

SECOND AMENDED AND RESTATED
REGIONAL WASTEWATER DISPOSAL AGREEMENT
BETWEEN
THE CITY OF SAN DIEGO
AND
THE PARTICIPATING AGENCIES
IN
THE METROPOLITAN SEWERAGE SYSTEM

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EXHIBITS

- A - Metro Facilities (Electronic Exhibit); file name: [Enter]; time stamp of file, software used to open and view file including version; attached hereto as CD-ROM/DVD-ROM
- B - Distribution of Wastewater System Capacity Rights
- C - Administrative Protocol on Allocation of Operating Reserves and Debt Service Coverage to Participating Agencies
- D - Notice Listing
- E - Methodology for contract capacity transfers
- F - Flow and Strength formulas
- G - Sample of the interest calculation
- H - Summary of billings from County Water Authority showing costs for untreated water
- I - List of Administrative Agreements
- J - Exhibit List

SECOND AMENDED AND RESTATED REGIONAL WASTEWATER DISPOSAL AGREEMENT

THIS SECOND AMENDED AND RESTATED REGIONAL WASTEWATER DISPOSAL AGREEMENT (“**Agreement**”) is made and entered into this ____ day of _____, 20____, by and between the CITY OF SAN DIEGO, a municipal corporation (“the **City**”), on the one hand; and the CITY OF CHULA VISTA, a municipal corporation; the CITY OF CORONADO, a municipal corporation; the CITY OF DEL MAR, a municipal corporation; the CITY OF EL CAJON, a municipal corporation; the CITY OF IMPERIAL BEACH, a municipal corporation; the CITY OF LA MESA, a municipal corporation; the LEMON GROVE SANITATION DISTRICT, a political subdivision of the State of California; the CITY OF NATIONAL CITY, a municipal corporation; the CITY OF POWAY, a municipal corporation; the OTAY WATER DISTRICT, a political subdivision of the State of California; the PADRE DAM MUNICIPAL WATER DISTRICT, a political subdivision of the State of California; and the SAN DIEGO COUNTY SANITATION DISTRICT, a political subdivision of the State of California (collectively, the “**Participating Agencies**”), on the other hand. The City and the Participating Agencies may be referred to herein individually as a “**Party**,” and collectively as the “**Parties**.”

RECITALS

WHEREAS, the City and the Participating Agencies (or their predecessors in interest) entered into that certain Regional Wastewater Disposal Agreement dated May 18, 1998 (the “**1998 Agreement**”), which provided, among other things, for certain contract rights to capacity in the Metropolitan Sewerage System, a system of wastewater conveyance, treatment, and disposal facilities (“**Metro System**”) and the establishment of a mechanism to fund the planning, design, construction, operation, and maintenance of the Metro System by the City and the Participating Agencies; and

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

WHEREAS, on April 29, 2014 the San Diego City Council gave its approval and support for the Pure Water San Diego program by adoption of Resolution No. R-308906. The Resolution approved and supported the City’s efforts to develop an implementation strategy to offload wastewater flow from the Point Loma Wastewater Treatment Plant through implementation of potable reuse, resulting in effluent discharged to the Pacific Ocean being equivalent to what would be achieved by upgrading the Point Loma Wastewater Treatment Plant to a secondary treatment plant (secondary equivalency); and

WHEREAS, the City is implementing a phased, multi-year program designed to achieve compliance with the Clean Water Act and regionally produce up to 83 million gallons per day of safe, reliable potable water using new, expanded, or modified facilities, some of which will include Metro System facilities, in order to achieve secondary equivalency at the Point Loma Wastewater Treatment Plant; and

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

WHEREAS, on or around November 2019, the East County Advanced Water Purification Joint Powers Authority (the "**ECAWP JPA**") was created to implement a potable reuse program to improve local and regional water supply reliability to supply advanced treated recycled water to East San Diego County through the East County Advanced Water Purification Project (the "**ECAWP Project**"). The planned ECAWP Project will capture and treat approximately 15 million gallons per day of wastewater that would otherwise be disposed of in the Metro System to produce an annual average supply of approximately 11.5 million gallons per day of new local drinking water. The ECAWP Project has the ability to aid and contribute towards the City and region's efforts to produce a regional annual average of up to 83 million gallons per day of water suitable for potable reuse by December 31, 2035, as described in the Cooperative Agreement in Support of Pure Water San Diego executed by the City and certain environmental stakeholders on December 9, 2014. The ECAWP Project includes a residuals bypass system that will convey a liquid reject stream from the advanced water purification facility, and Centrate from the solids dewatering process of the solids handling facility, to an existing regional sewage gravity pipeline owned and operated by the City for treatment and disposal; and

WHEREAS, effective on or around August 22, 2021, the City and the Participating Agencies amended the 1998 Agreement by executing an Amended and Restated Regional Wastewater Disposal Agreement (the "**ARA**") to address the costs and revenues associated with Phase 1 of the Pure Water Program and the related construction, expansion, and/or modification of Metro System facilities and Water Repurification System facilities designed to produce up to 30 million gallons per day of Repurified Water ("**Phase 1**"). The ARA provided that within one year of its effective date, the Parties intended to meet and negotiate in good faith regarding one or more amendments to the ARA or to its Exhibits to address multiple outstanding items described in Section 2.9 of the ARA; and

WHEREAS, Section 14.2 of the ARA provided that the Parties may amend the ARA by a written agreement between the City and all Participating Agencies stating the Parties' intent to amend or supplement the agreement; and

WHEREAS, in an effort to address in good faith the outstanding items described in Section 2.9 of the ARA, and comprehensively and equitably address the costs, revenues, and billing system associated with the Pure Water Program and the related construction, expansion, and/or modification of Metro System facilities beyond Phase 1, the City and Participating Agencies wish to amend and restate the ARA as provided herein.

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, the City and the Participating Agencies restate and amend the ARA and agree as follows:

1. DEFINITIONS

1.1 **Administrative Agreement** shall refer to a formal binding contract, approved under the process set forth in Section 15 of this Agreement, which implements technical, administrative, operational, and/or procedural details of this Agreement.

1.2 **Administrative Approval** is an approval mechanism authorized by this Agreement and shall refer to a City administrative process by which the subject of a particular action is presented to the City's Director of the Public Utilities Department or his or her designee for discussion, evaluation according to sound engineering standards, as applicable, and approval.

1.3 **Annual Average Daily Flow** is the number, in millions of gallons of wastewater per day ("MGD"), calculated by dividing total Flow on a fiscal year basis by the number of days in the applicable year, which is a term used for billing purposes.

1.4 **ARA** shall mean the Amended and Restated Regional Wastewater Disposal Agreement entered into between the City and the Metro Participating Agencies effective August 22, 2021.

1.5 **Capital Expense Rate** shall mean the same as the term is defined in Section 6.8.2.

1.6 **Capital Improvement Costs** means all costs of the planning, design, financing, and construction necessary to render a capital project facility fully operational. This includes costs for planning and environmental work; procurement of consultants or contractors to perform such work; construction management; investigative studies and pre-design work; labor and materials; inspection and testing; and financing cost including interest on financial instruments.

1.7 **Centrate** shall mean the liquid byproduct that results from the dewatering of digested solids as part of wastewater treatment processes.

1.8 **Chemical Oxygen Demand** or "COD" means the measure of the chemically decomposable material in wastewater, as determined by the procedures specified in the most

current edition of “Standard Methods for the Examination for Water and Wastewater,” or any successor publication which establishes the industry standard.

1.9 **City** shall mean and refer to the City of San Diego.

1.10 **City’s Water Utility** shall mean any and all facilities, properties, improvements and works at any time owned, controlled or operated by the City as part of the public utility system of the City for water purposes, for the development, obtaining, conservation, production, storage, treatment, transmission, furnishing and distribution of water and its other commodities or byproducts for public and private use (whether located within or without the City), and any related or incidental operations designated by the City as part of the Water System, including reclaimed and re-purified water.

1.11 **City Water Utility PW Costs** are those Pure Water Program costs allocated to the City’s Water Utility and therefore excluded as Metro System Costs under Section 6.3 of this Agreement.

1.12 **Contract Capacity** is the contractual right possessed by each Participating Agency to discharge wastewater into the Metro System pursuant to this Agreement up to the limits set forth in Exhibit B attached hereto. Contract Capacity is stated in terms of Monthly Average Daily Flow , Incremental Peak Flow, RSDP, COD and TSS.

1.13 **Contract Capacity Transfers** shall refer to the capacity transfers initiated based on Metered Flow and Strength data using the methodology set forth in Exhibit E that change a Participating Agency’s Contract Capacity, as set forth more fully in Section 4.4.3.1 and 4.4.3.2. These changes will generally be made to a single Participating Agency’s annual Contract Capacity to correct capacity exceedances, but can also be made to reduce a Participating Agency’s Contract Capacity.

1.14 **CWA** shall mean the San Diego County Water Authority.

1.15 **ECAWP JPA** shall mean the East County Advanced Water Purification Joint Powers Authority.

1.16 **ECAWP JPA Agencies** shall mean collectively the City of El Cajon, the Padre Dam Municipal Water District, and the San Diego County Sanitation District.

1.17 **ECAWP Project** shall mean the ECAWP JPA’s project to capture and treat wastewater that would otherwise be disposed of in the Metro System to produce an annual average supply of approximately 11.5 MGD of new local drinking water, as well as other byproducts such as recycled water and energy recovery facilities.

1.18 **Fixed Capacity** shall mean the capacities for Monthly Average Daily Flow, Incremental Peak Flow, RSDP, COD and TSS for each agency as set forth in Exhibit B.

1.19 **Fixed Capacity Charge** shall mean the charges set forth in Exhibit B that are identified as “Fixed Capacity Charges” that represent the Parties’ proportional charges for maintaining the Metro System. Items such as debt service are also included in the Fixed Capacity Charges.

1.20 **Flow** shall refer to the flow of wastewater discharged by the City and/or one or more Participating Agency/ies into the Metro System. Flow is measured through meters for billing purposes and compliance with Exhibit B.

1.21 **Functional Allocated Billing (FAB)** shall mean the method for distributing all capital, operations, and maintenance Metro System Costs and Revenues on an annual basis by grouping expenses according to their purposes and the current approved Functional-Design Methodology.

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

1.23 **Incremental Peak Flow** shall mean the Peak Flow minus the Monthly Average Daily Flow .

1.24 **“Industrial Wastewater”** means all wastewater, excluding domestic wastewater, and shall include all wastewater from any producing, manufacturing, processing, institutional, commercial, service, agricultural, or other operation. These may also include wastes of human origin similar to domestic wastewater.

1.25 **“Industrial User”** means a discharger of Industrial Wastewater to a public sewer. A Participating Agency may be an Industrial User.

1.26 **Joint Administrative Review Process** is an approval mechanism authorized by this Agreement in which an Administrative Agreement may be created, revised, supplemented, replaced or terminated subject to (1) City of San Diego’s Administrative Approval, and (2) the approval by two-thirds of the members of the Metro Commission during a duly noticed public meeting (in other words, upon the affirmative vote of no less than eight of the twelve members of the Metro Commission, irrespective of how many Metro Commissioners are present at the meeting, unless the number of Participating Agencies changes), subject to the review and objection process set forth more fully in Section 15.

1.25 **MBC Return** shall mean and refer to Centrate created at the Metropolitan Biosolids Center, 5240 Convoy St, San Diego, CA 92111. MBC Return shall contain Metered Flow, TSS and COD.

1.26 **Metered Flow** shall mean the amount or volume of wastewater captured by meters that exist throughout the Metro System, estimates from unit count areas, or estimates of flows when meters are out of service.

1.27 **Metro Commission** is the advisory body created under Section 9.

