

**RESTATEMENT OF
AGREEMENT BETWEEN CARDIFF SANITATION DISTRICT
AND SOLANA BEACH SANITATION DISTRICT
ESTABLISHING THE SAN ELIJO JOINT POWERS AUTHORITY**

This agreement is entered into this 25th day of June, 2008 by and between the City of Encinitas, as successor to the Cardiff Sanitation District, a county sanitation district, and the City of Solana Beach, as successor to the Solana Beach Sanitation District, a county sanitation district, (hereinafter referred to as the "parties" or "Member Agencies"), pursuant to the laws of the State of California.

RECITALS

- A. The Cardiff Sanitation District and the Solana Beach Sanitation District jointly constructed and operated a water pollution control facility known as the San Elijo Water Pollution Control Facility, pursuant to a joint powers agreement, commonly referred to as the "Basic Agreement."
- B. The Basic Agreement was superseded by the "Agreement Between Cardiff Sanitation District and Solana Beach Sanitation District Establishing A Joint Powers Authority For The Operation, Maintenance, Construction, Upgrade and Expansion Of A Joint Sewage System," dated June 17, 1987. That agreement created the San Elijo Joint Powers Authority (hereinafter "SEJPA"), as a separate public entity with the power to own, operate, maintain and upgrade the San Elijo Water Pollution Control Facility. Under the terms of that agreement, SEJPA was empowered to exercise the authority of the sanitation districts to provide for the transmission, collection, treatment, disposal of sewage and wastewater, and to develop water reclamation facilities, and was vested with all of their rights, obligations, liabilities and duties.
- C. Upon the dissolution and merger of the Solana Beach Sanitation District with the City of Solana Beach on July 1, 1990, and the dissolution and merger of the Cardiff Sanitation District with the City of Encinitas on October 18, 2001, these cities became entitled to continue to exercise the rights of the county sanitation districts in accordance with Government Code Sections 56886, 57461 and 57462, with respect to the provision of sewer service pursuant to the contracts under which the San Elijo Joint Powers Authority was created and operated.

D. The agreement establishing the SEJPA was amended a number of times between 1989 and 2005. It is the intent of the parties to supersede the June 1987 agreement, as so amended, by the adoption of this "Restatement of Agreement Between Cardiff Sanitation District and Solana Beach Sanitation District Establishing the San Elijo Joint Powers Authority," (hereinafter the "Agreement.") The purpose of this Agreement is to incorporate prior amendments into a single document, update the Agreement, and to clarify and supplement the duties and responsibilities of SEJPA and the parties.

In consideration of these recitals and the mutual covenants contained herein, the Member Agencies agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1. For the purposes of this agreement, the words and terms defined in this Article have the meaning established by this Article, unless from the context of the paragraph, sentence, phrase or clause in which the word or term appears it is evident that a different meaning is intended. Unless otherwise defined, the words or terms used in this agreement shall have their customary and common meanings.

Section 1.2. "Act" means the Joint Exercise of Powers Act, Title 1, Division 7, Chapter 5, (commencing with Section 6500) of the California Government Code.

Section 1.3. "Joint System" means the San Elijo Water Pollution Control Facility, consisting of the land, the sewage treatment plant, the Escondido Regulator Structure and the San Elijo Ocean Outfall, as well as the San Elijo Water Reclamation Facility, the Oak Crest and Lomas Santa Fe Reservoirs, Lomas Santa Fe Booster Pump Station and the associated recycled water distribution systems.

Section 1.4. "Joint Facilities" means the Joint System together with all other facilities, improvements, land and other works acquired, installed, operated, or maintained by SEJPA pursuant to this agreement.

Section 1.5. "MGD" means million gallons per day. Unless otherwise specified, the term MGD is used in reference to treatment capacity determined by average daily dry weather flow.

Section 1.6. "Member Agency" means either the City of Solana Beach, as successor to the Solana Beach Sanitation District, or the City of Encinitas, as successor to the Cardiff Sanitation District. When used in the plural, the term shall mean both cities.

Section 1.7. "Person" means person, corporation, partnership, joint venture, public entities, or unincorporated association of any type or nature.

Section 1.8. "Plant" is a term used to refer generally to the San Elijo Water Pollution Control Facility and San Elijo Water Reclamation Facility, and may include either the Joint System or the Joint Facilities, depending upon the context of the sentence in which the term is used.

Section 1.9. "SEJPA" means the San Elijo Joint Powers Authority created by this Agreement.

Section 1.10. "Transmission facilities" means sewers, pipes, force mains, laterals, pump stations, meters and other improvements for the collection or transmission of sewage, wastewater or reclaimed water.

ARTICLE 2

CREATION OF AUTHORITY/ SEJPA BOARD

Section 2.1. This Agreement is made pursuant to the Act, providing for the joint exercise of powers common to the Member Agencies. The purpose of this Agreement is to establish a single agency authorized to manage, operate, maintain and expand the Plant for the treatment and disposal of sewage or wastewater and for the treatment, storage, transmission, sale and disposal of recycled water, and to determine the joint and separate obligations of the Member Agencies concerning the transmission, treatment, disposal and reclamation of sewage and wastewater within the respective service territories of the Member Agencies.

