

AGENDA

Board of Directors' Meeting
September 15, 2011
5:30 p.m.

A copy of the agenda and attachments is available for review at the District office. The Board of Directors' Meeting Room is wheelchair accessible. If you require any special disability related accommodations (i.e., access to an amplified sound system, etc.), please contact the Moulton Niguel Water District Secretary's office at (949) 643-2006 at least seventy-two (72) hours prior to the scheduled meeting. This agenda can be obtained in alternate format upon written request to the Moulton Niguel Water District Secretary at least seventy-two (72) hours prior to the scheduled meeting. The next Regular Board Meeting will be held at 5:30 p.m. on October 20, 2011 at the Moulton Niguel Water District.

**BOARD OF DIRECTORS' MEETING
MOULTON NIGUEL WATER DISTRICT
27500 La Paz Road, Laguna Niguel
September 15, 2011
5:30 p.m.
Approximate Meeting Time: 1-2 Hours**

Agenda exhibits and other writings that are disclosable public records distributed to all, or a majority of, the members of the Moulton Niguel Water District Board of Directors in connection with a matter subject to discussion or consideration at an open meeting of the Board of Directors are available for public inspection at the District Office, 27500 La Paz Road, Laguna Niguel, CA ("District Office"). If such writings are distributed to members of the Board less than 72 hours prior to the meeting, they will be available in the reception area of the District Office at the same time as they are distributed, except that, if such writings are distributed immediately prior to, or during, the meeting, they will be available in the Board meeting room.

THIS BOARD MEETING WILL INCLUDE TELECONFERENCING AT THE
FOLLOWING LOCATION:
12025 CEDAR SHORE ROAD, ELLISON BAY, WISCONSIN

AGENDA

1. CALL MEETING TO ORDER

2. PLEDGE OF ALLEGIANCE

3. MINUTE APPROVAL: (ROLL CALL VOTE)

- REGULAR BOARD OF DIRECTORS' MEETING OF AUGUST 18, 2011
- SPECIAL MEETING OF BOARD OF DIRECTORS' OF AUGUST 19, 2011

4. PUBLIC COMMENTS

Persons wishing to address the Board of Directors on matters not listed on the Agenda may do so at this time. "Request To Be Heard" forms are available at the entrance to the Board Room. Comments are limited to five minutes unless further time is granted by the Presiding Officer. Submit form to the Recording Secretary prior to the beginning of the meeting.

Those wishing to address the Board of Directors on any item listed on the Agenda should submit a "Request To Be Heard" form to the Recording Secretary before the Presiding Officer announces that agenda item. Your name will be called to speak at that time.

5. PRESIDENT'S REPORT

6. BOARD REPORTS

GENERAL MANAGER'S REPORT:

7. SOUTH ORANGE COUNTY WASTEWATER AUTHORITY (SOCWA) UPDATE
8. UPDATE ON CHIQUITA WATER RECLAMATION PLANT BIOSOLIDS PROJECT
9. UPDATE ON WBBRS IMPLEMENTATION
10. DISCUSSION OF THE NINE SOUTH COUNTY AGENCIES' MEETING ON AUGUST 24, 2011
11. ADMINISTRATIVE MATTERS/GENERAL DISTRICT BUSINESS (UPDATE AS NECESSARY)
12. HR 1340 (YOUNG – FL)

This bill will allow water agencies to post their Annual Consumer Confidence Report (required under the Safe Drinking Water Act) on their website in lieu of mailing them to their customers. This option would only be available to agencies that did not experience any violations during the reporting period. Customers would still have the option to request a mailed copy of the report.

RECOMMENDED ACTION: (ROLL CALL VOTE)

BOARD OF DIRECTORS GIVES SUPPORT OF HR 1340 (YOUNG – FL) AND AUTHORIZES BOARD PRESIDENT TO SEND LETTER OF SUPPORT.

