THE CITY OF SAN DIEGO

# REPORT TO THE CITY COUNCIL

DATE ISSUED: February 21, 2012 REPORT NO: 12-019

ATTENTION: Natural Resources & Culture Committee
Agenda of February 29, 2012

SUBJECT: Sewage Transportation Agreement with City of Imperial Beach

REQUESTED ACTION: Authorize the Mayor to enter into an agreement with City of Imperial Beach for the transportation of their wastewater through the City of San Diego's Municipal Wastewater Collection System (the Muni System).

STAFF RECOMMENDATION: Approve the ordinance.

SUMMARY:
The City of San Diego (the City) provides wastewater transportation, treatment and disposal services for the City and 12 adjacent entities known as the Participating Agencies (PAs). The contractual conditions that are related to these services are contained in two distinct documents.

The large sewer mains, pump stations and treatment plants that convey, treat and dispose of the sewage for the City and the PAs are referred to collectively as the Metro System. The Metro System services provided to the PAs are governed by the terms and conditions of the *Regional Wastewater Disposal Agreement* (the Metro Agreement), City Document No. OO-18517, filed May 18, 1998. This agreement remains in force through December 31, 2050.

The agreements that stipulate the terms and conditions under which wastewater is transported from the PAs through the Muni System to the Metro System have expired for all but four of the PAs. The new *Sewage Transportation Agreement* (Transportation Agreement) will replace the expired agreement and will also be in effect through December 31, 2050 in order to run concurrent with the Metro Agreement.

Background
Over the past several years, the City has been in negotiations regarding the transportation agreements that the City had with the various PAs, which have expired. Currently – Spring Valley, Del Mar, Coronado and National City have current transportation agreements. During the negotiation period all PAs agreed to a set of terms in effect while in negotiations towards a transportation agreement, which includes:

- One unified transportation rate of charge to be paid per million gallons, per mile, per day (g/m/d) for the transport of wastewater through the Muni System.

- Methodology on annual adjustments to the transportation rate.
- Methodology for calculating cost apportionment for future capital improvement projects affecting the infrastructure which conveys the PA's wastewater flows.

Since that time, the City has been actively drafting new agreements and negotiating language and terms with the PAs, both jointly and as individual entities, in order to ensure terms and conditions that are fair and equitable to the PAs and to the City of San Diego ratepayers. In addition to standard clauses related to insurance, dispute resolution, and other contractual necessities, these agreements outline the following:

- The transportation rate, identical for all PAs, that will be paid per million gallons, per mile, per day (g/m/d) for the transport of wastewater through the Muni System;
- The frequency of and methodology for adjustments to the transportation rate;
- The method by which expenses for municipal pump stations utilized by the PAs will be allocated;
- The PAs' contract capacity rights in the municipal system and methodology for adjustment thereof; and
- The methodology for calculating cost apportionment for capital improvement projects affecting the infrastructure which conveys the PA's wastewater flows.

Discussion

Each PA's wastewater takes a unique route from the agency boundary through the City's Muni System to the Metro System. The PAs are billed for this conveyance of wastewater based on quantity of flow and total miles traveled in the City's Muni System, as well as a proportionate share of operations and maintenance expense for any municipal pump stations utilized. In addition, PAs are liable for a proportionate share of any capital improvement expense on infrastructure used to convey their wastewater.

*Transportation Rate Calculation*

The firm of Raftelis Financial Consultants, Inc. (Raftelis) was retained to formulate a municipal transportation rate to be applied to all PAs which was finalized in Fiscal Year 2008. Raftelis analyzed the portions of the system utilized by the PAs, as well as the appropriate expenses for operations, maintenance, administration and support activities associated with the system elements. The analysis averages three years of actual expenses to ensure a fair and equitable rate.

After a detailed review of the referenced expenses, the rate of $4.03 per million gallons x miles was calculated as the recoverable cost of operating and maintaining that portion of the municipal collection system utilized by the PAs. Public Utilities staff met with PA representatives during the course of the analysis and at the conclusion to ensure understanding and concurrence with the methods and results.

In Fiscal Year 2012 the rate is $4.36 per million gallons x miles. As an added safeguard for all stakeholders, this rate will be re-examined every 5 years, utilizing the most recent available 3-year average of actual expenses, to verify that the current rate is within 5% of the 3-year average. If the current rate deviates from this calculation by more than 5%, the rate is to be adjusted to the rate derived from the most recent 3-year average. As a ministerial matter, the transportation rate will be adjusted annually for inflation based on the State of California Economic Forecast Index.

*Future Capital Improvement Project (CIP) Cost-Sharing Calculation*
Some of the expired agreements contained a CIP cost component that was embedded in the municipal transportation rate (of the $2.43 per million gallons x miles transportation rate, $1.77 was the CIP component). While the exact history and provisions associated with the formulation of the previous CIP component has been questioned by PA's during renegotiations, it is evident that this charge was meant to address infrastructure that existed at the time the agreements were executed and did not contemplate future infrastructure improvements or regulatory mandates.

The new transportation agreement addresses the process by which cost allocations are formulated for new CIPs on infrastructure utilized by one or more PAs. Put simply, these costs are to be apportioned based on each user's peak capacity as a proportion of the design capacity of the improved infrastructure. All CIP expenses are to be paid as they incur or as agreed upon by both agencies.

