



ENCINA WASTEWATER AUTHORITY

A Public Agency

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Carlsbad, CA 92011-1095
Telephone (760) 438-3941
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January 23, 2017

Dear San Diego LAFCO,

In accordance with Senate Bill No. 1266, Encina Wastewater Authority is providing you with the full text of our joint powers agreements. This includes two items which operate in conjunction with each other: 1) the Revised Establishment Document which formally created the joint powers authority and 2) the Revised Basic Agreement which governs the ownership, operation and maintenance of the joint sewage system. There are not any amendments to either of these documents at this time.

If you have any questions or concerns, please feel free to reach out to me or Joseph Spence at jspence@encinajpa.com at any time.

Sincerely,

Michael Steinlicht
General Manager

Attachment 1: Revised Establishment Document Effective November 9, 1994

Attachment 2: Revised Basic Agreement Amended October 22, 2014

ATTACHMENT 1

REVISED ESTABLISHMENT DOCUMENT EFFECTIVE NOVEMBER 9, 1994

January 23, 2017

**REVISED ESTABLISHMENT DOCUMENT
FOR THE
ENCINA WASTEWATER AUTHORITY
AS AMENDED
EFFECTIVE November 9, 1994**

Ref: Admin.02-7081

THIS AGREEMENT (hereinafter the Revised Establishment Document, "RED") is made and entered into this 17th day of December 1990, by and among the CITY OF VISTA, (hereafter VISTA), the CITY OF CARLSBAD, (hereafter CARLSBAD), the BUENA SANITATION DISTRICT, (hereafter BUENA), the VALLECITOS WATER DISTRICT, a County Water District (hereafter VALLECITOS), the LEUCADIA COUNTY WATER DISTRICT, a County Water District (hereafter LEUCADIA), and the ENCINITAS SANITARY DISTRICT (hereafter ENCINITAS), herein called the "member agencies", for the operation, maintenance, and administration of their jointly owned sewerage system.

RECITALS

WHEREAS, each of the member agencies is a public agency authorized and empowered to contract for the joint exercise of powers under the Government code of the State of California; and

WHEREAS, each of the member agencies has the authority and power to collect, transmit, treat and dispose or reuse wastewater and wastewater treatment byproducts, and to construct and operate facilities for such purposes; and

WHEREAS, the member agencies recognize the need to operate, maintain and administer the Encina Joint System on a cooperative basis for the collection, transmission, treatment, and disposal of wastewater, and the management of wastewater treatment byproducts; and

WHEREAS, on August 1, 1988, the member agencies entered into a Joint Exercise of Powers Agreement, which this RED is to replace, pursuant to the provisions of Article 1, Chapter 5, division 7, title 1 of the California Government Code, creating a public agency then known as the Encina Administrative Agency (now Operator/Administrator of the Encina Joint System; and

WHEREAS, the Joint Exercise of Powers Agreement establishing the EWA was adopted as a supplement to the "Basic Agreement" establishing the Encina Joint Powers; and

WHEREAS, the member agencies desire to revise and condense the Basic Agreement and have drafted legal documents known collectively as the Revised Basic Agreement that are to be considered concurrently with this Agreement; and

WHEREAS, the member agencies desire to (a) retain the EWA as the Operator/Administrator of the Encina Joint Powers and (b) reestablish the organization, administration, rules, and specific powers of the EWA by entering into a revised agreement, to be known as the "Revised Establishment Document" ("RED"), separate from the Revised Basic Agreement ("RBA"), pursuant to Article 1, Chapter 5, Division 7, Title 1 of the California Government Code relating to the joint exercise of powers.

NOW THEREFORE, THE PARTIES HERETO COVENANT WITH EACH OTHER AS FOLLOWS:

Section 1. DEFINITIONS

For the purposes of this RED and the RBA, the following terms shall have the meanings indicated below:

1.1 **Basic Agreement.** That agreement by and among Vista, Carlsbad, Buena, Vallecitos, Leucadia, and Encinitas including all supplements and amendments thereto entered into beginning July 13, 1961.

1.2 **Joint Advisory Committee.** The Joint Advisory Committee (JAC) as defined in the Revised Basic Agreement.

1.3 **Joint System.** The Encina Joint System as defined in the Revised Basic Agreement.

1.4 **Revised Basic Agreement.** That agreement by and among Vista, Carlsbad, Buena, Vallecitos, Leucadia, and Encinitas including all amendments thereto entered into beginning December 17, 1990 and superseding the Basic Agreement.

Section 2. TERMS

2.1 **Establishment of Agency:** There is hereby established a public agency known as the Encina Wastewater Authority, herein called EWA (formerly known as the Encina Administrative Agency). For the purposes of this agreement, EWA is a public agency separate from the parties hereto, but it is the intent of these parties that EWA be subordinate to and dependent upon the member agencies in all matters.

2.2 **General Duties of the EWA.** The EWA shall operate, maintain, and administer the Encina Joint System utilizing funds contributed by the member agencies and grants received from the Federal and State governments.

2.3 **Powers.** The EWA shall have the following powers as needed to fulfill its duties:

2.3.1 To operate, maintain, administer and manage the Joint System, including any buildings, works or improvements comprising part of the Joint System and located either inside or outside the boundaries of the member agencies, in

accordance with sound engineering and accounting practices with local, state and federal laws and regulations;

2.3.2 To make and enter contracts in connection with the administration, management, maintenance and operation of the Joint System;

2.3.3 To employ agents and employees to operate, maintain, administer and manage the Joint System;

2.3.4 To incur debts, liabilities or obligations in connection with the operation, maintenance, administration and management of the Joint System;

2.3.5 To sue and be sued in its own name, provided that the EWA shall not commence or intervene in any lawsuit without the approval of all of its member agencies, except pursuant to paragraph 2.3.10 hereof;

2.3.6 To acquire, hold, and dispose of such equipment as may be reasonably necessary to the property operation, maintenance, administration and management of wastewater treatment and disposal facilities;

2.3.7 To file reports associated with the operation, maintenance, administration and management of the Joint System;

2.3.8 In an emergency, to reconstruct or cause to be reconstructed such portions of the Joint system when reconstruction is immediately required to permit the Joint System to continue to function;

2.3.9 To maintain at all times with a responsible insurer or insurers sufficient insurance against loss or damage to the Joint System or portion thereof, workers' compensation insurance, and insurance against public liability and property damage;

2.3.10 To adopt industrial pretreatment regulations that comply with federal and state pretreatment regulations. The regulations shall include technically based local limits, shall be followed by each member agency, shall apply to industrial connections and groundwater cleanup sites that discharge or have the potential to discharge into the Joint System, and shall allow EWA to take enforcement action against dischargers that violate the regulation;

2.3.11 To review and amend the industrial pretreatment regulations from time to time as the need arises;

2.3.12 To implement all requirements of the pretreatment regulations and all aspects of the Encina service area pretreatment program, including permitting, inspection, monitoring, reporting, and enforcement activities, except that industrial pretreatment permits shall be jointly issued by the member agency in whose jurisdiction the discharge is located and EWA;

2.3.13 To charge and bill the industrial dischargers for their respective share of the EWA's cost to implement the pretreatment regulations, including application review, permit issuance, sampling, monitoring, inspection and enforcement costs;

2.3.14 To purchase, lease or condemn real property upon such terms and conditions as approved unanimously by the member agencies;

2.3.15 To operate and maintain other facilities outside the Joint System as recommended by JAC and in accordance with EWA executed operation agreements, or as authorized in the Revised Basic Agreement, which may include budgeting responsibilities.

2.3.16 The powers enumerated herein shall be exercised subject to the restrictions upon the manner of exercising the powers of the Leucadia County Water District pursuant to the County Water District Law (Water Code §30000 et seq.).

2.4 Board of Directors. The EWA shall be administered by the governing body of the EWA which shall be known as the Board of Directors of the EWA, herein called the Board. Members of the JAC shall serve as the Board.

2.5 Officers of the Board. The Board shall elect its own officers, which shall include a Chairman, Vice-chairman, Secretary, Treasurer, and Auditor. The Chairman and Vice-Chairman shall be members of the Board and the Secretary may, but need not, be a member of the Board.

2.5.1 Treasurer. The Treasurer shall be appointed by the Board of Directors to serve at the Board's pleasure. The Treasurer shall be the depository and have custody of all money of the EWA from whatever source. The Board shall appoint the Treasurer from among the officers and employees of the Authority. The Board may appoint one or more persons to act as assistants to the Treasurer from among the officers and employees of the Authority. Upon appointment, an assistant shall be considered an "other officer" of the EWA under Section 2.5.3 of this RED. The person appointed as Treasurer may simultaneously hold the office of Auditor.

