



METRO TAC AGENDA
(Technical Advisory Committee to Metro JPA)

TO: Metro TAC Representatives and Metro Commissioners

DATE: Wednesday, September 15, 2010

TIME: 11:00 a.m. to 1:30 p.m.

LOCATION: MWWD, 9192 Topaz Way, (MOCII Auditorium) – Lunch will be provided

****PLEASE DISTRIBUTE THIS NOTICE TO METRO COMMISSIONERS AND METRO TAC REPRESENTATIVES****

1. Review and Approve MetroTAC Action Minutes for the Meeting of [August 18, 2010](#) (**Attachment**)
2. Metro Commission/JPA Board Meeting Recap (Standing Item)
3. Financial Update (Karyn Keese)
4. City of San Diego 2011 Budget and CIP
5. Metro Wastewater Update
6. MetroTAC Work Plan (Standing Item) (**Attachment**)
7. **ACTION:** Consideration for Approval to Award a Contract to Hawthorne Power Systems (Chris McKinney) (**Attachment**)
8. **ACTION:** Consideration for Approval of Revisions to City of San Diego Sewage Transportation Agreement (Edgar Patino) (**Attachment**)
9. Recycle Water Study Update (Dean Gipson) (**Attachment**)
10. Review of Items to be Brought Forward to the Metro Commission/Metro JPA Meeting of [October 7, 2010](#)
11. Other Business of Metro TAC
12. Adjournment ([To the next Regular Meeting, October 20, 2010](#))

Metro TAC 2010 Meeting Schedule

January 20	May 19	September 15
February 17	June 16	October 20
March 17	July 21	November 17
April 21	August 18	December 15

AGENDA ITEM 1

Attachment



Metro TAC
(Technical Advisory Committee to Metro JPA)

ACTION MINUTES

DATE OF MEETING: August 18, 2010

TIME: 11 AM

LOCATION: MWWD, MOC II, Auditorium

MEETING ATTENDANCE:

Iracsema Quilantan, Chula Vista
Scott Huth, Chair, Coronado
Dennis Davies, El Cajon
Chris Helmer, Imperial Beach
Erin Bullers, La Mesa
Greg Humora, La Mesa
Joe Smith, National City
Rita Bell, Otay Water District
Jim Peasley, Otay Water District
Augie Caires, Padre Dam MWD
Allen Carlisle, Padre Dam MWD

Al Lau, Padre Dam MWD
Augie Scalzitti, Padre Dam MWD
Doug Wilson, Padre Dam MWD
Tom Howard, Poway
Jeanne Cole, City of San Diego
Amy Dorman, City of San Diego
Peggy Merino, City of San Diego
Edgar Patino, City of San Diego
Jamie Richards, City of San Diego
Dean Gipson, PBS&J
Karyn Keese, PBS&J

1. **Review and Approve Metro TAC Action Minutes for the Meeting of July 21, 2010**
 - The minutes were approved
2. **Metro Commission/JPA Board Meeting Recap**
 - No updates to report
3. **Revisions to the City of San Diego Sewage Transportation Agreement**
 - Tabled until September 22, 2010 meeting
4. **Financial Update**
 - Doug Wilson handed out and reviewed the treasurer's annual report for year ending 6/30/2010
 - City of San Diego will present the June financial report at the next meeting
 - City of San Diego will present the 2011 O&M and CIP budget at next meeting
 - PBS&J has announced its acquisition by WS Atkins plc pending PBS&J shareholder approval; anticipate the change to be approved by the end of September

RECOMMENDATION: MetroTAC approved the treasurer's report and recommends presentation to the JPA board

5. Metro Wastewater Update

- Staff Report cover page handed out and city staff requested feedback

ACTION: Provide Edgar Patino comments on the form

6. Consideration for recommended approval of Amendment 2 to Metro JPA Webmaster Agreement (extends time of performance from 9/11/2010 to 9/11/2011 – no change in fees)

- Brief discussion

RECOMMENDATION: Present to JPA board members for approval

7. Review Comments on TM#4

- City of Chula Vista, Otay Water District, and the City of San Diego met earlier in the week to discuss putting the Salt Creek Interceptor in place; a future meeting will be scheduled
- Comments are due today (8/18/2010) on TM #4

8. Coarse Screening Workshop Summary

- Al Lau (PDMWD) and Dean Gipson attended the 2 day coarse screening workshop on August 2 and 3, 2010
- The workshop reviewed a variety of alternatives to divert flows from PLWTP
- Al and Dean described the variety of options and the additional alternatives the groups developed for the City of San Diego to evaluate
- Alternatives that can use recycled water year round are preferred because it avoids the need of a failsafe option to send unused flows to PLWTP; Indirect Potable Reuse (IPR) is attractive for this reason
- Options of putting treated water in San Vicente and Otay Reservoirs were discussed
- A significant alternative that developed is to use PDMWD facilities for treatment since it is closer to San Vicente Reservoir and more accessible to wastewater flows that flow down Mission Valley; the consultant team will evaluate these options more closely
- The Fine Screening workshop is scheduled for October 18 and 19, 2010; this will review the options developed in the coarse screening workshop and start to estimate costs for capital improvements

9. IROC Performance Plan

- The IROC audit committee has been authorized to hire a consultant to evaluate the water and wastewater utilities. Resources are limited so we need to focus our efforts. Attached to the agenda is a report that contains a list of potential issues to be audited. The following summarizes the items that may be pertinent to wastewater and recycled water:
 - Cost and benefits of the reclaimed water program

- Prioritization, control, and funding of mandated capital projects
- Overhead rates and inter-departmental charges
- CIP program oversight
- Chemical purchases, uses and optimization
- Long-term planning and investment
- Staffing levels and trends, and qualifications
- Asset management
- IROC will act on this at its September 20, 2010 meeting
- Please provide your comments on the top 3 to 5 items to audit, including other items not on the list above, prior to the JPA meeting on September 2, 2010 to Scott Huth and/or Augie Caires

ACTION: Provide your top 3 to 5 items to audit to Scott Huth prior to September 2, 2010

10. Metro TAC Work Plan

- “No Drugs Down the Drain”: several cities and agencies are investigating ways to legally collect pharmaceuticals and get them out of the waste stream; County Sheriff and the City of Chula Vista have permanent drop off locations
- Power Tariff: John Helminski at the City of San Diego is working on a sustainability project for CoSD
- Create a new item for recycled water finance issues
- Update the list and keep a list of completed items

11. Review of items to be brought forward to the Metro Commission/Metro JPA meeting of September 2, 2010

- Treasurer's Annual Report for Year Ending June 30, 2010
- Webmaster Agreement
- IROC Audit Recommendations

12. Other Business of Metro TAC

- For next TAC meeting:
 - Transportation Agreement
 - 2011 O&M and CIP budget presentations by City of San Diego

13. Adjournment

**MetroTAC
Participating Agencies Selection Panel Rotation**

Agency	Representative	Selection Panel	Date Assigned
Padre Dam	Neal Brown	IRWMP – Props 50 & 84 Funds	2006
El Cajon	Dennis Davies	Old Rose Canyon Trunk Sewer Relocation	9/12/2007
La Mesa	Greg Humora	As-Needed Piping and Mechanical	11/2007
National City	Joe Smith	MBC Additional Storage Silos	02/2008
Otay Water District	Rod Posada	As-Needed Biological Services 2009-2011	02/2008
Poway	Tom Howard	Feasibility Study for Bond Offerings	02/2008
County of San Diego	Dan Brogadir	Strategic Business Plan Updates	02/2008
Coronado	Scott Huth	Strategic Business Plan Updates	09/2008
Coronado	Scott Huth	As-needed Financial, HR, Training	09/2008
PBS&J	Karyn Keese	As-needed Financial, Alternate HR, Training	09/2008
Otay Water District	Rod Posada	Interviews for Bulkhead Project at the PLWTP	01/2009
Del Mar	David Scherer	Biosolids Project	2009
Padre Dam	Neal Brown	Regional Advisory Committee	On-going
County of San Diego	Dan Brogadir	Large Dia. Pipeline Inspection/Assessment	10/2009
Chula Vista	Roberto Yano	Sewer Flow Monitoring Renewal Contract	12/2009
La Mesa	Greg Humora	Sewer Flow Monitoring Renewal Contract	12/2009
Poway	Tom Howard	Fire Alarm Panels Contract	12/2009
El Cajon	Dennis Davies	MBC Water System Improvements D/B	01/2010
Lemon Grove	Patrick Lund	MWWD Inventory Management Training	07/2010
Chula Vista	Roberto Yano	PUD Strategic Plan Update	08/2010
Del Mar	David Scherer	PUD Strategic Plan Update	08/2010
National City	Joe Smith		
Coronado	Scott Huth		
Otay Water District	Rod Posada		
Padre Dam	Al Lau		
County of San Diego	Dan Brogadir		
Chula Vista	Roberto Yano		
La Mesa	Greg Humora		
Poway	Tom Howard		
El Cajon	Dennis Davies		
Lemon Grove	Patrick Lund		
Chula Vista	Roberto Yano		
Del Mar	David Scherer		

Agenda Item # 4
mtg 8/18/2010

Metro Wastewater JPA

Treasurer's Report
Twelve Months Ending June 30, 2010
Unaudited

Beginning Cash Balance at July 1, 2009 **\$ 79,890**

Operating Results

Membership dues & Interest income	\$ 210,733
Expenses	\$ (197,159)
Net Income (Loss)	<u>\$ 13,574</u>
Net change in receivables & payables (see cash flow statement)	<u>\$ (625)</u>

Cash provided (used) from operating activities **\$ 12,949**

Ending Cash Balance at June 30, 2010 **\$ 92,839**

Submitted by:

Doug Wilson, Treasurer

17-Aug-10

Metro Wastewater JPA - C/O Padre Dam MWD
Balance Sheet
As of June 30, 2010

	Jun 30, 10	Jun 30, 09	\$ Change
ASSETS			
Current Assets			
Checking/Savings			
California Bank & Trust	89,428	75,858	13,570
California Bank - checking	3,411	4,032	-620
Total Checking/Savings	92,839	79,890	12,949
Accounts Receivable			
Accounts Receivable	2,111	3,232	-1,122
Total Accounts Receivable	2,111	3,232	-1,122
Total Current Assets	94,950	83,122	11,827
TOTAL ASSETS	94,950	83,122	11,827
LIABILITIES & EQUITY			
Liabilities			
Current Liabilities			
Accounts Payable			
Accounts Payable	20,234	21,981	-1,747
Total Accounts Payable	20,234	21,981	-1,747
Total Current Liabilities	20,234	21,981	-1,747
Total Liabilities	20,234	21,981	-1,747
Equity			
Retained Equity	61,141	12,194	48,948
Net Income	13,575	48,948	-35,373
Total Equity	74,716	61,141	13,575
TOTAL LIABILITIES & EQUITY	94,950	83,122	11,827

Metro Wastewater JPA - C/O Padre Dam MWD

Profit & Loss Budget vs. Actual

July 2009 through June 2010

	<u>Jul '09 - Jun 10</u>	<u>Budget</u>	<u>\$ Over Budget</u>
Ordinary Income/Expense			
Income			
Membership Dues	210,000	210,000	0
Interest_ Income	733	1,500	(767)
Total Income	210,733	211,500	(767)
Expense			
PBS&J	120,891	106,000	14,891
Legal	31,255	35,000	(3,745)
Per Diem - Agency	19,950	24,750	(4,800)
Administrative Support - Padre	14,000	14,000	(0)
Metro/JPA/TAC meeting expens...	4,716	5,500	(784)
Administrative Assistant	2,750	2,400	350
Automobile Expense	1,495	3,000	(1,505)
Public Information	759	2,000	(1,241)
Office Supplies	646	500	146
Dues & Subscriptions	538	0	538
Telephone	480	0	480
Bank charges	202	0	202
Business meals	14	0	14
Miscellaneous	0	750	(750)
Dues and Subscriptions	0	600	(600)
Annual Retreat - strategic plan	0	3,000	(3,000)
Financial Consulting	0	3,000	(3,000)
Contingencies	(538)	10,000	(10,538)
Total Expense	197,159	210,500	(13,341)
Net Ordinary Income	13,575	1,000	12,575
Net Income	<u>13,575</u>	<u>1,000</u>	<u>12,575</u>

Statement of Cash Flows

July 2009 through June 2010

	<u>Jul '09 - Jun 10</u>
OPERATING ACTIVITIES	
Net Income	13,575
Adjustments to reconcile Net Income to net cash provided by operations:	
Accounts Receivable	1,122
Accounts Payable	-1,747
Net cash provided by Operating Activities	<u>12,949</u>
Net cash increase for period	12,949
Cash at beginning of period	<u>79,890</u>
Cash at end of period	<u>92,839</u>

Metro Wastewater JPA - C/O Padre Dam MWD

Accounts Receivable

	Jun 30, 10
City of San Diego - Metro Wastewater Dept	2,111
TOTAL	<u>2,111</u>

Metro Wastewater JPA - C/O Padre Dam MWD
Vendor Balance Summary
All Transactions

	Jun 30, 10
Abel R. Rodriguez	110
Augie Caires	546
Best Best & Krieger	1,186
Lori Anne Peoples	2,842
PBS&J	15,313
Philadelphia Sandwich Company	237
TOTAL	20,234

Agenda 8/18/2010
Item #5

**METRO JPA/TAC
Staff Report**

Subject Title:

Requested Action:

Recommendations:

Metro TAC:

IROC:

Prior Actions:
(Committee/Commission,
Date, Result)

Fiscal Impact:

Is this projected budgeted? Yes ____ No ____

Cost breakdown between
Metro & Muni:

Financial impact of this
issue on the Metro JPA:

Capital Improvement Program:

New Project? Yes ____ No ____

Existing Project? Yes ____ No ____ upgrade/addition ____ change ____

Comments/Analysis:

Previous TAC/JPA Action:

Additional/Future Action:

City Council Action:

MetroTAC
2010/2011 Work Plan

MetroTAC Items	Description	Subcommittee Member(s)
Lateral Issues	Sewer laterals are owned by the property owners they serve, yet laterals often allow infiltration and roots to the main lines causing maintenance issues. As this is a common problem among PAs, the MetroTAC will gather statistics from national studies and develop solutions.	Tom Howard Joe Smith
Secondary Waiver COMPLETED	The City of San Diego received approval from the Coastal Commission and now the Waiver is being processed by the EPA. The new 5 year waiver to operate the Point Loma Wastewater Treatment Plant at advanced primary went into effect August 1, 2010.	Scott Huth
Advanced Water Purification Demonstration Project	San Diego engaged CDM to design/build/operate the project for the water repurification pilot program. The MetroTAC will monitor and participate in the process as it moves forward.	
Fiscal Items	The Finance committee will continue to monitor and report on the financial issues affecting the Metro System and the charges to the PAs. The debt finance and reserve coverage issues have been resolved. Refunds totaling \$12.3 million were sent to most of the PA's.	Greg Humora Scott Huth Doug Wilson Karyn Keese
Recycled Water Fiscal Issues	<i>8/2010: The recycled water credits issue will be taken up starting in September 2010.</i>	Scott Huth Doug Wilson Karyn Keese
Water Reduction - Impacts on Sewer Rates	The MetroTAC wants to evaluate the possible impact to sewer rates and options as water use goes down, and consequently the sewer flows go down, reducing sewer revenues. Sewer strengths are also increasing because of less water to dilute the waste. We are currently monitoring the effects of this.	David Scherer Manny Magaña Karyn Keese
"No Drugs Down the Drain"	The state has initiated a program to reduce pharmaceuticals entering the wastewater flows. There have been a number of collection events within the region. The MetroTAC, working in association with the Southern California Alliance of Publicly-owned Treatment Works (SCAP), will continue to monitor proposed legislation and develop educational tools to be used to further reduce the amount of drugs disposed of into the sanitary sewer system. <i>8/2010: County Sheriff and Chula Vista have set up locations for people to drop off unwanted medications and drugs.</i>	Greg Humora
Flushable Items that do not Degrade	Several PAs have problems with flushable products, such as personal wipes, that do not degrade and cause blockages. MetroTAC is investigating solutions by other agencies, and a public affairs campaign to raise awareness of the problems caused by flushable products. We are also working with SCAP in their efforts to help formulate state legislation to require manufacturers of products to meet certain criteria prior to labeling them as "flushable." Follow AB2256 and offer support.	David Scherer Dean Gipson
Grease Recycling	To reduce fats, oils, and grease (FOG) in the sewer systems, more and more restaurants are being required to collect and dispose of cooking grease. Companies exist that will collect the grease and turn it into energy. MetroTAC is exploring if a regional facility offers cost savings for the PAs. The PAs are also sharing information amongst each other for use in our individual programs.	David Scherer Dean Gipson

MetroTAC Items	Description	Subcommittee Member(s)
"Power Tariff"	Power companies are moving to a peak demand pricing scheme which negatively impacts PAs with pump stations and other high energy uses. MetroTAC wants to evaluate the new legislation and regulations, and to identify and implement cost savings efforts for the PAs. (8/2010): John Helminski at the City of San Diego is working on a sustainability project for CoSD	Tom Howard Paula de Sousa
Recycled Water Study	As part of the secondary waiver process, San Diego agreed to perform a recycled water study within the Metro service area. That study is currently underway, and MetroTAC has representatives participating in the working groups. <i>8/2010: Al Lau and Dean Gipson attended the Coarse Screening Workshop in August 2010. The next Status Update Meeting is 9/7/10.</i>	Scott Huth Al Lau Dean Gipson
Recycled Water Rate Study	San Diego is working on a rate study for pricing recycled water from the South Bay plant and the North City plant. MetroTAC, in addition to individual PAs, have been engaged in this process and have provided comments on drafts San Diego has produced. We are currently waiting for San Diego to promulgate a new draft which addresses the changes we have requested. <i>8/2010: draft study is expected in September 2010.</i>	Karyn Keese
Metro JPA Strategic Initiatives	MetroTAC to develop success measures for the JPA strategic initiatives and suggest a schedule to complete certain items	Scott Huth Dan Brogadir Dean Gipson
Board Members' Items		
Rate Case Items	San Diego is starting the process for their next five-year rate case. As part of that process, MetroTAC and the Finance Committee will be monitoring the City's proposals as we move forward.	
Schedule E	MetroTAC and the Finance Committee are active and will monitor this process. Individual items related to Schedule E will come directly to the Board as they develop.	
Future bonding	MetroTAC and the Finance Committee are active and will monitor this process. Individual items related to bonding efforts will come directly to the Board as they develop.	
Changes in water legislation	MetroTAC and the Board should monitor and report on proposed and new legislation or changes in existing legislation that impact wastewater conveyance, treatment, and disposal, including recycled water issues	
Role of Metro JPA regarding Recycled Water	As plans for water reuse unfold and projects are identified, Metro JPA's role must be defined with respect to water reuse and impacts to the various regional sewer treatment and conveyance facilities	
Border Region	Impacts of sewer treatment and disposal along the international border should be monitored and reported to the Board. These issues would directly affect the South Bay plants on both sides of the border.	
IROC Performance Audits	Work with IROC to identify areas to be audited; participate in audit process. <i>8/2010: provide the top 5 areas to audit by September IROC meeting</i>	Augie Caries