1.28 **Metro System Costs** shall mean, at a minimum, those costs set forth in Section 5.3 and as otherwise set forth in this agreement.

1.29 **Metro System Revenues** are those revenues set forth in Section 5.5.

1.30 **Metropolitan Sewerage System** or **Metro System** shall mean and consist of those facilities which are listed, shown and/or described in Exhibit A attached hereto and incorporated by this reference into this Agreement, including any amendments thereto authorized by this Agreement. Exhibit A includes current constructed facilities and proposed future facilities.

1.31 **Monthly Average Daily Flow** is the number, in MGD, calculated by dividing total Flow on a monthly basis by the number of days in that month.

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

1.33 **New Contract Capacity** shall mean capacity in excess of the Contract Capacity set forth in Exhibit B and authorized subject to Section 3.3.

1.34 **North City Water Reclamation Plant** or **NCWRP** is the wastewater treatment facility located at 4949 Eastgate Mall in San Diego, which includes four major processes: primary treatment, secondary treatment, tertiary treatment, and disinfection.

1.35 **Operation and Maintenance Costs** are the costs to operate, maintain, manage, repair, and keep the Metro System conveyance, disposal, treatment, and reuse facilities functioning in accordance with all applicable laws, rules, and regulations.

1.36 **Participating Agencies** shall mean all of the local governments and agencies that executed this Agreement other than the City.

1.37 **Peak Flow** represents the wastewater flow in millions of gallons of wastewater per day that is captured in the highest 1-hour period in a fiscal year.

1.38 **PW Phase 1** shall mean the first phase of the Pure Water Program, which modifies/constructs Metro System and Water Repurification System facilities and is designed to produce an annual average of 30 million gallons per day of Repurified Water.

1.39 **Point Loma Wastewater Treatment Plant** or **PLWTP** is the main City wastewater treatment plant with an Monthly Average Daily Flow capacity of 240 million gallons per day and a peak flow capacity of 432 million gallons per day (as of the date of this

Agreement). It is an advanced primary treatment plant which includes four major processes: screening, grit removal, chemically enhanced sedimentation, and digestion.

1.40 **Postage Stamp Methodology** is a methodology that can allocate a single uniform cost to any of the annual Contract Capacity cost parameters identified in Exhibit B. This methodology assumes that even though a particular discharger may not utilize all of the infrastructure, all dischargers into the Metro System benefit from the shared infrastructure.

1.41 **Projected 2050 Strength and Flow Amounts** are the five (5) values described below:

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

1.41.2 **Projected 2050 Incremental Peak Flow** is the estimated amount of Annual Incremental Peak Flow, stated in millions of gallons per day (MGD), that the City and each Participating Agency are projected to have in the 2050 fiscal year. Projected Incremental Peak Metro Flow 2050 for each Party is stated in Column ___ of Exhibit B.

1.41.3 **Projected 2050 RSDP Flow** is the estimated amount of RSDP Flow, stated in millions of gallons per day (MGD), that the City and each Participating Agency are projected to have in the 2050 fiscal year. Projected RSDP Flow 2050 for each Party is stated in Column ___ of Exhibit B.

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

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

1.42 **Pure Water Program (PWP)** is the City's phased, multi-year program designed to produce up to 83 million gallons per day of Repurified Water using new, expanded, or modified facilities, some of which will include Metro System facilities.

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

1.44 **Reject Stream from Demineralization Process (RSDP)** is a liquid reject stream from a demineralization process at a potable reuse facility. Separately conveyed, it bypasses all secondary wastewater treatment processes.

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

1.46 **Repurified Water Revenue** is the cost savings that will be realized when the City's Water Utility's annual costs per-acre foot for Repurified Water, including City Water Utility PW Costs, are less than the purchase costs per-acre foot for comparable water from the San Diego County Water Authority, as further described in Section 6.

1.47 **Residuals** shall mean RSDP and Centrate. In the future, Residuals may include other waste byproducts if the Parties agree in writing that other byproducts may be discharged into the Metro System.

1.48 **South Bay Ocean Outfall (SBOO)** is the facility that is jointly owned by the International Boundary & Water Commission (U.S. Section IBWC) and the City. The outfall conveys and discharges treated effluent from the IBWC's International Wastewater Treatment Plant and treated effluent from the City's South Bay Water Reclamation Plant. As of the date of this Agreement, the outfall has a current Average Daily Flow Capacity of 174 million gallons per day. As of the date of this Agreement, the City owns 39.94% of the capacity of the outfall and the balance of the capacity is owned by the IBWC.

1.49 **South Bay Water Reclamation Plant or SBWRP** is the wastewater treatment facility located at 2411 Dairy Mart Road in San Diego, which includes four major processes: primary treatment, secondary treatment, tertiary treatment, and disinfection.

1.50 **Strength** means the measurement of Total Suspended Solids and Chemical Oxygen Demand within the Flow and any other measurement required by law after the date of this Agreement.

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

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

1.53 **Two-Party Approval** is an approval mechanism under this Agreement that requires the City's Administrative Approval and a two-thirds (2/3) vote or greater of the Metro Commissioners present at a duly noticed Metro Commission public meeting. For clarification,

the two-thirds vote requirement for Two-Party Approval depends on the number of Metro Commissioners present at the meeting, whereas approval under Joint Administrative Review requires the affirmative vote of no less than two-thirds of the total Metro Commissioners, irrespective of how many are present. If eight Metro Commissioners are present at a meeting, six votes would be sufficient for Two-Party Approval, but not for Joint Administrative Review assuming a 12-member Metro Commission.

1.54 **Variable Costs** shall refer to the portion of the Functional Design Methodology costs that are allocated based on Metered Flow and Strength.

1.55 **Water Repurification System** shall mean any facilities, including treatment and conveyance facilities, the purpose of which is the production or conveyance of Repurified Water. Water Repurification System includes, but is not limited to: the Tertiary Component of the North City Water Reclamation Plant to the extent being used to produce Repurified Water, the North City Pure Water Facility; the Repurified Water conveyance system, which will transport Repurified Water from the North City Pure Water Facility and/or other facilities to the Miramar Reservoir or other alternative location(s) as determined by the City; and any other Repurified Water treatment or conveyance facilities which are part of the Pure Water Program. These facilities are constructed and maintained at the expense of the City water utility and are excluded Metro System Costs under this Agreement.

2. OWNERSHIP AND OPERATION OF THE METRO SYSTEM

2.1 Rights of the Parties. The City is the owner of the Metro System, and any additions to the Metro System or other facilities constructed pursuant to this Agreement. As more particularly set forth in this Agreement, and subject to the terms and conditions of this Agreement, the rights of the Parties generally include the following:

2.1.1 All decisions with respect to the planning, design, construction, operation and maintenance of the Metro System shall rest with the City, in consultation with the Metro Commission.

2.1.2 The Participating Agencies shall have a contractual right to use the Metro System and to participate in its operation.

2.1.3 The City may transfer ownership of all or part of the Metro System at any time. In the event of a transfer, the City's successor shall be bound by the terms of this Agreement.

2.1.4 Any Participating Agency may transfer or assign its rights and obligations under this Agreement. Any transfer shall first be approved by the City. No transfer may occur if the City reasonably determines, after consultation with the Participating Agencies involved, that the proposed transfer will imbalance or adversely impact the City's ability to operate the Metro System.

2.2 Metro System Services.

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

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

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

2.3 Flow Commitment.

2.3.1 Subject to the provisions of this Agreement and absent a separate agreement of the Parties, all Flow within the capacity limits set forth in Exhibit B or any amendments or changes thereto shall remain in the Metro System.

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

2.3.3 Any Participating Agency may negotiate an agreement with the City to reduce all or part of their Contract Capacity. If a Participating Agency reduces its Contract Capacity to zero, that Participating Agency's rights shall terminate under this Agreement and that Participating Agency shall no longer be considered a member of the Metro Commission. However, the agreement between the City and Participating Agency shall provide that the Participating Agency pay its proportionate share of Capital Improvement Costs for the remainder of the useful life of the facility(ies) constructed during the time the Participating Agency possessed Contract Capacity in the Metro System. This shall include, but is not limited to, any remaining portions of outstanding debt that was incurred for capital facilities during the time the Participating Agency had the right to send Flow into the Metro System.

2.4 Funding Obligations. The City shall fund the acquisition, construction, maintenance and/or operation of the Metro System from monies in (or sewer revenues which populate) the Sewer Revenue Fund for the Metro System, and/or from construction funds derived from the sale of duly authorized sewer revenue bonds for the Metro System. Nothing in this Section or Agreement shall (i) obligate the City to make any payment for the acquisition, construction, maintenance or operation of the Metro System from monies derived from taxes or any other income or revenue of the City; (ii) be construed to obligate the City or any Participating Agency to pay from its annual income and revenues any sum which would create an indebtedness, obligation or liability within the meaning of the provisions of Section 18 of Article XVI of the Constitution of the State of California and, in the City's case, San Diego Charter Section 99; or (iii) prevent the City, in its discretion, from using tax revenues or any other available revenues or funds of the City for any purpose for which the City is empowered to expend moneys under this

Agreement. For the avoidance of doubt, subsections (i) and (ii) shall not relieve the City from its obligations to fund the Metro System as provided in this Section 2.4.

2.5 Limitations on Types and Condition of Wastewater.

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

2.5.2 Each Participating Agency will ensure that all Industrial Users of its wastewater system are regulated by the City's industrial pretreatment program. City shall not require the Participating Agencies to take any actions against such Industrial Users beyond that which are (1) required under applicable laws, rules and regulations, (2) taken by the City, or (3) that can be taken, but are not being taken by the City.

2.5.3 City and the Participating Agencies agree that the Interjurisdictional Pretreatment Agreements executed by and between the City and each Participating Agency, as applicable, shall terminate effective upon the date of this Agreement. However, the separate transportation agreements that are currently in effect between or among the City and the Participating Agencies shall remain in effect in accordance with their terms. Each Participating Agency will not discharge wastewater originating outside its respective boundaries into the Metro System without the approval of the City, which shall not be unreasonably withheld.

2.5.4 Each Participating Agency shall be responsible for the violation of any applicable laws, rules or regulations associated with its respective discharge of wastewater into the Metro System. Nothing in this Agreement shall affect or prohibit the ability of any Participating Agency to hold third parties responsible for such violations. However, City shall be responsible for enforcement actions related to the violation of any applicable laws, rules, or regulations associated with industrial waste dischargers regulated by City, though each Participating Agency shall collaborate with City when necessary on any enforcement response for pretreatment violations within a Participating Agency's jurisdiction. However, the City shall not be responsible for enforcement or monitoring related to a Participating Agency's compliance with its own NPDES Permit.

2.5.5 In the event a regulatory agency, imposes any penalty or fine, or takes other enforcement action, or a private citizen brings a citizen enforcement action to enforce regulatory requirements, (collectively, "Enforcement Actions") relating to the conveyance, treatment, or disposal of wastewater in or from the Metro System or operation of the Metro System, the City shall determine as part of its investigation and response to the notice of violation whether the City or a Participating Agency or Agencies caused or contributed to the violation for reasons which may include, without limitation, exceeding their Contract Capacity, the contents of their wastewater, or the failure to maintain or operate the Metro System or a Participating Agency's system. Any costs associated with an Enforcement Action including but not limited to fines, penalties, corrective measures, and costs of defense (collectively, "Penalty(ies)") shall be shared by the Participating Agencies and the City proportionately based on Fixed Capacity as set forth in the then current Exhibit B, unless the City determines that the violation for which the Penalty is

imposed was caused by, or was the result of, gross negligence or willful misconduct of the City or a Participating Agency.

