DUPLICATE

AMENDED AND RESTATED

REGIONAL WASTEWATER DISPOSAL AGREEMENT

BETWEEN

THE CITY OF SAN DIEGO

AND

THE PARTICIPATING AGENCIES

IN

THE METROPOLITAN SEWERAGE SYSTEM

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AMENDED AND RESTATED

REGIONAL WASTEWATER DISPOSAL AGREEMENT

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AMENDED AND RESTATED REGIONAL WASTEWATER DISPOSAL AGREEMENT

THIS AMENDED AND RESTATED REGIONAL WASTEWATER DISPOSAL AGREEMENT is made and entered into this 4th day of December, 2018, by and between the CITY OF SAN DIEGO, a municipal corporation ("the City"); and the CITY OF CHULA VISTA, a municipal corporation; the CITY OF CORONADO, a municipal corporation; the CITY OF DEL MAR, a municipal corporation; the CITY OF EL CAJON, a municipal corporation; the CITY OF IMPERIAL BEACH, a municipal corporation; the CITY OF LA MESA, a municipal corporation; the LEMON GROVE SANITATION DISTRICT, a political subdivision of the State of California; the CITY OF NATIONAL CITY, a municipal corporation; the CITY OF POWAY, a municipal corporation; the OTAY WATER DISTRICT, a political subdivision of the State of California; the PADRE DAM MUNICIPAL WATER DISTRICT, a political subdivision of the State of California; and the SAN DIEGO COUNTY SANITATION DISTRICT, a political subdivision of the State of California (the "Participating Agencies"). The City and the Participating Agencies may be referred to herein individually as a "Party," and collectively as the "Parties."

RECITALS

WHEREAS, the City and the Participating Agencies (or their predecessors in interest) entered into that certain Regional Wastewater Disposal Agreement dated May 18, 1998 (the "1998 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 ("Metro System") and the establishment of a mechanism to fund the planning, design, construction, operation, and maintenance of the Metro System by the City and the Participating Agencies; and

WHEREAS, the purposes of the 1998 Agreement were: (1) to replace the prior-existing sewage disposal agreements between the City and the Participating Agencies; (2) to provide certain contract rights to capacity in the Metro System to the Participating Agencies; (3) to establish a mechanism to fund the planning, design, construction, operation and maintenance of the Metro System by the City and the Participating Agencies as necessary to provide hydraulic capacity, and to comply with applicable law and with generally accepted engineering practices; and (4) to establish a system of charges which allocates the costs of the planning, design and construction of such new wastewater conveyance, treatment and disposal facilities as are necessary solely to provide for new capacity on a fair and equitable basis; and

WHEREAS, on April 29, 2014 the San Diego City Council gave its approval and support for the Pure Water San Diego program by adoption of Resolution No. R-308906. The Resolution approved and supported the City's efforts to develop an implementation 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); and

WHEREAS, the City is implementing a phased, multi-year program designed to regionally produce at least 83 million gallons per day 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; and

WHEREAS, the Pure Water Program will not only benefit the City by producing repurified water, but also the Participating Agencies and their wastewater customers, especially if secondary equivalency is recognized through federal legislation amending the Clean Water Act. Specifically, implementation of the Pure Water Program will reduce wastewater discharges to the Point Loma Wastewater Treatment Plant, part of the Metro System where a large portion of the Participating Agencies' wastewater is currently treated and disposed by discharging it into the Pacific Ocean. By diverting wastewater from the Point Loma Wastewater Treatment Plant and reducing the effluent discharged into the Pacific Ocean, the City and the Participating Agencies will potentially avoid billions of dollars in unnecessary capital, financing, energy, and operating costs to upgrade the Point Loma plant to secondary treatment at full capacity. Avoiding such costs would result in significant savings for regional wastewater customers; and

WHEREAS, the Padre Dam Municipal Water District, the San Diego County Sanitation District, and the City of El Cajon have proposed a program to produce up to 12 million gallons per day of safe, reliable potable water for East San Diego County using wastewater that would otherwise be disposed of in the Metro System ("East County AWP Program"). By offloading wastewater and wastewater contents from the Point Loma Wastewater Treatment Plant, the East County AWP Program would, if implemented, help the City's and region's efforts to achieve long-term compliance with the Clean Water Act by producing a regional annual average of at least 83 million gallons per day of water suitable for potable reuse by December 31, 2035, as described in the Cooperative Agreement in Support of Pure Water San Diego entered into by the City and certain environmental stakeholders on December 9, 2014; and

WHEREAS, Section XIV, subsection B, of the 1998 Agreement provided that the Parties may amend the Agreement by a written agreement between the City and all Participating Agencies stating the Parties' intent to amend the Agreement; and

WHEREAS, in order to comprehensively and equitably address the costs and revenues associated with the Pure Water Program and the related construction, expansion, and/or modification of Metro System facilities, the City and Participating Agencies wish to amend and restate the Regional Wastewater Disposal Agreement as provided herein.

THEREFORE, in consideration of the mutual promises set forth herein, the City and the Participating Agencies agree as follows:

I. DEFINITIONS

A. **Annual Average Daily Flow** is the number, in millions of gallons of wastewater per day ("MGD"), calculated by dividing total Flow on a fiscal year basis by 365 days.

B. **Brine** is a waste byproduct of the demineralization process at an upstream Water Repurification System facility or a Reclaimed Water facility.

C. **Capital Expense Rate** is the cost per acre foot that will apply if the Metro

System's Capital Improvement Costs for the Pure Water Program and/or upgrading of the Point Loma WTP to secondary treatment exceed $1.8 billion, as further described in Exhibit F.

D. **Capital Improvement Costs** are costs associated with the planning, design, financing, construction, or reconstruction of facilities.

E. **Chemical Oxygen Demand or "COD"** means the measure of the chemically decomposable material in wastewater, as determined by the procedures specified in the most current edition of "Standard Methods for the Examination for Water and Wastewater," or any successor publication which establishes the industry standard.

F. **City Water Utility PW Costs** are those Pure Water Program costs allocated to the City's water utility and therefore excluded as Metro System costs under Exhibit F.

G. **Contract Capacity** is the contractual right possessed by each Participating Agency to discharge wastewater into the Metro System pursuant to this Agreement up to the limit set forth in Exhibit B attached hereto. Contract Capacity is stated in terms of Annual Average Daily Flow.

H. **Flow** is the amount of wastewater discharged by the City and each Participating Agency.

I. **Functional-Design Methodology** shall mean the process of allocating Operation and Maintenance Costs and Capital Improvement Costs to Flow and Strength parameters recognizing the benefits of both the design criteria and the primary function of a unit process.

J. **Metro Commission** is the advisory body created under Section VIII.

K. **Metro System Costs** are those costs set forth in Section 5.2.1.

L. **Metro System Revenues** are those revenues set forth in Section 5.2.2.

M. **Metropolitan Sewerage System or Metro System** shall mean and consist of those facilities and contract rights to facilities which are shown and/or described in Exhibit A attached hereto and incorporated by this reference, including any amendments thereto authorized by this Agreement.

N. **Municipal System** shall mean the City's wastewater collection system, which consists of pipelines and pump stations, that collects wastewater within the City of San Diego and conveys it to the Metropolitan Sewerage System for treatment and disposal.

O. **New Capacity** is the capacity to discharge wastewater outside the Metro System, above the Contract Capacity set forth in Exhibit B attached hereto.

P. **New Contract Capacity** is the capacity to discharge wastewater into the Metro System, above the Contract Capacity set forth in Exhibit B attached hereto.

Q. **North City Water Reclamation Plant** or **North City WRP** is the 30 million gallons per day (as of the date of this Agreement) wastewater treatment facility located at 4949 Eastgate Mall in San Diego, which includes four major processes: primary treatment, secondary treatment, tertiary treatment, and disinfection.

R. **Operation and Maintenance Costs** are the costs of those items and activities required by sound engineering and management practices to keep the conveyance, disposal, treatment, and reuse facilities functioning in accordance with all applicable laws, rules, and regulations.

S. **Point Loma Wastewater Treatment Plant** or **Point Loma WTP** is the 240 million gallons per day (as of the date of this Agreement) advanced primary treatment plant which includes four major processes: screening, grit removal, sedimentation, and digestion.

T. **Projected 2050 Strength and Flow Amounts** are the three (3) values described below:

1. **Projected COD 2050 Flows** is the estimated amount of Chemical Oxygen Demand (COD), stated in pounds per day, that the City and each Participating Agency are projected to have in the 2050 fiscal year. Projected COD 2050 Flows for each Party are stated in Column 7 of Exhibit G.

2. **Projected Metro Flow 2050** is the estimated amount of Annual Average Daily Flow, stated in millions of gallons per day (MGD), that the City and each Participating Agency are projected to have in the 2050 fiscal year. Projected Metro Flow 2050 for each Party is stated in Column 4 of Exhibit G.

3. **Projected SS 2050 Flows** is the estimated amount of Suspended Solids (SS) stated in pounds per day, that the City and each Participating Agency are projected to have in the 2050 fiscal year. Projected SS 2050 Flows for each Party are stated in Column 10 of Exhibit G.

U. **Pure Water Capital Melded Percentage** or **Melded Percentage** is the proportionate share, stated in Column 12 of Exhibit G, by which Pure Water Program Capital Improvement Costs, Repurified Water Revenue, and the Capital Expense Rate will be allocated among the City and the Participating Agencies. The Pure Water Capital Melded Percentage is based on each Party's proportionate share of Projected Metro Flow 2050, Projected SS 2050 Flows, and Projected COD 2050 Flows, which proportions are weighted as described in Footnote 3 of Exhibit G.

V. **Pure Water Program** is the City's phased, multi-year program designed to

produce at least 83 million gallons per day of Repurified Water using new, expanded, or modified facilities, some of which will include Metro System facilities.

W. **Reclaimed Water (or Recycled Water)** shall have the definition set forth in Title 22, Division 4 of the California Code of Regulations and shall mean water which, as a result of treatment of wastewater, is suitable for a direct beneficial use or a controlled use that otherwise could not occur.

X. **Reclaimed Water (or Recycled Water) Distribution System** shall mean and consist of those eight (8) reclaimed water projects listed in Attachment B of the Stipulated Final Order for Injunctive Relief approved by the U.S. District Court on June 6, 1997 in *U.S.A. v. City of San Diego*, Case No. 88-1101-B, and attached hereto as Exhibit E.

Y. **Repurified Water** shall mean water which, as a result of advanced treatment of Reclaimed Water, is suitable for use as a source of domestic (or potable) water supply.

Z. **Repurified Water Revenue** is the cost savings that will be realized when the City water utility's annual costs per-acre foot for Repurified Water are less than the purchase costs per-acre foot for comparable water from the San Diego County Water Authority, as further described in Exhibit F.

AA. **Return Flow** shall mean the effluent created by the dewatering of digested biosolids, which includes centrate.

BB. **Reuse** shall mean to use again, such as water which has been reclaimed or repurified, or sludge that has been converted to biosolids for beneficial use.

CC. **South Bay Land/Ocean Outfall** is the facility that is jointly owned by the International Boundary & Water Commission (U.S. Section IBWC) and the City of San Diego. The Outfall is planned to convey and discharge treated effluent from the IBWC's International Wastewater Treatment Plant and treated effluent from the City's South Bay Water Reclamation Plant and the South Bay Secondary Treatment Plant. As of the date of this Agreement, the Outfall has a current Average Daily Flow Capacity of 174 million gallons per day. As of the date of this Agreement, the City owns 39.94% of the capacity of the Outfall and the balance of the capacity is owned by the IBWC.

DD. **South Bay Water Reclamation Plant** is the 15 million gallons per day (as of the date of this Agreement) wastewater treatment facility located at 2411 Dairy Mart Road in San Diego, which includes four major processes: primary treatment, secondary treatment, tertiary treatment, and disinfection.

EE. **Strength** means the measurement of Suspended Solids (SS) and Chemical Oxygen Demand (COD) within the wastewater Flow and any other measurement required by law after the date of this Agreement.

FF. **Suspended Solids** or **SS** means the insoluble solid matter in wastewater that is separable by laboratory filtration, as determined by the procedures specified in the most current edition of "Standard Methods for the Examination of Water and Wastewater," or any successor publication which establishes the industry standard.

GG. **Tertiary Component** is that portion of the wastewater treatment process that currently filters the secondary treated wastewater effluent through fine sand and/or anthracite coal to remove fine Suspended Solids and disinfects it to meet the requirements of the California Administrative Code, Title 22, or its successor for filtered and disinfected wastewater.

HH. **Water Repurification System** shall mean any facilities, including treatment and conveyance facilities, the purpose of which is the production or conveyance of Repurified Water. Water Repurification System includes, but is not limited to: the Tertiary Component of the North City Water Reclamation Plant to the extent being used to produce Repurified Water, the North City Pure Water Facility to be located across the street from the North City Water Reclamation Plant ("North City Pure Water Facility"); the Repurified Water conveyance system, which will transport Repurified Water from the North City Pure Water Facility and/or other facilities to the Miramar Reservoir or other alternative location(s) as determined by the City; and any other Repurified Water treatment or conveyance facilities which are part of the Pure Water Program.

II. OWNERSHIP AND OPERATION OF THE METRO SYSTEM

2.1 Rights of the Parties.

The City is the owner of the Metro System, and of any additions to the Metro System or other facilities constructed pursuant to this Agreement. All decisions with respect to the planning, design, construction, operation and maintenance of the Metro System shall rest with the City, in consultation with the Metro Commission. The Participating Agencies shall have a contractual right to use the Metro System and to participate in its operation as set forth in this Agreement. Subject to the terms of this Agreement, and in conformance with all applicable laws, the City may transfer ownership of all or part of the Metro System at any time. In the event of a transfer, the City's successor shall be bound by the terms of this Agreement. Subject to the terms of this Agreement, any Participating Agency may transfer or assign its rights and obligations under this Agreement. Any transfer shall first be approved by the City. No transfer may occur if the City reasonably determines, after consultation with the Participating Agencies involved, that the proposed transfer will imbalance, or will otherwise adversely impact the City's ability to operate the Metro System.

2.2 Metro System Services.

2.2.1 The City shall provide wastewater conveyance, treatment and disposal services to the Participating Agencies through the Metro System, under the terms set forth in this Agreement.

2.2.2 The City shall operate the Metro System in an efficient and economical manner, maintaining it in good repair and working order, all in accordance with recognized sound engineering and management practices.