13. WATER EFFICIENCY FUND

RECOMMENDED ACTION: (ROLL CALL VOTE)

THE BOARD OF DIRECTORS GIVES STAFF DIRECTION ON HOW TO UTILIZE FUNDS COLLECTED IN THE WATER EFFICIENCY FUND.

14. POLICY ON OUTSIDE AGENCY BILL INSERTS

RECOMMENDED ACTION: (ROLL CALL VOTE)

THE BOARD OF DIRECTORS GIVES STAFF DIRECTION ON IMPLEMENTING A POLICY OF PLACING OUTSIDE AGENCY BILL INSERTS WITHIN WATER BILLS.

CONSENT CALENDAR ITEMS: (ROLL CALL VOTE)

Consent items: Unless the General Manager or the Board requests that an item be removed from the Consent Calendar, all items will be acted upon as a whole and by one vote. Requests for discussion of any specific item should be made to the Presiding Officer in conjunction with the discussion of the consent motion.

The following items were previously discussed at the Engineering & Operations Board Meeting (9/12/11) and the Finance & IT Board Meeting (9/14/11).

15. RECEIVE AND FILE MONTHLY OPERATIONAL STATUS REPORTS.
16. RECEIVE AND FILE MONTHLY CONSTRUCTION PROGRESS REPORT.
17. RECEIVE AND FILE CAPITAL PROJECTS BUDGET SUMMARY.
18. RECEIVE AND FILE WATER SUPPLY RELIABILITY PROJECTS' STATUS SUMMARY REPORT.
19. SEWAGE LIFT STATION BACK-UP PUMPS AND/OR MOTORS, MISCELLANEOUS CONTRACTS

THE BOARD OF DIRECTORS APPROVES A TOTAL EXPENSE AUTHORIZATION OF \$239,500 TO BE ALLOCATED TO EACH OF THE ASSOCIATED CONTRACT NUMBERS AS FOLLOWS: (THIS PROJECT WILL BE FINANCED FROM FUND 14 – PLANNING AND CONSTRUCTION FUND.)

2011.046 = \$70,000
2011.047 = \$ 4,500
2011.048 = \$16,000
2011.049 = \$17,000
2011.050 = \$51,000
2011.052 = \$15,000
2011.053 = \$66,000

20. PROGRAMMABLE LOGIC CONTROLLER (PLC) PANEL REPLACEMENT, CONTRACT 2011.016

THE BOARD OF DIRECTORS AWARDS THE PROFESSIONAL SERVICES AGREEMENT TO BRITHINEE ELECTRIC FOR AN AMOUNT NOT-TO-EXCEED \$52,648, AND APPROVE A PROJECT EXPENSE AUTHORIZATION OF \$63,000. THIS PROJECT WILL BE FINANCED FROM FUND 7 – REPLACEMENT AND REFURBISHMENT FUND.

21. APPROVE WBBRS PROJECT EXPENDITURE, PROJECT NO. 2008.033, IN THE AMOUNT OF \$60,000. THIS PROJECT WILL BE FINANCED FROM FUND 7 – REPLACEMENT AND REFURBISHMENT FUND.
22. RECEIVE AND FILE FINANCIAL STATEMENTS FOR PERIOD ENDED JULY 31, 2011.
23. RECEIVE AND FILE THE SUMMARY OF DISBURSEMENTS IN THE AMOUNT OF \$15,203,450.34 DATED AUGUST 30, 2011.

ENGINEERING & OPERATIONS MATTERS:

24. LA PAZ ROAD RECYCLED WATER BRIDGE CROSSING, CONTRACT 2010.013

The City of Mission Viejo is completing the final design to widen the bridge on La Paz Road over the Metrolink Railroad. District staff has been working with the City to incorporate a recycled water pipeline into the construction package. A Staff Report was provided on this matter at the Engineering and Operations Meeting on September 12, 2011.

