

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) N/A
--	---

TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Public Utilities	DATE: 5/15/2014
---------------------	--	--------------------

SUBJECT: Authorize an Amendment to and Restatement of the March 17, 1998 Agreement (OO-18474) between the City of San Diego and the San Dieguito Water District and Santa Fe Irrigation District.

PRIMARY CONTACT (NAME, PHONE): Jesus Meda, 619-527-3156, MS 43	SECONDARY CONTACT (NAME, PHONE): Mark Mercer, 619-533-6295, MS 59
---	--

COMPLETE FOR ACCOUNTING PURPOSES

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE): NO FISCAL IMPACT

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	ORIG DEPT.	Mulvey, Robert	05/28/2014
Equal Opportunity Contracting	CFO		
Liaison Office	DEPUTY CHIEF		
Financial Management	COO		
Comptroller	CITY ATTORNEY		
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Authorizing the Mayor, or designee, to execute the first amendment and restatement to the March 17, 1998 Agreement (OO-18474) between the City of San Diego (City) and the San Dieguito Water District and Santa Fe Irrigation District to clarify the respective rights concerning the water supply operation and storage of water in Lake Hodges Reservoir.

STAFF RECOMMENDATIONS: Adopt Ordinance.	
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)	
COUNCIL DISTRICT(S):	Citywide
COMMUNITY AREA(S):	Citywide
ENVIRONMENTAL IMPACT:	This activity is not a "project" therefore exempt from CEQA pursuant to the State Guidelines Section 15060 (c) (3).
CITY CLERK INSTRUCTIONS:	

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 5/15/2014

ORIGINATING DEPARTMENT: Public Utilities

SUBJECT: Authorize an Amendment to and Restatement of the March 17, 1998 Agreement (OO-18474) between the City of San Diego and the San Dieguito Water District and Santa Fe Irrigation District.

COUNCIL DISTRICT(S): Citywide

CONTACT/PHONE NUMBER: Jesus Meda/619-527-3156, MS 43

DESCRIPTIVE SUMMARY OF ITEM:

This action is to approve the amendment to the original agreement (OO-18474) between the City of San Diego (City), the San Dieguito Water District and Santa Fe Irrigation District (referred collectively as Districts). The amendment elaborates on the shared responsibilities for the water supply operation and water storage in Lake Hodges Reservoir (Hodges).

STAFF RECOMMENDATION:

Adopt Ordinance.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

Hodges Dam and Reservoir (Hodges) were completed in 1919 by the San Dieguito Mutual Water Company. The City acquired the dam and reservoir in 1925. The Districts and their predecessors have acquired rights to local water collected in Hodges and have been using local water from Hodges pursuant to a series of agreements with the City since 1925. Historically, the City has not had the necessary infrastructure in place to use Hodges for water supply purposes. Hodges has a current capacity of 30,000 acre feet (AF) and has mainly collected only local watershed waters until recently.

In the 1990's, the City, the San Diego County Water Authority (SDCWA) and its member agencies (including the Districts) started the Emergency Storage Project (ESP) to address emergency storage deficiencies within the region. As part of the ESP, the City and SDCWA entered into the 1998 ESP Agreement for Hodges which resulted in new water infrastructure (pipelines/pump station/new adjacent reservoir) that connected Hodges to SDCWA's aqueduct system. In exchange, the 1998 ESP Agreement provided SDCWA with 20,000 acre feet of storage capacity rights within Hodges. These Hodges ESP improvements have been completed and have enabled both the City and SDCWA to utilize Hodges for both local and imported water supply. This has resulted in significant changes in how the reservoir is utilized and operated because the City, SDCWA, and the Districts now have more flexibility to store and utilize water in Hodges.

Also in 1998 and due to the new 1998 ESP Agreement, the City and Districts entered into a new separate agreement for Hodges (1998 Agreement). The 1998 Agreement essentially restated the Districts' property rights and obligations concerning local water and operations, and attempted to clarify how Hodges would be used and operated by all parties after SDCWA finished the Hodges ESP improvements.

Unfortunately, the 1998 Agreement was ambiguous on how Hodges would be operated after SDCWA completed the Hodges ESP improvements. This led the Districts to file a lawsuit in 2008 against the City. This lawsuit did not seek monetary damages from the City but sought a judicial interpretation of the 1998 Agreement. The City Council heard the details of this dispute at closed session in 2009 and provided direction to City staff and the City Attorney's Office to renegotiate the 1998 Agreement. The Districts and City staff, with assistance from the City Attorney's Office, have been negotiating a new operating agreement for Hodges. In November 2010, the Districts felt comfortable enough with the status of the negotiations to dismiss the City from the 2008 lawsuit.

Ultimately, this amendment and restatement will secure the City's ability to maximize the use of local water from Hodges. On the average, annually the City can expect to yield between 5,000 and 6,000 acre feet of local water from Hodges (value of \$4.1-\$5.0 M annually based on current imported water costs).

More specifically, the major points of clarification and restatement involve the following:

1. Sharing of local water collected in Hodges
 - a. City and Districts will continue to equally share all local runoff water collected in Hodges from local rain and runoff.
2. Sharing of storage space within Hodges:
 - a. The SDCWA, City and Districts will share the reservoir's 30,000 acre foot capacity in the following manner: SDCWA will own 20,000 acre feet of storage per the existing 1998 ESP Agreement; The City and Districts will equally share and own the remaining capacity (5,000 acre feet each). Storage ownership will ensure each party has operational control and rights to meet their respective operational and storage needs.
3. Sharing of Water Diversion/Transfers/Sales Out of Hodges:
 - a. The City and Districts will have the equal ability to share the available diversion capacity out of Hodges via existing pipelines/pump stations. This will provide equal benefits to the City and Districts when moving water out of Hodges, especially during wet years.
 - b. The City and Districts will have the ability to equally share in the sale of local water to SDCWA when operations and efficiencies dictate and in lieu of pumping that water out of Hodges. This would reduce significant pumping costs to the City and Districts.
4. Sharing of Hodges operation and maintenance costs (O&M Costs):
 - a. This was added to adequately address the sharing of O&M costs. For the period of July 1, 2012 until the San Vicente Dam Raise Project's completion (estimated July 2014), Hodges O&M costs will be shared equally amongst the Districts and the City. Upon completion of the San Vicente Dam Raise Project, the subsequent O&M costs will be shared amongst the Districts (25%), the City (25%), and the San Diego County Water Authority (50%, per 1998 ESP Agreement). The language was revised to reflect SDCWA's contribution to O&M costs.
5. Sharing of Hodges capital improvement costs for pre-ESP Hodges facilities (CIP Costs):

- a. This section was added to address the sharing of CIP Costs. The Districts will be responsible to pay for 25% of any CIP Costs related to Hodges Dam and outlet works. The City will cover the remaining CIP Costs until 2018, per the existing 1998 ESP Agreement. At 2018, SDCWA will begin to cover CIP Costs for Hodges in the amount of 50%, with the City and Districts covering 25% each. This language was revised to reflect SDCWA's contribution to CIP costs.

The above summarized major points of amendment and restatement will provide the City and Districts a unified and consistent interpretation on water accounting and operations for Hodges in line with the existing ESP Agreement and SDCWA operations. It will also provide equal sharing of operational benefits while protecting and ensuring long standing rights and obligations of all involved parties.

FISCAL CONSIDERATIONS:

The Agreement will allocate Hodges' operations and maintenance costs (O&M) between the Districts and the City. For the period of July 1, 2012 until the San Vicente Dam Raise Project's completion (estimated July 2014), Hodges O&M costs will be shared equally amongst the Districts and the City. Upon completion of the San Vicente Dam Raise Project, the subsequent O&M costs will be shared amongst the Districts (25%), the City (25%), and the San Diego County Water Authority (50%, per 1998 ESP Agreement).

EQUAL OPPORTUNITY CONTRACTING INFORMATION: N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On March 17, 1998, OO-18474 authorized and execut

Mulvey, Robert
Originating Department

Deputy Chief/Chief Operating Officer

April 10, 2014

**AMENDMENT TO AND RESTATEMENT OF MARCH 17, 1998 AGREEMENT
BETWEEN THE CITY OF SAN DIEGO, SANTA FE IRRIGATION DISTRICT
AND SAN DIEGUITO WATER DISTRICT REGARDING LAKE HODGES**

This AMENDMENT to and RESTATEMENT ("Amendment") of the March 17, 1998 Agreement (City of San Diego Document No. OO-18474) ("1998 Agreement") by and between the City of San Diego ("San Diego" or "City"), a municipal corporation, Santa Fe Irrigation District ("Santa Fe"), a California irrigation district, and San Dieguito Water District ("San Dieguito"), a California irrigation district, is made and entered this ___ day of _____, 2014. Santa Fe and San Dieguito are referred to herein collectively as the "Districts." The City, Santa Fe and San Dieguito are referred to herein collectively as the "Parties."

RECITALS

- A. The City acquired its ownership interest in Lake Hodges ("Lake Hodges" or "Lake Hodges Reservoir"), a reservoir with a capacity of approximately 30,000 acre feet, located near Rancho Santa Fe, California, subject to the Districts' entitlement to a portion of the water flowing into Lake Hodges.
- B. Subsequent to the City's acquisition of Lake Hodges, the Parties entered into a series of written agreements which addressed the quantity of "Local Water" available to the Districts, allocation of costs between the City and Districts associated with certain aspects of operations at Lake Hodges, delivery points for Local Water to be diverted by the Districts, and other matters.
- C. The Parties have expressed support for the efforts of the San Diego County Water Authority ("CWA") to establish a regional emergency storage project ("ESP").
- D. On March 17, 1998, the Parties entered into the 1998 Agreement. By its own terms, the 1998 Agreement was intended to rescind all previous agreements between the Parties and restate their respective rights with respect to Lake Hodges.
- E. On April 9, 1998, the CWA Board of Directors approved the authorization for the CWA General Manager to enter into an agreement with the City for the ESP expansion of Lake Hodges Dam and Reservoir.
- F. By agreement dated May 26, 1998 as City Document Number 00-18521-2 ("City-CWA Agreement"), the City entered into an agreement with CWA that relates to the ESP and associated improvements to be undertaken at various City reservoirs. In particular, the City-CWA Agreement and ESP contemplated the construction of a pipeline and pumping plant to connect Lake Hodges to Olivenhain Reservoir and CWA's "Second Aqueduct." The City-CWA Agreement expressly acknowledges the 1998 Agreement.
- G. In 2008, the Parties had a disagreement on the interpretation of the 1998

Agreement in relationship with the City-CWA Agreement. The Districts subsequently filed suit against the City alleging, among other claims that the City-CWA Agreement infringed upon the Districts' rights and interests in Lake Hodges and its water supplies. In particular, the Districts claimed that the City's agreement to convey to CWA the ownership of 20,000 acre feet of storage rights in Lake Hodges violated the 1998 Agreement. The City denied each of those claims. On or about November 18, 2010, the Districts and the City entered into a "Joint Stipulation to Dismiss Case Without Prejudice and Toll All Applicable Statutes of Limitations" as well as a "Tolling Agreement for the Lake Hodges Litigation Between Santa Fe Irrigation District, San Dieguito Water District, and the City of San Diego." On or about the same date, the Districts' lawsuit against the City was dismissed without prejudice.

- H. The purpose of this Amendment is to amend and restate the Parties' respective rights with respect to Lake Hodges in light of circumstances existing as of the date of this Amendment and to resolve the claims brought in the Districts' lawsuit.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals and the terms and conditions set forth below and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, San Dieguito and Santa Fe agree as follows:

1. **DEFINITIONS**

Unless otherwise defined herein, the following words shall have the meanings indicated:

- A. "**Commencement**" or the "**Commencement Date**" of Lake Hodges Project operations shall have the meaning set forth in Section 3, below.
- B. "**Dead Storage**" means that water located in the portion of the total storage capacity of the Lake Hodges Reservoir which is located lower in elevation than the lowest usable outlet of the Lake Hodges Dam outlet works or which cannot otherwise be accessed and utilized for water supply purposes. Dead Storage volumes are included in each Party's storage capacity right. Only volumes above Dead Storage amounts are available for use by each Party. Such Dead Storage shall be allocated per terms of Section 6.A.5, below.
- C. "**Emergency Storage Project**" or "**ESP**" means CWA's Emergency Storage Project, including but not limited to, the San Vicente Dam Raise Project, the Lake Hodges Project, and the Olivenhain Project, as described in CWA's Environmental Impact Report and in the Environmental Impact Statement of the US Army Corps of Engineers file no. 95-20092-DZ, and in Technical Memorandum 17, Phase II Report, prepared for CWA by GEI Consultants, Inc.

- D. **“Imported Water”** means water originating outside of the Lake Hodges watershed that is transported through CWA Aqueducts but excludes any water credited by CWA as Local Water.
- E. **“Interim Period”** means the time period between the Commencement Date and the San Vicente Dam Raise Completion Date.
- F. **“Lake Hodges Project”** means the construction/installation of: (1) a pipeline between Lake Hodges and Olivenhain Reservoir; (2) a new intake structure at Lake Hodges for such pipeline; (3) a pumping plant (**“Pumping Plant”**) at or near Lake Hodges; and (4) related appurtenances and mitigation.
- G. **“Local Water”** means all water flowing into Lake Hodges from the Lake Hodges watershed except as otherwise noted in this definition. Local Water shall also include all water credited by CWA as Local Water under the City-CWA Agreement or otherwise. Local Water does not include water which spills over Lake Hodges Dam, water withdrawn from Lake Hodges during Spill Events, and Imported Water.
- H. **“Operations and Maintenance Costs” or “O&M Costs”** shall mean the costs of operation, maintenance and administration of Lake Hodges, as described in Section 10(A), below.
- I. **“San Vicente Dam Raise Completion Date”** means the date when the ongoing project to raise the height of the dam at San Vicente Reservoir northeast of Lakeside, California is completed, which will occur when the Notice of Completion is approved by CWA’s Board of Directors.
- J. **“Spill Events”** shall refer to those times when water is spilling over Lake Hodges Dam.
- K. **“Water Year”** means the period from October 1 of any given year through September 30 of the following year.

2. **PROPERTY RIGHT**

The Districts’ right to Local Water is a property right acquired by the Districts for valuable consideration.