2.2.3 The City shall convey, treat, and dispose of or reuse all wastewater received under this Agreement in such a manner as to comply with all applicable laws, rules and regulations.

2.3 Flow Commitment.

2.3.1 Absent agreement of the Parties, all Flow from the Participating Agencies and the City, up to the capacity limits set forth in Exhibit B or any amendments thereto, shall remain in the Metro System.

2.3.2 This Agreement shall not preclude any Participating Agency from diverting Flow from the Metro System as a result of the construction of reclamation facilities or New Capacity outside of the Metro System.

2.3.3 Any Participating Agency may negotiate an agreement with the City to withdraw all Flow from the Metro System, which shall provide that the Agency pay its proportionate share of Capital Improvement Costs.

If a Participating Agency enters into an agreement with the City by December 31, 2019, to withdraw all Flow from the Metro System by January 1, 2035, such Participating Agency shall not pay Pure Water Program Capital Improvement Costs attributable to the Metro System except for Phase I (as defined below in Section 2.8).

2.4 Funding Obligations.

Nothing in this Section or in this Agreement shall obligate the City to make any payment for the acquisition, construction, maintenance or operation of the Metro System from moneys derived from taxes or from any income and revenue of the City other than moneys in or sewer revenues which go into the Sewer Revenue Fund for the Metro System and from construction funds derived from the sale of such sewer revenue bonds for the Metro System as are duly authorized. Nothing in this Agreement shall be construed to obligate the City to pay from its annual income and revenues any sum which would create an indebtedness, obligation or liability within the meaning of the provisions of Section 18 of Article XVI of the Constitution of the State of California. Nothing in this Section, however, or in this Agreement shall prevent the City, in its discretion, from using tax revenues or any other available revenues or funds of the City for any purpose for which the City is empowered to expend moneys under this Agreement. Nothing herein shall relieve the City from its obligations to fund and carry out this Agreement. Nothing in this Section or in this Agreement shall obligate any Participating Agency to make any payment which would create an indebtedness, obligation or liability within the meaning of the provisions of Section 18 of Article XVI of the Constitution of the State of California, or which is not authorized by law.

2.5 Financial Statements.

2.5.1 The City shall keep appropriate records and accounts of all costs and expenses relating to conveyance, treatment, disposal, and reuse of wastewater, and production of Repurified Water, and the acquisition, planning, design, construction, administration, monitoring, operation and maintenance of the Metro System and Water Repurification System, and any grants, loans, or other revenues received therefor. The City shall keep such records and accounts for at least four (4) years, or for any longer period required by law or outside funding sources.

2.5.2 Said records and accounts shall be subject to reasonable inspection by any authorized representative of any Participating Agency at its expense. Further, said accounts and records shall be audited annually by an independent certified public accounting firm appointed by the City pursuant to generally accepted accounting principles. A copy of said report shall be available to any Participating Agency. As part of said audit, the actual amount of City Water Utility's PW Costs, Pure Water Program costs attributable to the Metro System, Repurified Water Revenue, and the Capital Expense Rate shall be determined and audited by the City's external auditors and Participating Agency representatives, and a cumulative and annual summary of such amounts shall be included as a footnote or attachment to the audit of the Metro System. Cost summaries shall include separate lines for Capital Improvement Costs and Operation and Maintenance Costs.

2.5.3 The City shall make a good faith effort to complete the annual audit, and any related adjustments under this Agreement, by the end of the following fiscal year.

2.6 Limitations on Types and Condition of Wastewater.

2.6.1 Each Participating Agency will comply with all applicable laws, rules and regulations including its regulatory obligations associated with the discharge of wastewater into its respective system and from such system into the Metro System.

2.6.2 Each Participating Agency will minimize to the maximum extent practicable, the infiltration and inflow of surface, ground or stormwaters into its respective wastewater systems.

2.6.3 Each Participating Agency will insure that all industrial users of its wastewater system are regulated by an effective industrial pretreatment program that conforms to all to all applicable laws, rules and regulations and that is acceptable to the City. Provided, however, that the City shall not require the Participating Agencies to take any actions beyond that

which is required under applicable laws, rules and regulations that can be taken but are not being taken by the City.

2.6.4 The City and the Participating Agencies agree that nothing in this Agreement, including the termination of the existing sewage disposal agreements, shall affect the validity of the Interjurisdictional Pretreatment Agreements, or the separate transportation agreements that are currently in effect between or among the City and the Participating Agencies.

2.6.5 Each Participating Agency will not discharge a substantial amount of sewage originating outside its respective boundaries into the Metro System without the approval of the City.

2.6.6 Each Participating Agency shall be responsible for the violation of any applicable laws, rules or regulations associated with its respective discharge of wastewater into the Metro System. Nothing in this Agreement shall affect the ability of any Participating Agency to hold third parties responsible for such violations.

2.6.7 In the event a regulatory agency imposes any penalty or takes other enforcement action relating to the conveyance, treatment, or disposal of wastewater in or from the Metro System, the City shall determine if the City or a Participating Agency or Agencies caused or contributed to the violation by exceeding its Contract Capacity or by the contents of its wastewater. The City shall allocate the penalty or other relief, including the costs of defense, to the Party or Parties responsible. Each responsible Party, whether a Participating Agency or the City, shall be obligated to pay its share of such penalty or other relief, and any costs of defense. In the event that the City cannot make such an allocation, the cost of such penalty or other relief shall be shared by the Participating Agencies and the City proportionately based on Flow and Strength.

2.7 Right of First Refusal.

2.7.1 The City shall not sell or agree to sell the Metro System without first offering it to the Participating Agencies. For the purposes of this section, "Participating Agencies" shall mean a Participating Agency, a group of Participating Agencies, or a third party representing one or more Participating Agencies. The term "sell" shall include any transfer or conveyance of the Metro System or of any individual treatment or reclamation facility or outfall within the Metro System.

2.7.2 The City and the Participating Agencies recognize that transfer of ownership of the Metro System is currently restricted by Sections 6.04 and 6.20 of the Installment Purchase Agreement between the City and the Public Facilities Financing Authority of the City, which inter alia restricts the transfer of ownership to the Metropolitan Wastewater Sewage District

or other governmental agency whose primary purpose is to provide wastewater treatment. The City shall not seek to impose on bond holders a waiver of Section 6.04 or 6.20. Absent such a restriction, before the City sells or agrees to sell the Metro System, or any portion of it, the City shall offer to sell the Metro System to the Participating Agencies (the "Offer") on the terms and at a price equal to that proposed for the sale of the Metro System to a third party. The Participating Agencies shall have thirty days from receipt of the Offer (the "Intent to Respond Period") in which to notify the City of their intent to respond to the Offer. The Participating Agencies shall have five months from the expiration of the Intent to Respond Period in which to accept or reject the Offer. The Offer shall contain the name of the proposed purchaser, the proposed sale price, the terms of payment, the required deposit, the time and place for the close of escrow, and any other material terms and conditions on which the sale is to be consummated.

2.7.3 If the Participating Agencies give timely notice of their intent to respond and timely notice of their acceptance of the Offer, then the City shall be obligated to sell and the Participating Agencies shall be obligated to purchase the Metro System or any individual treatment or reclamation facility or outfall within the Metro System, as applicable, at the price and on the terms and conditions of the Offer. If the Participating Agencies do not give timely notice of their intent to respond or their acceptance of the Offer, or do not submit an offer on the same terms and conditions as the Offer, the City may, following the end of the Offer period, sell the Metro System, or any portion of it, at a price and on terms and conditions no less favorable to the City than those in the Offer. The City shall not sell the Metro System to any third party on terms or at a price less favorable to the City from the terms and price contained in the Offer absent compliance with the terms of this Section.

2.7.4 Nothing herein shall prevent the City from entering into a financing agreement which may impose limits on the City's power to sell the Metro System to the Participating Agencies pursuant to Section 2.7.1. if the City reasonably believes that such a financing agreement is in the City's best interest. Neither the entry into such a financing agreement by the City nor the performance thereof by the City shall constitute a breach or default by the City hereunder.

2.8 Pure Water San Diego Program.

2.8.1 Each new, expanded, or modified Metro System facility which is used in relation to the production of Repurified Water (in addition to the modification and expansion of the North City Water Reclamation Facility) shall be governed by this Agreement and Exhibit F, attached hereto and incorporated herein.

2.8.2 The allocation of Pure Water Program costs pursuant to this Agreement shall be retroactive through the fiscal year ending June 30, 2014, when Pure Water Program costs were first incurred by the Metro System. When conducting the year-end adjustments for the fiscal year in which this Agreement takes effect, the City shall credit or assess such prior costs to the Parties pursuant to this Agreement.

2.9 Future Negotiations and Cooperation.

2.9.1 This Agreement and Exhibit F specifically contemplate Phase I of the Pure Water Program, which consists of new, expanded, or modified Metro System facilities and Water Repurification System facilities designed to produce only up to 30 million gallons per day of Repurified Water ("Phase I"). Within one year of the Effective Date of this Agreement, the Parties intend to meet and negotiate in good faith regarding one or more amendments to this Agreement or its Exhibits to address:

2.9.1.1 The allocation of specific Pure Water Program costs between City's water utility and the Metro System for such later phases;

2.9.1.2 Alternative billing methodologies for Metro System costs;

2.9.1.3 The exclusion of costs related to the industrial discharges inspection and monitoring program within San Diego under Section 5.2.1.2.3 of the Agreement;

2.9.1.4 The inclusion of costs for regional, non-Metro System potable reuse projects in calculating the Capital Expense Rate;

2.9.1.5 A sample calculation of Repurified Water Revenue; and

2.9.1.6 The conveyance and treatment of wastewater generated at United States military bases under this Agreement.

If such negotiations do not result in an amendment to this Agreement or its Exhibits concerning these subjects, this Agreement shall remain in full force and effect as set forth herein. Further, if the City proceeds with a later phase of the Pure Water Program as authorized under Section 2.1 of this Agreement, and the Parties have not yet amended this Agreement or Exhibit F to specifically address such costs by the time they are incurred, all costs listed in Section I of Exhibit F shall nonetheless be excluded as Metro System costs under this Agreement.

2.9.2 The City and the Participating Agencies shall cooperate, coordinate, and negotiate in good faith with the Padre Dam Municipal Water District, San Diego County Sanitation District, and City of El Cajon on issues that relate to the East County AWP Program, including, but not limited to, the

potential transfer of the Mission Gorge Pump Station; disposal of residuals; and a source control program.

2.9.3 Following the Effective Date of this Agreement, the Parties intend to meet and negotiate in good faith regarding the disposal, treatment, and/or management of residuals (solids, brine, and centrate) produced at any new non-Metro System secondary, tertiary, or advanced wastewater treatment facilities upstream of any Metro System facilities related to the production of Repurified Water that currently exist or may exist in the future. Such negotiations may result in an amendment to this 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.

2.9.3.1 In the event that an amendment to this Agreement, or a separate agreement between the City and the involved Participating Agencies, regarding the disposal, treatment, and/or management of residuals at such non-Metro System facilities, cannot be achieved through direct negotiation, the parties shall use the dispute resolution process in Article IX of this Agreement.

2.9.3.2 Absent an amendment to this 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 secondary, tertiary, or advanced wastewater treatment facilities at any point upstream of a Metro System facility related to the production of Repurified Water that currently exists or may exist in the future.

III. PAYMENT AND MONITORING PROVISIONS

3.1 Payment for Metro System Facilities.

Through the system of charges set forth in Article V of this Agreement, each Participating Agency shall pay its share of the costs of planning, design and construction of all of the Metro System facilities which are identified in Exhibit A hereto, which is incorporated herein by reference.

3.2 Payment for Additional Metro System Facilities.

Through the system of charges set forth in Article V of this Agreement, each Participating Agency shall pay its share of the costs of acquisition, or planning, design and construction of such facilities in addition to those set forth on Exhibit A as are necessary for the Metro System to maintain compliance with applicable laws, rules and regulations, including the Ocean Pollution Reduction Act of 1994 and its successor(s), present and future waivers of applicable treatment standards at any Metro System treatment facility, and all facilities as are necessary to convey, treat, dispose, and reuse wastewater in the Metro System to provide the Contract Capacity set forth in Exhibit B, to maintain hydraulic capacity and as otherwise

required by sound engineering principles. As a ministerial matter, the City shall amend Exhibit A from time to time to reflect such additional facilities and shall give notice of any amendments to the Participating Agencies. The City shall keep an updated version of Exhibit A on file with the City Public Utilities Department. Exhibit A may be amended to reflect other changes to the Metro System only as expressly provided in this Agreement.

3.3 Payment for Operation and Maintenance.

Through the system of charges set forth in Article V of this Agreement, each Participating Agency shall pay its share of the Operation and Maintenance Costs of all Metro System facilities. The Participating Agencies shall not pay for the Operation and Maintenance Costs of Water Repurification System, which are City Water Utility PW Costs.

3.4 Charges Based on Flow and Strength; Exception.

3.4.1 Except as otherwise described in this Section 3.4, a Participating Agency's share of the charges in this Article III shall be assessed pursuant to Article V of this Agreement based on its proportionate Flow in the Metro System and the Strength of its wastewater.

3.4.2 Notwithstanding section 3.4.1, or any other provision of this Agreement, a Participating Agency's share of Pure Water Program Capital Improvement Costs, Repurified Water Revenue, and Capital Expense Rate attributable to the Metro System under Exhibit F shall be assessed or credited based on the Parties' proportionate share of the Pure Water Capital Melded Percentage stated in Column 12 of Exhibit G. The City shall annually allocate the estimated and actual Pure Water Program Capital Improvement Costs and revenues which are attributable to the Metro System under Exhibit F in proportion to each Party's Pure Water Capital Melded Percentage when estimating quarterly payments and conducting year-end adjustments under Article V.

