthers the objectives of San Diego City Council Resolution No. R-307585 by offloading wastewater flow from the Point Loma Wastewater Treatment Plant, and therefore contributes to achieving Secondary Equivalency under OPRA II and the Cooperative Agreement;
 - c. A mutual regional partnership involving the Pure Water Program and ECAWP Project will result in efficient regional long-term compliance with the Clean Water Act;
 - d. More specifically, the ECAWP Project is intended to offload approximately 15 MGD of wastewater from the Point Loma Wastewater Treatment Plant and contribute to Secondary Equivalency at no capital or operating expense to the City or the other Participating Agencies, and is intended to produce an annual average of 11.5 MGD of potable water annually for beneficial use.
- L. In light of the above, the Parties desire to enter into this Agreement in order to, among other things:
- a. Authorize the ECAWP JPA, on behalf of El Cajon, Padre Dam, and Sanitation District, to dispose of residuals for treatment and disposal by the Metro System pursuant to the terms and conditions of this Agreement;
 - b. Provide a contractual guarantee by the ECAWP JPA that the ECAWP Project will produce a minimum amount of 11 MGD of water suitable for potable use if water production requirements are included in the City's NPDES permit for the Point Loma Wastewater Treatment Plant;
 - c. Provide that the City will consider downsizing the capacity of Pure Water Phase 2 facilities from 53 MGD to 42 MGD (although the City will still retain space for the 53 MGD option), which would allow the City and all Participating Agencies to realize avoided capital and operating costs; and
 - d. Provide for a collaborative long-term, financial partnership for a regional residuals management system that may be used by the ECAWP Project and residual dischargers within the City.

NOW THEREFORE, in consideration of the above Recitals and of the mutual promises and agreements contained herein, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

- 1.1 Definitions.** Unless the context otherwise requires, the words and terms defined in this Section 1.1 shall, for the purposes of this Agreement, have the meanings herein specified.

Commented [U1]: Note: ECAWP is still reviewing this number from an engineering perspective to confirm this is an appropriate level to guarantee by contract. (ECAWP JPA)

Commented [U2]: Note: Number may be updated based on final determination regarding number above. (ECAWP JPA)

- 1.1.1** Amended and Restated Metro Agreement means the proposed Amended and Restated Metro Agreement in substantially the form approved by the City of San Diego City Council on December 4, 2018.
- 1.1.2** Brine is a waste byproduct of the demineralization process at a Repurified Water treatment facility.
- 1.1.3** Capital Expenses means all costs associated with planning (including costs of consultants and CEQA), design, financing, and construction of facilities, including startup and testing costs prior to acceptance of facilities.
- 1.1.4** Centrate is the liquid byproduct that results from the dewatering of digested sludge as part of wastewater treatment processes.
- 1.1.5** East Mission Gorge Force Main or EMGFM means the approximately eight (8) mile existing force main and gravity line from the East Mission Gorge Pump Station to the North Mission Valley Interceptor. The EMGFM is currently owned and operated by the City as part of its Municipal System, but will be transferred to the ECAWP JPA for construction, rehabilitation, and operation pursuant to the EMGPS Purchase and Sale Agreement and Escrow Instructions.
- 1.1.6** East Mission Gorge Pump Station or EMGPS means the existing pump station located on Mission Gorge Road near State Route 52. The EMGPS is currently owned and operated by the City as part of its Municipal System, but will be transferred to the ECAWP JPA for construction, rehabilitation and operation pursuant to the EMGPS Purchase and Sale Agreement and Escrow Instructions.
- 1.1.7** ECAWP JPA means the East County Advanced Water Purification Joint Powers Authority.
- 1.1.8** ECAWP Member Agencies means the member agencies of the ECAWP JPA, which currently includes El Cajon, Padre Dam, and Sanitation District.
- 1.1.9** ECAWP Project means the equipment, plants, and facilities used by the ECAWP JPA to convey, store, treat, recycle and reclaim wastewater and perform advanced purification of water for the ECAWP Member Agencies.
- 1.1.10** EMGPS Purchase and Sale Agreement and Escrow Instructions means a separate agreement between the City and the ECAWP JPA for the purchase and sale of certain parcels, property interests, and improvements, including the EMGPS, EMGFM, necessary easements, and a portion of the 42-inch gravity sewer feeding the EMGPS, from the City to the ECAWP JPA.
- 1.1.11** Effective Date shall have the meaning set forth in Section 6.1.
- 1.1.12** El Cajon means the City of El Cajon.
- 1.1.13** Helix means the Helix Water District.
- 1.1.14** Interagency Workgroup means a technical workgroup composed of City and ECAWP representatives.