*City of Imperial Beach Agreement*
San Diego and Imperial Beach had previously entered into an Agreement of 1984 between the City of San Diego and the City of Imperial Beach for the Financing and Operation of the Palm City Trunk Sewer System, under which San Diego authorized Imperial Beach to discharge sewage into the Muni System for transportation to the Metro System and under which the parties had operated. As discussed above, the new agreement standardizes terms and ensures that conditions are fair and equitable to the City of Imperial Beach and to the City of San Diego ratepayers. Specifically this agreement does the following:

- Allows Imperial Beach to discharge sewage into the Muni System for transportation to the Metro System.
- Establishes a rate to be charged for sewage transportation services rendered by San Diego to Imperial Beach.
- Establishes Imperial Beach's contract capacity in the Muni System for the use of a portion of the Muni System.
- Establishes a method to allocate the capital improvement project costs of future improvements, repair, rehabilitation, or replacement to the Muni System as are deemed necessary by San Diego and in consultation with authorized agencies affected by the work on a fair and equitable basis.

Conclusion
As we continue the finalization of these transportation agreements, we will ensure that all parties have a clear understanding of their respective obligations regarding the City's collection system costs and improvements. Given the longevity of these agreements, it is in the best interest of all parties to ensure the end product is as comprehensive and well-considered as possible.

Considerable effort has been made by City staff and PA representatives to ensure that these agreements allocate the costs of operating, maintaining and improving the Muni System fairly and equitably. Staff from the City and the PAs has met numerous times to ensure that all parties involved understood and agreed upon the numerous elements in the agreements. Unlike the expired agreements, there are built-in inflators as well as periodic review to ensure that costs are appropriately allocated.

FISCAL CONSIDERATIONS: The estimated annual revenue from the transportation agreement with the City of Imperial Beach is about $3,700 in transportation charges.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: There were extensive discussions with each PA on their particular agreements.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The City of Imperial Beach and the City of San Diego ratepayers are the key stakeholders in this matter. This agreement ensures that costs of operating, maintaining and improving the Muni System are allocated fairly and equitably.

2/16/12

Alex Ruiz
Assistant Director of Public Utilities

Roger S. Bailey
Director of Public Utilities

Attachment: Sewage Transportation Agreement between City of San Diego and City of Imperial Beach and Exhibits A – D

# SEWAGE TRANSPORTATION AGREEMENT

City of San Diego and
City of Imperial Beach

November 2011

## TABLE OF CONTENTS


ARTICLE 1 DEFINITIONS ..... 1

ARTICLE 2 OWNERSHIP AND OPERATION OF THE SAN DIEGO MUNICIPAL SEWERAGE SYSTEM ..... 4

ARTICLE 3 CONTRACT CAPACITY RIGHTS ..... 7

ARTICLE 4 EXCEEDING CAPACITY ..... 8

ARTICLE 5 MONITORING ..... 11

ARTICLE 6 TRANSPORTATION CHARGES ..... 11

ARTICLE 7 OPERATION AND MAINTENANCE CHARGES FOR MUNICIPAL PUMP STATIONS ..... 13

ARTICLE 8 CAPITAL IMPROVEMENT PROJECTS ..... 13

ARTICLE 9 CAPITAL IMPROVEMENT CHARGES ..... 15

ARTICLE 10 DURATION OF AGREEMENT ..... 17

ARTICLE 11 DISPUTE RESOLUTION ..... 17

ARTICLE 12 INSURANCE ..... 18

ARTICLE 13 GENERAL PROVISIONS ..... 18

EXHIBIT A CONTRACT CAPACITY

EXHIBIT B FACILITIES USED BY IMEPRIAL BEACH

EXHIBIT C UNIT TRANSPORTATION RATE

EXHIBIT D SEWER CROSS-CONNECTION STRUCTURES

**THIS SEWAGE TRANSPORTATION AGREEMENT** is made and entered into by and between the City of San Diego, a municipal corporation (San Diego), and the City of Imperial Beach (Imperial Beach).

## RECITALS

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

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

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

D. San Diego and Imperial Beach had previously entered into an Agreement of 1984 Between the City of San Diego and the City of Imperial Beach for the Financing and Operation of the Palm City Trunk Sewer System, under which San Diego has authorized Imperial Beach to discharge sewage into the San Diego Municipal Sewerage System for transportation to the Metropolitan Sewerage System and under which the parties had operated.

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

NOW, THEREFORE, in consideration of the mutual obligations of the parties as herein expressed, San Diego and Imperial Beach agree as follows:

## AGREEMENT

### ARTICLE 1 - DEFINITIONS

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

*Agency Sewerage System* means Imperial Beach's wastewater collection system, which consists of pipelines and pump stations, and collects wastewater within the agency and from other agencies.

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

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

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

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

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

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

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

*Cross Connection* means any actual or potential connection between the public water supply and a source of contamination or pollution. In this agreement reference to cross connection is between storm drains and sewer system. The purpose of a diversion system is to divert urban runoff with the most concentrated pollution into sewer system for treatment, rather than allowing it to flow into waterways untreated.

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

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

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

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

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

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

*LAFCO* means the San Diego Local Agency Formation Commission.

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

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

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

*Parties* means San Diego and Imperial Beach.

*Peak Capacity* means the highest amount of discharge of sewage that Imperial Beach is allowed under this Agreement to discharge into those portions of SDMS used by Imperial Beach, measured in fifteen (15) minute intervals and expressed as either a rate of flow in cubic feet per

second (cfs) or in million gallons per day (MGD) where 1 cfs = 0. 646317 MGD. In the event of a dispute, cubic feet per second (cfs) will take precedence.

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

*Regional Wastewater Disposal Agreement* means the "Regional Wastewater Disposal Agreement between San Diego and the Participating Agencies in the Metropolitan Sewerage System," Document No. OO-18417, filed May 18, 1998, with the Clerk for the City of San Diego as may be amended.

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

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

*Sewage* means wastewater and its commonly constituent substances.