3. **COMMENCEMENT DATE / EFFECTIVE DATE**

The Parties agree that the terms of this Amendment, including the rights, duties and obligations herein, shall become effective when this Amendment is fully approved and executed by all Parties (**“Effective Date”**). However, the Parties have been operating under the rights, duties and obligations set forth in Paragraphs 4, 5, and 8 below, since the date that the operations of the Lake Hodges Project began, which is March 15, 2012 (the **“Commencement Date”**).

4. **RIGHTS TO LOCAL WATER**

The Parties agree as follows:

- A. **Equal Sharing of all Local Water.** Beginning on the Commencement Date, the City shall be entitled to 50% of all Local Water upon inflow, and the Districts, together, shall be entitled to the other 50% of Local Water upon inflow. Subject to the provision of Section 7 below, regarding Spill Events, this 50/50 sharing of Local Water inflow shall be binding regardless of the volume of Local Water being stored in Lake Hodges by either Party at the time of such Local Water inflow.
- B. **No Other Diverters of Local Water.** The Parties agree that no entity other than the Districts and the City shall have the right to capture or divert Local Water or water diverted during Spill Events from Lake Hodges, except as may be agreed to in writing by the Parties. The Parties shall work cooperatively to carry out the intent of this provision, as necessary to protect their common interests.
- C. **Initial Allocation of Lake Hodges Water upon Commencement.** The City and Districts shall equally share the entire volume of water in Lake Hodges, 50% to City and 50% to Districts, as of the Commencement Date (i.e., March 15, 2012), which volume has been calculated by the City as 24,653.30 acre feet.

5. **RESERVOIR OPERATIONS**

- A. **Overall Intent of Lake Hodges Project Operations after Commencement.**
 - 1. **Goals of the Parties.** The Parties acknowledge that the City, the Districts and CWA will each be involved in the operations of Lake Hodges going forward. The Parties acknowledge the benefits of the joint use and cooperative use of storage in Lake Hodges to maximize Local Water yield and to meet the operational needs of all Parties. The Parties acknowledge that the Districts have a goal of ensuring the reliability of the Districts' Local Water supplies, particularly in times of drought. The Parties also acknowledge that among CWA's primary objectives are ensuring that sufficient water supplies are available in Lake Hodges and across San Diego County to serve CWA's member agencies during an emergency, and providing for sufficient water storage in Lake Hodges to allow for "pumped storage" operations.
 - 2. **Maximization of Local Water.** The Parties acknowledge and agree that Lake Hodges shall be operated to maximize the inflow, collection and yield of Local Water.
- B. **Annual Operations.**

1. **Reservoir Operations and Cooperation.** The Parties acknowledge and agree that the City, in cooperation with CWA, shall be the sole operator of Lake Hodges; provided, however, that there shall be close coordination with the Districts regarding Lake Hodges operations that impact the Districts' interests or water supplies.
2. **Reservoir Regulating Manual.** The Parties acknowledge that CWA, in cooperation with the City, has prepared a Lake Hodges Reservoir Regulating Manual (April 2008) ("RRM"). The RRM is intended to guide the operations of Lake Hodges. In addition, the RRM contemplates that an annual operating plan ("AOP") will be prepared by the City and CWA each spring/summer to provide more detail regarding anticipated Lake Hodges operations for the following Water Year. The AOP present "Guide Curves" that serve as a foundation for operating Lake Hodges. The Parties agree to conduct operations of Lake Hodges in substantial compliance with the Guide Curves or any updates to such Guide Curves that are either approved by the Parties or result from unforeseen natural events such as excessive rain.
3. **Annual Operating Plan Preparation.** The City will allow the Districts to participate each year in the full development of the annual operation plans described above as well as in any related operations and maintenance or similar budgeting process. As part of their participation in the AOP process, the Districts will provide the City with their anticipated annual storage plan and Local Water needs for the following Water Year by June 1 of each year.
4. **Annual Operating Plan Designations.** The City will assure that, after Commencement, all AOPs and any amended versions of the RRM will separately name the Districts, acknowledge their operations, recognize the Districts' storage rights and rights to Local Water in Lake Hodges as separate from the City, and expressly and separately track the volumes of Local Water held and controlled by the Districts.

6. **DISTRICTS' STORAGE OF WATER**

- A. **Reservoir Storage Allocation.** Beginning on the San Vicente Dam Raise Completion Date, the Districts shall have the right to store the Districts' share of Local Water in Lake Hodges as described in this Section 6.
 1. **Reservoir Storage Pools.** To secure the Districts' right to store Local Water in Lake Hodges, the City shall, in good faith, undertake all actions necessary with CWA, if any, to accomplish such storage rights. If the City is required to enter into any agreements to accomplish this task, such as a storage agreement between the City and CWA, such agreements shall be acceptable

in substance and form to the Districts before they are executed.

2. **Districts' Exclusive Storage Pool Amount.** The Districts shall have storage rights of 5,000 acre feet to store Local Water in Lake Hodges. The Districts' 5,000 acre-foot "District Storage Pool," includes the Districts' allocated Dead Storage, and may be used, in the sole discretion of the Districts, for holding operating storage, carryover storage, or other type of commonly recognized water storage. Water stored in the Districts' Storage Pool shall not be subject to spill.
 3. **City's Exclusive Storage Pool Amount.** The City shall have storage rights of 5,000 acre feet to store water in Lake Hodges. The City's 5,000 acre-foot "City Storage Pool," includes the City's allocated Dead Storage, and may be used, in the sole discretion of the City, for holding operating storage, carryover storage, or other type of commonly recognized water storage. Water stored in the City's Storage Pool shall not be subject to spill.
 4. **District and City Water in Lake Hodges Above Storage Pool Amounts.** Should the Districts or City have water in Lake Hodges that exceeds its Storage Pool volume and is not otherwise protected from spilling, such water shall be subject to spill. Should the Parties determine that such water must be removed from Lake Hodges or transferred in order to ensure that Lake Hodges Guide Curves are generally observed or for other material operational reasons, the Parties shall develop and jointly agree upon a withdrawal plan to remove or transfer all or a portion of such water within a reasonable time.
 5. **Dead Storage Allocation.** Pursuant to the City-CWA Agreement, CWA bears two-thirds (2/3) of all losses from dead storage resulting from the ESP intake structure, currently 5,989 acre feet. Based on this, CWA's current dead storage share is 3,992.7 acre feet. The dead storage resulting from the Hodges Dam existing outlet works is 1,830 acre feet. The Districts bear one-sixth (1/6) of such losses or currently 305 acre feet. The City bears the remaining losses, currently 1,691.3 (5,989 minus 3,992 minus 305). Any future changes to Dead Storage amounts will be allocated using the proportions and summations as stated above.
- B. **No Third Party Storage in Lake Hodges.** No entity other than the Districts and the City shall have the right to store water in the Districts' or City's storage capacity in Lake Hodges, except with the express written permission of the City and the Districts.
- C. **No Districts' Right to Store Imported Water.** The Districts shall not have the right to store Imported Water in Lake Hodges.

7. **SPILL EVENTS**

The purpose of this Section 7 is to delineate the rights of the Parties during Spill Events.

- A. **Spill Events.** During Spill Events occurring after the San Vicente Dam Raise Completion Date, water that is subject to spill per Section 6(A) shall spill in proportion to the Districts' and City's respective storage amounts in Lake Hodges at the time the Spill Event begins, except that the 5,000 acre-foot guaranteed non-spill storage benefitting both the Districts and City shall not be counted in making such proportional calculation of spill. Such proportional spill shall be applied until the spill-able amounts have completely spilled or the Spill Event ends.
- B. **Diversion or Sale of Water During Spill Events.** If both Parties decide to divert water out of Lake Hodges during a Spill Event, they shall share access to the City-owned and CWA-owned Lake Hodges Project facilities (i.e., the "City Component" and the "Authority Components" defined in the City-CWA Agreement). The Districts shall be entitled to 50% of the available capacity (available capacity can be impacted by hydraulic, water quality and operational constraints) of the Lake Hodges Projects facilities, less 50% of the total volume of water diverted by the Districts through the City-owned Hodges Dam Outlet. For example, if the available capacity of the Lake Hodges Project facilities is 168 cubic feet per second (cfs) and the Districts are diverting 10 cfs through the Hodges Dam Outlet, then the Districts shall have access to 79 cfs through the Lake Hodges Project $((168 \text{ cfs} \times .5) - (10 \text{ cfs} \times .5) = 79 \text{ cfs})$. Therefore, under the example, the City and Districts would each have the ability to withdraw a total of 89 cfs out of Lake Hodges during a Spill Event. Any Party's use of the CWA-owned Lake Hodges Project facilities shall be subject to any CWA terms and conditions associated with the use of such facilities.

Any water sold, either directly or through a paper transfer, to CWA shall be equally shared during a Spill Event, unless one Party decides not to participate in such sale or water transfer.

If a Party decides to not divert water out of Lake Hodges during a Spill Event, then the other Party can divert as much water as desired at no cost or compensation to the first Party until the Spill Event terminates.

8. **INTERIM PERIOD OPERATIONS.**

- A. **Storage During the Interim Period.** During the Interim Period, the Parties shall have equal access to the remaining 20,000 acre foot future CWA storage capacity. The Parties will operate such storage per the AOP Guide Curves and Sections 6 and 7.

9. **GENERAL PRINCIPLES REGARDING O&M AND CAPITAL IMPROVEMENT COST.** Following are several "General Principles" related to

Lake Hodges Operation and Maintenance Costs and capital improvement cost allocations:

- A. Beyond the costs the Districts currently pay as a member of CWA, the Districts shall not be required to bear any costs associated with construction, maintenance, operation, repair or rehabilitation of the ESP (e.g., the Lake Hodges Project component of the ESP), including any costs associated with ongoing or recurring permit conditions or environmental mitigation requirements for the ESP.
- B. The Districts shall not be required to pay more than their fair share of that portion of Lake Hodges Operation and Maintenance Costs and capital improvement costs to be paid by the City and the Districts. That is, the Districts shall be entitled to fully and fairly benefit from any and all operations and maintenance and capital improvement costs related to Lake Hodges to be paid by CWA, by third parties, or with grant (e.g., Proposition 84) funds.
- C. The Districts will be permitted and invited to participate in any annual Lake Hodges operations and maintenance budgeting processes undertaken between the City and CWA, including in any meetings related to O&M costs in excess of the annual budget established by CWA and the City. The Districts shall be invited to participate in any meetings or processes related to Lake Hodges operations that involve regulatory, operations and maintenance, capital improvement or other costs the Districts may be asked to bear.
- D. The Districts will not pay any recreational costs associated with Lake Hodges, including but not limited to management, capital improvement, operation, or maintenance costs for City recreation activities and facilities. The Districts will also not pay any operations, maintenance, capital improvement or other costs associated with pump storage operations.
- E. The City shall keep books, records, documents, and other evidence pertaining to actual Operating and Maintenance Costs, and capital improvement costs incurred and revenues, excluding recreation-related revenues, received from Lake Hodges Reservoir to the extent and in such detail as necessary to reflect all such costs and revenues. The City shall maintain such books, records, documents and other evidence pertaining to Lake Hodges O&M Costs and capital improvement costs for a minimum of four years after completion of the last entry or four years after resolution of all relevant disputes arising therefrom, whichever is longer, and shall make available at the City's offices at reasonable times such books, records, documents and other evidence for inspection and audit by the Districts.

10. LAKE HODGES OPERATION AND MAINTENANCE COST ALLOCATION

A. **O&M Costs.** Operations and Maintenance Costs shall include:

- (1) personnel costs of employees, such as dam tenders, reservoir keepers and other employees assigned by the City whose duties relate directly to the operation and maintenance of Lake Hodges Reservoir, for that portion of their time that is directly or entirely associated with the ongoing operation, maintenance and administration of the Lake Hodges Reservoir, Dam and outlet works and new intake structure at Lake Hodges for the pipeline between Lake Hodges and Olivenhain Reservoir;
- (2) the cost of repainting, resurfacing, patching, dredging, periodic surveys, including but not limited to watershed surveys, and inspections of Lake Hodges Reservoir, Dam and outlet works and new intake structure at Lake Hodges for the pipeline between Lake Hodges and Olivenhain Reservoir;
- (3) the costs of engineering studies and fees necessary to maintain the State of California licenses or permits for the Lake Hodges Reservoir, Dam and outlet works and new intake structure at Lake Hodges for the pipeline between Lake Hodges and Olivenhain Reservoir;
- (4) the cost of servicing machinery, equipment, and vehicles belonging to and operated by the City for that portion of the time they are utilized directly or principally in the operation, maintenance and administration of the Lake Hodges Reservoir, Dam and outlet works and new intake structure at Lake Hodges for the pipeline between Lake Hodges and Olivenhain Reservoir;
- (5) the cost of maintaining and irrigating landscape associated with the Lake Hodges Reservoir;
- (6) the cost of utility services such as power, heating, water, sewage, and garbage disposal which are directly related to the operation and maintenance of Lake Hodges Reservoir, Dam and outlet works and new intake structure at Lake Hodges for the pipeline between Lake Hodges and Olivenhain Reservoir;
- (7) any other costs and expenses reasonably incurred for the operation and maintenance of the Lake Hodges Reservoir, Dam and outlet works and new intake structure at Lake Hodges for the pipeline between Lake Hodges and Olivenhain Reservoir, so long as such further costs are not excepted from District payment or contribution to such costs by other provisions of this Amendment; and
- (8) such other operations and maintenance activities as the Parties may mutually agree and incorporate into the O&M budget for the Fiscal

Year in which such activities are performed.

B. Allocation of O&M Costs. The Parties agree to the following allocation of O&M Costs.

- (1) From July 1, 2012 until the San Vicente Dam Raise Completion Date, the Parties agree to share O&M Costs equally (50% to the Districts and 50% to the City), provided that any operations and maintenance payments related to Lake Hodges made by CWA or any other entity to the City over that period shall be applied to reduce O&M Costs before the 50/50 cost allocation between the Parties is calculated. O&M Costs during this period shall be reconciled within 90 days of the San Vicente Dam Raise Completion Date. Such reconciliation shall take into consideration the O&M costs already paid by Districts to City during this period. Any resulting refund to Districts or amount due from Districts shall be paid within 60 days following reconciliation.
- (2) The Parties agree that after the San Vicente Dam Raise Completion Date, the Districts shall pay 25% of the O&M Costs, the City shall pay 25% of the O&M Costs, and CWA shall pay 50%, pursuant to the City-CWA Agreement of the O&M Costs, provided that any operations and maintenance payments related to Lake Hodges made by any other entity to the City over that period shall be applied to reduce O&M Costs before the cost allocation between the Parties is calculated.