For any Enforcement Actions (1) related to sanitary sewer overflows of 10,000,000 gallons or more from the Metro System occurring after the effective date of this Agreement, or (2) that the City reasonably anticipates will result in the Participating Agencies' collective responsibility for the Penalties imposed to exceed 10% of the Metro Participating Agencies combined annual operations and maintenance budget for the fiscal year in which the Penalty is imposed ("Threshold Amount"), the City's determination will be subject to review by the Metro Commission as set forth in 2.5.5(a) through (f) below. The scope of the Metro Commission's review shall be limited to whether the violation for which the Penalty is imposed was caused by, or was the result of, gross negligence or willful misconduct of the City or a Participating Agency, and if so, how the Penalty should be fairly allocated. For all other Enforcement Actions, the City's determination related to the allocation of Penalty shall be final.

- a. The City will provide a copy of any report submitted to a regulatory agency in response to an Enforcement Action to the Metro JPA within 30 days of submitting that report to the regulatory agency. The City will also provide a summary of the City's findings regarding causation and preliminary determination regarding the allocation of any Penalties. If these determinations have not been made, the City will provide an anticipated date that the information will be provided.
- b. If the Metro Commission disputes the City's determination as to the allocation, as evidenced by a vote approved by two-thirds of the Metro Commissioners, it shall notify the City in writing of the same within 90 days of receiving the City's preliminary allocation determination.
- c. The City and representatives of the Metro JPA shall meet and confer to discuss the matter and try to reach an agreement on the appropriate allocation. To facilitate resolution, the meet and confer process shall be treated as a settlement discussion under the California Evidence Code and shall be a confidential process. The meet and confer process shall focus on whether the violation for which the Penalties are being imposed is the result, in whole or in part, of the gross negligence or willful misconduct of the City or a Participating Agency, and if so, how the Penalties shall be allocated.
- d. If through the meet and confer process, the City determines that the Participating Agencies' collective responsibility for the Penalties imposed will be less than the Threshold Amount, then the City will inform the Metro Commission of this determination and allocate the Penalty as such, and no further action by the Metro Commission is required. The City's determination related to the allocation of Penalty shall be final.
- e. If through the meet and confer process, the City and representatives of the Metro JPA reach an agreement, and the Participating Agencies' collective responsibility for the Penalties imposed will be equal to or greater than the Threshold Amount,

then that agreement shall be subject to the Two-Party Approval process. The City and representatives of the Metro JPA shall have an opportunity to present the proposed agreement to the Metro Commission before a vote on the determination.

- f. If the City and representatives of the Metro JPA are unable to reach an agreement and Participating Agencies' collective responsibility for the Penalties imposed is equal to or exceeds the Threshold Amount, the City will make a final determination regarding allocation of the Penalty and present the determination to the Metro Commission.
- g. In the event that Two Party Approval is required and the City and the Metro Commission cannot agree upon an appropriate allocation, each Participating Agency shall pay the portion of the Penalty allocated to them at the time that it is invoiced, however, such payment may be made under protest. The Parties shall engage in the dispute resolution procedures under this Agreement to resolve the issue, prior to any Party having the right to initiate litigation.

2.5.6

2.5.7 Food establishments and dischargers of fats, oils, and grease (FOG) are regulated and monitored by individual Participating Agencies within their jurisdiction. Participating Agencies are responsible for the provision of FOG programs, services, and enforcement within their jurisdiction. The City will not provide FOG-related services or programs outside of the City's jurisdiction.

2.6 Right of First Refusal.

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

2.6.2 The City and the Participating Agencies recognize that transfer of ownership of the Metro System is currently restricted by Sections 6.04 and 6.20 of the Installment Purchase Agreement between the City and the Public Facilities Financing Authority of the City, which inter alia restricts the transfer of ownership to the Metropolitan Wastewater Sewage District or other governmental agency whose primary purpose is to provide wastewater treatment. The City shall not seek to impose on bond holders a waiver of Section 6.04 or 6.20. Absent such a restriction, before the City sells or agrees to sell the Metro System, or any portion of it, the City shall offer to sell the Metro System to the Participating Agencies (the "Offer") on the terms and at a price equal to that proposed for the sale of the Metro System to a third party. The City shall provide all Participating Agencies written notice of the Offer by certified mail, return receipt requested or by a national courier service with delivery tracking. The Participating Agencies shall have thirty-five (35) days from the date of mailing of the Offer (the "Intent to Respond Period") in which to notify the City of their intent to respond to the Offer. If a Participating Agency or Agencies notify the

City of their intent to respond to the Offer, that Participating Agency or those Agencies shall have five months from the expiration of the Intent to Respond Period in which to accept or reject the Offer. The Offer shall contain the name of the proposed purchaser, the proposed sale price, the terms of payment, the required deposit, the time and place for the close of escrow, and any other material terms and conditions on which the sale is to be consummated. If no Participating Agency or Agencies notifies the City of its (or their) intent to respond to the Offer within the Intent to Respond Period, the City may move forward with the sale of the Metro System without further notice to the Participating Agency in accordance with Section 2.6.3 below.

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

2.6.4 Nothing herein shall prevent the City from entering into a financing agreement which may impose limits on the City's power to sell the Metro System to the Participating Agencies pursuant to Section 2.6.1 if the City reasonably believes that such a financing agreement is in the City's best interest. Neither the entry into such a financing agreement by the City nor the performance thereof by the City shall constitute a breach or default by the City hereunder.

2.7 Uniform Enforcement of Pretreatment Program by City. The Parties have determined that it is in their best interests for a single agency to be responsible for management of the pretreatment program for the Metro System in order to: (a) Ensure protection of the entire Metro System, including the successful operation of the Pure Water Program; (b) Provide consistent and uniform regulation of Industrial Users, including those subject to pretreatment requirements; (c) Provide for transparent and fair cost recovery from all dischargers; and (d) Promote efficiency and accountability in the administration of the Metro System. For these reasons, the Parties are delegating pretreatment responsibilities to the City, except regulation of Food Establishments and FOG dischargers, as set forth more fully in this Agreement and in "Administrative Agreement #1, Between City of San Diego and Participating Agencies in the Metropolitan Sewerage System for Unified Management of Industrial Waste Discharge Pretreatment and Enhanced Source Control Programs" ("**Administrative Agreement #1**").

2.7.1 Delegation of Authority. Each Participating Agency shall and hereby does delegate to City full authority and responsibility to operate, manage, and enforce an effective pretreatment program throughout the Metro System to ensure that all Industrial Users are subject to uniform rules and regulations, with direct billing to Industrial Users by the City to begin on the first July 1 following execution of this Agreement.

2.7.2 Operations and Maintenance. Procedures relating to the operation, management, enforcement, and cost recovery for the pretreatment program are set forth in Administrative Agreement #1.

2.7.3 Amending Pretreatment Program Procedures. Administrative Agreement #1 may be amended from time to time as set forth in Section 15. In the event of any conflict between this Agreement and Administrative Agreement #1, the terms of this Agreement shall control.

2.7.4 Adoption of Local Ordinances. By no later than June 30 following the Effective Date of this Agreement, every Participating Agency shall adopt a local ordinance conforming with the sample ordinance contained in Administrative Agreement #1 and the City's pretreatment ordinance, each as amended from time to time, to ensure consistency throughout the Metro System.

2.7.5 Identification of New Industrial Users. Participating Agencies shall notify City of any identified potential new Industrial Users within their respective boundaries while the City will bear responsibility for inventory assessments on a regular basis as set forth in Administrative Agreement #1. Each Participating Agency shall create and maintain a reporting procedure that includes a monthly report acceptable to the City identifying potential new Industrial User, including name of business, business address, type of business, and contact information. Each Participating Agency shall provide notice and a blank copy of the City's Industrial Wastewater Control Program Permit application to each identified potential new industrial user. Thereafter, it shall be the responsibility of the City and the potential new industrial user to coordinate regarding potential permitting and compliance.

2.7.6 Permit Compliance. Nothing in this Agreement shall be construed to relieve any discharger to the Metro System of the responsibility to obtain and comply with any required permits for, and to comply with rules and regulations applicable to, dischargers to the Metro System.

2.7.7 Inventory of Industrial Users. City shall create and maintain an inventory of all Industrial User within the Metro System as soon as reasonably practicable following execution of this Agreement. The Participating Agencies shall review the inventory, and shall notify the City of an Industrial Users in its jurisdiction that are not identified on the inventory.

2.7.8 Evaluation, Monitoring, Enforcement and Program Review. Upon the effective date of this Agreement it shall be the City's right and obligation to carry out pretreatment evaluation, permitting, monitoring and/or enforcement throughout the Metro System consistent with the procedures set forth in Administrative Agreement #1. The City's pretreatment program review shall occur as necessary, but no less than once every five (5) years. Nothing herein shall be construed as prohibiting any Participating Agency from enforcement of its own pretreatment ordinance within its jurisdiction.

2.7.9 City's Direct Billing of Industrial Users. The City shall directly bill Industrial User throughout the Metro System to recover costs associated with the pretreatment program as set forth in Administrative Agreement #1. The City Council shall set and approve such

costs in a publicly noticed meeting pursuant to the procedures set forth in Administrative Agreement #1.

2.8 Wastewater Generated at Military Bases. The City may contract directly with federal military bases that are connected to the Metro System for wastewater services and capacity subject to the terms of this Section 2.8. If a United States military base is located within a Participating Agency's jurisdiction, the Participating Agency may request that the City bill that military base directly as a separate and distinct customer. In the event the City agrees to accept the military's wastewater and bill the military base as a separate and distinct customer, then (1) the Participating Agency shall have no billing obligations with respect to the military base; (2) each Participating Agency whose sewage line conveys the military base's wastewater reserves the right to negotiate and charge the federal government a conveyance or transportation fee for use of that Participating Agency's sewer line; (3) the City shall require that the military base comply with the applicable City pretreatment rules; and (4) the City agrees that the wastewater generated by the military base shall not be considered wastewater of the Participating Agency with respect to capacity once the City enters into an agreement with the military base. Any transfers of capacity that are appropriate or necessary to accommodate flow from military bases, if needed, would be governed by Section 3.2 herein, "Transfer of Contract Capacity."

3. CAPACITY RIGHTS

3.1 Contract Capacity. Each Participating Agency shall have the contractual right to discharge wastewater to the Metro System up to the limits set forth in Exhibit B ("**Contract Capacity**"). Each Party's Projected 2050 Strength and Flow Amounts as stated in Exhibit B, is used for the purpose of allocating the Metro System's Pure Water Program Capital Improvement Costs, Repurified Water Revenue, and the Capital Expense Rate under this Agreement.

3.2 Transfer of Contract Capacity. The Participating Agencies and the City may buy, transfer, sell or exchange all or part of their Contract Capacity among themselves on such terms as they may agree upon. All Parties to this Agreement must receive notice prior to any final transaction regarding Contract Capacity. All proposed purchases, transfers, sales or exchanges of Contract Capacity require the City's Administrative Approval prior to becoming effective. No Contract Capacity may be transferred if the City determines, after consultation with the Participating Agencies involved in the transaction, that said transfer will imbalance, or will otherwise adversely impact the City's ability to operate the Metro System. Provided, however, that the Participating Agency seeking the transfer may offer to cure such imbalance at its own expense. If the Participating Agency makes such an offer, the City may not unreasonably withhold Administrative Approval. Following the City's Administrative Approval If the City approves the offer, the City shall adjust the Contract Capacity set forth in Exhibit B to reflect the approved changes. If necessary, Projected 2050 Metro Flow set forth in Exhibit B shall also be adjusted to reflect approved transfers pursuant to Section 3.6.