Section 2.2. The San Elijo Joint Powers Authority ("SEJPA") is hereby created. The San Elijo Joint Powers Authority is a public entity, separate and apart from the Member Agencies.

Section 2.3. Organization of SEJPA Board

(a) The SEJPA shall be governed by a Board consisting of four members. Two members of the SEJPA Board shall be members of the City Council of the City of Solana Beach and two members shall be members of the City Council of the City of Encinitas. Each Member

Agency may appoint an alternate to serve in the absence of a regular member of the SEJPA Board, who must also be a council member or an employee of the Member Agency.

(b) Each member of the SEJPA Board shall serve a term determined by the appointing authority. A member may serve any number of consecutive terms. A member or alternate member shall be disqualified to serve on the SEJPA Board if the member ceases to hold office on the city council of the appointing Member Agency, or in the case of an employee alternate, ceases to be an employee of the appointing Member Agency. Alternate members, if any, shall serve at the pleasure of the appointing authority. Each Member Agency shall provide written notice to SEJPA of any appointments made, and of any vacancies which may occur. However, the Board of SEJPA shall have the power to determine when a vacancy exists, in accordance with Government Code Section 1770, *et seq.*, for the purposes of conducting its business and notifying the Member Agencies of the need for an appointment.

(c) Each member of the SEJPA Board may receive compensation for each day of service to the joint powers authority, as defined by resolution adopted by the SEJPA Board. The rate of compensation, total per diem and annual compensation available, and compensable services established by such resolution shall not exceed the limits set forth in Water Code Sections 20201 and 20202. Such a resolution may be effective upon its adoption, but shall in no event have retroactive effect. It shall provide compensation of not less than the amount of \$160.00 per meeting for each regular, adjourned or special meeting of the SEJPA Board. Members shall also be reimbursed for actual and necessary expenses for travel and meetings as authorized by the SEJPA Board.

Section 2.4. Meetings of the SEJPA Board

(a) Annually, the SEJPA Board shall establish the time, date and place of its regular meetings; provided however, that the SEJPA Board shall hold at least one regular meeting every two months.

(b) All meetings of the SEJPA Board shall be noticed, called, held, and conducted in accordance with the Ralph M. Brown Act.

(c) The SEJPA Board shall keep minutes of all meetings, except for authorized closed sessions. The minutes shall be prepared as soon as practicable after each meeting of the SEJPA Board and a copy shall be delivered to each member of the Member Agencies, and to their respective city managers.

Section 2.5. Voting; Tie Votes

(a) Each member of the SEJPA Board shall have one vote. When a regular member of the SEJPA Board is absent, the regular member of the SEJPA Board of the same Member Agency shall be entitled to cast a vote on behalf of the absent member.

(b) Three members shall constitute a quorum for the transaction of business except that less than a quorum may adjourn any meeting from time to time. The existence of a quorum shall be determined based on the number of members present.

(c) The affirmative vote of three members of the SEJPA Board shall be required for any action of the SEJPA Board.

(d) Whenever, after consideration of a matter for two meetings, the SEJPA Board is unable to decide the matter because of a tie vote, the issue shall be referred to the City Councils of the Member Agencies for resolution within 45 days, except as otherwise provided in Sections 4.7 and 6 of this Agreement.

(e) The SEJPA Board may adopt, amend or repeal by-laws, rules or regulations for the conduct of its meetings and other business.

(f) The voting procedures established by this section, including the ability of one member to cast a vote on behalf of another member from the same Member Agency under the described circumstances, shall only apply to duly noticed regular and special meetings of the SEJPA Board. The voting procedures established by this section shall not apply to any standing or ad hoc committee of SEJPA.

ARTICLE 3

OFFICERS AND EMPLOYEES OF SEJPA BOARD

Section 3.1. Election of Officers

(a) By the second meeting of each calendar year, the SEJPA Board shall appoint a chairperson and vice-chairperson and shall establish the time and place for its regular meetings. The chairperson shall conduct and may call meetings of the SEJPA Board, adopt resolutions and ordinances, and execute contracts and other documents, and take such other actions as may be legally required or authorized by the SEJPA Board on behalf of the joint powers authority.

(b) The vice-chairperson shall act and perform all of the chairperson's duties in the absence of the chairperson.

Section 3.2. Secretary

(a) The general manager of the SEJPA will serve as the secretary to the Board. The Board may appoint any deputy secretaries as may be necessary or convenient. The secretary shall be responsible for preparing the minutes of the SEJPA Board, attesting to the signatures of the chairperson, vice-chairperson, or general manager on all resolutions, ordinances, contracts or other documents, and keeping all files and records of the SEJPA.

(b) The secretary shall cause a copy of this Agreement, and all amendments, to be filed with the Secretary of State pursuant to the Act.

(c) The secretary of the SEJPA is designated as the official for service of process or other documents on the SEJPA, and is authorized to accept service of process or other documents on behalf of the SEJPA, together with any deputy secretaries, if so authorized by the SEJPA Board.

Section 3.3. Treasurer; Auditor

(a) The SEJPA Board may appoint the general manager or other qualified officer, employee, or consultant of the SEJPA as treasurer, pursuant to the provisions of Section 6506.6 of the Act.