C. O&M Budgeting. City and District representatives shall annually develop and prepare a proposed O&M budget for each Fiscal Year after the Effective Date. Such O&M budget shall be submitted to the governing bodies, if applicable, of each of the Parties in sufficient time to permit each Party to budget and appropriate its share of the funds required for such budget. If, for any reason, such as the need for emergency repairs, the actual O&M Costs exceed or are expected to exceed the approved City-Districts O&M budget, City and Districts representatives shall meet and mutually agree to a revised budget and payment schedule for submissions to the applicable governing bodies of each Party, if applicable, in order to obtain a revised appropriation of funds necessary to pay O&M Costs for the remainder of such Fiscal Year. The City, as operator of Lake Hodges, shall be responsible to notify the Districts of the projected need for increased funds to pay for O&M Costs within 30 days of the discovery of the need for such funds. The City shall not be expected or required to, nor shall it, delay the implementation of emergency repairs necessary to ensure the structural integrity or safety of Lake Hodges Dam or appurtenant facilities because of the notification and budgeting requirements of this Amendment. Lack of notification does not release the Districts of the requirements to pay for such revised O&M Costs. All O&M Costs shall be paid to the City within 90 days of the end

of the Fiscal Year it was expensed.

- D. **Monthly and Annual Billing Dispute Resolution Procedure.** Subject to the reasonable right to dispute the amount of any bills as set forth in Section 20, below, the Districts agree to pay such bills. Within 150 days after the end of each Fiscal Year, the City will reconcile the estimated monthly billing with the actual costs. The Districts shall make payments to the City of the Districts share of the O&M Costs in advance on or before the first of every month in each Fiscal Year calculated based on the Districts' annual share of such expenses as reflected in the approved annual budget for O&M Costs divided by twelve. If the actual O&M Costs are less than the approved budget for any Fiscal Year then the excess actually paid by the Districts to the City shall be reimbursed back to the Districts.

11. **CAPITAL COSTS**

- A. **Allocation of Capital Improvement Costs Between the City and Districts.** Subject to the provisions of this Amendment and this Section 11 (and Section 11(B) in particular), the City and Districts agree to the following allocation of costs for future capital improvements at Lake Hodges.

- (1) The Districts shall bear no responsibility to contribute to or otherwise pay for any capital costs associated with the ESP facilities or improvements (e.g., repair and rehabilitation of the Pumping Plant), or with any recreation capital improvements at Lake Hodges.
- (2) The Districts agree to pay 25% of the capital costs associated with capital improvement projects related to pre-ESP Lake Hodges facilities or projects such as the repair, replacement or rehabilitation of Lake Hodges Dam and outlet works.
- (3) In view of the Districts' significant capital investment in its own water treatment facilities, the Districts shall bear no responsibility to contribute to or otherwise pay for water quality related capital improvement projects at Lake Hodges.

B. **Capital Cost Budgeting and Approval**

1. **Approval Process.** Subject to the commitments set forth in Section 11(A), any future capital improvement project at Lake Hodges Reservoir which affects the rights or interests of any Party or all Parties to this Amendment and which is over and above those future projects necessary for the maintenance, repair, or replacement of components of the Lake Hodges Reservoir, dam and outlet works shall require a new agreement with all Parties; provided, however, that no Party shall unreasonably withhold its

consent.

2. **Capital Improvement Project Meetings.** For future capital improvement projects where it is reasonably expected that the Districts will be asked to pay a portion of the costs of such capital improvement project, the Districts shall be timely invited to the initial project design meeting and to official design review meetings at the 30%, 60% and 90% design phase milestones.
3. **Third Party Funding of Future Capital Improvement Projects.** Any payment or promise of payment by any third party towards any capital improvement project at Lake Hodges to which the Districts are also being asked to contribute shall be counted when the City calculates the capital cost for such project to be paid by the Districts. In addition, any grant funding secured by any Party to be used to fund capital improvement projects at Lake Hodges shall be counted when the City calculates the capital cost for such project to be paid by the Districts.
4. **Monthly and Annual Billing.** The City shall annually, by June 1 of each year, estimate the capital improvement costs for the following Fiscal Year. The City shall charge and invoice the Districts their portion of the actual capital improvement costs as they are incurred on a monthly basis. Such capital improvement cost invoicing shall appear on billing separate from the monthly O&M Cost billing. The Parties expect that, after a new capital expenditure is approved by the Parties, the City will bill the Districts (and CWA, as applicable) as design, engineering, construction and related incidental expenses of such project occurs.
5. **Capital Cost Dispute Resolution Procedure.** Subject to the reasonable right to dispute the amount of such bills as set forth in Section 20, the Districts agree to pay such bills. Within 180 days after the end of each Fiscal Year, the City will reconcile the estimated Capital Cost billing with the actual capital cost billing.

12. WATER ACCOUNTING

- A. **City to Maintain Books and Records.** The City shall keep books, records, documents and other evidence pertaining to water quantities, water ownership, storage and other Lake Hodges operational issues to the extent and in such detail as necessary to reflect such water accounting. The City shall maintain such books, records, documents and other evidence for a minimum of four years after completion of the last entry or four years after resolution of any relevant disputes arising therefrom, whichever is longer. The City shall make available at the City's offices at reasonable times such books, records, documents and other evidence for inspection and audit by the Districts.

B. Water Inventory/Accounting. The City shall use reliable methods, including measurement where possible, to quantify the amount of water, including Local Water and Imported Water, entering Lake Hodges on a daily basis. The City shall maintain water inventory and accounting records in detail sufficient to conform with the provisions of the RRM. The City shall maintain daily records when available to measure the quantity of water withdrawn from the Lake Hodges Reservoir by CWA pipelines. The City/Districts' shall also measure the quantity of water withdrawn from the Lake Hodges Reservoir by the Districts and the City, and record such measurements daily, when available. Daily information will be used to calculate monthly hydrography records and reports.

C. Evaporation and Other Losses.

1. **Allocation.** Pursuant to the City-CWA Agreement, CWA bears two-thirds (2/3) of all losses from seepage, evaporation, and unaccounted for losses. The City and Districts bear the remaining one-third (1/3) of all such losses. The City and Districts shall share the remaining one-third (1/3) losses in proportion to the beginning of month storage amounts for each Party.

2. **Evaporation Loss Accounting.** Evaporation Losses shall be calculated and information on such losses distributed by the City to the Districts at least monthly. All accounting information provided to the Districts shall display Evaporation Losses incurred by the City, the Districts and CWA.

13. WATER SALES/TRANSFERS

A. Water Transfers Permitted. Nothing in this Amendment is intended to preclude any Party from selling, transferring or conveying Local Water to another Party, to CWA, or to any third party. Provided, however, that if any Party conveys Local Water to an entity, such Party shall be entirely responsible for the costs associated with moving such water (which cost is expected to be the cost of pumping and CWA's transportation charge). Water to be transferred, whether during a Spill Event or at another time, shall be placed in storage at a location other than Lake Hodges or otherwise put to beneficial use.

B. Access to CWA Pipeline and Pumping Plant. The Districts and the City agree that each Party shall share access to the City-owned and CWA-owned Lake Hodges Project facilities (i.e., the "City Component" and the "Authority Components" defined in the City-CWA Agreement), to divert water at all times, including during Spill Events. The District shall be entitled to 50% of the available capacity of the Lake Hodges Projects facilities, less 50% of the total volume of water diverted by the Districts through the City-owned Hodges Dam Outlet (See Example in Section 7B). Any Party's use of the CWA-owned Lake Hodges Project facilities shall

be subject to any CWA terms and conditions associated with the use of such facilities.

- C. **Water Sales to CWA.** The Parties agree to cooperate regarding the establishment of agreement(s) by one or all Parties to sell or otherwise transfer water to CWA. Any water sold, either directly or through a paper transfer, to CWA shall be equally shared from each (City and Districts) respective storage pool, unless one Party decides not to participate in such sale.
- D. **Removing Another Party's Water.** Neither Party has the right to move water out of Lake Hodges that belongs to the other Party, unless the Party has received permission in writing from the other Party to do so. If any Party removes another Party's water from Lake Hodges without permission, the entity responsible for such water removal shall replace such removed water within 30 calendar days or, if approved by the Party whose water was removed, pay for such removed water at CWA's imported untreated water rate, including transportation charges, within 30 days.

14. **OPERATIONAL ISSUES RELATED TO DISTRICT DIVERSIONS**

- A. **Districts' Diversion Points.** Unless otherwise agreed to in writing by the Parties, measurement and diversion of Local Water by the Districts shall be as follows:
 - 1. At the Districts' diversion point downstream from the City's flow meter at the outlet ("Outlet") of the Lake Hodges dam.
 - 2. As applicable, at the CWA flow control facility (FCF SDSF 3, 4 & 5) at the Districts' R.E. Badger Filtration Plant.
 - 3. At any other location agreed to by the Parties, provided any necessary arrangements are made with the City or CWA, or both.
- B. **Facilities / Outlets Maintenance.** The City shall at all times retain the responsibility and obligation for the operation, maintenance, repair, replacement and/or rehabilitation of the Lake Hodges Dam and Reservoir, including all associated facilities owned or operated by the City. The City shall maintain the Outlet and any associated meters/metering devices ("Meters") in good condition and repair at all times as is possible through the exercise of ordinary care. The costs associated with operating and maintaining the Outlets and Meters shall be included as part of O&M Costs and shared per terms of Section 10, above. The Districts shall have the right to annually inspect the Outlet and test the Meters for accuracy, with a representative of the City present if so desired by City, at reasonable times during business hours with reasonable notice. The Districts shall also have the right, if they so desire, to have a representative present at any test or reading of any Meters by the City. The Districts also have the right, at their own cost, to have third parties undertake

independent Meter testing.

15. WATER QUALITY

The City shall operate Lake Hodges and all of its facilities in a manner that conforms to the requirements of all local, state and federal laws and regulations regarding water quality collected in Lake Hodges. Except as provided in this paragraph, the City does not make any assurances concerning the quality of water in Lake Hodges.

16. EFFECT OF THIS AMENDMENT

Subject to the terms of Paragraph 3, above, this Amendment is intended to amend and restate in its entirety the provisions of the 1998 Agreement regarding operations of Lake Hodges upon and following the Effective Date. The City-CWA Agreement specifically acknowledges the existence and rights of the Parties under the 1998 Agreement and Section 6.3 of the City-CWA Agreement provides for the modification of the 1998 Agreement under certain terms and conditions and that any such modification shall not be a breach of the City-CWA Agreement. The City acknowledges that Santa Fe and San Dieguito are not parties to the City-CWA Agreement and that the City shall be solely responsible for any action taken by CWA alleging that the Amendment is not a permitted modification under Section 6.3 of the City-CWA Agreement or seeking to enforce the terms of Section 6.3 with respect to losses or diminished use by CWA as a result of the 1998 Agreement and any modification thereto. The City shall indemnify and defend Santa Fe and San Dieguito from any cause of action by CWA which arises in connection with the implementation of this Amendment.

17. NO ADVERSE EFFECT ON DISTRICTS' RIGHTS

The Parties agree that nothing contained in any future agreement between the City and CWA, or the City and any other party, shall adversely affect the rights of the Districts as set forth herein. Should the City take any actions related to Lake Hodges operations over the objections of the Districts or in a manner that substantially comprises the interests of the Districts, or which compromise the ability of the Districts to obtain their Local Water supplies, the Districts explicitly reserve their right to contest such action as provided herein, including but not limited to in a court proceeding, as set forth in Section 27, below.

18. CHANGED CIRCUMSTANCES / OPTION TO PURCHASE LAKE HODGES

In the event the City, CWA or any other Party terminates or substantially changes operations of Lake Hodges so as to significantly reduce or eliminate the ability of the Districts to obtain and store Local Water therein, (1) the Parties shall meet and confer as to next steps and to determine the continued applicability, if any, of this Amendment; and (2) the Districts shall have and are hereby conveyed the right of first refusal to purchase Lake Hodges and Hodges Dam.

19. **CONFLICTS BETWEEN TERMS**

If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Amendment, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Amendment, , and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Amendment.

20. **PRE-MEDIATION DISPUTE RESOLUTION PROCESS**

Any controversies arising out of the interpretation or application of this Amendment or the refusal of any party to perform the whole or any part thereof shall first be addressed through negotiation by the Parties in the following order:

- (1) Staff of the Parties will attempt to resolve/settle any disputes;
- (2) If Party staff is unable to resolve the dispute, Party management (or their designees) will attempt to resolve the dispute;
- (3) If Party management is unable to resolve the dispute, then Party executive management will attempt to resolve the dispute.

Thereafter, if the dispute cannot be resolved through the above-described process, mediation/legal remedies may be sought by any Party per the terms of this Amendment.

21. **MEDIATION**

- A. **Mandatory Non-binding Mediation.** If a dispute arises out of, or relates to this Amendment, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations or through the pre-mediation dispute resolution process described above, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Mediation Rules of the American Arbitration Association (AAA) or any other neutral organization agreed upon before having recourse in a court of law.
- B. **Mandatory Mediation 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 ("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, with the Districts bearing, collectively 50% of such cost, and the City bearing the other 50% of such cost.

C. **Selection of Mediator.** A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in water law or water engineering and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

1. If AAA is selected to coordinate the mediation, within ten working days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, the opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and "Administrator". The initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any objection. This process shall continue until both sides have agreed upon a Mediator.
2. The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.
3. If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.

D. **Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

1. Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.
2. Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, 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.

- E. **Post-Mediation Rights.** If any dispute cannot be resolved through the mediation process described in this Section 21, any Party may, subject to the provisions of Section 27, below, bring suit to resolve the dispute.