3.3 New Contract Capacity. The Parties recognize that the Metro System may be modified to create capacity in the Metro System beyond that set forth in Exhibit B as a result of the construction of additional facilities, increased flows, or as required by regulatory action. If capacity in excess of the Contract Capacity ("**New Contract Capacity**") is required or requested by a Party, the Parties shall negotiate in good faith to provide the needed or requested capacity. If

the Parties agree to provide New Contract Capacity, they shall memorialize the agreement for New Contract Capacity in an Administrative Agreement subject to the Joint Administrative Review Process set forth in Section 15. If the parties execute an Administrative Agreement for New Contract Capacity, Exhibit B shall also be adjusted pursuant to Section 3.6 to reflect the New Contract Capacity.

3.4 Reductions in Metro System Capacity. The Parties further recognize that Metro System Capacity may be reduced to comply with, or in response to, applicable permit conditions, or related regulatory action, or sound engineering principles. In the event that the capacity of the Metro System is re-rated to levels below the numbers reflected in the Totals Line set forth in Exhibit B, columns 1, 2, 3, 5, and 6, then the Projected 2050 Strength and Flow Amounts shall be reallocated proportionately among the Parties based on the percentages of fixed ownership set forth in Exhibit B at that point in time, subject to the City's Administrative Approval.

3.5 Restrictions on Veto of Transfers and Acquisitions of Capacity. Each Party understands and agrees that no Participating Agency has a right to veto or prevent the transfer of capacity between other Participating Agencies or the City, nor the creation or acquisition of new capacity for another Participating Agency or Agencies. By signing this Agreement, each Participating Agency is expressly preapproving such actions. The sole right of a Participating Agency to object to any of the foregoing shall be through expression of its opinion to the Metro Commission and, where applicable, through exercise of its rights under the dispute resolution provisions of this Agreement.

3.6 Amendments to Exhibits B. The City shall prepare amendments to Exhibit B to reflect any adjustment in Contract Capacity pursuant to actions permitted by this Section by no later than sixty (60) days after the City's Administrative Approval of the adjustment, as applicable. Within ten (10) days of preparing the amended Exhibit B, the City shall give notice of the amendments to each Participating Agency, along with copies of the amendments with the notice. The City shall reflect each amendment in the Exhibit List and shall keep an updated version of Exhibit B on file with the City Public Utilities Department at all times. An amendment to Exhibit B shall not be retroactive, except as provided in Section 4.4.3.3.

3.7 The South Bay Ocean Outfall. Nothing in this Agreement shall limit the City's right to transfer capacity service rights in assets that are not a part of the Metro System, including without limitation that portion of the South Bay Ocean Outfall which is not part of the Metro System.

4. FINANCE, BUDGETING, AND ACCOUNTING: PAYMENT AND MONITORING PROVISIONS

4.1 Payment for Metro System Facilities. Through the system of charges set forth in Section 5 of this Agreement, each Participating Agency shall pay its share of the costs of planning, design and construction of all of the Metro System facilities which are identified in Exhibit A hereto, which is incorporated herein by reference.

4.2 Payment for Additional Metro System Facilities. Through the system of charges set forth in Section 5 of this Agreement, each Participating Agency shall pay its share of the costs of

acquisition, planning, design and construction of such facilities, in addition to those set forth on Exhibit A, as are necessary to (a) convey, treat, dispose, and reuse wastewater in the Metro System; (b) provide the Contract Capacity set forth in Exhibit B; and (c) maintain hydraulic capacity as otherwise required by sound engineering principles. Each Participating Agency shall pay its share of the costs necessary to ensure the Metro System maintains compliance with applicable laws, rules and regulations, including the Ocean Pollution Reduction Act of 1994 and its successor(s), as well as present and future waivers of applicable treatment standards at any Metro System treatment facility. Exhibit A may be amended to reflect replaced or rehabilitated facilities, or changes in facilities, subject to the City's Administrative Approval; however, if the City proposes to add a new Metro facility to Exhibit A, or convert a City facility to a Metro facility that will be added to Exhibit A, then each such amendment shall be (1) subject to the City's Administrative Approval when the addition or conversion is for the purpose of complying with applicable laws, rules, or regulations; or (2) supported by an independent third-party study setting forth the benefits to the Metro System of each new facility, including a cost allocation for capital and projected annual maintenance costs if the addition or conversion is for any other purpose. For any new Metro facility or conversion of a City facility to a Metro facility proposed to be added or converted under (2) above, any such proposal must be memorialized in an Administrative Agreement subject to the Joint Administrative Review Process set forth in Section 15. Once approved, the City shall amend Exhibit A accordingly and shall give notice of any amendments to all Participating Agencies. The City shall keep an updated version of Exhibit A on file with the City Public Utilities Department. Exhibit A may be amended to reflect other changes to the Metro System only as expressly provided in this Agreement.

4.3 Payment for Operation and Maintenance. Through the system of charges set forth in Section 5 of this Agreement, each Participating Agency shall pay its share of the Operation and Maintenance Costs of all Metro System facilities. The Participating Agencies shall not pay for the Operation and Maintenance Costs of the Water Repurification System, which are City Water Utility PW Costs.

4.4 Charges Based on Flow, Strength and Fixed Capacity: Exception.

4.4.1 Except as otherwise described in this Section 4.4, a Participating Agency's share of the charges in this Section 4 shall be based on its proportionate Flow, Strength, and Fixed Capacities as set forth in Exhibit B, as described more fully in Section 5.

4.4.2 Notwithstanding Section 4.4.1, or any other provision of this Agreement, a Participating Agency's share of Pure Water Program Capital Improvement Costs, Repurified Water Revenue, and Capital Expense Rate attributable to the Metro System as described in Section 6.8 shall be assessed or credited based on the Parties' proportionate share of the Fixed Capacities set forth in Exhibit B. The City shall annually allocate the estimated and actual Pure Water Program Capital Improvement Costs and revenues which are attributable to the Metro System in proportion to each Party's Fixed Capacities as set forth in Exhibit B when estimating quarterly payments and conducting year-end adjustments.

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

4.4.3.1 Contract Capacity Transfers – Increases in Fixed Capacity Components. Beginning in the next fiscal year after the effective date of this Agreement, if a Party's Monthly Average Daily Flow , annual average pounds per day of COD, annual average pounds per day of TSS, Incremental Peak Flow, or RSDP, exceed past any one of its Projected 2050 Strength and Flow Amounts, which are set forth in Exhibit B, by any one of the following triggers: (1) Three percent (3%) in a fiscal year for any two consecutive fiscal years, (2) One MGD in a fiscal year for any two consecutive fiscal years, or (3) The equivalent Strength of one MGD in a fiscal year for any two consecutive fiscal years; then, the City shall prepare an amendment to Exhibit B that reflects an Contract Capacity Transfer for that Party based on the available information about such Party's exceedance(s) and the guidelines set forth in Exhibit E [methodology for contract capacity transfers]. The City shall thereafter amend Exhibit B under the process set forth in Section 3.6 to reflect the new Projected 2050 Strength and Flow Amounts for all Parties. Any changes to the guidelines in Exhibit E shall be made pursuant to the Joint Administrative Review Process described in Section 15.

4.4.3.2 Contract Capacity Transfers – Decreases in Fixed Capacity Components. Beginning in the next fiscal year after the effective date of this Agreement, if a Party can show through an independent report that its Monthly Average Daily Flow , annual average pounds per day of COD, annual average pounds per day of TSS, Incremental Peak Flow, or RSDP is projected to decrease ten percent (10%) or more below their Projected 2050 Strength and Flow Amounts using data from a minimum of three (3) consecutive prior fiscal years as support, then City shall prepare a proposed amendment to Exhibit B that reflects the new Projected 2050 Strength and Flow Amounts for all Parties based on such Party's decrease and other relevant information using sound engineering principles and the guidelines set forth in Exhibit E [methodology for contract capacity transfers]. The City's proposed amendment shall be subject to the Two-Party Approval Process. If approved, the City shall thereafter amend Exhibit B using the process set forth in Section 3.6

4.4.3.3 If Exhibit B is amended to update one or more Parties' Projected 2050 Strength and Flow Amounts pursuant to Section 4.4.3.1 or 4.4.3.2, the change in Projected 2050 Strength and Flow Amounts shall be effective retroactively to the beginning of that fiscal year, and the City shall use the updated amounts in estimating quarterly payments and conducting year-end adjustments for Pure Water Program costs and revenues. Therefore, any Party that underpaid based on prior Exhibit B Fixed Capacity amounts (which were based on prior Projected 2050 Strength and Flow Amounts) shall pay the retroactive amount due in quarterly installments in its quarterly payments the following fiscal year; any Party that overpaid based on previous Exhibit B Fixed Capacity amounts shall receive a credit in quarterly installments in its quarterly payments the following fiscal year. Notwithstanding the preceding sentence, if the retroactive amount due exceeds 20% of a Party's average annual Metro System payments for the previous four (4) fiscal years, such Party may elect to pay the retroactive amount due in its quarterly payments over the subsequent four (4) fiscal years, with interest, based on the most recent quarterly earnings rate of the City's Treasurer's Pooled Rate of Return; any Party that overpaid in an amount that exceeds 20% of their annual average Metro System payments for the previous four (4) fiscal years based shall receive a credit in its quarterly payments spread over the following four (4) fiscal years.

4.5 Monitoring Flow and Strength.

4.5.1 The City shall monitor Flow and Strength. The City shall own and operate as part of the Metro System monitoring devices which will measure the amount of Flow discharged into the Metro System. These devices shall be installed at locations appropriate to accurately monitor Flow and Strength. The City may also monitor Flow and Strength at other locations as it deems appropriate. For all currently unmetered areas, unit counts shall be used. For adding or subtracting unit count areas, the average current Metro Flow per unit shall be used consistently for all Metro Participating Agencies. These unmetered unit counts will be updated at least once every five (5) years. If the flow in an unmetered area is over 0.5 MGD at a specific connection point, then a meter shall be added for that area, if possible. Exhibit F provides the Flow and Strength formulas that shall be used to determine the payment obligation for each Party, or a grouping or subgrouping of Parties, as applicable. Exhibit F shall be distributed to all Parties with the budget estimates that are sent annually pursuant to Section 5.7.1. The City shall provide all Participating Agencies with access to the data from the Flow metering devices. Changes to Exhibit F may be made upon the City's Administrative Approval.

4.5.2 In measuring Strength, the frequency and nature of the monitoring shall not be more stringent for the Participating Agencies than it is for the City. The frequency, nature, and locations of Strength measurements, as well as the procedures used to determine Strength, shall be reviewed at least once every five (5) years and if changes are appropriate or required, the City may change the Strength measurements subject to the Two-Party Approval process.

4.5.3 The City shall report Strength data to the Participating Agencies at least quarterly.

4.5.4 The City shall notify the Metro Commission's Executive Director and any directly affected Participating Agency within 24 hours of any unpermitted or unlawful discharge or release of effluent from the Metro System which may be reportable to the Regional Board, or any other regulatory agency, and which may result in civil or criminal penalties or administrative enforcement proceedings pursuant to Water Code sections 13261, et seq., section 13300, et seq., Government Code section 54740 et seq., or other provisions of law. Upon request from the Metro Commission or a Participating Agency, City shall provide the Metro Commission or affected Participating Agencies with copies of all non-privileged related correspondence to and from the Regional Board. The City shall endeavor to confer with Metro Commission staff during the report preparation process and before any report is submitted to a regulatory or enforcement agency.

5. FINANCE, BUDGETING, AND ACCOUNTING: SYSTEM OF CHARGES

5.1 Charges Authorized. The City agrees to implement and the Participating Agencies agree to abide by a system of charges called Functional Allocated Billing (**FAB**). This system allows the City to equitably recover from all Participating Agencies their proportional share of the net Metro System Costs through the imposition of the following system of charges:

5.2 Functional Allocated Billing (FAB). The City shall annually determine the FAB rate based on the projected Metro System Costs (as defined below) for the forthcoming fiscal year, less all Metro System Revenues (as defined below).