3.4.3 Each Party recognizes that operation within respective Projected 2050 Strength and Flow Amounts is essential to the accurate allocation of costs and revenues under the Pure Water Program. In recognition of same, the Parties agree as follows:

3.4.3.1 Beginning in the next fiscal year after the effective date of this Agreement, if a Party's Annual Average Daily Flow, annual average pounds per day of COD, or annual average pounds per day of SS exceeds any one of its Party's Projected 2050 Strength and Flow Amounts by more than ten percent (10%) for any three (3) consecutive fiscal years, the City shall prepare an amendment to Exhibit G that adjusts projections of each Party's Projected 2050 Strength and Flow Amounts based on information about such Party's exceedance and other relevant information using sound engineering principles. Upon approval by the City and two-thirds

of the members of the Metro Commission, the City shall, as a ministerial matter, amend Exhibit G (including the Melded Percentages in Column 12 of Exhibit G) to reflect the new Projected 2050 Strength and Flow Amounts for each Party. The City shall keep an updated version of Exhibit G on file with the City Public Utilities Department. If the City and two-thirds of the Metro Commission cannot agree on an amendment to Exhibit G, the matter shall be submitted to dispute resolution pursuant to Article IX.

3.4.3.2 Notwithstanding the amounts set forth in Columns 4, 7, and 10 of Exhibit G, the following Parties will be deemed to have the following Projected 2050 Strength and Flow Amounts until July 1, 2025:

3.4.3.2.1 Padre Dam: 3.2 MGD Flow; 24,730 lb/day COD; 11,900 lb/day SS

3.4.3.2.2 San Diego County Sanitation District: 13.617 MGD Flow; 70,210 lb/day COD; 27,830 lb/day SS

3.4.3.2.3 El Cajon: 7.8 MGD Flow; 41,848 lb/day COD; 16,556 lb/day SS

3.4.3.3 If Exhibit G is amended to update one or more Parties' Projected 2050 Strength and Flow Amounts, the change in Projected 2050 Strength and Flow Amounts and Pure Water Capital Melded Percentages shall be retroactive in effect, and the City shall use the updated amounts in estimating quarterly payments and conducting year-end adjustments for Pure Water Program costs and revenues. Therefore, any Party that underpaid based on prior Pure Water Capital Melded Percentages (which were based on prior Projected 2050 Strength and Flow Amounts) shall pay the retroactive amount due in its quarterly payments the following fiscal year; any Party that overpaid based on previous Pure Water Capital Melded Percentages shall receive a credit in its quarterly payments the following fiscal year. Notwithstanding the preceding sentence, if the retroactive amount due exceeds 20% of a Party's average annual Metro System payments for the previous four (4) years, such Party may elect to pay the retroactive amount due in its quarterly payments over the subsequent four (4) fiscal years, with interest based on the most recent quarterly earnings rate of the Local Agency Investment Fund's Pooled Money Investment Account; any Party that overpaid based on previous Pure Water Capital Melded Percentages shall receive a credit in its quarterly payments the following four (4) fiscal years.

3.4.3.4 If a Participating Agency (other than those specified in Section 3.4.3.2) intends to divert a portion of its Flow from the Metro System pursuant to Section 2.3.2 on or before July 1, 2025, the Participating Agency may provide written notice to the City by December 31, 2019, requesting an adjustment in its Projected 2050 Strength and Flow Amounts and Melded Percentage in Exhibit G. If such notice is timely provided, the City shall prepare an amendment to Exhibit G based on information about such Party's diversion and other relevant information using sound engineering principles. Such amendment shall then be subject to the approval procedures set forth in Section 3.4.3.1, and the retroactivity provisions set forth in Section 3.4.3.3; provided, however, that such an amendment to Exhibit G shall also be subject to an agreement with the City for the Participating Agency to pay its proportionate share of Pure Water Program planning, design, and construction costs incurred to date by the Metro System (based on such Participating Agency's prior Melded Percentage), and any costs for Pure Water Program planning or design changes which are reasonably necessary due to the intended diversion.

3.5 Monitoring Flow and Strength.

3.5.1 The City shall monitor wastewater that is discharged into the Metro System for Flow and Strength. The City shall own and operate as part of the Metro System monitoring devices which will measure the amount of daily wastewater discharged into the Metro System. These devices shall be installed at locations appropriate to accurately monitor Flow and Strength. The City may also monitor wastewater Flow and Strength at other locations as it deems appropriate.

3.5.2 In measuring Strength, the frequency and nature of the monitoring shall not be more stringent for the Participating Agencies than it is for the City.

3.5.3 The City shall, at least once every five (5) years, update and provide its plans for the monitoring system and for the procedures it will use to determine Strength to the Participating Agencies. The Participating Agencies shall have the opportunity to review and comment prior to implementation.

3.5.4 The City shall report Flow and Strength data to the Participating Agencies at least quarterly.

IV. CAPACITY RIGHTS

4.1 Contract Capacity.

In consideration of the obligations in this Agreement, each Participating Agency shall have a contractual right to discharge wastewater to the Metro System up to the Contract

Capacity set forth in Exhibit B. Each Party's Projected Metro Flow 2050 stated in Exhibit G, is used solely for the purpose of allocating the Metro System's Pure Water Program Capital Improvement Costs, Repurified Water Revenue, and the Capital Expense Rate under this Agreement, and does not replace or limit Contract Capacity.

4.2 Transfers of Contract Capacity.

The Participating Agencies and the City may buy, sell or exchange all or part of their Contract Capacity among themselves on such terms as they may agree upon. The City shall be notified prior to any transfer. Any transfer shall be first approved by the City. No Contract Capacity may be transferred if the City determines, after consultation with the Participating Agencies involved in the transaction, that said transfer will unbalance, or will otherwise adversely impact the City's ability to operate the Metro System. Provided, however, that the Participating Agency seeking the transfer may offer to cure such imbalance at its own expense. Following the City's consent, as a ministerial matter, the Contract Capacity set forth in Exhibit B shall be adjusted to reflect the approved transfer. If necessary, Projected Metro Flow 2050 set forth in Exhibit G shall also be adjusted to reflect the approved transfer using the process set forth in Section 3.4.3.1, provided, however, that an amendment to Exhibit G due to an approved transfer shall not be retroactive in effect pursuant to Section 3.4.3.3.

4.3 Allocation of Additional Capacity.

The Parties recognize that the City's applicable permits for the Metro System may be modified to create capacity in the Metro System beyond that set forth in Exhibit B as a result of the construction of additional facilities or as a result of regulatory action. This additional capacity shall be allocated as follows:

4.3.1 Except as provided in section 4.3.2 below, in the event that the Metro System is rerated so that additional permitted capacity is created, said capacity shall be allocated proportionately based upon the Metro System charges that have been paid since July 1, 1995 to the date of rerating.

4.3.2 In the event that the additional permitted capacity is created as the result of the construction of non-Metro System facilities, or as the result of the construction of facilities pursuant to Article VII, such additional capacity shall be allocated proportionately based on the payments made to plan, design and construct such facilities.

4.4 Deductions in Contract Capacity.

The Parties further recognize that the Contract Capacity in Exhibit B and Projected Metro Flow 2050 in Exhibit G may be modified to comply with, or in response to, applicable permit conditions, or related regulatory action, or sound engineering principles. In the event that the capacity of the Metro System is rerated to a level below the total capacity set forth in Exhibit B, the Contract Capacity in Exhibit B and Projected Metro Flow 2050 in Exhibit G shall be reallocated proportionately pending the acquisition or construction of new facilities. The City shall acquire or construct such facilities as necessary to provide the Contract Capacity rights

set forth in Exhibit B, as planning and capacity needs require. The costs of such facilities shall be assessed pursuant to Section 3.2.

4.5 Amendments to Exhibits B and G.

As a ministerial matter, the City shall prepare amendments to Exhibits B and G to reflect any adjustment in Contract Capacity pursuant to this Article within ninety (90) days after the adjustment is made. The City shall give notice of the amendments to each Participating Agency, and shall provide copies of the amendments with the notice. The City shall keep an updated version of Exhibits B and G on file with the City Public Utilities Department.

4.6 The South Bay Land/Ocean Outfall.

Nothing in this Article shall limit the City's right to transfer capacity service rights in that portion of the South Bay Land/Ocean Outfall which is not part of the Metro System.

V. SYSTEM OF CHARGES

5.1 Charges Authorized.

The City agrees to implement and the Participating Agencies agree to abide by a new system of charges. This new system allows the City to equitably recover from all Participating Agencies their proportional share of the net Metro System Costs through the imposition of the following charges:

5.1.1 SSC (Sewer System Charge);

5.1.2 NCCC (New Contract Capacity Charge).

5.2 SSC (Sewer System Charge).

The City shall determine the SSC based on the projected Metro System Costs (as defined below) for the forthcoming fiscal year, less all Metro System Revenues (as defined below).

5.2.1 Metro System Costs

5.2.1.1 The following shall at a minimum be considered Metro System Costs for purposes of calculating the annual SSC:

5.2.1.1.1 Except as provided in section 5.2.1.2 (Excluded Costs), the annual costs associated with administration, operation, maintenance, replacement, annual debt service costs and other periodic financing costs and charges, capital improvement, insurance premiums, claims payments and claims administration costs of the Metro System, including projected overhead. Overhead

shall be calculated using accepted accounting practices to reflect the overhead costs of the Metro System.

5.2.1.1.2 Fines or penalties imposed on the City as a result of the operation of the Metro System, unless the fine/penalty is allocated to the City or a Participating Agency as provided in Section 2.6.7.

5.2.1.2 Excluded Costs. The following items shall not be considered Metro System Costs for purposes of calculating the annual SSC:

5.2.1.2.1 Costs related to the City of San Diego's Municipal System as determined by reasonable calculations;

5.2.1.2.2 Costs related to the treatment of sewage from any agency which is not a party to this Agreement;

5.2.1.2.3 Costs related to the inspection and monitoring program for the industrial dischargers located in San Diego, including associated administrative and laboratory services;

5.2.1.2.4 Right-of-way charges for the use of public streets of the City or any Participating Agency. The City and the Participating Agencies agree not to impose a right-of-way charge for the use of its public rights-of-way for Metro System purposes;

5.2.1.2.5 Capital Improvement Costs of any non-Metro System facility;

5.2.1.2.6 Capital Improvement Costs for which an NCCC is paid; and

5.2.1.2.7 City Water Utility PW Costs.

5.2.2 Metro System Revenues.

5.2.2.1 The following revenues shall be at a minimum considered Metro System Revenues for purposes of determining the annual SSC:

5.2.2.1.1 Any grant or loan receipts or any other receipts that are attributable to the Metro System, including, but not limited to, all compensation or receipts from the sale, lease, or other conveyance or transfer of any asset of the Metro System; provided, however, that this shall not include any grant, loan, or other receipts attributable to the Metro System components of the Pure Water

Program, which are specifically addressed in Section 5.2.2.1.8.

5.2.2.1.2 All compensation or receipts from the sale or other conveyance or transfer of any Metro System by-products, including, but not limited to gas, electrical energy, sludge products, and Reclaimed Water (excepting therefrom any receipts allocated pursuant to section 5.2.2.1.3).

5.2.2.1.3 The distribution of revenue from the sale of Reclaimed Water from the North City Water Reclamation Plant, including incentives for the sale of Reclaimed Water, shall first be used to pay for the cost of the Reclaimed Water Distribution System, then the cost of the Operation and Maintenance of the Tertiary Component of the North City Water Reclamation Plant that can be allocated to the production of Reclaimed Water, and then to the Metro System.

5.2.2.1.4 Any portion of an NCCC that constitutes reimbursement of costs pursuant to Section 7.1.4.

5.2.2.1.5 Any penalties paid under Section 7.3.

5.2.2.1.6 Proceeds from the Capital Expense Rate, as calculated under Exhibit F and allocated among the City and Participating Agencies in the proportions set forth in Column 12 of Exhibit G.

5.2.2.1.7 Those portions of Repurified Water Revenue attributable to the Metro System, as calculated under Exhibit F and allocated among the Participating Agencies in the proportions set forth in Column 12 of Exhibit G.

5.2.2.1.8 Any grant or loan receipts or any other receipts that are attributable to the Metro System components of the Pure Water Program, including, but not limited to, all compensation or receipts from the sale, lease, or other conveyance or transfer of any asset of the Metro System components of the Pure Water Program. Any proceeds under this section shall be allocated among the City and the Participating Agencies in the proportions set forth in Column 12 of Exhibit G.

5.2.2.2 Excluded Revenue

5.2.2.2.1 Capital Improvement Costs for which an NCCC is paid;

5.2.2.2.2 Proceeds from the issuance of debt for Metro System projects.

5.2.2.2.3 Proceeds from the sale of Reclaimed Water used to pay for the Reclaimed Water Distribution System pursuant to section 5.2.2.1.3 above.

5.2.3 Calculation of SSC Rates.

5.2.3.1 Prior to the initial implementation of the new system of charges, the City shall prepare a sample fiscal year estimate setting forth the methodology and sampling data used as a base for Strength based billing (SBB) which includes Flow and Strength (Chemical Oxygen Demand (COD) and Suspended Solids (SS)). The analysis shall be submitted to each Participating Agency.

5.2.3.2 The City shall determine the unit SSC rates by allocating net costs (Metro System Costs less Metro System Revenues) between parameters of Flow, COD and SS. This allocation is based on the approved Functional-Design Methodology analyses for individual Capital Improvement Projects (CIPs) and estimated Operation and Maintenance (O&M) Costs allocated to the three parameters. The City may revise the calculations to include any other measurement required by law after the effective date of this Agreement.

5.2.3.3 The net cost allocated to each of the three parameters (Flow, COD and SS) shall be divided by the total Metro System quantity for that parameter to determine the unit rates for Flow, COD and SS. These unit rates shall apply uniformly to all Participating Agencies.

5.2.4 Estimate and Billing Schedule and Year End Adjustment

5.2.4.1 The City shall estimate the SSC rates on an annual basis prior to January 15. The City shall quantify the SSC rates by estimating the quantity of Flow, COD and SS for each Party, based on that Party's actual flow and the cumulative data of sampling for COD and SS over the preceding years. If cumulative data is no longer indicative of discharge from a Participating Agency due to the implementation of methods to reduce Strength, previous higher readings may be eliminated.

5.2.4.2 Costs of treating Return Flow for solids handling will be allocated to the Participating Agencies in proportion to their Flow and

Strength. Return Flow will not be counted against the Participating Agencies' Contract Capacity as shown in Exhibit B.

5.2.4.3 The City shall bill the Participating Agencies quarterly, invoicing on August 1 , November 1, February 1 and May 1. Each bill shall be paid within thirty (30) days of mailing. Quarterly payments will consist of the total estimated cost for each Participating Agency, based on their estimated Flow, COD and SS, divided by four.