22. **INDEMNITY OBLIGATIONS**

- A. **Mutual Indemnification.** Each Party shall indemnify, defend, protect and hold harmless the other Party, their elected officials, officers, agents, employees, successors and assigns from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional, expert or consultants' fees and costs) of every kind and nature whatsoever (each a "Claim" and collectively, "Claims") which may arise from or in any manner relate to: (1) any violation of the obligations of the Parties under this Amendment, including without any limitation, any actual or alleged violation of any Legal Requirements, as defined in Paragraph 23; and (2) the negligent acts, omissions and/or willful misconduct of the Parties, their employees, agents, or contractors.
- B. **Defense of Third Party Claims.** The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of the indemnifying party. Such defense obligation shall arise immediately upon presentation of written notice to the indemnifying party of a Claim by any indemnified party. Promptly following receipt of any written claim or legal proceeding asserted by a person or entity which is not a party to this Amendment ("Third Party Claim"), the indemnified party shall notify the indemnifying party of such claim in writing. In matters that pose no conflict of interest, the indemnifying party thereafter shall undertake and diligently pursue the defense of the Third Party Claim with counsel reasonably acceptable to the indemnified party; provided, however, that the indemnifying party shall not consent to entry of judgment or enter into any settlement agreement without the consent of the indemnified party, which does not include a complete and unconditional agreement of the indemnified party or which imposes injunctive or other equitable relief against the indemnified party. If the indemnifying party fails to assume and diligently pursue the defense of a Third Party Claim, the indemnified party may defend against such Third Party Claim in such manner as it may deem appropriate, including without limitation, settlement thereof on such terms as the indemnified party may reasonably deem appropriate, and to pursue such remedies as may be available to the indemnified party against the indemnifying party. Notwithstanding the foregoing, the indemnified party

shall not consent to entry of judgment or enter into any settlement agreement without the consent of the indemnifying party, which does not include a complete and unconditional agreement of indemnifying party or which imposes injunctive or other equitable relief against indemnifying party.

- C. **Survival of Indemnification/ Defense of Third Party Claims Obligations.** The indemnifying party's indemnification and defense obligations hereunder shall survive the expiration or earlier termination of this Amendment until such time as action against any indemnified party for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

23. **COMPLIANCE WITH ALL LAWS**

The City shall operate and maintain Lake Hodges and Lake Hodges Dam in strict accordance with all state, federal and local laws and regulations ("Legal Requirements"), including but not limited to those pertaining to water quality, water rights, public health and safety, and recreational use, and will make all reasonable efforts to maintain and repair Lake Hodges and Lake Hodges Dam to continue operations in order to maintain the maximum annual average yield of Local Water. To the extent any violation of the Legal Requirements arises as a result of any particular Party's action or inaction, such Party shall be solely responsible for any and all costs arising from such action or inaction, including any costs required to remedy the violations of such Legal Requirements. The City makes no assurances, legal or otherwise, as to water quality in Lake Hodges.

24. **UPSTREAM CITY WATER PROJECT**

The Districts understand that the City may now or in the future operate a groundwater extraction, storage and/or recovery, or other project ("Upstream City Water Project") in areas within the watershed (e.g., San Pasqual Valley), and upstream, of Lake Hodges which may reduce the volume of water reaching Lake Hodges or otherwise potentially adversely affect Lake Hodges water volumes or water quality. The City shall provide any California Environmental Quality Act, other environmental and other documents related to any Upstream City Water Project, including any public notices, to the Districts as soon as they are made available to the public. The Districts reserve all rights to object to or challenge any Upstream City Water Project. The Parties agree to work cooperatively with respect to any project or activity upstream of Lake Hodges, including those not involving or sponsored by the City or the Districts, which could potentially adversely affect the volume or quality of water reaching Lake Hodges.

25. **BINDING AGREEMENT**

This Amendment shall be binding on and inure to the benefit of the successors and assigns of the respective parties.

26. **NOTICES**

Except for monthly O&M cost bills sent by City to Districts, any notice, demand, or payment required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective Parties set forth below. Any change in address by any Party shall be provided to all Parties within thirty (30) days following such change.

SAN DIEGUITO WATER DISTRICT

505 South Vulcan Ave.
Encinitas, CA 92024-3633
Attn: Director of Public Works

SANTA FE IRRIGATION DISTRICT

P. O. Box 409
5920 Linea del Cielo
Rancho Santa Fe, CA 92067
Attn: General Manager

CITY OF SAN DIEGO

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

27. **GOVERNING LAW**

Should any Party to this Amendment bring legal action against one or more of the others to enforce the provisions of this Amendment, the case shall be handled pursuant to California law and filed and maintained in the Superior Court of the County of San Diego.

28. **NO ADMISSION OF LIABILITY**

The Parties understand and agree that this Amendment is not to be construed as an admission of liability whatsoever on the part of any of them, and that the release is made solely for the purpose of avoiding the burden and expense which would be imposed upon the Parties through litigation.

29. **CONSULTATION WITH LEGAL COUNSEL**

The Parties represent that they have consulted legal counsel prior to the execution of this Amendment and have executed this Amendment with full knowledge of its meaning and effect.

30. **EXECUTION OF TERMS OF AGREEMENT**

The Parties agree to perform any acts and execute any documents consistent with the terms and conditions of this Amendment which may be needed, desired or required to effectuate the terms, conditions and provisions hereof.

31. **ATTORNEYS' FEES INCURRED IN RESOLVING THE DISPUTE**

The Parties agree that they will not seek attorneys' fees or costs that have been incurred in resolving the disputes or issues against one another described herein.

32. **DRAFTING OF AMENDMENT**

The Parties agree that this Amendment shall not be construed in favor of, or against, any Party by reason of the extent to which any Party or its counsel participated in the drafting of this Amendment.

33. **MODIFICATION OF AMENDMENT**

This Amendment may be amended only by a writing signed by each of the Parties hereto.

34. **INVALIDITY; SEVERABILITY**

If any portion of this Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect, unless otherwise agreed to by all Parties.

35. **WAIVER**

No waiver of any default under this Amendment shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

36. **NO THIRD-PARTY BENEFICIARIES**

There are no intended third party beneficiaries of any right or obligation assumed by the Parties under this Amendment.

37. **AUTHORITY TO ENTER AGREEMENT**

Each Party has all requisite power and authority to conduct its business and to execute, deliver, and perform the Amendment. Each Party warrants that the individuals who have signed this Amendment have the legal power, right, and authority to execute this Amendment and bind each respective Party.

38. **COUNTERPARTS**

This Amendment may be executed in separate counterparts, the whole of which shall constitute a binding agreement. Facsimile signatures, when received, shall have the same force and effect as original signatures.

39. INTEGRATION

This Amendment and references incorporated into this Amendment fully express all understandings of the Parties concerning the matters covered in this Amendment. No change, alteration, amendment, or modification of the terms or conditions of this Amendment, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties. All prior negotiations and agreements are merged into this Amendment.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the day and year first above written.

CITY OF SAN DIEGO

BY: _____

**APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL**

By: _____

SANTA FE IRRIGATION DISTRICT

By: _____

**Michael T. Hogan
Board President**

**APPROVED AS TO FORM:
BEST BEST & KRIEGER LLP**

By: _____

SAN DIEGUITO WATER DISTRICT

By: _____

**Tony Kranz
Board President**

ATTEST

By: _____

City of Encinitas, City Clerk

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

DATE:

EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

June 5, 2014

SUBJECT: Authorize an Amendment to and Restatement of the March 17, 1998 Agreement (OO-18474)
Between the City of San Diego and the San Dieguito Water District and Santa Fe Irrigation District

GENERAL CONTRACT INFORMATION

Recommended Agencies: Santa Fe Irrigation District
San Dieguito Water District

Amount of this Action: N/A

Funding Source: City of San Diego

SUBCONSULTANT PARTICIPATION

There is no subcontractor participation identified with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required.

Santa Fe Irrigation District and San Dieguito Water are Public Entities, and as such, are exempt from submitting Work Force Reports. Refer to San Diego Municipal Code Section 22.2703(b).

This agreement is not subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708). This agreement is subject to the City's Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

ADDITIONAL COMMENTS

This action is to approve the amendment to the original agreement (OO-18474) between the City of San Diego (City), the San Dieguito Water District and Santa Fe Irrigation District (referred collectively as Districts). The amendment elaborates on the shared responsibilities for the water supply operation and water storage in Lake Hodges Reservoir (Hodges).

KM

COPY

AGREEMENT

THIS AGREEMENT is executed by and between THE CITY OF SAN DIEGO, a municipal corporation, hereinafter referred to as "San Diego", SANTA FE IRRIGATION DISTRICT, a California irrigation district, hereinafter referred to as "SANTA FE", and SAN DIEGUITO WATER DISTRICT, a California irrigation district, hereinafter referred to as "SAN DIEGUITO". Santa Fe and San Dieguito are referred to collectively as "Districts".

RECITALS

- A. Santa Fe and San Dieguito, and their predecessors in interest have acquired rights to local water collected in Lake Hodges pursuant to contracts with the owners of Lake Hodges since the Hodges Dam was constructed.
- B. San Diego, Santa Fe and San Dieguito entered into an agreement on December 20, 1956 relating to the settlement of certain disputes then existing among them and providing, among other matters, for a fixed quantity of water to be provided to the Districts at local water costs.
- C. As a result of changed circumstances, San Diego, Santa Fe and San Dieguito entered into an agreement effective April 1, 1969 a copy of which is on file in the Office of the City Clerk as Document Number 728946 (the "1969 Agreement") pursuant to which the Districts purchased from San Diego the San Dieguito Reservoir and Dam including the conduit (flume) from the weir at Lake Hodges to the Reservoir, the 30" water transmission line originating at the San Diego County Water Authority Aqueduct and all appurtenances necessary for the operation of those facilities. The April 1, 1969 Agreement also established rights and duties of the parties with respect to the sale and purchase of Local Water collected in Lake Hodges for a contract term expiring on September 30, 2019.
- D. The April 1, 1969 Agreement memorialized a property right owned by the Districts to Local Water collected in Lake Hodges. It rescinded and superseded all prior agreements, and is the document which currently establishes the rights of the parties.
- E. San Diego, the San Diego County Water Authority, and the Olivenhain Municipal Water District now contemplate the development of an Emergency Storage Project which will result in the reoperation of Lake Hodges in combination with a newly developed reservoir called the Mt. Israel Reservoir. This project is estimated to increase the local yield of Lake Hodges from an average of approximately 5,769 acre feet per year to approximately 11,400 acre feet per year. Given this contemplated reoperation of Lake Hodges, San Diego, San Dieguito and Santa Fe desire to restate and redefine their rights and obligations concerning Local Water in Lake Hodges.

DOCUMENT NO. 00 - 18474

FILED MAR 17 1998

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

- F. Whether the Emergency Storage Project is constructed or not, in order for San Diego to use Local Water from Lake Hodges, San Diego must construct a project to transport said Local Water.
- G. This Agreement is intended to rescind all previous agreements among the parties and restate their respective rights with respect to Lake Hodges.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals and the terms and conditions set forth below and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, San Diego, San Dieguito and Santa Fe agree as follows:

- 1. Unless otherwise defined herein, the following words shall have the meanings indicated:
 - A. "Local Water" means all water collected in Lake Hodges from any source other than water transported through the San Diego County Water Authority Aqueducts, provided that Local Water shall include "Evaporative Make Up Water".
 - B. "Imported Water" means water transported through the San Diego County Water Authority Aqueducts but excludes "Evaporative Make Up Water."
 - C. "Water Contract Year " means the period from October 1 of any given year through September 30 of the Following Year.
 - D. "Evaporative Make Up Water" means all water credited by the San Diego County Water Authority as Local Water under Lake Hodges Improvement Project.
 - E. "Lake Hodges Improvement Project" means a project to transfer and/or store Local Water which involves the construction of infrastructure necessary to pipe and transport water to reservoirs, and which is projected to increase the average annual yield of Lake Hodges. Lake Hodges Improvement Project may be the Emergency Storage Project described in Recital E above or another project constructed to enable San Diego to use Local Water.
 - F. "Local Water Credit" means an amount of water to which the Districts are entitled to purchase but which they did not purchase in any Water Contract Year pursuant to paragraph 4 below.

- G. "Local Water Credit Balance" means the cumulative amount of water which the Districts or San Diego were entitled to purchase but which they did not purchase.
- H. "1969 Agreement" shall have the meaning assigned thereto in Recital C above.
- I. "Districts" means the Santa Fe Irrigation District and the San Dieguito Water District.
- J. "Weir" means the Lake Hodges Flume Weir as described on Exhibit "A" attached hereto and made a part hereof.
- K. "Flume" means the Lake Hodges Canal commencing at the Weir and ending at the San Dieguito Reservoir.
- L. "Control Facility at Badger Filtration Plant" means that flow control facility described on Exhibit "A" attached hereto and made a part hereof by reference.

2. The parties hereby rescind all previous agreements among them with respect to Lake Hodges, and specifically abrogate, set aside and nullify all their respective rights under such agreements, including, but not limited to, the 1969 Agreement among the three parties.

3. Until such time as the operation of the Lake Hodges Improvement Project commences, the Parties agree as follows:

- A. San Diego will sell to Districts all of the Local Water collected in Lake Hodges if the water is requested by Districts, provided that Local Water in Lake Hodges may be sold by San Diego to any other person, firm, corporation or agency if the following conditions exist:
 - i. There is contained in Lake Hodges at the time water is delivered to such other entity a quantity of Local Water in excess of the quantities San Diego is required to furnish Districts for the remainder of the Water Contract Year during which such sale is to be made; and
 - ii. There will be in storage in Lake Hodges available for the exclusive use of Districts at the end of said Water Contract Year not less than 8,300 acre feet of usable water; and
 - iii. The water is put to beneficial use by the purchaser.

San Diego may also release water from Lake Hodges in emergency to prevent or reduce flood or threat of flood damage.

- B. Districts shall pay San Diego for all Local Water delivered at the rate of \$31.00 per acre foot, which represents the current cost per acre foot to San Diego of operating and maintaining Lake Hodges, excluding the cost of recreation, including depreciation calculated on the straight line method. This price shall remain effective through September 30, 1999, which period coincides with the end of the Water Contract Year. On or prior to the end of each succeeding two year period the amount payable by Districts to San Diego per acre foot for Local Water during the succeeding two (2) year period, shall be calculated. The cost per acre foot payable during each particular succeeding two (2) year period shall be determined as follows:
- i. Calculate the total cost of operating and maintaining Lake Hodges during the immediately preceding two year period, plus the cost of capital improvements and repairs to Lake Hodges and Lake Hodges Dam during such two year period amortized over the useful life of the improvement, plus depreciation calculated on the straight line method divided by the total number of acre feet of Local Water sold by San Diego during the immediately preceding two year period.
 - ii. For purposes of calculating depreciation, the present depreciated value of Lake Hodges is agreed to be \$307,093.
 - iii. San Diego shall keep accurate records of all costs which it incurs related to Lake Hodges and of all Local Water sold to others than Districts, which records shall be available at all reasonable times for inspection by authorized representatives of the Districts.
- C. Districts shall determine the rates of delivery of water to the Districts pursuant to this Agreement in order to meet their respective requirements, and to discharge their obligation to provide potable water to their respective customers.
- D. Measurement and delivery of water by San Diego to Districts shall be as follows:
- i. At the head of an open conduit immediately downstream from Lake Hodges Dam as shown on Exhibit "A," hereinafter referred to as "the Weir."
 - ii. San Diego shall at its expense maintain the Weir in as good condition and repair at all times as is possible by the exercise of ordinary care. Districts shall have the right to inspect the Weir and test it for accuracy with a representative of San Diego at reasonable times during business hours with reasonable notice, and the right, if it shall

be so desired, to have a representative present at any test or reading of said meter by San Diego.