5.2.1 Calculation of FAB Rates.

5.2.1.1 The City shall determine the unit FAB rates by allocating net costs (Metro System Costs less Metro System Revenues) between parameters of Monthly Average Daily Flow, Incremental Peak Flow, COD, TSS, and RSDP as set forth in Exhibit B. These allocations are based on the approved Functional-Design Methodology analyses for sewer system components and estimated Operation and Maintenance (O&M) Costs allocated to each parameter.

5.2.1.2 Beginning one (1) year after substantial completion of the final project of Phase 1 of the Pure Water Program for which sewer revenue funds were used, the City shall have the FAB professionally reviewed at least once every five (5) years.

5.2.1.3 After conducting a professionally developed independent third-party report, the City may propose to change the FAB to include any other parameter, or modify any term governed by this Section 5.2.1, via the Joint Administrative Review Process set forth in Section 15. [Hold for specifics regarding different review/revision processes for worksheets] However, the City may revise the FAB, at any time, to include any other measurement required by law after the effective date of this Agreement subject to the City's Administrative Approval, which may be granted at the City's sole discretion. Once approved, the FAB resulting from this review will become the current approved version until it is revised by a future professional independent third-party study.

5.2.1.4 Each of the parameters will have a fixed and variable O&M charge between 0% and 100%. Fixed Capacity Charges will be based on the Contract Capacity in Exhibit B. Variable charges will be based on measured parameters.

5.2.1.5 Costs for capital improvements, capital replacement, and rehabilitation costs including financing shall be based on the approved Functional-Design Methodology and the Contract Capacity in Exhibit B.

5.2.1.6 The net cost allocated to each of the parameters shall be divided by the total Metro System quantity for that parameter to determine the unit rates for each parameter. These unit rates shall apply uniformly to all Parties.

5.3 Metro System Costs. The following shall at a minimum be considered Metro System Costs for purposes of calculating the annual FAB rate:

5.3.1 Except as provided in Section 5.4 (Excluded Costs), the annual Operation and Maintenance Costs and annual costs associated with administration, replacement, annual debt service costs and other periodic financing costs and charges, capital improvement, insurance premiums, claims payments and claims administration costs of the Metro System, including projected overhead, shall be calculated using generally accepted accounting practices to reflect the costs of the Metro System.

5.3.2 Fines or penalties imposed on the City as a result of the operation of the Metro System, unless the fine/penalty is allocated to the City or a Participating Agency as provided in Section 2.5.5.

5.4 Excluded Costs. The following items shall not be considered Metro System Costs for purposes of calculating the annual FAB rate:

5.4.1 Costs related to the City of San Diego's municipal sewer, water (including City Water Utility PW Costs), and/or stormwater systems as determined by City's reasonable calculations. Excluded costs also include operations, maintenance, and capital replacement costs for all excluded Pure Water Program Phase 1 and 2 Capital facilities identified in Section 6.3 of this Agreement, including tertiary facilities at the NCWRP;

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

5.4.3 Capital Improvement Costs or Operations and Maintenance Costs of any non-Metro System facility not included in Exhibit A, including, but not limited to, any costs associated with the ECAWP Project;

5.5 Metro System Revenues and Allocations. The following revenues shall be at a minimum considered Metro System Revenues for purposes of determining the annual FAB rate:

5.5.1 Any grant or loan receipts or any other receipts that are attributable to the Metro System or Metro System components of the Pure Water Program, including, but not limited to, all compensation or receipts from the sale, lease, or other conveyance or transfer of any asset of the Metro System or Metro System components of the Pure Water Program. Any such receipts attributable to the Metro System components of the Pure Water Program shall be allocated among the City and the Participating Agencies in the proportions set forth in Exhibit B Fixed Capacity amounts.

5.5.2 All compensation or receipts from the sale or other conveyance or transfer of any Metro System by-products, including, but not limited to gas, electrical energy, sludge products, and Recycled Water produced at the NCWRP and SBWRP and the future Central Area Plant.

5.5.3 Payments by the City's Water Utility for the Capital Expense Rate, as calculated under provisions in Section 6.8. These proceeds shall be allocated among the City and Participating Agencies in the proportions set forth in Exhibit B Fixed Capacity amounts.

5.5.4 Those portions of Repurified Water Revenue attributable to the Metro System, as calculated under provisions in Section 6.7.3. These revenues shall be allocated among the City and Participating Agencies in the proportions set forth in Exhibit B Fixed Capacity amounts.

5.5.5 Any other non-operating revenues, including, but not limited to interest income included in the income credit portion of the annual audit.

5.6 Excluded Revenue.

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

5.7 Estimate and Billing Schedule and Year End Adjustment.

5.7.1 The City shall estimate the FAB rates on an annual basis prior to January 15 and provide budget estimates for the upcoming fiscal year to all Parties. The City shall quantify the FAB rates by estimating the quantity of Flow, Strength, and Fixed Capacity Charges for each Party, based on that Party's Metered Flow for the past year and the cumulative data of sampling for COD and TSS over the preceding five years and Fixed Capacities set forth in Exhibit B. If the cumulative five-year Strength data is no longer indicative of discharge from a Party, and an Contract Capacity Transfer has been approved pursuant to Sections 4.4.3.1, 4.4.3.2, or 3.2, then the City may eliminate the previous higher readings subject to the City's Administrative Approval.

5.7.2 Prior to March 1 of each year the City will provide a mid-year review of the current year's Metro System Capital Improvement Costs and Operations and Maintenance Costs and offsetting non-operating revenues such as grant or loan proceeds, including fiscal year-end projections and provide such review to the Participating Agencies.

5.7.3 The City shall determine the volume of MBC Return on an annual basis and for billing purposes only. The costs of treating MBC Return shall be allocated to the Parties in proportion to their Metered Flow and Strength. If a Party's Monthly Average Daily Flow plus MBC Return exceeds their Contract Capacity set forth in Exhibit B, it shall not be treated as an exceedance pursuant to Section 4.4.3.1.

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

5.7.5 At the end of each fiscal year, the City shall determine the actual Metro System Costs and the actual Metered Flow as well as the cumulative Strength data for the City and each of the Participating Agencies. The City shall make any necessary adjustments to the unit rates for Flow, COD, TSS and Fixed Capacity Charges based on actual costs for the year as determined through the annual audit process in Section 5.8.2 of this Agreement. The City shall then recalculate the FAB rate for the year using actual audited costs for the year, actual Metered Flow, Residuals, MBC Return, cumulative Strength factors, and Fixed Capacity Charges for the City and for each Participating Agency. The City shall credit any future charges or bill for any additional amounts due the quarter after the prior year costs have been audited.

5.8 Financial Statements.

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

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

5.8.3 The City shall make a good faith effort to complete the annual audit, and any related adjustments under this Agreement as described in Section 5.8.2, by the end of the following fiscal year.

5.9 Debt Financing. The City retains the sole right to determine the timing and amount of debt financing required to provide Metro System Facilities. The annual debt service plus in-progress Capital Improvement Costs to maintain capacity in and of the Metro System shall be allocated to the Participating Agencies consistent with the Exhibit B Contract Capacity allocations effective on the date the debt is issued. If a Participating Agency wishes to withdraw or reduce their Flows and/or Strengths from the Metro System per Section 2.3.3 of this Agreement, such agency will remain responsible for its pro-rata share of all outstanding debt incurred at the time the debt was issued until it is satisfied, irrespective of withdrawal, reduction in Flows and/or Strengths, or Agreement expiration. If the City refunds debt, it shall allocate such refunds consistent with the Exhibit B Contract Capacity allocations effective on the date the debt was issued.

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

5.11 Amending the System of Charges. Except as otherwise provided in Section 5.2.1.6, the Parties may amend any provision in this Section 5 regarding the Finance, Budgeting, and Accounting System of Charges in an Administrative Agreement subject to the Joint Administrative Review Process set forth in Section 15.

6. FINANCE, BUDGETING, AND ACCOUNTING: PURE WATER PROGRAM COST ALLOCATION AND REVENUES – PHASE 1

6.1 North City Water Reclamation Plant Modification. As part of Phase 1 of the Pure Water Program, the City intends to modify the North City Water Reclamation Plant (a Metro System facility) and expand its capacity to 52 MGD. In addition, the City intends to construct the North City Pure Water Facility on a nearby site to produce Repurified Water. This Section sets forth the costs and revenues associated with the Pure Water Program attributable to the Metro System. Exhibit A includes current constructed Metro System facilities and existing and proposed future Phase 1 facilities.

6.2 New, Expanded or Modified Metro System Facilities. Each new, expanded, or modified Metro System facility, which is part of the Pure Water Program, and is used in relation to the production of Repurified Water (in addition to the modification and expansion of the North City Water Reclamation Plant) shall be governed by this Section.

6.3 Costs Excluded from Metro System Costs – Phase 1. All of the following Pure Water Program costs, including Capital Improvement Costs, Operation and Maintenance Costs, and other related costs (including administration, insurance, claims, and overhead) shall be excluded as Metro System Costs for purposes of calculating the annual FAB rate.

6.3.1 General Exclusions:

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

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

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

6.3.2 Cost Exclusions Specific to North City Water Reclamation Plant Improvements:

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

6.3.2.2 Costs for the methanol feed system.

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

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

6.4 North City Water Reclamation Plant Improvement Costs Included as Metro System Costs. Notwithstanding the above exclusions, the City and the Participating Agencies have

specifically agreed that the following Capital Improvement Costs and Operation and Maintenance Costs related to North City Water Reclamation Plant improvements shall be included as Metro System Costs for purposes of calculating the annual FAB rate (and therefore not qualify as City Water Utility PW Costs):

6.4.1 Costs for chemically enhanced primary treatment for up to 52 MGD capacity.

6.4.2 Costs for primary effluent equalization for up to 52 MGD capacity.

6.4.3 Costs for increased volume of aeration tanks that will provide up to, but not exceeding, 52 MGD capacity.

6.4.4 Costs to add secondary clarifier tanks sufficient for up to 52 MGD capacity.

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

6.4.6 Costs for treatment and conveyance of all MBC Return (micro-filtration and tertiary backwash) based on Metered Flow, COD, and TSS.

Reserved.

6.6 Reallocation of PWP Costs incurred since FY 2014.

6.6.1 The allocation of Pure Water Program costs, retroactive to June 30, 2014, will be calculated the year the Agreement goes into effect, will be completed no less than two fiscal years following the production of 30 MGD by Phase 1 of the Pure Water Program

6.6.1.1 All the O&M 50/50 task orders, or costs that cannot be directly assigned to a CIP such as program management, environmental documents, etc., will be reallocated by an alternative plan that applies interest accruing since June 2014 at the interest rate earned by the City of San Diego, and postpones the reconciliation of costs until the final completion of all construction projects for Phase 1 (City Water Utility PW Costs and Metro). This reconciliation will be performed during the audit of the fiscal year in which substantial completion of all projects occurs.

6.6.1.2 All Phase 1 PWP CIP projects were bid and awarded by October 2022 which is FY2023. All shared Phase 1 CIP projects will be reallocated to the actual construction cost split once the project is awarded, and the cost loaded CPM is completed and negotiated between the City and the Participating Agencies during the FY2023 audit. All incurred CIP soft costs since 2014 will be reallocated like the O&M task orders during the audit of the year of substantial completion of the actual Phase 1 CIP projects. Interest will be paid to the wastewater fund on incurred soft costs starting in FY2014.

6.6.1.3 A sample of the interest calculation dated _____ is included as Exhibit “T”.

6.7 Revenue Sharing for Repurified Water.

6.7.1 Background. Initially, the Parties anticipate that the cost per acre foot associated with the production of Repurified Water will be more expensive than the cost per acre foot of untreated imported water. However, it is anticipated that Repurified Water produced under Phase 1 will be less expensive than untreated imported water sometime in the future. Once Repurified Water produced under Phase 1 becomes less expensive than the cost of untreated imported water, the Parties agree that there will be revenue from the Pure Water Program.

