

**EAST COUNTY ADVANCED WATER PURIFICATION
JOINT EXERCISE OF POWERS AGREEMENT**

THIS JOINT POWERS AGREEMENT ("Agreement"), is made and entered into by and between the CITY OF EL CAJON ("El Cajon"), a charter city, PADRE DAM MUNICIPAL WATER DISTRICT ("Padre Dam"), a municipal water district, and the SAN DIEGO COUNTY SANITATION DISTRICT, a county sanitation district ("Sanitation District"). El Cajon, Padre Dam, and Sanitation District are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

RECITALS

- A. Each Party to this Agreement is a public agency authorized and empowered to contract for the joint exercise of powers under Articles 1 through 4, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code of the State of California; and
- B. Each Party to this Agreement has the power to plan for, design, construct, own, lease, operate, maintain, repair, and replace a reclamation facility for the purpose of treating wastewater and producing recycled or advanced purified water for beneficial use; and
- C. The Parties desire to use any power common to them for the purpose of treating wastewater and producing recycled or advanced purified water, or taking such other actions that will make more efficient the conveyance, treatment, and disposal of wastewater and the production of recycled or potable water; and
- D. The Parties desire, by means of this Agreement, to establish a separate organization for the construction, operation, and administration of a reclamation facility for the purpose of treating wastewater and producing recycled or advanced purified water, and for related purposes.

NOW THEREFORE, in consideration of the above Recitals and of the mutual promises and agreements contained herein, the Parties agree as follows:

**ARTICLE 1
GENERAL PROVISIONS**

- 1.1 **Definitions.** Unless the context otherwise requires, the words and terms defined in this Section 1.1 shall, for the purposes of this Agreement, have the meanings herein specified.
 - 1.1.1 **Act** means Articles 1 through 4, Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500) relating to the joint exercise of powers common to public agencies.
 - 1.1.2 **Administrator** means the Member Agency designated by this Agreement or the Board of Directors to manage and administer the Authority. If no Member Agency is designated, or if designated, is unable or unwilling to act as the Administrator, the Board of Directors shall manage and administer the Authority or appoint officers or employees for such purposes.

- 1.1.3 Agreement means this Joint Exercise of Powers Agreement.
- 1.1.4 Annual Budget means the budget adopted pursuant to Section 7.2.2 of this Agreement.
- 1.1.5 Authority means the East County AWP Joint Powers Authority, which is created by this Agreement.
- 1.1.6 Board or Board of Directors means the Board of Directors referred to in ARTICLE 2 of this Agreement, which is the governing body of the Authority.
- 1.1.7 Director means a member of the Board appointed to the Board pursuant to Section 2.2 of this Agreement.
- 1.1.8 Effective Date means the last date on which all Parties to this Agreement have executed the Agreement.
- 1.1.9 Fiscal Year means the period commencing on July 1 of each year and ending on and includes the following June 30.
- 1.1.10 Helix means Helix Water District, which is the anticipated purchaser of Product Water produced by the Project.
- 1.1.11 Member Agency(ies) means El Cajon, Padre Dam, Sanitation District, and any other entity added to this Agreement by a subsequent amendment.
- 1.1.12 Member of the Board or Board Member means a Director.
- 1.1.13 Operator means the entity designated by the Board of Directors to provide operation, maintenance, and similar services to the Authority.
- 1.1.14 Party(ies) means those entities who have executed this Agreement or any Amendment to this Agreement and who have not withdrawn from the Authority.
- 1.1.15 Product Water means water produced by the Project that meets all State and federal requirements for surface water augmentation and any supplemental water quality requirements agreed to by the Authority as necessary and appropriate for delivery to a drinking water reservoir.
- 1.1.16 Project means any devices, equipment, plants and systems used in the conveyance, storage, treatment, recycling, reclamation, and advanced purification of wastewater, including all treatment facilities, sub-regional facilities, drying beds, percolation ponds, utility installations, power co-generation facilities, and related appurtenances, extensions, improvements, remodeling, additions and alterations thereof; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment. The Project includes the following primary components:

- (a) The Advanced Water Purification Plant, which includes those facilities required to treat recycled water to indirect potable reuse standards for surface water augmentation, and includes facilities providing pre-osmosis treatment, reverse osmosis, and concentrate disposal. This term does not include those facilities that have been identified as Wastewater Treatment Plants and/or facilities required to generate Title 22 compliant irrigation water.
- (b) Product Water Conveyance System means the conveyance system that will be adequate to transport and deliver Product Water to the Product Water delivery point as specified by separate agreement, and includes, but is not limited to, the conveyance outlet structure and related facilities.
- (c) Regional Collection System means intercepting sewers, outfall sewers, and wastewater collection and conveyance systems owned and operated by the Authority (not including the Member Agencies' sewer systems) for the purpose of collecting and delivering wastewater from the Member Agencies' sewer systems to the Project and associated pumping stations and other equipment and their appurtenances, extensions, improvements, remodeling, additions, and alterations thereof.
- (d) Wastewater Treatment Plant(s) means new or existing primary, biological secondary, and tertiary wastewater treatment facilities.