- E. Santa Fe shall be entitled to receive $57 \frac{1}{3}\%$ and San Dieguito shall be entitled to receive $42 \frac{2}{3}\%$ of the first 7,500 acre feet of water supplied in any given Water Contract Year pursuant to this Agreement. If an amount in excess of 7,500 acre feet of water is supplied to Districts within any given year, each District shall be entitled to receive 50% of such excess. San Diego shall have no responsibility or obligation as between the Districts to meter or allocate water supplied to Districts or to otherwise ensure that there has been compliance with the provisions contained in this paragraph.
- F. San Diego shall bill each District monthly for water supplied by San Diego through the Weir during the preceding calendar month. Each District shall pay to San Diego the amount due San Diego for water so furnished each District within thirty (30) calendar days after receipt of such bill.
- G. San Diego will operate Lake Hodges and all of its facilities, and such operation shall conform to the requirements of all local, state and federal laws and regulations concerning the quality of local water collected in water storage reservoirs. San Diego will use its best efforts to ensure that polluted water from any source is not collected in Lake Hodges. Except as provided in this paragraph, San Diego does not make any assurances concerning water quality.
- H. The Districts' right to the delivery and purchase of Local Water collected in Lake Hodges as provided in paragraph 3 above is a property right which was purchased by the Districts for valuable consideration. The extent of such property right is defined and limited by the terms of this Agreement.

4. Upon commencement of the operation of Lake Hodges Improvement Project the Parties agree as follows:

- A. Prior to commencing construction of Lake Hodges Improvement Project San Diego shall project an average annual yield of Local Water in Lake Hodges. Said projected average annual yield shall be based upon the construction and design operation of Lake Hodges Improvement Project. Said projection shall be performed by the City and approved by Districts. Subject to the processes and procedures specified herein, in the event the Lake Hodges Improvement Project's average annual yield of Local Water is projected to be 11,400 acre feet or more, all Local Water shall be divided one-half to San Diego and one-half to Districts. In the event the projected average annual yield of Local Water is less than 11,400 acre feet the Local Water shall be divided so as to allocate an average annual yield to Districts of 5,700 acre feet per year.

- B. During the first Water Contract Year after commencement of the operation of Lake Hodges Improvement Project, San Diego will deliver and sell to Districts all of the Local Water requested by Districts up to 5,700 acre feet, including all water delivered pursuant to paragraph 3 above. All remaining Local Water in that Water Contract Year shall belong to San Diego.
- C. Beginning with the first Water Contract Year after commencement of the operation of Lake Hodges Improvement Project, if such Project's average annual yield of Local Water is projected to be 11,400 acre feet or more, all Local Water shall be divided one-half to San Diego and one-half to Districts. San Diego shall deliver and sell to the Districts their one-half of the amount of Local Water collected in Lake Hodges during the preceding Water Contract Year if said Local Water is requested by Districts. If a portion of said Local Water is not requested by Districts, it shall become a Local Water Credit as described in and subject to the provisions of paragraph 4H hereof. Whatever the actual amount of Local Water in any given Water Contract Year, except as otherwise provided in paragraph D below, it shall be shared as provided above, without any cap or floor.
- D. In the event Lake Hodges Improvement Project is constructed or operated so that the projected average yield of Local Water is less than 11,400 acre feet per year, the percentage of water which San Diego shall deliver and sell to Districts shall be adjusted to allow for an average annual yield to Districts of 5,700 acre feet per year. The percentage splits will be determined by a calculation of anticipated average yield to be performed by San Diego and approved by Districts. For example, if the design and operation of Lake Hodges Improvement Project has a projected average annual yield of 10,000 acre feet per year, the percentages would be 57% to Districts and 43% to San Diego.
- E. Notwithstanding paragraph 4C, if the average annual yield of Local Water becomes less than 11,400 acre feet due to operational constraints required by any regulatory authority having jurisdiction, or due to the siltation of the reservoir, then all Local Water shall continue to be divided one-half to San Diego and one-half to Districts.
- F. The point of delivery and measurement for Local Water purchased after commencement of the operation of Lake Hodges Improvement Project shall be the Weir as described in paragraph 3D if wheeled through the Flume. For all water delivered through Lake Hodges Improvement Project the point of delivery and measurement shall be the Control Facility located at the Badger Filtration Plant as described on Exhibit "A" attached hereto, and by this reference incorporated herein. For all water delivered through Lake Hodges

Improvement Project, the Districts shall pay San Diego a delivery charge equal to San Diego's cost.

- G. Districts shall pay San Diego for all water purchased in accordance with the provisions of Paragraph 3B, provided that the calculation of the costs of operating and maintaining Lake Hodges shall not include any costs incurred as part of the operation of Lake Hodges Improvement Project. The provisions of paragraphs 3C, 3D as to measurement of deliveries, 3E, 3F and 3G shall also apply to deliveries of Local Water after commencement of the operation of Lake Hodges Improvement Project.
- H. Credits for Local Water to which Districts own an entitlement but which is not purchased in any given Water Contract Year shall be the subject of a Local Water Credit Balance. The Districts' Local Water Credit Balance is that water which the Districts were entitled to purchase but which they did not purchase in any Water Contract Year. The Districts' Local Water Credit shall be reduced to account for evaporative and other losses in the amount of nine percent (9%) per year. Districts may draw on that Local Water Credit Balance by purchasing water represented by that Local Water Credit Balance from San Diego at Local Water prices at any time. Districts shall not receive credit for water which overflows Lake Hodges Dam or water which San Diego is otherwise unable to use or store in a facility other than Lake Hodges. In the event water overflows the Lake Hodges Dam it shall not be considered Local Water. In the event Districts purchase Local Water in any given Water Contract Year which is in excess of its Local Water Credit Balance, San Diego shall have a Local Water Credit Balance. In that event San Diego may draw on that Local Water Credit Balance by purchasing water represented by that Local Water Credit Balance from Districts at Local Water prices at any time. An example of the application of this Local Water Credit Balance is attached hereto as Exhibit C and by this reference incorporated herein.
- I. On or before October 1 of each year Districts shall provide San Diego with an estimate of projected Local Water use by the Districts for the forthcoming Water Year.
- J. In the event San Diego or any party acting on San Diego's behalf seeks to deposit reused water in Lake Hodges or in wells near Lake Hodges said water shall not be considered Local Water for purposes of this Agreement and the parties shall agree upon a formula to enable San Diego to receive credit for said reused water.

5. Upon commencement of the operation of Lake Hodges Improvement Project the right described in Paragraph 3H above shall terminate and be replaced with the Districts' right to delivery and purchase of all Local Water collected in Lake Hodges as provided in Paragraph 4 above as a

property right which was purchased by the Districts for a valuable consideration. In the event Lake Hodges Improvement Project is not constructed, Districts' property right shall be that right described in Paragraph 3H above. The extent of such property right is defined and limited by the terms of this Agreement.

6. If any provision of this Agreement shall for any reason be held illegal or ultra vires as to San Diego, the remaining portions of this Agreement shall at the option of either District remain in full force and effect as to San Diego and such Districts; if any provision of this Agreement shall for any reason be held illegal or ultra vires as to either District, the remaining portions of this Agreement shall at the option of San Diego remain in full force and effect as to such District and San Diego. If this Agreement shall be held illegal or ultra vires in its entirety as to any party, then the contracts heretofore existing between the Parties hereto shall continue in full force and effect as if this Agreement had never been executed, and none of the rights of any party hereto shall be in any manner affected by the execution of this Agreement.

7. San Diego shall operate and maintain Lake Hodges and Lake Hodges Dam in strict accordance with all state, federal and local laws and regulations and will make all reasonable efforts to maintain and repair Lake Hodges and Lake Hodges Dam to continue operations in order to maintain the maximum projected annual average yield of Local Water.

8. In the event San Diego elects to terminate or substantially change operations of Lake Hodges so as to eliminate the ability of Districts to obtain Local Water, Districts shall have and are hereby conveyed an option to purchase Lake Hodges and Hodges Dam. Upon exercise of said option, Districts shall pay San Diego just compensation in accordance with laws, principles and definitions used in eminent domain proceedings conducted for the purpose of public acquisition of private property for public use.

9. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the respective parties.

10. This Agreement shall be in full force and effect for so long as Lake Hodges is operated.

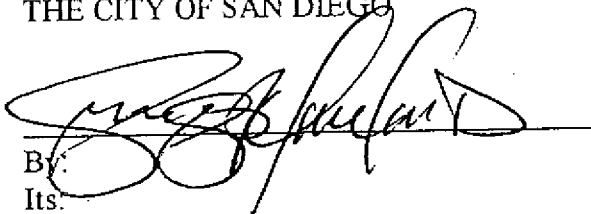
11. In the event qualified engineers and/or the state or federal government determine or order that the Lake Hodges Dam must be rebuilt or replaced in order for Lake Hodges operations to continue, San Diego shall have the right to rebuild and replace the Dam, or terminate Lake Hodges operations. In the event San Diego determines to rebuild or replace Lake Hodges Dam, Districts shall have an option to terminate this Agreement or extend this Agreement for so long as Lake Hodges is operated. In the event Districts exercise their option to extend the Agreement the price which Districts pay San Diego for Local Water as provided in Paragraph 3B, or 4E shall be recalculated so as to reflect the full capital costs of rebuilding or replacing the Lake Hodges Dam by increasing the present depreciated value of Lake Hodges to include the full price of rebuilding or replacing Lake Hodges Dam. In the event San Diego exercises its right to terminate Lake Hodges operations Districts shall have and are hereby conveyed an option to purchase Lake Hodges property and rebuild or replace Lake Hodges Dam themselves. Upon exercise of said option, Districts shall

pay San Diego just compensation in accordance with laws, principles and definitions used in eminent domain proceedings conducted for the purpose of public acquisition of private property for public use.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.


THE CITY OF SAN DIEGO

Dated: MAR 17 1998


By: _____
Its: _____

I hereby approved the form and legality of this Agreement this 19th day of March, 1998. *KG*

CASEY GWINN, CITY ATTORNEY

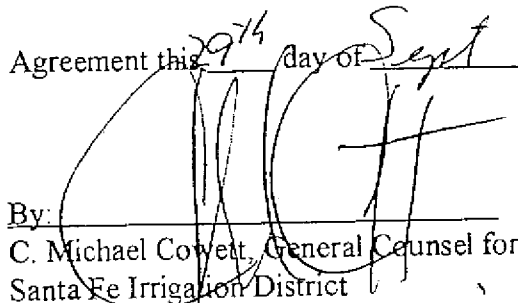

By: _____
Kelly J. Salt, Deputy City Attorney

SANTA FE IRRIGATION DISTRICT

Dated: Sept 29, 1997

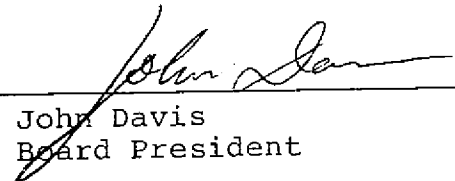

By: _____
Its: _____

I hereby approved the form and legality of this Agreement this 29th day of Sept, 1997.


By: _____
C. Michael Cowell, General Counsel for
Santa Fe Irrigation District

SAN DIEGUITO WATER DISTRICT

Dated: 10/08/97


By: John Davis
Its: Board President

I hereby approved the form and legality of this Agreement this 8th day of October, 1997.



By: Roger W. Krauel, Attorney for
San Dieguito Water District

EXHIBIT "A"

1. Lake Hodges Flume Weir

The Weir is located within a small block structure constructed at the easterly end of the "Lake Hodges Canal" commencing in the Southeast Quarter (SE 1/4) of the Northwest Quarter of Section 18, Township 13 South, Range 2 West of the subdivision of Rancho Santa Fe as per map thereof filed in the office of the County Recorder of San Diego County, California, on December 28, 1922, and numbered 1742.

2. Flow Control Facility

The Flow Control Facility known as San Diego County Water Authority's SD/SF 3 & 4 is located on property described as follows:

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 13 SOUTH, RANGE 3 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED NOVEMBER 19, 1880, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 10, THENCE SOUTH 89°24' 44" EAST 965.84 FEET ALONG THE SOUTH LINE OF SAID SECTION 10, (RECORD S89°49'57" E 936.97') TO THE CENTERLINE OF THE FIRST PIPELINE OF THE SECOND SAN DIEGO AQUEDUCT, THENCE CONTINUING ALONG THE SOUTH LINE OF SAID SECTION 10, SOUTH 89°24'44" EAST 16.27' TO THE EASTERLY LINE OF THE SAN DIEGO COUNTY WATER AUTHORITY RIGHT OF WAY AS GRANTED IN FILE/PAGE NO. 25440, RECORDED FEBRUARY 8, 1960 IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, THENCE NORTH 22°10'50" WEST (RECORD N22°10'37" W) 344.32 FEET ALONG SAID EASTERLY SAN DIEGO COUNTY WATER AUTHORITY RIGHT OF WAY LINE TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID EASTERLY SAN DIEGO COUNTY WATER AUTHORITY RIGHT OF WAY LINE, NORTH 67°49' 10" EAST, 65.00 FEET; THENCE SOUTH 22° 10' 50" EAST, 78.00 FEET; THENCE SOUTH 00°04'16" EAST 34.54 FEET; THENCE SOUTH 67°49'10" WEST, 52.00 FEET TO SAID EASTERLY SAN DIEGO COUNTY WATER AUTHORITY RIGHT OF WAY LINE; THENCE ALONG SAID SAN DIEGO COUNTY WATER AUTHORITY RIGHT OF WAY LINE, NORTH 22°10'50" WEST, 110.00 FEET TO THE TRUE POINT OF BEGINNING.