AGENDA ITEM 6

Attachment

**MetroTAC
2010/2011 Work Plan**

MetroTAC Items	Description	Subcommittee Member(s)
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Advanced Water Purification Demonstration Project	San Diego engaged CDM to design/build/operate the project for the water repurification pilot program. The MetroTAC will monitor and participate in the process as it moves forward.	
Fiscal Items	The Finance committee will continue to monitor and report on the financial issues affecting the Metro System and the charges to the PAs. The debt finance and reserve coverage issues have been resolved. Refunds totaling \$12.3 million were sent to most of the PA's.	Greg Humora Scott Huth Doug Wilson Karyn Keese
Recycled Water Fiscal Issues	<i>8/2010: The recycled water credits issue will be taken up starting in September 2010.</i>	Scott Huth Doug Wilson Karyn Keese
Water Reduction - Impacts on Sewer Rates	The MetroTAC wants to evaluate the possible impact to sewer rates and options as water use goes down, and consequently the sewer flows go down, reducing sewer revenues. Sewer strengths are also increasing because of less water to dilute the waste. We are currently monitoring the effects of this.	David Scherer Manny Magaña Karyn Keese
"No Drugs Down the Drain"	The state has initiated a program to reduce pharmaceuticals entering the wastewater flows. There have been a number of collection events within the region. The MetroTAC, working in association with the Southern California Alliance of Publicly-owned Treatment Works (SCAP), will continue to monitor proposed legislation and develop educational tools to be used to further reduce the amount of drugs disposed of into the sanitary sewer system. <i>8/2010: County Sheriff and Chula Vista have set up locations for people to drop off unwanted medications and drugs.</i>	Greg Humora
Flushable Items that do not Degrade	Several PAs have problems with flushable products, such as personal wipes, that do not degrade and cause blockages. MetroTAC is investigating solutions by other agencies, and a public affairs campaign to raise awareness of the problems caused by flushable products. We are also working with SCAP in their efforts to help formulate state legislation to require manufacturers of products to meet certain criteria prior to labeling them as "flushable." Follow AB2256 and offer support.	David Scherer Dean Gipson
Grease Recycling	To reduce fats, oils, and grease (FOG) in the sewer systems, more and more restaurants are being required to collect and dispose of cooking grease. Companies exist that will collect the grease and turn it into energy. MetroTAC is exploring if a regional facility offers cost savings for the PAs. The PAs are also sharing information amongst each other for use in our individual programs.	David Scherer Dean Gipson
"Power Tariff"	Power companies are moving to a peak demand pricing scheme which negatively impacts PAs with pump stations and other high energy uses. MetroTAC wants to evaluate the new legislation and regulations, and to identify and implement cost savings efforts for the PAs. (8/2010): John Helminski at the City of San Diego is working on a sustainability project for CoSD	Tom Howard Paula de Sousa

MetroTAC Items	Description	Subcommittee Member(s)
Recycled Water Study	As part of the secondary waiver process, San Diego agreed to perform a recycled water study within the Metro service area. That study is currently underway, and MetroTAC has representatives participating in the working groups. <i>8/2010: Al Lau and Dean Gipson attended the Coarse Screening Workshop in August 2010. The next Status Update Meeting is 9/7/10.</i>	Scott Huth Al Lau Dean Gipson
Recycled Water Rate Study	San Diego is working on a rate study for pricing recycled water from the South Bay plant and the North City plant. MetroTAC, in addition to individual PAs, have been engaged in this process and have provided comments on drafts San Diego has produced. We are currently waiting for San Diego to promulgate a new draft which addresses the changes we have requested. <i>8/2010: draft study is expected in September 2010.</i>	Karyn Keese
Metro JPA Strategic Initiatives	MetroTAC to develop success measures for the JPA strategic initiatives and suggest a schedule to complete certain items	Scott Huth Dan Brogadir Dean Gipson
Board Members' Items		
Rate Case Items	San Diego is starting the process for their next five-year rate case. As part of that process, MetroTAC and the Finance Committee will be monitoring the City's proposals as we move forward.	
Schedule E	MetroTAC and the Finance Committee are active and will monitor this process. Individual items related to Schedule E will come directly to the Board as they develop.	
Future bonding	MetroTAC and the Finance Committee are active and will monitor this process. Individual items related to bonding efforts will come directly to the Board as they develop.	
Changes in water legislation	MetroTAC and the Board should monitor and report on proposed and new legislation or changes in existing legislation that impact wastewater conveyance, treatment, and disposal, including recycled water issues	
Role of Metro JPA regarding Recycled Water	As plans for water reuse unfold and projects are identified, Metro JPA's role must be defined with respect to water reuse and impacts to the various regional sewer treatment and conveyance facilities	
Border Region	Impacts of sewer treatment and disposal along the international border should be monitored and reported to the Board. These issues would directly affect the South Bay plants on both sides of the border.	
IROC Performance Audits	Work with IROC to identify areas to be audited; participate in audit process. <i>8/2010: provide the top 5 areas to audit by September IROC meeting</i>	Augie Caries

Completed Items	Description	Subcommittee Member(s)
Debt Reserve and Operating Reserve Discussion	<p>In March 2010, the JPA approved recommendations developed by Metro JPA Finance Committee, MetroTAC, and the City of San Diego regarding how the PA's will fund the operating reserve and debt financing. MetroTAC has prepared a policy document to memorialize this agreement.</p> <p>Project complete: 4/10</p>	Scott Huth Karyn Keese
State WDRs & WDR Communications Plan	<p>The Waste Discharge Requirements (WDRs), a statewide requirement that became effective on May 2, 2006, requires all owners of a sewer collection system to prepare a Sewer System Management Plan (SSMP). Agencies' plans have been created. We will continue to work to meet state requirements, taking the opportunity to work together to create efficiencies in producing public outreach literature and implementing public programs.</p> <p>Project complete: 5/10</p>	Dennis Davies Patrick Lund
Ocean Maps from Scripps	<p>Schedule a presentation on the Sea Level Rise research by either Dr. Emily Young, San Diego Foundation, or Karen Goodrich, Tijuana River National Estuarine Research Reserve</p> <p>Project complete: 5/10</p>	Board Member Item
Secondary Waiver	<p>The City of San Diego received approval from the Coastal Commission and now the Waiver is being processed by the EPA. The new 5 year waiver to operate the Point Loma Wastewater Treatment Plant at advanced primary went into effect August 1, 2010.</p> <p>Project complete 7/10</p>	Scott Huth

AGENDA ITEM 7

Attachment

METRO JPA/TAC Staff Report

Subject Title: Provide Technical Services and Parts for Caterpillar Engine Generators and Switch Gear

Requested Action: The Wastewater Treatment and Disposal (WWTD) Division requests approval to award a contract to Hawthorne Power Systems. The proposed contract provides for technical services and parts for Caterpillar engine generators and switch gear. These parts and services are critical for operation and maintenance of engines located in several facilities.

WWTD operates and maintains large engines, generators, and switch gear which supply power to the multiple facilities. Currently, there is one (1) emergency diesel engine/generator at the South Bay Water Reclamation Plant; two (2) digester gas engine/generator sets that meet all the electric demand of the Point Loma Wastewater Treatment Plant (PLWTP) and create revenue via excess energy sales to SDG&E; one (1) emergency diesel engine generator at the PLWTP; and two (2) natural gas engines used to drive two wastewater pumps for surge protection of the Pump Station 2 force mains.

Preventive maintenance, repairs, and necessary parts are required to insure consistent operation of this equipment. WWTD staff provide routine maintenance and repair services. However, overhauls, rebuilds, and some more complex repairs which require more staff are completed by a private vendor. Vendor activities to provide these services are coordinated by City staff to minimize down time.

Hawthorne Power Systems was the only bidder to respond to this bid request. The contract term is two years with three, one-year options to renew. Annual cost increases shall not exceed 5%.

Recommendations:

Metro TAC:	Submitted for consideration on September 15, 2010.
IROC:	N/A- This contract is included in the approved Metro operating budget and does not require IROC review.
Prior Actions: (Committee/Commission, Date, Result)	Submitted for consideration by the Natural Resources and Culture Committee on September 8, 2010; tentatively scheduled for consideration by the full Council on October 12, 2010.

Fiscal Impact: \$1,125,000 in FY 2011; \$1,200,000 in FY 2012

Is this projected budgeted?	Yes <u> X </u> No <u> </u>
Cost breakdown between Metro & Muni:	100% Metro
Financial impact of this issue on the Metro JPA:	\$2,325,000 over two years (FY 2011 and FY 2012)

Capital Improvement Program: N/A

New Project?	Yes <u> </u> No <u> </u>
Existing Project?	Yes <u> </u> No <u> </u> upgrade/addition <u> </u> change <u> </u>

Comments/Analysis:

Previous TAC/JPA Action: None.

Additional/Future Action: Pending Metro TAC Approval, anticipated Metro Commission approval on October 7, 2010

City Council Action: To be considered by the NR&C Committee on September 8, 2010; tentatively scheduled for consideration by the full Council on October 12, 2010.

AGENDA ITEM 8

Attachment

SEWAGE TRANSPORTATION AGREEMENT

BETWEEN

THE CITY OF “AGENCY NAME”

AND

THE CITY OF SAN DIEGO

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EXHIBIT A	CONTRACT CAPACITY	
EXHIBIT B	FACILITIES USED BY “AGENCY NAME”	
EXHIBIT C	UNIT TRANSPORTATION RATE	
EXHIBIT D	SEWER CROSS-CONNECTION STRUCTURES	

THIS SEWAGE TRANSPORTATION AGREEMENT is made and entered into by and between the City of San Diego, a municipal corporation (San Diego), and the City of “Agency Name” (“Agency Name”).

RECITALS

- A. San Diego owns, operates and maintains the Metropolitan Sewerage System for the purpose of treating and disposing of sewage for San Diego and certain other municipalities and districts including Participating Agencies within the San Diego region under the terms and conditions of the Regional Wastewater Disposal Agreement.
- B. San Diego also owns, operates and maintains the San Diego Municipal Sewerage System for the purpose of collecting and transporting sewage to the Metropolitan Sewerage System.
- C. Due to the location of “Agency Name”’s sewerage system it is necessary that “Agency Name” use a portion of the San Diego Municipal Sewerage System to transport its sewage to the Metropolitan Sewerage System.
- D. San Diego and “Agency Name” had previously entered into a [***Agreement – name to be inserted***] which expired on [***Date – to be inserted***] under which San Diego has authorized “Agency Name” to discharge sewage into the San Diego Municipal Sewerage System for transportation to the Metropolitan Sewerage System and under which the parties had operated.
- E. The purposes of this Agreement are to: 1) allow “Agency Name” to discharge sewage into the San Diego Municipal Sewerage System for transportation to the Metropolitan Sewerage System; 2) establish a rate to be charged for sewage transportation services rendered by San Diego to “Agency Name”; 3) establish “Agency Name”’s contract capacity in San Diego Municipal Sewerage System for the use of a portion of the San Diego Municipal Sewerage System; 4) reimburse San Diego for [***specific items to be inserted***]; and 5) establish a method to allocate the capital improvement project costs of future improvements, repair, rehabilitation, or replacement to the San Diego Municipal Sewerage System as are deemed necessary by San Diego and in consultation with authorized agencies affected by the work on a fair and equitable basis.

NOW, THEREFORE, in consideration of the mutual obligations of the parties as herein expressed, San Diego and “Agency Name” agree as follows:

AGREEMENT

ARTICLE 1 - DEFINITIONS

The singular of each defined term includes the plural. For the purposes of this Agreement, the following definitions apply:

Agency Sewerage System means “Agency Name”’s wastewater collection system, which consists of pipelines and pump stations, and collects wastewater within the agency and from other agencies.

Authorized Agency means a municipality, district, or agency which has been authorized by San Diego to discharge sewage into the San Diego Municipal Sewerage System (SDMS) under sewage transportation agreement(s) with San Diego.

Average Capacity means the average actual amount of discharge of sewage that “Agency Name” is allowed under this Agreement to discharge into the SDMS, averaged during a 24-hour period from midnight to midnight in the dry season and expressed as either an average rate of flow in cubic feet per second (cfs) or in million gallons per day (MGD) where 1 cfs = 0. 646317 MGD.

Average Daily Flow (sometimes referred to as *ADF*) means the flow from “Agency Name” into those portions of SDMS used by “Agency Name” expressed as an average rate of flow in million gallons per day (MGD) computed by dividing the total gallons discharged during the designated period (e.g., billing period, dry season, month, etc.,) by the number of days within that same period.

Best Management Practices means an engineered structure, management activity, or a combination thereof, that eliminates or reduces an adverse environmental effect of a pollutant.

Capital Improvement Project (sometimes referred to as *CIP*) means those items and activities required by sound engineering and best management practices, including but not limited to acquisition, planning, design, financing, and construction, for any one or more of the following purposes: 1) to alter, change or modify the hydraulic capacity of any part or whole of any existing SDMS facilities; 2) to improve the function and performance of any part or whole of any existing SDMS facilities; 3) to add new SDMS facilities for the purpose of altering, changing, or modifying the hydraulic capacity, or improving the function and performance of the SDMS; or 4) to perform a major repair on or replace any existing SDMS facilities.

Capital Improvement Project Cost means costs associated with capital improvement projects.

Contract Capacity means the amount of sewage “Agency Name” is allowed under this Agreement to discharge into those portions of SDMS used by “Agency Name”, up to the limits set forth in Exhibit A and expressed in terms of average capacity and peak capacity. Contract capacity as defined in this agreement shall refer to capacity only in the SDMS, and is separate and distinct from contract capacity in the Metro system as referenced in the Regional Wastewater Disposal Agreement.

Design Capacity means the maximum flow which can be conveyed through a pipe segment when the ratio of depth of the flow to the diameter of the pipe segment (d/D) equals 75% for pipe segment 18 inches or greater, or 50 % for pipe segment 15 inches or smaller. The design capacity of a sewer line is determined based on the “length-weighted” average of design capacity of all pipe segments in the sewer line. In the case of a pump station, design capacity means the maximum flow that can be pumped using the main pumps, excluding the back up pumping capacity.

Dry Season means the period from May 1 through September 30.

Fiscal Year means the period from July 1 through June 30.

Flow means the amount of wastewater, including inflow and infiltration, which is discharged into the SDMS by San Diego, “Agency Name”, or any other authorized agency. Flow may be expressed in million gallons per day (MGD) or cubic feet per second (cfs).

Infiltration means water other than wastewater that enters a sewerage system (including sewer service connections) from the ground through such means as defective pipes, pipe joints, connections or manholes. Infiltration does not include, and is distinguished from, inflow.

Inflow means water other than wastewater that enters a sewerage system (including sewer service connections) from sources such as roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

LAFCO means the San Diego Local Agency Formation Commission.

Metropolitan Sewerage System (sometimes referred to as the *Metro System*) means those facilities and contract rights to facilities which are described in the Regional Wastewater Disposal Agreement, Document No. OO-18517, filed May 18, 1998, as may be amended.

Operation and Maintenance (sometimes referred to as *O & M*) means those items and activities required by sound engineering and best management practices to maintain the hydraulic capacity, function, and performance of SDMS facilities.

Operation and Maintenance Costs means the costs of operation and maintenance including, but not limited to, annual costs associated with administration, operation, maintenance, replacement (non-CIP), annual premiums, claims payments and claims administration, and overhead.

Parties means San Diego and “Agency Name”.

Peak Contract Capacity means the highest amount of discharge of sewage that “Agency Name” is allowed under this Agreement to discharge into those portions of SDMS used by “Agency Name”, measured in fifteen (15) minute intervals and expressed as either a rate of flow in cubic feet per second (cfs) or in million gallons per day (MGD) where 1 cfs = 0.646317 MGD.

Peak Flow means the highest actual instantaneous flow as measured in fifteen (15) minute intervals at a metering device expressed as either a rate of flow in cubic feet per second (cfs) or in million gallons per day (MGD) (1 cfs = 0.646317 MGD). In the event of a dispute, cubic feet per second (cfs) will take precedence.

Regional Wastewater Disposal Agreement means the “Regional Wastewater Disposal Agreement between San Diego and the Participating Agencies in the Metropolitan Sewerage System,”

Document No. OO-18417, filed May 18, 1998, with the Clerk for the City of San Diego as may be amended.

San Diego Municipal Sewerage System (sometimes referred to as *SDMS*) means San Diego's wastewater collection system, which consists of pipelines and pump stations, that collects wastewater within San Diego and from "Agency Name" and other authorized agencies and conveys it to the Metropolitan Sewerage System for treatment and disposal.

SDMS Facility means each element of the SDMS used or useful for the transportation of sewage, including but not limited to transmission lines, force mains, trunk sewers, interceptors, and pump stations.

Sewage means wastewater and its commonly constituent substances.

Sewage Transportation Service means the transportation of sewage from the point of discharge into the SDMS to the Metropolitan Sewerage System.

Transportation Charge means the amount paid by "Agency Name" to San Diego for the transportation of flow in the SDMS to the Metropolitan Sewerage System. This charge includes operation and maintenance costs but does not include capital improvement project costs.

Unit Transportation Rate means the amount per unit distance (mile) of length of gravity sewer charged for sewage transportation service.

ARTICLE 2 - OWNERSHIP AND OPERATION OF THE SAN DIEGO MUNICIPAL SEWERAGE SYSTEM

2.1 Rights of the Parties. San Diego is the owner of the SDMS and of any additions to the SDMS or other facilities constructed pursuant to this Agreement. All decisions with respect to the planning, design, construction, operation and maintenance of the SDMS shall rest with San Diego. If "Agency Name"'s contractual right to use the SDMS is adversely impacted by the planning, design, construction, operation and maintenance of any part of SDMS, "Agency Name" shall have the right to review and comment on these issues prior to any modifications to the subject portions of the SDMS. However, "Agency Name" shall only have a contractual right to use the SDMS as set forth in this Agreement.

2.1.1 Change in Ownership. Subject to the terms of this Agreement, and in conformance with all applicable laws, San Diego may transfer ownership of all or part of the SDMS at any time. San Diego shall not transfer or agree to transfer any part of the SDMS transporting sewage from "Agency Name" without reserving "Agency Name"'s rights granted by this Agreement. In the event of a transfer, San Diego's successor in interest shall be bound by the terms of this Agreement.

2.1.2 Assignment of Rights. Subject to the terms of this Agreement, "Agency Name" may transfer or assign its rights and obligations under this Agreement. Any such transfer must first, however, be approved by San Diego by written agreement. "Agency Name" may not transfer its rights if San Diego determines, after consultation with "Agency

Name”, that the proposed transfer will imbalance, or will otherwise adversely impact San Diego’s ability to operate the SDMS or the Metro System.

2.2 Duties of San Diego. Subject to the terms of this Agreement, San Diego agrees to provide sewage transportation services to “Agency Name” for the contract capacity set forth in Exhibit A.

2.2.1 Operation. San Diego shall operate the SDMS in an efficient and economical manner, and maintain it in good repair and working order, all in accordance with recognized sound engineering and best management practices. San Diego shall comply with all applicable laws, rules and regulations.

2.2.2 Funds. San Diego shall collect and receive all money paid under this Agreement in connection with the SDMS and disburse all money spent in connection with the SDMS.