(b) The treasurer shall be the depository and shall have custody of all of the accounts, funds and money of the SEJPA from whatever source.

(c) The treasurer shall have the duties established by Sections 6505 and 6505.5 of the Act. SEJPA shall contract with a certified public accountant to perform the annual audit.

(d) Pursuant to Section 6505.1 of the Act, the treasurer shall have charge of, handle and have access to all accounts, funds and money of the SEJPA and all records of the SEJPA relating thereto. The secretary shall have charge of, handle and have access to all other records of the SEJPA.

(e) The SEJPA Board shall establish the amount of the official bond required of the treasurer and general manager. The premium of the bond shall be a proper charge against SEJPA.

Section 3.4. General Manager

(a) The SEJPA Board shall appoint a general manager of SEJPA. The general manager will be a qualified, registered engineer, or a qualified, registered designee of an engineering firm with experience in managing sewage and wastewater treatment facilities.

(b) The general manager shall be responsible for the administrative operations of the SEJPA under the direction and control of the SEJPA Board. The general manager shall be responsible for the effective functioning of the SEJPA and the physical facilities owned and operated by the SEJPA.

(c) The general manager shall have the following powers in addition to those powers necessary and proper to the effective administration of the SEJPA, and not by way limitation on those powers:

(1) To participate in the design of and supervise the construction of any improvements to, or expansion of, the SEJPA facilities authorized or contemplated by this agreement;

(2) To execute any contract for capital costs, costs of special services, equipment, materials, supplies, maintenance or repair that involves an expenditure by the SEJPA of less than \$35,000; or any contract with any consultant (except for consultants to perform the duties of the auditor or treasurer) for services, the cost of which is included in the budget for the then current fiscal year, and which involve an expenditure by the SEJPA of less than \$35,000;

(3) To employ and approve payroll for all personnel of the SEJPA required for administration, maintenance and operation of the Joint Facilities and all other employees authorized by the SEJPA's budget or by the SEJPA Board;

(4) To expend funds of the SEJPA and enter into contracts, not exceeding in the aggregate expenditures of \$75,000 of funds of the SEJPA, whenever required for urgent sewer maintenance or repair work or in the event of any emergency to keep the Joint Facilities in operation or to restore them to operating condition. Following the exercise of this authority, the general manager shall make the report required by section 22050 of the Public Contract Code regarding the necessity of the actions taken. For the purposes of this authorization, urgent sewer maintenance or repair work and emergency work is that required as a result of a physical condition of the Plant or any of the Joint Facilities which threatens the public health or safety or the environment, and requires immediate remedial action in order to avoid the threat to the public health or safety or to the environment;

(5) To approve demands for payments by the SEJPA of \$35,000 or less, provided such demands are made pursuant to a valid contract to which the SEJPA is a party,

or are demands for payment for items for which funds have been approved in the adopted SEJPA budget;

(6) To prepare and submit to the SEJPA Board, in time for revision and adoption by it prior to June 30 of each year, the annual budget for the next succeeding fiscal year referred to in Section 6.1;

(7) To apply for all permits, licenses, or approvals necessary for operation of the Joint Facilities from any local, state or federal government or agency with jurisdiction over the facilities of the SEJPA, and to file all reports required by any local, state or federal government or agency with jurisdiction over the facilities of the SEJPA, unless otherwise directed to the contrary by the SEJPA Board; and

(8) Generally to supervise the acquisition, construction, management, maintenance and operation of the Joint Facilities.

(9) To process, investigate, respond to and resolve claims filed against SEJPA, and to settle claims in amounts not exceeding \$50,000 (or the maximum amount authorized pursuant to Government Code section 935.4), provided that the SEJPA Board may, by resolution, reduce the settlement authority of the general manager.

(d) The general manager shall perform such other duties as may be delegated by the SEJPA Board, and shall report to the SEJPA Board at such times and concerning such matters as the SEJPA Board may require.

(e) The general manager shall on an ongoing basis inform the city manager of each party of the operation of the SEJPA and of the decisions of the general manager in operating and administering the SEJPA which affect the Member Agencies.

Section 3.5. General Counsel

(a) The SEJPA Board shall appoint General Counsel of SEJPA on such terms and conditions as it may see fit. General Counsel shall be a person or firm with experience with public law and the operations of utilities.

(b) General Counsel shall advise SEJPA officials in all legal matters pertaining to SEJPA business. General Counsel shall frame all ordinances and resolutions required by the Board. General Counsel shall perform other legal services as required from time to time by the Board. Notwithstanding the foregoing, the SEJPA Board may also retain Special Counsel, as needed.

Section 3.6. Other Employees and Consultants

(a) The SEJPA Board shall have the power to appoint and employ such other employees, consultants, advisers and independent contractors as may be necessary for the purposes of this Agreement.

(b) Except as expressly approved by the SEJPA Board, none of the officers, agents, or employees directly employed by the SEJPA Board shall be deemed, by reason of their employment by the SEJPA to be employed by either Member Agency, or by reason of their employment by the SEJPA to be subject to any of the requirements of either Member Agency.

ARTICLE 4

POWERS

Section 4.1. The SEJPA shall exercise, in a manner provided in this agreement, the powers common to each of the county sanitation districts organized under Health & Safety Code section 4700, et seq. (which created this joint powers authority) as necessary to the accomplishment of the purposes of this Agreement.