2.5.2 Auditor. The Auditor shall be appointed by the Board of Directors to serve at the Board's pleasure. The Auditor shall draw all warrants to pay demands against the EWA approved by the Board of Directors. The Board shall appoint the Auditor from among the officers and employees of the Authority. The Board may appoint one or more persons to act as assistants to the Auditor from among the officers and employees of the Authority. Upon appointment, an assistant shall be considered an "other officer" of the EWA under Section 2.5.3 of the RED. The person appointed as Auditor may simultaneously hold the office of Treasurer.

2.5.3 Other Officers. The General Manager and Attorney for the EWA shall be appointed by the Board. Subject to the limits of the EWA's approved

budget, the Board shall also have the power to appoint and employ such other officers, consultants, advisors, and independent contractors as it may deem necessary or convenient for the business of the EWA, who shall serve at the pleasure of the Board. The public officer, officers, or persons who have charge of, handle, or have access to any substantial property of the EWA shall file an official bond in an amount to be fixed by the Board. The General Manager shall have the power to appoint, promote, demote and remove employees of the EWA subject to the provisions of the personnel policy of the EWA and the EWA's approved budget.

2.6 Meetings of the Board.

2.6.1 Regular Meetings. The Board shall provide for its regular meetings; provided, however, it shall hold at least one regular meeting per month. The dates, hour, and place of the regular meetings shall be fixed by resolution, and a copy of such resolution shall be furnished to each member agency.

2.6.2 Ralph M. Brown Act. All meetings of the Board, including, without limitations, regular, adjourned regular, and special meetings, shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code).

2.6.3 Minutes. The Secretary of the EWA shall cause to be kept minutes of all meetings of the Board, and shall cause a copy of the minutes to be forwarded to each member of the Board and to each of the parties hereto.

2.6.4 Quorum and Vote. A majority of the Board or their alternates shall constitute a quorum for the transaction of business; except that less than a quorum for the transaction of business; except that less than a quorum may adjourn from time to time. The affirmative vote of a majority of a quorum shall be required for the approval of any action. However, when voting on a matter involving the treatment plant (Unit I) or the ocean outfall (Unit J), any member of the Board may call for a weighted vote. In such case, the affirmative vote of members representing a majority of the capacity of the Unit involved shall be required for the approval of any action, to be calculated as follows:

The total vote of all members of the Board shall be 100 percent. Each regularly appointed member shall have a percentage of vote equal to one-half of the percentage of capacity of the member agency he represents in the Unit involved. Where only one member is present, said member shall have a percentage of vote equal to the total percentage of capacity of the agency he represents. At any meeting where no regularly appointed member is represented, each alternative of such regularly appointed member is represented, each alternative of such regularly appointed member shall have a percentage of vote equal to one-half of the percentage of capacity of the agency he represents. Provided, however, at any meeting where any agency is represented by only one alternate, said alternate shall have a percentage of vote equal to the total percentage of the capacity of the agency he represents.

2.7 Rules. The Board shall adopt rules and regulations, including a conflict of interest code and a purchasing procedure. The Board may, from time to time, review and revise these rules and regulations as needed.

2.8 Budgeting. Annually, the EWA shall prepare an operation, maintenance, and administration budget (hereafter referred to as the O&M budget) and a capital improvement program budget (hereafter referred to as the capital budget). The budgets shall be prepared in accordance with the RBA and generally accepted accounting principles.

2.9 Accounting and Audits.

2.9.1 Fiscal Year. The fiscal year of the EWA shall be from July 1 to June 30.

2.9.2 Accounting Procedures and Audit. Full books and accounts shall be maintained for the EWA in accordance with practices established by or consistent with those utilized by the Controller of the State of California for like public agencies. The Auditor of the EWA shall either make or contract with a certified public accountant to make an annual audit of the accounts and records of the EWA. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the California Government Code and the audit shall conform to generally accepted accounting principles. A report of the audit shall be filed as a public record with each of the member agencies and with the San Diego County Auditor within 30 days of its completion. Such report shall be filed within 12 months of the end of the fiscal year under examination.

2.10 Liabilities. Except as provided hereinabove, the debts, liabilities and obligations of the EWA shall be the debts, liabilities and obligations of the EWA alone, and not the member agencies.

2.11 Withdrawal or Dissolution. Upon withdrawal of a member from the EWA or upon dissolution of the EWA, there shall be a partial or complete distribution of assets and discharge of liabilities as follows. The distribution of assets may be made in kind or assets may be sold and the proceeds thereof distributed to a member agency at the time of withdrawal or to the member agencies at the time of dissolution; provided that, all property and rights in property assigned or transferred by any member agency to the EWA shall be reconveyed to said member agency free and clear of all encumbrances and liens of any kind.

2.11.1 Withdrawal. Upon withdrawal of any member agency from the EWA, the withdrawing member shall receive its proportionate or otherwise defined share of any assets of the EWA and shall contribute its proportionate or otherwise defined share toward discharge of any enforceable liability incurred by the EWA.

2.11.2 Dissolution. Upon dissolution of the EWA, each member agency shall receive its proportionate or otherwise defined share toward discharges of any enforceable liabilities incurred by the EWA.

2.12 Rescission or Termination. The EWA shall continue as Operator/Administrator until such time as EWA is terminated by written consent of a majority of the member agencies, evidenced by certified copies of resolutions by their governing bodies. Upon termination of the EWA and replacement with another Operator/Administrator, employees of the EWA shall become the employees of the new Operator/Administrator subject to existing employment contracts, seniority, retirement rights and any other employee benefits or rights now enjoyed by those employees.

2.13 Notices. All notices, statements, demands, requests, consents, approvals, authorizations, agreements, appointments or designations hereunder shall be given in writing and addressed to the principal office of the EWA.

2.14 Severability. If any one or more of the terms, provisions, promises, covenants or conditions of this agreement shall by any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

2.15 Modification of Agreement. This agreement shall contain all of the terms and conditions made between the parties hereto and shall not be amended except by an agreement in writing signed by all the member agencies.

2.16 Succession. The provisions of this agreement shall be binding upon and shall inure to the benefit of the successors of the parties thereto.

2.17 Approval. This agreement shall be approved as of the date that all of the member agencies have approved this agreement and the Revised Basic Agreement.

IN WITNESS WHEREOF, each party hereto has pursuant to resolution duly passed and adopted by their respective governing bodies caused this Revised Establishment Document to be executed effective as of the day and year first above written.

ATTEST:

City Clerk

LEUCADIA COUNTY WATER DISTRICT

BY: _____
PRESIDENT

VALLECITOS WATER DISTRICT

BY: _____
PRESIDENT

CITY OF VISTA

BY: _____
PRESIDENT

BUENA SANITATION DISTRICT

BY: _____
PRESIDENT

ENCINITAS SANITARY DISTRICT

BY: _____
PRESIDENT

CITY OF CARLSBAD

BY: _____
PRESIDENT

APPROVED AS TO FORM:

BY: _____
EWA COUNSEL

CITY OF VISTA

By _____

Attest:

City Clerk

CITY OF CARLSBAD,

By _____

Attest:

City Clerk

LEUCADIA COUNTY WATER DISTRICT

By _____
President

VALLECITOS WATER DISTRICT

By _____
President

BUENA SANITATION DISTRICT

By _____
President

ENCINITAS SANITARY DISTRICT

By _____
President

Approved as to Form:

By 
EWA Counsel

CITY OF VISTA

BY

[Handwritten Signature]

Attest:

[Handwritten Signature]

City Clerk

CITY OF CARLSBAD,

By _____

Attest:

City Clerk

LEUCADIA COUNTY WATER DISTRICT

By

President

VALLECITOS WATER DISTRICT

By

President

BUENA SANITATION DISTRICT

By

President

ENCINITAS SANITARY DISTRICT

By

President

Approved as to Form:

By

EWA Counsel

CITY OF VISTA

By _____

Attest:

City Clerk

CITY OF CARLSBAD

BY *Alfred R. Lewis*

Attest:

John J. Smith, Sanitation City Clerk
City Clerk

LEUCADIA COUNTY WATER DISTRICT

By _____
President

VALLECITOS WATER DISTRICT

By _____
President

BUENA SANITATION DISTRICT

By _____
President

ENCINITAS SANITARY DISTRICT

By _____
President

Approved as to Form:

By _____
EWA Counsel

CITY OF VISTA

By _____

Attest:

City Clerk

CITY OF CARLSBAD,

By _____

Attest:

City Clerk

LEUCADIA COUNTY WATER DISTRICT

By *James E. Kelly*
President

VALLECITOS WATER DISTRICT

By _____
President

BUENA SANITATION DISTRICT

By _____
President

ENCINITAS SANITARY DISTRICT

By _____
President

Approved as to Form:

By _____
EWA Counsel

CITY OF VISTA

By _____

Attest:

City Clerk

CITY OF CARLSBAD,

By _____

Attest:

City Clerk

LEUCADIA COUNTY WATER DISTRICT

By _____
President

VALLECITOS WATER DISTRICT

By *Michael D. Cuyler*
President

BUENA SANITATION DISTRICT

By _____
President

ENCINITAS SANITARY DISTRICT

By _____
President

Approved as to Form:

By _____
EWA Counsel

CITY OF VISTA

By _____

Attest:

City Clerk

CITY OF CARLSBAD,

By _____

Attest:

City Clerk

LEUCADIA COUNTY WATER DISTRICT

By _____
President

VALLECITOS WATER DISTRICT

By _____
President

BUENA SANITATION DISTRICT

By *Gloria E. McCallen*
President

ENCINITAS SANITARY DISTRICT

By _____
President

Approved as to Form:

By _____
EWA Counsel

CITY OF VISTA

By _____

Attest:

City Clerk

CITY OF CARLSBAD,

By _____

Attest:

City Clerk

LEUCADIA COUNTY WATER DISTRICT

By _____
President

VALLECITOS WATER DISTRICT

By _____
President

BUENA SANITATION DISTRICT

By _____
President

ENCINITAS SANITARY DISTRICT

By _____
President

Approved as to Form:

By _____
EWA Counsel

ATTACHMENT 2
REVISED BASIC AGREEMENT AMENDED OCTOBER 22, 2014

January 23, 2017

**RESOLUTION 2014-64
EXHIBIT A**

**REVISED BASIC AGREEMENT
FOR
OWNERSHIP, OPERATION AND MAINTENANCE OF A JOINT SEWAGE SYSTEM**

AS AMENDED OCTOBER 22, 2014

Ref: Admin.14-10934

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**REVISED BASIC AGREEMENT
FOR
OWNERSHIP, OPERATION AND MAINTENANCE OF A JOINT SEWAGE SYSTEM
AS AMENDED
EFFECTIVE OCTOBER 22, 2014**

THIS AGREEMENT (hereinafter referred to as the Revised Basic Agreement), is made and entered into as of the 22nd day of October 2014, by and among the CITY OF VISTA, a charter city (hereafter VISTA), the CITY OF CARLSBAD, a charter city (hereafter CARLSBAD), the BUENA SANITATION DISTRICT, a County Sanitation District (hereafter BUENA), the VALLECITOS WATER DISTRICT, a County Water District (hereafter VALLECITOS), the LEUCADIA WASTEWATER DISTRICT, a County Water District (hereafter LEUCADIA), and the CITY OF ENCINITAS, a general law city (hereafter ENCINITAS).

RECITALS

WHEREAS, the parties hereto are responsible for providing sewage collection, transmission, treatment and disposal services in their respective service areas and are authorized to contract with other parties for the provision of such services; and,

WHEREAS, on July 13, 1961, VISTA and CARLSBAD entered into a Basic Agreement pursuant to Chapter 5 of Division 7 of Title 1 of the California Government Code to acquire, construct and operate a Joint Sewer System; and,

WHEREAS, the Basic Agreement provided that other municipal corporations and public districts or agencies may become parties to the Basic Agreement, thereby becoming members of the joint powers authority; and,

WHEREAS, on January 6, 1964, BUENA became a member of the joint powers authority and acquired certain interests and capacity rights in the Joint System; and,

WHEREAS, on March 22, 1965, VALLECITOS (then San Marcos) became a member of the joint powers authority and acquired certain interests and capacity rights in the Joint System; and,

WHEREAS, on August 17, 1971, LEUCADIA and ENCINITAS (then Encinitas Sanitary District) became members of the joint powers authority and acquired certain interests and capacity rights in the Joint System; and,

WHEREAS, it is the desire of the parties hereto to (a) continue functioning through a joint powers authority and (b) modify and condense the enabling legal documents for the joint powers authority by entering into a Revised Basic Agreement pursuant to Article 1, Chapter 5, Division 7, Title 1 of California Government Code relating to the joint exercise of powers, for the purposes of planning, designing, owning, operating, and maintaining a joint sewer system and concurrently establishing, by separate agreement, the Encina Wastewater Authority ("EWA").

NOW THEREFORE, THE PARTIES HERETO COVENANT WITH EACH OTHER AS FOLLOWS:

Section 1 DEFINITIONS

For the purposes of this agreement the following terms shall have the meanings indicated:

1.1 Joint Advisory Committee (JAC). A committee composed of representatives of the member agencies that advises both the member agencies and the Operator/Administrator on issues relating to the Joint System.

1.2 Joint System. The Encina Water Pollution Control Facility (Unit I), and the Encina Ocean Outfall (Unit J) including all related land, rights of way, and appurtenances (collectively, "Encina").

1.3 Member Agencies. The six members of the Encina Wastewater Authority: Vista, Carlsbad, Buena, Vallecitos, Leucadia, and Encinitas.

1.4 Operator/Administrator. The public agency designated by the member agencies as being responsible for operating, maintaining, and administering the Encina Joint System. Since August 1, 1988, the Operator/Administrator has been the Encina Wastewater Authority.

1.5 Biosolids. Primarily organic solid product, produced by the wastewater treatment processes, which can be beneficially recycled.

History: Adopted December 17, 1990; Amended effective November 18, 1992; November 9, 1994.

Section 2 JOINT PARTICIPATION

The member agencies shall participate jointly in the planning, design, acquisition, construction, ownership, operation, maintenance and use of the Joint System (including any future expansions thereof), and shall pay for such activities as hereinafter specified.

History: Adopted December 17, 1990.

Section 3 AREA TO BE SERVED BY THE JOINT SYSTEM

3.1 Existing Service Area. The area to be served by the Joint System is shown on Exhibit A, which is attached hereto and made a part of this Revised Basic Agreement by reference. Areas lying outside a member agency's legal boundary but inside that member agency's Exhibit A service area may be served by the member agency, providing the member agency provides assurance in the form of a legally binding agreement that these discharges will meet all applicable rules and regulations. Any wastewater or biosolids received from outside a member agency's legal boundary pursuant to such agreement shall be regarded as the wastewater or biosolids of the member agency for the purposes of billing, capacity, and source control.

3.2 Revisions to the Service Area. Areas lying outside the Exhibit A service areas of the member agencies may be served, provided such areas are annexed by a member agency. Notification of such annexations must be made in writing to the Joint Advisory Committee so that Exhibit A can be modified as appropriate. Member agencies can also request alteration of their Exhibit A service areas; such modifications must be approved in writing by all member agencies, as evidenced by receipt of resolutions from the governing bodies of all member agencies.

Member agencies whose Exhibit A service areas are enlarged shall be responsible for providing adequate capacity.

3.3 Prohibition on Discharges from Outside the Exhibit A Service Area. Each member agency agrees that it will neither permit nor knowingly countenance the use of the Joint System, directly or indirectly, for the disposal of wastewater or biosolids originating outside of its legal boundary except in the above manner, extent and conditions.

History: Adopted December 17, 1990; Amended effective November 18, 1992; November 9, 1994.

Section 4 ENLARGEMENT OF THE JOINT SYSTEM

Any member agency having first obtained the consent of Carlsbad and Vista, may at its sole cost and expense enlarge any portion of Unit I or J of the Joint System in which it is the owner of capacity rights and any increased capacity in such unit or portion resulting from such enlargement shall belong to the member agency paying the cost and expense thereof. No member agency shall unreasonably withhold consent to such enlargement. Any such enlargement shall be constructed in accordance with plans and specifications approved by Carlsbad and Vista.

History: Adopted December 17, 1990; Amended effective November 18, 1992.

Section 5 PROTECTION OF THE JOINT SYSTEM/SOURCE CONTROL

5.1 Protection of the Joint System. The Joint System shall not be used by any member agency for any purpose other than the conveyance, treatment, reuse, or disposal of wastewater and its by-products. Wastewater shall be construed to mean domestic sewage and trade wastewaters. Each member agency shall adopt and enforce ordinances, resolutions, rules and regulations, concerning the type and condition of wastewater permitted to be discharged into the sewers under its control and shall prohibit the discharge of any wastewater which would be detrimental to the Joint System, or to the use of by-products generated by the Joint System. Such ordinances, resolutions, rules and regulations shall reflect the applicable federal and state statutes and regulations and shall be consistent with the Operator/Administrator's industrial pretreatment regulations.