The Project, as defined in this Agreement, shall not include Lake Jennings or Santee Lakes, although both shall be used in relation to the Project. Specifically, Lake Jennings is and shall remain owned and operated by Helix, and shall be the location to which Product Water is delivered to Helix pursuant to the terms and conditions of a separate Product Water purchase agreement. Further, Santee Lakes shall remain owned and operated by Padre Dam, and shall be used in conjunction with the treatment of recycled and advanced purified water, including brine minimization, to maintain a steady level of Product Water production and reduce the Authority's brine disposal costs and for emergency failsafe storage. In recognition of these operational benefits to the Project, Padre Dam shall receive without charge an annual average of 1,000 acre feet of water (or such other amount as may be agreed in writing by Padre Dam and the Authority) delivered to Santee Lakes from the Project, a significant portion of which will be recirculated to the Project.

1.1.17 Title 22 Water means water produced by the Project that meets all State requirements for a direct beneficial use or a controlled use that is compliant with Title 22, Division 4 of the California Code of Regulations, as may be amended from time to time.

1.2 Purpose. This Agreement is made pursuant to the Act by El Cajon, Padre Dam, and Sanitation District, each of which is authorized to contract with the other. The purposes of this Agreement are to: (1) create the East County AWP Joint Powers Authority; (2) provide for the administration of the Authority; (3) plan for, design, construct, own, lease, operate, maintain, repair, and replace the Project; (4) receive, convey, treat, and dispose of wastewater; (5) produce and deliver Product Water and Title 22 Water; and (6) perform services or assume obligations of the Member Agencies

and non-Member Agencies specifically related to the Project and approved by the Board of Directors.

1.3 Creation of Authority. Pursuant to the Act, there is hereby created a public entity known as the "East County AWP Joint Powers Authority." The Authority shall be a public entity separate and apart from the Member Agencies and shall administer this Agreement.

1.4 Term. The term of this Agreement shall commence on the Effective Date and shall continue until terminated by the Parties as provided in ARTICLE 8 of this Agreement.

1.5 Powers of Authority

1.5.1 General Powers. The Authority shall exercise, in the manner herein provided, the powers common to the Member Agencies, powers otherwise permitted under the Act, and powers necessary to accomplish the purposes of this Agreement, subject however to such restrictions as are applicable to El Cajon, a charter city organized and operating under Article XI of the California Constitution.

1.5.2 Specific Powers. Subject to the limitations set out in Section 1.5.1, the Authority is hereby authorized, in its own name, to do all acts necessary, convenient and appropriate for the exercise of the foregoing powers for the purposes set forth in this Agreement and to do any or all of the following:

- (a) To make and enter contracts;
- (b) To employ agents and employees;
- (c) To lease, acquire, construct, manage, maintain or operate any building, works or improvements;
- (d) To acquire, hold or dispose of property;
- (e) To own, operate, maintain, administer, and manage the Project, including any buildings, works or improvements located inside or outside the boundaries of the Member Agencies;
- (f) To receive, convey, treat, and dispose of wastewater discharged by all or certain Member Agencies and receive payment for such services;
- (g) To produce and deliver Product Water and Title 22 Water and receive payment for such services;
- (h) To incur debts, liabilities or obligations, which, except as otherwise provided in Section 9.2, do not constitute a debt, liability or obligation of any Member Agency;

- (i) To receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations, and governmental entities, provided that the Authority consents to such gifts, contributions and donations;
- (j) To prescribe the duties, compensation and other terms and conditions of employment of other agents, officers and employees;
- (k) To adopt reasonable rules and regulations for the conduct of the day-to-day operations of the Authority;
- (l) To apply for, accept, receive and disburse grants, donations, and loans from local, State, or federal agencies or from individuals or businesses.
- (m) To sue and be sued in its own name;
- (n) To invest money in its treasury, pursuant to Government Code Section 6505.5 *et seq.*, that is not required for the immediate necessities of the Authority, as the Authority determines advisable, in the same manner and on the same conditions as local agencies, pursuant to Section 53601 of the Government Code;
- (o) To assume the rights and obligations of any Member Agency related to the purpose of this Agreement, and incurred specifically for the development or implementation of the Project;
- (p) To adopt and enforce industrial pretreatment regulations. The regulations may include, but not necessarily be limited to, 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 Regional Collection System, and shall allow the Authority to take enforcement action against dischargers that violate the regulation;
- (q) To implement all requirements of the industrial pretreatment regulations and all aspects of the Authority's service area pretreatment program, including permitting, inspection, monitoring, reporting, and enforcement activities, provided that industrial pretreatment permits may be jointly or individually issued by the Authority, the Member Agency in whose jurisdiction the discharge is located, or other public agencies authorized to do so by contract with the Authority or Member Agency;
- (r) To charge and bill industrial dischargers for their respective share of the Authority's cost to implement industrial pretreatment regulations, including application review, permit issuance, sampling, monitoring, inspection, and enforcement costs;
- (s) To carry out and enforce all provisions of this Agreement; and

- (t) To exercise any and all powers which are provided for in the Act and in Government Code Section 6584 *et seq.*, including, without limitation Government Code Section 6588, as they exist on the Effective Date of this Agreement or may hereafter be amended.