- 1.1.15** Metro Agreement means the 1998 Regional Wastewater Disposal Agreement between the City of San Diego and the Participating Agencies in the Metropolitan Sewerage System, as may be amended from time to time (including the Amended and Restated Metro Agreement, once fully executed by the parties thereto).
- 1.1.16** Metro System means the City's Metropolitan Sewerage System, in which each of the ECAWP Member Agencies maintain contract capacity under the 1998 Regional Wastewater Disposal Agreement between the City of San Diego and the Participating Agencies in the Metropolitan Sewerage System, as may be amended from time to time.
- 1.1.17** MGD means million gallons per day.
- 1.1.18** NPDES Permit means the City's National Pollutant Discharge Elimination System permit for the Point Loma Wastewater Treatment Plant, as may be renewed from time to time.
- 1.1.19** O&M Expenses means those items and activities required by sound engineering and best management practices to maintain the hydraulic capacity, function, and performance of a facility.
- 1.1.20** Padre Dam means the Padre Dam Municipal Water District.
- 1.1.21** Participating Agencies means the parties to the Metro Agreement other than the City.
- 1.1.22** Pure Water Program means the City's phased, multi-year program designed to regionally produce at least 83 MGD of safe, reliable potable water from repurified wastewater.
- 1.1.23** Repurified Water means water which, as a result of advanced treatment of recycled wastewater, is suitable for use as a source of domestic (or potable) water.
- 1.1.24** Residuals means Solids, Brine, and Centrate produced by the ECAWP JPA as defined in this Agreement.
- 1.1.25** Sanitation District means the San Diego County Sanitation District.
- 1.1.26** Solids means the solid, semisolid, or slurry residual material that is produced as a byproduct of wastewater treatment processes.
- 1.1.27** Stoyer WRF means the existing Ray Stoyer Water Recycling Facility, which is currently owned and operated by Padre Dam to produce approximately 2 MGD of Title 22 recycled water. During and after development of the ECAWP Project, portions of the Stoyer WRF will be decommissioned, while other portions will be owned and operated by either the ECAWP JPA as part of the ECAWP Project or by Padre Dam.

1.1.28 Wastewater means the liquid effluent that is discharged by domestic, municipal, commercial, and industrial users of water.

ARTICLE 2 REGIONAL COORDINATION FOR ECAWP PROJECT AND PURE WATER PROJECT

2.1 Ownership and Operation.

2.1.1 ECAWP Project. The ECAWP JPA is the owner of the ECAWP Project and/or has certain contractual rights of use to the ECAWP Project. All decisions with respect to the planning, design, construction, operation, permitting, regulatory compliance, and maintenance of the Project shall rest with the ECAWP JPA; provided, however, that the ECAWP JPA will consult with the City as provided in this Agreement.

2.1.2 Metro System and Other Pure Water Facilities. The City is the owner of the Metro System and has such rights and obligations as are described in the Metro Agreement. The City is also the owner of all Pure Water Program facilities that are not part of the Metro System, and all decisions with respect to the planning, design, construction, operation, permitting, regulatory compliance, and maintenance of such facilities shall rest with the City.

2.2 Water Production Guarantee. If at any point the City's NPDES Permit expressly requires a minimum amount of regional production of Repurified Water, the ECAWP JPA agrees to guarantee production of at least 11 MGD to fulfill such requirement. If a state or federal agency imposes penalties on the City for a violation of the NPDES Permit requirement to produce a minimum amount of Repurified Water, and such violation is caused in whole or in part by the ECAWP JPA's failure to produce 11 MGD as provided above, the ECAWP JPA will pay its proportionate share of penalties that are directly attributable to the ECAWP JPA's failure to produce the amount required above. The City and ECAWP JPA agree to cooperate in good faith with one another and provide reasonable, timely updates to one another on subjects relating to such requirement or potential violations, including, but not limited to: the City's NPDES Permit application (including an application for a permit modified under section 301(h) & (j)(5) of the Clean Water Act), correspondence with the permitting agencies regarding the application or NPDES Permit requirements, annual Repurified Water production, communications with state or federal agencies regarding violations or alleged violations related to Repurified Water, and defense or appeals regarding violations or alleged violations of the Repurified Water production requirement.