2.3 Funding Obligations. Nothing in this Section or in this Agreement shall obligate San Diego to make any payment for the acquisition, construction, maintenance or operation of the SDMS from monies derived from taxes or from any income and revenue of San Diego other than monies in, or sewer revenues which go into, the Sewer Revenue fund for the SDMS, and from construction funds derived from the sale of sewer revenue bonds or other sources of sewer funding for the SDMS as are duly authorized. Nothing in this Agreement shall be construed to obligate San Diego to pay from its annual income and revenues any sum that would create an indebtedness, obligation or liability within the meaning of the provision of Section 18 of Article XVI of the Constitution of the State of California or Section 99 of the San Diego City Charter. Nothing in this Section, however, or in this Agreement shall prevent San Diego, in its discretion, from using tax revenues or any other available revenues or funds of San Diego for any purpose for which San Diego is empowered to expend monies under this Agreement. Nothing in this Agreement shall be construed as a limitation upon the powers of the City of San Diego as a Charter City of the State of California.

2.4 Financial Statements. San Diego shall keep appropriate records and accounts of all costs and expenses relating to the collection and conveyance of sewage and the acquisition, planning, design, construction, administration, monitoring, and operation and maintenance of the SDMS.

2.4.1 Right to Audit. Upon written request, said books and records shall be subject to reasonable inspection by any duly authorized representative of “Agency Name” at its expense. “Agency Name” may audit these records for a three fiscal year period previous to its request, at its own expense.

2.4.2 CAFR. San Diego shall make its Comprehensive Annual Financial Report as it relates to the SDMS available to “Agency Name”.

2.5 Limitations on Type and Condition of Sewage. “Agency Name” shall not discharge or allow to be discharged, any sewage or wastes into the SDMS which do not meet the standards established by appropriate San Diego ordinances, resolutions, rules and regulations. “Agency Name” shall also comply with all applicable statutes, rules and regulations of all agencies of the United States of America, including the Environmental Protection Agency, and all agencies of

the State of California having jurisdiction over the collection, transmission, treatment and disposal of sewage and other wastes in the SDMS.

2.5.1 Excessive Inflow or Infiltration. “Agency Name” shall not allow, to the extent practicable, excessive inflow and infiltration to be discharged into the SDMS. For purposes of this Section, “excessive” means any amount that causes “Agency Name” to exceed the limit of peak capacity set forth in Exhibit A.

2.5.2 Compliance with Laws. “Agency Name” shall not allow, to the extent practicable, the discharge of any waste, pollutant, inflow, or infiltration into the SDMS that is prohibited by ordinances, resolutions, rules, or regulations of the United States of America, including the Environmental Protection Agency, the State of California, and San Diego having jurisdiction over the collection, transportation, treatment and disposal of sewage and other wastes in the SDMS. This Section does not prohibit “Agency Name” from operating the cross-connections identified in Exhibit D, provided “Agency Name” applies for and receives a permit(s) for industrial wastewater discharge from San Diego and complies with the terms and conditions of said permit(s), including the payment of any fees or costs associated with the permit. Continued operation of the cross-connections is also contingent on approval by State and Federal regulatory agencies, whose permission San Diego will request collectively for all agencies with flow that enters the Metro System. As a ministerial matter, Exhibit D may be amended from time to time by “Agency Name” and San Diego, provided any additional cross-connections meet the requirements of this section and the total flow from “Agency Name” remains at or below the contract capacity.

2.5.3 Imported Sewage. “Agency Name” shall not discharge any sewage originating outside the boundaries of “Agency Name” into the SDMS without the prior written consent of San Diego except for sewage from recreational vehicles, motor homes, trailers, or from businesses that pump sewage from private septic systems, that otherwise complies with the requirements of this Agreement.

2.5.4 Enforcement Actions. If a regulatory agency with appropriate jurisdiction imposes any penalty or takes other enforcement action related to the transportation of sewage or other matter in or from the SDMS, San Diego shall determine, in active consultation with impacted parties, whether San Diego, “Agency Name”, or any other authorized agency caused or contributed to such penalty or enforcement action. Based on this determination, San Diego shall allocate the penalty or other relief, including the cost of defense, to the party or parties responsible. Each responsible party, whether San Diego, “Agency Name”, or another authorized agency, shall pay its share of the penalty or other relief, and any costs of defense as reasonably determined by San Diego in active consultation with impacted parties. If San Diego cannot make an allocation based on responsibility, the cost of the penalty or other relief shall be shared by San Diego, “Agency Name”, and any other authorized agency involved based proportionately on their respective average daily flow into the SDMS.

2.5.5 Rock Traps. After consultation with San Diego, “Agency Name” shall be required to install rock trap screens at sites connecting to the SDMS. San Diego shall request the installation of rock traps in writing and shall allow a minimum of 120 days for installation after the initial request is made.

2.5.6 Odor Control. If San Diego determines that flow from “Agency Name” is causing unreasonably high concentrations of hydrogen sulfide gas in the SDMS, or is a source of unreasonably noxious odors, “Agency Name” shall take reasonable steps within the agency sewerage system necessary to eliminate such concerns, such as pre-treating the flow with chemicals to reduce the formation of hydrogen sulfide.

ARTICLE 3 - CONTRACT CAPACITY RIGHTS

3.1 Amount of Contract Capacity. In consideration of the terms and conditions of this Agreement, “Agency Name” shall have a contractual right to discharge sewage into the SDMS up to the contract capacity described in Exhibit A, provided, however, this shall not confer on “Agency Name” the right to discharge any substances otherwise prohibited by this Agreement into the SDMS. Flow from any cross-connections identified in Exhibit D is counted against the contract capacity granted by this Agreement.

3.2 Projected Flow and Capacity Report. On or before September 30th of each year during the term of this Agreement and upon the request of San Diego, “Agency Name” shall provide San Diego with a ten-year projection (by fiscal year) of its average daily flow for dry season, peak flow and capacity requirements in those portions of the SDMS used by “Agency Name”. The peak flow projection should be based on the ten-year return wet weather flow estimation. If at any time during the ten-year projection “Agency Name” is projected to exceed its average and/or peak capacity allotted under its contract capacity, “Agency Name” shall develop and submit a plan of action and an implementation schedule to San Diego for its approval and acceptance. At a minimum, the plan shall describe “Agency Name”’s future needs for contract capacity for the next ten (10) years and if necessary, propose mitigation measures which may be required of “Agency Name” to facilitate its future needs for capacity including but not limited to increases in capacity through capital improvement projects or taking other measures such as the construction of peak flow retention structures or re-use facilities to reduce “Agency Name”’s flow into the SDMS.

3.2.1 San Diego Review. In the event that San Diego disagrees with the ten-year projection, the plan of action, or the implementation schedule provided by “Agency Name”, the parties shall meet in good faith and attempt to reconcile their differences for a period not to exceed six months from the date “Agency Name” submits its peak flow projection. If the parties fail to reach an agreement after six months, San Diego may independently develop a notice of determination and proceed with the procedure set forth in Section 8.2.2.

3.3 Other Planning Information. On or before September 30th of each year during the term of this Agreement and upon the request of San Diego, “Agency Name” shall also provide San

Diego with a 50-year projection (by fiscal year) of its average daily flows for dry season in those portions of SDMS used by “Agency Name”.

3.4 Requests for Additional Contract Capacity. If “Agency Name” desires to purchase additional contract capacity and San Diego is willing to sell additional capacity pursuant to Section 4.2.2, or to create additional contract capacity pursuant to Section 8.2.2 of this Agreement, “Agency Name” agrees to pay transportation charges for the additional flow, as well as “Agency Name”’s proportionate share of capital improvement project costs for existing or new SDMS facilities as may be necessary to provide the additional contract capacity. The decision of whether to sell or create additional contract capacity for “Agency Name”, however, shall be at the sole discretion of San Diego. “Agency Name” agrees to submit a written request to obtain and purchase the additional capacity needed in accordance with the procedures set forth in Article 8 of this Agreement.

3.5 Transfers of Contract Capacity. “Agency Name” may buy, sell or exchange all or part of its contract capacity to or from San Diego or other authorized agencies on such terms as they may agree upon provided that San Diego shall be notified prior to any transfer. Any transfer shall be first approved in writing by San Diego. No contract capacity may be transferred if San Diego determines, after consultation with “Agency Name”, that said transfer will unbalance, or will otherwise adversely impact San Diego's ability to operate any SDMS facility or the Metro System. As a ministerial matter, San Diego shall amend Exhibit A from time to time to reflect approved transfers of contract capacity, and provide “Agency Name” with an updated exhibit.

ARTICLE 4 - EXCEEDING CAPACITY

4.1 Limitations on Capacity. During the term of this Agreement, “Agency Name” shall have the right to discharge sewage into the SDMS in an amount not to exceed its contract capacity set forth in Exhibit A. San Diego is not obligated to receive from “Agency Name”, nor is “Agency Name” privileged to discharge into the SDMS, any amounts in excess of “Agency Name”’s contract capacity permitted under this Agreement.

4.2 Good-Faith Contract Capacity Discussions. The parties recognize that appropriate capacity and long term planning are essential for the proper provision of sewage transportation service. The parties further recognize that it is very difficult to forecast and measure the resulting damage to San Diego and the SDMS if “Agency Name” exceeds its contract capacity. Therefore, if San Diego notifies “Agency Name” that it has exceeded its contract capacity, either average capacity or peak capacity as set forth in Exhibit A, at any time during five or more days (from midnight to midnight) in any consecutive 90 day period, “Agency Name” shall develop and submit a plan of action and an implementation schedule to San Diego for its approval and acceptance. At a minimum, the plan shall describe how “Agency Name” proposes to stay within its contract capacity or how “Agency Name” proposes to increase its contract capacity in the SDMS. “Agency Name”’s proposals may include, but are not limited to, increasing available capacity through participation in SDMS capital improvement projects, purchasing or transferring capacity from San Diego or an authorized agency, taking other measures such as the replacement of “Agency Name” system components experiencing infiltration and inflow and/or construction of

peak flow retention structures or re-use facilities to reduce “Agency Name”’s flow into the SDMS.

4.2.1 San Diego Review. In the event that “Agency Name” fails to submit the aforementioned plan of action and implementation schedule within six (6) months of the date “Agency Name” is notified by San Diego, or if San Diego reasonably determines that the submitted plan and schedule are insufficient or untimely to adequately address the matter, San Diego shall independently develop a notice of determination pursuant to Section 8.2.2.

4.2.2 Cost of Additional Capacity. In the event that sufficient capacity is available in existing infrastructure, such capacity may be made available to “Agency Name”, at the discretion of San Diego, upon payment commensurate with the required additional capacity. In addition to the transportation charge for the additional flow, “Agency Name” shall pay its proportionate share of capital improvement project costs for existing SDMS facilities used by “Agency Name” under this Agreement, including but not limited to the types described in Article 8. “Agency Name”’s additional share of capital improvement project costs shall be based upon the relative additional amount of “Agency Name”’s peak capacity as it relates to the design capacity of the respective SDMS facilities according to the following formula:

“Agency Name”’s estimated share of capital improvement project costs = $(A/B) \times C$

Where: “A” is “Agency Name”’s additional peak capacity;

“B” is the design capacity of the SDMS facilities; and

“C” is the capital improvement project cost of the SDMS facilities, expressed as the original cost unless the facilities had been rehabilitated, in which case the cost of rehabilitation shall be added to the original cost. In the case of replacement, the replacement cost shall be used in lieu of the original cost for the portion of the facility that has been replaced.

4.3 No Limitation of Municipal Powers. San Diego has sole discretion to determine how to operate the SDMS in a safe, efficient and environmentally sound manner to avoid any risk to the health, safety and welfare of the public. Therefore, nothing in this Agreement shall be construed as precluding or limiting San Diego from taking any action reasonably necessary to prevent flow from “Agency Name” from endangering the health, safety, or welfare of the residents of the City of San Diego.

4.4 Diversion of Flow. Nothing in this Agreement shall preclude “Agency Name” from diverting all or part of its flow from the SDMS. However, prior to such diversion, “Agency Name” shall notify San Diego in writing at least six (6) months in advance and enter into an agreement with San Diego that, at a minimum, will require “Agency Name” to pay its proportionate share of outstanding capital improvement project costs, if payment of such outstanding costs upon diversion of flow is not already addressed by separate agreement

pursuant to Sections 8.2.1.3 or 8.2.2.3. “Agency Name” will also be responsible for all transportation charges owed by “Agency Name” up to the time of diversion.

4.4.1 No Refunds. In no event shall “Agency Name”’s diversion of all or part of its flow from the SDMS entitle “Agency Name” to any refund of previously remitted payments for capital improvement project costs, or forgiveness of amounts owed, if any, to San Diego for existing or increased contract capacity. “Agency Name” shall, however, retain such contract capacity and may transfer such capacity rights to another authorized agency, subject to San Diego’s approval. “Agency Name”’s contract capacity may be reduced or eliminated by future capital improvement projects:

4.4.1.1 If a capital improvement project replaces a facility in which “Agency Name” has contract capacity, “Agency Name”’s contract capacity is extinguished.

4.4.1.2 If a capital improvement project rehabilitates a facility in which “Agency Name” has contract capacity, “Agency Name”’s contract capacity is reduced in proportion to the amount that the capital improvement project cost, when added to the original cost of the facility, reduces “Agency Name”’s proportionate share of the total cost of the facility.

4.5 Fines and Penalties. “Agency Name” shall be responsible for the violation of any applicable laws, rules, or regulations associated with its discharge of flow into the SDMS. In the event a regulatory agency imposes any penalty or takes other enforcement action relating to the conveyance of flow through a SDMS facility listed in Exhibit B, San Diego shall determine whether itself or an authorized agency or agencies caused or contributed to such penalty or enforcement actions. San Diego shall allocate the penalty or other relief, including the costs of defense, to the authorized agency or agencies responsible. Each responsible party, whether an authorized agency or San Diego, shall be obligated to pay its share of such penalty or other relief, and any costs of defense. In the event that San Diego cannot make such an allocation, the cost of such penalty or other relief shall be shared by all authorized agencies, including San Diego, using the SDMS facility proportionately based on the amount of flow.

ARTICLE 5 - MONITORING

5.1 Flow Monitoring Devices. In most cases, flow monitoring devices are already installed and paid for through the Regional Wastewater Disposal Agreement. If San Diego and/or “Agency Name” determine that additional flow monitoring devices are needed beyond any Metro System flow monitoring devices, San Diego shall own and operate the flow monitoring devices as part of the Metro System monitoring devices and allocate costs as identified in the Regional Wastewater Disposal Agreement.

5.2 Equipment Maintenance. San Diego shall operate, maintain, manage and control the flow monitoring device(s) in an efficient and economical manner and preserve them in good repair and working order, all in accordance with recognized and sound engineering practices. San Diego shall provide flow reports to “Agency Name” on a regular basis but not less frequently than quarterly. Upon written request, San Diego shall provide “Agency Name” with the record

of the field calibration for any meters in question. "Agency Name" shall have access to the electronic files.

5.3 Unmonitored Flows. Where the transported sewage is not monitored, San Diego and "Agency Name" shall mutually agree upon the estimated amount of flow generated from such service areas. If such an agreement cannot be made, the dispute shall be resolved pursuant to the dispute resolution procedure set forth in Article 11 of this Agreement. "Agency Name" shall keep current and accurate records of the number and types of structures for evaluation of gallons per day for flow into the SDMS lines. Such records shall be made available for San Diego upon written request.

ARTICLE 6 - TRANSPORTATION CHARGES

6.1 Transportation Charge. San Diego shall charge and "Agency Name" shall pay a transportation charge at the unit transportation rate, set forth in Exhibit C, per million gallons of flow for each mile such flow is transported in the SDMS.

6.1.1 Adjustments for Inflation. As a ministerial matter, this rate shall be adjusted annually for inflation in accordance with the State of California Economic Forecast Index for the most recent year ending December 31. Revised rates shall take effect July 1 of the following year. In no event will the rate be adjusted more frequently than once each fiscal year.

6.1.2 Periodic Adjustments. The unit transportation rate will be reviewed by San Diego every five (5) years, commencing from the date of its finalization, to ensure that it does not deviate substantially from actual costs incurred by San Diego for operation and maintenance of the SDMS utilized by "Agency Name". San Diego will adjust the unit transportation rate in accordance with either of the following methods:

6.1.2.1 San Diego will determine the average of the actual costs for the previous three (3) years, based on the formula and calculations used to devise the current transportation rate. If the average actual costs for the three-year period would have resulted in a transportation rate that is more than five percent (5%) less than or greater than the transportation rate being applied at the time of the analysis, the rate will be adjusted to an amount equal to the three-year average of actual expenses on the next scheduled increase date.

6.1.2.2 San Diego may conduct or procure, at its sole cost and expense, a cost of service study to determine the appropriate unit transportation rate. The unit transportation rate shall be adjusted in accordance with the results of the study on the next scheduled increase date. If "Agency Name" objects to the adjustment recommended by the study, the matter shall be resolved pursuant to the dispute resolution procedure set forth in Article 11 of this Agreement.

6.1.3 Other Adjustments. Notwithstanding the above, San Diego may adjust the unit transportation rate at any time if a change in federal, state, or local laws or regulations, a

court order, or an order from a regulatory agency materially affects the cost of providing sewage transportation service. In consultation with “Agency Name”, San Diego will adjust the unit transportation rate to reflect the actual cost to San Diego, effective the beginning of the next billing period. If “Agency Name” objects to the adjustment determined by San Diego, the matter shall be resolved pursuant to the dispute resolution procedure set forth in Article 11 of this Agreement.

6.1.4 Updating Exhibit C. As a ministerial matter, and provided it has followed the procedures set forth herein, including any dispute resolution procedure, San Diego shall amend Exhibit C from time to time to reflect adjustments to the unit transportation rate, and provide “Agency Name” with an updated exhibit.

6.2 Billing. San Diego shall bill “Agency Name” on a quarterly basis for transportation charges no later than ninety (90) days after the end of the quarter to which the billing applies. Payment shall be made by “Agency Name” to San Diego within thirty (30) days of receipt of the billing and shall be considered delinquent fifteen (15) days thereafter. Late payments shall accrue interest at a rate of ten (10) percent per annum.

6.3 Payment Disputes. No payment shall be withheld by “Agency Name” because of a dispute as to its amount. Disputed payment shall be made with a notation as to the portion in dispute. Payment disputes shall be resolved pursuant to the dispute resolution procedure set forth in Article 11 of this Agreement. Any amount determined to have been improperly allocated to “Agency Name” resulting in an overpayment shall be adjusted by San Diego as a credit to the next invoice following such determination, and shall accrue interest at a rate of ten (10) percent per annum, calculated from the date paid by “Agency Name”. In the event that the improper allocation to “Agency Name” resulted in an underpayment, such amount shall be adjusted by San Diego as a debit to the next invoice following such determination.

ARTICLE 7 - OPERATION AND MAINTENANCE CHARGES FOR MUNICIPAL PUMP STATIONS

7.1 Calculation of Operations and Maintenance Charges. All operations and maintenance costs for [***insert name of pump station(s)***] shall be paid by San Diego. “Agency Name” shall reimburse San Diego for its share of these costs on a fiscal year basis calculated using the following formula:

$$A = (B / C) \times D$$

Where: “A” is “Agency Name”’s share of the annual operations and maintenance costs for [***insert name of pump station***].