ARTICLE 2 BOARD OF DIRECTORS

- 2.1 **Creation.** The Authority shall be governed by a board of three (3) members, which is hereby established and which shall be composed of one (1) representative from each Member Agency. The governing board shall be known as the "Board of Directors of the East County AWP Joint Powers Authority." All voting power shall reside in the Board.
- 2.2 **Members of the Board of Directors.**
 - 2.2.1 **Directors Appointed.** Upon the Effective Date of this Agreement, each Member Agency which has not already done so shall designate and appoint, by a formal action of its governing body; one (1) member of its governing body to act as its representative on the Board of Directors; and one (1) other governing body member or Member Agency employee to act as an alternate to each Director so appointed. The alternate appointed by each Member Agency shall have the authority to attend, participate in and vote at any meeting of the Board when the regular member is absent.
 - 2.2.2 **Membership.** Each Director and alternate shall serve for a term of four (4) years from the date of his or her appointment or until a successor is appointed. Notwithstanding, each Director and alternate serves at the pleasure of the appointing Member Agency's governing body and may be removed at any time, with or without cause, at the sole discretion of the appointing Member Agency's governing body. If a Director or alternate's membership on the appointing Member Agency's governing body ceases, his or her membership on the Board shall also cease. If an alternate is an employee of a Member Agency, and the alternate's employment by the Member Agency ceases, his or her position as an alternate shall also cease.
 - 2.2.3 **Board Compensation.** The Board shall serve without compensation from the Authority. Compensation may be provided as approved by the Member Agencies appointing each Director and alternate, and any such compensation will be the responsibility of the Member Agency.
- 2.3 **Powers of the Board.** All the power and authority of the Authority shall be exercised by the Board of Directors, which may delegate such power in its discretion. Notwithstanding the above, the Board shall not delegate its legislative powers.
- 2.4 **Provision for Bylaws.** The Board may cause to be developed and may adopt, from time to time, such bylaws for the Authority to govern its day-to-day operations. Each Member Agency shall receive a copy of any bylaws developed and adopted under this Section.

- 2.5** **Ex Officio Members.** The Board may adopt bylaws authorizing ex officio members or alternates to participate in meetings of the Board of Directors. Any ex officio member or alternate shall be a member of the governing body of a public agency with an existing or anticipated contractual relationship to the Project, which may include, but not be limited to, a public agency purchasing Product Water produced by the Project. Any ex officio member or alternate shall not be entitled to vote, shall not be counted toward a quorum of the Board, and shall serve without compensation from the Authority.

ARTICLE 3 MEETINGS OF THE BOARD

- 3.1** **Meetings.** The Board shall provide for its regular meetings by resolution; provided, however, that at least one regular meeting shall be held each fiscal quarter. The date, hour and place of the regular meetings shall be fixed by Resolution of the Board and filed with the governing body of each of the Member Agencies. The Board may meet in joint session with other public agencies and advisory bodies in accordance with State law.
- 3.2** **Ralph M. Brown Act.** All meetings of the Board, including without limitation, 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 Government Code.
- 3.3** **Voting.** Each Board Member shall have one vote. Except as otherwise provided by law or by this Agreement, all actions of the Board shall be approved on the affirmative vote of a majority of the Members of the Board.
- 3.4** **Quorum.** A majority of the Members of the Board shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time.
- 3.5** **Board Action.** The Board may act by ordinance, resolution, or motion. Unless otherwise provided in the bylaws, ordinances shall not be required to be introduced and adopted at separate meetings of the Board. The enacting clause of all ordinances shall be, "The Board of Directors of the East County AWP Joint Powers Authority does ordain as follows."
- 3.6** **Minutes.** The Secretary of the Authority shall cause minutes of regular, adjourned regular, and special meetings to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Member of the Board and to each Member Agency.
- 3.7** **Rules.** The Board may adopt from time to time such rules and regulations for the conduct of its affairs as may be required.

ARTICLE 4 OFFICERS AND EMPLOYEES OF THE AUTHORITY

- 4.1** **Chair.** The Board of Directors shall elect one of its members as Chair of the Board. The term of office for the Chair of the Board shall be one year. The Parties intend for the Chair of the Board

to be from a different Member Agency each year, but such rotation shall not be mandatory. The Chair of the Board shall preside at all meetings and shall perform such other duties as are specified by the Board of Directors.