5.2.4.4 At the end of each fiscal year, the City shall determine the actual Metro System Costs and the actual Flow as well as the cumulative Strength data for the City and each of the Participating Agencies. The City shall make any necessary adjustments to the unit rates for Flow, COD and SS based on actual costs for the year. The City shall then recalculate the SSC for the year using actual costs for the year, actual Flow, and cumulative Strength factors (COD, SS and Return Flow) for the City and for each Participating Agency. The City shall credit any future charges or bill for any additional amounts due, the quarter after the prior year costs have been audited.

5.3 NCCC (New Contract Capacity Charge).

If New Contract Capacity is required or requested by a Participating Agency, pursuant to Article VII, the Metro System shall provide the needed or requested capacity, provided that the Participating Agency agrees to pay an NCCC in the amount required to provide the New Contract Capacity. New Contract Capacity shall be provided pursuant to Article VII.

5.4 Debt Financing.

The City retains the sole right to determine the timing and amount of debt financing required to provide Metro System Facilities.

5.5 Allocation of Operating Reserves and Debt Service Coverage.

The Parties shall continue to comply with the 2010 Administrative Protocol on Allocation of Operating Reserves and Debt Service Coverage to Participating Agencies, attached hereto and incorporated herein as Exhibit C.

VI. PLANNING

6.1 Projected Flow and Capacity Report.

Commencing on July 1, 1999, each Participating Agency shall provide the City and the Metro Commission with a ten-year projection of its Flow and capacity requirements from the Metro System. The Agencies shall disclose any plans to acquire New Capacity outside the Metro System. This "Projected Flow and Capacity Report" shall be updated annually.

6.2 Other Planning Information.

Each Participating Agency shall provide the City with such additional information as requested by the City as necessary for Metro System planning purposes.

6.3 Ten-Year Capital Improvement Plan.

The City shall prepare a Ten-Year Capital Improvement Plan for the Metro System that describes the facilities necessary to convey, treat, and dispose of, or reuse all Flow in the Metro System in compliance with all applicable rules, laws and regulations. The plan shall be updated annually.

6.4 Notice to Metro Commission.

In the event that the City is not able to include a facility in the Ten-Year Capital Improvement Plan, the City shall notify the Metro Commission as soon as possible before the detailed design or construction of such facility provided that the facility will significantly impact the Metro System.

VII. FACILITIES SOLELY FOR NEW CONTRACT CAPACITY

The Participating Agencies and City are obligated to pay for the acquisition or planning, design, and construction of new facilities in the Metro System that are needed solely to provide New Contract Capacity only under the terms provided below.

7.1 Determination of Need for New Contract Capacity.

7.1.1 As part of its planning efforts, and considering the planning information provided to the City by the Participating Agencies, the City shall determine when additional facilities beyond those acquired or constructed pursuant to Article III above will be necessary solely to accommodate a need for New Contract Capacity in the Metro System, whether by the City or by the Participating Agencies. The City shall determine: (1) the amount of New Contract Capacity needed; (2) the Participating Agency or Agencies, or the City, as the case may be, in need of the New Contract Capacity; (3) the type and location of any capital improvements necessary to provide the New Contract Capacity; (4) the projected costs of any necessary capital improvements; and, (5) the allocation of the cost of any such facilities to the Participating Agency and/or the City for which any New Contract Capacity is being developed. The City shall notify the Participating Agencies of its determination within sixty days of making such determination.

7.1.2 The City or Participating Agency or Agencies in need of New Contract Capacity as determined by the City pursuant to section 7.1.1 above, may choose, in their sole discretion, to obtain New Capacity outside of the Metro System in lieu of New Contract Capacity. Under such circumstances, the Participating Agency or Agencies shall commit to the

City in writing their intent to obtain such New Capacity. Upon such commitment, the City shall not be required to provide New Contract Capacity to such Agency or Agencies as otherwise required under this Agreement.

7.1.3 The Participating Agencies shall have six months from the date of notice of the determination within which to comment on or challenge all or part of the City's determination regarding New Contract Capacity, or to agree thereto or to commit, in writing, to obtain New Capacity outside of the Metro System. Any Participating Agency objecting to the City's determination shall have the burden to commence and diligently pursue the formal dispute resolution procedures of this Agreement within said six month period. The City's determination shall become final at the close of the six month comment and objection period. The City's determination shall remain valid notwithstanding commencement of dispute resolution unless and until otherwise agreed to pursuant to the dispute resolution process in Article IX, or pursuant to a final court order.

7.1.4 The City and the Participating Agency or Agencies which need New Contract Capacity shall thereafter enter into an agreement specifying the terms and conditions pursuant to which the New Contract Capacity will be provided, including the amount of capacity and the New Contract Capacity. Each Party obtaining New Contract Capacity shall reimburse the Metro System for the costs of acquisition, planning, design, and construction of facilities necessary to provide the New Contract Capacity that have been paid by other Parties under Section 7.2.3.

7.1.5 The Parties recognize that the City may acquire and plan, design and construct facilities that are authorized pursuant to both Article III and Article VII of this Agreement. Under such circumstances, the City shall allocate the costs and capacity of such facilities pursuant to Article III and Section 7.1.1 as applicable.

7.2 Charges for Facilities Providing New Contract Capacity

7.2.1 The expense of acquisition, planning, design, and construction of New Contract Capacity shall be borne by the City or the Participating Agency or Agencies in need of such New Contract Capacity.

7.2.2 Notwithstanding any provision in this Agreement, the City and the Participating Agencies shall pay for the Operation and Maintenance Costs of all facilities pursuant to the payment provisions of Article III, including those facilities acquired and constructed to provide New Contract Capacity in the Metro System.

7.2.3 Charges for the acquisition, planning, design and construction of facilities solely to provide New Contract Capacity shall be paid for by the

Participating Agencies and the City pursuant to the payment provisions in Article III of this Agreement until an agreement is reached under Section 7.1.4. or pending the resolution of any dispute relating to the City's determination with respect to New Contract Capacity.

7.2.4 As a ministerial matter, the City shall prepare amendments to Exhibits A and B to reflect the acquisition or construction of facilities to provide New Contract Capacity pursuant to this Article. The City shall give notice of the Amendments to the Participating Agencies, and shall provide copies of the Amendments with the notice.

7.3 Liquidated Damages.

7.3.1 The Parties recognize that appropriate capacity and long term planning for same are essential to the proper provision of sewerage service. In recognition of same, the Parties agree that discharge beyond Contract Capacity will result in damages that are difficult to determine. Therefore, the damages are being liquidated in an amount estimated to the actual damage that will be incurred by the City, and is not a penalty. In the event that a Participating Agency exceeds its Contract Capacity after the City has given notice that New Capacity is required, said Participating Agency shall be assessed and pay a liquidated damages until such time as the Participating Agency obtains the required New Capacity. The liquidated damages shall be one dollar ($1) for each gallon of Flow which exceeds the Participating Agency's Contract Capacity for each quarter in which any exceedance occurs. The amount of liquidated damages shall be adjusted each fiscal year to reflect the annual percentage change in the Engineering News Record – Los Angeles construction cost index.

7.3.2 In the event that a Participating Agency fails to pay the charges imposed under this Article after the City has given notice that payment is required, said Participating Agency shall be assessed and shall pay liquidated damages which shall be determined by multiplying the most recent quarterly earnings rate of the Local Agency Investment Fund's Pooled Money Investment Account times the total outstanding charges. The Participating Agency shall pay such liquidated damages each quarter until the outstanding charges are paid in full.

VIII. THE METRO COMMISSION

8.1 Membership.

The Metro Commission shall consist of one representative from each Participating Agency. Each Participating Agency shall have the right to appoint a representative of its choice to the Metro Commission. If a Participating Agency is a dependent district whose governing body is that of another independent public agency that Participating Agency shall be represented

on the Metro Commission by a representative appointed by the governing body which shall have no more than one representative no matter how many Participating Agencies it governs. Each member has one vote in any matter considered by the Metro Commission. The Metro Commission shall establish its own meeting schedule and rules of conduct. The City may participate in the Metro Commission on an ex officio, non-voting basis.

8.2 Advisory Responsibilities of Metro Commission.

8.2.1 The Metro Commission shall act as an advisory body, advising the City on matters affecting the Metro System. The City shall present the position of the majority of the Metro Commission to the City's governing body in written staff reports. The Metro Commission may prepare and submit materials in advance and may appear at any hearings on Metro System matters and present its majority position to the governing body of the City.

8.2.2 The Metro Commission may advise the City of its position on any issue relevant to the Metro System.

IX. DISPUTE RESOLUTION

This Section governs all disputes arising out of this Agreement.

9.1 Mandatory 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 or Parties to the dispute. A copy of the notice shall be sent to the City, all other Participating Agencies, and the Metro Commission.

9.2 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.

9.3 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 Metro System costs.

9.4 Conduct of Mediation.

Mediation hearings 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 (pursuant to California Evidence Code Sections 1115 – 1128 and 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. Either Party may have attorneys, witnesses or experts present.

9.5 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.

9.6 Performance Required During Dispute.

Nothing in this Article shall relieve the City and the Participating Agencies from performing their obligations under this Agreement. The City and the Participating Agencies 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.

9.7 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.)

X. INSURANCE AND INDEMNITY

10.1 City Shall Maintain All Required Insurance.

10.1.1 Throughout the term of this Agreement the City shall procure and maintain in effect liability insurance covering Metro System assets and operations in the same manner, and to the same extent, as the City insures similar assets and operations of the City. Such insurance may be provided through separate policies for the Metro System, or by consolidating the Metro System with other City assets and operations for insurance purposes. If the Metro System is insured separately, policy limits, deductibles, and self-insured retentions shall be equivalent to what the City procures for other similar City assets and operations. The City shall maintain all insurance required by law, including workers' compensation insurance, and may self-insure for certain losses when allowed by law.

The proportionate cost of insurance for the Metro System shall be included in the computation of the SSC.

10.1.2 If the Metro System is insured separately, any policy or policies of liability insurance carried by the City for the Metro System shall name the Participating Agencies as additional insureds with evidence of same supplied to each upon request.

10.1.3 Upon request by the Metro Commission or a Participating Agency, the City shall promptly provide written coverage and policy information, including, but not limited to, the scope of coverage, policy limits, deductibles, and self-insured retentions, including information on any claims made against the policies and remaining limits and deductibles.

10.2 Substantially Equivalent Coverage.

In the event of a transfer of the Metro System to a nonpublic entity pursuant to Article II, coverage substantially equivalent to all the above provisions shall be maintained by any successor in interest.

XI. INTERRUPTION OF SERVICE

Should the Metro System services to the Participating Agencies be interrupted as a result of a major disaster, by operation of federal or state law, or other causes beyond the City's control, the Participating Agencies shall continue all payments required under this Agreement during the period of the interruption.

XII. NOTICES REQUIRED UNDER AGREEMENT

The City and each Participating Agency shall give notice when required by this Agreement. All notices must be in writing and either served personally, or mailed by certified mail. The notices shall be sent to the officer listed for each Party, at the address listed for each Party in Exhibit D in accordance with this Article. If a Party wishes to change the officer and/or address to which notices are given, the Party shall notify all other Parties in accordance with this Article. Upon such notice, as a ministerial matter, the City shall amend Exhibit D to reflect the changes. The amendment shall be made within thirty (30) days after the change occurs. The City shall keep an updated version of Exhibit D on file with the City Public Utilities Department. The City shall provide a copy of the amended Exhibit D to all Parties.

XIII. EFFECTIVE DATE AND EXPIRATION

13.1 Effective Date.

This Agreement shall be effective thirty (30) days after execution by the City and all of the Participating Agencies, and shall be dated as of the signature date of the last executing Party.

13.2 Expiration.

Subject to the rights and obligations set forth in Section 13.4, this Agreement shall expire on December 31, 2065. This Agreement is subject to extension by agreement of the Parties. The Parties shall commence discussions on an agreement to provide wastewater treatment services beyond the year 2065 on or before December 31, 2055, or at such time, if any, that the Point Loma WTP is required to be upgraded to secondary treatment.

13.3 Contract Capacity Rights Survive Expiration.

The Participating Agencies' right to obtain wastewater treatment services from the facilities referred to in, or constructed pursuant to this Agreement shall survive the expiration of the Agreement. Provided however, upon expiration of this Agreement, the Participating Agencies shall be required to pay their proportional share based on Flow and Strength of all Metro System Costs (Capital Improvement Costs and Operation and Maintenance) to maintain their right to such treatment services. Provided further, that in the event that the Participating Agencies exercise their rights to treatment upon expiration of this Agreement, the City shall have the absolute right, without consultation, to manage, operate and expand the Metro System in its discretion.

13.4 Capital Expense Rate Beyond Expiration.

The Capital Expense Rate, as further described in Exhibit F, shall continue until the cost difference between (a) the actual sum of Pure Water Program Capital Improvement Costs and associated debt attributable to the Metro System under Exhibit F and/or the costs to upgrade the Point Loma WTP and (b) $1.8 billion (as adjusted for inflation), has been fully paid, or the Agreement expires, whichever is sooner. Notwithstanding, it is the express intent and desire of the City and the Participating Agencies that if the Agreement expires before the cost difference has been paid through the Capital Expense Rate, that the Capital Expense Rate continue in any extension of this Agreement negotiated by the Parties pursuant to Section 13.2 until the cost difference has been fully paid.

13.5 Abandonment.

After December 31, 2065, the City may abandon the Metro System upon delivery of notice to the Participating Agencies ten (10) years in advance of said abandonment. Upon notice by the City to abandon the Metro System, the Parties shall meet and confer over the nature and conditions of such abandonment. In the event the Parties cannot reach agreement, the matter shall be submitted to mediation under Article IX. In the event of abandonment, the City shall retain ownership of all Metro System assets free of any claim of the Participating Agencies.

XIV. GENERAL

14.1 Exhibits.

1. This Agreement references Exhibits A through G. Each exhibit is attached to this Agreement, and is incorporated herein by reference. The exhibits are as follows:

Exhibit A	Metro Facilities;
Exhibit B	Contract Capacities;
Exhibit C	Administrative Protocol on Allocation of Operating Reserves and Debt Service Coverage to Participating Agencies;
Exhibit D	Notice Listing;
Exhibit E	Reclaimed Water Distribution System;
Exhibit F	Pure Water Cost Allocation and Revenues; and
Exhibit G	Pure Water Capital Billing Table

14.2 Amendment of Agreement.

Except as provided in this Agreement, and recognizing that certain amendments are ministerial and preapproved, this Agreement may be amended or supplemented only by a written agreement between the City and the Participating Agencies stating the Parties' intent to amend or supplement the Agreement.