As provided in the Act, SEJPA shall be a public entity separate from the Member Agencies. The SEJPA shall have the power to finance, acquire, construct, manage, maintain and operate the Joint Facilities.

In exercising its powers hereunder, the SEJPA shall use its best efforts to maximize water reclamation, beneficial use of biogas and re-use of biosolids.

Section 4.2. The SEJPA shall have the authority to finance, construct, acquire, manage, operate and maintain any improvements or facilities necessary to upgrade the Joint Facilities.

Section 4.3. The SEJPA shall have the authority to finance, construct, acquire, manage, operate and maintain any improvements or facilities necessary to expand the treatment capacity of the Plant in order to provide wastewater treatment capacity necessary to serve the continuing needs of the property within areas served by the Member Agencies and such other territories as it may, by contract or otherwise, be authorized to serve.

Section 4.4. The SEJPA is, in its own name, authorized to do all acts necessary for the exercise of the foregoing powers, including, but not limited to, any or all of the following:

- (a) To make and enter into contracts.

- (b) To employ agents, employees, advisors, consultants and independent contractors.
- (c) To acquire, construct, manage, maintain or operate any buildings, works, or improvements.
- (d) To acquire, hold or dispose of property.
- (e) To sue and be sued in its own name.
- (f) To incur debts, liabilities or obligations, provided that no debt, liability or obligation shall constitute a debt, liability or obligation of either Member Agency.
- (g) To apply for, accept, receive and disburse grants, loans and other aid from any agency of the United States of America or of the State of California.
- (h) To purchase insurance, including, but not limited to, general liability, property and worker's compensation insurance.
- (i) To invest any money in the treasury pursuant to Section 6505.5 of the Act that is not required for the immediate necessities of the SEJPA, as the SEJPA determines is advisable, in the same manner and upon the same conditions as local agencies, pursuant to Section 53601 of the Government Code of the State.
- (j) To carry out and enforce all the provisions of this Agreement.
- (k) To act as lead agency for purposes of the California Environmental Quality Act with regard to any upgrade or expansion of the Joint Facilities.
- (l) To establish charges and fees for sewage treatment and other services provided by the SEJPA.

Section 4.5. The SEJPA shall have the power to issue revenue bonds under the Act, commencing with Section 6540, the Revenue Bond Act of 1941, commencing with Section 51300 of the Government Code, the Mello-Roos Community Facilities Act, commencing with Government Code Section 53330, or other provisions of law applicable to joint powers authorities, or to finance Joint Facilities expansion or upgrade by any other revenue-based financing method which either Member Agency is authorized to use.

Section 4.6. The SEJPA is authorized to charge to each Member Agency its proportionate or contracted share of the maintenance, operation, financing, construction, acquisition or expansion of the Joint Facilities, or the debt service on any revenue bonds. The Member Agencies agree to levy within their respective service areas service, stand-by,

annexation, connection and other fees and charges as authorized by law as may be necessary to pay the charges established by the SEJPA.

Section 4.7. All casualty losses resulting from claims for damages or litigation, and all related attorneys' fees, investigative fees, and other expenses, shall be deemed included within the operation and maintenance expenses of the Joint Facilities and shall be processed, investigated, and resolved by SEJPA. SEJPA shall bill, and the Member Agencies shall pay for such casualty losses and related expenses in proportion to their flow in the Joint System as part of their regular operation and maintenance expense payments pursuant to Sections 6.7 and 6.8 of this Agreement, unless said loss or expense is solely the result of actions by one member agency, in which case that member agency shall be solely responsible for payment of loss or expense.

Section 4.8. The powers of the SEJPA shall be exercised in the manner provided in the Act, in the applicable revenue bond laws, in the Federal Water Pollution Control Act, and in the Porter-Cologne Water Quality Control Act; and, except for those powers set forth in any Bond Law and in Article 2 of the Act, as the same now reads or may be hereafter amended, shall be subject, to the extent required by Section 6509 of the Act, to the restrictions upon the manner of exercising such powers that are imposed upon County Sanitation Districts in the exercise of similar powers.

Section 4.9. Unless otherwise specified by resolution of the Member Agency passed in connection with the issuance of bonds or other financing methods for the financing or refinancing of improvements, the debts, liabilities and obligations of the SEJPA shall not be the debts, liabilities and obligations of either Member Agency.

Section 4.10. The SEJPA is hereby designated lead agency for the purposes of the California Environmental Quality Act as it applies to all undertakings for expansion or upgrade of the Joint Facilities, unless otherwise agreed by the Member Agencies.

Section 4.11. The SEJPA may allow either Member Agency to conduct temporary operations, provided that: (1) such Member Agency agrees to defend, indemnify and hold harmless both the SEJPA and the other Member Agency against any costs, damages, or liabilities arising out of such operations involving the Joint Facilities; and (2) SEJPA determines that such use will not be injurious to, nor interfere with the lawful operation of the Joint Facilities; and (3) the Member Agency bears any and all costs which SEJPA may incur which arise out of such

operations. The Board of SEJPA may authorize the general manager to permit such operations on such terms and conditions as it may specify:

ARTICLE 5

METHODS OF PROCEDURE: CAPITAL COSTS

Section 5.1. The Member Agencies previously conveyed their respective property interests in the Plant to the SEJPA, together with rights of access over, across, and through any real property owned by the Member Agencies necessary for the operation of the Plant. All real or personal property, facilities, improvements, fixtures or other property interests necessary for operation, maintenance, upgrade, or expansions of the Joint Facilities shall be acquired in the name of the SEJPA.