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

Annual cost per acre foot of CWA untreated water purchased by the City for delivery at Miramar Reservoir (which shall be determined based on the total costs for water actually billed to the City by CWA for water delivered at Miramar Reservoir in a fiscal year, divided by the number of acre-feet of CWA water delivered at Miramar Reservoir that year)

less

Annual cost per acre foot of City Water Utility PW Costs (which shall be determined based on total annual City Water Utility PW Costs divided by the number of acre-feet of Repurified Water actually produced in that year)

multiplied by

The number of acre feet of Repurified Water produced by Pure Water Program facilities during the applicable fiscal year.

Exhibit H is a summary of the most recent CWA rate structure and cost allocations to the City of San Diego for untreated water. The Parties agree that Exhibit H shall be referred to by the Parties in the future in determining how costs for water delivered at Miramar Reservoir are calculated. If no untreated water is delivered at Miramar Reservoir in a given year, then the closest point of delivery of untreated water to the City shall be used. The City shall annually update Exhibit H to reflect the most recent CWA rate structure and cost allocations to the City of San Diego.

The City shall estimate whether there will be Repurified Water Revenue in the upcoming fiscal year prior to January 15 of each year, and these amounts shall be incorporated into the budget estimates for the upcoming fiscal year to all Parties.

6.7.3 Revenue Sharing. Repurified Water Revenue shall initially be shared based on the relative actual Capital Improvement Costs for the Pure Water Program contributed

by City's Water Utility and the Metro System. Such Capital Improvement Cost contributions are currently estimated as (62% City's Water Utility and 38% Metro System). Repurified Water Revenue shall be applied to debt attributable to the Metro System first, until the debt attributable to the Metro System is fully paid.

Following full payment of debt attributable to the Metro System, Repurified Water Revenue shall be shared based on the relative actual Operation and Maintenance Costs for Pure Water Program facilities contributed by City's Water Utility and the Metro System, calculated annually. Such Operation and Maintenance Costs are currently estimated as 76% City's Water Utility and 24% Metro System on an annual basis.

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

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

6.7.5 Change in Potable Reuse Method. The Parties acknowledge that the Pure Water Program Phase 1 will initially use indirect potable reuse surface water augmentation. The use of CWA untreated water costs in calculating Repurified Water Revenue is intended to provide an appropriate point of comparison to costs for producing Repurified Water that will be introduced into surface water. The Parties agree that if the City desires to implement direct potable reuse (in which Repurified Water would be introduced directly into a water supply pipeline or facility), the Parties shall meet and negotiate in good faith regarding an amendment to this Section 6.7, to appropriately update the formula for Repurified Water Revenue, which form of amendment shall occur via an Administrative Agreement and shall be subject to the Joint Administrative Review and approval process set forth in Section 15.

6.8 Capital Expense Rate.

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

Therefore, the Parties agree that \$1.8 billion represents the maximum amount of Capital Improvement Costs that the Metro System should be obligated to contribute to the Pure Water Program, the purpose of which is not solely the disposal of wastewater, but also the production of Repurified Water. The Parties agree that this \$1.8 billion maximum contribution should apply

whether or not the PLWTP is actually upgraded to secondary treatment to meet legal requirements in the future because, as of the date of the Agreement, the Parties have the option of upgrading the PLWTP to full secondary treatment for the cost of approximately \$1.8 billion.

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

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

6.8.2.1 The sum of all Capital Improvement Costs and associated debt attributable to the Metro System components of the Pure Water Program under this Section 6.8.2; and/or

6.8.2.2 The sum of all Capital Improvement Costs and associated debt for the full or partial upgrading of the PLWTP to secondary treatment.

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

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

The sum of all Capital Improvement Costs and associated debt attributable to (i) the Metro System components of the Pure Water Program under this Section 6 and (ii) upgrading of the PLWTP to secondary treatment (if any)

less

\$1.8 billion, as adjusted for inflation each July 1 (starting on July 1, 2019) to reflect the annual percentage change in the Engineering News Records – Los Angeles construction cost index

multiplied by

1.42 (which estimates the total interest on a 30-year State Revolving Fund loan with an interest rate of 2.5%)

and divided by

The total number of acre feet per year of secondary treated effluent that is expected to be produced by Metro System facilities for the production of Repurified Water over a period of thirty (30) years.

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

For purposes of this Section 6.8.3, Capital Improvement Costs and associated debt shall include such costs incurred by the Metro System prior to the effective date of the Agreement.

6.8.4 Year-End Adjustment. At the end of each fiscal year during which the Capital Expense Rate applies, the City shall determine the actual Capital Improvement Costs and associated debt attributable to the Metro System components of the Pure Water Program under this Section 6 and any upgrading of the PLWTP to secondary treatment, the then-applicable interest amount for outstanding loans for the Metro System components of the Pure Water Program and PLWTP upgrades, and the actual amount of secondary treated effluent produced by Metro System facilities and used for the production of Repurified Water.

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

6.8.5 Duration; Expiration. The Capital Expense Rate shall continue until the cost difference between (a) the actual sum of Pure Water Program Capital Improvement Costs and associated debt attributable to the Metro System under Section 6.8 and/or the costs to upgrade the PLWTP and (b) \$1.8 billion (as adjusted for inflation), has been fully paid, or the Agreement expires, whichever is sooner. Notwithstanding, it is the express intent and desire of the City and the Participating Agencies that if the Agreement expires before the cost difference has been paid through the Capital Expense Rate, that the Capital Expense Rate continue in any extension of this Agreement negotiated by the Parties pursuant to Section 14.2 [Expiration] until the cost difference has been fully paid.

6.9 Amending Pure Water Program Cost Allocation and Revenues – Phase 1. Except as otherwise provided in Section 6.7.2, the Parties may amend any provision in this Section 6 regarding the Finance, Budgeting, and Accounting for the Pure Water Program Cost Allocation and Revenues for Phase 1 in an Administrative Agreement subject to the Joint Administrative Review Process set forth in Section 15.

7. FINANCE, BUDGETING, AND ACCOUNTING: PURE WATER PROGRAM COST ALLOCATION AND REVENUES – PHASE 2

7.1 Pure Water Program – Phase 2. The Second Phase of the Pure Water Program (“**Phase 2**”) shall create up to an additional 53 MGD of Repurified Water at Phase 2 facilities. The Parties agree to incorporate all terms relating to Phase 2 into this Agreement via an Administrative

Agreement subject to the Joint Administrative Review Process and approvals set forth in Section 15, subject to the requirements set forth in this Section 7 below.

7.2 Costs Excluded As Metro System Costs.

Costs Excluded from Metro System Costs for Phase 2 shall be identified in an Administrative Agreement subject to the Joint Administrative Review Process and approvals set forth in Section 15. However, the Administrative Agreement must reflect that all of the following Pure Water Program Phase 2 costs, including Capital Improvement Costs, Operation and Maintenance Costs, and other related costs (including administration, insurance, claims, and overhead) shall be excluded from Metro System Costs for the purposes of calculating the annual Phase 2 FAB rate, and shall be City Water Utility PW Costs:

7.2.1 Costs of the Phase 2 Water Repurification System and any Metro System facilities to the extent constructed, modified, expanded, or used for the purpose of treating water beyond secondary treatment (ocean discharge standard under current law). This shall include costs for preliminary treatment, primary treatment, and secondary treatment to the extent such costs are higher than they would otherwise be due to the production of Phase 2 Repurified Water.

7.2.2 Costs for fail-safe disposal, if necessary, for design capacity for Phase 2 Repurified Water, including, but not limited to, any costs associated with the reservation of capacity at the Point Loma Wastewater Treatment Plant.

7.2.3 Costs for the demolition or replacement of existing Metro System facilities with similar facilities for the purpose of making space available for Phase 2 Water Repurification System facilities. Such costs may take into account the current asset value or market value of the existing Metro System facility.

7.2.4 Costs for the Phase 2 methanol feed system.

7.2.5 Costs for Phase 2 RSDP disposal, including, but not limited to, pump stations, pipelines, retreatment, ocean outfall, and monitoring.

7.2.6 50% of the costs for the MBR Tanks and system for Phase 2.

7.2.7 All membrane integrity monitoring systems for Phase 2.

7.2.8 All Phase 2 systems downstream of MBR's.

7.3 Revenue Sharing for Repurified Water – Phase 2. Terms regarding revenue sharing for Repurified Water for Phase 2 shall be identified in an Administrative Agreement subject to the Joint Administrative Review Process and approvals set forth in Section 15. However, this Administrative Agreement must reflect terms related to Phase 2 revenue sharing for Repurified Water that conceptually mimic those terms set forth in Section 6.7 up until Phase 2 achieves up to 53 MGD of Repurified Water, taking into account production of water suitable for potable reuse occurring at all treatment processes for wastewater upstream from and at the PLWTP.

7.4 Capital Expense Rate – Phase 2. Terms regarding the Capital Expense Rate for Phase 2 shall be identified in an Administrative Agreement subject to the Joint Administrative Review Process and approvals set forth in Section 15. However, this Administrative Agreement must reflect terms related to the Phase 2 Capital Expense Rate that conceptually mimic those terms set forth in Section 6.8 up until Phase 2 achieves 53 MGD of Repurified Water, taking into account production of water suitable for potable reuse occurring at all treatment processes for wastewater upstream from and at the PLWTP.

8. FUTURE NEGOTIATIONS AND COOPERATION

This Agreement specifically contemplates Phase 1 and Phase 2 of the Pure Water Program, which consists of new, expanded, or modified Metro System and Water Repurification System facilities currently designed to produce up to 83 million gallons per day of Repurified Water. The Parties intend to meet and negotiate in good faith regarding the referenced Administrative Agreements identified in this Agreement. All items outside the scope of the Joint Administrative Review Process shall be negotiated by the Parties through the amendment processes described in Section 16.3, if necessary.

9. THE METRO COMMISSION

9.1 Membership. The Metro Commission shall consist of one representative from each Participating Agency. Each Participating Agency shall have the right to appoint a representative of its choice to the Metro Commission. If a Participating Agency is a dependent district whose governing body is that of another independent public agency, that Participating Agency shall be represented on the Metro Commission by a representative appointed by the governing body which shall have no more than one representative no matter how many Participating Agencies it governs. Each member has one vote in any matter considered by the Metro Commission. The Metro Commission shall establish its own meeting schedule and rules of conduct. The City may participate in the Metro Commission on an ex officio, non-voting basis. On October 25, 2000, the Participating Agencies entered into a Joint Exercise of Power Agreement thereby creating the Metro Wastewater Joint Powers Authority (“**Metro JPA**”) for the purpose of taking responsibility, actions, and making decisions pertaining to the Regional Wastewater Disposal Agreement entered into by and among the City and the Participating Agencies dated June 25, 1998, which is the predecessor to this Agreement. The Metro Commission and the Metro JPA are one and the same entity for all intents and purposes under this Agreement.

9.2 Advisory Responsibilities of Metro Commission.

9.2.1 The Metro Commission shall act as an advisory body to the Mayor and City Council on policy issues and matters affecting and relating to the Metro System, and shall be included in the City’s list of boards and commissions on the City’s website. The City shall present the position of the majority of the Metro Commission to the City’s governing body in written staff reports. The Metro Commission may prepare and submit materials in advance and may appear at any City hearings on Metro System matters and present its position to the governing body of the City.

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

9.3 Delegation of Decision-Making Authority of the Metro Commission. The Participating Agencies hereby delegate to the Metro Commission the authority to take certain actions pursuant to the approval processes provided in Section 16.3.2 and Section 16.3.3.