14.3 Construction of Agreement.

14.3.1 Drafting of Agreement

It is acknowledged that the City and the Participating Agencies, with the assistance of competent counsel, have participated in the drafting of this Agreement and that any ambiguity should not be construed for or against the City or any Participating Agency on account of such drafting.

14.3.2 Entire Agreement

The City and each Participating Agency represent, warrant and agree that no promise or agreement not expressed herein has been made to them, that this Agreement contains the entire agreement between the Parties, that this Agreement supersedes any and all prior agreements or understandings between the Parties unless otherwise provided herein, and that the terms of this Agreement are contractual and not a mere recital; that in executing this Agreement, no Party is relying on any statement or representation made by the other Party, or the other Party's representatives concerning the subject matter, basis or effect of this Agreement other than as set forth herein; and that each Party is relying solely on its own judgement and knowledge.

14.3.3 Agreement Binding on All; No Third Party Beneficiaries

This Agreement shall be binding upon and shall inure to the benefit of each of the Parties, and each of their respective successors, assigns, trustees or receivers. All 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.

14.3.4 Severability

14.3.4.1 Should any provision of this Agreement be held invalid or illegal, such invalidity or illegality shall not invalidate the whole of this Agreement, but, rather, the Agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly except to the extent that enforcement of this Agreement without the invalidated provision would materially and adversely frustrate either the City's or a Participating Agency's essential objectives set forth in this Agreement.

14.3.4.2 Should a court determine that one or more components of the allocation of costs set forth in this Agreement places the City or a Participating Agency in violation of Article XIII D, Section 6 of the California Constitution with respect to their ratepayers, such components shall no longer be of force or effect. In such an event, the City and the Participating Agencies shall promptly meet to renegotiate the violative component of the cost allocation to comply with Article XIII D, Section 6 of the California Constitution, and use the dispute resolution process in Article IX of this Agreement if an agreement cannot be reached through direct negotiation.

14.3.4.3 Should a state or federal agency provide a final, written determination that the method of allocating Pure Water Program Capital Improvement Costs under this Agreement violates the requirements of state or federal grants or loans which are, or will be, used to fund the wastewater components of the Pure Water Program, such allocation method will no longer be of any force or effect. In such an event, the Parties agree that the allocation of Pure Water Program Capital Improvement Costs attributable to the Metro System will be based on Strength and Flow as set forth in Section 3.4.1, and the allocation of Repurified Water Revenue and the Capital Expense Rate will be based on the Parties' actual payments to fund the Pure Water Program Capital Improvement Costs attributable to the Metro System. The City and the Participating Agencies shall also promptly meet to negotiate an alternative cost allocation method that would comply with such grant or loan funding requirements.

14.3.5 Choice of Law

This Agreement shall be construed and enforced pursuant to the laws of the State of California.

14.3.6 Recognition of San Diego Sanitation District as Successor to Certain Parties.

The Parties hereby acknowledge and agree that the San Diego County Sanitation District is a Participating Agency under this Agreement as the successor in interest to the Alpine Sanitation District, East Otay Mesa Sewer Maintenance District, Lakeside Sanitation District, Spring Valley Sanitation District, and Winter Gardens Sewer Maintenance District.

14.4 Declarations Re: Agreement.

14.4.1 Understanding of Intent and Effect of Agreement

The Parties expressly declare and represent that they have read the Agreement and that they have consulted with their respective counsel regarding the meaning of the terms and conditions contained herein. The Parties further expressly declare and represent that they fully understand the content and effect of this Agreement and they approve and accept the terms and conditions contained herein, and that this Agreement is executed freely and voluntarily.

14.4.2 Warranty Regarding Obligation and Authority to Enter Into This Agreement

Each Party represents and warrants that its respective obligations herein are legal and binding obligations of such Party, that each Party is fully authorized to enter into this Agreement, and that the person signing this Agreement hereinafter for each Party has been duly authorized to sign this Agreement on behalf of said Party.

14.5 Restrictions on Veto of Transfers and Acquisitions of Capacity

Each Party understands and agrees that this Agreement governs its respective rights and responsibilities with respect to the subject matter hereto and specifically recognizes that with respect to the transfer and acquisition of Contract Capacity (Section 4.2) or the creation of New Contract Capacity for any Participating Agency (Article VII), no Participating Agency has a right to veto or prevent the transfer of capacity by and among other Participating Agencies or with the City, or to veto or prevent the creation or acquisition of capacity for another Participating Agency or Agencies, recognizing that by signing this Agreement each Participating Agency has expressly preapproved such actions. The sole right of a Participating Agency to object to any of the foregoing shall be through expression of its opinion to the Metro Commission and, where applicable, through exercise of its rights under the dispute resolution provisions of this Agreement.

14.6 Right to Make Other Agreements

Nothing in this Agreement limits or restricts the right of the City or the Participating Agencies to make separate agreements among themselves without the need to amend this Agreement, provided that such agreements are consistent with this Agreement. Nothing in this Agreement or Exhibit F limits or restricts the right of the City or the Participating Agencies to enter into separate agreements for the purchase or sale of Repurified Water produced by the Water Repurification System or sharing in City Water Utility PW Costs. Such agreements shall not affect the cost allocation and Metro System revenues delineated in Exhibit F.

14.7 Limitation of Claims

Notwithstanding any longer statute of limitations in State law, for purposes of any claims asserted by the City or a Participating Agency for refunds of overpayments or collection of undercharges arising under this Agreement, the Parties agree that such refunds or collections shall not accrue for more than four years prior to the date that notice of such claim is received by the City or a Participating Agency. This also applies to any related adjustments to each Participating Agency's share of net Metro System costs or revenues resulting from the resolution of such claims. The City and the Participating Agencies hereby waive any applicable statute of limitations available under State law that exceed four years. In no case shall the limitations period stated in this section begin to accrue until the date that the annual audit and year-end adjustment from which the claim arises are complete.

14.8 Counterparts

This Agreement may be executed in counterparts. This Agreement shall become operative as soon as one counterpart hereof has been executed by each Party. The counterparts so executed shall constitute one Agreement notwithstanding that the signatures of all parties do not appear on the same page.

SIGNATURES ON FOLLOWING PAGES

IN WITNESS WHEREOF, the Parties have executed this Amendment and Restated Regional Wastewater Disposal Agreement as of the date first set forth above.

CITY OF CHULA VISTA

Name: _____
Title: _____

Approved as to Form:

Name: _____
Title: _____

CITY OF CORONADO

Name: _____
Title: _____

Approved as to Form:

Name: _____
Title: _____

CITY OF DEL MAR

Name: _____
Title: _____

Approved as to Form:

Name: _____
Title: _____

CITY OF EL CAJON

Name: _____
Title: _____

Approved as to Form:

Name: _____
Title: _____

CITY OF IMPERIAL BEACH

Name: _____
Title: _____

Approved as to Form:

Name: _____
Title: _____

CITY OF LA MESA

Name: _____
Title: _____

Approved as to Form:

Name: _____
Title: _____

LEMON GROVE SANITATION DISTRICT

Name: _____
Title: _____

Approved as to Form:

Name: _____
Title: _____

CITY OF NATIONAL CITY

Name: _____
Title: _____

Approved as to Form:

Name: _____
Title: _____

OTAY WATER DISTRICT

Name: _____
Title: _____

Approved as to Form:

Name: _____
Title: _____

PADRE DAM MUNICIPAL WATER DISTRICT

Name: _____
Title: _____

Approved as to Form:

Name: _____
Title: _____

CITY OF POWAY

Name: _____
Title: _____

Approved as to Form:

Name: _____
Title: _____

CITY OF SAN DIEGO

Name: _____
Title: _____

Approved as to Form:

Name: _____
Title: _____

SAN DIEGO COUNTY SANITATION DISTRICT

Name: _____
Title: _____

Approved as to Form:

Name: _____
Title: _____

O- 21027

EXHIBIT A

METRO FACILITIES AS OF 6/27/18

Existing Facilities

Pt. Loma Wastewater Treatment Plant
Pt. Loma Ocean Outfall
Pump Station #1
Pump Station #2
South Metro Interceptor
North Metro Interceptor
Metro Force Mains 1 & 2
Digested Sludge Pipeline
North City Water Reclamation Plant
Metro Biosolids Center (NCWR Plant Related Facilities)
North City Tunnel Connector
North City Raw Sludge Pipeline
Centrate Pipeline
Rose Canyon Parallel Trunk Sewer
Second Rose Canyon Trunk Sewer
East Mission Bay Trunk Sewer
Morena Blvd. Interceptor
South Bay Water Reclamation Plant
Dairy Mart Road & Bridge Rehab
Grove Avenue Pump Station
Grove Avenue Pump Station Sewer Pipeline
South Bay Raw Sludge Pipeline
South Bay Land/Ocean Outfall[1]
Environmental Monitoring & Technical Services Laboratory
Centrate Treatment Facility at Metropolitan Biosolids Center
Metro Operations Center (Iv10C) Complex (based on annual facilities allocation)

Additional Metro Facilities

Note: The below listed facilities could be required as part of the Metro System for hydraulic capacity, good engineering practices and/or compliance with applicable law, rules or regulations, including OPRA, and the continuation of the City's waiver of applicable treatment standards at the Point Loma Wastewater Treatment Plant ("Waiver").

South Bay Sludge Processing Facility

[1] The South Bay Land/Ocean Outfall is jointly owned by the International Boundary and Water Commission, U.S. Section (60.06%) and the City of San Diego (39.94%). The capacity of the City's portion of the outfall as of the date of this Agreement is 74 MGD average dry weather flow, of which the Metro System has a capacity right to 69.2 MGD and the City as an exclusive right to 4.8 MGD.

South Bay Secondary Treatment Plant, Phase I (21 MGD)
South Bay Secondary Sewers, Phase I

Note: These facilities could be required as part of the Metro System for hydraulic capacity, good engineering practices, compliance with OPRA, and to maintain the City's Waiver. In the event that hydraulic capacity demands, or the obligations of OPRA (or its successor) or the terms of the City's Waiver change, these facilities may not be required or may be modified or supplemented, as appropriate, pursuant to the terms of this Agreement.

South Bay Secondary Treatment Plant, Phase II (28 MGD)
South Bay Secondary Sewers, Phase II

Note: These facilities could be added to the Metro System as part of Phase I of the Pure Water Program.

Expansion of North City Water Reclamation Plant
Morena Pump Station

EXHIBIT B

CONTRACT CAPACITIES

Annual Average Daily Flow in Millions of Gallons Per Day

Metro Agency	Original Contract Capacity	Additional Contract Capacity	New Contract Capacity	Transferred Contract Capacity	Total Contract Capacity	Percent of Total
Chula Vista	19.843	1.021	0.000	0.000	20.864	8.182%
Coronado	3.078	0.172	0.000	0.000	3.250	1.275%
Del Mar	0.821	0.055	0.000	0.000	0.876	0.344%
East Otay Mesa*	0.000	0.000	0.000	1.000	1.000	0.392%
El Cajon	10.260	0.655	0.000	0.000	10.915	4.280%
Imperial Beach	3.591	0.164	0.000	0.000	3.755	1.473%
La Mesa	6.464	0.359	0.000	0.170	6.993	2.742%
Lakeside-Alpine*	4.586	0.255	0.000	0.000	4.841	1.898%
Lemon Grove	2.873	0.154	0.000	0.000	3.027	1.187%
National City	7.141	0.346	0.000	0.000	7.487	2.936%
Otay	1.231	0.056	0.000	0.000	1.287	0.505%
Padre Dam	6.382	0.343	0.000	(0.500)	6.225	2.441%
Poway	5.130	0.264	0.000	0.500	5.894	2.312%
Spring Valley/ Otay Ranch*	10.978	0.545	0.000	(1.170)	10 .353	4.060%
Wintergardens*	1.241	0.068	0.000	0.000	1.309	0.513%
Subtotal	83.619	4.459	0.000	0.000	88.078	34.540%

Metro Agency	Original Contract Capacity	Additional Contract Capacity[1]	New Contract Capacity[2]	Transferred Contract Capacity[3]	Total Contract Capacity	Percent of Total
San Diego	156.381	10.541	0.000	0.000	166.922	65.460%
Total	240.000	15.000	0.000	0.000	255.000	100.00%

* Indicates a sub-area of the San Diego County Sanitation District.

1. Additional Contract Capacity is capacity allocated pursuant to Section 4.3.1 of the Agreement.
2. New Contract Capacity is capacity obtained pursuant to Section 6 of the Agreement.
3. Transferred Contract Capacity is capacity obtained pursuant to Section 4.2 of the Agreement.

EXHIBIT C

ADMINISTRATIVE PROTOCOL ON ALLOCATION OF OPERATING RESERVES AND DEBT SERVICE COVERAGE TO PARTICIPATING AGENCIES

METRO WASTEWATER **JPA**

www.metrojpa.org

276 Fourth Avenue Chula Vista, CA 91950 619-476-2557

Ernest Ewin, Chairman

April 19, 2010

Rod Greek
Public Utilities Deputy Director
City of San Diego, Metropolitan Wastewater
9192 Topaz Way
San Diego, CA 92123

Re: Administrative Protocol on Allocation of Operating Reserves and Debt Service Coverage to Participating Agencies

Dear Mr. Greek:

This letter is intended to memorialize the attached Administrative Protocol on Allocation of Operating Reserves and Debt Service Coverage to Participating Agencies ("Protocol") negotiated between the City of San Diego and Metro TAC/ Metro JPA/ Metro Commission, on behalf of the Participating Agencies under the Regional Wastewater Disposal Agreement. Your signature will indicate acceptance of the Protocol on behalf of the City.

By countersigning this letter, the City of San Diego and Metro TAC/ Metro JPA/ Metro Commission acknowledge and agree to the terms and conditions contained in the attached Protocol.