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

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

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

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

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

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

2.1.2 Assignment of Rights. Subject to the terms of this Agreement, Imperial Beach may transfer or assign its rights and obligations under this Agreement. Any such transfer must first, however, be approved by San Diego by written agreement. Imperial Beach may not transfer its rights if San Diego determines, after consultation with Imperial Beach, that the proposed transfer will imbalance, or will otherwise adversely impact San Diego's ability to operate the SDMS or the Metro System. Any transfer of rights or assignment to a non-profit corporation or public entity formed by the City of Imperial Beach, with or without LAFCO approval, to provide sewer service to the residents of Imperial Beach shall not require San Diego's approval provided the transfer or assignment does not increase the contract capacity or alter the point(s) of entry into the SDMS. Imperial Beach shall provide San Diego with written notice at least sixty days prior to such transfer or assignment.

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

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

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

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

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

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

2.4.2 CAFR. San Diego shall make its Comprehensive Annual Financial Report as it relates to the SDMS available to Imperial Beach.

2.5 Limitations on Type and Condition of Sewage. Imperial Beach shall not discharge or allow to be discharged, any sewage or wastes into the SDMS which do not meet the standards established by appropriate San Diego ordinances, resolutions, rules and regulations. Imperial Beach shall also comply with all applicable statutes, rules and regulations of all agencies of the United States of America, including the Environmental Protection Agency, and all agencies of the State of California having jurisdiction over the collection, transmission, treatment and disposal of sewage and other wastes in the SDMS.

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

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

2.5.3 Imported Sewage. Imperial Beach shall not discharge any sewage originating outside the boundaries of Imperial Beach into the SDMS without the prior written consent of San Diego except for sewage from recreational vehicles, motor homes,

trailers, or from businesses that pump sewage from private septic systems, that otherwise complies with the requirements of this Agreement.

2.5.4 Enforcement Actions. If a regulatory agency or judicial body with appropriate jurisdiction imposes any penalty or takes other enforcement action related to the transportation of sewage or other matter in or from the SDMS, San Diego shall reasonably determine, in active consultation with impacted parties, whether San Diego, Imperial Beach, or any other authorized agency caused or contributed to such penalty or enforcement action, if no apportionment of fault is made by the regulatory agency or judicial body with appropriate jurisdiction. Based on this determination, San Diego shall allocate the penalty or other relief, including the cost of defense, to the party or parties responsible. Each responsible party, whether San Diego, Imperial Beach, or another authorized agency, shall pay its share of the penalty or other relief, and any costs of defense as reasonably determined by San Diego in active consultation with impacted parties. If San Diego cannot reasonably make an allocation based on responsibility, the cost of the penalty or other relief shall be shared by San Diego, Imperial Beach, and any other authorized agency involved based proportionately on their respective average daily flow into the SDMS.

2.5.5 Rock Traps. After consultation with San Diego, Imperial Beach shall be required to install rock trap screens at sites connecting to the SDMS where reasonably necessary to protect the SDMS or the Metro System. San Diego shall request the installation of rock traps in writing and shall allow a minimum of 120 days for installation after the initial request is made.

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

## ARTICLE 3 - CONTRACT CAPACITY RIGHTS

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

3.2 Projected Flow and Capacity Report. On or before September 30th of each year during the term of this Agreement and upon the request of San Diego, Imperial Beach shall provide San Diego with a ten-year projection (by fiscal year) of its average daily flow for dry season, peak flow and capacity requirements in those portions of the SDMS used by Imperial Beach. The peak flow projection should be based on the ten-year return wet weather flow estimation. If at any time during the ten-year projection Imperial Beach is projected to exceed its average and/or peak

capacity allotted under its contract capacity, Imperial Beach shall develop and submit a plan of action and an implementation schedule to San Diego for its approval and acceptance. At a minimum, the plan shall describe Imperial Beach's future needs for contract capacity for the next ten (10) years and if necessary, propose mitigation measures which may be required of Imperial Beach to facilitate its future needs for capacity including but not limited to increases in capacity through capital improvement projects or taking other measures such as the construction of peak flow retention structures or re-use facilities to reduce Imperial Beach's flow into the SDMS.

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

3.3 Other Planning Information. On or before September 30th of each year during the term of this Agreement and upon the request of San Diego, Imperial Beach shall also provide San Diego with a 50-year projection (by fiscal year) of its average daily flows for dry season in those portions of SDMS used by Imperial Beach.

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

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

## ARTICLE 4 - EXCEEDING CAPACITY

4.1 Limitations on Capacity. During the term of this Agreement, Imperial Beach shall have the right to discharge sewage into the SDMS in an amount not to exceed its contract capacity set forth in Exhibit A. San Diego is not obligated to receive from Imperial Beach, nor is Imperial

Beach privileged to discharge into the SDMS, any amounts in excess of Imperial Beach's contract capacity permitted under this Agreement.

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

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

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

Imperial Beach's estimated share of capital improvement project costs = (A/B) x C

Where: "A" is Imperial Beach's additional peak capacity;

"B" is the design capacity of the SDMS facilities; and

"C" is the capital improvement project cost of the SDMS facilities, expressed as the original cost unless the facilities had been rehabilitated, in which case the cost of rehabilitation shall be added to the original cost. In

the case of replacement, the replacement cost shall be used in lieu of the original cost for the portion of the facility that has been replaced.

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

4.4 Diversion of Flow. Nothing in this Agreement shall preclude Imperial Beach from diverting all or part of its flow from the SDMS. However, prior to such diversion, Imperial Beach shall notify San Diego in writing at least six (6) months in advance and enter into an agreement with San Diego that, at a minimum, will require Imperial Beach to pay its proportionate share of outstanding capital improvement project costs, if payment of such outstanding costs upon diversion of flow is not already addressed by separate agreement pursuant to Sections 8.2.1.3 or 8.2.2.3. Imperial Beach will also be responsible for all transportation charges owed by Imperial Beach up to the time of diversion.