9.4 Standing. If a dispute arises among the Parties relating to or arising from a Party's obligation under this Agreement or an associated Administrative Agreement, the Metro JPA shall have standing to enforce the terms of this Agreement on behalf of two or more Participating Agencies if a majority of the Metro Commission votes to take action relating to this Agreement on behalf of two or more Participating Agencies.

10. DISPUTE RESOLUTION

This Section governs all disputes arising out of this Agreement and any associated Administrative Agreements.

10.1 Mandatory Non-Binding Mediation. If a dispute arises among the Parties relating to or arising from a Party's obligations under this Agreement or an associated Administrative Agreement that cannot be resolved through informal discussions and meetings, the Parties involved in the dispute shall first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the rules of JAMS, AAA, or any other neutral organization agreed upon by the Parties before having recourse in a court of law. Mediation shall be commenced by sending a Notice of Demand for Mediation to the other Party or Parties to the dispute. A copy of the notice shall be sent to the City, all other Participating Agencies, and the Metro Commission.

10.2 Selection of Mediator. A single mediator that is acceptable to the Parties involved in the dispute shall be used to mediate. The mediator will be knowledgeable in the subject matter of this Agreement, if possible, and chosen from lists furnished by JAMS, AAA, or any other agreed upon mediator.

10.3 Mediation Expenses. The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All mediation costs, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be Metro System costs.

10.4 Conduct of Mediation. Mediation hearings will be conducted in an informal manner. Discovery shall not be allowed. The discussions, statements, writings and admissions and any offers to compromise during the proceedings will be confidential to the proceedings (pursuant to California Evidence Code Sections 1115 - 1128 and 1152) and will not be used for any other purpose unless otherwise agreed by the Parties in writing. The Parties may agree to exchange any information they deem necessary. The Parties involved in the dispute shall have representatives attend the mediation who are authorized to settle the dispute, though a recommendation of

settlement may be subject to the approval of each agency's boards or legislative bodies. Either Party may have attorneys, witnesses or experts present.

10.5 Mediation Results. Any resultant agreements from mediation shall be documented in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

10.6 Performance Required During Dispute. Nothing in this Section shall relieve the City and the Participating Agencies from performing their obligations under this Agreement. The City and the Participating Agencies shall be required to comply with this Agreement, including the performance of all disputed activity and disputed payments, pending the resolution of any dispute under this Agreement.

11. INSURANCE

11.1 City Shall Maintain All Required Insurance

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

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

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

11.2 Substantially Equivalent Coverage. In the event of a transfer of the Metro System to a nonpublic entity pursuant to Section 2.1, coverage substantially equivalent to all the above provisions shall be maintained by any successor in interest.

12. INTERRUPTION OF SERVICE

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

13. NOTICES REQUIRED UNDER AGREEMENT

The City and each Participating Agency shall give notice when required by this Agreement. Except as provided in Section 2.6.2, all notices must be in writing and must be sent via email and either served personally, or mailed by certified mail. The notices shall be sent to the officer listed for each Party, at the address and email address listed for each Party in Exhibit D in accordance with this Section. If a Party wishes to change the officer and/or address to which notices are given, the Party shall notify all other Parties in accordance with this Section. Upon such notice, and subject to the City's Administrative Approval, the City shall amend Exhibit D to reflect the changes. The amendment shall be made within sixty (60) days after receipt of the Party's notice regarding the change in officer and/or address. The City shall keep an updated version of Exhibit D, notated with the most recent amendment date, on file with the City Public Utilities Department. The City shall provide a copy of the amended Exhibit D to all Parties by no later than sixty (60) days after amending Exhibit D.

14. EFFECTIVE DATE AND EXPIRATION

14.1 Effective Date. This Agreement shall be effective on July 1 of the following fiscal year after execution by the City and all of the Participating Agencies, and shall be dated as of the signature date of the last executing Party. For example, irrespective of whether the last executing Party signs this Agreement on September 1, 2024, January 1, 2025, or June 30, 2025, the effective date of the Agreement would be July 1, 2025.

14.2 Expiration. Subject to the rights and obligations set forth in Section 14.4, unless amended, replaced, or terminated earlier by mutual consent of all the Parties, this Agreement shall expire on June 30, 2065. This Agreement is subject to extension by agreement of the Parties. The Parties shall commence discussions on an agreement to provide wastewater treatment services beyond the year 2065 on or before December 31, 2055, or at such time, if any, that the PLWTP is required to be upgraded to secondary treatment. The Parties may create, amend or terminate any associated Administrative Agreements addressing implementation of this Agreement, as provided in this Agreement.

14.3 Contract Capacity Rights Survive Expiration. The Participating Agencies' Contract Capacity rights and rights to obtain wastewater treatment services from the facilities referred to in, or constructed pursuant to this Agreement shall survive the expiration of the Agreement. Provided, however, for any Participating Agency to exercise such rights, the Participating Agency shall comply with all the following requirements: (a) provide at least six months' written notice prior to the expiration of this Agreement; (b) upon expiration of this Agreement, pay their proportional share of Metro System Costs according to the billing methodologies set forth in this Agreement in order to maintain their right(s) to such wastewater treatment services; and (c) agree to recalculate and pay proportional share of future Metro System Costs based on the number of Participating Agencies that remain subject to this Agreement. In the event this Agreement expires and one or more Participating Agency(ies) continue to pay their proportional share of all Metro System Costs, the City shall have the right to continue managing, operating, and expanding the Metro System subject to the same terms set forth in this Agreement, unless otherwise agreed to in writing by and between the City and a Participating Agency. In the event one or more Participating Agency(ies) exercise its/their right(s) to maintain Contract Capacity and wastewater treatment services, such

Participating Agency(ies) shall also maintain the right to continue receiving any and all revenues contemplated by this Agreement, including, but not limited to, Metro System Revenues.

14.4 Abandonment. After June 30, 2065, the City may abandon operation of the Metro System upon delivery of notice to the Participating Agencies ten (10) years in advance of said abandonment. Upon notice by the City to abandon the Metro System, the Parties shall meet and confer over the nature and conditions of such abandonment. In the event the Parties cannot reach agreement, the matter shall be submitted to mediation under Section 9. In the event of abandonment, the City shall retain ownership of all Metro System assets free of any claim of the Participating Agencies. Abandonment by the City with continued operation by a different entity shall not terminate or affect a Contract Capacity rights of a Participating Agency so long as that Participating Agency has continued to pay their proportional share of Capital Improvement Costs and Operation and Maintenance Costs according to the billing methodologies set forth in this Agreement. Nothing in this language shall be construed to require the City to continue as operator of the Metro System after the ten years (10) notice period has run.

15. ADMINISTRATIVE AGREEMENTS

15.1 Use and Process for Administrative Agreements.

15.1.1 Purpose. Administrative Agreements are intended to implement the intent of the Parties in an efficient and effective manner without reopening or renegotiating the terms of this Agreement. Administrative Agreements are limited to addressing issues that are authorized by this Agreement. Administrative Agreements are separate and distinct from Exhibits to this Agreement, and are designed to address procedural, operational, technical, and administrative issues. Terms in this Agreement may only be modified through the Joint Administrative Review Process if this Agreement expressly authorizes the use of an Administrative Agreement.

15.1.2 Amendments, Supplements, or Successors to Administrative Agreements. Where this Agreement refers to an Administrative Agreement, such reference shall include any amendment(s) to that Administrative Agreement or supplemental or successor Administrative Agreement(s).

15.1.3 Function. Administrative Agreements are made among all the Parties, but deal with a specific function or group of like functions, for the benefit of regional wastewater treatment within the Metro System, or for the implementation of this Agreement.

15.1.4 Current Agreements. The Administrative Agreements which are approved and executed simultaneously with the execution of this Agreement are listed in the “List of Administrative Agreements” attached to this Agreement as Exhibit I. The City shall update the List of Administrative Agreement each time an Administrative Agreement is approved, amended, revised or terminated pursuant to this Agreement.

15.1.5 Development and Approval Process. **Any** Party can present an Administrative Agreement, or an amendment or supplement thereto, or termination thereof, to the City for approval by way of the Joint Administrative Review Process. Once an Administrative Agreement receives City’s Administrative Approval, then, with respect to the Participating

Agencies, an Administrative Agreement may be presented to the Metro Commission for review and a first reading. Sixty (60) days or more after the first reading, after the Metro Commissioners have had opportunity to consult with their respective agency staff and governing boards, the Administrative Agreement may be presented for a second reading and approved upon an affirmative vote by no less than two-thirds of the members of the Metro Commission during a duly noticed public meeting (in other words, upon the affirmative vote of no less than eight of the twelve members of the Metro Commission, irrespective of how many Metro Commissioners are present at the meeting, unless the number of Participating Agencies changes). If the second reading does not occur within One Hundred and Twenty (120) days of the first reading, the proposed Administrative Agreement shall no longer be in consideration. An Administrative Agreement, amendment thereto, or termination thereof, must receive City's Administrative Approval and no less than a two-thirds vote by the Metro Commission before it is effective.

16. GENERAL

16.1 Exhibits.

16.1.1 Exhibit List. This Agreement references Exhibits A through L. Each exhibit is attached to this Agreement and is incorporated herein by reference. All exhibits to this agreement shall be listed in the **Exhibit List** which is attached to this Agreement as Exhibit J. The City shall update the Exhibit List from time to time each time an Exhibit is amended or revised pursuant to this Agreement.

16.2 Electronic Exhibits and Attachments. Acknowledgement and Acceptance: The Parties hereby acknowledge and agree that the exhibit(s) and attachment(s) related to this Agreement, or any of its associated Administrative Agreements, indicated as an Electronic Exhibits above (collectively, the "Electronic Exhibits") may be in an electronic format that cannot be readily or accurately converted into a physical or printed form. The Parties expressly agree that such Electronic Exhibits shall nonetheless be deemed to be valid and enforceable attachments to this Agreement, and shall be incorporated by reference as if fully set forth herein.

16.2.1 Identification and Access: All Electronic Exhibits shall bear the same Exhibit identifier and name (i.e., Exhibit A – Metro Facilities) set forth in the Exhibit List, and shall be clearly identified as an Electronic Exhibit in the Exhibit List, including a file name, a time stamp of file, and a note indicating the software used to open and view the file, including version. The Electronic Exhibit shall be loaded on to a CD-ROM, DVD-ROM, or other electronic storage medium that is a write-once medium without the ability to further edit. Each Party shall receive an identical copy of the Electronic Exhibit(s) via identical storage mediums. The City shall ensure that all Participating Agencies have full and unrestricted access to Electronic Exhibits for the duration of the Agreement and any applicable retention period thereafter, including by providing access to any necessary software, applications, or systems required to view, interact with, or manipulate the Electronic Exhibits in their native format; such as through website access via the GIS Online platform found on the City of San Diego's website at <https://sandiego.maps.arcgis.com>. No interaction or manipulation of any Electronic Exhibit shall in any way constitute a bona fide change or amendment to the Electronic Exhibit.

16.2.2 Storage and Security: Each Party shall be responsible for securely storing and maintaining the integrity of the Electronic Exhibits in their possession or control. This includes, but is not limited to, implementing and maintaining reasonable and appropriate technical, administrative, and physical safeguards to protect the confidentiality, availability, and integrity of the Electronic Exhibits, and to prevent unauthorized access, disclosure, alteration, or destruction thereof.

16.2.3 Authentication and Admissibility: The Parties hereby stipulate and agree that the Electronic Exhibits shall be deemed to be original documents and authentic for all purposes under applicable law, and that the Parties may rely upon and introduce such Electronic Exhibits as evidence in any proceeding arising out of or relating to this Agreement, without the need for further foundation, authentication, or certification.