- 4.2 Vice-Chair.** The Board of Directors shall elect one of its members as Vice-Chair. The term of office for the Vice-Chair shall be one year. The Parties intend for the Vice-Chair to be from a different Member Agency each year, but such rotation shall not be mandatory. The Vice-Chair shall perform all the duties of the Chair of the Board in the absence of the Chair of the Board or in the event the Chair of the Board is unable to perform such duties and shall perform such other duties as are specified by the Board of Directors.
- 4.3 Secretary.** The Authority's Secretary shall be the Administrator's secretary or board clerk, or his or her designee, unless the Board elects to appoint as the Secretary another individual of its own choosing. If the Board does not elect to appoint another individual of its own choosing as the Secretary, the Secretary shall serve at the pleasure of the Administrator and may be removed at any time, with or without cause, in the sole discretion of the Administrator's governing board or management-level employee. The Secretary shall be responsible for the minutes and other records of the proceedings of the Board of Directors and shall perform such other duties as specified by the Administrator pursuant to a written agreement between the Authority and the Administrator. If the Board elects to appoint another individual of its own choosing, the Secretary shall perform such other duties as the Board of Directors specifies.
- 4.4 Treasurer and Auditor Controller.** Pursuant to Government Code Sections 6505.5 and 6505.6, the Authority's Treasurer and Auditor/Controller shall be the Administrator's senior financial officer (such as its chief financial officer, director of finance, or finance manager as designated by the Administrator) unless the Board elects to appoint as the Treasurer and Auditor/Controller another individual of its own choosing. The Treasurer shall be the depository and have custody of all money of the Authority, from whatever source, and shall have all of the duties and obligations set forth in Sections 6505 and 6505.5 of the Government Code. The offices of Treasurer and Auditor/Controller may be held by separate individuals, or combined and held by one individual as the Board may elect. If the Board does not elect to appoint another individual of its own choosing as the Treasurer and Auditor/Controller, the Treasurer and Auditor/Controller shall serve at the pleasure of the Administrator and may be removed at any time, with or without cause, in the sole discretion of the Administrator's governing board or management-level employee.
- 4.5 Authority Attorney.**
- 4.5.1 Appointment.** The Attorney for the Authority shall be appointed by the Board of Directors, provided that an individual, office, or firm providing general counsel or city attorney services to one of the Member Agencies shall not serve as the Authority Attorney. Such individuals, offices, or firms may, however, provide special counsel services to the Authority. Notwithstanding the above, the general counsel to one of the Member Agencies will provide interim general counsel services until the Board appoints an Authority Attorney.

4.5.2 Duties. The Attorney for the Authority or a designated deputy shall attend all meetings of the Board of Directors; provided, however, that the absence of the Authority Attorney shall not affect the validity of any meeting. The Attorney shall perform such other duties the Board of Directors specifies, including, but not limited to, obtaining specialized legal services.

4.6 Administrator.

4.6.1 Generally. The Board shall appoint an Administrator for the purposes of managing and administering the Authority. A Member Agency may be appointed as the Authority's Administrator. Except as provided in Section 4.6.2 below, the Board shall appoint the Administrator pursuant to a separate written agreement. The Administrator may also be appointed as the Operator.

4.6.2 Interim Administrator.

(a) Until the Board appoints a long-term Administrator pursuant to a separate written agreement, Padre Dam shall serve as the Authority's Interim Administrator. In no event shall the term of the Interim Administrator extend beyond March 31, 2021 without approval of the Board. Any extension shall last for not more than one (1) year. As Interim Administrator, Padre Dam shall perform all services reasonably necessary for the management and administration of the Authority including, but not limited to:

- (i) continuing the financing, planning, design, permitting, and procurement activities necessary to construct and operate the Project, which prior to this Agreement were being performed by the Parties themselves;
- (ii) coordinating and preparing for Board meetings;
- (iii) identifying key Padre Dam staff that will provide services to the Board and the Authority on behalf of Padre Dam as the Administrator, including staff who shall serve as Secretary and Treasurer, in accordance with the directions given by Padre Dam's governing board or by a management employee under the exclusive control of Padre Dam;
- (iv) being responsible for the appointment, employment, management, and/or termination of any personnel, contractors, or consultants providing services to the Authority including, but not limited to, contractors and consultants necessary for the financing, planning, design, permitting and procurement of the Project;