Commented [U3]: As noted above, this amount is being reviewed/confirmed.
(ECAWP JPA)

Commented [U4]: Same as above.
(ECAWP JPA)

2.3 ECAWP Milestones. ECAWP JPA intends to meet the following key milestones for construction and operation of the ECAWP Project:

2.3.1 Issuance of the notice to proceed for one or more of the progressive design-build packages by December 31, 2020. The ECAWP Project packages include Package #1 (water recycling facility, advanced water purification facility, visitor center, product water pump station, and solids handling facility), Package #2 (advanced water purification pipeline, dechlorination facility, and Lake Jennings reservoir inlet), and Package #3 (influent pump station, East Mission Gorge pump station, East Mission Gorge force main and residuals bypass system);

2.3.2 Commencement of construction for one or more of the construction packages by June 30, 2022;

2.3.3 Commencement of commercial operation of wastewater treatment and production of Repurified Water by June 30, 2025.

Any failure to meet the above milestones by the time stated shall not be considered a breach of this Agreement. In the event the ECAWP JPA anticipates a delay in one or more of the above dates, it will notify the City. The City and ECAWP JPA recognize that if construction for one or more of the ECAWP Project construction packages has not begun by October 1, 2024 (estimated date for City's 10% design of Phase 2 Pure Water facilities), the City will likely need to proceed with 53 MGD production capacity for Phase 2 Pure Water facilities. In such event, the Parties will meet to revisit their respective rights and obligations under this Agreement and a potential amendment to achieve the Parties' purposes under this Agreement.

2.4 **City Review and Comment on ECAWP Facilities.** Following completion of 30% design of the ECAWP Project's treatment facilities, the ECAWP JPA will present the design concept and share information on the efficacy and reliability of the ECAWP Project's treatment plant design with the City. Notwithstanding the foregoing, final decisions with respect to the planning, design, and construction shall rest with the ECAWP JPA.

2.5 **Potential Reduction in Pure Water Phase 2 Capacity.** The City agrees to consider downsizing the capacity of Pure Water Phase 2 facilities from 53 MGD to 42 MGD. The Parties acknowledge that the City and all of the Participating Agencies, including non-ECAWP JPA agencies, may realize avoided Capital Expenses and O&M Expenses through such downsizing.

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(ECAWP JPA)

2.6 **Satisfaction of Amended and Restated Agreement Requirements.** The Parties acknowledge and agree that this Agreement satisfies the requirements of Section 2.9.3.2 of the Amended and Restated Metro Agreement.

2.7 **Stoyer WRF.** Stoyer WRF is currently owned and operated by Padre Dam and discharges Solids and other residuals into the Metro System, subject to the requirements of the current Metro Agreement. During and after development of the ECAWP Project, portions of the Stoyer WRF will be decommissioned, while other portions will be owned and operated by either the ECAWP JPA as part of the ECAWP Project or by Padre Dam.

In the event the ECAWP Project is decommissioned in the future, the City acknowledges and agrees that Padre Dam will retain the right to operate a wastewater treatment and recycling facility up to the same capacity as Stoyer WRF on such terms and conditions as would apply if Stoyer WRF were to continue its current operations under the Metro Agreement. For example, such facility would not be considered a "new" facility under Section 2.9.3.2 of the Amended and Restated Metro Agreement (or similar successor provisions), but would be subject to the provisions of the Metro Agreement that would apply to Stoyer WRF if it continued in operation. In this event, the cost savings claimed above would be less.