“B” is “Agency Name”’s annual flow through [***insert name of pump station***] expressed in mgd on a fiscal year basis.

“C” is the total annual flow through [***insert name of pump station***] expressed in mgd on a fiscal year basis.

“D” is the total annual operations and maintenance costs for [***insert name of pump station***] including the forcemain(s) on a fiscal year basis.

7.2. Payment of Operations and Maintenance Charges. “Agency Name” shall pay San Diego its share of the operation and maintenance costs for [***insert name of pump station(s)***] in accordance with the following process:

7.2.1 Estimated Charges. Not later than May 1 in any year subsequent to the execution of this Agreement, San Diego shall estimate the operations and maintenance costs for the ensuing fiscal year for [***insert name of pump station***] and shall notify “Agency Name” of its share of these estimated annual costs. San Diego shall then bill “Agency Name” quarterly on August 1, November 1, February 1, and May 1 based on this estimate.

7.2.1.1 Each bill shall be paid within thirty (30) days of receipt of the billing and shall be considered delinquent fifteen (15) days, thereafter. Late payments shall accrue interest at ten (10) percent per annum.

7.2.2 Reconciliation of Charges. At the end of each fiscal year, San Diego will determine the actual operations and maintenance costs incurred and compare it with the estimated costs paid by "Agency Name". In the event the estimated costs paid by "Agency Name" exceed the actual costs, San Diego shall credit any future charges for [***insert name of pump station***] operations and maintenance costs against the next bill for the quarter after the prior year costs have been closed and verified. In the event the estimated costs paid by "Agency Name" are less than the actual costs, San Diego shall add the difference to the next bill for the quarter after the prior year costs have been closed and verified. San Diego shall provide “Agency Name” a copy of the documentation regarding [***insert name of pump station***] operations and maintenance costs. All estimates and final reconciliations shall be prepared according to recognized accounting principles.

7.3 Payment Disputes. No payment shall be withheld by “Agency Name” because of a dispute as to its amount. Disputed payment shall be made with a notation as to the portion in dispute. Payment disputes shall be resolved pursuant to the dispute resolution procedure set forth in Article 11 of this Agreement. Any amount determined to have been improperly allocated to “Agency Name” shall be adjusted by San Diego as a credit to the next invoice following such determination, and shall accrue interest at a rate of ten (10) percent per annum, calculated from the date the disputed payment was made by the “Agency Name”.

ARTICLE 8 - CAPITAL IMPROVEMENT PROJECTS

8.1 Planning. “Agency Name” and San Diego shall prepare the following plans and projections for one another to forecast future improvements that may be necessary to the SDMS:

8.1.1 “Agency Name” Plans. In accordance with Sections 3.2 and 3.3 of this Agreement, “Agency Name” shall provide San Diego with the projections (by fiscal year) of its flows and contract capacity requirements in those portions of the SDMS used by “Agency

Name". "Agency Name" shall also advise San Diego of any plans to acquire capacity outside the SDMS. This "Projected Flow Capacity Report" shall be updated annually. "Agency Name" shall also provide San Diego with such additional information requested by San Diego as necessary for SDMS planning purposes.

8.1.2 San Diego Plans. San Diego shall prepare a Ten Year Municipal Capital Improvement Plan for the SDMS that describes facilities necessary to convey all flows in compliance with applicable rules, laws and regulations. These Plans shall be updated annually. San Diego shall solicit and consider, in good faith, comments from "Agency Name" on the Capital Improvement Plan for those portions of the SDMS in which "Agency Name" has contract capacity or "Agency Name" is negotiating additional contract capacity.

8.2 Capital Improvement Projects. "Agency Name" and San Diego are obligated to pay for capital improvement projects for the SDMS that are needed to maintain existing contract capacity or to provide new contract capacity under the terms below, provided, however, that the decision whether or not to construct a capital improvement project shall be at the sole discretion of San Diego. As a ministerial matter, and provided San Diego has proceeded in the manner set forth in this Article 8, and the dispute resolution process found in Article 11, herein, San Diego shall amend Exhibit B from time to time to reflect future capital improvement projects in the list of SDMS facilities used by "Agency Name", and provide "Agency Name" with an updated exhibit.

8.2.1 Maintenance of Existing Contract Capacity. As part of its planning efforts and the needs of the SDMS, and considering the planning information provided to San Diego by "Agency Name", San Diego shall determine when capital improvement projects will be necessary to maintain "Agency Name"'s existing contract capacity and the efficiency of the SDMS.

8.2.1.1 San Diego's determination shall be made following active and meaningful consultation between San Diego and "Agency Name". This determination shall be based on: (1) the type and location of any capital improvement projects necessary; (2) the projected costs of any necessary capital improvement projects; and (3) the allocation of the cost of any such capital improvement projects to "Agency Name" and San Diego calculated pursuant to Section 9.2. San Diego shall then prepare a notice of determination setting forth its conclusions and send said notice of determination to "Agency Name".

8.2.1.2 "Agency Name" shall have six (6) months from the date of the notice of determination within which to either: (1) comment on or challenge all or part of San Diego's determination; (2) agree to the determination; or (3) commit, in writing, to obtain new sewage transportation services outside of the SDMS as described below. If "Agency Name" objects to San Diego's determination, "Agency Name" shall have the burden to commence and diligently pursue the formal dispute resolution procedures of Article 11 of this Agreement. If "Agency Name" fails to initiate dispute resolution within ninety (90) days after the

expiration of the time to respond to the notice of determination set forth herein, San Diego's determination shall become final and binding on "Agency Name", and "Agency Name" agrees to pay the capital improvement project costs and transportation charge set forth therein.

8.2.1.3 If San Diego and "Agency Name" agree on the capital improvement projects necessary to maintain existing contract capacity, San Diego and "Agency Name" shall enter into an agreement specifying the terms and conditions pursuant to which the capital improvement projects shall be undertaken. The agreement shall provide that "Agency Name" shall reimburse San Diego for its proportionate share of any capital improvement project costs accruing to "Agency Name" to maintain existing contract capacity.

8.2.2 Capital Improvement Projects to Provide Additional Contract Capacity. San Diego shall also, as part of its planning efforts, and considering planning information provided to San Diego by "Agency Name", determine the adequacy of "Agency Name"'s contract capacity or consider requests for additional contract capacity by "Agency Name".

8.2.2.1 San Diego's determination shall be made following active and meaningful consultation with "Agency Name". If San Diego determines that "Agency Name" requires additional contract capacity or agrees that it is able to provide additional contract capacity as requested by "Agency Name", San Diego shall conduct a study to determine the following: (1) the amount of additional contract capacity needed or which may be provided; (2) the type and location of any capital improvement projects necessary to provide additional contract capacity; (3) the projected costs of any necessary capital improvement projects; and (4) the allocation of the cost of any such capital improvement projects calculated pursuant to Section 9.2. San Diego shall then prepare a notice of determination setting forth its conclusions and send said notice of determination to "Agency Name".

8.2.2.2 "Agency Name" shall have six (6) months from the date of a notice of determination within which to either: (1) comment on or challenge all or part of San Diego's determination, (2) agree to the determination or (3) to commit, in writing, to obtain new sewage transportation services outside of the SDMS as described below; however, if San Diego's notice of determination was issued in response to "Agency Name"'s plan of action and implementation schedule set forth in Section 4.2, "Agency Name" shall respond within sixty (60) days of the date of the notice of determination. If "Agency Name" objects to San Diego's determination, "Agency Name" shall have the burden to commence and diligently pursue the dispute resolution procedures of Article 11 of this Agreement. If "Agency Name" fails to initiate dispute resolution within ninety (90) days after the expiration of the time to respond to the notice of determination set forth herein, San Diego's determination shall become final and binding on "Agency Name", and "Agency Name" agrees to pay the capital improvement project costs and transportation charge set forth therein.

8.2.2.3 If San Diego and “Agency Name” agree on the capital improvement projects necessary to increase contract capacity, San Diego and “Agency Name” shall enter into an agreement specifying the terms and conditions pursuant to which the capital improvement projects shall be undertaken. The agreement shall provide that “Agency Name” shall reimburse San Diego for its proportionate share of any capital improvement project costs accruing to “Agency Name” to increase contract capacity.

8.3 Option to Divert Flow. Notwithstanding the foregoing, upon notice of San Diego’s determination regarding additional capacity “Agency Name” may choose, at its sole discretion, to divert all or part of its flow from the SDMS pursuant to Section 4.4.

ARTICLE 9 - CAPITAL IMPROVEMENT CHARGES

9.1 Charges for Existing Facilities. The Parties agree that no reimbursements are due from “Agency Name” to San Diego for existing facilities which are used by “Agency Name” for the transportation of its sewage through the SDMS, except as otherwise identified in this Section.

9.1.1 Facilities Used and Equitable Cost Share. The Parties agree that “Agency Name”’s equitable share of the capital improvement project costs of existing facilities which are used by “Agency Name” for the transportation of its sewage in the SDMS and which have not been paid to San Diego are as follows:

[*insert names of facilities and equitable cost share* If none, indicate “none.”]

9.1.2. Payment Schedule. Payment by “Agency Name” for these capital improvement costs shall be made as follows:

[*insert payment schedule*]

9.2 Calculation of Capital Improvement Project Costs for Future Facilities. In addition to the transportation charge, “Agency Name” shall pay its proportionate share of capital improvement project costs for SDMS facilities constructed in the future for, or used by, “Agency Name” under this Agreement including but not limited to the types described in Article 8. Capital improvement projects, their estimated costs, and the proportionate share of expenses for “Agency Name” shall be included as addendums to this Agreement as they are initiated. Final, actual costs shall be used for billing “Agency Name”. “Agency Name”’s share of future capital improvement project costs shall be based upon the relative amount of “Agency Name”’s peak capacity as described in Exhibit A and as it relates to the design capacity of the respective SDMS facilities, according to the following formulas:

Where: “A” is “Agency Name”’s peak capacity;

“B” is the design capacity of the SDMS facility;

“C” is the estimated capital improvement project cost of the SDMS facility constructed for or used by “Agency Name”;

"D" is the remaining useful life of the existing SDMS facility; and

"E" is the estimated useful life of the new SDMS facility.

9.2.1 Capital Improvement Projects for Both Parties. For new SDMS facilities, or for repair, rehabilitation, or replacement of SDMS facilities that have reached the end of their useful life, or if replacement of SDMS facilities is needed to increase the design capacity because of an increase in flow from both “Agency Name” and San Diego, “Agency Name”’s estimated share of capital improvement project costs = $(A/B) \times C$.

9.2.2 Capital Improvement Projects for San Diego. For replacement of SDMS facilities that have not reached the end of their useful life, to increase the design capacity, due solely to an increase in flow from San Diego and/or other involved agencies, “Agency Name”’s estimated share of capital improvement project costs = $(A/B) \times C \times ((E-D)/E)$.

9.2.3 Capital Improvement Projects for “Agency Name”. For replacement of SDMS facilities that have not reached the end of their useful life, to increase the design capacity, due solely to an increase in flow from “Agency Name”, “Agency Name”’s estimated share of capital improvement project costs = $C - [((B - A)/B) \times C \times ((E-D)/E)]$.

9.3 Billing. San Diego shall bill “Agency Name” for its share of capital improvement costs as described above. Billings for design and subsequent project costs shall be issued immediately following the City’s remittance for payment of same. The billings shall be in an amount equal to “Agency Name”’s share of the amount expended on the capital improvement project during the relevant invoice period based on the formula described above. Payment shall be made within thirty (30) days of receipt of the billing and shall be considered delinquent fifteen (15) days thereafter. Late payments shall accrue interest at ten (10) percent per annum. No payment shall be withheld by “Agency Name” because of a dispute as to its amount. Disputed payments shall be made with a notation as to the portion in dispute. Payment disputes shall be resolved pursuant to the dispute resolution procedure set forth in Article 11 of this Agreement. Any amount determined to have been improperly allocated to “Agency Name” shall be issued to the “Agency Name” as a refund plus ten (10) percent interest calculated per annum from the date the disputed payment was made by “Agency Name” within thirty days following such determination.

ARTICLE 10 – DURATION OF AGREEMENT

10.1 Effective Date. This Agreement shall become effective thirty days after execution by San Diego and “Agency Name”.

10.2 Term of Agreement. Subject to the rights and obligations set forth in Sections 10.3, 10.4 and 10.5 below, this Agreement shall expire on December 31, 2050 or upon the expiration or termination of the Regional Wastewater Disposal Agreement, whichever occurs first. Any outstanding obligation of “Agency Name” to pay its proportionate share of capital improvement project costs shall survive termination of this Agreement prior to December 31, 2050.

10.3 Extension of Agreement. This Agreement is subject to extension by agreement of the parties. The parties shall commence discussions on an agreement to provide sewage transportation services beyond the year 2050 on or before December 31, 2040.

10.4 Contract Termination. If in the future, “Agency Name” is able to obtain alternate sewage transportation services, “Agency Name” may divert some or all of its flow from the SDMS pursuant to Section 4.4. This Agreement shall terminate if “Agency Name”’s contract capacity in the SDMS is extinguished pursuant to Section 4.4.1.1.

10.5 Abandonment. San Diego may cease operation and maintenance of all or part of the SDMS upon delivery of notice to “Agency Name” ten (10) years in advance of said abandonment. Upon notice by San Diego to abandon the SDMS, 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 resolved pursuant to the dispute resolution procedure set forth in Article 11 of this Agreement. In the event of abandonment, San Diego shall retain ownership of all SDMS assets free from any claim of “Agency Name”.

ARTICLE 11 - DISPUTE RESOLUTION

11.1 Application. This Article shall govern all disputes arising out of this Agreement.

11.2 Mediation. Upon delivery of a written request for mediation to the other party involved, any dispute concerning this Agreement may be submitted to a mutually acceptable mediator. The decision of the mediator shall not be final or binding unless otherwise agreed to in writing by the parties.

11.2.1 Condition Precedent to Litigation. Mediation shall be required before either party may proceed to litigation or any other method of dispute resolution. If a mediation session has not been held within ninety (90) days after written request for mediation has been received by either party, the party requesting mediation may proceed to litigation unless the period for mediation has been extended by mutual written agreement between the parties.

11.2.2 Costs. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, 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 borne equally by the parties, unless they agree otherwise.

11.2.3 Evidence. All mediation proceedings, results and documentation, shall be non-binding and inadmissible for any purpose in any legal proceeding (pursuant to California Evidence Code Sections 1115 through 1128), unless such admission is otherwise agreed upon in writing by both parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

11.3 Performance Required During Dispute. Nothing in this Article shall relieve either San Diego or “Agency Name” from its obligation to perform all of their obligations under this

Agreement. San Diego and “Agency Name” 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.

ARTICLE 12 - INSURANCE

12.1 San Diego Shall Maintain All Required Insurance. San Diego shall maintain all insurance required by law.

12.1.1 Workers’ Compensation Insurance. San Diego is currently self-insured for Workers Compensation for all San Diego employees.

12.1.2 Public Liability Insurance. San Diego is currently self-insured for its public liability insurance, which includes general liability and automobile liability coverage for property damage and bodily injury claims. San Diego budgets annually for its self-administered claims program handled through the Risk Management Department. Claims are processed and administered in accordance with the California Government Code Sections 900 *et seq.*

12.2 Substantially Equivalent Coverage. If the SDMS is transferred to another entity pursuant to Article 2, coverage substantially equivalent to all the above provisions shall be maintained by any successor in interest.

ARTICLE 13 – GENERAL PROVISIONS

13.1 Force Majeure. In the event performance under this Agreement is delayed due to causes which are outside the control of the Parties and their agents, and could not be avoided by the exercise of due care, which includes but is not limited to war, terrorist attack, act of God, government regulations, labor disputes, strikes, fires, floods, adverse weather, or inability to obtain materials, labor or equipment, both Parties will be entitled to an extension in time of performance equivalent to the length of delay.

13.2 Governing Law. This Agreement is intended to be construed pursuant to the laws of the State of California. In addition, parties agree that this Agreement has been entered into in San Diego County and concerns subject matter located in San Diego County.

13.3 Notices. All notices required to be given under this Agreement must be in writing and either served personally or mailed by certified mail, return receipt requested to:

City of “Agency Name”
[*insert title*]
[*insert address*]
[*insert address*]

City of San Diego
Director of Public Utilities
Public Utilities Department

9192 Topaz Way
San Diego, CA 92123

13.4 Waiver of Breach. No failure of either San Diego or “Agency Name” to insist upon strict performance by the other of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition, agreement and term of the Agreement shall continue in full force and effect without respect to any other then existing or subsequent breach.

13.5 Exhibits. This Agreement references certain exhibits. Each exhibit is attached to this Agreement, and is also incorporated herein by reference. The exhibits are as follows:

Exhibit A	Contract Capacity
Exhibit B	Facilities Used by “Agency Name”
Exhibit C	Unit Transportation Rate
Exhibit D	Sewer Cross-Connection Structures

13.6 Amendment of Agreement. Except as provided in this Agreement, and recognizing that changes to Contract Capacity (Exhibit A), Facilities Used by “Agency Name” (Exhibit B), Transportation Charge (Exhibit C), and Sewer Cross-Connection Structures (Exhibit D) are ministerial, this Agreement may be amended or supplemented only by a mutual agreement in writing between San Diego and “Agency Name” stating the parties’ intent to amend or supplement the Agreement.

13.7 Drafting of Agreement. It is acknowledged that San Diego and “Agency Name”, with the assistance of competent counsel, have participated in the negotiation of this Agreement and that any ambiguity should not be construed for or against either San Diego or “Agency Name”.

13.7.1 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.

13.8 Integration Clause. San Diego and “Agency Name” 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 including but not limited to the provisions of Section 13.6 of this Agreement, and that the terms of this Agreement are contractual and not a mere recital; that in executing this Agreement, neither 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 judgment and knowledge.

13.9 Third Party Beneficiaries. This Agreement does not confer any rights on any person who is not a party to this Agreement, and any third party beneficiaries are hereby expressly disclaimed.

13.10 Successors in Interest. This Agreement shall be binding upon and shall inure to the benefit of both San Diego and “Agency Name”, and each of its respective successors, assigns, trustees or receivers.

13.11 Severability. 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 provision, 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 or both parties' essential objectives set forth in this Agreement.

13.12 Headings. All Section headings are for convenience only and shall not affect the interpretation of this Agreement.13.13 Signature Authority. 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.

13.14 Restrictions on Veto of Transfers and Acquisitions of Capacity. “Agency Name” understands and specifically recognizes that with respect to transfer and acquisition of capacity in the SDMS or the creation of additional capacity in the SDMS for any other authorized agency, “Agency Name” does not have the right to veto or prevent the transfer of capacity by and among other agencies or with San Diego, or to veto or prevent the creation or acquisition of capacity for another authorized agency or agencies. “Agency Name” recognizes that by signing this Agreement “Agency Name” has expressly pre-approved such actions. The sole right of “Agency Name” to object to any of the foregoing shall be through expression of its opinion to San Diego and, where applicable, through exercise of its rights under the dispute resolution provisions of this Agreement.