(O-98-84)

ORDINANCE NUMBER O- 18474 (NEW SERIES)

ADOPTED ON MAR 17 1998

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH SANTA FE IRRIGATION DISTRICT AND SAN DIEGUITO WATER DISTRICT RESTATING RIGHTS CONCERNING LOCAL WATER IN LAKE HODGES.

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

Section 1. That the City Manager is hereby authorized to execute, for and on behalf of The City of San Diego, an agreement with the Santa Fe Irrigation District and San Dieguito Water District restating rights concerning local water in Lake Hodges.

Section 2. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By Kelly J. Salt
Kelly J. Salt
Deputy City Attorney

KJS:pev
2/5/98
Or.Dept:Wtr.
Aud.Cert:N/A
O-98-84
Form=o&t.frm

Passed and adopted by the Council of The City of San Diego on
MAR 17 1998 by the following vote:

YEAS: MATHIS, WEAR, KEHOE, STEVENS, WARDEN, STALLINGS,
MCCARTY, VARGAS, MAYOR GOLDING

NAYS: NONE

NOT PRESENT: NONE

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(Seal)

By: Lori A. Witzel, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O- 18474 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on FEB 17 1998 and on MAR 17 1998.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(Seal)

By: Lori A. Witzel, Deputy

April 10, 2014

**AMENDMENT TO AND RESTATEMENT OF MARCH 17, 1998 AGREEMENT
BETWEEN THE CITY OF SAN DIEGO, SANTA FE IRRIGATION DISTRICT
AND SAN DIEGUITO WATER DISTRICT REGARDING LAKE HODGES**

This AMENDMENT to and RESTATEMENT ("Amendment") of the March 17, 1998 Agreement (City of San Diego Document No. OO-18474) ("1998 Agreement") by and between the City of San Diego ("San Diego" or "City"), a municipal corporation, Santa Fe Irrigation District ("Santa Fe"), a California irrigation district, and San Dieguito Water District ("San Dieguito"), a California irrigation district, is made and entered this ___ day of _____, 2014. Santa Fe and San Dieguito are referred to herein collectively as the "Districts." The City, Santa Fe and San Dieguito are referred to herein collectively as the "Parties."

RECITALS

- A.** The City acquired its ownership interest in Lake Hodges ("Lake Hodges" or "Lake Hodges Reservoir"), a reservoir with a capacity of approximately 30,000 acre feet, located near Rancho Santa Fe, California, subject to the Districts' entitlement to a portion of the water flowing into Lake Hodges.
- B.** Subsequent to the City's acquisition of Lake Hodges, the Parties entered into a series of written agreements which addressed the quantity of "Local Water" available to the Districts, allocation of costs between the City and Districts associated with certain aspects of operations at Lake Hodges, delivery points for Local Water to be diverted by the Districts, and other matters.
- C.** The Parties have expressed support for the efforts of the San Diego County Water Authority ("CWA") to establish a regional emergency storage project ("ESP").
- D.** On March 17, 1998, the Parties entered into the 1998 Agreement. By its own terms, the 1998 Agreement was intended to rescind all previous agreements between the Parties and restate their respective rights with respect to Lake Hodges.
- E.** On April 9, 1998, the CWA Board of Directors approved the authorization for the CWA General Manager to enter into an agreement with the City for the ESP expansion of Lake Hodges Dam and Reservoir.
- F.** By agreement dated May 26, 1998 as City Document Number 00-18521-2 ("City-CWA Agreement"), the City entered into an agreement with CWA that relates to the ESP and associated improvements to be undertaken at various City reservoirs. In particular, the City-CWA Agreement and ESP contemplated the construction of a pipeline and pumping plant to connect Lake Hodges to Olivenhain Reservoir and CWA's "Second Aqueduct." The City-CWA Agreement expressly acknowledges the 1998 Agreement.
- G.** In 2008, the Parties had a disagreement on the interpretation of the 1998

Agreement in relationship with the City-CWA Agreement. The Districts subsequently filed suit against the City alleging, among other claims that the City-CWA Agreement infringed upon the Districts' rights and interests in Lake Hodges and its water supplies. In particular, the Districts claimed that the City's agreement to convey to CWA the ownership of 20,000 acre feet of storage rights in Lake Hodges violated the 1998 Agreement. The City denied each of those claims. On or about November 18, 2010, the Districts and the City entered into a "Joint Stipulation to Dismiss Case Without Prejudice and Toll All Applicable Statutes of Limitations" as well as a "Tolling Agreement for the Lake Hodges Litigation Between Santa Fe Irrigation District, San Dieguito Water District, and the City of San Diego." On or about the same date, the Districts' lawsuit against the City was dismissed without prejudice.

- H. The purpose of this Amendment is to amend and restate the Parties' respective rights with respect to Lake Hodges in light of circumstances existing as of the date of this Amendment and to resolve the claims brought in the Districts' lawsuit.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals and the terms and conditions set forth below and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, San Dieguito and Santa Fe agree as follows:

1. **DEFINITIONS**

Unless otherwise defined herein, the following words shall have the meanings indicated:

- A. "**Commencement**" or the "**Commencement Date**" of Lake Hodges Project operations shall have the meaning set forth in Section 3, below.
- B. "**Dead Storage**" means that water located in the portion of the total storage capacity of the Lake Hodges Reservoir which is located lower in elevation than the lowest usable outlet of the Lake Hodges Dam outlet works or which cannot otherwise be accessed and utilized for water supply purposes. Dead Storage volumes are included in each Party's storage capacity right. Only volumes above Dead Storage amounts are available for use by each Party. Such Dead Storage shall be allocated per terms of Section 6.A.5, below.
- C. "**Emergency Storage Project**" or "**ESP**" means CWA's Emergency Storage Project, including but not limited to, the San Vicente Dam Raise Project, the Lake Hodges Project, and the Olivenhain Project, as described in CWA's Environmental Impact Report and in the Environmental Impact Statement of the US Army Corps of Engineers file no. 95-20092-DZ, and in Technical Memorandum 17, Phase II Report, prepared for CWA by GEI Consultants, Inc.

- D. **“Imported Water”** means water originating outside of the Lake Hodges watershed that is transported through CWA Aqueducts but excludes any water credited by CWA as Local Water.
- E. **“Interim Period”** means the time period between the Commencement Date and the San Vicente Dam Raise Completion Date.
- F. **“Lake Hodges Project”** means the construction/installation of: (1) a pipeline between Lake Hodges and Olivenhain Reservoir; (2) a new intake structure at Lake Hodges for such pipeline; (3) a pumping plant (**“Pumping Plant”**) at or near Lake Hodges; and (4) related appurtenances and mitigation.
- G. **“Local Water”** means all water flowing into Lake Hodges from the Lake Hodges watershed except as otherwise noted in this definition. Local Water shall also include all water credited by CWA as Local Water under the City-CWA Agreement or otherwise. Local Water does not include water which spills over Lake Hodges Dam, water withdrawn from Lake Hodges during Spill Events, and Imported Water.
- H. **“Operations and Maintenance Costs” or “O&M Costs”** shall mean the costs of operation, maintenance and administration of Lake Hodges, as described in Section 10(A), below.
- I. **“San Vicente Dam Raise Completion Date”** means the date when the ongoing project to raise the height of the dam at San Vicente Reservoir northeast of Lakeside, California is completed, which will occur when the Notice of Completion is approved by CWA’s Board of Directors.
- J. **“Spill Events”** shall refer to those times when water is spilling over Lake Hodges Dam.
- K. **“Water Year”** means the period from October 1 of any given year through September 30 of the following year.

2. **PROPERTY RIGHT**

The Districts’ right to Local Water is a property right acquired by the Districts for valuable consideration.

3. **COMMENCEMENT DATE / EFFECTIVE DATE**

The Parties agree that the terms of this Amendment, including the rights, duties and obligations herein, shall become effective when this Amendment is fully approved and executed by all Parties (**“Effective Date”**). However, the Parties have been operating under the rights, duties and obligations set forth in Paragraphs 4, 5, and 8 below, since the date that the operations of the Lake Hodges Project began, which is March 15, 2012 (the **“Commencement Date”**).

4. **RIGHTS TO LOCAL WATER**

The Parties agree as follows:

- A. **Equal Sharing of all Local Water.** Beginning on the Commencement Date, the City shall be entitled to 50% of all Local Water upon inflow, and the Districts, together, shall be entitled to the other 50% of Local Water upon inflow. Subject to the provision of Section 7 below, regarding Spill Events, this 50/50 sharing of Local Water inflow shall be binding regardless of the volume of Local Water being stored in Lake Hodges by either Party at the time of such Local Water inflow.
- B. **No Other Diverters of Local Water.** The Parties agree that no entity other than the Districts and the City shall have the right to capture or divert Local Water or water diverted during Spill Events from Lake Hodges, except as may be agreed to in writing by the Parties. The Parties shall work cooperatively to carry out the intent of this provision, as necessary to protect their common interests.
- C. **Initial Allocation of Lake Hodges Water upon Commencement.** The City and Districts shall equally share the entire volume of water in Lake Hodges, 50% to City and 50% to Districts, as of the Commencement Date (i.e., March 15, 2012), which volume has been calculated by the City as 24,653.30 acre feet.

5. **RESERVOIR OPERATIONS**

- A. **Overall Intent of Lake Hodges Project Operations after Commencement.**
 - 1. **Goals of the Parties.** The Parties acknowledge that the City, the Districts and CWA will each be involved in the operations of Lake Hodges going forward. The Parties acknowledge the benefits of the joint use and cooperative use of storage in Lake Hodges to maximize Local Water yield and to meet the operational needs of all Parties. The Parties acknowledge that the Districts have a goal of ensuring the reliability of the Districts' Local Water supplies, particularly in times of drought. The Parties also acknowledge that among CWA's primary objectives are ensuring that sufficient water supplies are available in Lake Hodges and across San Diego County to serve CWA's member agencies during an emergency, and providing for sufficient water storage in Lake Hodges to allow for "pumped storage" operations.
 - 2. **Maximization of Local Water.** The Parties acknowledge and agree that Lake Hodges shall be operated to maximize the inflow, collection and yield of Local Water.
- B. **Annual Operations.**

1. **Reservoir Operations and Cooperation.** The Parties acknowledge and agree that the City, in cooperation with CWA, shall be the sole operator of Lake Hodges; provided, however, that there shall be close coordination with the Districts regarding Lake Hodges operations that impact the Districts' interests or water supplies.
2. **Reservoir Regulating Manual.** The Parties acknowledge that CWA, in cooperation with the City, has prepared a Lake Hodges Reservoir Regulating Manual (April 2008) ("RRM"). The RRM is intended to guide the operations of Lake Hodges. In addition, the RRM contemplates that an annual operating plan ("AOP") will be prepared by the City and CWA each spring/summer to provide more detail regarding anticipated Lake Hodges operations for the following Water Year. The AOP present "Guide Curves" that serve as a foundation for operating Lake Hodges. The Parties agree to conduct operations of Lake Hodges in substantial compliance with the Guide Curves or any updates to such Guide Curves that are either approved by the Parties or result from unforeseen natural events such as excessive rain.
3. **Annual Operating Plan Preparation.** The City will allow the Districts to participate each year in the full development of the annual operation plans described above as well as in any related operations and maintenance or similar budgeting process. As part of their participation in the AOP process, the Districts will provide the City with their anticipated annual storage plan and Local Water needs for the following Water Year by June 1 of each year.
4. **Annual Operating Plan Designations.** The City will assure that, after Commencement, all AOPs and any amended versions of the RRM will separately name the Districts, acknowledge their operations, recognize the Districts' storage rights and rights to Local Water in Lake Hodges as separate from the City, and expressly and separately track the volumes of Local Water held and controlled by the Districts.

6. DISTRICTS' STORAGE OF WATER

- A. **Reservoir Storage Allocation.** Beginning on the San Vicente Dam Raise Completion Date, the Districts shall have the right to store the Districts' share of Local Water in Lake Hodges as described in this Section 6.
 1. **Reservoir Storage Pools.** To secure the Districts' right to store Local Water in Lake Hodges, the City shall, in good faith, undertake all actions necessary with CWA, if any, to accomplish such storage rights. If the City is required to enter into any agreements to accomplish this task, such as a storage agreement between the City and CWA, such agreements shall be acceptable

in substance and form to the Districts before they are executed.

2. **Districts' Exclusive Storage Pool Amount.** The Districts shall have storage rights of 5,000 acre feet to store Local Water in Lake Hodges. The Districts' 5,000 acre-foot "District Storage Pool," includes the Districts' allocated Dead Storage, and may be used, in the sole discretion of the Districts, for holding operating storage, carryover storage, or other type of commonly recognized water storage. Water stored in the Districts' Storage Pool shall not be subject to spill.
 3. **City's Exclusive Storage Pool Amount.** The City shall have storage rights of 5,000 acre feet to store water in Lake Hodges. The City's 5,000 acre-foot "City Storage Pool," includes the City's allocated Dead Storage, and may be used, in the sole discretion of the City, for holding operating storage, carryover storage, or other type of commonly recognized water storage. Water stored in the City's Storage Pool shall not be subject to spill.
 4. **District and City Water in Lake Hodges Above Storage Pool Amounts.** Should the Districts or City have water in Lake Hodges that exceeds its Storage Pool volume and is not otherwise protected from spilling, such water shall be subject to spill. Should the Parties determine that such water must be removed from Lake Hodges or transferred in order to ensure that Lake Hodges Guide Curves are generally observed or for other material operational reasons, the Parties shall develop and jointly agree upon a withdrawal plan to remove or transfer all or a portion of such water within a reasonable time.
 5. **Dead Storage Allocation.** Pursuant to the City-CWA Agreement, CWA bears two-thirds (2/3) of all losses from dead storage resulting from the ESP intake structure, currently 5,989 acre feet. Based on this, CWA's current dead storage share is 3,992.7 acre feet. The dead storage resulting from the Hodges Dam existing outlet works is 1,830 acre feet. The Districts bear one-sixth (1/6) of such losses or currently 305 acre feet. The City bears the remaining losses, currently 1,691.3 (5,989 minus 3,992 minus 305). Any future changes to Dead Storage amounts will be allocated using the proportions and summations as stated above.
- B. **No Third Party Storage in Lake Hodges.** No entity other than the Districts and the City shall have the right to store water in the Districts' or City's storage capacity in Lake Hodges, except with the express written permission of the City and the Districts.
- C. **No Districts' Right to Store Imported Water.** The Districts shall not have the right to store Imported Water in Lake Hodges.

7. **SPILL EVENTS**

The purpose of this Section 7 is to delineate the rights of the Parties during Spill Events.