Sincerely,

4/21/10

for the Metro TAC/ Metro JPA/ Metro Commission

Enclosure

The Protocol is accepted by the City of San Diego pursuant to the terms and conditions set forth in the attachment hereto:

Date: 4/19/10

Rod Greek, Public Utilities Deputy Director

The Protocol is accepted by Metro TAC/ Metro JPA/ Metro Commission on behalf of the Participating Agencies pursuant to the terms and conditions set forth in the attachment hereto:

Date: 5/6/10

Administrative Protocol on Allocation of Operating Reserves and Debt Service Coverage to Participating Agencies

BACKGROUND:

In early 2008 the MetroTAC formed a working group in response to the City of San Diego's request for $20 million in funding in FYE 2009 from the Participating Agencies ("PAs") for operating reserves and debt service coverage. The working group continued to meet with City of San Diego staff regarding the establishment of a mutually agreed upon protocol through early February 2010. A summary of the City of San Diego's 2008 proposal and the negotiated 2010 protocol is included as Attachment A.

At its regular meeting of February 17, 2010, the MetroTAC approved the following recommendations to move to the Finance Committee of the Metro Wastewater JPA and thereafter to the Metro Commission/ Metro Wastewater JPA for discussion and action:

- Proceed with PAs funding a 1.2 debt service ratio coverage
- Proceed with PAs funding a 45 day operating reserves
- The PAs will fund no other reserves
- FY07 and FY08 refund monies will be used to fund the operating reserves
- Interest accrual on operating reserves and undesignated accounts will start with FY10 (beginning on July 1, 2009)

The Finance Committee of the Metro Wastewater JPA, at its February 24, 2010 meeting, took action to recommend approval of the above, by the Metro Commission/ Metro Wastewater JPA. At its March 4, 2010 meeting, the Metro Commission/ Metro Wastewater JPA, comprised of representatives of the PAs, approved the components of the negotiated policy, with the understanding that any such policy would serve as an administrative protocol regarding the allocation of debt service coverage to the PAs and funding of operating reserves by the PAs.

PROTOCOL REGARDING PA FUNDING OF OPERATING RESERVES:

Background:

Operating reserves are established to provide funding for unforeseen events that might occur during the course of the fiscal year such as unforeseen major maintenance or capital projects. The PAs performed a survey of other regional wholesale agencies and determined that agencies such as the San Diego County Water Authority maintain a 45 day operating reserves. Although the City of San Diego's current policy is to increase operating reserves for its retail customers from 45 to 70 days, the City realizes that if a major maintenance incident should occur it can immediately request payment from the PAs per the Regional Wastewater Disposal Agreement. The City of San Diego's retail customer's rates cannot be immediately increased due to Proposition 218 requirements for noticing and public hearings.

Protocol:

Attachment B is a summary of the funding strategy showing each PAs 2007 and 2008 refunds based on recent City Metro Wastewater Exhibit E audits. The refunds will be used to fund the PAs 45 day operating reserves contribution. In the majority of cases most PAs will see a refund even after they have

fully funded their portion of the operating reserves. PAs that do not have adequate refunds will be billed for their portion of the reserve in the next quarterly 2010 billing. The operating reserves for each fiscal year will be established based on 45 days of operating revenues as determined by the following formula:

$$\frac{\text{Fiscal Year Estimated Operating Expenses (not including CIP and debt service)}}{\text{365 days}} \times \text{45 days}$$

The number of days included in the calculation cannot be changed without prior consent of the PAs.

The operating reserves will be maintained by the City of San Diego and interest will accrue on a monthly basis based on actual interest rates on the City's investments. This interest revenue will be added to the PAs undesignated fund balance for that fiscal year. As part of each year's Exhibit E audit the actual required operating reserves and interest earned on it will be determined and audited by the City of San Diego's external auditors and PA representatives. A summary of the operating reserves balance and interest earned for each PA will be included as a footnote or attachment to the City Metro Wastewater Exhibit E Audit.

PROTOCOL REGARDING ALLOCATION OF DEBT SERVICE COVERAGE TO PAs

Background:

A 1.2 debt service coverage ratio is a requirement for all of the outstanding Metro parity debt. A cash flow prepared by the City of San Diego shows (Attachment C) that if the PAs are billed at the current level ($65 million annually to cover the PAs portion of operations, pay-go capital, and debt service expense) for the next three to five years that this requirement can be achieved without additional contributions by the PAs. This provides the PAs a stable projected annual Metro contribution for the next three to five years.

Protocol:

The PAs will maintain through annual contributions and use of PA undesignated fund balance a positive cash flow not to exceed 1.2 times the PA share of the required annual debt service on Metro Debt. The debt service coverage ratio of 1.2 cannot be changed without prior consent of the PAs.

The undesignated fund balance will be maintained by the City of San Diego and interest will accrue on a monthly basis based on actual interest rates on the City's investments. This interest revenue will be added to the PAs undesignated fund balance for that fiscal year.

As part of each year's Exhibit E audit the actual required reserve coverage and interest earned on the undesignated fund balance will be determined and audited by the City of San Diego's external auditors and PA representatives. A summary of the debt service coverage requirement and portion of interest earned on the undesignated fund balance for each PA will be included as a footnote or attachment to the City Metro Wastewater Exhibit E Audit.

If the cash flow in any year does not provide the required 1.2 debt service coverage the PAs will be billed the additional required revenue including interest.

Attachment A
Original San Diego Proposal

Draft

FY 2009, and prospective years, Participating Agency funding process for the allocation of the MWWD Debt Service Coverage requirement:

Year 1

On October 1, 2008

1. Obtain the FY 2009 total MWWD debt service amount including SRF debt from the Administrative Services, Budget Section.
2. Calculate the debt service coverage dollar amount greater than 100%. The target debt service coverage percentage of 1.56 is the average debt service coverage ratio found in the current rate case model. The formula is: ([Current Debt Service Amount], $94,306,351 * .56 = $52,811,557).
3. Allocate the total debt service coverage amount between the Municipal and Metropolitan Systems using their respective debt service percentages of 77.91% for the Metropolitan System and 22.09% for the Municipal System.
4. Obtain final FY 2009 projected flow-based billing percentages for the Participating Agencies from Admin Services, Agency Contracts Section, (Peggy Merino).
5. Allocate the Metropolitan System portion of the debt service coverage amount to the City of San Diego and the 15 Participating Agencies using final FY 2009 projected flow-based billing percentages.
6. Update the Participating Agency Debt Coverage Payment Schedule.

On October 4, 2008

1. Forward the Participating Agency Debt Coverage Payment Schedule to the Admin Services, Agency Contracts Section, (Peggy Merino).

On November 1, 2008

1. Admin Services, Agency Contracts Section, (Peggy Merino) sends FY 2009 second quarter invoices to include as a second item, the debt service coverage amounts. The due date is December 1, 2008. (no interest will be applied to these accounts due to the mid year payment approach)

On December 1, 2008

1. Recognize the Participating Agencies debt service coverage payments as new revenues and update the Participating Agency Debt Coverage Payment Schedule.
2. Inform Admin Services, Agency Contracts Section, (Peggy Merino) to reduce the Participating Agencies FY 2010 CIP expense allocation by the FY 2009 Participating Agencies debt service coverage payments.
3. Obtain the preliminary FY 2010 projected flow-based percentages for the Participating Agencies from Admin Services, Agency Contracts Section, (Peggy Merino).
4. Calculate a preliminary FY 2010 debt service coverage schedule and forward to the Admin Services, Agency Contracts Section, (Peggy Merino)

On January 1, 2009

1. Admin Services, Agency Contracts Section, (Peggy Merino), informs the Participating Agencies of the FY 2010 projected debt service coverage amounts for budgeting purposes.

On July 1, 2009

1. Apply the FY 2009 Participating Agencies debt service coverage payments towards the cash requirement for the FY 2010 Metro based CIP Project budget. Any residual amounts will be applied to the O&M budget.

Year 2 (Prospective Years)

On October 1, 2009

1. Obtain the Fiscal Year 2010 total MWWD debt service amount including SRF debt from the Administrative Services, Budget Section.
2. Calculate the debt service coverage dollar amount greater than 100%. The target debt service coverage percentage of 1.56 is the average debt service coverage ratio found in the current rate case model. The formula is: ([Current Debt Service Amount], $xxx,xxx,xxx * .56 = $xxx,xxx,xxx)
3. Allocate the total debt service coverage amount between the Municipal and Metropolitan Systems using their respective debt service coverage percentages of xx.xx% for the Municipal System and xx.xx% for the Metropolitan System.
4. Obtain the final FY 2010 projected flow-based percentages for the Participating Agencies from Admin Services, Agency Contracts Section, (Peggy Merino). .
5. Allocate the Metropolitan System portion of the debt service coverage amount to the City of San Diego and the 15 Participating Agencies using the preliminary FY 2010 projected flow-based percentages.
6. Update the Participating Agency Debt Coverage Payment Schedule.

On October 4, 2009

1. Forward the Participating Agency Debt Coverage Payment Schedule to the Admin Services, Agency Contracts Section, (Peggy Merino) for invoicing purposes.

On November 1, 2009

1. Admin Services, Agency Contracts Section, (Peggy Merino) sends FY 2009 second quarter invoices to include as a second item, the debt service coverage amounts. The due date is December 1, 2009. (no interest will be applied to these accounts due to the mid year payment approach)

On December 1, 2009

1. Recognize the Participating Agencies debt service coverage payments as new revenues and update the Participating Agency Debt Coverage Payment Schedule.
2. Inform Admin Services, Agency Contracts Section, (Peggy Merino) to reduce the Participating Agencies FY 2011 CIP expense allocation by the FY 2010 Participating Agencies debt service coverage payments.
3. Obtain the preliminary FY 2011 projected flow-based percentages for the Participating Agencies from Admin Services, Agency Contracts Section, (Peggy Merino).
4. Calculate a preliminary FY 2011 debt service coverage schedule and forward to the Admin Services, Agency Contracts Section, (Peggy Merino)

On January 1, 2010

1. Admin Services, Agency Contracts Section, (Peggy Merino), informs the Participating Agencies of the FY 2011 projected debt service coverage amounts for budgeting purposes.

On July 1, 2010

1. Apply the FY 2010 Participating Agencies debt service coverage payments towards the cash requirement for the FY 2011 Metro based CIP Project budget. Any residual amounts will be applied to the O&M budget.

H:\Participating Agencies\FY 2009 Debt Coverage Process Flow 07162008 ver 2 draft.doc

Attachment B
Operating Reserve Funding Strategy

FY07-FY08 Operating Reserve Rate Stabilization
Based on 2008 Flows
FINAL

	EXHIBIT E AUDIT ADJUSTMENTS				2008 FLOWS & LOADS		
Agency	FY 2007	FY 2008	TOTAL		2008 FLOWS & LOADS	OPERATING RESERVE	NET
CHULA VISTA	($1,837,010)	($2,100,751)	($3,937,761)		28.083%	$1,202,374	($2,735,387)
CORONADO	($189,910)	($366,858)	($556,768)		3.356%	$143,693	($413,075)
DEL MAR	($87,785)	($103,913)	($191,698)		1.029%	$44,061	($147,637)
EL CAJON	($290,369)	$66,888	($223,481)		15.270%	$653,789	$430,308
IMPERIAL BEACH	($132,300)	($130,153)	($262,453)		3.652%	$156,373	($106,080)
LA MESA	($99,793)	($40,190)	($139,983)		8.842%	$378,561	$238,578
LAKESIDE/ALPINE	($293,313)	($243,206)	($536,519)		5.357%	$229,368	($307,151)
LEMON GROVE	($147,034)	($195,043)	($342,077)		3.611%	$154,615	($187,462)
NATIONAL CITY	($637,379)	($947,043)	($1,584,422)		7.572%	$324,211	($1,260,211)
OTAY	$123,792	($138,545)	($14,753)		0.459%	$19,668	$4,915
PADRE DAM	($789,976)	($1,752,218)	($2,542,194)		5.198%	$222,537	($2,319,657)
POWAY	($683,251)	$130,168	($553,083)		5.770%	$247,021	($306,062)
SPRING VALLEY	($611,093)	($667,539)	($1,278,632)		10.316%	$441,691	($836,941)
WINTERGARDENS	($71,984)	($56,162)	($128,146)		1.482%	$63,470	($64,676)
TOTAL	($5,747,405)	($6,544,565)	($12,291,970)		100%	$4,281,432	$ (8,010,538.00)

Attachment C
Debt Service Coverage Funding Strategy

Attachment C

Schedule of Participating Agency Contributions to Operations Reserve and Debt Service Coverage Cash flow FY 2007-2011
Prepared on: February 23, 2010

HOW TO READ CASH FLOW SPREADSHEET:
Blue font = data inputted directly into spreadsheet
Green font = data imported from another spreadsheet in workbook
Black font = Calculation; see legend to determine calculation

Line #	Cash Flow Component	Legend	Foot-note #	AUDITED FY07	AUDITED FY08	PROJECTED FY09	PROJECTED FY10	PROJECTED FY11	PROJECTED FY12	PROJECTED FY13	PROJECTED FY14	PROJECTED FY15
1	Current Projected Revenue Stream	Input		$54,007,596	$63,231,038	$57,249,960	$64,487,408	$65,000,000	$65,000,000	$65,000,000	$65,000,000	$65,000,000
2	Annual Refund After Exhibit E Audit	Input					[redacted]	(1,500,000)	(3,000,000)	(2,500,000)	(2,100,000)	(1,800,000)
3	Transfer (to)/from Operating Reserve	Line 21-Prior Year				-	(4,281,432)	(42,814)	(43,242)	(43,675)	(44,112)	(44,553)
4	Undesignated Fund Balance Interest	Line 17 X Interest Rate	(1)				79,990	258,156	225,608	113,282	62,579	58,899
5	Operating Reserve Interest	Calculated Off-Line	(2)				164,514	166,159	167,821	169,499	171,194	172,906
6	Gross PA System Revenue	Sum(Line1:Line5)		$54,007,596	$63,231,038	$57,249,960	$52,241,049	$63,881,500	$62,350,187	$62,739,106	$63,089,661	$63,387,252
7	Less:											
8	PA Estimated Total Operating Expenses	Prior year X 1.01	(3)	$32,304,298	$37,150,042	$34,727,170	$34,727,170	$35,074,442	$35,425,186	$35,779,438	$36,137,232	$36,498,605
9												
10	Net PA System Revenue	Line 6 - Line 8		$21,703,298	$26,080,996	$22,522,790	$17,513,879	$28,807,059	$26,925,001	$26,959,668	$26,952,429	$26,888,647
11												
12	PA Annual Debt Service Payment	Calculated Off-Line		$20,373,393	$19,350,051	$20,441,069	$24,049,985	$24,048,886	$22,479,049	$22,478,268	$22,478,075	$22,478,736
13	CIP Pay Go – 20% of Projected CIP	Input	(4)	(4,417,502)	(512,512)	-	1,318,048	5,610,210	7,369,218	5,800,940	4,570,129	4,655,009
14	Total CIP and Debt Service	Line 12 + 13		15,955,891	19,337,539	20,441,069	25,368,037	29,654,090	29,848,257	28,279,206	27,048,204	27,133,739
15												
16	Net Income after CIP and Debt Service	Line 10 - 14		$5,747,407	$6,743,457	$2,081,721	($7,854,157)	($847,032)	($2,923,257)	($1,319,537)	($95,775)	($245,092)
17	PA Undesignated Fund Balance	Line 16 + Prior Year		$5,747,407	$12,490,864	$14,572,585	$6,718,428	$5,871,396	$2,948,139	$1,628,602	$1,532,827	$1,287,735
18												
19	Calculated Debt Service Ratio	Line 10/Line 12	(5)				0.73	1.20	1.20	1.20	1.20	1.20
20												
21	Operating Reserve (45 days)	(Line 8/365 days) X 45 days					$4,281,432	$4,324,246	$4,367,489	$4,411,164	$4,455,275	$4,499,828