13.15 Other Agreements. Nothing in this Agreement limits or restricts the right of San Diego or “Agency Name” to make separate agreements with other agencies without the need to amend this Agreement, provided that such agreements are consistent with this Agreement. This Agreement is not intended to nor shall it in any way supersede or modify the terms and conditions of the Regional Wastewater Disposal Agreement or any amendments thereto.

13.16 Counterparts. This Agreement may be executed in counterparts. The counterparts so executed shall constitute one Agreement notwithstanding that the signatures of all parties do not appear on the same page.

13.17 Annexation of Agency Area to the City of San Diego. In the event that all or part of the area served by “Agency Name” is annexed into San Diego, this Agreement shall be null and void

with respect to the annexed territory. “Agency Name”’s obligations to pay transportation charges or capital improvement project costs associated with that annexed area shall cease after the date of annexation. For purposes of determining the date of cessation of these costs, the date of annexation shall be the effective date as determined by LAFCO.

13.17.1 Bond Indebtedness. Notwithstanding the effect of the above provisions, nothing in this Section shall be construed as relieving “Agency Name” of any obligations concerning bond indebtedness that was incurred by “Agency Name” prior to the annexation, except to the extent that the obligation involves San Diego and “Agency Name” prior to annexation, in which case San Diego shall become responsible for that portion of “Agency Name”’s obligation to the extent that the obligation was incurred for the annexed area, if obligations for bond indebtedness are calculated based on geographical size, acreage, or connections.

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IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or his/her designee, pursuant to Ordinance No. O-_____ authorizing such execution, and by "Agency Name" acting by and through _____.

CITY OF "AGENCY NAME"

By: _____

Name: _____

Date: _____

By: _____

Name: _____

Date: _____

CITY OF SAN DIEGO

By: _____

Name: _____

Date: _____

I HEREBY APPROVE the form and legality of the forgoing agreement this ____ day of _____, 2010.

JAN I. GOLDSMITH, City Attorney

By: _____

Deputy City Attorney

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2/6/09

SEWAGE TRANSPORTATION AGREEMENT

BETWEEN

THE CITY OF “AGENCY NAME”

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AND

THE CITY OF SAN DIEGO

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THIS SEWAGE TRANSPORTATION AGREEMENT is made and entered into by and between the City of San Diego, a municipal corporation (San Diego), and the City of "Agency Name" ("Agency Name").

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RECITALS

A. San Diego owns, operates and maintains the Metropolitan Sewerage System for the purpose of treating and disposing of sewage for San Diego and certain other municipalities and districts including Participating Agencies within the San Diego region under the terms and conditions of the Regional Wastewater Disposal Agreement.

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B. San Diego also owns, operates and maintains the San Diego Municipal Sewerage System for the purpose of collecting and transporting sewage to the Metropolitan Sewerage System.

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C. Due to the location of "Agency Name"'s sewerage system it is necessary that "Agency Name" use a portion of the San Diego Municipal Sewerage System to transport its sewage to the Metropolitan Sewerage System.

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D. San Diego and "Agency Name" had previously entered into a [*Agreement – name to be inserted*] which expired on [*Date – to be inserted*] under which San Diego has authorized "Agency Name" to discharge sewage into the San Diego Municipal Sewerage System for transportation to the Metropolitan Sewerage System and under which the parties had operated.

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E. The purposes of this Agreement are to: 1) allow "Agency Name" to discharge sewage into the San Diego Municipal Sewerage System for transportation to the Metropolitan Sewerage System; 2) establish a rate to be charged for sewage transportation services rendered by San Diego to "Agency Name"; 3) establish "Agency Name"'s contract capacity in San Diego Municipal Sewerage System for the use of a portion of the San Diego Municipal Sewerage System; 4) reimburse San Diego for [*specific items to be inserted*]; and 5) establish a method to allocate the capital improvement project costs of future improvements, repair, rehabilitation, or replacement to the San Diego Municipal Sewerage System as are deemed necessary by San Diego and in consultation with authorized agencies affected by the work on a fair and equitable basis.

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NOW, THEREFORE, in consideration of the mutual obligations of the parties as herein expressed, San Diego and "Agency Name" agree as follows:

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AGREEMENT

ARTICLE 1 - DEFINITIONS

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The singular of each defined term includes the plural. For the purposes of this Agreement, the following definitions apply:

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| Agency Sewerage System means “Agency Name”’s wastewater collection system, which consists of pipelines and pump stations, and collects wastewater within the agency and from other agencies.

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| Authorized Agency means a municipality, district, or agency which has been authorized by San Diego to discharge sewage into the San Diego Municipal Sewerage System (SDMS) under sewage transportation agreement(s) with San Diego.

| Average Capacity means the average actual amount of discharge of sewage that “Agency Name” is allowed under this Agreement to discharge into the SDMS, averaged during a 24-hour period from midnight to midnight in the dry season and expressed as either an average rate of flow in cubic feet per second (cfs) or in million gallons per day (MGD) where 1 cfs = 0. 646317 MGD.

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| Average Daily Flow (sometimes referred to as *ADF*) means the flow from “Agency Name” into those portions of SDMS used by “Agency Name” expressed as an average rate of flow in million gallons per day (MGD) computed by dividing the total gallons discharged during the designated period (e.g., billing period, dry season, month, etc.,) by the number of days within that same period.

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| Best Management Practices means an engineered structure, management activity, or a combination thereof, that eliminates or reduces an adverse environmental effect of a pollutant.

| Capital Improvement Project (sometimes referred to as *CIP*) means those items and activities required by sound engineering and best management practices, including but not limited to acquisition, planning, design, financing, and construction, for any one or more of the following purposes: 1) to alter, change or modify the hydraulic capacity of any part or whole of any existing SDMS facilities; 2) to improve the function and performance of any part or whole of any existing SDMS facilities; 3) to add new SDMS facilities for the purpose of altering, changing, or modifying the hydraulic capacity, or improving the function and performance of the SDMS; or 4) to perform a major repair on or replace any existing SDMS facilities.

| Capital Improvement Project Cost means costs associated with capital improvement projects.

| Contract Capacity means the amount of sewage “Agency Name” is allowed under this Agreement to discharge into those portions of SDMS used by “Agency Name”, up to the limits set forth in Exhibit A and expressed in terms of average capacity and peak capacity. Contract capacity as defined in this agreement shall refer to capacity only in the SDMS, and is separate and distinct from contract capacity in the Metro system as referenced in the Regional Wastewater Disposal Agreement.

| Design Capacity means the maximum flow which can be conveyed through a pipe segment when the ratio of depth of the flow to the diameter of the pipe segment (d/D) equals 75% for pipe segment 18 inches or greater, or 50 % for pipe segment 15 inches or smaller. The design capacity of a sewer line is determined based on the “length-weighted” average of design capacity of all pipe segments in the sewer line. In the case of a pump station, design capacity means the maximum flow that can be pumped using the main pumps, excluding the back up pumping capacity.

Dry Season means the period from May 1 through September 30.

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Fiscal Year means the period from July 1 through June 30.

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Flow means the amount of wastewater, including inflow and infiltration, which is discharged into the SDMS by San Diego, "Agency Name", or any other authorized agency. Flow may be expressed in million gallons per day (MGD) or cubic feet per second (cfs).

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Infiltration means water other than wastewater that enters a sewerage system (including sewer service connections) from the ground through such means as defective pipes, pipe joints, connections or manholes. Infiltration does not include, and is distinguished from, inflow.

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Inflow means water other than wastewater that enters a sewerage system (including sewer service connections) from sources such as roof leaders, cellar drains, yard drains, area drains, foundation drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.

LAFCO means the San Diego Local Agency Formation Commission.

Metropolitan Sewerage System (sometimes referred to as the Metro System) means those facilities and contract rights to facilities which are described in the Regional Wastewater Disposal Agreement, Document No. OO-18517, filed May 18, 1998, as may be amended.

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Operation and Maintenance (sometimes referred to as O & M) means those items and activities required by sound engineering and best management practices to maintain the hydraulic capacity, function, and performance of SDMS facilities.

Operation and Maintenance Costs means the costs of operation and maintenance including, but not limited to, annual costs associated with administration, operation, maintenance, replacement (non-CIP), annual premiums, claims payments and claims administration, and overhead.

Parties means San Diego and "Agency Name".

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Peak Contract Capacity means the highest amount of discharge of sewage that "Agency Name" is allowed under this Agreement to discharge into those portions of SDMS used by "Agency Name", measured in fifteen (15) minute intervals and expressed as either a rate of flow in cubic feet per second (cfs) or in million gallons per day (MGD) where 1 cfs = 0.646317 MGD.

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Peak Flow means the highest actual instantaneous flow as measured in fifteen (15) minute intervals at a metering device expressed as either a rate of flow in cubic feet per second (cfs) or in million gallons per day (MGD) (1 cfs = 0.646317 MGD). In the event of a dispute, cubic feet per second (cfs) will take precedence.

Regional Wastewater Disposal Agreement means the "Regional Wastewater Disposal Agreement between San Diego and the Participating Agencies in the Metropolitan Sewerage System,"

Document No. OO-18417, filed May 18, 1998, with the Clerk for the City of San Diego, as may be amended.

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San Diego Municipal Sewerage System (sometimes referred to as SDMS) means San Diego's wastewater collection system, which consists of pipelines and pump stations, that collects wastewater within San Diego and from "Agency Name" and other authorized agencies and conveys it to the Metropolitan Sewerage System for treatment and disposal.

SDMS Facility means each element of the SDMS used or useful for the transportation of sewage, including but not limited to transmission lines, force mains, trunk sewers, interceptors, and pump stations.

Sewage means wastewater and its commonly constituent substances.

Sewage Transportation Service means the transportation of sewage from the point of discharge into the SDMS to the Metropolitan Sewerage System.

Transportation Charge means the amount paid by "Agency Name" to San Diego for the transportation of flow in the SDMS to the Metropolitan Sewerage System. This charge includes operation and maintenance costs but does not include capital improvement project costs.

Unit Transportation Rate means the amount per unit distance (mile) of length of gravity sewer charged for sewage transportation service.

ARTICLE 2 - OWNERSHIP AND OPERATION OF THE SAN DIEGO MUNICIPAL SEWERAGE SYSTEM

2.1 Rights of the Parties. San Diego is the owner of the SDMS and of any additions to the SDMS or other facilities constructed pursuant to this Agreement. All decisions with respect to the planning, design, construction, operation and maintenance of the SDMS shall rest with San Diego. If "Agency Name"'s contractual right to use the SDMS is adversely impacted by the planning, design, construction, operation and maintenance of any part of SDMS, "Agency Name" shall have the right to review and comment on these issues prior to any modifications to the subject portions of the SDMS. However, "Agency Name" shall only have a contractual right to use the SDMS as set forth in this Agreement.

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2.1.1 Change in Ownership. Subject to the terms of this Agreement, and in conformance with all applicable laws, San Diego may transfer ownership of all or part of the SDMS at any time. San Diego shall not transfer or agree to transfer any part of the SDMS transporting sewage from "Agency Name" without reserving "Agency Name"'s rights granted by this Agreement. In the event of a transfer, San Diego's successor in interest shall be bound by the terms of this Agreement.

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2.1.2 Assignment of Rights. Subject to the terms of this Agreement, "Agency Name" may transfer or assign its rights and obligations under this Agreement. Any such transfer must first, however, be approved by San Diego by written agreement. "Agency Name" may not transfer its rights if San Diego determines, after consultation with "Agency

Name”, that the proposed transfer will imbalance, or will otherwise adversely impact San Diego’s ability to operate the SDMS or the Metro System.

2.2 Duties of San Diego. Subject to the terms of this Agreement, San Diego agrees to provide sewage transportation services to “Agency Name” for the contract capacity set forth in Exhibit A.

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2.2.1 Operation. San Diego shall operate the SDMS in an efficient and economical manner, and maintain it in good repair and working order, all in accordance with recognized sound engineering and best management practices. San Diego shall comply with all applicable laws, rules and regulations.

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2.2.2 Funds. San Diego shall collect and receive all money paid under this Agreement in connection with the SDMS and disburse all money spent in connection with the SDMS.

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2.3 Funding Obligations. Nothing in this Section or in this Agreement shall obligate San Diego to make any payment for the acquisition, construction, maintenance or operation of the SDMS from monies derived from taxes or from any income and revenue of San Diego other than monies in, or sewer revenues which go into, the Sewer Revenue fund for the SDMS, and from construction funds derived from the sale of sewer revenue bonds or other sources of sewer funding for the SDMS as are duly authorized. Nothing in this Agreement shall be construed to obligate San Diego to pay from its annual income and revenues any sum that would create an indebtedness, obligation or liability within the meaning of the provision of Section 18 of Article XVI of the Constitution of the State of California or Section 99 of the San Diego City Charter. Nothing in this Section, however, or in this Agreement shall prevent San Diego, in its discretion, from using tax revenues or any other available revenues or funds of San Diego for any purpose for which San Diego is empowered to expend monies under this Agreement. Nothing in this Agreement shall be construed as a limitation upon the powers of the City of San Diego as a Charter City of the State of California.

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2.4 Financial Statements. San Diego shall keep appropriate records and accounts of all costs and expenses relating to the collection and conveyance of sewage and the acquisition, planning, design, construction, administration, monitoring, and operation and maintenance of the SDMS.

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2.4.1 Right to Audit. Upon written request, said books and records shall be subject to reasonable inspection by any duly authorized representative of “Agency Name” at its expense. “Agency Name” may audit these records for a three fiscal year period previous to its request, at its own expense.

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2.4.2 CAFR. San Diego shall make its Comprehensive Annual Financial Report as it relates to the SDMS available to “Agency Name”.

2.5 Limitations on Type and Condition of Sewage. “Agency Name” shall not discharge or allow to be discharged, any sewage or wastes into the SDMS which do not meet the standards established by appropriate San Diego ordinances, resolutions, rules and regulations. “Agency Name” shall also comply with all applicable statutes, rules and regulations of all agencies of the United States of America, including the Environmental Protection Agency, and all agencies of

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the State of California having jurisdiction over the collection, transmission, treatment and disposal of sewage and other wastes in the SDMS.

2.5.1 Excessive Inflow or Infiltration. “Agency Name” shall not allow, to the extent practicable, excessive inflow and infiltration to be discharged into the SDMS. For purposes of this Section, “excessive” means any amount that causes “Agency Name” to exceed the limit of peak capacity set forth in Exhibit A.

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2.5.2 Compliance with Laws. “Agency Name” shall not allow, to the extent practicable, the discharge of any waste, pollutant, inflow, or infiltration into the SDMS that is prohibited by ordinances, resolutions, rules, or regulations of the United States of America, including the Environmental Protection Agency, the State of California, and San Diego having jurisdiction over the collection, transportation, treatment and disposal of sewage and other wastes in the SDMS. This Section does not prohibit “Agency Name” from operating the cross-connections identified in Exhibit D, provided “Agency Name” applies for and receives a permit(s) for industrial wastewater discharge from San Diego and complies with the terms and conditions of said permit(s), including the payment of any fees or costs associated with the permit. Continued operation of the cross-connections is also contingent on approval by State and Federal regulatory agencies, whose permission San Diego will request collectively for all agencies with flow that enters the Metro System. As a ministerial matter, Exhibit D may be amended from time to time by “Agency Name” and San Diego, provided any additional cross-connections meet the requirements of this section and the total flow from “Agency Name” remains at or below the contract capacity.

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2.5.3 Imported Sewage. “Agency Name” shall not discharge any sewage originating outside the boundaries of “Agency Name” into the SDMS without the prior written consent of San Diego except for sewage from recreational vehicles, motor homes, trailers, or from businesses that pump sewage from private septic systems, that otherwise complies with the requirements of this Agreement.

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2.5.4 Enforcement Actions. If a regulatory agency with appropriate jurisdiction imposes any penalty or takes other enforcement action related to the transportation of sewage or other matter in or from the SDMS, San Diego shall determine, in active consultation with impacted parties, whether San Diego, “Agency Name”, or any other authorized agency caused or contributed to such penalty or enforcement action. Based on this determination, San Diego shall allocate the penalty or other relief, including the cost of defense, to the party or parties responsible. Each responsible party, whether San Diego, “Agency Name”, or another authorized agency, shall pay its share of the penalty or other relief, and any costs of defense as reasonably determined by San Diego in active consultation with impacted parties. If San Diego cannot make an allocation based on responsibility, the cost of the penalty or other relief shall be shared by San Diego, “Agency Name”, and any other authorized agency involved based proportionately on their respective average daily flow into the SDMS.

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2.5.5 Rock Traps. After consultation with San Diego, “Agency Name” shall be required to install rock trap screens at sites connecting to the SDMS. San Diego shall request the installation of rock traps in writing and shall allow a minimum of 120 days for installation after the initial request is made.

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2.5.6 Odor Control. If San Diego determines that flow from “Agency Name” is causing unreasonably high concentrations of hydrogen sulfide gas in the SDMS, or is a source of unreasonably noxious odors, “Agency Name” shall take reasonable steps within the agency sewerage system necessary to eliminate such concerns, such as pre-treating the flow with chemicals to reduce the formation of hydrogen sulfide.

ARTICLE 3 - CONTRACT CAPACITY RIGHTS

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3.1 Amount of Contract Capacity. In consideration of the terms and conditions of this Agreement, “Agency Name” shall have a contractual right to discharge sewage into the SDMS up to the contract capacity described in Exhibit A, provided, however, this shall not confer on “Agency Name” the right to discharge any substances otherwise prohibited by this Agreement into the SDMS. Flow from any cross-connections identified in Exhibit D is counted against the contract capacity granted by this Agreement.

3.2 Projected Flow and Capacity Report. On or before September 30th of each year during the term of this Agreement and upon the request of San Diego, “Agency Name” shall provide San Diego with a ten-year projection (by fiscal year) of its average daily flow for dry season, peak flow and capacity requirements in those portions of the SDMS used by “Agency Name”. The peak flow projection should be based on the ten-year return wet weather flow estimation. If at any time during the ten-year projection “Agency Name” is projected to exceed its average and/or peak capacity allotted under its contract capacity, “Agency Name” shall develop and submit a plan of action and an implementation schedule to San Diego for its approval and acceptance. At a minimum, the plan shall describe “Agency Name”’s future needs for contract capacity for the next ten (10) years and if necessary, propose mitigation measures which may be required of “Agency Name” to facilitate its future needs for capacity including but not limited to increases in capacity through capital improvement projects or taking other measures such as the construction of peak flow retention structures or re-use facilities to reduce “Agency Name”’s flow into the SDMS.

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3.2.1 San Diego Review. In the event that San Diego disagrees with the ten-year projection, the plan of action, or the implementation schedule provided by “Agency Name”, the parties shall meet in good faith and attempt to reconcile their differences for a period not to exceed six months from the date “Agency Name” submits its peak flow projection. If the parties fail to reach an agreement after six months, San Diego may independently develop a notice of determination and proceed with the procedure set forth in Section 8.2.2.

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3.3 Other Planning Information. On or before September 30th of each year during the term of this Agreement and upon the request of San Diego, “Agency Name” shall also provide San

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Diego with a 50-year projection (by fiscal year) of its average daily flows for dry season in those portions of SDMS used by "Agency Name".