- A. **Spill Events.** During Spill Events occurring after the San Vicente Dam Raise Completion Date, water that is subject to spill per Section 6(A) shall spill in proportion to the Districts' and City's respective storage amounts in Lake Hodges at the time the Spill Event begins, except that the 5,000 acre-foot guaranteed non-spill storage benefitting both the Districts and City shall not be counted in making such proportional calculation of spill. Such proportional spill shall be applied until the spill-able amounts have completely spilled or the Spill Event ends.
- B. **Diversion or Sale of Water During Spill Events.** If both Parties decide to divert water out of Lake Hodges during a Spill Event, they shall share access to the City-owned and CWA-owned Lake Hodges Project facilities (i.e., the "City Component" and the "Authority Components" defined in the City-CWA Agreement). The Districts shall be entitled to 50% of the available capacity (available capacity can be impacted by hydraulic, water quality and operational constraints) of the Lake Hodges Projects facilities, less 50% of the total volume of water diverted by the Districts through the City-owned Hodges Dam Outlet. For example, if the available capacity of the Lake Hodges Project facilities is 168 cubic feet per second (cfs) and the Districts are diverting 10 cfs through the Hodges Dam Outlet, then the Districts shall have access to 79 cfs through the Lake Hodges Project $((168 \text{ cfs} \times .5) - (10 \text{ cfs} \times .5) = 79 \text{ cfs})$. Therefore, under the example, the City and Districts would each have the ability to withdraw a total of 89 cfs out of Lake Hodges during a Spill Event. Any Party's use of the CWA-owned Lake Hodges Project facilities shall be subject to any CWA terms and conditions associated with the use of such facilities.

Any water sold, either directly or through a paper transfer, to CWA shall be equally shared during a Spill Event, unless one Party decides not to participate in such sale or water transfer.

If a Party decides to not divert water out of Lake Hodges during a Spill Event, then the other Party can divert as much water as desired at no cost or compensation to the first Party until the Spill Event terminates.

8. **INTERIM PERIOD OPERATIONS.**

- A. **Storage During the Interim Period.** During the Interim Period, the Parties shall have equal access to the remaining 20,000 acre foot future CWA storage capacity. The Parties will operate such storage per the AOP Guide Curves and Sections 6 and 7.

9. **GENERAL PRINCIPLES REGARDING O&M AND CAPITAL IMPROVEMENT COST.** Following are several "General Principles" related to

Lake Hodges Operation and Maintenance Costs and capital improvement cost allocations:

- A. Beyond the costs the Districts currently pay as a member of CWA, the Districts shall not be required to bear any costs associated with construction, maintenance, operation, repair or rehabilitation of the ESP (e.g., the Lake Hodges Project component of the ESP), including any costs associated with ongoing or recurring permit conditions or environmental mitigation requirements for the ESP.
- B. The Districts shall not be required to pay more than their fair share of that portion of Lake Hodges Operation and Maintenance Costs and capital improvement costs to be paid by the City and the Districts. That is, the Districts shall be entitled to fully and fairly benefit from any and all operations and maintenance and capital improvement costs related to Lake Hodges to be paid by CWA, by third parties, or with grant (e.g., Proposition 84) funds.
- C. The Districts will be permitted and invited to participate in any annual Lake Hodges operations and maintenance budgeting processes undertaken between the City and CWA, including in any meetings related to O&M costs in excess of the annual budget established by CWA and the City. The Districts shall be invited to participate in any meetings or processes related to Lake Hodges operations that involve regulatory, operations and maintenance, capital improvement or other costs the Districts may be asked to bear.
- D. The Districts will not pay any recreational costs associated with Lake Hodges, including but not limited to management, capital improvement, operation, or maintenance costs for City recreation activities and facilities. The Districts will also not pay any operations, maintenance, capital improvement or other costs associated with pump storage operations.
- E. The City shall keep books, records, documents, and other evidence pertaining to actual Operating and Maintenance Costs, and capital improvement costs incurred and revenues, excluding recreation-related revenues, received from Lake Hodges Reservoir to the extent and in such detail as necessary to reflect all such costs and revenues. The City shall maintain such books, records, documents and other evidence pertaining to Lake Hodges O&M Costs and capital improvement costs for a minimum of four years after completion of the last entry or four years after resolution of all relevant disputes arising therefrom, whichever is longer, and shall make available at the City's offices at reasonable times such books, records, documents and other evidence for inspection and audit by the Districts.

10. LAKE HODGES OPERATION AND MAINTENANCE COST ALLOCATION

A. O&M Costs. Operations and Maintenance Costs shall include:

- (1) personnel costs of employees, such as dam tenders, reservoir keepers and other employees assigned by the City whose duties relate directly to the operation and maintenance of Lake Hodges Reservoir, for that portion of their time that is directly or entirely associated with the ongoing operation, maintenance and administration of the Lake Hodges Reservoir, Dam and outlet works and new intake structure at Lake Hodges for the pipeline between Lake Hodges and Olivenhain Reservoir;
- (2) the cost of repainting, resurfacing, patching, dredging, periodic surveys, including but not limited to watershed surveys, and inspections of Lake Hodges Reservoir, Dam and outlet works and new intake structure at Lake Hodges for the pipeline between Lake Hodges and Olivenhain Reservoir;
- (3) the costs of engineering studies and fees necessary to maintain the State of California licenses or permits for the Lake Hodges Reservoir, Dam and outlet works and new intake structure at Lake Hodges for the pipeline between Lake Hodges and Olivenhain Reservoir;
- (4) the cost of servicing machinery, equipment, and vehicles belonging to and operated by the City for that portion of the time they are utilized directly or principally in the operation, maintenance and administration of the Lake Hodges Reservoir, Dam and outlet works and new intake structure at Lake Hodges for the pipeline between Lake Hodges and Olivenhain Reservoir;
- (5) the cost of maintaining and irrigating landscape associated with the Lake Hodges Reservoir;
- (6) the cost of utility services such as power, heating, water, sewage, and garbage disposal which are directly related to the operation and maintenance of Lake Hodges Reservoir, Dam and outlet works and new intake structure at Lake Hodges for the pipeline between Lake Hodges and Olivenhain Reservoir;
- (7) any other costs and expenses reasonably incurred for the operation and maintenance of the Lake Hodges Reservoir, Dam and outlet works and new intake structure at Lake Hodges for the pipeline between Lake Hodges and Olivenhain Reservoir, so long as such further costs are not excepted from District payment or contribution to such costs by other provisions of this Amendment; and
- (8) such other operations and maintenance activities as the Parties may mutually agree and incorporate into the O&M budget for the Fiscal

Year in which such activities are performed.

B. Allocation of O&M Costs. The Parties agree to the following allocation of O&M Costs.

- (1) From July 1, 2012 until the San Vicente Dam Raise Completion Date, the Parties agree to share O&M Costs equally (50% to the Districts and 50% to the City), provided that any operations and maintenance payments related to Lake Hodges made by CWA or any other entity to the City over that period shall be applied to reduce O&M Costs before the 50/50 cost allocation between the Parties is calculated. O&M Costs during this period shall be reconciled within 90 days of the San Vicente Dam Raise Completion Date. Such reconciliation shall take into consideration the O&M costs already paid by Districts to City during this period. Any resulting refund to Districts or amount due from Districts shall be paid within 60 days following reconciliation.
- (2) The Parties agree that after the San Vicente Dam Raise Completion Date, the Districts shall pay 25% of the O&M Costs, the City shall pay 25% of the O&M Costs, and CWA shall pay 50%, pursuant to the City-CWA Agreement of the O&M Costs, provided that any operations and maintenance payments related to Lake Hodges made by any other entity to the City over that period shall be applied to reduce O&M Costs before the cost allocation between the Parties is calculated.

C. O&M Budgeting. City and District representatives shall annually develop and prepare a proposed O&M budget for each Fiscal Year after the Effective Date. Such O&M budget shall be submitted to the governing bodies, if applicable, of each of the Parties in sufficient time to permit each Party to budget and appropriate its share of the funds required for such budget. If, for any reason, such as the need for emergency repairs, the actual O&M Costs exceed or are expected to exceed the approved City-Districts O&M budget, City and Districts representatives shall meet and mutually agree to a revised budget and payment schedule for submissions to the applicable governing bodies of each Party, if applicable, in order to obtain a revised appropriation of funds necessary to pay O&M Costs for the remainder of such Fiscal Year. The City, as operator of Lake Hodges, shall be responsible to notify the Districts of the projected need for increased funds to pay for O&M Costs within 30 days of the discovery of the need for such funds. The City shall not be expected or required to, nor shall it, delay the implementation of emergency repairs necessary to ensure the structural integrity or safety of Lake Hodges Dam or appurtenant facilities because of the notification and budgeting requirements of this Amendment. Lack of notification does not release the Districts of the requirements to pay for such revised O&M Costs. All O&M Costs shall be paid to the City within 90 days of the end

of the Fiscal Year it was expensed.

- D. Monthly and Annual Billing Dispute Resolution Procedure.** Subject to the reasonable right to dispute the amount of any bills as set forth in Section 20, below, the Districts agree to pay such bills. Within 150 days after the end of each Fiscal Year, the City will reconcile the estimated monthly billing with the actual costs. The Districts shall make payments to the City of the Districts share of the O&M Costs in advance on or before the first of every month in each Fiscal Year calculated based on the Districts' annual share of such expenses as reflected in the approved annual budget for O&M Costs divided by twelve. If the actual O&M Costs are less than the approved budget for any Fiscal Year then the excess actually paid by the Districts to the City shall be reimbursed back to the Districts.

11. CAPITAL COSTS

- A. Allocation of Capital Improvement Costs Between the City and Districts.** Subject to the provisions of this Amendment and this Section 11 (and Section 11(B) in particular), the City and Districts agree to the following allocation of costs for future capital improvements at Lake Hodges.

- (1) The Districts shall bear no responsibility to contribute to or otherwise pay for any capital costs associated with the ESP facilities or improvements (e.g., repair and rehabilitation of the Pumping Plant), or with any recreation capital improvements at Lake Hodges.
- (2) The Districts agree to pay 25% of the capital costs associated with capital improvement projects related to pre-ESP Lake Hodges facilities or projects such as the repair, replacement or rehabilitation of Lake Hodges Dam and outlet works.
- (3) In view of the Districts' significant capital investment in its own water treatment facilities, the Districts shall bear no responsibility to contribute to or otherwise pay for water quality related capital improvement projects at Lake Hodges.

B. Capital Cost Budgeting and Approval

- 1. Approval Process.** Subject to the commitments set forth in Section 11(A), any future capital improvement project at Lake Hodges Reservoir which affects the rights or interests of any Party or all Parties to this Amendment and which is over and above those future projects necessary for the maintenance, repair, or replacement of components of the Lake Hodges Reservoir, dam and outlet works shall require a new agreement with all Parties; provided, however, that no Party shall unreasonably withhold its

consent.

2. **Capital Improvement Project Meetings.** For future capital improvement projects where it is reasonably expected that the Districts will be asked to pay a portion of the costs of such capital improvement project, the Districts shall be timely invited to the initial project design meeting and to official design review meetings at the 30%, 60% and 90% design phase milestones.
3. **Third Party Funding of Future Capital Improvement Projects.** Any payment or promise of payment by any third party towards any capital improvement project at Lake Hodges to which the Districts are also being asked to contribute shall be counted when the City calculates the capital cost for such project to be paid by the Districts. In addition, any grant funding secured by any Party to be used to fund capital improvement projects at Lake Hodges shall be counted when the City calculates the capital cost for such project to be paid by the Districts.
4. **Monthly and Annual Billing.** The City shall annually, by June 1 of each year, estimate the capital improvement costs for the following Fiscal Year. The City shall charge and invoice the Districts their portion of the actual capital improvement costs as they are incurred on a monthly basis. Such capital improvement cost invoicing shall appear on billing separate from the monthly O&M Cost billing. The Parties expect that, after a new capital expenditure is approved by the Parties, the City will bill the Districts (and CWA, as applicable) as design, engineering, construction and related incidental expenses of such project occurs.
5. **Capital Cost Dispute Resolution Procedure.** Subject to the reasonable right to dispute the amount of such bills as set forth in Section 20, the Districts agree to pay such bills. Within 180 days after the end of each Fiscal Year, the City will reconcile the estimated Capital Cost billing with the actual capital cost billing.

12. WATER ACCOUNTING

- A. **City to Maintain Books and Records.** The City shall keep books, records, documents and other evidence pertaining to water quantities, water ownership, storage and other Lake Hodges operational issues to the extent and in such detail as necessary to reflect such water accounting. The City shall maintain such books, records, documents and other evidence for a minimum of four years after completion of the last entry or four years after resolution of any relevant disputes arising therefrom, whichever is longer. The City shall make available at the City's offices at reasonable times such books, records, documents and other evidence for inspection and audit by the Districts.

- B. Water Inventory/Accounting.** The City shall use reliable methods, including measurement where possible, to quantify the amount of water, including Local Water and Imported Water, entering Lake Hodges on a daily basis. The City shall maintain water inventory and accounting records in detail sufficient to conform with the provisions of the RRM. The City shall maintain daily records when available to measure the quantity of water withdrawn from the Lake Hodges Reservoir by CWA pipelines. The City/Districts' shall also measure the quantity of water withdrawn from the Lake Hodges Reservoir by the Districts and the City, and record such measurements daily, when available. Daily information will be used to calculate monthly hydrography records and reports.
- C. Evaporation and Other Losses.**
- 1. Allocation.** Pursuant to the City-CWA Agreement, CWA bears two-thirds (2/3) of all losses from seepage, evaporation, and unaccounted for losses. The City and Districts bear the remaining one-third (1/3) of all such losses. The City and Districts shall share the remaining one-third (1/3) losses in proportion to the beginning of month storage amounts for each Party.
 - 2. Evaporation Loss Accounting.** Evaporation Losses shall be calculated and information on such losses distributed by the City to the Districts at least monthly. All accounting information provided to the Districts shall display Evaporation Losses incurred by the City, the Districts and CWA.