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

4.4.1.1 If a capital improvement project replaces a facility in which Imperial Beach has contract capacity, Imperial Beach's contract capacity is extinguished.

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

4.5 Fines and Penalties. Imperial Beach shall be responsible for the violation of any applicable laws, rules, or regulations associated with its discharge of flow into the SDMS. In the event a regulatory agency imposes any penalty or takes other enforcement action relating to the conveyance of flow through a SDMS facility listed in Exhibit B, if no determination of fault is made by the regulatory agency, San Diego shall reasonably determine whether itself or an authorized agency or agencies caused or contributed to such penalty or enforcement actions. San Diego shall allocate the penalty or other relief, including the costs of defense, to the authorized agency or agencies responsible. Each responsible party, whether an authorized agency or San Diego, shall be obligated to pay its share of such penalty or other relief, and any costs of defense. In the event that San Diego cannot make such an allocation, the cost of such penalty or other

relief shall be shared by all authorized agencies, including San Diego, using the SDMS facility proportionately based on the amount of flow. Imperial Beach shall have the ability to review any finding made by San Diego adverse to Imperial Beach and Imperial Beach shall have the right to defend any actions before the regulatory agency where San Diego claims that Imperial Beach is at fault.

## ARTICLE 5 - MONITORING

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

5.2 Equipment Maintenance. San Diego shall operate, maintain, manage and control the flow monitoring device(s) in an efficient and economical manner and preserve them in good repair and working order, all in accordance with recognized and sound engineering practices. San Diego shall provide flow reports to Imperial Beach on a regular basis but not less frequently than quarterly. Upon written request, San Diego shall provide Imperial Beach with the record of the field calibration for any meters in question. Imperial Beach shall have access to the electronic files.

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

## ARTICLE 6 - TRANSPORTATION CHARGES

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

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

6.1.2 Periodic Adjustments. The unit transportation rate will be reviewed by San Diego every five (5) years, commencing from the date of its finalization, to ensure that it does not deviate substantially from actual costs incurred by San Diego for operation and

maintenance of the SDMS utilized by Imperial Beach. San Diego will adjust the unit transportation rate in accordance with either of the following methods:

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

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

6.1.3 Other Adjustments. Notwithstanding the above, San Diego may adjust the unit transportation rate at any time if a change in federal, state, or local laws or regulations, a court order, or an order from a regulatory agency materially affects the cost of providing sewage transportation service. In consultation with Imperial Beach, San Diego will adjust the unit transportation rate to reflect the actual cost to San Diego, effective the beginning of the next billing period. If Imperial Beach objects to the adjustment determined by San Diego, the matter shall be resolved pursuant to the dispute resolution procedure set forth in Article 11 of this Agreement.

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

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

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

allocation to Imperial Beach resulted in an underpayment, such amount shall be adjusted by San Diego as a debit to the next invoice following such determination.

## ARTICLE 7 - OPERATION AND MAINTENANCE CHARGES FOR MUNICIPAL PUMP STATIONS

This section does not apply to Imperial Beach.

## ARTICLE 8 - CAPITAL IMPROVEMENT PROJECTS

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

8.1.1 Imperial Beach Plans. In accordance with Sections 3.2 and 3.3 of this Agreement, Imperial Beach shall provide San Diego with the projections (by fiscal year) of its flows and contract capacity requirements in those portions of the SDMS used by Imperial Beach. Imperial Beach shall also advise San Diego of any plans to acquire capacity outside the SDMS. This "Projected Flow Capacity Report" shall be updated annually. Imperial Beach shall also provide San Diego with such additional information requested by San Diego as necessary for SDMS planning purposes.

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

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

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

8.2.1.1 San Diego's determination shall be made following active and meaningful consultation between San Diego and Imperial Beach. This determination shall be

based on: (1) the type and location of any capital improvement projects necessary; (2) the projected costs of any necessary capital improvement projects; and (3) the allocation of the cost of any such capital improvement projects to Imperial Beach and San Diego calculated pursuant to Section 9.2. San Diego shall then prepare a notice of determination setting forth its conclusions and send said notice of determination to Imperial Beach.

8.2.1.2 Imperial Beach shall have six (6) months from the date of the notice of determination within which to either: (1) comment on or challenge all or part of San Diego's determination; (2) agree to the determination; or (3) commit, in writing, to obtain new sewage transportation services outside of the SDMS as described below. If Imperial Beach objects to San Diego's determination, Imperial Beach shall have the burden to commence and diligently pursue the formal dispute resolution procedures of Article 11 of this Agreement. If Imperial Beach fails to initiate dispute resolution within ninety (90) days after the expiration of the time to respond to the notice of determination set forth herein, San Diego's determination shall become final and binding on Imperial Beach, and Imperial Beach agrees to pay the capital improvement project costs and transportation charge set forth therein.

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

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

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

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

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

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

## ARTICLE 9 - CAPITAL IMPROVEMENT CHARGES

9.1 Charges for Existing Facilities. The Parties agree that no reimbursements are due from Imperial Beach to San Diego for existing facilities which are used by Imperial Beach for the transportation of its sewage through the SDMS.

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

Where: "A" is Imperial Beach's peak capacity conveyed by the capital improvement project;

"B" is the design capacity of the capital improvement project;

"C" is the estimated capital improvement project cost;

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

"E" is the estimated useful life of the new SDMS facility; and

"F" is the percentage of capital improvement project length used by Imperial Beach.