3.4 Requests for Additional Contract Capacity. If "Agency Name" desires to purchase additional contract capacity and San Diego is willing to sell additional capacity pursuant to Section 4.2.2, or to create additional contract capacity pursuant to Section 8.2.2 of this Agreement, "Agency Name" agrees to pay transportation charges for the additional flow, as well as "Agency Name"'s proportionate share of capital improvement project costs for existing or new SDMS facilities as may be necessary to provide the additional contract capacity. The decision of whether to sell or create additional contract capacity for "Agency Name", however, shall be at the sole discretion of San Diego. "Agency Name" agrees to submit a written request to obtain and purchase the additional capacity needed in accordance with the procedures set forth in Article 8 of this Agreement.

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3.5 Transfers of Contract Capacity. "Agency Name" may buy, sell or exchange all or part of its contract capacity to or from San Diego or other authorized agencies on such terms as they may agree upon provided that San Diego shall be notified prior to any transfer. Any transfer shall be first approved in writing by San Diego. No contract capacity may be transferred if San Diego determines, after consultation with "Agency Name", that said transfer will unbalance, or will otherwise adversely impact San Diego's ability to operate any SDMS facility or the Metro System. As a ministerial matter, San Diego shall amend Exhibit A from time to time to reflect approved transfers of contract capacity, and provide "Agency Name" with an updated exhibit.

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ARTICLE 4 - EXCEEDING CAPACITY

4.1 Limitations on Capacity. During the term of this Agreement, "Agency Name" shall have the right to discharge sewage into the SDMS in an amount not to exceed its contract capacity set forth in Exhibit A. San Diego is not obligated to receive from "Agency Name", nor is "Agency Name" privileged to discharge into the SDMS, any amounts in excess of "Agency Name"'s contract capacity permitted under this Agreement.

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4.2 Good-Faith Contract Capacity Discussions. The parties recognize that appropriate capacity and long term planning are essential for the proper provision of sewage transportation service. The parties further recognize that it is very difficult to forecast and measure the resulting damage to San Diego and the SDMS if "Agency Name" exceeds its contract capacity. Therefore, if San Diego notifies "Agency Name" that it has exceeded its contract capacity, either average capacity or peak capacity as set forth in Exhibit A, at any time during five or more days (from midnight to midnight) in any consecutive 90 day period, "Agency Name" shall develop and submit a plan of action and an implementation schedule to San Diego for its approval and acceptance. At a minimum, the plan shall describe how "Agency Name" proposes to stay within its contract capacity or how "Agency Name" proposes to increase its contract capacity in the SDMS. "Agency Name"'s proposals may include, but are not limited to, increasing available capacity through participation in SDMS capital improvement projects, purchasing or transferring capacity from San Diego or an authorized agency, taking other measures such as the replacement of "Agency Name" system components experiencing infiltration and inflow and/or construction of

peak flow retention structures or re-use facilities to reduce “Agency Name”’s flow into the SDMS.

4.2.1 San Diego Review. In the event that “Agency Name” fails to submit the aforementioned plan of action and implementation schedule within six (6) months of the date “Agency Name” is notified by San Diego, or if San Diego reasonably determines that the submitted plan and schedule are insufficient or untimely to adequately address the matter, San Diego shall independently develop a notice of determination pursuant to Section 8.2.2.

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4.2.2 Cost of Additional Capacity. In the event that sufficient capacity is available in existing infrastructure, such capacity may be made available to “Agency Name”, at the discretion of San Diego, upon payment commensurate with the required additional capacity. In addition to the transportation charge for the additional flow, “Agency Name” shall pay its proportionate share of capital improvement project costs for existing SDMS facilities used by “Agency Name” under this Agreement, including but not limited to the types described in Article 8. “Agency Name”’s additional share of capital improvement project costs shall be based upon the relative additional amount of “Agency Name”’s peak capacity as it relates to the design capacity of the respective SDMS facilities according to the following formula:

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“Agency Name”’s estimated share of capital improvement project costs = $(A/B) \times C$

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Where: _____ “A” is “Agency Name”’s additional peak capacity;

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“B” is the design capacity of the SDMS facilities; and

“C” is the capital improvement project cost of the SDMS facilities, expressed as the original cost unless the facilities had been rehabilitated, in which case the cost of rehabilitation shall be added to the original cost. In the case of replacement, the replacement cost shall be used in lieu of the original cost for the portion of the facility that has been replaced.

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4.3 No Limitation of Municipal Powers. San Diego has sole discretion to determine how to operate the SDMS in a safe, efficient and environmentally sound manner to avoid any risk to the health, safety and welfare of the public. Therefore, nothing in this Agreement shall be construed as precluding or limiting San Diego from taking any action reasonably necessary to prevent flow from “Agency Name” from endangering the health, safety, or welfare of the residents of the City of San Diego.

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4.4 Diversion of Flow. Nothing in this Agreement shall preclude “Agency Name” from diverting all or part of its flow from the SDMS. However, prior to such diversion, “Agency Name” shall notify San Diego in writing at least six (6) months in advance and enter into an agreement with San Diego that, at a minimum, will require “Agency Name” to pay its proportionate share of outstanding capital improvement project costs, if payment of such outstanding costs upon diversion of flow is not already addressed by separate agreement

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pursuant to Sections ~~8.2.1.3~~ or ~~8.2.2.3~~, “Agency Name” will also be responsible for all transportation charges owed by “Agency Name” up to the time of diversion.

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4.4.1 No Refunds. In no event shall “Agency Name”’s diversion of all or part of its flow from the SDMS entitle “Agency Name” to any refund of previously remitted payments for capital improvement project costs, or forgiveness of amounts owed, if any, to San Diego for existing or increased contract capacity. “Agency Name” shall, however, retain such contract capacity and may transfer such capacity rights to another authorized agency, subject to San Diego’s approval. “Agency Name”’s contract capacity may be reduced or eliminated by future capital improvement projects:

4.4.1.1 If a capital improvement project replaces a facility in which “Agency Name” has contract capacity, “Agency Name”’s contract capacity is extinguished.

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4.4.1.2 If a capital improvement project rehabilitates a facility in which “Agency Name” has contract capacity, “Agency Name”’s contract capacity is reduced in proportion to the amount that the capital improvement project cost, when added to the original cost of the facility, reduces “Agency Name”’s proportionate share of the total cost of the facility.

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4.5 Fines and Penalties. “Agency Name” shall be responsible for the violation of any applicable laws, rules, or regulations associated with its discharge of flow into the SDMS. In the event a regulatory agency imposes any penalty or takes other enforcement action relating to the conveyance of flow through a SDMS facility listed in Exhibit B, San Diego shall determine whether itself or an authorized agency or agencies caused or contributed to such penalty or enforcement actions. San Diego shall allocate the penalty or other relief, including the costs of defense, to the authorized agency or agencies responsible. Each responsible party, whether an authorized agency or San Diego, shall be obligated to pay its share of such penalty or other relief, and any costs of defense. In the event that San Diego cannot make such an allocation, the cost of such penalty or other relief shall be shared by all authorized agencies, including San Diego, using the SDMS facility proportionately based on the amount of flow.

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ARTICLE 5 - MONITORING

5.1 Flow Monitoring Devices. In most cases, flow monitoring devices are already installed and paid for through the Regional Wastewater Disposal Agreement. If San Diego and/or “Agency Name” determine that additional flow monitoring devices are needed beyond any Metro System flow monitoring devices, San Diego shall own and operate the flow monitoring devices as part of the Metro System monitoring devices and allocate costs as identified in the Regional Wastewater Disposal Agreement.

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5.2 Equipment Maintenance. San Diego shall operate, maintain, manage and control the flow monitoring device(s) in an efficient and economical manner and preserve them in good repair and working order, all in accordance with recognized and sound engineering practices. San Diego shall provide flow reports to “Agency Name” on a regular basis but not less frequently than quarterly. Upon written request, San Diego shall provide “Agency Name” with the record

of the field calibration for any meters in question. "Agency Name" shall have access to the electronic files.

5.3 Unmonitored Flows. Where the transported sewage is not monitored, San Diego and "Agency Name" shall mutually agree upon the estimated amount of flow generated from such service areas. If such an agreement cannot be made, the dispute shall be resolved pursuant to the dispute resolution procedure set forth in Article 11 of this Agreement. "Agency Name" shall keep current and accurate records of the number and types of structures for evaluation of gallons per day for flow into the SDMS lines. Such records shall be made available for San Diego upon written request.

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ARTICLE 6 - TRANSPORTATION CHARGES.

6.1 Transportation Charge. San Diego shall charge and "Agency Name" shall pay a transportation charge at the unit transportation rate, set forth in Exhibit C, per million gallons of flow for each mile such flow is transported in the SDMS.

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6.1.1 Adjustments for Inflation. As a ministerial matter, this rate shall be adjusted annually for inflation in accordance with the State of California Economic Forecast Index for the most recent year ending December 31. Revised rates shall take effect July 1 of the following year. In no event will the rate be adjusted more frequently than once each fiscal year.

6.1.2 Periodic Adjustments. The unit transportation rate will be reviewed by San Diego every five (5) years, commencing from the date of its finalization, to ensure that it does not deviate substantially from actual costs incurred by San Diego for operation and maintenance of the SDMS utilized by "Agency Name". San Diego will adjust the unit transportation rate in accordance with either of the following methods:

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6.1.2.1 San Diego will determine the average of the actual costs for the previous three (3) years, based on the formula and calculations used to devise the current transportation rate. If the average actual costs for the three-year period would have resulted in a transportation rate that is more than five percent (5%) less than or greater than the transportation rate being applied at the time of the analysis, the rate will be adjusted to an amount equal to the three-year average of actual expenses on the next scheduled increase date.

6.1.2.2 San Diego may conduct or procure, at its sole cost and expense, a cost of service study to determine the appropriate unit transportation rate. The unit transportation rate shall be adjusted in accordance with the results of the study on the next scheduled increase date. If "Agency Name" objects to the adjustment recommended by the study, the matter shall be resolved pursuant to the dispute resolution procedure set forth in Article 11 of this Agreement.

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6.1.3 Other Adjustments. Notwithstanding the above, San Diego may adjust the unit transportation rate at any time if a change in federal, state, or local laws or regulations, a

court order, or an order from a regulatory agency materially affects the cost of providing sewage transportation service. In consultation with "Agency Name", San Diego will adjust the unit transportation rate to reflect the actual cost to San Diego, effective the beginning of the next billing period. If "Agency Name" objects to the adjustment determined by San Diego, the matter shall be resolved pursuant to the dispute resolution procedure set forth in Article 11 of this Agreement.

6.1.4 Updating Exhibit C. As a ministerial matter, and provided it has followed the procedures set forth herein, including any dispute resolution procedure, San Diego shall amend Exhibit C from time to time to reflect adjustments to the unit transportation rate, and provide "Agency Name" with an updated exhibit.

6.2 Billing. San Diego shall bill "Agency Name" on a quarterly basis for transportation charges no later than ninety (90) days after the end of the quarter to which the billing applies. Payment shall be made by "Agency Name" to San Diego within thirty (30) days of receipt of the billing and shall be considered delinquent fifteen (15) days thereafter. Late payments shall accrue interest at a rate of ten (10) percent per annum.

6.3 Payment Disputes. No payment shall be withheld by "Agency Name" because of a dispute as to its amount. Disputed payment shall be made with a notation as to the portion in dispute. Payment disputes shall be resolved pursuant to the dispute resolution procedure set forth in Article 11 of this Agreement. Any amount determined to have been improperly allocated to "Agency Name" resulting in an overpayment shall be adjusted by San Diego as a credit to the next invoice following such determination, and shall accrue interest at a rate of ten (10) percent per annum, calculated from the date paid by "Agency Name". In the event that the improper allocation to "Agency Name" resulted in an underpayment, such amount shall be adjusted by San Diego as a debit to the next invoice following such determination.

ARTICLE 7 - OPERATION AND MAINTENANCE CHARGES FOR MUNICIPAL PUMP STATIONS

7.1 Calculation of Operations and Maintenance Charges. All operations and maintenance costs for [*insert name of pump station(s)*] shall be paid by San Diego. "Agency Name" shall reimburse San Diego for its share of these costs on a fiscal year basis calculated using the following formula:

$$A = (B / C) \times D$$

Where: "A" is "Agency Name"'s share of the annual operations and maintenance costs for [*insert name of pump station*].

"B" is "Agency Name"'s annual flow through [*insert name of pump station*] expressed in mgd on a fiscal year basis.

"C" is the total annual flow through [*insert name of pump station*] expressed in mgd on a fiscal year basis.

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~~“D” is the~~ total annual operations and maintenance costs for ~~[*insert name of pump station*]~~ including the forcemain(s) on a fiscal year basis.

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7.2. Payment of Operations and Maintenance Charges. “Agency Name” shall pay San Diego its share of the operation and maintenance costs for ~~[*insert name of pump station(s)*]~~ in accordance with the following process:

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7.2.1 Estimated Charges. Not later than May 1 in any year subsequent to the execution of this Agreement, San Diego shall estimate the operations and maintenance costs for the ensuing fiscal year for ~~[*insert name of pump station*]~~ and shall notify “Agency Name” of its share of these estimated annual costs. San Diego shall then bill “Agency Name” quarterly on August 1, November 1, February 1, and May 1 based on this estimate.

7.2.1.1 Each bill shall be paid within thirty (30) days of receipt of the billing and shall be considered delinquent fifteen (15) days, thereafter. Late payments shall accrue interest at ~~ten (10) percent~~ per annum.

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7.2.2 Reconciliation of Charges. At the end of each fiscal year, San Diego will determine the actual operations and maintenance costs incurred and compare it with the estimated costs paid by “Agency Name”. In the event the estimated costs paid by “Agency Name” exceed the actual costs, San Diego shall credit any future charges for ~~[*insert name of pump station*]~~ operations and maintenance costs against the next bill for the quarter after the prior year costs have been closed and verified. In the event the estimated costs paid by “Agency Name” are less than the actual costs, San Diego shall add the difference to the next bill for the quarter after the prior year costs have been closed and verified. San Diego shall provide “Agency Name” a copy of the documentation regarding ~~[*insert name of pump station*]~~ operations and maintenance costs. All estimates and final reconciliations shall be prepared according to recognized accounting principles.

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7.3 Payment Disputes. No payment shall be withheld by “Agency Name” because of a dispute as to its amount. Disputed payment shall be made with a notation as to the portion in dispute. Payment disputes shall be resolved pursuant to the dispute resolution procedure set forth in Article 11 of this Agreement. Any amount determined to have been improperly allocated to “Agency Name” shall be adjusted by San Diego as a credit to the next invoice following such determination, and shall accrue interest at a rate of ten (10) percent per annum, calculated from the date the disputed payment was made by the “Agency Name”.

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8.1 Planning. “Agency Name” and San Diego shall prepare the following plans and projections for one another to forecast future improvements that may be necessary to the SDMS:

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8.1.1 “Agency Name” Plans. In accordance with Sections 3.2 and 3.3 of this Agreement, “Agency Name” shall provide San Diego with the projections (by fiscal year) of its flows and contract capacity requirements in those portions of the SDMS used by “Agency

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Name". "Agency Name" shall also advise San Diego of any plans to acquire capacity outside the SDMS. This "Projected Flow Capacity Report" shall be updated annually. "Agency Name" shall also provide San Diego with such additional information requested by San Diego as necessary for SDMS planning purposes.

8.1.2 San Diego Plans. San Diego shall prepare a Ten Year Municipal Capital Improvement Plan for the SDMS that describes facilities necessary to convey all flows in compliance with applicable rules, laws and regulations. These Plans shall be updated annually. San Diego shall solicit and consider, in good faith, comments from "Agency Name" on the Capital Improvement Plan for those portions of the SDMS in which "Agency Name" has contract capacity or "Agency Name" is negotiating additional contract capacity.

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8.2 Capital Improvement Projects. "Agency Name" and San Diego are obligated to pay for capital improvement projects for the SDMS that are needed to maintain existing contract capacity or to provide new contract capacity under the terms below, provided, however, that the decision whether or not to construct a capital improvement project shall be at the sole discretion of San Diego. As a ministerial matter, and provided San Diego has proceeded in the manner set forth in this Article 8, and the dispute resolution process found in Article 11, herein, San Diego shall amend Exhibit B from time to time to reflect future capital improvement projects in the list of SDMS facilities used by "Agency Name", and provide "Agency Name" with an updated exhibit.

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8.2.1 Maintenance of Existing Contract Capacity. As part of its planning efforts and the needs of the SDMS, and considering the planning information provided to San Diego by "Agency Name", San Diego shall determine when capital improvement projects will be necessary to maintain "Agency Name"'s existing contract capacity and the efficiency of the SDMS.

8.2.1.1 San Diego's determination shall be made following active and meaningful consultation between San Diego and "Agency Name". This determination shall be based on: (1) the type and location of any capital improvement projects necessary; (2) the projected costs of any necessary capital improvement projects; and (3) the allocation of the cost of any such capital improvement projects to "Agency Name" and San Diego calculated pursuant to Section 9.2. San Diego shall then prepare a notice of determination setting forth its conclusions and send said notice of determination to "Agency Name".

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8.2.1.2 "Agency Name" shall have six (6) months from the date of the notice of determination within which to either: (1) comment on or challenge all or part of San Diego's determination; (2) agree to the determination; or (3) commit, in writing, to obtain new sewage transportation services outside of the SDMS as described below. If "Agency Name" objects to San Diego's determination, "Agency Name" shall have the burden to commence and diligently pursue the formal dispute resolution procedures of Article 11 of this Agreement. If "Agency Name" fails to initiate dispute resolution within ninety (90) days after the

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expiration of the time to respond to the notice of determination set forth herein, San Diego's determination shall become final and binding on "Agency Name", and "Agency Name" agrees to pay the capital improvement project costs and transportation charge set forth therein.

8.2.1.3 If San Diego and "Agency Name" agree on the capital improvement projects necessary to maintain existing contract capacity, San Diego and "Agency Name" shall enter into an agreement specifying the terms and conditions pursuant to which the capital improvement projects shall be undertaken. The agreement shall provide that "Agency Name" shall reimburse San Diego for its proportionate share of any capital improvement project costs accruing to "Agency Name" to maintain existing contract capacity.

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8.2.2 Capital Improvement Projects to Provide Additional Contract Capacity. San Diego shall also, as part of its planning efforts, and considering planning information provided to San Diego by "Agency Name", determine the adequacy of "Agency Name"'s contract capacity or consider requests for additional contract capacity by "Agency Name".

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8.2.2.1 San Diego's determination shall be made following active and meaningful consultation with "Agency Name". If San Diego determines that "Agency Name" requires additional contract capacity or agrees that it is able to provide additional contract capacity as requested by "Agency Name", San Diego shall conduct a study to determine the following: (1) the amount of additional contract capacity needed or which may be provided; (2) the type and location of any capital improvement projects necessary to provide additional contract capacity; (3) the projected costs of any necessary capital improvement projects; and (4) the allocation of the cost of any such capital improvement projects calculated pursuant to Section 9.2. San Diego shall then prepare a notice of determination setting forth its conclusions and send said notice of determination to "Agency Name".