Section 5.2. The Member Agencies previously transferred all records, accounts, funds and money relating to the Joint Facilities to SEJPA.

Section 5.3. The SEJPA is responsible for operation and maintenance of the Joint Facilities. Either Member Agency may contract with the SEJPA to perform operation and maintenance of the transmission and collection systems, or other non-Joint Facilities of the Member Agency, provided that all costs and liabilities incurred by SEJPA, its employees, officers or agents, arising out of SEJPA's operation or maintenance of such systems or facilities for one Member Agency shall be discharged by payment by such Member Agency; and further provided that such Member Agency shall defend, indemnify and hold harmless the other Member Agency from all liabilities arising out of SEJPA's operation or maintenance of such systems or facilities.

Section 5.4. Work performed by one Member Agency at the request of the SEJPA for the SEJPA, the SEJPA shall hold harmless, defend, and indemnify said Member Agency.

Section 5.5. SEJPA may undertake all steps and procedures necessary to plan, finance, construct and operate any upgrade or expansion of the Joint Facilities, as approved by the SEJPA Board, including, but not limited to, preparation of plans and specifications; acquisition of permits, licenses, rights-of-way and land, construction, issuance of bonds, acceptance of grants and any other activity necessary or convenient to the accomplishment of the project.

ARTICLE 6

BUDGET; ADMINISTRATION MAINTENANCE AND OPERATION COSTS; OTHER COSTS AFTER COMPLETION OF CONSTRUCTION OF THE PROJECT

Section 6.1. The SEJPA Board shall adopt a budget for administration, maintenance and operation costs, capital costs, costs of special services, capital reserve expenses (if any) and bond interest and redemption expenses (if any) annually prior to June 30 of each year. If the SEJPA Board fails to adopt a budget by June 30 of any year (i.e., the end of the agency's fiscal year), SEJPA shall continue to operate using the budget approved for administration, maintenance and operation costs, bond interest and redemption expenses, and other non-discretionary spending, for the preceding year, and until such time as a budget is approved. The Member Agencies shall be obligated to continue to make timely payments to SEJPA based upon such prior year's budgeted amounts until such time as a budget is approved by the SEJPA Board.

Section 6.2. The SEJPA shall cause to be kept accurate and correct books of account, showing in detail the capital costs, costs of special services, maintenance and operation costs, and planning and construction costs of the Joint Facilities and all financial transactions of the SEJPA relating to the Joint Facilities, which books of account shall correctly show any receipts and also any costs, expenses or charges paid or to be paid by all or any of the Member Agencies hereunder, and also records of the sewage flow from each of the Member Agencies or other users, together with the strength of effluent delivered from each of the Member Agencies or other users. Said books and records shall be open to inspection at all times during normal business hours by any representative of the Member Agencies, or by any accountant or other person authorized by the Member Agencies to inspect said books or records.

Section 6.3. After adoption of the annual budget prior to June 30 of each year, pursuant to Section 6.1, the SEJPA shall furnish to each of the Member Agencies an estimate of the total annual maintenance and operation costs, capital costs, costs of special services, capital reserve expenses (if any), bond interest and redemption expenses (if any), and the proportion thereof allocated to each Member Agency for the ensuing fiscal year.

Section 6.4. Each Member Agency, and other public entity using the Plant, shall provide facilities to meter or measure the total of all wastewater, grease, sludge, sediment, or other material discharged or delivered to the Joint Facilities, including equipment to facilitate the

monitoring of the characteristics of the material so discharged by such agency. Meters or measuring devices shall be read, waste characteristics established, and the charges based thereon determined as often as required for each Member Agency to make the deposits in the maintenance and operation fund of the SEJPA. The allocation of maintenance and operational costs between the Member Agencies for wastewater treatment and/or disposal will be based on the average daily flows and may be also be based, in part, upon the strength of effluent delivered from each of the Member Agencies or other users, as reported to the SEJPA Board monthly, for the calendar year ending prior to the beginning of each fiscal year. The methodology to be used for allocation of costs based on the effluent delivered by the Member Agencies shall be included in and adopted as part of the annual budget approved by the Member Agencies. Dischargers utilizing the San Elijo Ocean Outfall for disposal of flows which are not treated at the San Elijo Water Pollution Control Facility will not be charged for wastewater treatment operations, but will be required to pay for operation and maintenance of the outfall. Dischargers solely utilizing the plants solids handling, treatment, and/or disposal, will be charged based on a case-by-case basis determined by the general manager.

Section 6.5. The SEJPA shall maintain a Wastewater Operation & Maintenance fund, a Water Reclamation fund, and a Capital Improvement fund. All monies in these funds shall be paid out for the administration, maintenance and operation costs of the Joint Facilities, upon approval of demands for payment by the general manager, or the SEJPA Board as provided in this Agreement, and in accordance with Section 6505.5 of the Act.