5.2 Prohibitions. No member agency shall allow excessive infiltration of any surface or storm waters to be discharged directly or indirectly into the Joint System. No member agency shall allow cooling water or other unpolluted industrial wastewater to be discharged directly or indirectly into the Joint System without the consent of all other member agencies. No member agency shall authorize a discharge from any groundwater cleanup site unless the discharge is authorized in advance by the Operator/Administrator.

History: Adopted December 17, 1990; Amended effective November 18, 1992.

Section 6 CAPACITY AND USE OF CAPACITY (CAPACITY INFRINGEMENT)

Each member agency shall own and enjoy a perpetual right to use its Joint System capacity in the proportions set forth immediately below herein. No member agency shall in any way grant, encumber, limit or restrict its interest in any part of the Joint System for any purpose other than the treatment and disposal or reuse of wastewater and the management of wastewater treatment byproducts, or use the Joint System or any part thereof to a greater percentage than its capacity rights, except as set forth in Section 9 herein, without the prior written consent of the

other member agencies, provided that no such excessive use without written consent shall be construed as a waiver of capacity rights by any member agency.

History: Adopted December 17, 1990; Amended effective November 18, 1992.

Section 7 CAPACITY MONITORING

Each member agency shall participate in a joint flow metering system, operated and administered by the Operator/Administrator, and facilitate such measurements of flow into the Joint System as needed for billing purposes and to verify that each agency is within its capacity rights. This metering system shall be maintained according to a separate agreement executed by the Operator/Administrator and the member agencies.

History: Adopted December 17, 1990.

Section 8 ACQUISITION/SALE OF EXCESS CAPACITY

In the event that any member agency hereafter requires additional capacity in the Joint System and capacity is available from another member agency, the capacity may be licensed, leased or purchased as necessary. Such lease or purchase shall be on terms as are hereafter agreed upon by the member agencies involved. In the event an inter-agency capacity agreement is adopted, the Joint Advisory Committee shall be notified in writing. Licensing, lease or purchase shall be subject to the terms and conditions established in Section 9 herein.

History: Adopted December 17, 1990; Amended effective November 18, 1992.

Section 9 CAPACITY RIGHTS IN UNITS

9.1 Unit I and Unit J Capacity. Capacity rights shall be as follows:

Member Agency	Unit I Liquid		Unit I Solids		Unit J Disposal	
	MGD	Percentage	MGD	Percentage	MGD	Percentage
Vista	10.67	26.34%	10.67	24.63%	10.67	24.63%
Carlsbad	10.26	25.33%	10.26	23.69%	10.26	23.69%
Buena	3.00	7.41%	3.00	6.93%	3.00	6.93%
Vallecitos	7.67	18.93%	10.47	24.17%	10.47	24.17%
Leucadia	7.11	17.55%	7.11	16.42%	7.11	16.42%
Encinitas	1.80	4.44%	1.80	4.16%	1.80	4.16%
Total	40.51	100.00%	43.31	100.00%	43.31	100.00%

The total disposal capacity of Unit J shall be 43.31 MGD average daily flow. This capacity rating assumes that the wet weather peaking factor on the flows to Unit J shall continue to be less than 2.76, and all the parties hereto agree to make good faith efforts to ensure that the wet weather peaking factor on the flows to Unit J remains below 2.76.

History: Adopted December 17, 1990; Amended effective October 22, 2014.

9.2 Unit I Capacity Infringement. The member agencies agree to make available up to 5 percent of their respective shares of total capacities, as set forth in Section 9.1 through a reserve capacity pool, in accordance with the following terms and conditions:

9.2.1. Flow Calculation. For the purposes of calculating payments due for licensing under this section, flows shall be based on measured (ADS) flows, to the maximum extent feasible. Solids loading flows shall be based on the total flow originating within each member agency. Voting rights, as described in Section 11 shall be in no way affected by temporary use of reserve capacity under this section. Total Reserve Capacity is the total capacity shown in paragraph 9.2.7. below.

9.2.2. Monitoring of Capacity Demand. Each agency shall provide monthly reports to EWA regarding future capacity committed, based upon its acceptance of applications for or issuance of any building permits, letters of availability, certificates or other entitlements for use which represent that sewer capacity is available to the applicant or project, or which enforceable or practically commit the agency to provide future sewer service. Reports shall be submitted in such form as the Board of EWA may require. Before the measured and committed flows reach 75% of Encina's total capacity (per Section 9.1), the EWA shall initiate a program to ensure adequate capacity to meet projected needs.

9.2.3. Excess Use a Trespass. Any use of capacity in excess of 95% of their respective share of Encina's total capacity (per Section 9.1) plus 50% of the Total Reserve Capacity, or otherwise in violation of this section, shall be considered a trespass. At the request of any member agency, EWA shall, and is hereby authorized to specifically enforce the terms of this section (Section 9.2) against a member agency or agencies on behalf of the remaining member agencies, including through commencement of a proceeding at law or equity. The parties agree that specific enforcement is a proper remedy in that payment of damages is not an adequate remedy for the potential losses to any member agency resulting from the loss of capacity. For example, replacement of capacity may be impractical and the consequences for the economic development of the members are not readily subject to quantification. Each member agency hereby consents to the commencement of such action or actions by EWA, and waives any right it may have to further approval of such actions under the joint powers agreement creating and establishing EWA. In addition to any injunctive relief, EWA may seek consequential damages on behalf of the remaining member agencies. In any such action, the prevailing party shall be entitled to attorney's fees and costs.

9.2.4. Indemnity and Hold Harmless. In addition to payment of the amount specified herein, each agency agrees to indemnify, defend and hold harmless the EWA and the other member agencies for any claim, demand, cost, penalty, fine or damage (including reasonable attorney's fees and costs of investigation), arising out of its violation of this section, whether resulting from the agency's active or passive, negligent or intentional act or failure to act to prevent a violation, and notwithstanding the active or passive negligence of those member agencies which are in compliance with the provisions of this section.

9.2.5. License Payments. When any member agency's flows exceed 100% of its capacity allocation for the treatment of solids, and/or treatment and/or disposal of liquids, for any continuous three-month period, such member agency shall pay for the use of such capacity from the reserve capacity pool in accord with the schedule of values, as adjusted each July 1 (commencing in July 2013) by updating the facility spreadsheet to include any additional and changed capital project costs, and to reflect the current Engineering News Record – Los Angeles ("ENRLA") construction cost index, as follows (see Exhibit C):

- (a) Any portion of reserve up to 50% of Total Reserve Capacity:

\$203,824 per MGD of Unit I liquid capacity per year
 \$400,986 per MGD of Unit I solids capacity per year
 \$73,753 per MGD of Unit J capacity per year

(b) The use of reserve amounts over 50% of Total Reserve Capacity shall be a violation of this section. In addition to any other remedy provided herein, or available to EWA or the member agencies, an agency shall pay for such use:

\$339,706 per MGD of Unit I liquid capacity per year
 \$668,311 per MGD of Unit I solids capacity per year
 \$122,922 per MGD of Unit J capacity per year

(c) Payments to member agencies with unused reserve shall be made annually. Payments from member agencies shall be made quarterly to the EWA and held in a special account.

History: Adopted December 17, 1990; Amended effective October 22, 2014.

9.2.6. Restrictions on Use Over 40% of Reserve. If at any time any agency shall have enforceable or practically committed to provide future sewer service which, when added to its then existing actual flows, equals 95% of its allocated capacity (per Section 9.1) plus 40% of the Total Reserve Capacity, such agency shall:

(a) Immediately halt the acceptance or issuance of any building permits, letters of availability, certificates or other entitlements for use which represent that sewer capacity is the agency to provide future sewer service.

(b) Immediately inform EWA, in writing, that it has reached this threshold, of the actions it has taken to implement 9.2.6(a) above, and of its intention to present a plan to EWA, within 30 days, for capacity management to prevent the agency from exceeding use of 50% of the Total Reserve Capacity.

9.2.7. Reserve Capacity. Reserve capacity shall be as follows:

Member Agency	Unit I Liquid		Unit I Solids		Unit J Disposal	
	MGD	Percentage	MGD	Percentage	MGD	Percentage
Vista	0.54	26.34%	0.54	24.63%	0.54	24.63%
Carlsbad	0.51	25.33%	0.51	23.69%	0.51	23.69%
Buena	0.15	7.41%	0.15	6.93%	0.15	6.93%
Vallecitos	0.38	18.93%	0.52	24.17%	0.52	24.17%
Leucadia	0.36	17.55%	0.36	16.42%	0.36	16.42%
Encinitas	0.09	4.44%	0.09	4.16%	0.09	4.16%
Total	2.03	100.00%	2.17	100.00%	2.17	100.00%

History: Adopted December 17, 1990; Amended effective October 22, 2014.