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8.2.2.2 "Agency Name" shall have six (6) months from the date of a notice of determination within which to either: (1) comment on or challenge all or part of San Diego's determination, (2) agree to the determination or (3) to commit, in writing, to obtain new sewage transportation services outside of the SDMS as described below; however, if San Diego's notice of determination was issued in response to "Agency Name"'s plan of action and implementation schedule set forth in Section 4.2, "Agency Name" shall respond within sixty (60) days of the date of the notice of determination. If "Agency Name" objects to San Diego's determination, "Agency Name" shall have the burden to commence and diligently pursue the dispute resolution procedures of Article 11 of this Agreement. If "Agency Name" fails to initiate dispute resolution within ninety (90) days after the expiration of the time to respond to the notice of determination set forth herein, San Diego's determination shall become final and binding on "Agency Name", and "Agency Name" agrees to pay the capital improvement project costs and transportation charge set forth therein.

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8.2.2.3 If San Diego and “Agency Name” agree on the capital improvement projects necessary to increase contract capacity, San Diego and “Agency Name” shall enter into an agreement specifying the terms and conditions pursuant to which the capital improvement projects shall be undertaken. The agreement shall provide that “Agency Name” shall reimburse San Diego for its proportionate share of any capital improvement project costs accruing to “Agency Name” to increase contract capacity.

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8.3 Option to Divert Flow. Notwithstanding the foregoing, upon notice of San Diego’s determination regarding additional capacity “Agency Name” may choose, at its sole discretion, to divert all or part of its flow from the SDMS pursuant to Section 4.4.

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ARTICLE 9 - CAPITAL IMPROVEMENT CHARGES

9.1 Charges for Existing Facilities. The Parties agree that no reimbursements are due from “Agency Name” to San Diego for existing facilities which are used by “Agency Name” for the transportation of its sewage through the SDMS, except as otherwise identified in this Section.

9.1.1 Facilities Used and Equitable Cost Share. The Parties agree that “Agency Name”’s equitable share of the capital improvement project costs of existing facilities which are used by “Agency Name” for the transportation of its sewage in the SDMS and which have not been paid to San Diego are as follows:

[*insert names of facilities and equitable cost share* If none, indicate “none.”]

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9.1.2. Payment Schedule. Payment by “Agency Name” for these capital improvement costs shall be made as follows:

[*insert payment schedule*]

9.2 Calculation of Capital Improvement Project Costs for Future Facilities. In addition to the transportation charge, “Agency Name” shall pay its proportionate share of capital improvement project costs for SDMS facilities constructed in the future for, or used by, “Agency Name” under this Agreement including but not limited to the types described in Article 8. Capital improvement projects, their estimated costs, and the proportionate share of expenses for “Agency Name” shall be included as addendums to this Agreement as they are initiated. Final, actual costs shall be used for billing “Agency Name”. “Agency Name”’s share of future capital improvement project costs shall be based upon the relative amount of “Agency Name”’s peak capacity as described in Exhibit A and as it relates to the design capacity of the respective SDMS facilities, according to the following formulas:

Where: “A” is “Agency Name”’s peak capacity;

“B” is the design capacity of the SDMS facility;

"C" is the estimated capital improvement project cost of the SDMS facility constructed for or used by "Agency Name";

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"D" is the remaining useful life of the existing SDMS facility; and

"E" is the estimated useful life of the new SDMS facility.

9.2.1 Capital Improvement Projects for Both Parties. For new SDMS facilities, or for repair, rehabilitation, or replacement of SDMS facilities that have reached the end of their useful life, or if replacement of SDMS facilities is needed to increase the design capacity because of an increase in flow from both "Agency Name" and San Diego, "Agency Name"'s estimated share of capital improvement project costs = $(A/B) \times C$.

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9.2.2 Capital Improvement Projects for San Diego. For replacement of SDMS facilities that have not reached the end of their useful life, to increase the design capacity, due solely to an increase in flow from San Diego and/or other involved agencies, "Agency Name"'s estimated share of capital improvement project costs = $(A/B) \times C \times ((E-D)/E)$.

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9.2.3 Capital Improvement Projects for "Agency Name". For replacement of SDMS facilities that have not reached the end of their useful life, to increase the design capacity, due solely to an increase in flow from "Agency Name", "Agency Name"'s estimated share of capital improvement project costs = $C - [((B - A)/B) \times C \times ((E-D)/E)]$.

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9.3 Billing. San Diego shall bill "Agency Name" for its share of capital improvement costs as described above. Billings for design and subsequent project costs shall be issued immediately following the City's remittance for payment of same. The billings shall be in an amount equal to "Agency Name"'s share of the amount expended on the capital improvement project during the relevant invoice period based on the formula described above. Payment shall be made within thirty (30) days of receipt of the billing and shall be considered delinquent fifteen (15) days thereafter. Late payments shall accrue interest at ten (10) percent per annum. No payment shall be withheld by "Agency Name" because of a dispute as to its amount. Disputed payments shall be made with a notation as to the portion in dispute. Payment disputes shall be resolved pursuant to the dispute resolution procedure set forth in Article 11 of this Agreement. Any amount determined to have been improperly allocated to "Agency Name" shall be issued to the "Agency Name" as a refund plus ten (10) percent interest calculated per annum from the date the disputed payment was made by "Agency Name" within thirty days following such determination.

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ARTICLE 10 – DURATION OF AGREEMENT

10.1 Effective Date. This Agreement shall become effective thirty days after execution by San Diego and "Agency Name".

10.2 Term of Agreement. Subject to the rights and obligations set forth in Sections 10.3, 10.4 and 10.5 below, this Agreement shall expire on December 31, 2050 or upon the expiration or termination of the Regional Wastewater Disposal Agreement, whichever occurs first. Any outstanding obligation of "Agency Name" to pay its proportionate share of capital improvement project costs shall survive termination of this Agreement prior to December 31, 2050.

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10.3 Extension of Agreement. This Agreement is subject to extension by agreement of the parties. The parties shall commence discussions on an agreement to provide sewage transportation services beyond the year 2050 on or before December 31, 2040.

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10.4 Contract Termination. If in the future, "Agency Name" is able to obtain alternate sewage transportation services, "Agency Name" may divert some or all of its flow from the SDMS pursuant to Section 4.4. This Agreement shall terminate if "Agency Name"'s contract capacity in the SDMS is extinguished pursuant to Section 4.4.1.1.

10.5 Abandonment. San Diego may cease operation and maintenance of all or part of the SDMS upon delivery of notice to "Agency Name" ten (10) years in advance of said abandonment. Upon notice by San Diego to abandon the SDMS, 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 resolved pursuant to the dispute resolution procedure set forth in Article 11 of this Agreement. In the event of abandonment, San Diego shall retain ownership of all SDMS assets free from any claim of "Agency Name".

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ARTICLE 11 - DISPUTE RESOLUTION

11.1 Application. This Article shall govern all disputes arising out of this Agreement.

11.2 Mediation. Upon delivery of a written request for mediation to the other party involved, any dispute concerning this Agreement may be submitted to a mutually acceptable mediator. The decision of the mediator shall not be final or binding unless otherwise agreed to in writing by the parties.

11.2.1 Condition Precedent to Litigation. Mediation shall be required before either party may proceed to litigation or any other method of dispute resolution. If a mediation session has not been held within ninety (90) days after written request for mediation has been received by either party, the party requesting mediation may proceed to litigation unless the period for mediation has been extended by mutual written agreement between the parties.

11.2.2 Costs. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, 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 borne equally by the parties, unless they agree otherwise.

11.2.3 Evidence. All mediation proceedings, results and documentation, shall be non-binding and inadmissible for any purpose in any legal proceeding (pursuant to California Evidence Code Sections 1115 through 1128), unless such admission is otherwise agreed upon in writing by both parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

11.3 Performance Required During Dispute. Nothing in this Article shall relieve either San Diego or "Agency Name" from its obligation to perform all of their obligations under this

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"Agency Name" shall not assign this Agreement, or any part of it, nor any monies due, or to become due hereunder, without the prior written consent of San Diego. Any assignment by "Agency Name" without the express written approval of San Diego shall be cause for termination of this Agreement at the sole option of San Diego. In no event shall any contractual relationship be created by any third party and San Diego.¶

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Agreement. San Diego and "Agency Name" 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.

ARTICLE 12 - INSURANCE

12.1 San Diego Shall Maintain All Required Insurance. San Diego shall maintain all insurance required by law.

12.1.1 Workers' Compensation Insurance. San Diego is currently self-insured for Workers Compensation for all San Diego employees.

12.1.2 Public Liability Insurance. San Diego is currently self-insured for its public liability insurance, which includes general liability and automobile liability coverage for property damage and bodily injury claims. San Diego budgets annually for its self-administered claims program handled through the Risk Management Department. Claims are processed and administered in accordance with the California Government Code Sections 900 *et seq.*

12.2 Substantially Equivalent Coverage. If the SDMS is transferred to another entity pursuant to Article 2, coverage substantially equivalent to all the above provisions shall be maintained by any successor in interest.

ARTICLE 13 – GENERAL PROVISIONS

13.1 Force Majeure. In the event performance under this Agreement is delayed due to causes which are outside the control of the Parties and their agents, and could not be avoided by the exercise of due care, which includes but is not limited to war, terrorist attack, act of God, government regulations, labor disputes, strikes, fires, floods, adverse weather, or inability to obtain materials, labor or equipment, both Parties will be entitled to an extension in time of performance equivalent to the length of delay.

13.2 Governing Law. This Agreement is intended to be construed pursuant to the laws of the State of California. In addition, parties agree that this Agreement has been entered into in San Diego County and concerns subject matter located in San Diego County.

13.3 Notices. All notices required to be given under this Agreement must be in writing and either served personally or mailed by certified mail, return receipt requested to:

City of "Agency Name"

[*insert title*]

[*insert address*]

[*insert address*]

City of San Diego
Director of Public Utilities
Public Utilities Department

Sewage Transportation Agreement
City of "Agency Name"

City of San Diego

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If the sewage transportation services provided to "Agency Name" under this Agreement are interrupted as a result of a major disaster, operation of federal or state law, or other causes beyond the control of San Diego, "Agency Name" shall continue all payments required under this Agreement during the period of interruption. Following the resumption of sewage transportation services, San Diego and "Agency Name" shall determine whether "Agency Name" is entitled to any refund of transportation charges paid during the period of interruption. If the parties are unable to reach an agreement following good faith negotiations, "Agency Name" may seek a refund through the dispute resolution process set forth in Section XI, ab(... [1]

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13.4 Waiver of

Breach. No failure of either San Diego or “Agency Name” to insist upon strict performance by the other of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition, agreement and term of the Agreement shall continue in full force and effect without respect to any other then existing or subsequent breach.

13.5 Exhibits. This Agreement references certain exhibits. Each exhibit is attached to this Agreement, and is also incorporated herein by reference. The exhibits are as follows:

Exhibit A	Contract Capacity
Exhibit B	Facilities Used by “Agency Name”
Exhibit C	Unit Transportation Rate
<u>Exhibit D</u>	<u>Sewer Cross-Connection Structures</u>

13.6 Amendment of Agreement. Except as provided in this Agreement, and recognizing that changes to Contract Capacity (Exhibit A), Facilities Used by “Agency Name” (Exhibit B), Transportation Charge (Exhibit C), and Sewer Cross-Connection Structures (Exhibit D) are ministerial, this Agreement may be amended or supplemented only by a mutual agreement in writing between San Diego and “Agency Name” stating the parties’ intent to amend or supplement the Agreement.

13.7 Drafting of Agreement. It is acknowledged that San Diego and “Agency Name”, with the assistance of competent counsel, have participated in the negotiation of this Agreement and that any ambiguity should not be construed for or against either San Diego or “Agency Name”.

13.7.1 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.

13.8 Integration Clause. San Diego and “Agency Name” represent, warrant and agree that no promise or agreement not expressed herein has been made to them, that this Agreement contains

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XVI. EFFECTIVE DATE AND TERMINATION
A. Effective Date
This Agreement shall become effective thirty days after execution by San Diego and “Agency Name”.
B. Term

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Subject to the rights and obligations set forth in Sections XVI.C, XVI.D and XVI.E below, this Agreement shall expire on December 31, 2050 or upon the expiration or termination of the Regional Wastewater Disposal Agreement, whichever occurs first. Any outstanding obligation of “Agency Name” to pay its proportionate share of capital improvement project costs shall survive termination of this Agreement prior to December 31, 2050.

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the entire agreement between the parties, that this Agreement supersedes any and all prior agreements or understandings between the parties unless otherwise provided herein including but not limited to the provisions of Section 13.6 of this Agreement, and that the terms of this Agreement are contractual and not a mere recital; that in executing this Agreement, neither 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 judgment and knowledge.

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13.9 Third Party Beneficiaries. This Agreement does not confer any rights on any person who is not a party to this Agreement, and any third party beneficiaries are hereby expressly disclaimed.

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13.10 Successors in Interest. This Agreement shall be binding upon and shall inure to the benefit of both San Diego and "Agency Name", and each of its respective successors, assigns, trustees or receivers.

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13.11 Severability. 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 provision, 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 or both parties' essential objectives set forth in this Agreement.

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13.12 Headings. All Section headings are for convenience only and shall not affect the interpretation of this Agreement. 13.13 Signature Authority.

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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.

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D. Declarations ¶
1. Understanding of Intent and Effect of Agreement¶

13.14 Restrictions on Veto of Transfers and Acquisitions of Capacity. "Agency Name" understands and specifically recognizes that with respect to transfer and acquisition of capacity in the SDMS or the creation of additional capacity in the SDMS for any other authorized agency, "Agency Name" does not have the right to veto or prevent the transfer of capacity by and among other agencies or with San Diego, or to veto or prevent the creation or acquisition of capacity for another authorized agency or agencies. "Agency Name" recognizes that by signing this Agreement "Agency Name" has expressly pre-approved such actions. The sole right of "Agency Name" to object to any of the foregoing shall be through expression of its opinion to San Diego and, where applicable, through exercise of its rights under the dispute resolution provisions of this Agreement.

Deleted: 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.

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13.15 Other Agreements. Nothing in this Agreement limits or restricts the right of San Diego or “Agency Name” to make separate agreements with other agencies without the need to amend this Agreement, provided that such agreements are consistent with this Agreement. This Agreement is not intended to nor shall it in any way supersede or modify the terms and conditions of the Regional Wastewater Disposal Agreement or any amendments thereto.

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13.16 Counterparts. This Agreement may be executed in counterparts. The counterparts so executed shall constitute one Agreement notwithstanding that the signatures of all parties do not appear on the same page.

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13.17 Annexation of Agency Area to the City of San Diego. In the event that all or part of the area served by “Agency Name” is annexed into San Diego, this Agreement shall be null and void with respect to the annexed territory. “Agency Name”’s obligations to pay transportation charges or capital improvement project costs associated with that annexed area shall cease after the date of annexation. For purposes of determining the date of cessation of these costs, the date of annexation shall be the effective date as determined by LAFCO.

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13.17.1 Bond Indebtedness. Notwithstanding the effect of the above provisions, nothing in this Section shall be construed as relieving “Agency Name” of any obligations concerning bond indebtedness that was incurred by “Agency Name” prior to the annexation, except to the extent that the obligation involves San Diego and “Agency Name” prior to annexation, in which case San Diego shall become responsible for that portion of “Agency Name”’s obligation to the extent that the obligation was incurred for the annexed area, if obligations for bond indebtedness are calculated based on geographical size, acreage, or connections.

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IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or his/her designee, pursuant to Ordinance No. O- authorizing such execution, and by "Agency Name" acting by and through

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CITY OF "AGENCY NAME"

By: _____

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By: _____

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By: _____ ¶

Name: _____

I HEREBY APPROVE the form and legality of the forgoing agreement this _____ day of _____, 2010.

¶

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Name: _____ ¶

¶

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Date: _____

JAN I. GOLDSMITH, City Attorney

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CITY OF SAN DIEGO

By: _____

Deputy City Attorney

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JAN I. GOLDSMITH, City Attorney¶

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By: _____¶
Deputy City Attorney¶

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XIII. INTERRUPTION OF SERVICE

If the sewage transportation services provided to “Agency Name” under this Agreement are interrupted as a result of a major disaster, operation of federal or state law, or other causes beyond the control of San Diego, “Agency Name” shall continue all payments required under this Agreement during the period of interruption. Following the resumption of sewage transportation services, San Diego and “Agency Name” shall determine whether “Agency Name” is entitled to any refund of transportation charges paid during the period of interruption. If the parties are unable to reach an agreement following good faith negotiations, “Agency Name” may seek a refund through the dispute resolution process set forth in Section XI, above.

XIV. JURISDICTION

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XV. NOTICES REQUIRED UNDER AGREEMENT**Extension of Agreement**

This Agreement is subject to extension by agreement of the parties. The parties shall commence discussions on an agreement to provide sewage transportation services beyond the year 2050 on or before December 31, 2040.

D. Contract Termination

If in the future, “Agency Name” is able to obtain alternate sewage transportation services, “Agency Name” may divert all of its flow from the SDMS pursuant to Section IV.D.

E. Abandonment

San Diego may abandon the SDMS upon delivery of notice to “Agency Name” ten (10) years in advance of said abandonment. Upon notice by San Diego to abandon the SDMS, 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 resolved pursuant to the dispute resolution procedure set forth in Section XI of this Agreement. In the event of abandonment, San Diego shall retain ownership of all SDMS assets free from any claim of “Agency Name”.

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XVII. WAIVER OF BREACH

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XVIII. GENERAL

A.

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the provisions of Sections III E (Transfers of

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VIII B 1 (Capital Improvement Projects, Exhibit B),

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C. Construction of Agreement

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2. Entire Agreement; No Third Party Beneficiaries

AGENDA ITEM 9

Attachment



September 9, 2010

Marsi Steirer
Interim Assistant Director
Public Utilities Department
City of San Diego
600 B Street
Suite 600, MS 906
San Diego, CA 92101

**SUBJECT: Review of Recycled Water Study Participating Agency Options
Memorandum Letter Dated August 17, 2010**

Dear Marsi:

Your letter dated August 17, 2010, provides useful comments and insight on the development of the Recycled Water Study technical memoranda and also offers good suggestions for improvements to the Participating Agency's memorandum on using regional opportunities to reduce flows to Point Loma Wastewater Treatment Plant (PLWWTP). We are incorporating your comments, as well as comments from our members, into our memorandum, which has been retitled "Regional Opportunities to Reduce Flows at Point Loma Wastewater Treatment Plant." When this document is completed, we will provide you with the final version.

Acknowledging that your team surveyed the Participating Agencies (PAs) early in the process about our potential and expected uses of recycled water, our members have been updating our needs and plans. We have been doing so in part to provide you valuable and timely information for the Recycled Water Study, and also because we are evaluating alternatives for sources of water for our customers. We are including this information in our memorandum. Since this will be a concise summary of our recycled water needs, updated with the most current information, we expect your team to use this information when considering alternatives. Since our memorandum will be a useful reference tool, we expect this document to also be included as a reference in future technical memoranda as well as the final Recycled Water Study.