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

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

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

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

## ARTICLE 10 – DURATION OF AGREEMENT

10.1 Effective Date. This Agreement shall become effective thirty days after execution by San Diego and Imperial Beach.

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

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

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

10.5 Abandonment. San Diego may cease operation and maintenance of all or part of the SDMS upon delivery of notice to Imperial Beach ten (10) years in advance of said abandonment. Upon notice by San Diego to abandon the SDMS, the parties shall meet and confer over the nature and conditions of such abandonment. In the event the parties cannot reach agreement, the matter shall be resolved pursuant to the dispute resolution procedure set forth in Article 11 of this Agreement. In the event of abandonment, San Diego shall retain ownership of all SDMS assets free from any claim of Imperial Beach.

## ARTICLE 11 - DISPUTE RESOLUTION

11.1 Application. This Article shall govern all disputes arising out of this Agreement. There shall be no other condition precedent or claims requirement other than those enumerated in this Agreement.

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

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

11.2.2 Costs. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

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

11.3 Performance Required During Dispute. Nothing in this Article shall relieve either San Diego or Imperial Beach from its obligation to perform all of their obligations under this Agreement. San Diego and Imperial Beach shall be required to comply with this Agreement, including the performance of all disputed activity and disputed payments, pending the resolution of any dispute under this Agreement.

## ARTICLE 12 - INSURANCE

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

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

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

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

## ARTICLE 13 – GENERAL PROVISIONS

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

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

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

City of Imperial Beach
Public Works Director
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

Copy to City Clerk, City of Imperial Beach

City of San Diego
Director of Public Utilities
Public Utilities Department
9192 Topaz Way
San Diego, CA 92123

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

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

| | |
|---|---|
| Exhibit A | Contract Capacity |
| Exhibit B | Facilities Used by Imperial Beach |
| Exhibit C | Unit Transportation Rate |
| Exhibit D | Sewer Cross-Connection Structures |

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

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

> 13.7.1 Understanding of Intent and Effect of Agreement. The parties expressly declare and represent that they have read the Agreement and that they have consulted with their respective counsel regarding the meaning of the terms and conditions contained herein. The parties further expressly declare and represent that they fully understand the content and effect of this Agreement and they approve and accept the terms and conditions contained herein, and that this Agreement is executed freely and voluntarily.

13.8 Integration Clause. San Diego and Imperial Beach represent, warrant and agree that no promise or agreement not expressed herein has been made to them, that this Agreement contains the entire agreement between the parties, that this Agreement supersedes any and all prior agreements or understandings between the parties unless otherwise provided herein including but not limited to the provisions of Section 13.6 of this Agreement, and that the terms of this Agreement are contractual and not a mere recital; that in executing this Agreement, neither party is relying on any statement or representation made by the other party, or the other party's representatives concerning the subject matter, basis or effect of this Agreement other than as set forth herein; and that each party is relying solely on its own judgment and knowledge.

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

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

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

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

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

13.14 Restrictions on Veto of Transfers and Acquisitions of Capacity. Imperial Beach understands and specifically recognizes that with respect to transfer and acquisition of capacity in the SDMS or the creation of additional capacity in the SDMS for any other authorized agency,

Imperial Beach does not have the right to veto or prevent the transfer of capacity by and among other agencies or with San Diego, or to veto or prevent the creation or acquisition of capacity for another authorized agency or agencies. Imperial Beach recognizes that by signing this Agreement Imperial Beach has expressly pre-approved such actions. The sole right of Imperial Beach to object to any of the foregoing shall be through expression of its opinion to San Diego and, where applicable, through exercise of its rights under the dispute resolution provisions of this Agreement.

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

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

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

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

[remainder of page intentionally blank]

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

CITY OF IMPERIAL BEACH

By: _____

Name: Gary R. Brown, City Manager

Date: 11/21/11

By: _____

Name: Jennifer Lyon, City Attorney

Date: 11/21/11

CITY OF SAN DIEGO

By: _____

Name: _____

Date: _____

I HEREBY APPROVE the form and legality of the forgoing agreement this _____ day of _____, 2011.