9.2.8. Sole Method of Allocation. No agency shall provide capacity to any other member agency except pursuant to this section without the unanimous consent of the member agencies; provided that an agency may agree to provide additional capacity on a temporary basis to an agency which has used the maximum reserve capacity authorized by this section if: (1)

such arrangement provides for payments at rates not less than the maximum reserve capacity rate per paragraph 9.2.5(b), above; and (2) the capacity so provided does not reduce the Total Reserve Capacity available.

History: Adopted December 17, 1990; Amended effective November 18, 1992; January 14, 1997.

Section 10 CAPACITY RIGHTS FOR RECLAMATION

10.1 Future Reclamation. Any member agency, at its own expense, may, and shall have the right to, reclaim water from any wastewater in the Joint System which emanates within the jurisdiction of the respective member agency. And, subject to the following limitations, each member agency shall have the right to install facilities for the reclamation of water from wastewater. Any proposed reclamation shall require the approval of all the member agencies in the event that the proposed reclamation facility is designed and/or constructed such that (i) any solids or non-treated effluent from any such facility may be discharged into Unit I of the Joint System and/or (ii) any reclaimed water may be discharged into Unit J of the Joint System. Such approval shall not be withheld unless the use of the proposed reclamation facility would adversely affect one or more of the member agencies and the reclaiming member cannot reasonably mitigate the adverse impact. Nothing in this section shall be construed so as to require approval by the member agencies as to the geographic location of a reclamation facility constructed solely within the boundaries of any member agency.

10.2 Existing Reclamation. Section 10.1 above pertains to all future reclamation facilities. Currently constructed facilities may be operated to their capacity without further action by owners. The current reclamation facilities and capacities are as follows:

MEMBER AGENCY	RECLAMATION FACILITY	CAPACITY IN MGD
Carlsbad	Carlsbad Water Recycling Facility	4.00 MGD
Leucadia	Gafner	1.00 MGD
Vallecitos	Meadowlark	5.00 MGD

History: Adopted December 17, 1990; Amended effective November 18, 1992; October 22, 2014.

Section 11 JOINT ADVISORY COMMITTEE

The member agencies have created a Joint Advisory Committee (JAC) to advise the member agencies and the Operator/Administrator. JAC shall continue in this advisory role.

11.1 Powers. Recommendations of JAC shall be advisory only. The JAC shall have the following responsibilities:

11.1.1 To review the operation and maintenance of the Joint System, including the cost thereof, and make reports and recommendations to the governing bodies of the member agencies;

11.1.2 To review and make recommendations regarding proposed expansion, enlargements or modifications of the Joint System to the governing bodies of the member agencies; and,

11.1.3 To review and make recommendations regarding contracts, budget matters, regulations, policies, permits and other documents and issues as appropriate to the

Operator/Administrator. Each report and recommendation of the JAC permitted by this Section shall be considered as having been made by all the member agencies when made to the Operator/Administrator and made in accordance with the voting rights and percentages set forth below in Section 11.4.4.

11.2 Representation on JAC. JAC shall be constituted by two appointed representatives from each member agency, with one alternate for each appointed representative. JAC representatives may, but need not, be members of the governing bodies of the member agencies.

11.3 Officers of JAC. JAC shall elect its own officers, which shall include a Chairman, Vice-Chairman, and Secretary. The Chairman and Vice-Chairman shall be JAC representatives and the Secretary may, but need not, be a JAC representative.

11.4 Meetings of the JAC.

11.4.1 Regular Meetings. The JAC shall provide for its regular meetings; provided, however, it shall hold at least one regular meeting per year. The dates, hour, and place of the regular meetings shall be established by JAC.

11.4.2 Ralph M. Brown Act. All meetings of the JAC, including, without limitations, regular, adjourned regular, and special meetings, shall be called, noticed, held, and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code).

11.4.3 Minutes. The JAC Secretary shall cause to be kept minutes of all meetings of the JAC, and shall cause a copy of the minutes to be forwarded to each JAC representative.

11.4.4 Vote. The total vote of all members of the JAC shall equal 100%. When voting on a matter involving the Treatment Plant (Unit I) or Ocean Outfall (Unit J) each JAC representative's percentage vote shall equal one-half of the percentage of that unit's capacity owned by the representative's agency. If only one of an agency's representatives is present, this representative's percentage vote shall equal the total percentage of that unit's capacity owned by the representative's agency. If both representatives are absent, each alternate shall have a percentage vote equal to one-half of the percentage capacity of the alternate's member agency; provided, however, at any JAC meeting where any member agency is represented by only one alternate, the alternate shall have a percentage of vote equal to the total percentage of the capacity of the agency he/she represents.

11.5 Rules. JAC shall adopt rules and regulations for the place, time and conduct of JAC meetings.

11.6 Payment for Attendance. The Operator/Administrator (or, if requested by the appointing member agency, that member agency as to its representatives) shall pay each representative (or alternate who attends a meeting by reason of the absence of a representative) an attendance fee of twenty-five (\$25) for each JAC meeting, provided that such payment does not exceed fifty dollars (\$50) per calendar month. Attendance fees shall be paid monthly. [This fee waived per legal counsel opinion.]

11.7 Assistance from the Operator/Administrator. The Operator/Administrator shall provide supplies and clerical and secretarial help for JAC. The cost of such supplies and assistance shall be considered part of the expense of operating and maintaining the Joint System.

History: Adopted December 17, 1990; Amended effective November 18, 1992; November 9, 1994; February 8, 2000.

Section 12 OPERATOR/ADMINISTRATOR

The Joint System shall be maintained and operated by any one of the parties hereto, or by another Public Agency, which party or other public agency shall be known as the Operator/Administrator.

12.1 General Duties.

12.1.1 Joint System. The Operator/ Administrator shall maintain and operate the Joint System, and shall preserve it in good repair and working order, all in accordance with recognized sound engineering and accounting practices and local, state, and federal laws and regulations.

12.1.2 Pump Stations. The Operator/Administrator also shall operate and maintain, at the expense of the Cities of Vista and Carlsbad, the Agua Hedionda and Buena Vista Pump Stations (formerly Units G and C of the Joint System) within an annual budget prepared by the Operator/Administrator and approved by Vista and Carlsbad.

12.1.3 Other Facilities. The Operator/Administrator shall have the authority to operate and maintain other facilities outside the Joint System as recommended unanimously by JAC and in accordance with Operator/Administrator executed operation agreements, which may include budgeting responsibilities.

12.2 Designation and Specific Powers. Effective August 1, 1988, the member agencies created a public agency known as the Encina Wastewater Authority (EWA) to serve as the Operator/Administrator of the Encina Joint System. The EWA shall continue to serve as the Operator/Administrator until such time as EWA is terminated by written consent of a majority of the member agencies, evidenced by certified copies of resolutions by their governing bodies. The organization, administration, rules, and specific powers of the EWA shall be as set forth in the Revised Establishment Document establishing the EWA. Upon termination of the EWA and replacement with another Operator/Administrator, employees of the EWA shall become the employees of the new Operator/Administrator subject to existing employment contracts, seniority, retirement rights and any other employee benefits or rights now enjoyed by those employees.

History: Adopted December 17, 1990; Amended effective November 18, 1992.

Section 13 BUDGETING AND ACCOUNTING

13.1 Annual Budgets. Annually, the Operator/ Administrator shall prepare an operation, maintenance, and administration budget (hereafter referred to as the O & M budget) and a capital improvement program budget (hereafter referred to as the capital budget.) The budgets shall be prepared in accordance with generally accepted accounting principles.

13.1.1 Preparation of Estimated O & M Budget. No later than May 1 of each year, the Operator/Administrator shall prepare an estimated budget of the (a) amount of money required to operate, maintain and administer the Joint System during the ensuing fiscal year, and (b) the proportionate amount to be paid by each member agency. Such estimate shall be based on the total operation, maintenance, and administration costs during the current fiscal year as such costs are set forth in the current approved budget for the Joint System.