Concentrating time and effort on evaluating viable indirect potable reuse (IPR) options is sensible and expected by the PAs. IPR offers opportunities to reliably divert large quantities of recycled water year-round away from PLWWTP. However, the PAs also see value in developing and evaluating other opportunities for reusing water. Some of these concepts include, but are not limited to, aquifer storage, ground water recharge, salt water intrusion barriers, customer base development (both retail and commercial), and reservoir detention. While some of these options present challenging hurdles to address, such as the regulations addressing the creation of dams and reservoirs, a significant number of water reuse options exist and developing these options will mitigate the risks presented by IPR. For instance, IPR regulations are still under development with uncertainty of specific requirements that may increase or decrease the costs

The Joint Powers Authority Proactively Addressing Regional Wastewater Issues

of IPR options currently under development by your team. Further, public acceptance of IPR is still being tested with the region. These and other hurdles may stymie IPR development such that, if other alternatives are not developed, reducing flows at PLWWTP will not have advanced.

Similar to how agencies are diversifying their water supply portfolio, we strongly contend that the Recycled Water Study must include a diversity of options for recycled water use. One way to present the options, even if they are not fully developed in the Recycled Water Study, is to create two tables – the first showing the principal solutions, including IPR, and a second table showing other, viable options.

Regardless of the options presented, opportunities for the City of San Diego to partner with the PAs should be included as viable options. Seeking solutions that involve more than one agency leads to innovative and collaborative solutions that benefit the entire region. Including these options in the Recycled Water Study will show that all options were considered, but not necessarily developed.

On behalf of the PAs, we appreciate the opportunity to work with you and we look forward to continuing our participation in the Recycled Water Study.

Sincerely,

Scott Huth
MetroTAC Chairman



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: August 30, 2010

TO: Distribution

FROM: Amer Barhoumi, Associate Engineer-Civil, Public Utilities Department

SUBJECT: Response to Questions during the July 21 Metro-TAC Meeting

During the Metro-TAC meeting on July 21, 2010, the committee had several questions regarding the Recycled Water Study. Attached you will find the questions presented during the meeting and our responses.

If you have any questions please feel free to call me at (619) 533-4186 or Rey Novencido at (619) 533-4187.

A handwritten signature in black ink, appearing to be "Amer Barhoumi", written over a horizontal line.

Amer Barhoumi

AB/

Enclosures: July 21, 2010 Meeting Minutes

Distribution:

Marsi Steirer, Interim Assistant Director
Ann Sasaki, Assistant Director Wastewater Branch
Amy Dorman, Senior Civil Engineer
Scott Huth, Chairperson, Metro-TAC
Dean Gipson, Representative, Metro-TAC
Rey Novencido, Assistant Civil Engineer

Recycled Water Study

July 21, 2010 Meeting Minutes

Metro-TAC Meeting

In addition to the meeting summary provided by the PAs, the Recycled Water Study Team (Study Team) recorded the following questions, comments, and responses that followed the formal presentation:

Question/Comment	Response
The PAs would like to have representation in the screening sessions.	Subsequent to the PA Meeting, PA representatives were invited and did attend the Coarse Screening Session
The maps (Presentation slides 14 & 15) only appear to include City of San Diego recycled water demands.	City of Chula Vista pointed out that the yellow dots on the map indicate the City's wholesale customer demands. The Study Team has captured other regional recycled water demands; these same maps appear in Technical Memorandum (TM) #2.
Padre Dam Municipal Water District (PDMWD) asked who attends the bi-monthly stakeholder meetings.	Representatives from: San Diego Coastkeeper, Surfrider Foundation, San Diego County Water Authority (SDCWA) Scott Huth, and Dean Gipson attend.
City of Chula Vista suggested that the Study Team consider options whereby Point Loma's discharges (@ <240 mgd) meet secondary standards, without necessarily upgrading the entire plant to secondary treatment.	Noted. This concept will be considered in the Study and discussed with all stakeholders.
City of Del Mar raised a concern as to whether or not the SDCWA would allow IPR water to be put into the San Vicente Reservoir. This is a concern given that San Vicente will be able to provide flows to the SDCWA Aqueduct following the completion of their pipeline and pump station projects. Questions were also raised about the pump storage project and short circuiting of IPR flows.	<p>SDCWA participates in the bi-monthly stakeholder meetings. Toby Roy attends on their behalf, and her background from years working for the California Department of Public Health (CADPH) provides some regulatory insight to the rest of the group.</p> <p>As part of the City of San Diego's Water Purification Demonstration Project (formerly known as the "IPR Demonstration Project"), the City will outreach to SDCWA's Board and managers.</p> <p>Regarding short circuiting, the City is evaluating how IPR water would move through San Vicente Reservoir. Currently, the IPR water would not be connected directly to the aqueduct to meet expected regulatory retention time requirements.</p>

Question/Comment	Response
What is the decision flow shown on the decision trees? (Presentation Slides 32 & 38)	The top of the tree is our base and is set. For example, in South Bay our base is comprised of the City of San Diego's anticipated 2015 demands, and Otay Water District's demands per their existing agreement with the City. These base demands must be met before proceeding to options shown on the lower levels of the tree.
Otay Water District (OWD) asked if the PAs' capacities would increase as a result of implementing the Study's recommendations.	The Study's objective is to offset flows to Point Loma. Therefore, that is where the Study will end; no PA capacity increases will be considered, as they will cancel out the offsets.
OWD stated that they are holding off on \$30M worth of recycled water infrastructure projects due to insufficient supply from the South Bay Water Reclamation Plant (SBWRP).	We understand the supply issues relate to not having enough wastewater to convert to recycled water and meet OWD's peak summertime demands (due to the seasonal nature of recycled water systems). To address this either seasonal storage or a new diversion is needed (to divert and increase wastewater flows to South Bay). The City recommends a meeting between the City and OWD to discuss how any improvements will be financed, since the City's opinion is that the contracted peak capacity of 6 mgd can be fulfilled to OWD under existing conditions.
OWD asked how the summer IPR flows might affect the summer NPR supply.	Seasonal demand peaks are taken into account when evaluating available supply versus demand. The non-potable demands were peaked based on historical peak month factors. IPR flows varied based on seasonal non-potable flows. This does not address the interim peak flow issue (see above).
PDMWD asked how the fact that there are no regulations for the reservoir IPR options is this being taken into account.	As part of the Water Purification Demonstration Project, the City of San Diego will meet with CADPH on a regular basis. The first such meeting took place in April. The goal is to actively and continually engage CADPH in the project so that by the time the final report is released they will have all the test results and evaluations needed to establish the requirements of a full-scale project.
PDMWD mentioned that a significant amount of flow from El Cajon and Lakeside flows past their water reclamation plant and asked whether this is being considered.	Attachment A of the memorandum provided to the Study Team at this meeting depicted a regional Advanced Water Treatment Plant that would receive flows from both PDMWD and the City of San Diego's North City Water Reclamation Plant. The Study Team is preparing a formal response to the memorandum that addresses this option. This option was also discussed subsequent to this meeting in the Coarse Screening Session.
City of Coronado asked what is expected to occur after the Study is completed.	The study will be presented to the Mayor, City Council, Metro TAC and the JPA and other interested parties and stakeholders.



THE CITY OF SAN DIEGO

August 17, 2010

Mr. Scott Huth
Chairperson
Metro Technical Advisory Committee
101 B Avenue
Coronado, CA 92118

Dear Scott:

Subject: Review of Recycled Water Study Participating Agency Options Memorandum

On July 21, 2010, the Recycled Water Study team (Study Team) made a presentation to the Metro JPA TAC to summarize progress on the Recycled Water Study. This meeting was held at the City of San Diego Metropolitan Operations Center 2 (MOC2) in Kearny Mesa. The Study Team appreciates your suggestion to set up the presentation, recognizing that this type of study is complex and a more detailed presentation directly to the Participating Agencies (PAs) would be of value. Your feedback following the meeting, as well as the dialogue during the meeting, confirmed the value and the importance of the presentation.

Prior to our presentation, the Participating Agencies provided the Study Team with a white paper entitled "Recycled Water Study Participating Agency Options." The following summarizes our review and input regarding this memorandum.

Response to Section 2: Purpose and Goals

The second paragraph in the memorandum states that "To date, the City's current recycled water study technical memoranda seem focused on indirect potable reuse (IPR) and spend little time addressing other alternatives." We hope from the presentation, the question and answer session, and the information herein, that it is clear that the Study Team is evaluating and values both non-potable and indirect potable reuse.

There have been four technical memorandums for the recycled water study issued to date. Two out of these four (TM1 and TM2) deal exclusively with non-potable reuse. What follows is a summary of the potential non-potable demand provided by the water purveyors surveyed during the preparation of TM 2, along with a description of how that information is being folded into the Study. Note: the Otay Water District's demand projections were revised per the Study Team's meeting with Otay Water District Staff on June 10, 2010.



Public Utilities Department

600 B Street, Suite 600, MS 906 • San Diego, CA 92101
Tel (619) 533-7595 Fax (619) 533-5325

Summary of 2035 Average Annual Non-Potable Usage

- San Diego North – 10.9 mgd (12,210 AFY) (includes OMWD, Poway South and some additional uses) of planned non potable demands through 2015 included as a baseline demand in all North City options.
- Olivenhain Municipal Water District (Olivenhain MWD) – 1.0 mgd (1,100 AFY) included as a baseline demand through 2015 in all North City options.
- Poway South – 0.7 mgd (750 AFY) included as a baseline demand through 2015 in all North City options.
- Poway North – 1 mgd (1,100 AFY) included in a Rancho Bernardo non-potable reuse option within the San Pasqual options being developed. This also includes non-potable reuse expansion within the City in Rancho Bernardo.
- Santa Fe Irrigation District – un-quantified demand (potentially 0.6-0.8 mgd (700-900 AFY)) could be served by an incidental infill demand currently included as a baseline demand in all North City options.
- Padre Dam Municipal Water District (MWD) – 3.0 mgd included as 2035 non-potable demand that will be diverted from wastewater available in Mission Gorge (IPR totals from El Monte Valley are addressed outside these non-potable totals – see below).
- Otay Water District – 5.3 mgd (5,847 AFY) based on 2026 contract number are included as baseline demands in all South Bay options.
- Otay Water District – 1.5 mgd of potential additional non-potable demands are included in two of the three possible South Bay options. These demands were obtained from OWD as part of the June 2010 meeting and adjusted based on the level of confidence expressed in there becoming a reality. We understand these to include landscape demands through 2040 and speculative power plant and North District demands. The study approach includes reductions where demands are speculative.
- San Diego South – 1.4 mgd (1,670 AFY) are included as baseline demands in all South Bay options. These include demands for Caltrans and the International Boundary and Water Commission plant.
- Coronado – 0.4 mgd (460 AFY) identified in the questionnaire. The study has not addressed this opportunity yet since the upstream impacts (at North City and South Bay) must first be determined.

We also want to note that while indirect potable reuse does take more time to analyze and evaluate than non-potable opportunities, the total usage opportunities are much larger and less limited by seasonal issues as compared to non-potable uses. A larger quantity of average flow could be reliably diverted away from the Point Loma Wastewater Treatment Plant (PLWTP), resulting in lower upgrade costs and greater benefits to the PAs and the City. We want to reinforce that during the evaluation of IPR opportunities, we preserve the demands (as reported to the Project Team) noted in current and future plans for non-potable reuse within all areas, including within the PAs service area.

Response to Section 3: Options-North

The Study assumptions for Olivenhain MWD and Poway are addressed above. The table shown in the white paper does not include values for these two users for comparison. The questionnaires received from the PAs (which were summarized in TM 2), previous studies, and the City's ongoing dialog with these users were the basis of totals summarized above.

Regarding San Pasqual, the team is currently looking at three options for a San Pasqual plant. Both non-potable reuse service (to Rancho Bernardo and North Poway) and indirect potable reuse approaches are being examined. The Study Team will continue to evaluate these opportunities and anticipates having an update at the next stakeholder Status Update Meeting. Note: these opportunities do not offload PLWTP as the flows currently go to Escondido's Hale Avenue Resource Recovery Facility (HARRF). To divert wastewater from the PLWTP tributary area to HARRF brings up a number of concerns. These include:

- New wastewater pump stations and force mains would be needed to divert the wastewater at a substantial cost. The diversion would also reduce wastewater available to the North City Water Reclamation Plant (NCWRP), which is counterproductive to the Morena and Mission Valley concepts presented on July 21. The goal of these two concepts is to *increase* flows to North City to achieve better economy of scale.
- The ability to develop indirect potable reuse above the 3.5-mgd San Pasqual concept would need to be determined (based on basin yields, regulatory requirements, etc.).
- PS77 and the force mains to HARRF would need upgrades. The two disposal force main pipelines under Lake Hodges may not have enough disposal capacity for added flows and the City does not wish to increase flows in these pipes due to their location under the lake (in fact the City desires reducing their use if possible). This is particularly important for non-potable options that require failsafe capacity.
- Diverting and increasing indirect potable reuse in the San Pasqual area would increase the concentration of waste streams (brine, solids) to HARRF and require an evaluation of the contractual terms, and affect downstream water recycling at HARRF.
- The capacity of HARRF and the land and ocean outfalls would likely be affected, and would require costly upgrades.
- Any reuse project in the San Pasqual/Hodges area is institutionally complex and could affect the operation of several water agencies and the San Diego County Water Authority.

For these reasons, the City feels it is best to pursue the current San Pasqual projects being evaluated as opposed to new diversion concepts.

Response to Section 4: Options-East

The Padre Dam MWD non-potable demand assumptions are summarized above. Regarding indirect potable reuse, the Study Team is looking at diverting wastewater near the East Mission Gorge Pump Station in Santee, and is currently considering the following two options:

- 1) All remaining wastewater (after PDWMD non-potable uses) is treated for an indirect potable reuse project with a satellite advanced water purification facility and delivery to

the San Vicente Reservoir. This is approximately 12 MGD of purified water (after treatment losses).

- 2) All remaining wastewater (after PDWMD non-potable uses and the Helix/PDMWD El Monte Valley project) is treated for an indirect potable reuse project with a satellite advanced water purification facility and delivery to the San Vicente Reservoir. This is approximately 7 MGD with the separate El Monte Project assumed at 5 MGD.

Either method produces offsets to the PLWTP and thus benefits the City and PAs. It also maximizes the water supply potential, which also benefits the region. Regarding Attachment A in your memorandum, the Study Team is currently not evaluating the diversion of all tertiary water produced at North City and those produced at a Santee plant to a single, joint-agency advanced water purification facility in Santee including a storage reservoir. While we see some merit to this idea, it would require the City of San Diego to greatly deviate from the scope and tasks, currently underway in the Water Purification Demonstration Project (formerly known as the IPR Demonstration Project). The project objective being demonstrated includes putting 16,000 AFY into the San Vicente Reservoir; the wastewater "supply" is strictly NCWRP's existing sewer basin. Evaluations are already underway. The desired outcome is regulatory approval of the IPR project.

The PA-proposed option introduces an entirely different (and larger) sewer basin and would increase the scope of the City's research of contaminants of emerging concerns that could be in the influent of the proposed advanced water treatment plant (AWT). The Demonstration Project is funded through a special water rate increase that went into effect last year; the City must adhere to this pre-determined budget and cannot accept any scope increases at this time. In addition, based on discussions with Padre Dam, we believe their proposed concept will require reservoir siting as well as reservoir permitting. Both would require extensive time to obtain and implement (possibly beyond the 2035). The City must keep in mind that whatever alternative it recommends, it must be able to provide adequate relief to the PLWTP within the near future (10-20 years).

Response to Section 5: Options-South

We agree that wastewater diversions are the key to optimizing reuse potential in South Bay. In the presentation, and in the options being evaluated, different diversions are proposed to get additional wastewater to the South Bay Water Reclamation Plant (WRP). The Study Team has been focused on the facilities needed to meet 2035 demand. It is acknowledged that there may be interim summertime conditions where there will not be enough wastewater available to meet the demand potential. Since this relates to contractual items between the City and the Otay Water District, this issue should be addressed separately from this forum.

Regarding South Bay non-potable demands, we hope the presentation and information summarized above (in the Response to Section 2) displays that non-potable uses are included and valued. Non-potable demands for the City, Caltrans, the International Boundary and Water Commission, and the OWD are included as baseline flows for all South Bay alternatives and

additional OWD non-potable use are included in two of the three South Bay options being evaluated.

Regarding the Salt Creek diversion/non-potable project, a meeting was held with representatives from the City of San Diego, OWD and City of Chula Vista attending. The meeting was a productive exchange of information and ideas, with a commitment to meet again in November 2010 when more information is available from the City's Recycled Water Pricing Study and Recycled Water Study, and Chula Vista's water reclamation plant study. Given the City of San Diego's prior analysis on the Salt Creek diversion structure, finalizing designs should take minimal effort and implementation could begin within a reasonable time should the agencies come to agreement on terms and conditions of this alternative.

As to the City of Chula Vista plan to construct its own water reclamation plant in the South Bay, if implemented this plan would affect the sizing of South Bay opportunities and potentially affect wastewater quality for downstream reuse projects. Although the project would offset some non-potable reuse, the total PLWTP offset and non-potable reuse achieved region-wide would remain the same. The same amount of total wastewater is diverted (and offloaded from the PLWTP) and used for beneficial purposes. This benefits the City and the PAs, and meets environmental stakeholder goals of wastewater flow reductions. If the analysis being conducted by the City of Chula Vista is sufficiently complete in time for discussion in the fine screening session, it can be discussed further at that time.

Response to Section 6: Conclusions

We agree with the statement in the memo that says "To be successful, these options require the City and the PAs to work together to generate viable concepts and determine how those concepts could be funded to the maximum value of all parties." The Study has progressed along these lines and there has been constant stakeholder participation and PA representation throughout the process.

We hope the presentation highlighted the following key points:

- 1) Non-potable reuse (including use outside the City limits) is being fairly evaluated.
- 2) Developing large reuse programs is highly complex from a technical, regulatory and institutional standpoint. The Study Team attempts to manage the realm of possible opportunities into a well defined set of projects that can be evaluated and compared and meet as many of the varied goals of the stakeholder group as possible.
- 3) Indirect potable reuse opportunities are not intended to replace non-potable reuse. However, indirect potable reuse projects are an order of magnitude larger than non-potable reuse projects, and they provide the potential for greater PLWTP offsets and regional water supply benefitting the City and PAs.

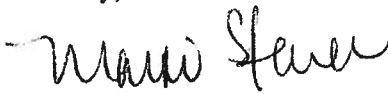
Page 6

Mr. Scott Huth

August 17, 2010

We look forward to your continued involvement in the Stakeholder meetings and your response to upcoming deliverables. Should the PA group desire an additional presentation in the near future, we would be happy to discuss the timing of that presentation.

Sincerely,

A handwritten signature in black ink, appearing to read "Marsi Steirer". The signature is fluid and cursive, with the first name "Marsi" and last name "Steirer" clearly distinguishable.

Marsi A. Steirer

Interim Assistant Director

AB/ctc

cc: James Strayer, Associate Vice President, Black & Veatch
Jennifer Thompson, Principal/Senior Project Manager, CDM
Victor Occiano, Vice President, Brown & Caldwell

Page 7

Mr. Scott Huth

August 17, 2010

bcc: Alex Ruiz, Interim Director of Public Utilities
Ann Sasaki, Assistant Director Wastewater Branch
Amy Dorman, Senior Civil Engineer
Amer Barhoumi, Associate Civil Engineer
Rey Novencido, Assistant Engineer- Civil
RMS D 3.1