RECOMMENDED ACTION: (ROLL CALL VOTE)

THE BOARD OF DIRECTORS OF THE MOULTON NIGUEL WATER DISTRICT APPROVES A PROJECT EXPENSE AUTHORIZATION OF \$115,000. THIS PROJECT WILL BE FINANCED FROM FUND 12 – WATER RELIABILITY FUND.

FINANCE & INFORMATION TECHNOLOGY MATTERS:

25. See Consent Calendar Items

LEGAL MATTERS:

26. AGREEMENT WITH CITY OF MISSION VIEJO FOR CONSTRUCTION OF 12- INCH RECYCLED PIPELINE IN LA PAZ ROAD CONCURRENTLY WITH ROAD WIDENING PROJECT

SUMMARY AND DISCUSSION:

Attachment L-1 to the Agenda is a proposed agreement with the City of Mission Viejo for the construction of a new recycled water pipeline in La Paz Road within the City's road/bridge widening project (from I-5 freeway to Chrisanta, including a bridge over the Metrolink Railroad). Staff used an agreement form modeled on the terms used for recent pipeline relocations with the County of Orange/OCFCD. The City Engineer will provide the pipeline design in accordance with the District's specifications, and the City will include the pipeline within the road/bridge project contract.

The District will review and approve final design, bid documents, and pipeline change orders. The City's contractor will provide insurance and warranty bonding for the pipeline, including naming the District as an additional insured and an indemnitee under the construction contract. The City will charge a 10% administrative fee for the total pipeline project cost. Please refer to the Staff Report included in the Engineering/Operations Agenda for cost estimate information and additional project particulars.

RECOMMENDED ACTION: (ROLL CALL VOTE)

THE BOARD OF DIRECTORS APPROVES THE "AGREEMENT BETWEEN CITY OF MISSION VIEJO AND MOULTON NIGUEL WATER DISTRICT FOR INSTALLATION OF DISTRICT RECYCLED WATER PIPELINE WITH LA PAZ WIDENING PROJECT" AND AUTHORIZE EXECUTION OF THE AGREEMENT BY THE GENERAL MANAGER, SUBJECT TO NON-SUBSTANTIVE CHANGES APPROVED BY THE DIRECTOR OF ENGINEERING/OPERATIONS AND LEGAL COUNSEL.

27. IN ACCORDANCE WITH GOVERNMENT CODE SECTION 54956.96 (a) (1) AND (b), A CLOSED SESSION WILL BE CONDUCTED TO CONFERENCE ON EXISTING LITIGATION OF SOUTH ORANGE COUNTY WASTEWATER AUTHORITY: TWO CASES

a. *South Orange County Wastewater Authority, South Coast Water District vs. San Diego Regional Water Quality Control Board, Petition for Writ of Mandate (LASC Case, filed 8-18-2011) [Region 9 Failure to Modify San Juan Outfall NPDES Permit re SCWD Groundwater Recovery Facility]*

South Orange County Wastewater Authority, South Coast Water District vs. San Diego Regional Water Quality Control Board, Petition for Writ of Mandate (LASC Case) [\$204,000 Mandatory Minimum Penalties for SCWD Groundwater Recovery Facility discharge under San Juan Outfall NPDES Permit]

b. *South Orange County Wastewater Authority v. City of Dana Point, Makar Properties LLC (2011) 196 Cal. App. 4th 1604*

28. IN ACCORDANCE WITH SUBDIVISION (A) OF GOVERNMENT CODE SECTION 54956.9, A CLOSED SESSION WILL BE CONDUCTED TO:

United States, the States of California, Delaware, Florida, Illinois, Indiana, Nevada, New Mexico, New York, and Tennessee, the Commonwealths of Massachusetts and Virginia, and the District of Columbia ex rel. John Hendrix vs. J-M Manufacturing Company, Inc., d/b/a JM Eagle, a Delaware corporation, and Formosa Plastics Corporation, U.S.A., a Delaware corporation: Federal and State court cases [“JM Pipe Matter”]