Footnotes:
(1) average of current year ending balance + prior year ending balancel times 3.2%
(2) average monthly balance times LAIF rate (first year calculated at half year interest)
(3) FY09 based on average of FY07 & FY08 then 1% inflation
(4) 20% of projected Metro CIP
(5) Minimum coverage requirement 1.2 time annual Metro debt service

FY10 Operating Reserve Calc:

PA Operating Expenses:	$34,727,170
divided by:	365
Equals:	$95,143
Times:	45
45 day Operating Reserve:	$4,281,432

FY10 Operating Reserve Interest Calc:

PA Operating Expenses:	$4,281,432
Times ave monthly LAIF Interest Rate:	0.038425 (range from 3.18% to 4.53% per month)
FY10 Estimated Interest Earned:	$164,514

EXHIBIT D

NOTICE LISTING

City Manager
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91919
Phone: (619) 691-5031
Fax: (619) 585-5612

City Manager
City of Coronado
1825 Strand Way
Coronado, CA 92113
Phone: (619) 522-7335
Fax: (619) 522-7846

City Manager
City of Del Mar
1050 Camino Del Mar
Del Mar, CA 92014
Phone: 755-9313 ext. 25
Fax: 755-2794

City Manager
City of El Cajon
200 Civic Center Way
El Cajon, CA 92020
Phone: (619) 441-1716
Fax: (619) 441-1770

City Manager
City of Imperial Beach
825 Imperial Beach Blvd.
Imperial Beach, CA 91932
Phone: (619) 423-8300 ext. 7
Fax: (619) 429-9770

City Manager
City of La Mesa
8130 Allison Avenue
La Mesa, CA 91942
Phone: (619) 667-1101
Fax: (619) 462-7528

City Manager
City of Lemon Grove
3232 Main Street
Lemon Grove, CA 91945
Phone: (619) 464-6934
Fax: (619) 460-3716

City Manager
City of National City
1243 National City Blvd.
National City, CA 91950
Phone: (619) 336-4240
Fax: (619) 336-4327

City Manager
City of Poway
13325 Civic Center Drive
Poway, CA 92064
Phone: (858) 679-4200
Fax: (858) 679-4226

Chief Operating Officer
City of San Diego
202 "C" Street
San Diego, CA 92101
Phone: (619) 236-5949
Fax: (619) 236-6067

Chief Administrative Officer
County of San Diego
1600 Pacific Highway, Rm. 209
San Diego, CA 92101
Phone: (619) 531-5250
Fax: (619) 557-4060

General Manager
Otay Water District
2554 Sweetwater Springs Blvd.
Spring Valley, CA 91977
Phone: (619) 670-2210
Fax: (619) 670-2258

General Manager
Padre Dam Municipal Water District
9300 Fanita Pkwy
Santee, CA 92071
Phone: (619) 258-4610
Fax: (619) 258-4794

EXHIBIT E

RECLAIMED WATER DISTRIBUTION SYSTEM

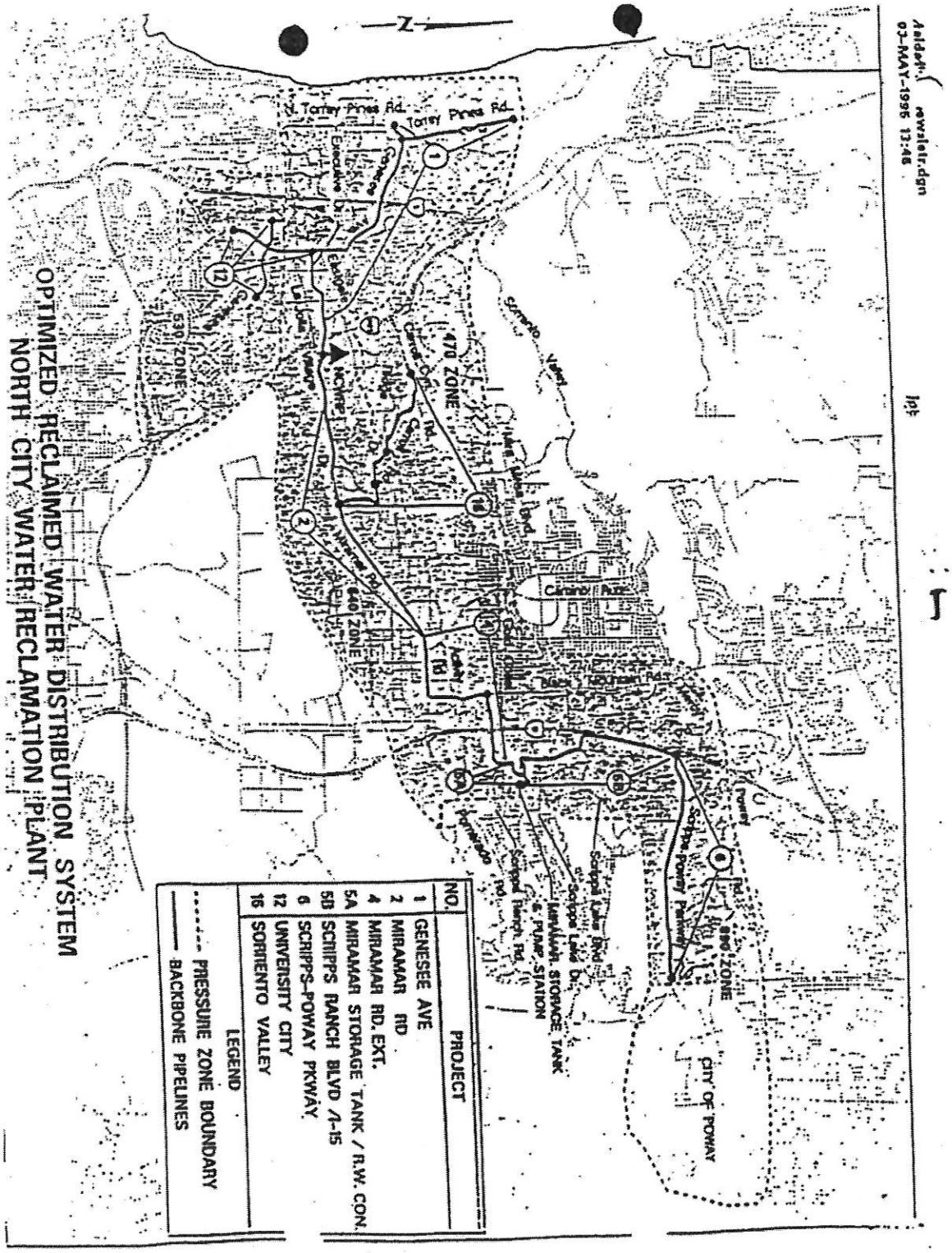


EXHIBIT F

PURE WATER PROGRAM COST ALLOCATION AND REVENUES

As part of the Pure Water Program, the City intends to modify the North City Water Reclamation Plant (a Metro System facility) and expand its capacity to 52 mgd. In addition, the City intends to construct the North City Pure Water Facility on a nearby site to produce Repurified Water. This Exhibit F sets forth the costs and revenues associated with the Pure Water Program which are, or are not, attributable to the Metro System.

I. Costs Excluded from Metro System Costs

All of the following Pure Water Program costs, including Capital Improvement Costs, Operation and Maintenance Costs, and other related costs (including administration, insurance, claims, and overhead) are excluded as Metro System Costs for purposes of calculating the annual Sewer System Charge, and shall be the responsibility of City's water utility ("**City Water Utility PW Costs**"), unless otherwise expressly agreed to pursuant to an amendment to this Exhibit F:

1.1 General Exclusions.

1.1.1 Costs of the Water Repurification System and any Metro System facilities to the extent constructed, modified, expanded, or used for the purpose of treating water beyond secondary treatment (ocean discharge standard under current law). This shall include costs for preliminary treatment, primary treatment, and secondary treatment to the extent such costs are higher than they would otherwise be due to the production of Repurified Water.

1.1.2 Costs for fail-safe disposal, if necessary, for design capacity for Repurified Water, including, but not limited to, any costs associated with the reservation of capacity at the Point Loma Wastewater Treatment Plant.

1.1.3 Costs for the demolition or replacement of existing Metro System facilities with similar facilities for the purpose of making space available for Water Repurification System facilities. Such costs may take into account the current asset value or market value of the existing Metro System facility.

1.2 Cost Exclusions Specific to North City Water Reclamation Plant Improvements.

1.2.1 Costs for increased aeration tank volume to the extent the new volume exceeds the amount necessary to provide 52 mgd capacity. Determination of sizing to provide 52 mgd capacity shall be based on the current tank volume necessary to provide 30 mgd capacity.

1.2.2 Costs for the methanol feed system.

1.2.3 Costs for brine disposal, including, but not limited to, pump stations, pipelines, retreatment, ocean outfall, and monitoring.

1.2.4 Costs for the use of existing tertiary water filters for Repurified Water purposes. Such costs may take into account the depreciated value of such filters, or use such other appropriate valuation method as agreed by the City and authorized representatives of the Metro Commission. (Costs under this section shall be reimbursed or credited by City's water utility to the Metro System.)

II. North City Water Reclamation Plant Improvement Costs Included as Metro System Costs

Notwithstanding the above exclusions, the City and the Participating Agencies have specifically agreed that the following Capital Improvement Costs and Operation and Maintenance Costs related to North City Water Reclamation Plant improvements shall be included as Metro System Costs for purposes of calculating the annual Sewer System Charge (and therefore not qualify as City Water Utility PW Costs):

2.1 Costs for chemically enhanced primary treatment for up to 52 mgd capacity.

2.2 Costs for primary effluent equalization for up to 52 mgd capacity.

2.3 Costs for increased volume of aeration tanks that will provide up to, but not exceeding, 52 mgd capacity. Determination of sizing to provide 52 mgd capacity shall be based on the current tank volume necessary to provide 30 mgd capacity.

2.4 Costs to add secondary clarifier tanks sufficient for up to 52 mgd capacity.

2.5 Costs for wastewater conveyance facilities to provide wastewater for replacement of centrate flows that cannot be treated at the North City Water Reclamation Plant due to the production of Repurified Water.

2.6 Costs for treatment and conveyance of all return flows (micro-filtration and tertiary backwash) based on Flow, COD, and SS.

III. Cost Allocation Example

Attachment 1 is an example of the City's Pure Water Phase I Cost Estimate (based on 60% design), and indicates which costs are City Water Utility PW Costs and which costs are attributable to the Metro System. The Parties agree that Attachment 1 is an illustrative document to assist the Parties in the future and is not a comprehensive list of all such costs. If there is any conflict between this Exhibit F and Attachment 1, or if a specific cost is not addressed in Attachment 1, this Exhibit F shall control.

IV. Revenue Sharing for Repurified Water

4.1 **Background.** Initially, the parties anticipate that the cost per acre foot associated with the production of Repurified Water will be more expensive than the cost per acre foot of untreated imported water. However, it is anticipated that Repurified Water produced under the Pure Water Program will be less expensive than untreated imported water sometime in the future. Once Repurified Water produced under the Pure Water Program becomes less expensive

than the cost of untreated imported water, the parties agree that there will be revenue from the Pure Water Program.

4.2 **Calculation.** Revenue sharing shall occur in each fiscal year during which the annual cost per acre foot associated with the production of Repurified Water is less than the cost of untreated water per acre foot from the San Diego County Water Authority ("**CWA**"). The annual cost difference shall be known as "**Repurified Water Revenue.**" Repurified Water Revenue shall be determined as follows:

> Annual cost per acre foot of CWA untreated water purchased by the City for delivery at Miramar Reservoir (which shall be determined based on the total of certain fixed and variable costs for water actually billed to the City by CWA for water delivered at Miramar Reservoir in a fiscal year, divided by the number of acre-feet of CWA water delivered at Miramar Reservoir that year)
>
> ***less***
>
> Annual cost per acre foot of City Water Utility PW Costs (which shall be determined based on total annual City Water Utility PW Costs divided by the number of acre-feet of Repurified Water actually produced in that year)
>
> ***multiplied by***
>
> The number of acre feet of Repurified Water produced by Pure Water Program facilities during the applicable fiscal year.

Attachment 2 is a summary of billings from CWA showing fixed and variable costs for untreated water. The Parties agree that Attachment 2 shall be referred to by the Parties in the future in determining how costs for water delivered at Miramar Reservoir are calculated. If no untreated water is delivered at Miramar Reservoir in a given year, then the closest point of delivery of untreated water to the City shall be used.

The City shall estimate whether there will be Repurified Water Revenue in the upcoming fiscal year prior to January 15 of each year, and the estimated amount of Repurified Water Revenue shall be effective on July 1 of the upcoming fiscal year.

4.3 **Revenue Sharing.** Repurified Water Revenue shall initially be shared based on the relative actual Capital Improvement Costs for the Pure Water Program contributed by City's Water Utility and the Metro System. Such Capital Improvement Cost contributions are currently estimated as (61% City Water Utility and 39% Metro System) until the debt attributable to the Metro System is fully paid.