Section 6.6. The SEJPA shall establish a Capital Reserve Fund. The annual capital reserve expenses of the SEJPA for each component of the Joint Facilities shall be allocated by the SEJPA to the Member Agencies on the basis of equal ownership. All moneys received in payment of capital reserve expenses shall be paid out as directed by the SEJPA Board and upon approval of demands for payment by the general manager, as provided in this Agreement, and in accordance with Section 6505.5 of the Act.

Section 6.7. Each Member Agency agrees to pay the SEJPA its allocated share of the total estimated annual costs and expenses of the SEJPA in periodic payments within 30 days of receipt of invoice. The SEJPA shall submit to each Member Agency a final detailed statement of the final costs and expenses for the fiscal year, allocated in the same manner as estimated expenses were allocated, within 30 days after completion of the fiscal year end audit, whereupon

final adjustments of debits and credits shall be made by the SEJPA. If the amount of any allocated share of any estimated item of expense due from a Member Agency was less than the final allocation of such item to the Member Agency, the Member Agency shall forthwith pay the difference to SEJPA. If the amount of any allocated share of any estimated items of expense due from Member Agency was in excess of the final allocation of such item to that Member Agency, SEJPA shall credit such excess to the appropriate account of such agency.

Section 6.8. Each Member Agency shall provide the funds required to be paid by it to the SEJPA under this Agreement, from any source of funds legally available for such purposes, subject only to the limitations of the Porter-Cologne Water Quality Control Act and the Federal Water Pollution Control Act.

ARTICLE 7

CAPACITY RIGHTS

Section 7.1.

(a) Based upon completion of expansion as described in the 1989 agreement between the parties, each Member Agency has a right to 50 percent of the available treatment capacity of the Plant (equal to 2.625 MGD each, as of the date of this Agreement). However, to the extent a portion of this capacity is leased to the Rancho Santa Fe Community Services District, the parties agree that such demands shall be supplied equally from the capacity of each Member Agency. Nothing in this section shall be construed to grant any rights to the Rancho Santa Fe Community Services District.

(b) Neither Member Agency shall issue sewer treatment commitments, availability letters, or permits totaling more than 100 percent of its allocated capacity rights. The SEJPA shall meter the amount of sewage from each Member Agency being treated at the Plant. When the SEJPA finds that a Member Agency is utilizing 75 percent or more of its maximum capacity rights, SEJPA shall immediately notify the Member Agency in writing. The Member Agency shall immediately take steps to reduce its use of the Plant so as to be within its maximum capacity rights. If a Member Agency is unable to reduce its use of the Plant it shall either;

1. Purchase or lease capacity from the other Member Agency, at a price negotiated between the Member Agencies, if the other Member Agency has surplus or unused capacity rights; or

2. At its own expense, provide for modifications to pumping and conveyance or treatment facilities so as to accommodate its excess use of the Plant.

Should any party fail to comply with the provisions of this Section, SEJPA may take any necessary action under Section 7.3 or Section 7.5.

Section 7.2. Transfers.

Either Member Agency may contract with any person, firm, association, corporation or public agency for any portion of its maximum capacity rights under this Agreement, but no such contract shall relieve the Member Agency of any of its obligations under this Agreement.

Either Member Agency may sell any portion of its maximum capacity to the other Member Agency. Upon such sale, the SEJPA Board will adjust the maximum capacity of the Member Agencies to reflect the sale.

Section 7.3. At no time shall the flow to or into the Plant from a Member Agency exceed the party's capacity rights. The SEJPA shall have the power to limit the sewage treatment commitments, availability letters or permits, or the sewage flowing to or into the Plant from a party to the capacity rights of that party. The SEJPA shall have the power to prohibit the discharge to the Plant of any substance in a concentration which exceeds the maximum limit that may have been established by resolution or ordinance of the SEJPA, or of either party, as necessary to safeguard the sewage treatment processes of the Plant. The SEJPA shall cause the combined effluent treatment of the Plant to be monitored, as well as the combined discharge, to determine whether federal and/or state discharge requirements or permit limits are being met. In addition, the SEJPA shall cause the effluent of each Member Agency to be monitored. If the combined effluent of the Plant, at the point of ultimate discharge into the receiving water, fails at any time to meet all discharge requirements or permit limits, the Member Agency responsible for each violation shall be solely responsible for any fines or penalties levied or criminal sanctions imposed. In this regard, the Member Agency responsible for any such violation shall hold harmless the SEJPA and the non-violating Member Agency from all liability and damages, fines or penalties, incurred by them or any of them as a direct and proximate result of such violation, including, but not limited to, legal, engineering and administrative expenses, and direct or indirect damages incurred by the SEJPA or any non-violating Member Agency as a result of a cease and desist order, or court injunction from any state or federal agency restricting construction within the jurisdictional limits of the SEJPA or the Member Agency. Upon

notification of any such violation, the Member Agency in violation shall take prompt, corrective action as necessary to meet said discharge requirements or permit limits.

Section 7.4. The Member Agencies agree that the SEJPA shall be empowered, in any case in which the SEJPA is a party, to a grant contract with the State of California or the United States of America, to impose to the extent permitted by law on each of the Member Agencies, the duty of compliance with all conditions in such grant contract, and each Member Agency agrees to comply with such conditions by enactment of appropriate ordinances, regulations or otherwise.