LIST OF ATTACHMENTS

GENERAL MANAGER REPORT MATTERS

Attachment L-1

Agreement Between City of Mission Viejo and Moulton Niguel Water District for Installation of District Recycled Water Pipeline With La Paz Widening Project

ATTACHMENT NO. L-1

AGREEMENT BETWEEN CITY OF MISSION VIEJO AND MOULTON NIGUEL WATER DISTRICT FOR INSTALLATION OF DISTRICT RECYCLED WATER PIPELINE WITH LA PAZ WIDENING PROJECT

This Agreement, hereinafter referred to as "AGREEMENT," is dated and effective the _____ day of _____, 2011 ("Effective Date"), and is by and between the **CITY OF MISSION VIEJO**, hereinafter referred to as "CITY," and **MOULTON NIGUEL WATER DISTRICT**, hereinafter referred to as "DISTRICT." CITY and DISTRICT are sometimes referred to in this AGREEMENT individually as "party," or jointly as "parties."

RECITALS

WHEREAS, CITY proposes to construct the widening of La Paz Road from the I-5 Freeway to Chrisanta, including the bridge over the Metrolink Railroad, hereafter referred to as "PROJECT," and CITY confirms that it previously completed CEQA and NEPA proceedings for the PROJECT that encompass utilities, including the DISTRICT's "PIPELINE" as discussed in the following Recital;"

WHEREAS, DISTRICT desires to install a 12-inch recycled water pipeline and appropriate connections and appurtenances within the extents of the PROJECT for purposes of improving DISTRICT's ability to serve recycled water, hereafter referred to as "PIPELINE;"

WHEREAS, DISTRICT previously constructed two separate 12-inch recycled water pipelines within La Paz Road on either side of the PROJECT that will connect to the PIPELINE; and

WHEREAS, CITY and DISTRICT have mutually determined the best course of action to install the PIPELINE within the PROJECT extents is to incorporate the design and construction of the PIPELINE into CITY'S contract for the PROJECT.

NOW THEREFORE, IT IS AGREED by and between the parties as follows:

SECTION I

CITY , IN ADDITION TO ANY OBLIGATIONS AND RESPONSIBILITIES, AND RIGHTS, SET FORTH IN SECTION II AND SECTION III HEREOF, SHALL:

1. Direct CITY's Engineer to incorporate the design of the PIPELINE into the PROJECT plans and specifications. The PIPELINE design shall meet the requirements of the DISTRICT's standard specifications and shall be subject to the approval by the DISTRICT. CITY shall obtain a design contract amendment from CITY's Engineer for the scope and fee to prepare the design

of the PIPELINE, and shall provide to DISTRICT for review and approval; DISTRICT's approval shall not be unreasonably withheld.

2. Include individual bid items in PROJECT plans and specifications for the installation of the PIPELINE, including the connections to existing DISTRICT pipelines (as will be specified by DISTRICT in accordance with SECTION II. 4.), relevant appurtenances, and appropriate testing as required under the approved PROJECT plans and specifications for the PIPELINE; and provide to DISTRICT prior to soliciting bids for DISTRICT review and approval, which shall not be unreasonably withheld.

3. Solicit competitive bids for the PROJECT including PIPELINE and award a construction contract to the lowest responsive and responsible bidder, hereinafter referred to as "CONTRACTOR."

4. Prior to award of the contract for the PROJECT, Provide a complete set of construction contract documents to DISTRICT which shall identify all sub-contractors, including those who will be suppliers, or accomplish work, with respect to the PIPELINE, as well as line item bid prices for all PROJECT work for the PIPELINE.

5. Award the construction contract to CONTRACTOR and oversee and administer the construction contract, including those elements of the PROJECT and the construction contract related to the PIPELINE work.

6. Provide shop drawing submittals associated with the PIPELINE for review and approval by DISTRICT. DISTRICT shall review and comment on all shop drawing submittals within twenty (20) calendar days from the date received by DISTRICT.