ARTICLE 3

MANAGEMENT OF SOLIDS

- 3.1 **Solids Handling by ECAWP JPA.** The ECAWP Project will include a Solids handling facility designed to handle and dispose of 100% of Solids produced by wastewater treatment at the ECAWP Project. Therefore, except as otherwise set forth in this Article 3, the ECAWP JPA will not discharge Solids into the Metro System after the start of commercial operations. Commercial operations shall begin after an operational test period, approval by the permitting agencies, and acceptance of the ECAWP Project by the ECAWP JPA. The Parties acknowledge and agree that the restriction in this section is not intended to prohibit the ECAWP JPA from discharging raw wastewater into the Metro System.
- 3.2 **Limited Exceptions.** In the event that the ECAWP JPA experiences an event or condition adversely affecting the ability of the ECAWP Solids handling facility from processing or disposing of Solids, including planned or unplanned maintenance or repair, the ECAWP JPA may dispose of Solids into the Metro System in accordance with the following:
- 3.2.1 For any Solids that would be discharged by the ECAWP JPA into conveyance facilities upstream of Pure Water Program Phase 1 facilities, the volume of Solids shall in no case exceed the amount of Solids that would be produced by a 6 MGD wastewater treatment facility treating raw wastewater. Further, in the event the City determines that there is a need to materially alter its standard treatment process due solely to the temporary discharge of Solids by ECAWP JPA, the City will inform ECAWP JPA and convene the Interagency Workgroup to identify potential solutions including but not limited to: (i) a further limitation on the quantity of Solids disposed of by ECAWP JPA; and/or (ii) a temporary decrease in the amount of wastewater being treated by the ECAWP JPA, consequently diverting more raw wastewater discharged to the Metro System, until the ECAWP JPA's Solids handling facility is operating normally. The ECAWP JPA will be responsible for any incremental operating costs identified by the City and reviewed by the Interagency Workgroup which are caused solely by ECAWP JPA's disposal of Solids.
- 3.2.2 For any Solids that would be discharged by the ECAWP JPA into conveyance facilities that are not upstream of Pure Water Program Phase 1 facilities, the discharge of Solids shall be consistent with any requirements or limitations that apply to El Cajon, Padre Dam, and Sanitation District under the Metro Agreement, including any applicable local limits requirements. In the event the City determines that there is a need to materially alter its standard treatment process due solely to the discharge of Solids by ECAWP, the Parties shall use the methods described above in Section 3.2.1 to address such issues, and the ECAWP JPA will be responsible for any incremental operating cost identified by the City and reviewed by the Interagency Workgroup which are caused solely by ECAWP disposal of Solids.

ARTICLE 4

INTEGRATED REGIONAL SOLUTION TO MANAGEMENT OF BRINE AND CENTRATE

4.1 Agreement to Pursue Integrated Regional Solution. The City and ECAWP JPA agree to pursue and financially partner in an integrated regional solution to management of Brine and Centrate as further described in this Article.

4.2 East Mission Gorge Force Main. Following the transfer of the EMGFM to the ECAWP JPA, the Parties shall enter into an agreement concerning the design, construction, rehabilitation, and operation of the EMGFM. The agreement shall be consistent with the following:

- 4.2.1** ECAWP JPA will be responsible for planning and contracting for the design, construction, and rehabilitation of the EMGFM.
- 4.2.2** The ECAWP JPA will be responsible for 60% of the Capital Expenses for the EMGFM, and the City will be responsible for the remaining 40% of such Capital Expenses. Such cost-sharing responsibility will apply to the following reasonable, documented Capital Expenses incurred by ECAWP JPA prior to the date of the agreement: costs of consultants for studies, planning, CEQA, and pre-design work. Such preliminary costs are estimated to be approximately \$_____ [need to update with details and estimated costs].

The City will deposit its estimated share of the costs with the ECAWP JPA prior to construction. The City will contribute additional amounts, if necessary, based on its share of costs. The ECAWP JPA will refund any excess amounts after completion and acceptance.

- 4.2.3** The Interagency Workgroup will have an opportunity to review and provide comments on the design of the EMGFM prior to construction.
- 4.2.4** The ECAWP JPA will own and operate the rehabilitated EMGFM and will be responsible for 100% of the O&M Expenses for the EMGFM.
- 4.2.5** The Parties will provide one another with such easements or other property interests as are necessary to perform the activities contemplated in this Agreement.

4.3 Regional Brine Line. The City and ECAWP JPA agree, through the Interagency Workgroup, to study and plan for the construction of a Regional Brine Line to convey Brine, Centrate, and possibly other wastewater constituents around Phase 1 and/or Phase 2 of the Pure Water Program facilities.

- 4.3.1 Phase 1 of Regional Brine Line.** Phase 1 of the Regional Brine Line would extend from the EMGPS to the South Mission Valley Interceptor and would divert Brine and Centrate around Pure Water Phase 1 facilities. The City and ECAWP JPA will work together, through the Interagency Workgroup, to complete a basis of design report for Phase 1 of the Regional Brine Line by November 30, 2020 (or by such later date as mutually agreed to by the Parties) so that the ECAWP JPA may include information about Phase 1 of the Regional Brine Line in its design-build procurement process for the ECAWP Project. In addition, the ECAWP JPA will study and, in consultation with the Interagency Workgroup, determine whether Phase 1 of the Regional Brine Line may be located within the EMGFM (pipe-in-pipe design).