13.1.2 Approval of Estimated O & M Budget. Each estimated O & M budget adopted by the Operator/Administrator shall be forwarded to the JAC for consideration and for submission to the member agencies for approval. The Operator/Administrator's estimated O & M budget shall be deemed effective upon unanimous approval by the member agencies and upon the receipt by the Operator/Administrator of certified copies of approving resolutions or minute orders from the governing bodies of each of the member agencies. Until such time as formal approval has been received from each member agency, the estimated O & M budget shall constitute merely a proposed budget, subject to consideration or revisions. The O & M budget shall be considered separately from the capital budget and may be approved independently. In the event a proposed budget is not approved, the Operator/Administrator shall continue to operate using the O & M budget figures from the previous fiscal year.

13.1.3 O & M Contributions. Each member agency shall pay its estimated portion of the budgeted operation, maintenance, and administration costs and shall pay its actual portion of the costs as determined pursuant to Section 16 of this Revised Basic Agreement. Quarterly on October 15, January 15, April 15 and July 15, the Operator/Administrator shall bill the member agencies and the member agencies shall deposit with the Operator/Administrator approximately one fourth of the annual cost of operation, maintenance, and administration for the preceding quarter as described herein. Provided, however, that each invoice shall be increased or decreased to adjust the estimated amount payable based upon the estimated total expenses incurred in the preceding quarter and the estimated total amount and strength of wastewater received from each member agency during the preceding quarter. In the event that at the end of any fiscal year the amount paid by a member agency exceeds the amount that should have been charged, the excess shall be credited to the member agency the following fiscal year. In case of an underpayment, the member agency shall be assessed the amount that should have been charged in the following fiscal year. Each member agency shall make quarterly contribution payments to the Operator/Administrator promptly at the time they become due.

13.1.4 Actual O & M Contributions. The member agencies agree to contribute from their treasuries the actual annual costs of the Joint System as divided among the member agencies pursuant to Section 16 of this Revised Basic Agreement. Such costs shall include the actual costs of (1) all materials and supplies used or purchased for the operation, maintenance, or administration of the Joint System, (2) all contracts let by the Operator/Administrator for the performance of budgeted O & M work, and (3) the salaries and wages of all Operator/Administrator employees providing such services, including vacations and sick leave benefits, workers' compensation, social security and retirement payments, and health insurance. Such costs shall be paid out of the funds deposited with the Operator/Administrator by the member agencies; provided however, the failure of any member agency to pay the Operator/Administrator shall not relieve the other member agencies of their obligation to pay their proportionate shares of operation, maintenance, and administration of the Joint System.

13.1.5 Preparation of Estimated Capital Budget. No later than May 1 of each year, the Operator/Administrator shall prepare an estimated budget of the amount of money required for capital improvement projects during each of the next five fiscal years and over the next twenty years. The estimated capital budget shall show the estimated amount to be paid by each member agency. Such estimate shall be based on existing and/or projected ownership as appropriate.

13.1.6 Approval of Estimated Capital Budget. Each estimated capital budget adopted by the Operator/Administrator shall be forwarded to the JAC for consideration and for submittal to the member agencies for approval. The Operator/Administrator's estimated capital budget shall be deemed effective upon unanimous approval by the member agencies and upon the receipt by the Operator/Administrator of certified copies of approving resolutions or minute orders from the governing bodies of each of the member agencies. Until such time as formal approval has been received from each member agency, the estimated capital budget shall constitute merely a proposed budget, subject to consideration or revisions. The capital budget shall be considered separately from the O & M budget and may be approved independently.

13.1.7 Capital Contributions. Each member agency shall pay its actual portion of the capital costs except as noted in Section 17 of this Revised Basic Agreement. Quarterly on October 15, January 15, April 15 and July 15, the Operator/Administrator shall bill the member agencies and the member agencies shall deposit with the Operator/Administrator approximately one fourth of the actual estimated capital costs incurred in the preceding quarter, except as otherwise specified in Section 18. Any capital funds remaining at the end of the fiscal year shall be retained and credited toward the member agencies for the following fiscal year. Any capital expenses unfunded at the end of the fiscal year shall be debited and charged to the member agencies in the following fiscal year. Each member agency shall make quarterly contribution payments to the Operator/Administrator promptly at the time they become due.

13.1.8 Actual Capital Contributions. The member agencies agree to contribute their actual capital costs pursuant to Section 17 of this Revised Basic Agreement. Such costs shall include the actual costs of (1) all materials and supplies used or purchased for capital improvement of the Joint System and (2) all contracts let by the Operator/Administrator for the performance of capital improvement projects. Provided however, the failure of any member agency to pay the Operator/Administrator shall not relieve the other member agencies of their obligation to pay their proportionate shares of the capital expenses of the Joint System.

13.1.9 Audit. Annually the Operator/Administrator shall cause the preparation of an independent accountant audit of the financial statements.

History: Adopted December 17, 1990; Amended effective November 18, 1992; November 9, 1994; August 12, 1998.

Section 14 ASSISTANCE TO OPERATOR/ADMINISTRATOR

When requested by the Operator/Administrator, the EWA shall provide assistance, and make recommendations to said Operator/Administrator relative to all services and duties it is to perform under the terms of this Revised Basic Agreement.

History: Adopted December 17, 1990; Amended effective November 18, 1992; November 9, 1994.

Section 15 RIGHTS OF WAY AND LAND ACQUISITIONS

The Operator/Administrator and/or any of the member agencies may, as agreed upon in writing by all the member agencies, act on behalf of the member agencies in acquiring lands and rights of way necessary for the operation, maintenance, ownership, and use of the Joint System.

History: Adopted December 17, 1990; Amended effective November 18, 1992.

Section 16 PAYMENT OF OPERATION AND MAINTENANCE EXPENSES

16.1 Allocation of Expenses. All operation, maintenance and administration expenses for Units I and J of the Joint System, hereafter referred to as O & M expenses, shall be paid by each member agency based on each member agency's percentage of ownership and usage in these units. For the purpose of this section, the following definitions shall apply: "usage" shall mean the costs for power, chemicals, maintenance, and other sewage treatment, solids handling, and disposal processes which result from wastewater entering Unit I or Unit J; "ownership" shall mean the costs for insurance, administration expenses, laboratory expenses, plant operations, services and maintenance, and other wastewater collection and treatment, solids handling and effluent disposal costs which are incurred irrespective of the amount of wastewater which enters Unit I or Unit J.

16.2 Payment Schedule. Each member agency shall pay its proportionate share of the operation, maintenance and administration expenses in accordance with Section 13.1 of this Revised Basic Agreement.

16.3 Revenue from By-Products. Any revenue received from the sale of by-products arising out of the operation of the Joint System shall be apportioned to each member agency in the same proportion as their share of the O & M expenses for the Joint System in the year in which the revenue is received.

History: Adopted December 17, 1990; Amended effective November 18, 1992; November 9, 1994.

Section 17 PAYMENT OF CAPITAL EXPENSES

17.1 Allocation of Expenses. Unless otherwise specified herein, capital expenses shall be allocated based on existing or projected Unit I or Unit J ownership as appropriate. Exceptions are as follows:

17.1.1 Phase IV Expansion. Phase IV capacity and costs are allocated according to the methodology shown in Exhibit B, attached hereto and made part of this Revised Basic Agreement by reference.

17.1.2 Phase V Expansion. Phase V capacity and costs are allocated according to the methodology shown in Exhibit D, attached hereto and made part of this Revised Basic Agreement by reference.

17.1.3 Joint Flow Metering System. Each member agency is responsible for the capital expenses of meters and monitors serving its respective service area. Capital expenses for the monitors serving the entire Exhibit A service area shall be paid on the basis of Unit J flow.

17.1.4 Additional Land/Right of Way Acquisition. All expenses shall be allocated in accordance with the terms of a separate agreement to be adopted unanimously by the member agencies.

17.2 Payment Schedule. Unless otherwise specified herein, capital expenses shall be paid on a quarterly basis. Exceptions are as follows:

17.2.1 Additional Land/Right of Way Acquisition. All expenses shall be paid in accordance with the terms of a separate agreement to be adopted unanimously by the member agencies.

17.2.2 Other Capital Expenses. On occasion, capital expenses may occur earlier in the fiscal year than would allow for regular quarterly billing. If regular quarterly billings do not provide needed capital early enough during the fiscal year, supplemental capital billings shall be sent to the member agencies. In such cases, the Operator/Administrator will notify the member agency financial representatives as far in advance as possible.

History: Adopted December 17, 1990; Amended effective November 18, 1992; August 12, 1998; October 22, 2014.