- (v) performing administrative tasks related to the Board's selection and appointment of the Authority Attorney;
 - (vi) implementing the policies, decisions, and directions of the Board, as provided to Padre Dam at the agency level to the person identified under subsection (d) below;
 - (vii) coordinating and conferring with the Parties' technical staff; and
 - (viii) operating and maintaining the property of the Authority, including, but not limited to, operational tasks related to commissioning and testing of the Project.
- (b) In order to compensate Padre Dam for the performance of services as Interim Administrator, the Authority shall pay Padre Dam a quarterly service fee upon receipt of a quarterly invoice from Padre Dam. The amount of the quarterly service fee shall be set forth in a writing approved by the Board and Padre Dam's General Manager following the Effective Date of this Agreement, and may be revised as necessary in a writing signed by the Authority and Padre Dam's General Manager based on Padre Dam's projections of the cost to perform its services as Interim Administrator. For expenses incurred by Padre Dam for contractors, consultants, and other outside services, materials, and supplies, Padre Dam shall draw upon and expend its own funds and the Authority shall reimburse Padre Dam from Authority funds upon receipt of a quarterly invoice from Padre Dam. The Authority shall pay each invoice within thirty (30) days of its receipt. In addition, after the adoption of a budget by the Authority's Board, future service fees and reimbursable expenditures by Padre Dam shall be subject to the adopted budget, unless such service fees and reimbursable expenditures have been previously approved by the Authority's Board or relate to the period of time prior to adoption of the budget.
- (c) Padre Dam shall identify key Padre Dam staff that shall provide services required of the Interim Administrator. Key staff identified by Padre Dam shall be qualified to perform services required of the Interim Administrator. Such key staff shall at all times remain under the exclusive direction and control of Padre Dam. Subject to payment of quarterly service fees by the Authority as provided in subsection (b) above, Padre Dam shall be responsible for all compensation, supervision, and administrative costs relating to Padre Dam staff.
- (d) A representative of Padre Dam, which shall be an employee of Padre Dam that is not assigned to deliver services required of Padre Dam as Interim Administrator, shall serve as the main point of contact for the Authority. Any concerns regarding Padre Dam's performance as Interim Administrator, including staff identified to perform services required of the Interim Administrator, shall be relayed to the designated point of contact.

- (e) The Authority shall not have the ability to direct how services are to be performed, specify the location where services are to be performed, or establish hours or days for the performance of services provided by Padre Dam staff. The Authority shall not have any right to discharge or discipline any member of Padre Dam's staff.
 - (f) Padre Dam is retained as an independent contractor and is not an employee of Authority. No employee or agent of Padre Dam shall become an employee of the Authority. Padre Dam employees or agents assigned to provide services under this Agreement shall remain under the exclusive control of Padre Dam.
 - (g) The Authority shall defend, indemnify, and hold harmless Padre Dam and its officials, officers, employees, contractors, agents, and authorized volunteers from any and all claims, demands, damages, liabilities, fines, expenses, and related costs and fees, including attorney's fees, arising from or related to Padre Dam's performance of services as the Interim Administrator.
- 4.7 **Official Bond.** Pursuant to Government Code section 6505.1, the public officer, officers or persons who have charge of, handle or have access to any property of the Authority shall file an official bond in an amount to be fixed by the Board of Directors of the Authority.
- 4.8 **Additional Officers and Employees.** The Board shall have the power to appoint such additional officers and to employ such employees, assistants, contractors, consultants and others as may be appropriate. Such power shall include, but not be limited to, the power to appoint an Operator for the purposes of providing operations, maintenance, and similar services to the Authority. A Member Agency may be appointed as the Authority's Operator pursuant to a written agreement with the Authority.

ARTICLE 5 COMMITTEES

- 5.1 **Committees.** The Board of Directors, by a majority vote, may form committees for any purpose. Such vote shall designate the method for appointing committee members, the scope of the duties and responsibility of the committee, whether the committee is a standing or ad hoc committee, and such other matters as the Board may deem appropriate.

ARTICLE 6 PROJECT COORDINATION

- 6.1 **Coordination With the Parties.** The Parties may convene members of their respective staffs to review issues associated with the Project and the other purposes of this Agreement from time to time. If authorized by a written agreement between the Authority and a public agency which is not a Member Agency, or authorized by the Board, a non-Member Agency may designate a representative to review such issues with staff of the Member Agencies as appropriate.

**ARTICLE 7
FINANCES**

7.1 Fiscal Year. The Fiscal Year of the Authority shall be as defined in Section 1.1 of this Agreement.

7.2 Annual Budget.

7.2.1 Interim Budget. The Board shall, within one hundred and twenty (120) days of the Effective Date of this Agreement, approve an interim budget, which shall constitute the operating budget until the Annual Budget is adopted.

7.2.2 Annual Budget. Annually, prior to July 1 of each year, the Board shall adopt a budget for all expenditures to be made by the Authority during the ensuing Fiscal Year. Each annual budget shall be adopted and shall be effective on the affirmative vote of a majority of the Directors.