If the ECAWP JPA determines that the pipe-in-pipe design is feasible and cost effective, and the City agrees, the Parties will negotiate and enter into an agreement concerning the design, construction, and operation of Phase 1 of the Regional Brine Line. The ECAWP JPA would be responsible for planning and contracting for the design and construction of Phase 1 of the Regional Brine Line. The agreement will also be consistent with Section 4.3.3 below and shall also provide that the City will accept ownership of and operational responsibility for Phase 1 of the Regional Brine Line upon completion. ECAWP JPA will provide such easements or other interests as are necessary to allow City to own and operate the facility.

If the ECAWP JPA or the City determines that the pipe-in-pipe design is not feasible or cost effective, or if the Parties are unable to mutually agree on the terms and conditions of design, construction, and operation of a pipe-in-pipe design for Phase 1 of the Regional Brine Line, the Parties will negotiate and enter into an agreement concerning the design, construction, and operation of a non-pipe-in-pipe design for Phase 1 of the Regional Brine Line under which the City will be responsible for planning and contracting for the design and construction of Phase 1 of the Regional Brine Line. The agreement shall also be consistent with Section 4.3.3 below.

With regard to timing, the Parties anticipate that Phase 1 of the Regional Brine Line would be completed prior to testing and startup of the ECAWP Project.

Notwithstanding the foregoing, the Parties agree that in the event Phase 1 of the Regional Brine Line is not completed by the above date, Section 4.3.4 shall apply.

4.3.2 Phase 2 of Regional Brine Line. Phase 2 of the Regional Brine Line would divert Brine and Centrate around Pure Water Phase 2 facilities. The City would be responsible for planning and contracting for the design, construction of Phase 2 of the Regional Brine Line. If Phase 2 of the Regional Brine Line is constructed, the provisions of Section 4.3.3 shall apply.

4.3.3 General Provisions Regarding Regional Brine Line.

- (a) Once completed, any and all portions of the Regional Brine Line shall be part of the City's Municipal System. Accordingly, the Participating Agencies shall not be responsible for Capital Expenses or O&M Expenses for the Regional Brine Line under the Metro Agreement. Agencies, entities, or other persons discharging into the Regional Brine Line would be responsible for the funding based on equitable fees.
- (b) Notwithstanding the Parties' respective responsibilities for designing and constructing Phases 1 and 2 of the Regional Brine Line, the City shall be responsible for 100% of the Capital Expenses of both portions of the Regional Brine Line.

If the ECAWP JPA constructs Phase 1 of the Regional Brine Line using the pipe-in-pipe concept, the agreement for design and construction between the City and the ECAWP JPA will require that the City provide a

deposit for all reasonably anticipated Capital Expenses to ECAWP JPA, as well as reasonable, documented Capital Expenses incurred by ECAWP JPA prior to the date of the agreement, including consultant costs for studies, planning, CEQA, and pre-design work. In the event that the City's initial deposit is not sufficient to cover the ECAWP JPA's actual Capital Expenses, the City will contribute the remaining amounts. The ECAWP JPA will refund any excess amounts deposited to the City.

- (c) The size of the Regional Brine Line shall be sufficient to provide ECAWP JPA with at least [1.7] MGD of capacity. In the discretion of the City, the total capacity may be larger for purpose of connecting other agencies, entities, or customers.
 - Commented [U6]:** Number subject to review/confirmation. (ECAWP JPA)
- (d) The ECAWP JPA shall have a capacity right to use at least [1.7] MGD of capacity in the Regional Brine Line. ECAWP JPA may use its capacity to convey Brine and Centrate for disposal by the Metro System. In the event that the water reclamation facility for Phase 2 of the Pure Water Program is not located at the site of the Point Loma Wastewater Treatment Plant, the ECAWP JPA may, under emergency conditions, also use its capacity in the Regional Brine Line to convey Solids and/or raw wastewater for disposal by the Metro System. All discharges under this subsection shall comply with the requirements of the Metro Agreement. For purposes of this subsection, an "emergency condition" is an event or condition adversely affecting the standard operations of ECAWP Project facilities, and which could not have been prevented through the exercise of due care by the ECAWP JPA.
 - Commented [U7]:** Number subject to review/confirmation. (ECAWP JPA)
- (e) The City may connect other customers to the Regional Brine Line in the gravity portions of the Regional Brine Line; provided, however, that such connections or use of the Regional Brine Line shall not reduce the ECAWP JPA's capacity in the Regional Brine Line or impair its use thereof.
- (f) The ECAWP JPA shall pay its proportionate share of O&M Expenses for use of the Regional Brine Line based on its share of flow in the line. Details concerning calculation of O&M Expenses shall be established in a Sewage Transportation Agreement between the City and the ECAWP JPA.
- (g) The term of the ECAWP JPA's capacity right in the Regional Brine Line shall be consistent with the term of this Agreement.
- (h) In the event that the City desires for ECAWP JPA to discharge other wastewater constituents into the Regional Brine Line, or in the event the ECAWP JPA desires to discharge other wastewater constituents into the Regional Brine Line, the matter will be referred to the Interagency Workgroup for review and analysis. The Interagency Workgroup will develop a recommendation to the Parties, who will determine the matter by mutual agreement.