Section 18 SETTLEMENT OF DISPUTE OR CONTROVERSY

18.1 Right to Arbitration. Should any dispute or controversy arise in connection with the books, records or accounts of any member agency or in connection with the acquisition, construction, maintenance, operation repair, reconstruction or enlargement of the Joint System or in connection with any of the affairs or operation thereof, or the execution of this agreement, the governing bodies of member agencies that are affected by such dispute may elect to arbitrate the dispute or controversy in accordance with this section. In the event of such election, the governing body of each member agency affected shall appoint or designate one disinterested person as an arbitrator. Said arbitrators so chosen, if an even number, shall designate an additional disinterested person to make an odd number of arbitrators. Said arbitrators so chosen shall act as a Board of Arbitrators in connection with any such dispute or controversy. The findings of fact approved by a vote of the majority of the members of the Board of Arbitrators shall be binding upon the affected member agencies.

18.2 Right of Observation. The parties to any arbitration proceedings held under the provisions of this agreement shall notify every other member agency not a party thereto of such arbitration proceedings and any other member agency shall have the right to be represented at such proceedings by a member agency designated observer.

18.3 Right to Expert Arbitration. Any controversy which can be determined by an engineer's or other expert's findings and which under this section could be submitted to arbitration may, if the parties thereto agree in writing to do so, be submitted to a named engineer or expert who shall be the sole arbitrator. Any such engineer shall be a Registered Engineer in the State of California. Any such engineer or expert shall be disinterested as required of arbitrators on an arbitration board. He shall proceed in the same manner provided herein for an arbitration board.

History: Adopted December 17, 1990; Amended effective November 18, 1992.

Section 19 APPORTIONMENT OF LIABILITY

Any liability incurred by the member agencies, which liability arises out of or in connection with the operation and/or maintenance of the Joint System, except for costs of improvements to such facilities and operating and maintenance costs, shall be discharged by payment by each member hereof in proportion to their respective ownership in the facilities at the time of the incident which results in the liability.

History: Adopted December 17, 1990; Amended effective November 18, 1992.

Section 20 NOTICES

Notices required or permitted under this Revised Basic Agreement shall be sufficiently given if in writing and if either served personally or mailed by certified mail to the member agencies.

History: Adopted December 17, 1990; Amended effective November 18, 1992.

Section 21 SEVERABILITY

If any one or more of the terms, provisions, promises, covenants or conditions of this agreement shall by any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

History: Adopted December 17, 1990; Amended effective November 18, 1992.

Section 22 MODIFICATION OF AGREEMENT

This agreement shall contain all the terms and conditions made between the parties hereto and shall not be amended except by an agreement in writing signed by all the member agencies.

History: Adopted December 17, 1990; Amended effective November 18, 1992.

Section 23 SUCCESSION

The provisions of this agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto.

History: Adopted December 17, 1990; Amended effective November 18, 1992.

IN WITNESS WHEREOF, each party hereto has pursuant to resolution duly passed and adopted by their respective governing bodies caused this Revised Basic Agreement to be approved, has authorized its execution by the officeholder set forth below, to become effective as of the day and year first above written. This Revised Basic Agreement may be executed in counterparts, each of which may be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

CITY OF VISTA

By Judy Ritter
Mayor Judy Ritter

Attest:
Marci Kilian
City Clerk Marci Kilian

CITY OF CARLSBAD

By _____
Mayor

Attest:

City Clerk

LEUCADIA WASTEWATER DISTRICT

By _____
President

VALLECITOS WATER DISTRICT

By _____
President

BUENA SANITATION DISTRICT

By Judy Ritter
Chairperson Judy Ritter

CITY OF ENCINITAS

By _____
Mayor

Attest:

City Clerk

Approved as to form:

By _____
JAC Counsel

IN WITNESS WHEREOF, each party hereto has pursuant to resolution duly passed and adopted by their respective governing bodies caused this Revised Basic Agreement to be approved, has authorized its execution by the officeholder set forth below, to become effective as of the day and year first above written. This Revised Basic Agreement may be executed in counterparts, each of which may be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

CITY OF VISTA

By _____
Mayor

Attest:

City Clerk

CITY OF CARLSBAD

By Matt Hall
Mayor

Attest:

Shelley Boen for
City Clerk

LEUCADIA WASTEWATER DISTRICT

By _____
President

VALLECITOS WATER DISTRICT

By _____
President

BUENA SANITATION DISTRICT

By _____
Chairperson

CITY OF ENCINITAS

By _____
Mayor

Attest:

City Clerk

Approved as to form:

By _____
JAC Counsel

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IN WITNESS WHEREOF, each party hereto has pursuant to resolution duly passed and adopted by their respective governing bodies caused this Revised Basic Agreement to be approved, has authorized its execution by the officeholder set forth below, to become effective as of the day and year first above written. This Revised Basic Agreement may be executed in counterparts, each of which may be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

CITY OF VISTA

By _____
Mayor

Attest:

City Clerk

CITY OF CARLSBAD

By _____
Mayor

Attest:

City Clerk

LEUCADIA WASTEWATER DISTRICT

By David Kuldner
President

VALLECITOS WATER DISTRICT

By _____
President

BUENA SANITATION DISTRICT

By _____
Chairperson

CITY OF ENCINITAS

By _____
Mayor

Attest:

City Clerk

Approved as to form:

By _____
JAC Counsel

IN WITNESS WHEREOF, each party hereto has pursuant to resolution duly passed and adopted by their respective governing bodies caused this Revised Basic Agreement to be approved, has authorized its execution by the officeholder set forth below, to become effective as of the day and year first above written. This Revised Basic Agreement may be executed in counterparts, each of which may be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

CITY OF VISTA

By _____
Mayor

Attest:

City Clerk

CITY OF CARLSBAD

By _____
Mayor

Attest:

City Clerk

LEUCADIA WASTEWATER DISTRICT

By _____
President

VALLECITOS WATER DISTRICT

By *Ray D. Evans*
President

BUENA SANITATION DISTRICT

By _____
Chairperson

CITY OF ENCINITAS

By _____
Mayor

Attest:

City Clerk

Approved as to form:

By _____
JAC Counsel

IN WITNESS WHEREOF, each party hereto has pursuant to resolution duly passed and adopted by their respective governing bodies caused this Revised Basic Agreement to be approved, has authorized its execution by the officeholder set forth below, to become effective as of the day and year first above written. This Revised Basic Agreement may be executed in counterparts, each of which may be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

CITY OF VISTA

By _____
Mayor
Attest:

City Clerk

CITY OF CARLSBAD

By _____
Mayor
Attest:

City Clerk

LEUCADIA WASTEWATER DISTRICT

By _____
President

VALLECITOS WATER DISTRICT

By _____
President

BUENA SANITATION DISTRICT

By _____
Chairperson

CITY OF ENCINITAS

By _____
Mayor

Attest:

City Clerk

Approved as to form:

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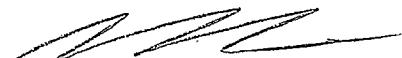
CITY OF ENCINITAS

By _____
Mayor

Attest:

City Clerk

Approved as to form:

By 
JAC Counsel

<INSERT SERVICE AREA MAP>

**EXHIBIT B
 PHASE IV COST ALLOCATION**

1. Phase IV cost shall be allocated as follows:
 - a. All costs shall be allocated by unit process and among flow, BOD, and suspended solids in the manner recommended for revenue programs by the State Water Resources Control Board.
 - b. The replacement value of the existing Unit I and Unit J facilities at the mid-point of construction (projected ENRLA of 6465) shall be determined. In determining replacement value, grant funding shall be included except for the grant funding used to pay for the "oversized" portion of "oversized" items (i.e., items sized or undertaken for the ultimate site capacity, such as site grading and paving, piping, etc.).
 - c. Dollar ownership of the existing facilities shall be determined by multiplying existing ownership percentages times the replacement values determined in step b.
 - d. The cost of the proposed Phase IV facilities at the midpoint of construction (projected ENRLA of 6465) shall be estimated by the design engineer.
 - e. The total value of the EWPCF following construction of Phase IV shall be estimated by adding the replacement value of the existing facilities (determined in step b) to the estimated cost of the Phase IV project (determined in step d).
 - f. Needed dollar ownership of the EWPCF following construction of Phase IV shall be determined by multiplying the revised Unit I liquid and solids and Unit J ownership's (determined in Exhibit A of the Thirty-Ninth Supplement) by the total value of the EWPCF following construction of Phase IV (determined in step e).
 - g. Phase IV cost allocations shall be calculated by subtracting existing dollar ownership's (determined in step c) from needed dollar ownership's following construction of Phase IV (determined in step f). Credits and buy-ins for existing facilities are automatically included in this calculation and need not be calculated separately; however, the dollar values of each are included below for background.