Section 7.5. Each Member Agency, as required by law, shall adopt and maintain a uniform industrial waste ordinance that will establish criteria for, and restrictions on, the nature and quality of industrial waste discharged either directly or indirectly into the Plant. The SEJPA, acting through the general manager with the approval of the SEJPA Board, shall be responsible for the design, implementation and operation of a program for inspection and monitoring all industrial waste produced in each Member Agency and discharge into the Plant, including field inspection employees of the SEJPA. The industrial waste ordinance of each Member Agency will authorize field inspection employees of the SEJPA to act as enforcement agents of the Member Agency with power to inspect and issue notices for violations of such ordinance; provided that all actual prosecutions for violations of such ordinances (including, without limitation, levying of fines, disconnection of discharge lines, and civil and criminal court actions) shall be the exclusive responsibility of the respective parties. All costs and expenses of the SEJPA under this section shall be allocated by the SEJPA to the parties on the basis of the actual costs incurred for each party and as a part of maintenance and operation costs provided for in Section 6.3.

Section 7.6. Each Member Agency, and any other agency using the plant, shall adopt and enforce ordinances, resolutions, rules and regulations, regulating the type and condition of sewage and wastewater permitted to be discharged into the transmission facilities under the control of the Member Agency or other agency, and shall prohibit users of every kind and nature from discharging any sewage, wastewater or storm water which would be detrimental to the Joint Facilities or any part thereof. Each Member Agency, and any other agency, shall comply with all applicable laws of the United States, the State of California, or any other city having jurisdiction over the collection, transmission, treatment and disposal of sewage, wastewater or

storm water. For the purposes of this Section, laws shall include statutes, ordinances or regulations duly adopted by a regulatory agency of the United States or the State of California.

Section 7.7. To the maximum extent practicable, no party to this Agreement shall permit excessive infiltration of surface or storm water into the Joint Facilities or its transmission facilities.

Section 7.8. The SEJPA is hereby authorized to take any and all legal or equitable actions, including, but not limited to seeking injunctive relief or specific performance, as necessary to enforce this Agreement.

ARTICLE 8

RIGHT TO EXPAND

Section 8.1. Notwithstanding anything in this Agreement to the contrary, if the SEJPA fails to expand the Plant to meet the service needs of a Member Agency, either Member Agency may undertake any expansion to the Joint Facilities deemed necessary by the Member Agency to provide service within the service territory of the Member Agency. The party undertaking the expansion shall be responsible for all costs associated with such expansion and shall be entitled to all capacity resulting from the expansion.

ARTICLE 9

PREVIOUS AGREEMENTS

Section 9.1. Prior agreements between the Member Agencies shall be of no force and effect after the date of this Agreement, except insofar as it defined the rights and obligations of the parties with regard to the Joint System prior to the date of this Agreement. Such prior agreements may be used to interpret this Agreement as it pertains to the operation, maintenance and ownership of the Joint System.

Section 9.2. The Agreement between the Rancho Santa Fe Community Services District, SEJPA, and the Cardiff and Solana Beach Sanitation Districts for treatment and disposal of 0.25 MGD of sewage, as amended through January 3, 1991, shall be administered by SEJPA on behalf of the Member Agencies.

Section 9.3. SEJPA is hereby delegated the duties and assigned the rights of the Cardiff Sanitation District and the Solana Beach Sanitation District, and either or both of them under the Agreement between Buena, Cardiff, Fairbanks Ranch, Rancho Santa Fe, Solana Beach, and

Whispering Palms Sanitation Districts; regarding a Joint Sewage Collection and Transmission Operation Center dated November 17, 1981.

Section 9.4. The SEJPA shall administer the San Elijo Ocean Outfall Agreement dated October 4, 2000, and as amended from time to time, between the SEJPA and the City of Escondido.

ARTICLE 10

OBLIGATION FOR TRANSMISSION SYSTEM

Section 10.1. Each Member Agency shall be responsible for the maintenance, operation, expansion and installation of all transmission facilities located within the service territory of the Member Agency. A Member Agency may delegate this responsibility to the SEJPA; provided, however, that the Member Agency shall remain responsible for all costs and liabilities arising out of the assumption of this responsibility by SEJPA.

Section 10.2. The Member Agencies shall share the maintenance and operating costs of any transmission facility, not part of the Joint Facilities, used jointly by both parties, in proportion to the actual use by the respective parties.

Section 10.3. Meters used to measure the flow from a Member Agency to the Joint Facilities shall be operated and maintained as part of the Joint Facilities.

ARTICLE 11

RECLAIMED WATER AND OTHER BY-PRODUCTS

Section 11.1. All reclaimed water, biosolids and other by-products of the Joint Facilities operation shall be the property of the SEJPA.

Section 11.2. The SEJPA may sell any reclaimed water, groundwater, biosolids other byproducts of the Joint System.

Section 11.3. Before selling reclaimed water, groundwater, biosolids or other byproduct to any person other than a Member Agency, the SEJPA shall offer the product to the Member Agencies. The Member Agencies shall have 60 days to accept the offer.