4.3.4 Discharge Into Metro System. In the event that one or both portions of the Regional Brine Line are not constructed as contemplated by this Agreement, and such failure to construct one or both portions of the Regional Brine Line is not caused by a willful act or omission of the ECAWP JPA, the Parties acknowledge and agree that the ECAWP JPA may discharge Brine and Centrate for treatment and disposal by the Metro System through its existing or future connections thereto, subject to any requirements or limitations that apply to El Cajon, Padre Dam, and Sanitation District under the Metro Agreement, which may include any applicable local limits requirements.

4.4 Environmental Compliance.

- 4.4.1** ECAWP JPA will be the lead agency under the California Environmental Quality Act, Public Resources Code section 21000 et. seq. ("CEQA") in relation to the improvements constructed by the ECAWP JPA under this Agreement.
- 4.4.2** The City will be the lead agency under the California Environmental Quality Act, Public Resources Code section 21000 et. seq. ("CEQA") in relation to the improvements constructed by the City under this Agreement.
- 4.4.3** The Parties' approval of any improvements contemplated under this Agreement and any obligations of the Parties associated with such improvements are conditioned upon future compliance with CEQA, including, but not limited to, a determination that the environmental impacts of the improvements have been adequately considered and mitigated in compliance with CEQA and any and all applicable environmental laws. The Parties' approval of this Agreement does not limit the ability of the Parties to consider alternatives to the improvements pursuant to CEQA. The Parties will file a Notice of Determination under Title 14 of the California Code of Regulations, sections 15075 or 15094, or a Notice of Exemption under section 15062, as applicable, following adoption or consideration of any environmental document or environmental determination for the improvements.
- 4.4.4** The Parties acknowledge and agree that all costs incurred by a Party in relation to compliance with CEQA, including costs of consultants, shall be considered Capital Expenses under this Agreement. The Parties' financial responsibility for such costs shall be consistent with the percentages stated in Sections 4.2.2 and 4.3.3(b).
- 4.4.5** In the event of any action arising out of or in any way related to CEQA compliance or environmental review of the improvements contemplated under this Agreement, City shall indemnify and hold harmless ECAWP JPA, its officials, officers, employees and agents (collectively "Indemnified Parties") from and against any and all claims, suits, causes of action, fines, penalties, proceedings, damages, injuries or losses of any kind, including attorneys' fees (collectively "Liabilities") to the percentage extent of City's financial responsibility for the improvement(s) in question. Such percentages are stated in Sections 4.2.2 and 4.3.3(c).

4.5 Treatment and Disposal of ECAWP Brine and Centrate. The City acknowledges and agrees that discharges by ECAWP JPA into the Regional Brine Line shall, following

Commented [U8]: Note: Section will likely need further review/discussion between ECAWP and City CEQA attorneys.
(ECAWP JPA)

conveyance through the Regional Brine Line, be treated and disposed of by the City pursuant to the terms and conditions in the Metro Agreement.

ARTICLE 5 **ECAWP PROJECT AND METRO SYSTEM**

- 5.1 ECAWP Agencies' Continued Rights in Metro System.** In recognition of the ECAWP Member Agencies' capacity rights under the Metro Agreement and their long history as partners and financial contributors in the Metro System, and in consideration of the ECAWP Member Agencies' investment in offloading approximately 15 MGD of wastewater from the Point Loma Wastewater Treatment Plant, the Parties agree as follows:

5.1.1 Seasonal Wet Weather Flows. The City shall continue to manage the ECAWP Agencies' seasonal wet weather flows pursuant to the Metro Agreement.