Following full payment of debt attributable to the Metro System, Repurified Water Revenue shall be shared based on the relative actual Operation and Maintenance Costs for Pure Water Program facilities contributed by City's Water Utility and the Metro System, calculated

annually. Such Operation and Maintenance Costs are currently estimated as (76% City Water Utility and 24% Metro System) on an annual basis.

4.4 **Year-End Adjustment.** At the end of each fiscal year during which there is Repurified Water Revenue, the City shall determine the actual cost per acre foot of CWA untreated water purchased by the City, the actual cost per acre foot of City Water Utility PW costs, and the actual amount of Repurified Water produced at Pure Water Program facilities.

Based on the actual cost and production information, the City will recalculate the Repurified Water Revenue for the prior fiscal year. The City will credit any future charges or bill for any additional amounts due the quarter after the prior year costs have been audited.

4.5 **Change in Potable Reuse Method.** The parties acknowledge that the Pure Water Program will initially use the surface water augmentation method of potable reuse. The use of CWA untreated water costs in calculating Repurified Water Revenue is intended to provide an appropriate point of comparison to costs for producing Repurified Water that will be introduced into surface water. The parties agree that if the City implements direct potable reuse (in which Repurified Water is introduced directly into a water supply pipeline or facility), the parties shall meet and negotiate in good faith regarding an amendment to this Exhibit F to appropriately update the formula for Repurified Water Revenue.

V. Capital Expense Rate

5.1 **Background.** The Point Loma Wastewater Treatment Plant operates under a National Pollutant Discharge Elimination System ("NPDES") permit modified under section 301(h) & (j)(5) of the Clean Water Act. If such modified permit were ever revoked or not renewed, the parties agree that, under current law, the City would have an obligation to upgrade the Point Loma WTP to secondary treatment. The parties further agree that $1.8 billion is a fair and comprehensive estimation of the costs that could be incurred by the Metro System to meet the legal requirements related to the Metro System under current law. The estimate of $1.8 billion is based on the net present value of the capital cost to develop 180 MGD of secondary treatment at Point Loma WTP as of November 15, 2018.

Therefore, the parties agree that $1.8 billion represents the maximum amount of Capital Improvement Costs that the Metro System should be obligated to contribute to the Pure Water Program, the purpose of which is not solely the disposal of wastewater, but also the production of Repurified Water. The parties agree that this $1.8 billion maximum contribution should apply whether or not the Point Loma WTP is actually upgraded to secondary treatment to meet legal requirements in the future because, as of the date of the Agreement, the parties have the option of upgrading the Point Loma WTP to full secondary treatment for the cost of approximately $1.8 billion.

In light of the above, the parties have agreed that if Metro System costs related to the Pure Water Program exceed the $1.8 billion, City's Water Utility will pay a charge for each acre foot of secondary treated effluent produced by Metro System facilities and used for the production of Repurified Water.

5.2 **Capital Expense Rate.** Under the circumstances described below, City's Water

Utility shall pay a charge ("**Capital Expense Rate**") for each acre-foot of secondary treated effluent produced by Metro System facilities and used for the production of Repurified Water. City's Water Utility shall pay the Capital Expense Rate if the following costs alone, or in combination, exceed $1.8 billion (which amount shall be adjusted for inflation):

(a) the sum of all Capital Improvement Costs and associated debt attributable to the Metro System components of the Pure Water Program under this Exhibit F; and/or

(b) the sum of all Capital Improvement Costs and associated debt for the full or partial upgrading of the Point Loma Wastewater Treatment Plant to secondary treatment.

Notwithstanding the above, the Capital Expense Rate shall not apply if the Point Loma WTP is actually upgraded to secondary treatment (or beyond) due to: (a) a change in federal or state statutory law making it necessary to upgrade the Point Loma WTP to comply with such new discharge standard; or (b) a final decision by a state or federal court or a federal administrative agency of competent jurisdiction that an NPDES permit modified under section 301(h) & (j)(5) of the Clean Water Act is thereby revoked or denied renewal due to a finding that the discharge from the Point Loma WTP violates anti-degradation rules or regulations promulgated under section 403 of the Clean Water Act.

5.3 **Calculation of Capital Expense Rate.** The amount per acre-foot of the Capital Expense Rate shall be determined as follows:

The sum of all Capital Improvement Costs and associated debt attributable to (i) the Metro System components of the Pure Water Program under this Exhibit F and (ii) upgrading of the Point Loma WTP to secondary treatment (if any)
less
$1.8 billion, as adjusted for inflation each July 1 (starting on July 1, 2019) to reflect the annual percentage change in the Engineering News Record – Los Angeles construction cost index
multiplied by
1.42 (which estimates the total interest on a 30-year State Revolving Fund loan with an interest rate of 2.5%)
and divided by
The total number of acre feet per year of secondary treated effluent that is expected to be produced by Metro System facilities for the production of Repurified Water over a period of thirty (30) years.

The City shall estimate whether the Capital Expense Rate shall apply to the upcoming fiscal year (and its amount) prior to January 15 of each year, and the estimated amount of the Capital Expense Rate shall be effective on July 1 of the upcoming fiscal year.

For purposes of this Article V of Exhibit F, Capital Improvement Costs and associated debt shall include such costs incurred by the Metro System prior to the effective date of the Agreement.

5.4 Year-End Adjustment

At the end of each fiscal year during which the Capital Expense Rate applies, the City shall determine the actual Capital Improvement Costs and associated debt attributable to the Metro System components of the Pure Water Program under this Exhibit F and any upgrading of the Point Loma WTP to secondary treatment, the then-applicable interest amount for outstanding loans for the Metro System components of the Pure Water Program and Point Loma WTP upgrades, and the actual amount of secondary treated effluent produced by Metro System facilities and used for the production of Repurified Water.

Based on the actual cost, interest, and effluent information, the City will recalculate the Capital Expense Rate for the prior fiscal year. The City will credit any future charges or bill for any additional amounts due the quarter after the prior year costs have been audited.

5.5 Duration; Expiration

The duration and expiration of the Capital Expense Rate is set forth in Section 13.4 of the Agreement.

ATTACHMENT 1 – PURE WATER PHASE I COST ESTIMATE

	Total	Percent
Wastewater:		
Morena Pump Station WW Force Main and Brine Conveyance	$ 324,712,285.00	
North City Renewable Energy	$ 33,794,784.00	
North City MBC Improvements	$ 7,310,835.00	
North City WRP Expansion and PWF Influent Conveyance	$ 176,882,842.00	
SDG&E	$ 3,288,932.00	
Total Wastewater	$ 545,989,678.00	39%
Water:		
Morena Pump Station WW Force Main and Brine Conveyance	$ 46,504,958.00	
North City Renewable Energy	$ 94,020,128.00	
Miramar WTP Pump and Plant Improvements	$ 4,555,811.00	
North City Pure Water Facility	$ 521,652,285.00	
North City WRP Expansion and PWF Influent Conveyance	$ 45,236,959.00	
North City Pure Water Pipeline	$ 109,411,952.00	
North City Pure Water Pump Station	$ 20,469,509.00	
Total Water	$ 841,851,602.00	61%
Total Project	$ 1,387,841,280.00	
Shared Projects Cost Allocations:		
Morena Pump Station WW Force Main and Brine Conveyance		
Wastewater	$ 324,712,285.00	87%
Water	$ 46,504,958.00	13%
	$ 371,217,243.00	
North City Renewable Energy		
Wastewater	$ 33,794,784.00	26%
Water	$ 94,020,128.00	74%
	$ 127,814,912.00	
North City WRP Expansion and PWF Influent Conveyance		
Wastewater	$ 176,882,842.00	80%
Water	$ 45,236,959.00	20%
	$ 222,119,801.00	
Planning and Environmental Cost Allocation Based on Capital Cost Split:		
Wastewater		39%
Water		61%

Note: The above estimates are based on 60% design of Phase I of the Pure Water Program.

EXHIBIT G

PURE WATER CAPITAL BILLING TABLE

1	2	3	4	5	6	7	8	9	10	11	12
Agency	Estimated Average Daily Flow (MGD)	Net Offload For Padre Dam Project (MGD)	Projected Metro Flow 2050 (MGD)		COD Applied to 2050 Flows	COD Applied to 2050 Flows	Percent COD Contributed	SS Applied to 2050 Flows	SS Applied to 2050 Flows	Percent SS Contributed	Pure Water Capital Melded Percentage[3]
			Flow	%	(mg/l)	(lb/day)		(mg/l)	(lb/day)		
Chula Vista	18.33	0	18.33	11.601%	701.947	107377.684	11.889%	250.011	38244.530	11.701%	11.699%
Coronado	1.9	0	1.9	1.202%	587.457	9314.884	1.031%	241.493	3829.176	1.172%	1.152%
Del Mar	0.031	0	0.031	0.020%	542.195	140.270	0.016%	305.112	78.935	0.024%	0.020%
East Otay Mesa (County)[1]	1.788	0	1.788	1.132%	621.049	9267.041	1.026%	240.016	3581.421	1.096%	1.096%
El Cajon	7.8	7.0	0.805	0.510%	650.914	4373.460	0.484%	236.265	1587.450	0.486%	0.497%
Imperial Beach	2.473	0	2.473	1.565%	540.757	11160.249	1.236%	205.193	4234.820	1.296%	1.411%
La Mesa	5.03	0	5.03	3.183%	523.099	21958.348	2.431%	197.537	8292.107	2.537%	2.823%
Lakeside/Alpine (County)[1]	4.619	4.4	0.260	0.165%	638.686	1387.995	0.154%	197.667	429.570	0.131%	0.153%
Lemon Grove	2.4	0	2.4	1.519%	593.836	11893.920	1.317%	203.567	4077.236	1.247%	1.395%
National City	4.65	0	4.65	2.943%	685.192	26589.642	2.944%	219.881	8532.740	2.611%	2.852%
Otay Water District	0.38	0	0.38	0.240%	1442.632	4574.952	0.507%	818.053	2594.253	0.794%	0.457%
Padre Dam	2.486	1.8	0.696	0.441%	696.892	4049.236	0.448%	251.288	1460.088	0.447%	0.444%
Poway	3.101	0	3.101	1.963%	563.551	14584.185	1.615%	243.460	6300.522	1.928%	1.869%
Spring Valley (County)[2]	6.231	0	6.231	3.944%	597.292	31059.332	3.439%	235.079	12224.151	3.740%	3.765%
Wintergardens (County)[1]	0.979	0.9	0.074	0.047%	633.136	392.817	0.043%	208.768	129.526	0.040%	0.044%
San Diego	109.855	0	109.855	69.526%	703.556	645009.168	71.419%	252.229	231239.253	70.751%	70.323%
Total	172.053	14.048	158.005	100%	10722.190	903133.183	100%	4305.618	326835.778	100%	100%

[1] Subareas of the San Diego County Sanitation District

[2] Includes Otay Ranch (0.87 mgd) and Spring Valley (5.361 mgd). Flow from Otay Ranch that would flow to Metro through Chula Vista pipelines.

[3] These fractions used to calculate the melded percentage: (Based on 5 year average and not subject to change except by agreement of the parties.)

FLOW	SS	COD
0.482	0.275	0.243

TF 6a
12/4/18

(O-2019-60)
COR. COPY

ORDINANCE NUMBER O- 21027 (NEW SERIES)

DATE OF FINAL PASSAGE DEC 05 2018

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE AMENDED AND RESTATED REGIONAL WASTEWATER DISPOSAL AGREEMENT WITH THE MEMBERS OF THE METROPOLITAN WASTEWATER JOINT POWERS AUTHORITY.

WHEREAS, the 1998 Disposal Agreement between the City of San Diego and the Members of the Metropolitan Wastewater Joint Powers Authority (Participating Agencies) which includes: The City of Chula Vista, the City of Coronado, the City of Del Mar, the City of El Cajon, the City of Imperial Beach, the City of La Mesa, the Lemon Grove Sanitation District, the City of National City, the City of Poway, the Otay Water District, the Padre Dam Municipal Water District, and the San Diego County Sanitation District provides contract rights to capacity in the Metropolitan Sewerage System, a system of wastewater conveyance, treatment, and disposal facilities (Metro System) and the establishment of a mechanism to fund the planning, design, construction, operation, and maintenance of the Metro System by the City and the Participating Agencies; and

WHEREAS, Pure Water is a multi-year program that uses proven technology to produce a safe, reliable and cost-effective water supply for the City. At full implementation in 2035, the Program will provide one-third (1/3) of San Diego's water supply locally and will reduce the City's ocean wastewater discharges by approximately one-half (1/2); and

WHEREAS, Pure Water provides water and wastewater benefits by creating a new local source of water and diversion of flows from the Point Loma Wastewater Treatment Plant; and

WHEREAS, the cost to implement Pure Water will be shared by both water and wastewater customers requiring an amendment to the 1998 Disposal Agreement to memorialize how the cost of Pure Water shall be allocated between water and wastewater customers; and

WHEREAS, under Charter section 99, no contract, agreement or obligation extending for a period of more than five years may be authorized except by Ordinance approved by a two-thirds majority vote of the City Council; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor, or his designee, is authorized to approve and execute, for and on behalf of the City, an Ordinance for the Amended and Restated Regional Wastewater Disposal Agreement between the City of San Diego and the Participating Agencies in the Metropolitan Sewerage System, in substantial conformance with the Agreement, on file in the office of the City Clerk as Document No. OO - 21027.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By _____
Christine M. Leone
Deputy City Attorney

CML:cw
10/22/18
11/13/18 COR. COPY
Or.Dept:Public Utilities Department
CC No.: N/A
Document No.: 1875757

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of DEC 04 2018.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 12/5/18
(date)

_____
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

_____
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on DEC 04 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☐	☒	☐	☐
David Alvarez	☒	☐	☐	☐
Georgette Gomez	☒	☐	☐	☐

Date of final passage DEC 05 2018.

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on NOV 15 2018, and on DEC 05 2018.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21027

Passed by the Council of The City of San Diego on December 4, 2018, by the following vote:

YEAS:	**BRY, ZAPF, WARD, COLE, KERSEY, CATE, ALVAREZ, GÓMEZ.**
NAYS:	**SHERMAN.**
NOT PRESENT:	**NONE.**
RECUSED:	**NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **Connie Patterson**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. **O-21027** (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on **November 15, 2018,** and on **December 5, 2018.**

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: Connie Patterson, Deputy