7.2.3 Failure to Obtain Budget Approval.

(a) In the event the Board does not adopt a budget prior to start of a Fiscal Year, the budgeted amounts of all expenses shall, except as required for debt payments or provided in multi-year agreements and other similar continuing legal obligations, remain the same as the amounts last approved by the Board in its most recently adopted budget; provided, however, that the amounts shall be increased by the Consumer Price Index ("CPI"). The CPI shall mean the Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers in the San Diego area (San Diego CPI-U) for the twelve (12) month period ending the February prior to the beginning of the Fiscal Year. This factor shall be applied to the budget until such time as a new budget is adopted by the Board.

(b) Any shortfall in available funds and other non-reserve funds shall be made up from available reserves dedicated by the Board for such purpose and, if insufficient to cover the shortfall, any available reserve funds which have not been designated by the Board for a particular purpose or otherwise legally restricted for other purposes. Reserves shall mean any available cash or investments. In the event that a shortfall in available funds exceeds available unrestricted reserves of the Authority, such resulting unfunded shortfall shall be carried forward into the subsequent Fiscal Year. Member Agencies shall have no obligation to cure such unfunded shortfall other than as may be provided in a separate agreement, including, but not limited to, the interim funding agreement described in Section 7.3.2 below.

7.3 Funds, Accounts and Reports. There shall be strict accountability of all funds and reporting of all receipts and disbursements.

7.3.1 Sources of Funds. The sources of funds available to the Authority may include, but are not limited to, the following:

- (a) Grants, donations, and loans received by the Authority from local, State, or federal agencies or from individuals or businesses.
- (b) Funds collected as user charges or user fees by Member Agencies.
- (c) Funds collected from Member Agencies and non-Member Agencies pursuant to the terms of a separate agreement, including, but not limited to, the interim funding agreement described in Section 7.3.2 below.
- (d) Funds collected as connection fees by Member Agencies.
- (e) Funds received from State and federal disaster relief agencies.
- (f) Funds obtained by issuing bonds, notes, warrants and other evidences of indebtedness.
- (g) "In kind" contributions from Member Agencies.
- (h) Funds from any other source derived.

The Authority shall arrange for the receipt of such funds from the above sources as are available to the Authority and as are necessary for the conduct of the Authority's activities. Member Agencies may, in the appropriate circumstances: (a) make contributions from their treasuries for the purposes set forth in this Agreement; (b) make payments of public funds to defray the cost of such purposes; and (c) make advances of public funds for such purposes. The provisions of Government Code Section 6513 are incorporated into this Agreement.

7.3.2 Parties' Interim and Long-Term Funding Plans.

- (a) The Parties intend for certain initial Authority activities to be funded through a separate interim funding agreement signed by the Member Agencies and Helix.
- (b) The Parties intend for the Authority to fund initial Authority costs through the interim funding agreement and other agreements and revenue sources available to the Authority for such purposes. Notwithstanding, in the event the Board determines that certain costs cannot be funded through such revenue sources, each Party agrees that it will contribute to a fund or budget approved by the Board. Each Party will provide contributions approved by the Board within sixty (60) days of receipt of an invoice from the Authority. Contributions made pursuant to this subsection, if any, shall be in equal, one-third shares from each Member Agency. This subsection shall remain in effect until the Member Agencies execute a separate agreement for wastewater services with the Authority.

- (c) The Parties intend that all Authority activities will ultimately be funded through various service agreements under which the Member Agencies and non-Member Agencies will pay for services provided by the Authority or commodities produced by the Project; the Parties intend that such separate service agreements will, when taken together, be sufficient to fund all activities of the Authority, including, but not limited to, all administrative, capital expense, and operation and maintenance costs of the Authority and the Project.
- 7.3.3 Accounts.** Revenues or funds received or made available to the Authority from any source whatsoever, shall be deposited into accounts that may be established by the Authority, and may be expended by the Authority in any legal manner, subject to such reservations as may be imposed by the Authority from time to time.
- 7.3.4 Reports.** The Treasurer shall, within one hundred and eighty (180) days after the close of each Fiscal Year, give a complete written report of all financial activities for such Fiscal Year to the Board of Directors and to each Member Agency. The Authority's books and records shall be open to inspection at all reasonable times by representatives of each Member Agency. The Treasurer shall prepare and provide such additional reports, including audited financial statements and ongoing disclosure reports, as are required by separate agreements entered into by the Authority.
- 7.4 Payments and Advances.** No expenditures in excess of those budgeted shall be made unless otherwise approved by the Authority's Board.
- 7.5 Audit.** In accordance with Sections 6505 through 6505.6 of the Government Code, the Treasurer shall cause an annual audit of the accounts and records of the Authority to be made and reported. The audit shall be conducted by an independent certified public accountant or public accountant. The audit shall conform to generally accepted auditing standards. Such report shall be filed within twelve (12) months of the end of the Fiscal Year under examination.
- 7.6 Procurement Methods.** The Board may adopt such policies relating to procurement of services, equipment, supplies and other materials needed to accomplish the purposes of this Agreement.
- 7.7 Development Period Costs.** The Authority shall, to the extent allowed by law or outside funding sources, reimburse or credit each Member Agency for its individual contributions toward technical, engineering, environmental, financial, permitted, and other pre-procurement activities associated with the Project dating from March 5, 2014, through the execution of a design or design-build contract relating to the Project by the Authority. The reimbursement or credit shall be paid from proceeds on bond sales by the Authority.