5.1.2 Failsafe Disposal. The Metro System shall serve as the ECAWP JPA's failsafe disposal. Currently, sufficient treatment and conveyance capacity exists within the Metro System to accommodate failure of the ECAWP JPA treatment facilities in a failsafe disposal scenario.

Section 2.9.1 of the proposed Amended and Restated Regional Disposal Agreement provides that the City and the Participating Agencies will engage in good faith negotiations and discussions on a variety of Metro System subjects, including billing methodologies for Metro System costs. Part of such discussions may include the maintenance of existing conveyance capacity available to ECAWP JPA for failsafe disposal and the allocation of costs thereof. As part of such discussions, the City acknowledges that any cost share on the part of the ECAWP JPA for maintaining conveyance capacity to accommodate ECAWP failsafe disposal will take into consideration the financial and other benefits to the City and the Participating Agencies of the avoided costs in downsizing Pure Water Phase 2 facilities.

5.1.3 Effect. This Section 5.1 is not intended to, and does not, amend the Metro Agreement. Rather, this Section 5.1 is a statement of the Parties' mutual understanding of the ECAWP Member Agencies' existing rights under the Metro Agreement and the Parties' mutual intent for how the ECAWP Project will operate in conjunction with the Metro System in the future.

5.2 Records.

5.2.1 Keeping and Maintenance of Records. The City and the ECAWP JPA shall keep appropriate records and accounts of all costs and expenses related to the East Mission Gorge Force Main, Regional Brine Line, and other costs and expenses related to this Agreement. The Parties shall keep such records and accounts for at least four (4) years, or for any longer period required by law or outside funding sources.

5.2.2 Inspection and Annual Audits. Said records and accounts shall be subject to reasonable inspection by any authorized representative of any Party. Further, said accounts and records shall be audited annually by an independent certified

public accounting firm appointed by Party that incurred the costs or expenses pursuant to generally accepted accounting principles. A copy of said report shall be available to any Party.

ARTICLE 6 EFFECTIVE DATE; TERM

- 6.1 Effective Date; Term.** This Agreement shall be effective upon execution of: (a) this Agreement; (b) the Amended and Restated Metro Agreement by all parties thereto; and (c) the EMGPS Purchase and Sale Agreement and Escrow Instructions ("Effective Date"). This Agreement shall remain in effect during the term of the Metro Agreement or for as long as the ECAWP Member Agencies (or any successor(s) in interest) have the right to obtain wastewater treatment and disposal services from the Metro System, whichever is longer.

ARTICLE 7 DISPUTE RESOLUTION

7.1 Dispute Resolution.

- 7.1.1 Non-Binding Mediation.** If a dispute arises among the Parties relating to or arising from a Party's obligations under this Agreement that cannot be resolved through informal discussions and meetings, the Parties involved in the dispute shall first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of JAMS, AAA, or any other neutral organization agreed upon by the Parties before having recourse in a court of law. Mediation shall be commenced by sending a notice of demand for mediation to the other Party.
- 7.1.2 Selection of Mediator.** A single mediator that is acceptable to the Parties involved in the dispute shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Agreement, if possible, and chosen from lists furnished by JAMS, AAA, or any other agreed upon mediator.
- 7.1.3 Mediation Expenses.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All mediation costs, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be equally shared by the Parties to the dispute.
- 7.1.4 Conduct of Mediation.** Mediation will be conducted in an informal manner. Discovery shall not be allowed. The discussions, statements, writings and admissions and any offers to compromise during the proceedings will be confidential to the proceedings (Evidence Code §§ 1115 – 1128; 1152) and will not be used for any other purpose unless otherwise agreed by the Parties in writing. The Parties may agree to exchange any information they deem necessary. The Parties involved in the dispute shall have representatives attend the mediation who are authorized to settle the dispute, though a recommendation of settlement may be subject to the approval of each agency's boards or legislative bodies. Any involved Party may have attorneys, witnesses or experts present.

- 7.1.5 Mediation Results.** Any resultant agreements from mediation shall be documented in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.
- 7.1.6 Performance Required During Dispute.** Nothing in this Section 7.1 shall relieve the Parties from performing their obligations under this Agreement. The Parties shall be required to comply with this Agreement, including the performance of all disputed activity and disputed payments, pending the resolution of any dispute under this Agreement.
- 7.1.7 Offers to Compromise.** Any offers to compromise before or after mediation proceedings will not be used to prove a Party's liability for loss or damage unless otherwise agreed by the Parties in writing (pursuant to Evidence Code Section 1152.)