7. Furnish a representative to perform the usual functions of a CITY inspector, hereinafter referred to as "INSPECTOR," who shall be responsible for monitoring and inspecting the CONTRACTOR's performance. CITY, through the INSPECTOR, shall provide written notice of when PIPELINE work within the pipe trench and connections to existing DISTRICT facilities are scheduled at least 72 hours in advance to the DISTRICT "REPRESENTATIVE" (to the extent DISTRICT designates a "REPRESENTATIVE" as such term is defined below in SECTION II.4.)

8. Issue construction contract change orders (CCOs) as required for the PIPELINE, but only after review and written approval by DISTRICT. DISTRICT's approval shall not be unreasonably withheld and DISTRICT shall respond to requests for approval in a timely manner, as further set forth in SECTION II.3.

9. Incorporate within the contract documents for the PROJECT a requirement for CONTRACTOR to obtain and keep in full force and effect throughout the duration of PROJECT, for the mutual benefit of DISTRICT and CITY, Commercial General Liability insurance with a limit of at least one million dollars (\$1,000,000) per occurrence with a minimum aggregate of at least two million dollars (\$2,000,000) and Commercial Automobile Liability insurance with a limit of at least one million dollars (\$1,000,000). Said policies shall

name DISTRICT and CITY, and each of their elected and appointed officials officers, employees and agents ,as additional insureds by separate endorsements, and shall, additionally, contain language providing for waiver of subrogation, that the policies are primary and noncontributing with any insurance that may be carried by the parties, that said insurance may not be cancelled or materially changed except upon thirty (30) calendar days written notice to CITY, and any losses shall be payable notwithstanding any act or failure to act or negligence of DISTRICT and/or CITY. CITY shall also require that worker's compensation benefits are secured by CONTRACTOR as required by law, with a waiver of subrogation endorsement against DISTRICT and CITY. CITY shall also incorporate in the PROJECT contract documents terms for CONTRACTOR's indemnification of DISTRICT, and DISTRICT's elected and appointed officials, officers, employees and agents, which shall be consistent with the CONTRACTOR's indemnity applicable to CITY.

10. Require CONTRACTOR to construct the PIPELINE to the written approval of DISTRICT. CITY shall not accept PROJECT work from CONTRACTOR until DISTRICT concurs that the PIPELINE construction work has been performed to DISTRICT'S written approval and in accordance with CITY's plans and specifications.

11. Require CONTRACTOR to provide a one-year warranty and a warranty bond for the PIPELINE for the benefit of DISTRICT. This warranty and bonding requirement is to be stated in the plans and specifications, and contract documents, for the PROJECT.

12. Upon completion of the PIPELINE work and DISTRICT's written acceptance of PIPELINE, provide a final accounting report detailing the bid item costs for the PIPELINE work for review and approval by DISTRICT, which approval shall not be unreasonably withheld, and invoice DISTRICT for the balance of any additional costs incurred by CITY and approved by DISTRICT not otherwise paid for said PIPELINE work. DISTRICT shall pay CITY within sixty (60) calendar days of receipt of said invoice.

13. Upon filing of the Notice of Completion for the PROJECT, CITY shall issue an encroachment permit for the PIPELINE, which form shall be consistent with Exhibit A hereto, and shall include terms consistent with law governing DISTRICT's exercise of its' franchise rights within public right of way, and execute a dedication of the PIPELINE facilities in the form of Exhibit B hereto to the District for DISTRICT to assume ownership of the PIPELINE.

13. Pursuant to Section 895.4 of the Government Code, defend with counsel approved in writing by DISTRICT , and indemnify and hold and save harmless DISTRICT and its elected and appointed officials, officers, agents and employees, from all liability from loss, damage or injury to persons or property, including any and all legal costs and attorneys' fees, in any manner arising out of the performance, by CITY, its elected and appointed officials, officers, agents and employees, of CITY's obligations under this AGREEMENT or the contract for the PROJECT.