JAN I. GOLDSMITH, City Attorney

By: _____
Deputy City Attorney

# EXHIBIT A
# CONTRACT CAPACITY

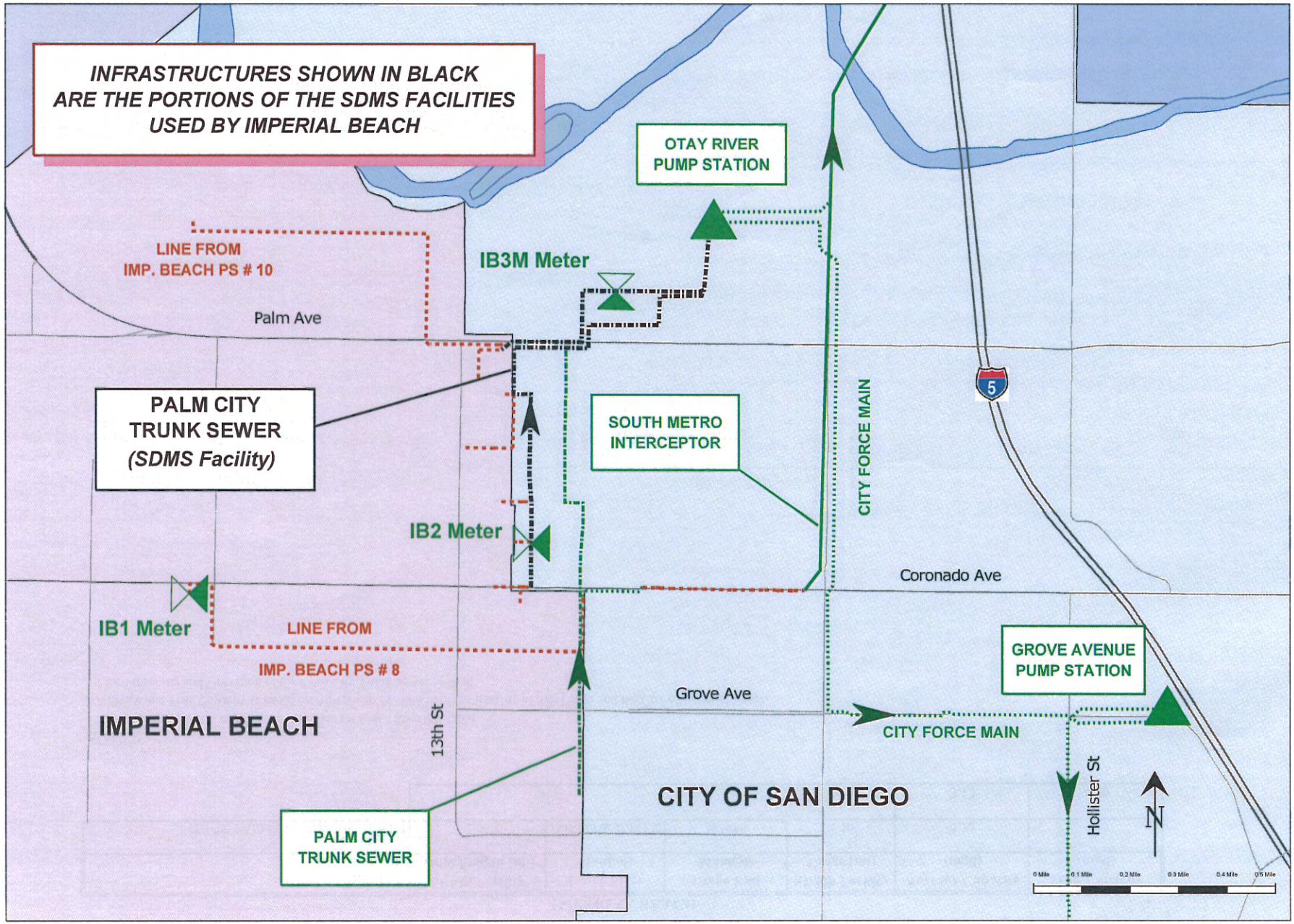
## IMPERIAL BEACH

| SDMS Facility | SDMS Facility Total Length (mi) | Usage Start Manhole | Usage End Manhole | SDMS Facility Usage (mi) | Average Capacity (mgd) | Peak Capacity (mgd) |
|---|---|---|---|---|---|---|
| (TS 75) PALM CITY TRUNK SEWER | 2.58 | J34S115 & J34S172 | J33S86 | 1.70 | 3.12 | 4.80 |
| | | | | **Overall :** | **3.12** | **4.80** |

**NOTES:**

1 Metro facilities and non-city sewer lines are excluded from this table.

2 Average and Peak Capacity is based on Agreement of 1984 between the City of San Diego and the City of Imperial Beach for the Financing and Operation of the Palm City Trunk Sewer System.




THIS MAP IS PROVIDED WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Copyright SanGIS All Rights Reserved. This product may contain information from the SANDAG Regional Information System, which cannot be reproduced without written permission of SANDAG. This product may contain information which has been reproduced with permission granted by Thomas Brothers Maps.

SanGIS

Date Printed : 02-01-10 J Richards

J:\GROUPS\ADS\Transportation Agreement Maps\Imperial Beach - REVISED

# EXHIBIT B
# FACILITIES USED BY IMPERIAL BEACH
# SEWAGE TRANSPORTATION AGREEMENT

City of San Diego
SPLASH
Water Department

# EXHIBIT C
# UNIT TRANSPORTATION RATE

## I. Computation Methodology:

The Transportation Rate is based on O & M costs associated with the use of the conveyance systems and billing units in terms of Million Gallons-Miles (MG-Mile). O&M Costs are apportioned between small diameter pipes (SDP) defined as less than eighteen inches and large diameter pipes (LDP) defined as equal to or greater than eighteen inches based on the costs to service large diameter pipes. This method provides information on the amount of flow, the individual lines utilized for transport, and the total mileage used in the municipal system.

## II. Base Transportation Rate:

| Pipe Diameter | | | | Unit cost | Agency | | Rate |
|---|---|---|---|---|---|---|---|
| Billing Units | MG-miles | Length, miles | O&M Cost | $/mg -mile | Billing Units, MG-miles | Cost | $/mg -mile |
| <18" | 329,722 | 2,538 | $52,790,764 | $160.11 | 2,255 | $361,041 | $0.77 |
| =>18" | 1,407,607 | 281 | $4,612,328 | $3.28 | 469,428 | $1,538,182 | $3.26 |
| Total | 1,737,329 | 2,819 | $57,403,092 | | 471,683 | $1,899,223 | $4.03 |

## III. Transportation Rate effective July 1, 2008 through June 30, 2009 is $4.16[1]

[1] The base transportation rate adjusted by the average inflation rate for California in 2007 of 3.2% per the State of California Economic Forecast Index. This is consistent with Section VI.A. of the Municipal Sewage Transportation Agreement.

## IV. Transportation Rate effective July 1, 2009 through June 30, 2010 is $4.30[2]

[2] The base transportation rate adjusted by the average inflation rate for California in 2008 of 3.4% per the State of California Economic Forecast Index. This is consistent with Section VI.A. of the Municipal Sewage Transportation Agreement.