7.2 Indemnification.

- 7.2.1** Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Parties and their officials, officers, employees and agents (the "Indemnified Parties") from and against any and all liability, loss, damages, expenses, costs (including, without limitation, costs and fees of litigation or arbitration) of every nature, arising out of any act or omission of the Indemnifying Party related to this Agreement, provided, however, that the foregoing obligations shall not apply to the proportionate extent such claims or damages are caused by the negligence or willful misconduct of the Indemnified Parties.

7.2.2 This Section 7.2 shall survive any expiration or termination of this Agreement.

**ARTICLE 8
MISCELLANEOUS PROVISIONS**

- 8.1 Severability.** If any section, clause or phrase of this Agreement or the application thereof to any Party or any other person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, it shall be deemed severable, and the remainder of the Agreement or the application of such provisions to any other Party or to other persons or circumstances shall not be affected thereby. Each Party hereby declares that it would have entered into this Agreement, and each subsection, sentence, clause and phrase thereof, irrespective that one or more sections, subsections sentences, clauses or phrases or the application thereof might be held invalid.
- 8.2 Notices.** Notices required or permitted hereunder shall be sufficiently given if made in writing and delivered either personally or by registered or certified mail, postage prepaid to the respective Parties, as follows:

SAN DIEGO:	With copy to:
Chief Operating Officer City of San Diego 202 "C" Street San Diego, CA 92101	City Attorney City of San Diego 1200 Third Ave., Suite 1620 San Diego, CA 92101
ECAWP JPA:	With copy to:
East County AWP Joint Powers Authority P.O. Box 719003 Santee, CA 92072 Attn: JPA Administrator	East County AWP Joint Powers Authority P.O. Box 719003 Santee, CA 92072 Attn: JPA General Counsel

The Parties may from time to time change the address to which notice may be provided by providing notice of the change to the other Parties.

- 8.3 Consent.** Whenever in this Agreement or in any amendment thereto consent or approval is required, the same shall not be unreasonably withheld unless otherwise specified.
- 8.4 Other Agreements Not Prohibited.** Other agreements by and between the Parties of this Agreement or any other entity are neither prohibited nor modified in any manner by execution of this Agreement.
- 8.5 Assignment.** Except as otherwise provided in this Agreement, the rights, titles and interests of any Party to this Agreement shall not be assignable or transferable without the consent of the governing body of each Party hereto.
- 8.6 Section Headings.** The section headings herein are for convenience of the Parties only, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions or language of this Agreement.
- 8.7 Laws of California.** This Agreement is made in the State of California, under the Constitution and laws of such State, and shall be construed and enforced in accordance with the laws of such State.
- 8.8 Construction of Language.** It is the intention of the Parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.
- 8.9 Cooperation.** The Parties recognize the necessity and hereby agree to cooperate with each other in carrying out the purposes of this Agreement.
- 8.10 Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties hereto.

- 8.11 Enforcement.** The Parties are hereby authorized to take any and all legal or equitable actions, including but not limited to an injunction and specific performance, necessary or permitted by law to enforce this Agreement.
- 8.12 Integration.** This Agreement constitutes the full and complete Agreement of the Parties.
- 8.13 Amendment.** Except as otherwise may be provided in this Agreement, neither this Agreement nor any provision hereof may be modified or amended except by a written instrument signed by the Parties.
- 8.14 Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.
- 8.15 No Third Party Beneficiaries; Exception.** Except as provided below, all of the covenants contained in this Agreement are for the express benefit of each and all such Parties, this Agreement is not intended to benefit any third parties, and any such third party beneficiaries are expressly disclaimed. Notwithstanding the foregoing, El Cajon, Padre Dam, and Sanitation District shall be considered third party beneficiaries.

SIGNATURES ON FOLLOWING PAGE(S)

IN WITNESS WHEREOF, the Parties have caused this Residuals Management and Disposal Agreement to be executed and attested by their proper officers thereunto duly authorized on the day and year set forth below, making the same effective on the date signed by the last of all Parties hereto.

CITY OF SAN DIEGO

Approved as to Form:

By: _____
Kevin Faulconer, Mayor

By: _____, City Attorney

Date: _____

**EAST COUNTY ADVANCED WATER
PURIFICATION JOINT POWERS
AUTHORITY**

Approved as to Form:

By: _____
Gary Kendrick, Board Chair

By: _____
Nicholaus Norvell, Interim General
Counsel

Date: _____