SECTION II

DISTRICT, IN ADDITION TO ANY OBLIGATIONS AND RESPONSIBILITIES, AND RIGHTS, SET FORTH IN SECTION I AND III, SHALL:

1. Be responsible for review and approval of the design of the PIPELINE based on CITY'S Engineer's design request and the contract plans and specifications, and for all CCOs as described in paragraph 3 below for the PROJECT. DISTRICT shall not unreasonably delay the CONTRACTOR in the written approval of work related to the PIPELINE.
2. Be invoiced for the PIPELINE work as the CITY'S Engineer prepares and completes the design of the PIPELINE, and the CONTRACTOR completes construction of the PIPELINE, in accordance with progress payment terms under the PROJECT contract documents. Upon review and approval, DISTRICT shall pay all such invoices within thirty (30) days of receipt from CITY. Invoices shall include the 10% administrative fee as defined in SECTION II, Part 6.
3. Review and approve CCO's issued by CITY specifically related to the PIPELINE and be solely responsible for all CCO costs pertaining to the PIPELINE. DISTRICT shall not unreasonably withhold consent to such CCO's and DISTRICT shall pay to CITY its share of the cost of such CCO's within thirty (30) days of receipt of a written request for such payment from CITY.
4. At DISTRICT's option and sole discretion, furnish a representative to assist over-seeing installation of the PIPELINE, hereinafter referred to as "REPRESENTATIVE." REPRESENTATIVE and INSPECTOR shall cooperate and consult with each other. Should INSPECTOR and REPRESENTATIVE be unable to reach agreement, the decision of INSPECTOR shall be final, provided the PIPELINE is constructed to DISTRICT's standards and specifications. Specific inspection for all PIPELINE work by CONTRACTOR within the pipe trench and for all connections to existing facilities owned by DISTRICT shall be performed to the full satisfaction of the DISTRICT, or as applicable, REPRESENTATIVE.
5. Coordinate shutdown of existing DISTRICT pipelines with CONTRACTOR to facilitate connections associated with PIPELINE. CONTRACTOR will identify a schedule for the PIPELINE and include a proposed outage period to be submitted to CITY and approved in writing by DISTRICT, which can be extended if required for the work of the PIPELINE, and as approved by INSPECTOR and DISTRICT or as applicable, REPRESENTATIVE.
6. Upon completion of PIPELINE and within sixty (60) calendar days of receipt of an invoice and final accounting report from CITY, DISTRICT shall provide to CITY final payment for PIPELINE work not otherwise paid previously, determined as the sum of 6a, 6b, 6c, and 6d below:
 - a. The costs for the design of the PIPELINE to incorporate into the PROJECT plans and specifications.

- b. The actual sum of the line item prices bid for the construction of PIPELINE as listed in the bid schedule, from CONTRACTOR.
- c. CCO expenses previously approved by DISTRICT's related to work for the PIPELINE and not already paid by DISTRICT, if any, shall be added to the above.
- d. Ten percent (10%) of the actual sum amount determined by the addition of 6a, 6b, and 6c above as an agreed upon amount to reimburse CITY for costs incurred for construction administration, inspection, CEQA, bonds, insurance, scheduling, and other mobilization costs related to PIPELINE.

7. Pursuant to Section 895.4 of the Government Code, defend with counsel approved in writing by CITY, and indemnify and hold and save harmless CITY and its elected and appointed officials, officers, agents and employees, from all liability arising from loss, damage or injury to persons or property, including any and all legal costs and attorney's fees, in any manner arising out of the performance, by DISTRICT, its elected and appointed officials, officers, agents and employees, of DISTRICT's obligations under this AGREEMENT.

8. Upon filing of a Notice of Completion of the PROJECT by CITY and CITY's issuance of an encroachment permit for the PIPELINE (Exhibit A), accept ownership by a dedication of facilities (Exhibit B) of the PIPELINE.