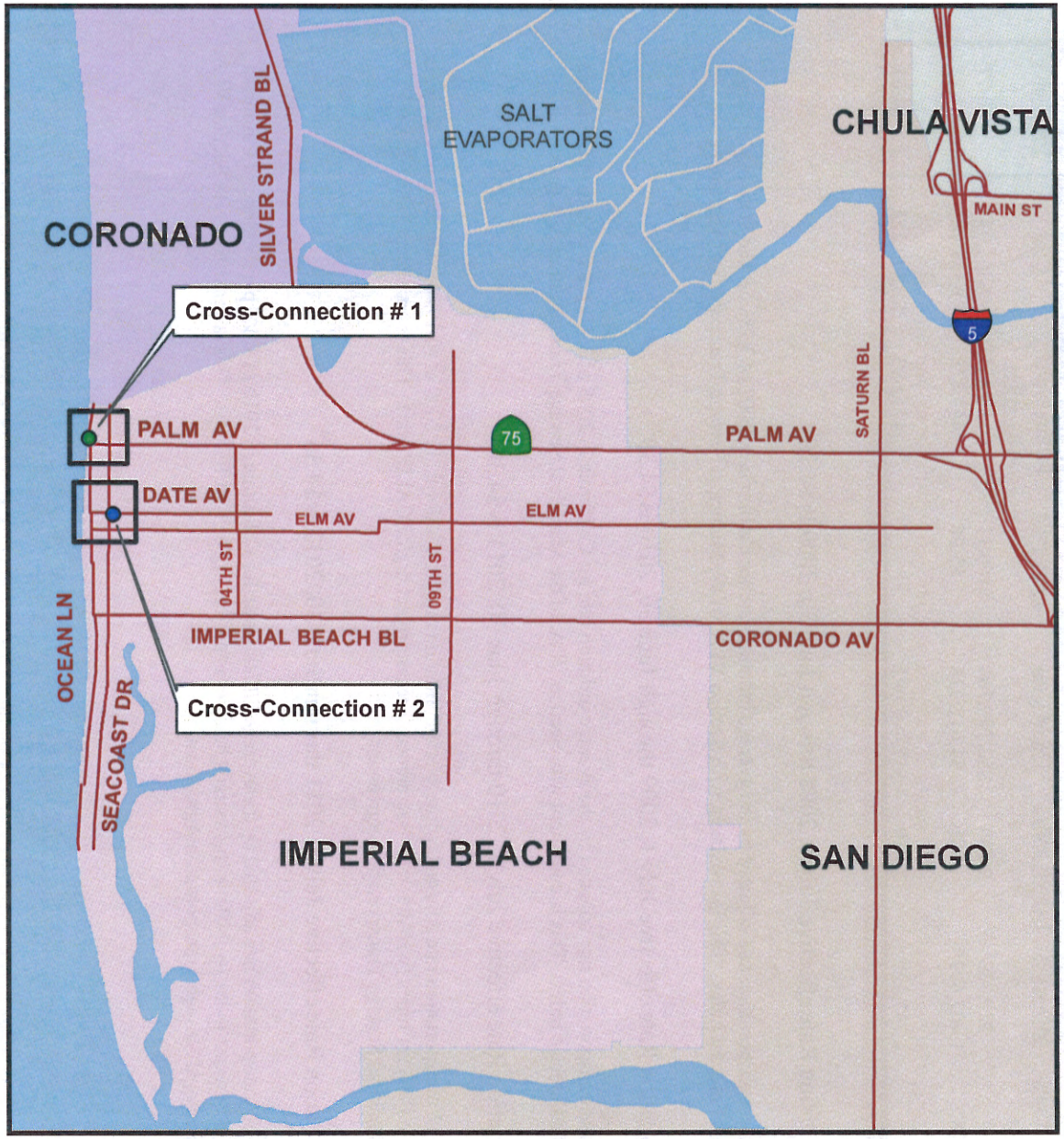
## V. Transportation Rate effective July 1, 2010 through June 30, 2011 is $4.30[3]

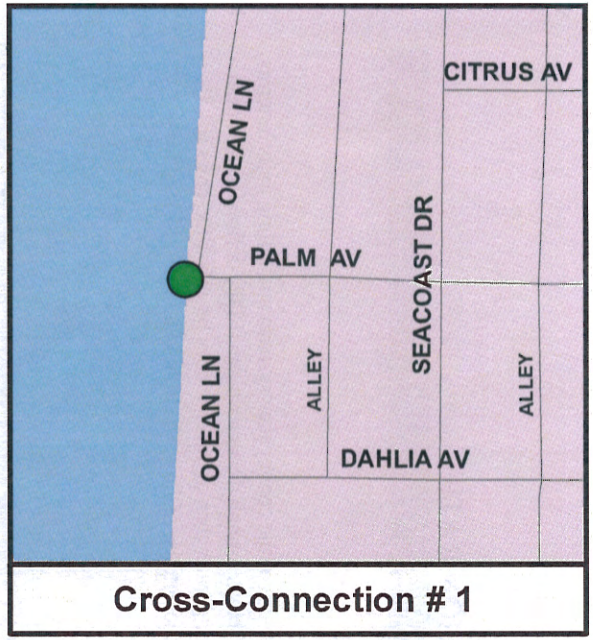
[3] The base transportation rate adjusted by the average inflation rate for California in 2009 of -0.1% per the State of California Economic Forecast Index (website: http://sacramentoforecastproject.org/ca/CALIF.htm). This is consistent with Section VI.A. of the Municipal Sewage Transportation Agreement.