13. WATER SALES/TRANSFERS

- A. Water Transfers Permitted.** Nothing in this Amendment is intended to preclude any Party from selling, transferring or conveying Local Water to another Party, to CWA, or to any third party. Provided, however, that if any Party conveys Local Water to an entity, such Party shall be entirely responsible for the costs associated with moving such water (which cost is expected to be the cost of pumping and CWA's transportation charge). Water to be transferred, whether during a Spill Event or at another time, shall be placed in storage at a location other than Lake Hodges or otherwise put to beneficial use.
- B. Access to CWA Pipeline and Pumping Plant.** The Districts and the City agree that each Party shall share access to the City-owned and CWA-owned Lake Hodges Project facilities (i.e., the "City Component" and the "Authority Components" defined in the City-CWA Agreement), to divert water at all times, including during Spill Events. The District shall be entitled to 50% of the available capacity of the Lake Hodges Project facilities, less 50% of the total volume of water diverted by the Districts through the City-owned Hodges Dam Outlet (See Example in Section 7B). Any Party's use of the CWA-owned Lake Hodges Project facilities shall

be subject to any CWA terms and conditions associated with the use of such facilities.

- C. **Water Sales to CWA.** The Parties agree to cooperate regarding the establishment of agreement(s) by one or all Parties to sell or otherwise transfer water to CWA. Any water sold, either directly or through a paper transfer, to CWA shall be equally shared from each (City and Districts) respective storage pool, unless one Party decides not to participate in such sale.
- D. **Removing Another Party's Water.** Neither Party has the right to move water out of Lake Hodges that belongs to the other Party, unless the Party has received permission in writing from the other Party to do so. If any Party removes another Party's water from Lake Hodges without permission, the entity responsible for such water removal shall replace such removed water within 30 calendar days or, if approved by the Party whose water was removed, pay for such removed water at CWA's imported untreated water rate, including transportation charges, within 30 days.

14. **OPERATIONAL ISSUES RELATED TO DISTRICT DIVERSIONS**

- A. **Districts' Diversion Points.** Unless otherwise agreed to in writing by the Parties, measurement and diversion of Local Water by the Districts shall be as follows:
 - 1. At the Districts' diversion point downstream from the City's flow meter at the outlet ("Outlet") of the Lake Hodges dam.
 - 2. As applicable, at the CWA flow control facility (FCF SDSF 3, 4 & 5) at the Districts' R.E. Badger Filtration Plant.
 - 3. At any other location agreed to by the Parties, provided any necessary arrangements are made with the City or CWA, or both.
- B. **Facilities / Outlets Maintenance.** The City shall at all times retain the responsibility and obligation for the operation, maintenance, repair, replacement and/or rehabilitation of the Lake Hodges Dam and Reservoir, including all associated facilities owned or operated by the City. The City shall maintain the Outlet and any associated meters/metering devices ("Meters") in good condition and repair at all times as is possible through the exercise of ordinary care. The costs associated with operating and maintaining the Outlets and Meters shall be included as part of O&M Costs and shared per terms of Section 10, above. The Districts shall have the right to annually inspect the Outlet and test the Meters for accuracy, with a representative of the City present if so desired by City, at reasonable times during business hours with reasonable notice. The Districts shall also have the right, if they so desire, to have a representative present at any test or reading of any Meters by the City. The Districts also have the right, at their own cost, to have third parties undertake

independent Meter testing.

15. WATER QUALITY

The City shall operate Lake Hodges and all of its facilities in a manner that conforms to the requirements of all local, state and federal laws and regulations regarding water quality collected in Lake Hodges. Except as provided in this paragraph, the City does not make any assurances concerning the quality of water in Lake Hodges.

16. EFFECT OF THIS AMENDMENT

Subject to the terms of Paragraph 3, above, this Amendment is intended to amend and restate in its entirety the provisions of the 1998 Agreement regarding operations of Lake Hodges upon and following the Effective Date. The City-CWA Agreement specifically acknowledges the existence and rights of the Parties under the 1998 Agreement and Section 6.3 of the City-CWA Agreement provides for the modification of the 1998 Agreement under certain terms and conditions and that any such modification shall not be a breach of the City-CWA Agreement. The City acknowledges that Santa Fe and San Dieguito are not parties to the City-CWA Agreement and that the City shall be solely responsible for any action taken by CWA alleging that the Amendment is not a permitted modification under Section 6.3 of the City-CWA Agreement or seeking to enforce the terms of Section 6.3 with respect to losses or diminished use by CWA as a result of the 1998 Agreement and any modification thereto. The City shall indemnify and defend Santa Fe and San Dieguito from any cause of action by CWA which arises in connection with the implementation of this Amendment.

17. NO ADVERSE EFFECT ON DISTRICTS' RIGHTS

The Parties agree that nothing contained in any future agreement between the City and CWA, or the City and any other party, shall adversely affect the rights of the Districts as set forth herein. Should the City take any actions related to Lake Hodges operations over the objections of the Districts or in a manner that substantially comprises the interests of the Districts, or which compromise the ability of the Districts to obtain their Local Water supplies, the Districts explicitly reserve their right to contest such action as provided herein, including but not limited to in a court proceeding, as set forth in Section 27, below.

18. CHANGED CIRCUMSTANCES / OPTION TO PURCHASE LAKE HODGES

In the event the City, CWA or any other Party terminates or substantially changes operations of Lake Hodges so as to significantly reduce or eliminate the ability of the Districts to obtain and store Local Water therein, (1) the Parties shall meet and confer as to next steps and to determine the continued applicability, if any, of this Amendment; and (2) the Districts shall have and are hereby conveyed the right of first refusal to purchase Lake Hodges and Hodges Dam.

19. CONFLICTS BETWEEN TERMS

If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Amendment, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Amendment, , and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Amendment.

20. PRE-MEDIATION DISPUTE RESOLUTION PROCESS

Any controversies arising out of the interpretation or application of this Amendment or the refusal of any party to perform the whole or any part thereof shall first be addressed through negotiation by the Parties in the following order:

- (1) Staff of the Parties will attempt to resolve/settle any disputes;
- (2) If Party staff is unable to resolve the dispute, Party management (or their designees) will attempt to resolve the dispute;
- (3) If Party management is unable to resolve the dispute, then Party executive management will attempt to resolve the dispute.

Thereafter, if the dispute cannot be resolved through the above-described process, mediation/legal remedies may be sought by any Party per the terms of this Amendment.

21. MEDIATION

- A. Mandatory Non-binding Mediation.** If a dispute arises out of, or relates to this Amendment, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations or through the pre-mediation dispute resolution process described above, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Mediation Rules of the American Arbitration Association (AAA) or any other neutral organization agreed upon before having recourse in a court of law.
- B. Mandatory Mediation 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 ("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, with the Districts bearing, collectively 50% of such cost, and the City bearing the other 50% of such cost.

C. Selection of Mediator. A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in water law or water engineering and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a “Request for Mediation” along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

1. If AAA is selected to coordinate the mediation, within ten working days from the receipt of the initiating Party’s Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any objection, and a preference for available dates. If the opposing Party strikes all of initiating Party’s preferred Mediators, the opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and “Administrator”. The initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any objection. This process shall continue until both sides have agreed upon a Mediator.
2. The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties’ lists who is available to serve within the designated time frame.
3. If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.

D. Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party’s legal position. The Parties may agree to exchange any information they deem necessary.

1. Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.
2. Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be “non-binding” and inadmissible for any purpose in any legal proceeding, 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.

- E. **Post-Mediation Rights.** If any dispute cannot be resolved through the mediation process described in this Section 21, any Party may, subject to the provisions of Section 27, below, bring suit to resolve the dispute.

22. **INDEMNITY OBLIGATIONS**

- A. **Mutual Indemnification.** Each Party shall indemnify, defend, protect and hold harmless the other Party, their elected officials, officers, agents, employees, successors and assigns from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional, expert or consultants' fees and costs) of every kind and nature whatsoever (each a "Claim" and collectively, "Claims") which may arise from or in any manner relate to: (1) any violation of the obligations of the Parties under this Amendment, including without any limitation, any actual or alleged violation of any Legal Requirements, as defined in Paragraph 23; and (2) the negligent acts, omissions and/or willful misconduct of the Parties, their employees, agents, or contractors.
- B. **Defense of Third Party Claims.** The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of the indemnifying party. Such defense obligation shall arise immediately upon presentation of written notice to the indemnifying party of a Claim by any indemnified party. Promptly following receipt of any written claim or legal proceeding asserted by a person or entity which is not a party to this Amendment ("Third Party Claim"), the indemnified party shall notify the indemnifying party of such claim in writing. In matters that pose no conflict of interest, the indemnifying party thereafter shall undertake and diligently pursue the defense of the Third Party Claim with counsel reasonably acceptable to the indemnified party; provided, however, that the indemnifying party shall not consent to entry of judgment or enter into any settlement agreement without the consent of the indemnified party, which does not include a complete and unconditional agreement of the indemnified party or which imposes injunctive or other equitable relief against the indemnified party. If the indemnifying party fails to assume and diligently pursue the defense of a Third Party Claim, the indemnified party may defend against such Third Party Claim in such manner as it may deem appropriate, including without limitation, settlement thereof on such terms as the indemnified party may reasonably deem appropriate, and to pursue such remedies as may be available to the indemnified party against the indemnifying party. Notwithstanding the foregoing, the indemnified party

shall not consent to entry of judgment or enter into any settlement agreement without the consent of the indemnifying party, which does not include a complete and unconditional agreement of indemnifying party or which imposes injunctive or other equitable relief against indemnifying party.

- C. **Survival of Indemnification/ Defense of Third Party Claims Obligations.** The indemnifying party's indemnification and defense obligations hereunder shall survive the expiration or earlier termination of this Amendment until such time as action against any indemnified party for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

23. COMPLIANCE WITH ALL LAWS

The City shall operate and maintain Lake Hodges and Lake Hodges Dam in strict accordance with all state, federal and local laws and regulations ("Legal Requirements"), including but not limited to those pertaining to water quality, water rights, public health and safety, and recreational use, and will make all reasonable efforts to maintain and repair Lake Hodges and Lake Hodges Dam to continue operations in order to maintain the maximum annual average yield of Local Water. To the extent any violation of the Legal Requirements arises as a result of any particular Party's action or inaction, such Party shall be solely responsible for any and all costs arising from such action or inaction, including any costs required to remedy the violations of such Legal Requirements. The City makes no assurances, legal or otherwise, as to water quality in Lake Hodges.

24. UPSTREAM CITY WATER PROJECT

The Districts understand that the City may now or in the future operate a groundwater extraction, storage and/or recovery, or other project ("Upstream City Water Project") in areas within the watershed (e.g., San Pasqual Valley), and upstream, of Lake Hodges which may reduce the volume of water reaching Lake Hodges or otherwise potentially adversely affect Lake Hodges water volumes or water quality. The City shall provide any California Environmental Quality Act, other environmental and other documents related to any Upstream City Water Project, including any public notices, to the Districts as soon as they are made available to the public. The Districts reserve all rights to object to or challenge any Upstream City Water Project. The Parties agree to work cooperatively with respect to any project or activity upstream of Lake Hodges, including those not involving or sponsored by the City or the Districts, which could potentially adversely affect the volume or quality of water reaching Lake Hodges.

25. BINDING AGREEMENT

This Amendment shall be binding on and inure to the benefit of the successors and assigns of the respective parties.

26. NOTICES

Except for monthly O&M cost bills sent by City to Districts, any notice, demand, or payment required to be given herein shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the respective Parties set forth below. Any change in address by any Party shall be provided to all Parties within thirty (30) days following such change.

SAN DIEGUITO WATER DISTRICT

505 South Vulcan Ave.
Encinitas, CA 92024-3633
Attn: Director of Public Works

SANTA FE IRRIGATION DISTRICT

P. O. Box 409
5920 Linea del Cielo
Rancho Santa Fe, CA 92067
Attn: General Manager

CITY OF SAN DIEGO

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

27. GOVERNING LAW

Should any Party to this Amendment bring legal action against one or more of the others to enforce the provisions of this Amendment, the case shall be handled pursuant to California law and filed and maintained in the Superior Court of the County of San Diego.

28. NO ADMISSION OF LIABILITY

The Parties understand and agree that this Amendment is not to be construed as an admission of liability whatsoever on the part of any of them, and that the release is made solely for the purpose of avoiding the burden and expense which would be imposed upon the Parties through litigation.

29. CONSULTATION WITH LEGAL COUNSEL

The Parties represent that they have consulted legal counsel prior to the execution of this Amendment and have executed this Amendment with full knowledge of its meaning and effect.

30. EXECUTION OF TERMS OF AGREEMENT

The Parties agree to perform any acts and execute any documents consistent with the terms and conditions of this Amendment which may be needed, desired or required to effectuate the terms, conditions and provisions hereof.

31. ATTORNEYS' FEES INCURRED IN RESOLVING THE DISPUTE

The Parties agree that they will not seek attorneys' fees or costs that have been incurred in resolving the disputes or issues against one another described herein.

32. DRAFTING OF AMENDMENT

The Parties agree that this Amendment shall not be construed in favor of, or against, any Party by reason of the extent to which any Party or its counsel participated in the drafting of this Amendment.

33. MODIFICATION OF AMENDMENT

This Amendment may be amended only by a writing signed by each of the Parties hereto.

34. INVALIDITY; SEVERABILITY

If any portion of this Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect, unless otherwise agreed to by all Parties.

35. WAIVER

No waiver of any default under this Amendment shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

36. NO THIRD-PARTY BENEFICIARIES

There are no intended third party beneficiaries of any right or obligation assumed by the Parties under this Amendment.

37. AUTHORITY TO ENTER AGREEMENT

Each Party has all requisite power and authority to conduct its business and to execute, deliver, and perform the Amendment. Each Party warrants that the individuals who have signed this Amendment have the legal power, right, and authority to execute this Amendment and bind each respective Party.

38. COUNTERPARTS

This Amendment may be executed in separate counterparts, the whole of which shall constitute a binding agreement. Facsimile signatures, when received, shall have the same force and effect as original signatures.

39. INTEGRATION

This Amendment and references incorporated into this Amendment fully express all understandings of the Parties concerning the matters covered in this Amendment. No change, alteration, amendment, or modification of the terms or conditions of this Amendment, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties. All prior negotiations and agreements are merged into this Amendment.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment on the day and year first above written.

CITY OF SAN DIEGO

BY: _____

**APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL**

By: _____

SANTA FE IRRIGATION DISTRICT

By: _____

**Michael J. Bardin
General Manager**

**APPROVED AS TO FORM:
BEST BEST & KRIEGER LLP**

By: _____

SAN DIEGUITO WATER DISTRICT

By: _____

**Glenn Pruim
General Manager**

ATTEST

By: _____

City of Encinitas, City Clerk