SECTION III

IT IS MUTUALLY UNDERSTOOD AND AGREED:

1. The terms and provisions of this AGREEMENT, including the Recitals which are true and correct, and Exhibits A and B, which are incorporated in this AGREEMENT by this reference, shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.
2. This AGREEMENT constitutes the entire agreement between CITY and DISTRICT and supersedes all prior understandings and agreements, if any, between the parties with respect to the subjects hereof. This AGREEMENT may only be modified in a writing specifically referencing this AGREEMENT and signed by both parties hereto.
3. If any part of this AGREEMENT is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this AGREEMENT shall be given effect to the fullest extent reasonably possible.
4. The parties represent and warrant that this AGREEMENT has been duly authorized and executed and constitute the legally binding obligation of their respective entity enforceable in accordance with its terms. This AGREEMENT may be executed in counterparts, and each counterpart shall be deemed to be an original.

5. All notices or other communications provided for herein shall be in writing and shall be personally served or delivered by United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

Moulton Niguel Water District
Mr. Robert Gumerman, General Manager
27500 La Paz Road
Laguna Niguel, CA 92677
rgumerman@mnwd.com
with a copy to: Director of Engineering and Operations
(same address above)

City of Mission Viejo
Mr. Dennis Wilberg, City Manager
200 Civic Center
Mission Viejo, CA 92692

Either party may, by notice to the other party, designate a different address for notices which shall be substituted for that specified above. Any notice given as provided in this paragraph shall be deemed to have been received, if personally served, as of the date and time of service, or it deposited in the mail as provided above, forty-eight (48) hours after deposit in the mail.

6. This AGREEMENT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this AGREEMENT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.

7. If DISTRICT breaches any of the covenants or conditions of this AGREEMENT, CITY shall have the right to terminate this AGREEMENT upon ten (10) days written notice prior to the effective day of termination. DISTRICT may terminate this AGREEMENT at any time with ten (10) days prior written notice to CITY, provided DISTRICT shall remain responsible for all costs incurred by CITY for the PIPELINE design, construction and other work incurred prior to the termination and not otherwise paid by DISTRICT as agreed herein, and DISTRICT shall further be and remain responsible for any future PIPELINE costs arising after such termination that cannot otherwise be mitigated under the terms of the contract with CONTRACTOR. Any notice of termination hereunder by either party shall be in writing and shall state the date upon which such termination is effective. Notice shall be served as provided in paragraph 5 above.

8. Termination

- a. In the event PROJECT construction (as outlined above), is not initiated within two (2) years of the Effective Date of this AGREEMENT, this AGREEMENT

will automatically terminate unless extended in writing by mutual agreement of the parties.

- b. In the event CITY is unable to proceed with PROJECT in accordance with the terms and conditions of this AGREEMENT, CITY may terminate this AGREEMENT, with or without cause, upon delivery of thirty (30) days written notice to DISTRICT.
- c. Notice of termination shall be in writing and shall state the date upon which such is effective. Notice shall be served as provided in paragraph 5 above.

9. This AGREEMENT is by and between DISTRICT and CITY and is not intended and shall not be construed so as to create, as between DISTRICT and CITY any agency, servant, employee, partnership, joint venture, association or other relationship between the DISTRICT and CITY.

10. The failure of DISTRICT or CITY to insist upon strict performance of any of the covenants or conditions of this AGREEMENT shall not be deemed a waiver of any right or remedy that DISTRICT or CITY may have, and shall not be deemed a waiver of any right to require strict performance of all the terms, covenants and conditions of this AGREEMENT thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of this AGREEMENT.

11. Should litigation be necessary to enforce any terms, covenants or provisions of this AGREEMENT, each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed by their duly authorized representative.

MOULTON NIGUEL WATER DISTRICT

Date: _____

By: _____

Robert Gumerman

APPROVED AS TO FORM:

BOWIE, ARNESON, WILES & GIANNONE

Legal Counsel, Moulton Niguel Water District

By: _____

Patricia B. Giannone

CITY OF MISSION VIEJO

Date: _____

By: _____

APPROVED AS TO FORM:

Legal Counsel, City of Mission Viejo

By: _____