Estimated Phase IV cost allocations in dollars and percent of total are as follows:

Agency	Existing Ownership	Projected Ownership Following Phase IV	Estimated Phase IV Cost	Effective Ownership	Credit/Buyin
Vista	22,739,000	28,938,000	6,199,000	11.44	(5,455,000)
Carlsbad	20,585,000	33,216,000	12,631,000	23.31	(745,000)
Leucadia	13,314,000	27,297,000	13,983,000	25.81	2,916,000
San Marcos	14,099,000	27,105,000	13,006,000	24.01	2,091,000
Buena	4,436,000	11,020,500	6,584,500	12.15	2,023,000
Encinitas	<u>4,694,000</u>	<u>6,470,500</u>	<u>1,776,500</u>	<u>3.28</u>	<u>(830,000)</u>
Total	79,867,000	134,047,000	54,180,000	100.00	0

Final Phase IV cost allocations will be determined following completion of Phase IV construction and will use the actual project costs spread according to the final engineer's estimate instead of the current engineer's estimate in steps d through g above. Actual ENRLA at mid-point of construction will be substituted for the projected value in step b.

EXHIBIT C
LICENSE PAYMENTS & SCHEDULE OF VALUES

(1) Any portion of reserve up to 50% of Total Reserve Capacity:

The license payment shall be 8% of the current replacement value of the facilities, without grants deducted, adjusted each July 1 (commencing in July 2013) by updating the asset allocation spreadsheet to include any additional and changed capital project costs, and to reflect the current ENRLA construction cost index. Unit I and J license payments shall be based on a flow rate of 43.31 MGD. Unit I liquid license payments shall be proportioned based on the percentage of the Flow value of the total replacement value. Unit I solids license payments shall be proportioned based on the percentage of the sum of the BOD and SS replacement values, as compared to the total replacement value.

(1) 2013 - Example calculations:

Unit I - Total replacement value of Unit I (treatment facilities) without grant deducted, July 2013 at ENRLA of 10306.93 = \$327,429,000, Flow value = \$110,345,000, BOD value = \$122,548,000, SS value = \$94,536,000. Utilizing an interest rate of 8% yields a license payment of \$604,810 per MGD (\$327,429,000 times .08 divided by 43.31 MGD).

Split between liquid and solids payments:

Liquid portion = \$604,810 times 110,345,000 / 327,429,000 = \$203,824
Solid portion = \$604,810 times (122,548,000 + 94,536,000) / 327,429,000 = \$400,986

Unit J total replacement value = \$39,928,000.

\$39,928,000 times .08 divided by 43.31 MGD = \$73,753

July 1, 2013 license payments

\$203,824 per MGD of Unit I liquid capacity per year
\$400,986 per MGD of Unit I solids capacity per year
\$73,753 per MGD of Unit J capacity per year

(2) The use of reserve amounts over 50% of Total Reserve Capacity:

License payments shall be increased by 2/3.

(3) July 1, 2013 license payments:

\$339,706 per MGD of Unit I liquid capacity per year
\$668,311 per MGD of Unit I solids capacity per year
\$122,922 per MGD of Unit J capacity per year

Encina Wastewater Authority

Revised Basic Agreement

Exhibit D

Allocation of Phase V Capital Improvements

The cost of Phase V Capital Improvements shall be allocated by unit process and among flow, Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS) in the manner recommended for revenue programs by the State Water Resources Control Board as amended by action of the Encina Wastewater Authority (EWA) member agencies, Joint Advisory Committee and Board of Directors and as follows:

1. The replacement value of the existing Unit I and Unit J facilities at the mid-point of construction shall be determined and, in addition, each member agency's share thereof shall be determined.
 - a. Replacement value shall be calculated for all Unit I and Unit J facilities remaining in service at Phase V project acceptance including: Pre-Phase III; Phase III; Phase IV including interim flow equalization facilities transitioning from Unit J to Unit I; and, Post Phase IV including the Building Program and Joint Use Flow Equalization.
 - b. The replacement value of each facility shall be calculated by multiplying the original cost of that facility by the percentage change in the Engineering News Record Construction Cost Index for Los Angeles (ENRCLA) from the year that facility was placed in service then adding the resulting product to the original cost of the subject facility.
 - c. Mid-Point of Construction shall be the date half-way between the date EWA issues a Notice to Proceed on the largest single Phase V Project construction contract and the date the EWA Board of Directors takes action to accept that contract as completed.
 - d. Each member agency's current ownership percentage (COP) of the replacement values for existing facilities shall be calculated by multiplying total Unit I Flow, Unit I Solids and Unit J Disposal replacement values by each member agency's Unit I Liquid, Unit I Solids or Unit J Disposal percentage capacity rights as stated in Section 9.1 of the RBA.
2. Based upon wastewater flow projections developed and refined by the member agencies, required ownership percentages (ROP) shall be determined and, in addition, each member agency's share of existing facilities at replacement value determined in Step 1 shall be restated to conform to their respective ROP.
 - a. Flow projections shall be provided by the member agencies and shall not be changed to alter the allocation of Phase V costs hereunder after the member agencies have unanimously approved this amendment to the Revised Basic Agreement (RBA).
 - b. ROP shall be calculated by dividing a member agency's wastewater flow projection by the total of all member agencies wastewater flows.
 - c. Each member agency's share of the replacement values for existing facilities shall be calculated by multiplying total Unit I Flow, Unit I Solids and Unit J Disposal replacement values by each member agency's ROP of Unit I Liquid, Unit I Solids or Unit J Disposal.
3. An estimated debit or credit shall be calculated for each member agency to pay for, or receive payment or credit for, investments in existing Unit I and Unit J facilities and thereby reallocate ownership of existing facilities at replacement value among the member agencies in conformance with their respective ROP as determined in Step 2.
 - a. Where any member agency's ROP for Unit I Liquid, Unit I Solids or Unit J Disposal is greater than its COP for Unit I Liquid, Unit I Solids or Unit J Disposal, an estimated debit shall be calculated and assessed to that member agency's account for that unit process.

- b. Where any member agency's ROP for Unit I Liquid, Unit I Solids or Unit J Disposal is less than its COP Unit I Liquid, Unit I Solids or Unit J Disposal, an estimated credit shall be calculated and credited to that member agency's account for that unit process.
 - c. The debit or credit shall be calculated by subtracting each member agency's share of the replacement values for existing facilities (determined in Step 1d) by unit process from that member agency's share of the ROP (determined in Step 2c) by unit process.
 - d. Upon conclusion of this step for each unit process, each member agency's estimated share of all Pre-Phase III, Phase III, Phase IV and Post-Phase IV Unit I and Unit J costs for facilities placed into, and remaining in, service as of the most recent fiscal year end prior to Phase V project acceptance shall be combined with the Phase V Project construction costs estimated in Step 4, to determine each member agency's estimated Phase V Project cash requirements.
4. The total cost of the Phase V facilities at mid-point of construction shall be estimated by the design engineer. As of July 1, 2004 Phase V facilities construction costs are estimated at \$36.1 million. These costs shall be allocated to member agencies on the basis of each member agency's ROP.
 5. Each member agency's share of the total cost of the Phase V Project shall be calculated by adding the member agency's debit or credit as determined in Step 3 with the member agency's share of Phase V costs as determined in Step 4. These amounts as of July 1, 2004 are as follows (amounts in thousands of dollars):

	<u>Estimated Replacement Value of Existing Ownership</u>	<u>Estimated Existing Facilities Debit or (Credit)</u>	<u>Estimated Phase V Facilities Costs</u>	<u>Total Estimated Phase V Cash Required by Member Agency</u>
Vista	\$ 43,309	\$ 7,270	\$ 8,938	\$ 16,209
Carlsbad	\$ 49,724	\$ (1,088)	\$ 8,595	\$ 7,507
Buena	\$ 16,742	\$ (2,521)	\$ 2,513	\$ (8)
Vallecitos	\$ 40,565	\$ 4,789	\$ 8,590	\$ 13,379
Leucadia	\$ 40,998	\$ (7,294)	\$ 5,956	\$ (1,338)
Encinitas	\$ 9,689	\$ (1,156)	\$ 1,508	\$ 352
Total	\$ 201,026	\$ 0	\$ 36,100	\$ 36,100

6. Final Phase V cost allocations shall be determined, and member agency accounts shall be adjusted following completion of Phase V construction and shall use the method described hereinabove except that actual figures shall be used including: existing facilities based on the most recently completed independent financial audit; project costs based on actual amounts paid according to EWA's financial records; and, actual ENRLA at the defined mid-point of construction.