ARTICLE 8 TERMINATION / AMENDMENT

- 8.1 Duration and Termination.** This Agreement shall become effective as of the Effective Date and shall continue in full force and effect until terminated by the mutual written consent of all Member Agencies. If at any time there are only two (2) Parties to this Agreement and one (1)

- Party intends to withdraw, the other Party's written consent to terminate this Agreement shall not be unreasonably conditioned or delayed. Notwithstanding the prior provisions of this Section 8.1, this Agreement and the Authority shall continue to exist for the purpose of disposing of all claims, distribution of assets, and all other functions necessary to conclude the affairs of the Authority.
- 8.2 Amendment.** This Agreement may be amended at any time by the written consent of the governing body of each Party hereto.
- 8.3 Withdrawal.** Notwithstanding any other provision of this Agreement, any Member Agency may withdraw from the Authority by providing the Authority with written notice of its intent to withdraw within the first seven (7) days of each Fiscal Year. Such notice shall not become effective until the last day of Fiscal Year in which notice was given. A withdrawal from the Authority constitutes a withdrawal of that Member Agency's representatives from the Board of Directors. If at any time there are only two (2) Parties to this Agreement, any desired withdrawal shall be subject to the termination provisions of this Agreement.
- 8.4 Effect of Withdrawal.** The withdrawal of a Member Agency shall not terminate its responsibility to contribute its share of any obligation incurred by the Authority or to perform any other obligation arising from a separate agreement or other legally binding obligation, including amounts determined by the Board for (1) liabilities and claims accrued during the time the agency was a Member Agency (including any future obligations arising from retirement benefits for past and existing employees of the Authority, if any) or (2) budgeted expenses for the Fiscal Year in which notice of intent to withdraw is given. Except as the withdrawing Member Agency may agree, in writing, with the Board, the withdrawing Member Agency shall automatically relinquish all rights as a Member Agency under this Agreement, on the effective date of the withdrawal.
- 8.5 Purchase Option.** Upon termination of this Agreement, but prior to disbursement of any assets of the Authority, Padre Dam shall have the option, exercisable in its discretion, to purchase the Project, in whole or in part, for fair market value at the time of the exercise of the option. Padre Dam shall provide written notice of its intent to exercise its option, and the details thereof, within forty five (45) days of termination of this Agreement. As soon as practicable after receipt of Padre Dam's notice, the Authority shall notify Padre Dam of the Authority's reasonable determination of the amount of the purchase price for the desired Project assets, and include the details and calculations for each component thereof. Upon mutual agreement on a purchase price determined under this section and payment thereof, the Authority will sell, assign, transfer, convey and deliver to Padre Dam all of its right, title, and interest in the purchased assets.
- 8.6 Disbursement.** Upon termination of this Agreement and after payment of all liabilities, costs, expenses and charges validly incurred under this Agreement, and resolution of any purchase option exercised by Padre Dam, all remaining assets of the Authority shall be disbursed among Member Agencies, including any Member Agencies which previously withdrew from the Authority. All assets shall be divided among the Member Agencies in accordance with and proportionate to their cash contributions (including payments for services received and property at market value when received) made during the term of this Agreement, if it is feasible to do so.

However, the Board may, in its discretion and by a unanimous vote of the then-current Directors of the Board of Directors, distribute assets without regard to a Member Agency's contribution.

ARTICLE 9 SPECIAL PROVISIONS

- 9.1 Insurance.** The Authority shall maintain types and levels of insurance coverage for the Authority as the Board of Directors determines to be reasonably adequate.
- 9.2 Liability of Authority, Board, Officers, Employees.** Pursuant to Government Code Section 6508.1, the debts, liabilities, and obligations of the Authority, with the exception of retirement liabilities of the Authority, shall not be the debts, liabilities and obligations of any of the Member Agencies or any of their respective members, officers, directors, employees or agents. The Authority, its Directors, officers, employees, staff and agents shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No Member Agency, its officer, director or employee shall be responsible for any action taken or omitted by any other Member Agency, or its officers, or employees.
- 9.3 Retirement System.** The Authority shall not enter into a contract with the California Public Employees' Retirement System without the written consent of each Member Agency, which shall not be unreasonably withheld, conditioned, or delayed.
- 9.4 Indemnity.** The Authority shall indemnify, defend and hold harmless the Board of Directors, the individual Member Agencies, and their members, officers, directors, employees and agents from and against any and all liability, loss, damages, expenses, costs (including, without limitations, costs and fees of litigation or arbitration) of every nature, arising out of any act or omission related to this Agreement, except such loss or damage which was caused by the willful misconduct of the Board of Directors, any individual Member Agency, or their members, officers, directors, employees and agents. The Authority's duty to indemnify each Member Agency pursuant to this Agreement shall survive that Member Agency's withdrawal from the Agency.
- 9.5 Conflict of Interest Code.** The Authority shall, by resolution, adopt a conflict of interest code as required by law.