16.2.4 Receipt and Completeness: Each Party hereby acknowledges and confirms that they have received, reviewed, and had a reasonable opportunity to inspect all Electronic Exhibits that are attached to and incorporated into this Agreement as of the Effective Date. By executing this Agreement, each Party represents and warrants that, to the best of their knowledge, the Electronic Exhibits are complete, accurate, and free from material errors, omissions, or defects. The Parties further agree to notify the other Party promptly upon discovering any discrepancies or inaccuracies in the Electronic Exhibits, and to cooperate in good faith to resolve any such issues in a timely manner.

16.2.5 Amendments and Modifications to Electronic Exhibits: Any amendments or modifications to the Electronic Exhibits shall be made in accordance with the procedures set forth in this Agreement for amending or modifying the terms and conditions hereof, and any such amended or modified Electronic Exhibits shall be deemed to replace and supersede any prior version thereof. Amended Electronic Exhibits shall also be loaded onto a new and separate CD-ROM, DVD-ROM, or other electronic storage medium that is a write-once medium without the ability to further edit. Each Party shall receive identical copies of the Electronic Exhibits via identical storage mediums. Amended Electronic Exhibits shall bear identical Exhibit Identifiers as their predecessor exhibits, but with a different suffix (for example, Exhibit A, when amended, shall be identified as Exhibit A-1, a subsequent amendment shall be identified as Exhibit A-2, etc.).

16.3 Amendments to Agreement. There shall be four (4) ways to amend, modify, and/or change the terms set forth in this Agreement:

16.3.1 Amendments. Except as set forth in Sections 16.3.2, 16.3.3, and 16.3.4, amendments to this Agreement require the approval of all Parties. Such amendments must be in writing and signed by a duly authorized representative from each Party. Unless specifically referenced as being subject to one of the approval mechanisms set forth in Sections 16.3.2, 16.3.3, or 16.3.4 below, any amendment, modification, and/or changes to the terms of this Agreement must occur pursuant to this Section 16.3.1. This provision controls over all other provisions in this Agreement.

16.3.2 Joint Administrative Review Process. As set forth in this Agreement, the Joint Administrative Review Process requires (1) City of San Diego's Administrative Approval,

and (2) The approval by two-thirds of the members of the Metro Commission during a duly noticed public meeting (in other words, upon the affirmative vote of no less than eight of the twelve members of the Metro Commission, irrespective of how many Metro Commissioners are present at the meeting, unless the number of Participating Agencies changes). The following actions may be taken subject to the Joint Administrative Review Process:

- (a) Agreements for New Contract Capacity as specifically set forth in Section 3.3
- (b) Addition of new Metro Facilities or conversion of City facility to a Metro facility as specifically set forth in Section 4.2
- (c) Changes to Exhibit E (Methodology for Contract Capacity Transfers)
- (d) Revisions to FAB as specifically set forth in Section 5.2.1.3, except as provided therein
- (e) Changes to Finance, Budgeting, and Accounting System of Charges as specifically set forth in Section 5.11
- (f) Changes to Costs Excluded from Metro System Costs – Phase 1 as specifically set forth in Section 6.3
- (g) Amending the formula for Repurified Water Revenue as specifically set forth in Section 6.7.5
- (h) Changes to Finance, Budgeting, and Accounting for the Pure Water Program Cost Allocation and Revenues for Phase 1 as specifically set forth in Section 6.9
- (i) Certain terms relating to Phase 2 as specifically set forth in Section 7.1
- (j) Changes to Costs Excluded from Metro System Costs – Phase 2 as specifically set forth in Section 7.2
- (k) Terms regarding revenue sharing for Repurified Water for Phase 2 as specifically set forth in Section 7.3.
- (l) Terms regarding the Capital Expense Rate for Phase 2 as specifically set forth in Section 7.4.
- (m) Creation, changes, amendments, modifications to, or terminations of any Administrative Agreements as specifically set forth in Article 15.

16.3.3 Two-Party Approval. As set forth in this Agreement, Two-Party Approval requires the City's Administrative Approval and a two-thirds (2/3) vote or greater of the Metro Commissioners present at a duly noticed Metro Commission public meeting. The following actions may be taken subject to Two-Party Approval:

- (a) Determinations regarding liability as specifically set forth in Section 2.5.5
- (b) Contract Capacity Transfers – Decreases as specifically set forth in Section 4.4.3.2
- (c) Changes to Strength measurements as specifically set forth in Section 4.5.2

16.3.4 City Administrative Approval. As set forth in this Agreement, the City's Administrative Approval requires discussion, evaluation, and approval by the Director of the City of San Diego's Public Utilities Department or his or her designee. The City may, in the City's sole discretion, refer a decision subject to the City's Administrative Approval to the City Council for a recommendation, approval, or other action. No action is required on the part of a Participating Agency. The following actions may be taken subject to the City's Administrative Approval:

- (a) Transfers of Contract Capacity as specifically set forth in Section 3.2
- (b) Reductions in Metro System Capacity as specifically set forth in Section 3.4
- (c) Amending Exhibit B as specifically set forth in Section 3.6
- (d) Amending Exhibit A as specifically set forth in Section 4.2
- (e) Contract Capacity Transfers – Increases as specifically set forth in Section 4.4.3.1
- (f) Changes to Exhibit F (Flow and Strength Formulas) as specifically set forth in Section 4.5.1
- (g) Changes to FAB to include measurements required by law as specifically set forth in Section 5.2.1.3
- (h) Changes to Exhibit H if CWA changes their rate structure as specifically set forth in Section 6.7.2
- (i) Changes to Exhibit D (Notice) as specifically set forth in Section 13

16.4 Construction of Agreement.

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

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

16.4.3 Agreement Binding on All; No Third Party Beneficiaries. This Agreement shall be binding upon and shall inure to the benefit of each of the Parties, and each of their respective successors, assigns, trustees or receivers. All the covenants contained in this Agreement are for the express benefit of each and all such Parties. This Agreement is not intended to benefit any third parties, and any such third party beneficiaries are expressly disclaimed.

16.4.4 Severability.

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

16.4.4.2 Should a court determine that one or more components of the allocation of costs set forth in this Agreement or any associated Administrative Agreement places the City or a Participating Agency in violation of Article XIII D, Section 6 of the California Constitution with respect to their ratepayers, such components shall no longer be of force or effect. In such an event, the City and the Participating Agencies shall promptly meet to renegotiate the violative component of the cost allocation to comply with Article XIII D, Section 6 of the California Constitution, and use the dispute resolution process in Section 10 of this Agreement if an agreement cannot be reached through direct negotiation.

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

16.4.5 Choice of Law. This Agreement and any of its associated Administrative Agreements shall be construed and enforced pursuant to the laws of the State of California.

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

16.5 Declarations Re: Agreement.

16.5.1 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.

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

16.6 Right to Make Other Agreements. Nothing in this Agreement limits or restricts the right of the City or the Participating Agencies to make separate agreements among themselves without the need to amend this Agreement, provided that such agreements are consistent with this Agreement. Nothing in this Agreement or Section 6 limits or restricts the right of the City or the Participating Agencies to enter into separate agreements for the purchase or sale of Repurified Water produced by the Water Repurification System or sharing in City Water Utility PW Costs. Such agreements shall not affect the cost allocation and Metro System revenues delineated in Section 5.

16.7 Statute of Limitations to Resolve Billing Issues. Notwithstanding any longer statute of limitations in State law, if the City or a Participating Agency wishes to dispute a bill on the basis of an alleged overpayment or underpayment arising under this Agreement, the Party alleging the dispute must provide written notice regarding the disputed bill to all Parties to this Agreement promptly upon discovery of such a billing issue. The written notice shall invoke or reference this Section. The Parties agree that such refunds or collections shall not accrue for more than three (3) years from the date that such billing is received by the Participating Agency. The City and the Participating Agencies hereby waive any applicable statute of limitations available under State law that exceeds three (3) years. Upon receipt of the written notice regarding the billing dispute, any Participating Agency wishing to participate in the resolution of the dispute shall be allowed to do so and to present evidence to all Parties in support of their position. The involved Parties' determination regarding the outcome of the billing dispute, including any related adjustments to each Participating Agency's share of net Metro System costs or revenues resulting from the resolution of such billing issues, shall be final. For example, if a Participating Agency is billed on January 1, 2025, City has until January 1, 2028 to determine whether that Participating Agency has been underbilled or overbilled and provide written notice to that Participating Agency, and all other Parties accordingly. Similarly, the Participating Agency would have until January 1, 2028 to determine whether they have been underbilled or overbilled and send written notice to the City and all other Parties accordingly. Nothing in this section relieves a Participating Agency from its obligations to make timely payments under this Agreement irrespective of whether or not a bill is being disputed. If the Parties are unable to resolve a billing dispute, the Parties shall utilize the dispute resolution processes in this Agreement.

16.8 Counterparts and Electronic Signatures. This Agreement may be executed in counterparts. This Agreement shall become operative as soon as one counterpart hereof has been executed by each Party. The counterparts so executed shall constitute one Agreement notwithstanding that the signatures of all Parties do not appear on the same page. A faxed, .pdf, or other electronic copy of the fully executed original version of this Agreement shall have the same legal effect as an executed original for all purposes. Electronic signatures (including but not limited to signatures via DocuSign) shall be acceptable, enforceable, and shall have the same legal effect as an original signature.

16.9 Transparency. Upon request, the City shall promptly provide each Participating Agency with access to all records and information reflecting Flow and Strength of sewage in the Metro System, including, but not limited to, Flow data from all Metro System meters, worksheets or calculations that are used by City to develop cost information for any costs contemplated by this Agreement, and any Strength or other data utilized by the City when calculating annual sewage Flow and/or other costs imposed pursuant to this Agreement (including, but not limited to, pretreatment costs). The Parties shall work in good faith together to ensure the Participating Agencies have reasonable and full transparency under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment and Restated Regional Wastewater Disposal Agreement and the associated Administrative Agreements(s) identified herein as of the date first set forth above.

CITY OF CHULA VISTA

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

CITY OF CORONADO

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

CITY OF DEL MAR

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

CITY OF EL CAJON

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

CITY OF IMPERIAL BEACH

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

CITY OF LA MESA

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

**LEMON GROVE SANITATION
DISTRICT**

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

CITY OF NATIONAL CITY

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

OTAY WATER DISTRICT

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

**PADRE DAM MUNICIPAL WATER
DISTRICT**

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

CITY OF POWAY

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

CITY OF SAN DIEGO

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

**SAN DIEGO COUNTY SANITATION
DISTRICT**

Approved as to Form:

Name: _____
Title: _____

Name: _____
Title: _____

EXHIBIT I

LIST OF ADMINISTRATIVE AGREEMENTS

NO.	TITLE	EFFECTIVE DATE	AMENDMENT DATE
1.	Agreement Between City of San Diego and Participating Agencies in the Metropolitan Sewerage System for Unified Management of Industrial Waste Discharge Pretreatment and Enhanced Source Control Programs (Exhibit X)		
2.			

EXHIBIT J

EXHIBIT LIST

Exhibit	Name	Amended Date
A	Metro Facilities (Electronic Exhibit); file name: [Enter]; time stamp of file, software used to open and view file including version; attached hereto as CD-ROM/DVD-ROM	11X17 Attached
B	Distribution of Wastewater System Capacity Rights	Attached
C	Administrative Protocol on Allocation of Operating Reserves and Debt Service Coverage to Participating Agencies	Attached
D	Notice Listing	To-Do
E	Methodology for contract capacity transfers.	Attached
F	Flow and Strength formulas	Attached
G	Sample of the interest calculation	Attached
H	Summary of billings from County Water Authority showing costs for untreated water	Attached
I	List of Administrative Agreements	Included
J	Exhibit List	Included