## VI. Transportation Rate effective July 1, 2011 through June 30, 2012 is $4.36[4]

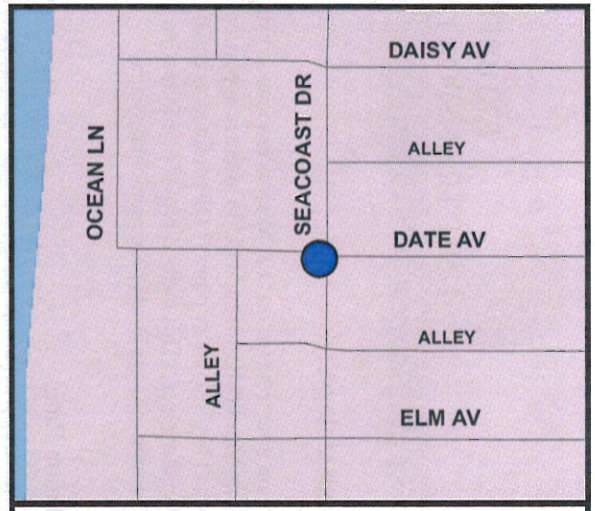
[4] The base transportation rate adjusted by the average inflation rate for California in 2010 of 1.4% per the State of California Economic Forecast Index (website: http://sacramentoforecastproject.org/ca/CALIF.htm). This is consistent with Section VI.A. of the Municipal Sewage Transportation Agreement.

THIS MAP IS PROVIDED WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Copyright SanGIS All Rights Reserved. This product may contain information from the SANDAG Regional Information System, which cannot be reproduced without written permission of SANDAG. This product may contain information which has been reproduced with permission granted by Thomas Brothers Maps.




Cross-Connection # 1




Cross-Connection # 2

# EXHIBIT D
# THE CITY OF IMPERIAL BEACH
# SEWER CROSS-CONNECTION STRUCTURE LOCATIONS

City of San Diego
PUBLIC UTILITIES
Water & Wastewater

J:\GROUPS\ADS\Transportation Agreement Maps\Imperial Beach Exhibit D.mxd

Print Date: 06-17-10 J. Richards

**RESOLUTION NO. 2011-7117**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING A SEWAGE TRANSPORTATION AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND CITY OF IMPERIAL BEACH DATED NOVEMBER 2011**

**WHEREAS,** the City of San Diego owns, operates and maintains the Metropolitan Sewerage System for the purpose treating and disposing of sewage for San Diego and certain other municipalities, including the City of Imperial Beach, and districts within the San Diego region under the terms and conditions of the Regional Wastewater Disposal Agreement; and

**WHEREAS,** City of San Diego also owns, operates and maintains the San Diego Municipal Sewerage System for the purpose of collecting and transporting sewage to the Metropolitan Sewerage System; and

**WHEREAS,** due to the location of the City of Imperial Beach sewerage system it is necessary that Imperial Beach use a portion of the San Diego Municipal Sewerage System to transport its sewage to the Metropolitan Sewerage System; and

**WHEREAS,** Cities of San Diego and Imperial Beach had previously entered into an Agreement of 1984 Between the City of San Diego and the City of Imperial Beach for the Financing and Operation of the Palm City Trunk Sewer System, under which San Diego has authorized Imperial Beach to discharge sewage into the San Diego Municipal Sewerage System for transportation to the Metropolitan Sewerage System and under which the parties had continued to operated; and

**WHEREAS,** the purposes of this new Agreement are to: 1) allow Imperial Beach to discharge sewage into the San Diego Municipal Sewerage System for transportation to the Metropolitan Sewerage System; 2) establish a rate to be charged for sewerage transportation services rendered by the City of San Diego to the City of Imperial Beach; 3) establish Imperial Beach's contract capacity in San Diego Municipal Sewerage System for the use of a portion of the San Diego Municipal Sewerage System; and 4) establish a method to allocate the capital improvement project costs of future improvements, repair, rehabilitation, or replacement to the San Diego Municipal Sewerage System as are deemed necessary by San Diego and in consultation with authorized agencies affected by the work on a fair and equitable basis; and

**WHEREAS,** the City of San Diego and City of Imperial Beach staffs have worked on the proposed agreement for the past few years; and

**WHEREAS,** it is the opinion of City staff that the proposed agreement is fair and equitable to both parties; and

**WHEREAS,** the estimated annual sewage transportation cost for Fiscal Year 2012 is $3,740; and

**WHEREAS,** this cost will vary over time depending on the City's sewerage flow and the transportation rate; and

**WHEREAS,** the City's sewerage flow has been relatively constant over the past 20 years, however the transportation rate have continued to move higher due to increased system maintenance and operation costs over time; and

**WHEREAS,** the Agreement becomes effective thirty (30) days after execution of the Agreement by both parties and expires on December 31, 2050.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Imperial Beach as follows:

1. The above recitals are true and correct.
2. The Sewage Transportation Agreement between the City of San Diego and City of Imperial Beach dated November 2011 is approved.
3. The City Manager and City Attorney are authorized to sign the Sewage Transportation Agreement between the City of San Diego and City of Imperial Beach dated March 2011.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Imperial Beach at its meeting held on the 16th day of November 2011, by the following vote:

| | | |
|---|---|---|
| **AYES:** | **COUNCILMEMBERS:** | **KING, SPRIGGS, BILBRAY, JANNEY** |
| **NOES:** | **COUNCILMEMBERS:** | **NONE** |
| **ABSENT:** | **COUNCILMEMBERS:** | **BRAGG** |

**JAMES C. JANNEY, MAYOR**

**ATTEST:**

Jacqueline M. Hald

**JACQUELINE M. HALD, MMC**
**CITY CLERK**