ARTICLE 12

TERMINATION

Section 12.1. This Agreement shall continue until terminated by an agreement executed by the parties, such agreement being authorized by a four-fifths vote of the governing body of each Member Agency. Such agreement shall provide for the disposition of the assets and liabilities of SEJPA.

Section 12.2. Notwithstanding section 12.1, either Member Agency may terminate this Agreement by giving the other party not less than 12 months written notice of its intent to withdraw from SEJPA. In such event, the withdrawing party shall remain liable for payment of its pro rata share of any debts or legal obligations of the SEJPA which are outstanding at the time of withdrawal, including but not limited to obligations to repay any loan, grant or other indebtedness incurred for the purpose of developing or constructing any wastewater or water recycling facility. The withdrawing party shall also be responsible for any and all costs or expenses of the non-withdrawing party incurred as a result of the termination, such as the costs of permit modifications to maintain Joint Facilities' operations or obtaining lenders' consents to modify obligees on outstanding grants, leases or loans. The withdrawing party may transfer its interests in the assets of SEJPA to any other public agency with authority to operate a wastewater and water recycling facility, provided that: (1) the non-withdrawing party shall have a right of first refusal to acquire the assets of the withdrawing party on terms and conditions no less favorable than those on which the withdrawing party is transferring the assets to another public agency; and (2) the transferee shall either have no right to manage or govern the operations of the wastewater or water recycling facilities (i.e., the non-withdrawing party shall have sole right and responsibility for management and governance of the operations of the Joint Facilities) following the transfer, or the terms and conditions of the transfer affecting the operations of the Joint Facilities (including the transferee's proposed governance rights, if any) shall be acceptable to and approved by the non-withdrawing party. The non-withdrawing party shall have a reasonable period of time to exercise its rights under this paragraph.

ARTICLE 13

MISCELLANEOUS PROVISIONS

Section 13.1. Notices required to be given to any party under this agreement shall be delivered either personally or by first class mail, postage pre-paid, addressed as follows:

City of Solana Beach

City Manager

635 S. Highway 101

Solana Beach, California 92075

City of Encinitas

City Manager

505 S Vulcan Ave

Encinitas, California 92024

provided that either party may give notice, in writing, of a different address to which notices shall be given in the future.

Section 13.2. Each party to this Agreement shall, to the maximum extent feasible, prohibit the Joint Facilities from being used for any purpose other than the treatment, disposal or reclamation of wastewater, groundwater or stormwater, unless such other use is lawful and mutually agreed to by the parties to this Agreement, in writing, to be in their best interests.

In the event that any portion of the Joint Facilities is used for such other purposes, any lease payments, rents, or other income derived from such use shall inure to the benefit of the SEJPA.

Section 13.3. Time is of the essence in this agreement.

Section 13.4. Whenever this Agreement requires consent or approval, such consent or approval shall not be unreasonably withheld.

Section 13.5. This Agreement shall be governed by the laws of the State of California.

Section 13.6. This Agreement may be amended at any time, or from time to time, except as limited by contract with the holders of bonds issued by the SEJPA, or by applicable regulations or laws of any jurisdiction having authority, by one or more supplemental agreements executed by all the parties, either as required in order to carry out any of the provisions of this Agreement or for any other purpose, including, without limitation, adjustment of capacity rights or addition of new parties (including any legal entities or taxing areas heretofore or hereafter created) in pursuance of the purposes of this Agreement.

Section 13.7. Should any part, term, or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State, or otherwise be rendered

unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

Section 13.8. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Member Agencies. No party may assign any right or obligation hereunder without the written consent of the other Member Agencies.

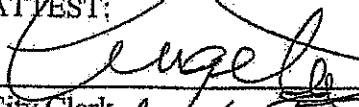
Section 13.9. Either Member Agency may amend or modify its service territory at any time, provided however, that no modification shall alter the capacity rights of a Member Agency or include the service territory of the other Member Agency without the consent of the other Member Agency and an amendment to this Agreement.

IN WITNESS WHEREOF, the parties hereto have, by resolution, caused this Agreement to be executed on the day and year set opposite the name of each of the parties.


City of Solana Beach, as successor to the SOLANA BEACH SANITATION DISTRICT

DATED: 6-25-2008

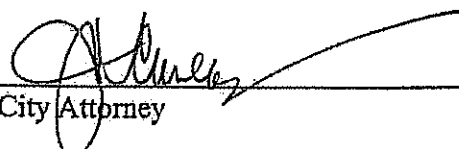
ATTEST:



City Clerk *Angela Tvey*
APPROVED AS TO FORM



CITY MANAGER
CITY of SOLANA BEACH
DAVID OTT

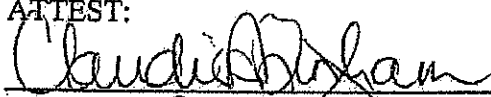


City Attorney

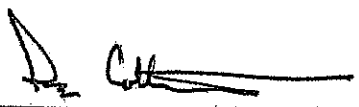
City of Encinitas, as successor to the CARDIFF SANITATION DISTRICT

DATED: 6-23-08

ATTEST:




City Clerk, Deputy



CITY MANAGER
CITY of ENCINITAS
PHIL COTTON

APPROVED AS TO FORM



City Attorney