ARTICLE 10 MISCELLANEOUS PROVISIONS

- 10.1 Severability.** If any section, clause or phrase of this Agreement or the application thereof to any Party or any other person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, it shall be deemed severable, and the remainder of the Agreement or the application of such provisions to any other Party or to other persons or circumstances shall not be affected thereby. Each Party hereby declares that it would have entered into this Agreement, and each subsection, sentence, clause and phrase thereof, irrespective that one or more sections, subsections sentences, clauses or phrases or the application thereof might be held invalid.

10.2 Notices. Notices required or permitted hereunder shall be sufficiently given if made in writing and delivered either personally or by registered or certified mail, postage prepaid to the respective Parties, as follows:

EL CAJON:

City of El Cajon
200 Civic Center Way
El Cajon, CA 92020
Attn: City Manager

With copy to:

City of El Cajon
200 Civic Center Way
El Cajon, CA 92020
Attn: City Attorney

PADRE DAM:

Padre Dam Municipal Water District
P.O. Box 719003
Santee, CA 92072
Attn: General Manager

With copy to:

Best Best & Krieger LLP
655 W. Broadway, Floor 15
San Diego, CA 92101
Attn: Padre Dam General Counsel

SANITATION DISTRICT:

San Diego County Sanitation District
5500 Overland Avenue, Suite 315
San Diego, CA 92123
Attn: Program Manager

With copy to:

Office of County Counsel
1600 Pacific Highway #355
San Diego, CA 92101
Attn: Sanitation District General Counsel

The Parties may from time to time change the address to which notice may be provided by providing notice of the change to the other Parties.

10.3 Consent. Whenever in this Agreement or in any amendment thereto consent or approval is required, the same shall not be unreasonably withheld.

10.4 Other Agreements Not Prohibited. Other agreements by and between the Parties of this Agreement or any other entity are neither prohibited nor modified in any manner by execution of this Agreement.

10.5 Section Headings. The section headings herein are for convenience of the Parties only, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions or language of this Agreement.

10.6 Laws of California. This Agreement is made in the State of California, under the Constitution and laws of such State, and shall be construed and enforced in accordance with the laws of such State.

10.7 Construction of Language. It is the intention of the Parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

- 10.8 Cooperation.** The Parties recognize the necessity and hereby agree to cooperate with each other in carrying out the purposes of this Agreement.
- 10.9 Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties hereto.
- 10.10 Enforcement.** The Authority is hereby authorized to take any and all legal or equitable actions, including but not limited to an injunction and specific performance, necessary or permitted by law to enforce this Agreement.
- 10.11 Integration.** This Agreement constitutes the full and complete Agreement of the Parties.
- 10.12 Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

SIGNATURES ON FOLLOWING PAGE(S)


IN WITNESS WHEREOF, the Parties have caused this Joint Exercise of Powers Agreement to be executed and attested by their proper officers thereunto duly authorized on the day and year set forth below, making the same effective on the date signed by the last of all Parties hereto.

CITY OF EL CAJON

By: 
Graham Mitchell, City Manager

Date: 10-16-19

Approved as to Form:

By: 
Morgan L. Foley, City Attorney

PADRE DAM MUNICIPAL WATER DISTRICT

By: 
Allen Carlisle, General Manager

Date: 10-16-19

Approved as to Form:

By: 
Paula de Sousa Mills, General Counsel


SAN DIEGO COUNTY SANITATION DISTRICT


By: 
Clerk, Board of Supervisors

Date: 11/1/19

Approved as to Form and Legality:

By: 
Thomas L. Bosworth, Sr. Deputy

Approved and/or authorized by the
Board of Supervisors of the County of San Diego.
Meeting Date: 10/30/19 Minute Order No. SA2
By:  Date: 11/1/19
Deputy Clerk of the Board Supervisors

Approved by the Padre Dam MWD
Board of Directors
Meeting Date: 10/16/19
Attest: 
Board Secretary

Approved by the Padie Dam MWD
Board of Directors
 Meeting Date: 10/11/14
 Attest: [Signature]
Board Secretary

Deputy Clerk of the Board
 Meeting Date: _____
 Board of Supervisors